

GILA RIVER INDIAN COMMUNITY

Executive Office of the Governor & Lieutenant Governor

“Putting Our People First”

Stephen Roe Lewis
Governor



Robert Stone
Lieutenant Governor

Thomas Buschatzke
Director
Arizona Department of Water Resources

Ted Cooke
General Manager
Central Arizona Water Conservation District

Dear Director Buschatzke and Mr. Cooke:

I am writing on behalf of the Gila River Indian Community (“Community”) to provide you with the Community’s views on the Lower Colorado Drought Contingency Plan (“LBDCP”) discussions now underway within your DCP Steering Committee. Tribes are deeply concerned about the prospect of drought being declared on the Colorado River as soon as 2020, both on their respective tribal nations and economies, but also on the greater Arizona economy. We are all affected by major climate changes such as this, and we recognize the need to jointly plan for and address the impacts of drought.

As you are aware, the Community is very concerned about the concepts that are emerging within your DCP Steering Committee discussions. In particular, we consider the Ag Pool mitigation proposals that have been presented to the DCP Steering Committee to date as attempts to transfer higher priority NIA CAP Water to the lower priority Ag Pool without mitigation to affected NIA CAP Water entitlement holders like the Community. Further, the Ag Pool mitigation proposals are inequitable because, if adopted, the Ag Pool would have more water than otherwise projected under the current 2007 Interim Guidelines. Moreover, these mitigation plans do not fully mitigate NIA CAP water entitlement holders. As a result of these inequitable proposals the Community’s Litigation Team¹ approved the attached motion to provide clear direction regarding what proposals are unacceptable to the Community. These motions are summarized as follows:

- The Community’s DCP Steering Committee representatives are instructed to reject any proposed mitigation plan that puts a CAP water user in a better position under the LBDCP than they would be under the existing 2007 Interim Guidelines; and

¹ The Community Council established, and delegated authority to, the Litigation Team to provide direction to the Community’s legal counsel and other representatives on matters related to the enforcement, protection and implementation of the Community’s water settlement. The Litigation Team is comprised of the Community’s Governor, Lieutenant Governor, seven Community Council members, and the Community’s Treasurer.

- The Community's DCP Steering Committee representatives are instructed to reject any proposed mitigation plan that does not provide for equitable mitigation to the NIA Priority Pool.

As a result of these instructions I must reject the recent mitigation proposal that was delivered to our legal counsel on October 17, 2018, because: (1) it would provide more water to the Ag Pool than it would expect to receive under the 2007 Interim Guidelines, thus placing certain CAP water users in a better position under the LBDCP than they would be under the existing 2007 Interim Guidelines; and (2) it is patently inequitable because it does not fully mitigate the NIA Priority Pool, and is essentially a proposal to transfer of over 300,000 acre-feet of NIA Priority Pool water to the Ag Pool.

The Community still believes that there may be a path for the LBDCP to be adopted and has expressed basic principles that we believe provide a path for LBDCP being adopted. These basic principles are what we will be guided by when evaluating the various proposals under discussion.

A. "Rule of Holes"

First, we believe that the purpose of the LBDCP is to reduce water use from Lake Mead, the source of Arizona's supply of Colorado River water, in advance of a declaration of a Tier 1 shortage, in order to be better positioned to avoid a Tier 2 shortage, or worse. This is a goal that is worthy of support by all, and tribes join in supporting it with you. To fulfill this goal, we strongly believe that we should not make the problem in Lake Mead any worse by using additional water drawn from Lake Mead in order to mitigate the impact of the LBDCP cuts on any pool of CAP water users. To do so would violate the "Rule of Holes", which states that when you are in a hole, you should stop digging.

B. Increase Lake Mead Elevation Levels

Second, stopping digging is essential, but we also believe that LBDCP must also seek to fill up Lake Mead as well, to the maximum extent possible to stave off a Tier II cut for as long as possible. Thus, the Community considers a robust program of System Conservation to be an essential element of any LBDCP, and cannot contemplate participating in an LBDCP that does not include such a program.

C. Equitable Burden Sharing

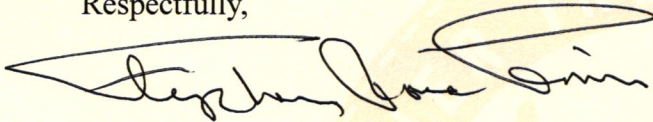
Third, we believe that all interested parties and water users should bear some of the pain of the cuts necessary to better assure longer term water supplies for us all. No one group of water users should be protected from the consequences of the adoption of LBDCP, while others are expected to make sacrifices for our common good. This is a fundamental principle of fairness, and is of particular concern to tribes because we are more often than not the ones expected to sacrifice when others do not. The point is not to protect all from the consequences of the adoption of LBDCP, but to equitably find a way for sharing the burden of these cuts. This means all cuts should be proportional, and if one group is going to be fully mitigated then all groups should be fully mitigated.

D. No Sacrifice of Hard Won Tribal Water Rights as Part of LBDCP

Finally, we believe that under no circumstances will the Community be able support any LBDCP that requires tribes to give up any aspect of their existing tribal water rights as part of LBDCP. This does not mean that the Community does not recognize the need for common sacrifice for our common good. It does mean that new restrictions on the location of use of our CAP water rights, for example, will not be acceptable to the Community under any circumstances. Nor can we accept any diminution in the legal definition of our statutory entitlement to CAP water. If a Tribal ICS Program is adopted that does not recognize our existing water rights as we see them, the Community will not be able to support it or the LBDCP.

We hope this letter is helpful to you and the Steering Committee in your deliberations on this critical issue for the State of Arizona. To avoid further misunderstandings about what the Community believes might be an acceptable LBDCP, we are currently preparing our own proposal for you to consider. We will share it with you as soon as we are able and would look forward to discussing it with you on October 24, 2018, at a mutually convenient time. We will be back in touch on this soon.

Respectfully,



Stephen R. Lewis
Governor
Gila River Indian Community

Cc: Leslie Meyers

