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Water-rights Settlements and Reclamation in Central Arizona as a Cross-cultural Experience: A Reexamination of Native Water Policy

Kenichi Matsui

As of December 2010, the US Congress had enacted more than twenty major community-specific Native water-rights settlements, and the state of Arizona had more of these settlements (eight) than any other US state.¹ This unique situation has invited voluminous studies on Arizona's Native water-rights settlements. Although these studies have clarified the political and legal implications of the settlements and offered some practical future recommendations for Native water-rights policy, several ethnohistorical and theoretical questions still remain as to what factors galvanized and formed these settlements and whose ideas they were.² Did large reclamation projects such as the Central Arizona Project (CAP) give a major incentive for policy makers to enact these settlements? If so, did these settlements intend to accommodate mainly non-Native needs? If not, to what extent did the Native peoples play a role in forming these water settlements?

In seeking to answer these questions, I will examine the history and implications of two water-rights settlements: one for the Salt River Pima-Maricopa Indian community, and the other for the Fort McDowell Yavapai Nation in central Arizona, both near the city of Phoenix. In order to clarify the ethnohistorical aspects of these settlements, I will focus on interactions and negotiations between the two Native communities and non-Native stakeholders

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about Native water rights and the impact of water works that affected these communities during the twentieth century. By providing a detailed documentation of Native and non-Native reactions as well as the interactions between these peoples, I attempt to clarify the evolving and hybrid nature of Native water-rights settlements. I argue that these features, which scholars have not yet discussed in adequate detail, somewhat resemble historic peace treaties between Native peoples and the federal government.³

As historic peace treaties settled past grievances and established a new economic and political alliance between indigenous peoples and the federal government, late-twentieth-century water settlements were intended to resolve past wrongs by securing water supplies and offering compensation along with some economic benefit to tribal governments. An attempt to place the history of the two Arizona water-rights settlements within this context will reveal that the win-lose analogy cannot fully shed light on the meanings and significance of Native water-rights settlements. These settlements also demonstrate an expression of cross-cultural experience. I believe that this approach can contribute to the enrichment of ethnohistorical research on Native/non-Native relations, especially as they relate to water-rights settlements in Arizona. From my previous studies on other parts of the American West and western Canada, I also believe that this emphasis on cross-cultural experience works to understand Native water settlements in some other parts of North America.⁴

This study should also contribute to our better understanding of the formation of Native water-rights policies. Cultural anthropologists, ethnohistorians, and other scholars have written about how the introduction of water policy—or what political scientist Daniel McCool calls “Anglo policy”—changed indigenous culture and society in a localized context.⁵ However, very little has been set down about the process of indigenous use or the incorporation of nontraditional political and legal strategies—the strategies that frequently advanced the positions of indigenous peoples in the midst of changing and often-debilitating sociopolitical and environmental circumstances.

Similarly, little documentation has been produced about the process of Native peoples’ influence on the formation and implementation of water policy in the United States. This point is particularly important in the studies of cross-cultural interactions or so-called Indian-white relations regarding water-development projects and water rights. In examining the impact of water rights and policies on Native communities, some scholars have delegated the intellectual property rights of forming water policies mainly to the “white” people. In *Native Waters*, for example, McCool contends that “nearly all Indian policy is made by white people, not Indian people.”⁶ In this article, I attempt to show otherwise by arguing that the water policy affecting two Native communities in central Arizona was not simply conceived by “white” policy makers. Native

leaders and activists played important roles in formulating water policy. Their roles became more obvious as Native leadership became more attuned to and equipped with political campaigning and negotiation skills during the latter half of the twentieth century. Also, one of the striking characteristics of modern Native campaigning and negotiation are the roles that traditional culture and religion play in reclaiming the self-governing rights of indigenous peoples. This cultural and religious focus is not something recently “invented”; rather, as mainstream American society has become more culturally sensitive in making policies since the 1960s, indigenous peoples saw opportunities to advance their position by incorporating their cultural claims. Thus, throughout this article, I argue that so-called Indian water policy was more the product of cross-cultural interactions and negotiations than a racially designated innovation.⁷

In order to clarify the nature of Native responses, I begin with a brief discussion about how Native and non-Native parties each came to the disputed areas. I follow with a critical examination of the interaction between Native peoples and non-Native stakeholders regarding the Salt River Project and the CAP (especially its Orme Dam scheme). The Salt River Project was one of the first and most significant reclamation projects in the American West. The Orme Dam scheme, which did not materialize, provides an important picture of how Native politics evolved during the twentieth century by incorporating nonindigenous elements and reiterating Native traditional cultural values. In these cases, indigenous peoples played some decisive roles (more so in the latter case) in formulating and implementing water policies that, in turn, affected non-Native people in central Arizona. Although Native leaders did not accept assimilation-oriented water policies on reservations, they did, in dealing with water projects that affected their livelihood and indigenous rights to land and water, see opportunities to secure and advance their communities’ rightful claims for self-government. The article will conclude with a position on the evolving and hybrid nature of the two Native water-rights settlements.

HISTORICAL BACKGROUND

The Salt River Pima-Maricopa (or Salt River) and Fort McDowell reservations are located in the Phoenix metropolitan area of the state of Arizona. The Salt River Reservation was established in 1879 by the executive order of President Rutherford B. Hayes for the Pimas (Akimel O’odham) and Maricopas (Pee-Posh). These indigenous peoples traditionally centered their activities in the Sonoran Desert, especially around the present-day Gila River Reservation, which is located several miles south of Phoenix. During the late 1860s, a

number of non-Native settlers established their homesteads on the upper stream of the Gila and began to divert a large amount of water for irrigation. In 1870, Pima Indian agent Frederick E. Grossman of the Bureau of Indian Affairs (BIA) reported that the Pimas and Maricopas bitterly complained that the newcomers irrigated the upper-stream land “without returning to the river the surplus of this water thereby greatly diminishing its volume before it reached the reservation.”⁸

During the early 1870s, largely because of drought and crop failure, more than two thousand members of the reservation, who sought better access to water for irrigation, moved to the Salt River region.⁹ President Hayes originally issued an executive order on January 10, 1879, that set aside a large parcel of land for the reservation. This original reservation encompassed much of the Phoenix metropolitan area and extended eastward near the San Carlos Apache Reservation. Political pressures from non-Native farmers and railroad interests soon ensued against the establishment of such a large tract of land for these Native peoples, and Hayes replaced the order with a new one in the same year, which set aside a much smaller parcel of land east of the present-day township of Scottsdale.¹⁰

At the turn of the century, the four bands of the Yavapai people similarly migrated out of the Apache Reservation in eastern Arizona. During the war years between the US Army and some Apache bands in the 1860s and 1870s, the Yavapais, who had been mistaken as Apache bands, were placed on the San Carlos Indian Reservation. By 1900, many Yavapai had left their unrelated indigenous neighbors and taken their journey back to traditional territories. One band moved to the area northeast of the present-day Salt River Reservation along the Verde River, a tributary to the Salt River.¹¹

During the fall of 1900, a federal Indian agent found a band of the Yavapais (mostly the Kwoyokopaya Band) living at the abandoned Camp McDowell military reservation near the Salt River Indian Reservation. Moved by their plea to return to their traditional home, this Indian agent and Commissioner of Indian Affairs William A. Jones recommended that the Department of the Interior (DOI) set aside a reservation for this band. The military reservation, which consisted of about twenty-five thousand acres, was then under the jurisdiction of the DOI in accordance with the act of August 23, 1894. Receiving the request from the DOI on November 27, 1901, the General Land Office drafted a bill the next month to allot land in severalty to the Yavapai Band. The allotted area included the old campsite with its good artesian well, garden, federal government farm, and old government irrigation ditch.¹²

The establishment of the Yavapai Reservation, however, did not proceed smoothly. Non-Native settlers, including the Mexicans, had already occupied most of the fertile land. The federal government sent its agent, Frank Mead,

to investigate the situation. He observed that many non-Native farmers had threatened the Yavapai to leave the military campsite, but the Yavapai were determined to remain there and practice farming. Three days after Mead submitted his report in September 1903, President Theodore Roosevelt issued an executive order that established the Fort McDowell Indian Reservation. The federal government also purchased the land from the non-Native settlers on the military reserve in order to solve the land dispute.¹³ Thus, despite considerable opposition from non-Native farmers, the Yavapai could secure their land. Here we can see a glimpse of some Yavapai negotiation efforts in the process of setting aside the tribal land.¹⁴

SALT RIVER PROJECT AND EMERGING NATIVE AGENCY

During the same year, a number of irrigation promoters in the Phoenix area actively engaged in the expansion of family-size irrigated homesteads by using federal funds, as authorized by the National Reclamation Act of 1902. Benjamin A. Fowler, a former newspaperman, led a number of irrigation promoters and entrepreneurs to found the Salt River Valley Water Users' Association (SRVWUA). He had previously worked closely with major promoters of the National Reclamation Act, such as George H. Maxwell of the National Irrigation Association and Frederick H. Newell of the US Geological Service (USGS).¹⁵ This legislation, which was the product of the Progressive Era as well as the legacy of the Jeffersonian ideal of yeoman farms, attempted to nationalize the administration and finance irrigated homesteads by establishing the Reclamation Service within the USGS.¹⁶ Fowler's water association was to take up the task of establishing a water-storage dam and irrigation systems for the valley homesteaders in collaboration with the federal reclamation service.¹⁷ It was one of the first multipurpose reclamation projects that the service was to undertake.¹⁸

The association undertook its projects under the umbrella name of the Salt River Project. Its first major undertaking was the construction of Roosevelt Dam, which was expected to impound about 1.3 million acre-feet of water on the upper basin of the Salt River near the present-day Tonto National Monument. It also would generate electricity for the city of Phoenix.¹⁹

However, this sudden boost of non-Native agricultural settlement in the Phoenix area placed a heavy strain on Native use of water, especially for agricultural purposes. In 1902, for example, the Reclamation Service already reported that the Native peoples on the Salt River and Gila River reservations "are now in danger of starving because the water has been taken from them and all their crops [will] fail." In order to alleviate the water shortage, the Reclamation

Service recommended that the federal government authorize it to construct “a storage dam, either at San Carlos [present-day Coolidge Dam site], on the Gila River, or at Tonto Basin [at the site of the present-day Roosevelt Dam], on the Salt River, by which a supply of water can be furnished to the industrious and friendly Indians—Pimas and Papagos [O’odham].”²⁰ The Board of Indian Commissioners made a similar report about the water shortage and crop failure in 1903.²¹

By 1905, water disputes in the Salt River valley became ubiquitous, not merely between Native peoples and non-Natives but also between various interest groups. On January 16, 1905, the entangled water disputes reached the Arizona District Court. More than five thousand landowners in the valley and the upper Verde River valley, along with various canal companies, were listed as defendants in the case of *Hurley v. Abbot*, although the case did not include Native interests in valley water.²² This exclusion of Native needs posed a serious threat to the continuation of Native farming because farmers on the Salt River Reservation alone had already cultivated at least 3,449 acres by 1902.²³

At least one month before the filing of *Hurley v. Abbot*, the BIA knew that this case would be litigated. In December 1904, irrigation engineer William H. Code wrote to Secretary of the Interior Ethan A. Hitchcock to protect Native water needs by adjudicating their water rights. The DOI, however, did not respond to Code’s letter. Only on August 31, 1907, a few months after the new secretary, James R. Garfield, took the office, did the department order US attorney Joseph Alexander to intervene in *Hurley v. Abbot* on behalf of the Native peoples on the Salt River and Fort McDowell reservations.²⁴ Although Alexander personally expressed his reluctance to take this case, he nevertheless diligently calculated the quantity of water and land necessary for Native peoples in the valley. Alexander argued that the Salt River Reservation was entitled to irrigate 3,448 acres of land and the Fort McDowell Reservation was entitled to irrigate 1,300 acres. Alexander also included needs for the Phoenix Indian School (160 acres) and the Phoenix Indian Hospital (60 acres).²⁵

This idea of quantifying Native water rights on the basis of irrigable acreage was a new and quite unconventional practice at the time. The US Supreme Court rendered its first decision regarding Native water rights in *Winters v. United States* (1908), in which the Court ruled that the federal government “reserved” water on behalf of Native tribes when Indian reservations were established. This *Winters* decree also indicated that Native water rights were not to be clearly quantified because of the consideration for future use on reservations. As more water users competed with Native peoples, the federal court faced the necessity of clarifying the extent to which Native peoples could claim their rights to water. In its decision on the *Walker River* case (1939), the

9th Circuit Court introduced the idea of the “reasonably foreseeable needs” of the tribe.²⁶ In its decision on *Arizona v. California* (1963), the Supreme Court went beyond this “reasonable use” doctrine and decided to quantify Native water-rights claims by establishing the practicably irrigable acreage (PIA) test. Alexander’s action by claiming water rights to specific irrigable acreage was similar to this PIA test.²⁷ Despite this unconventional action, Alexander’s claim was pragmatic if one considers the complexity of water-rights disputes in the Salt River valley at the time.

Other than the legal claims that Alexander put forth in the Arizona district court, the Pimas and Maricopas were faced with difficulties in securing water for their farms. In undertaking irrigation projects on the Salt River Reservation and the Fort McDowell Reservation, officials of the BIA depended largely on the goodwill of Reclamation Service officials and the SRVWUA, which held virtual administrative power over water allocation and the construction of ditches throughout the valley, including Native reservations. Rather than actively engaging in time-consuming negotiations for securing the water supply for the tribes, BIA officials at the time remained hopeful for the increase of water supply by the completion of Roosevelt Dam. In a 1906 correspondence between the Board of Indian Commissioners and BIA officials, both sides agreed that “the most economical and promising plan was for the Indian Office to subscribe for a 10,000-acre water right on behalf of the Indians, putting them into the position of members of the Water Users’ Association, organized for utilizing the water made available by the Roosevelt Dam.” They also believed that the water supply for the Pimas and Maricopas would arrive “within the next twelve months.”²⁸ This optimistic assumption proved to be wrong because a sufficient water supply did not reach Native reservations even years after the dam’s completion in 1911.²⁹

Other than assigning Alexander to clarify legal claims for the Native tribes, BIA officials could have adopted the latest legal development regarding Native water rights. In the *Winters* case, Chief Justice Joseph McKenna, in his majority judgment, affirmed Native water rights as superior to water claims under the state and territorial jurisdictions. When intervening in *Hurley v. Abbot*, Alexander did not adopt this *Winters* doctrine in his argument, nor did Judge Edward Kent of the Arizona District Court consider the decree in the litigation process. Perhaps Alexander and Judge Kent were not sure at the time if the *Winters* doctrine, which dealt with treaty rights, was applicable to Native peoples on reservations that were created by presidential executive orders. The court did not clarify if the *Winters* decree would apply to the Native peoples living on executive-order reservations. The answer to this question had to wait until the decision by the federal circuit court of appeals in *United States v.*

Walker River Irrigation District (1939), in which the court recognized that the *Winters* doctrine was applicable to reservations created by executive orders.³⁰

Although Alexander may have taken a pragmatic approach to water-shortage problems on the Salt River and Fort McDowell reservations, evidence does not show that he actually consulted with Native leaders and farmers regarding how they would like to pursue the course of legal actions in securing water rights. Also, no written record exists that clarifies the extent to which the Pimas and Maricopas understood the implication of this legal development on Native water rights at the time, but the documentary record does tell that Native leaders did not forget this past. For example, during the 1970s, the leaders of the Pima-Maricopa community as well as the Yavapai Nation reminded a Senate committee of the failure of the federal government to observe its fiduciary obligation during the early twentieth century. Gerald Anton, president of the Salt River Pima-Maricopa Indian community, testified on the conditions of his tribe's water rights by recollecting past federal actions and claimed that the DOI and the BIA "failed to present the Indians' claims . . . as guardian of a number of Indian settlers."³¹

Another problem arose from Judge Kent's decision. Under the *Winters* decree, state water laws did not regulate Native use of water on Indian reservations, which were under the federal jurisdiction. The Kent decree, however, regarded Native water rights as something the SRVWUA could adjudicate in accordance with the state water-rights doctrine of "prior appropriation." Although the Kent decree recognized Native rights as long as they met the state's legal criteria, it generally placed Native rights in low-priority categories. The decree divided irrigable reservation lands and others in the valley into three categories—Class A, B, and C. Class A and Class B had a history of irrigation, but Class A had a prior right to water. Class C lands did not have a history of irrigation but were entitled to receive water from the Roosevelt Reservoir once the dam was completed. The members of the SRVWUA generally received higher priority, and tribal lands were only classified as either Class B or Class C. The Class B land on the Salt River Reservation amounted to 2,107 acres, but water rights to the area received lower priority in regard to off-reservation Class B lands largely because Native farmers were not members of the SRVWUA. As a result, the decree recognized rights to irrigate less than one-tenth of the total irrigable land on the Salt River Reservation. The Fort McDowell Reservation, where competition for water was less intense than that in the Salt River valley, received water only sufficient enough to irrigate 1,300 acres out of the 2,064 acres of total irrigable lands.³²

Although Class C lands on the reservations were to be irrigated after the completion of the Roosevelt Dam in 1911, water had not reached these lands even six years later. Upon a request from the BIA, the DOI sent Samuel A.

Eliot to investigate the delay. On June 19, 1917, he confirmed the delay and recommended that “a large supply of water for irrigation is imperatively needed if the Indians on the Salt River Reservation are to have a real opportunity to advance in civilization.”³³

The complication in government administration and the lack of cooperation from the SRVWUA were also attributed to the delay of the water supply from the Roosevelt Reservoir. On May 18, 1916, Congress passed legislation that authorized the secretary of the Interior to secure water for 631 ten-acre allotment lands on the Salt River Reservation. Congress also appropriated \$20,000 for the initial installment of water-supply works.³⁴ In 1917, however, the Bureau of Reclamation replied that all of the Salt River Project waters had already been allocated to non-Native farmers. This meant that Native farmers on the Salt River Reservation could not secure their water supply but had to be hopeful that they would receive some “surplus” water that non-Native farmers did not use.³⁵

Native farmers remained uncertain about the prospect of succeeding in on-reservation agriculture until the 1930s. The DOI learned that the Salt River Project would commence the construction of the Bartlett Dam in order to meet the increasing demand for water. On June 3, 1935, about two years before the completion of the dam, the federal government and the SRVWUA reached an agreement that would fulfill the terms stipulated in the act of 1916 and the Kent decree for the Salt River Reservation. This agreement also recognized that “the quantity of water authorized by the so-called Kent decree is not sufficient for the irrigation requirements of the Indians of the Salt River Reservation.”³⁶ This time, the United States was “desirous” to participate in the construction of the dam by paying 20 percent of the cost and assuming a one-fifth interest in the works along with water for the tribe after its completion. The water to which the tribe was entitled included twenty thousand acre-feet of water from the reservoir along with one-fifth of the surplus water. When the dam was completed in 1937, the federal government somehow reduced the amount to 14,264 acre-feet in order to accommodate non-Native interests.³⁷

In the eyes of many Yavapai residents and farmers, this grim picture of water-supply problems on the Salt River Reservation was not the worst-case scenario. Although the Salt River Pima-Maricopa peoples obtained the legal recognition of water rights by the act of 1916 and the 1935 agreement, the Yavapais on the Fort McDowell Reservation had not achieved comparable headway. In addition, the Yavapais consistently had to endure the lack of government support for maintaining their irrigation works. For example, when J. R. Meskimons, an Indian Irrigation Service engineer, came to investigate the canal system on the reservation during the spring of 1905, he found that the system “has been injured various times by the floods and is not yet

permanently repaired.”³⁸ The Yavapai farmers spent the growing season of that year without the proper irrigation system, and in April 1906, Code estimated the cost of the repair would be \$2,000. The federal government remained hesitant to spend that money for the Yavapais during the following three years. On July 28, 1909, instead of persuading Congress to appropriate the amount, Code recommended to the secretary of the Interior that “the proper solution of the water problem at McDowell” would be to relocate the Yavapais to the Salt River Reservation.³⁹

The Kent decree of 1910 incorporated Code’s removal solution and stipulated that the federal government intended “to remove these Indians from this reservation to the Salt River Reservation” within the next year largely because the Yavapais had not successfully produced crops owing to “the insufficient means of diversion” from the Verde River. After relocation, the Yavapais would irrigate family-based severalty lands on the Salt River Reservation “by means of the proportionate share in the stored water in the Roosevelt Reservoir.” In March 1910, President William Howard Taft’s executive order opened the Salt River Reservation to “other” Indians.⁴⁰

This unilateral plan for Yavapai removal met strenuous opposition from the tribal leaders. Most prominent among them were Chief Yuma Frank and Carlos Montezuma. In his petition of May 7, 1910, Chief Frank stated, “We do not like to give up our homes and go to the Salt River reservation.”⁴¹ He also clarified that the tribe was determined to maintain irrigation ditches and livestock “without any help” from the federal government. Montezuma, who was educated in non-Native institutions and became a medical doctor in Chicago, also played a major role in leading the community. Representing the tribe, he wrote to Secretary of the Interior Richard A. Ballinger on January 30, 1911, “I thoroughly disagree with your department that it is to the best interests of these Camp McDowell Indians to move, and I positively know *it is not their wish to move*.”⁴² Montezuma suggested that, instead of spending about \$45,000 for the task of relocating the entire tribe, the government might use the same amount for building reclamation works that would increase the water supply from the Verde River to the reservation.⁴³

Replying to Montezuma, Acting Commissioner of Indian Affairs Charles F. Hauke explained, “It is not practicable to irrigate sufficient land on the Camp McDowell Reservation to afford allotment to the Indians there [because of] the treacherous character of the stream from which the waters would be taken.” He reiterated that the BIA did not “contemplate allotments to Indians of the lands now embraced in the Camp McDowell Reservation and the Indians should understand if they agree to move to and accept allotments on the Salt River Reservation they will be given irrigable lands there.”⁴⁴ Having examined the long delay of the water supply from the Roosevelt Reservoir to

the Salt River Reservation from 1911 through the 1930s, we now know that Hauke's assurance of land and water for the Yavapai was not based on a clear understanding of the highly competitive and entangled water-rights disputes in the Salt River valley at the time. Also, no record has been found as to whether Hauke or any BIA agents negotiated with the Pimas and Maricopas about relocating the entire Yavapai population from the Fort McDowell community.

Although Hauke emphasized practical concerns, the main reason for removal was to open the Fort McDowell Reservation to non-Native farmers. Historian Peter Iverson suggests that twenty-five thousand acres of the reservation land along the Verde River lured the federal government and the territorial government to expand the Salt River Project and to explore more potential benefits for non-Native farmers, town developers, and land speculators. Leading the opposition in 1911, Montezuma suspected that this economic incentive was behind the removal plan. He testified during the congressional hearing of 1911, "Somebody, some project is favored, if that is the case, then the . . . Indians [the Yavapais] are not wanted where they are."⁴⁵

Strong and persistent opposition from the Fort McDowell Reservation community eventually caused the federal government to drop the removal plan during the 1920s, but there remained many promoters and government officials who still held on to the idea that the "proper solution" would be to remove the Native people from the reservation. In addition, the maintenance of the water-supply system to the reservation was unattended by public works officials, and Yavapai farmers endured an inadequate water supply and damages to their irrigation works by occasional severe floods. As a result, the cultivated acreage at Fort McDowell dropped to somewhere between two hundred and four hundred acres by 1920.⁴⁶

By the 1920s, water-rights disputes had appeared as a major point of contention not only in the Salt River valley but also in the Colorado River basin in general. In November 1922, the delegates from the basin states agreed to sign the Colorado River Compact, the first interstate treaty in the history of the United States. This compact divided the river's waters between the upper basin states (Wyoming, Colorado, Utah, and New Mexico) and lower basin states (Arizona, California, and Nevada). The Arizona legislature, however, refused to ratify the compact because Arizona deemed the distribution of the water unfair and too biased toward the interests of California. The California legislature said that it would not ratify the compact without a deal to build the Boulder Canyon Dam. In 1928, with the promise of it being a multipurpose dam, California politicians persuaded Congress to pass the Boulder Canyon Project Act despite strong opposition from Arizona. In 1944, Arizona finally ratified the compact when the secretary of the Interior promised the delivery of 2.8 million acre-feet a year from the Colorado River. Arizona politicians then

began to persuade Congress to pass the CAP, a major engineering endeavor to divert Colorado water into the Phoenix metropolitan area and beyond.⁴⁷

In the midst of these interstate political and legal debates over the equitable distribution of water, the interests of the Yavapai Nation and the Salt River Pima-Maricopa Indian community appeared to be marginalized. However, if one focuses on the changes in Native politics during the first half of the twentieth century, it also becomes clear that the Native leadership gradually but steadily acquired sophisticated negotiation skills in its discussions with high-ranking government officials. The role that Montezuma and Chief Frank played in successfully campaigning against the removal of the Yavapai people amply demonstrated some new and remarkable development in Yavapai leadership. This new leadership entailed not only coordinating and uniting people but also using the popular media (at the time, newspapers) and writing letters that could clearly communicate with the government. In a way, these leaders turned the tools of assimilation such as language, law, and political customs into something for their own advantage. As we will see, these skills were developed further during the second half of the twentieth century.

CENTRAL ARIZONA PROJECT AND MATURING NATIVE AGENCY

The idea of bringing the Colorado River water to the Phoenix metropolitan area captured the interest of Arizona politicians as soon as the Colorado River Compact was made in 1922, but this plan did not move forward until Arizona ratified the compact in 1944. In that year, Democratic Senators Carl Hayden and Ernest McFarland of Arizona introduced a bill to authorize the CAP. This Arizona bill initially met strong opposition from many federal government officials and the governors of California and Nevada. It took twenty-two years for Congress to approve the bill as part of the Colorado River Basin Project Act (1968). Because of the long-term effort Senator Hayden made for the promotion of the project, it was also known as the Carl Hayden Project.⁴⁸

Although the main part of the Hayden project was to build a canal from the Colorado River to the Tucson area passing through Phoenix, it also contained side projects such as one to construct a multipurpose facility called Orme Dam at the confluence of the Verde and the Salt Rivers. CAP planners promised many benefits, including flood control for the people in the Phoenix metropolitan area, hydroelectric power generation, and recreation attractions. This dam raised particular concern among the Yavapais because it would require 16,952 acres of the Fort McDowell Reservation (about 20,000 in total, or almost 85 percent of the reservation) and 1,750 acres of the Salt River Reservation lands. Once completed, the dam and its reservoir would require the relocation

of about 279 tribal members on the Fort McDowell Reservation (out of 330 in 1968). As compensation for their relocation, Congress would authorize the secretary of the Interior to pay “the fair market price” for all lands to be inundated. The secretary also would set aside 2,500 acres of land for their resettlement within the Tonto National Forest.⁴⁹ If the Yavapai community refused to comply, the secretary of the Interior would “acquire the property interests involved through eminent domain proceedings in the US District Court for the District of Arizona.”⁵⁰

When the CAP bill gained more support during the 1960s, the tribe intensified its opposition. For example, in April 1965, although Representative Morris Udall, Representative John Rhodes, and Senator William H. King joined Hayden to support the CAP bill, Tribal Chairman Phillip Dorchester wrote to Udall: “We are unalterably opposed to the proposed Orme Dam because it will destroy our beloved homeland.” Dorchester pointed out that the dam would inundate “our cemetery containing the souls of the faithful Mohave Apache scouts.”⁵¹ Tribal heroes such as Montezuma and Chief Frank were also buried in the cemetery along the Verde. As passionate as Montezuma and Frank, but more strategically tactful than his predecessors, Dorchester expressed his strong determination to fight against the dam by emphasizing that he had secured support from several politically influential action groups, including the National Congress of American Indians, the Indian Rights Association, the American Friends Service Committee, and other civil-rights groups.

Dorchester’s letter did make some CAP promoters worried. Two influential figures behind the CAP, Richard Johnson of the Central Arizona Project Association and Senator King, discussed Dorchester’s letter. King told Johnson that “Dorchester does not necessarily speak for the Ft. McDowell people.” If the Fort McDowell people would receive a cash settlement, “they might very well decide they like the dam after all.” Johnson replied that either Udall or he would be harsh in dealing with Dorchester to “leave Orme Dam in.”⁵²

In contrast to the people at Fort McDowell, some leaders of the Salt River Native community welcomed Udall’s support of the Orme Dam plan. Shortly after hearing about Dorchester’s letter, Tribal President Filmore Carlos at Salt River wrote to Udall: “We respectfully suggest that no hasty action be taken in removing the Orme Dam from the Central Arizona Project until you are sure that the Fort McDowell tribal council and the Fort McDowell community as a whole concurs in the rigid position taken in the letter by Mr. Dorchester.”⁵³ Carlos was surprised at Dorchester’s position because it seemed to be a breach of an agreement reached between the Salt River and Fort McDowell communities on October 2, 1964, which endorsed the Orme Dam project.

Udall, however, knew that the anti-Orme Dam campaign among the Fort McDowell community was real and strong, and he was willing to drop the Orme Dam project in order to save others in the CAP. He learned from Bureau of Reclamation engineers and, at a later date, Johnson that the CAP would be feasible without Orme Dam. In his letter of March 17, 1965, to Douglas J. Wall, chairman of the Arizona Interstate Stream Commission, Udall wrote, "I have come to the reluctant and tentative conclusion that we cannot hope for 1965 congressional action if construction of Orme Dam is provided for in the bill."⁵⁴ His conclusion, however, did not convince other promoters, who were more than eager to remove the Yavapai community from its reservation for the proposed dam site. They went ahead with the bill that included the Orme Dam plan, which failed to pass Congress in 1965.

The BIA attempted to override the opposition from the Fort McDowell community to Orme Dam. When the tribal council took a vote at a public meeting in 1969 upon the request from Udall, the McDowell community rejected the dam. The BIA officials who attended the meeting, however, reported that the tribal members actually supported the dam. In 1973, upon request from the tribal attorney, Bureau of Reclamation officials met with the community for the first time in order to discuss the Orme Dam proposal. BIA officials were also present to assist them. When the Salt River flood seriously damaged the Phoenix metropolitan area during the spring of 1977, the BIA took this opportunity to reiterate the necessity of Orme Dam.⁵⁵

The Fort McDowell tribal council decided to have legal aid in order to deal with the pressure from the BIA, the CAP, the Bureau of Reclamation, and influential policy makers like Udall and King. In 1974, the council hired Thomas W. Fredericks, who had been associated with the Native American Rights Fund and had experience in representing his own tribe in dealing with issues similar to those of Orme Dam. Fredericks first recommended an unbiased tribal referendum in order to clarify the tribe's position on the dam. This recommendation was based on his understanding that, in the tribal constitution, the BIA was responsible for supporting the result of a tribal referendum. This meant that if the majority voted against the dam, the BIA would have to buttress the tribal position in communicating the matter with pro-Orme Dam groups. On September 24, 1976, the vote was taken and the result was against the dam by 144 to 57. Those who favored the dam were presumed to be the ones living off-reservation because, when unofficial votes were taken among reservation residents during 1973 and 1975 with the help of civil-rights activists, only one cast a vote for the dam. In 1973, one hundred members voted against the dam, and two years later, an additional forty joined the opposition. It is remarkable that the number of people in opposition on the

Fort McDowell Reservation remained steady throughout the 1970s despite the mounting pressure from politically influential non-Native promoters.⁵⁶

During the 1970s, the Fort McDowell Yavapai clearly expressed their doubt regarding money-oriented economic developments and emphasized more traditional values. When the Senate Committee on Interior and Insular Affairs held hearings in October 1975, Minnie Williams and Emma Johnson, along with others from Fort McDowell, sent letters to Senator Henry Jackson, chairman of the committee. Williams, for example, emphasized that the issue was not the money but land. “Don’t you see,” she continued, using economic terms, “that money is losing its value all the time with inflation while land becomes more and more valuable?” Johnson expressed her determination to protect her family gravesite, including the souls of her father, two daughters, husband, father-in-law, niece, and cousin. “When I think that they will be under the water,” she implored, “I always cry.”⁵⁷

The Fort McDowell people also emphasized religious values in their homeland. This argument gained momentum as Congress passed the American Indian Religious Freedom Act in 1978, demonstrating cultural flexibility with respect to Native religious activities. In 1980, Tribal Chairman Clinton Pattea stated that the land had spiritual meanings. It was “a resource for our lives,” but not a “commodity”; therefore, the decision “is not ours to sell or to make money from [the land].” He explained that the Yavapai people believed that a “spiritual people,” an intermediary being between the Creator and ordinary people, left “great medicine materials” on prayer grounds.⁵⁸ In 1981, Pattea’s successor, Norman Austin, reiterated Pattea’s point that the responsibility of his people was “to use the land, and to care for it. . . . When President Carter was in office,” he continued, “he signed the Freedom of Religion Act, that’s how we’re using this place for that purpose.”⁵⁹

The Fort McDowell people also needed the land along the Verde River for agricultural purposes, and for these, they needed to secure their water rights. In the 1975 congressional hearings, Robert Russell, then tribal chairman, testified that his tribe wanted its water rights clearly adjudicated in accordance with the *Winters* decree, which was part of the federal government’s obligation to fulfill the purposes of establishing the reservation. The DOI replied that neither the Fort McDowell people nor the other four tribes in central Arizona were entitled to reserved rights to CAP water because their reservations did not include the bank of the Colorado River. In addition, the department would not be able to secure additional water to these tribes because of the Kent decree.⁶⁰ The Salt River Project now dominated even access to the Verde River under the agreement of 1935, which authorized the project to build Bartlett Dam. Without considering its fiduciary obligation to protect the well-being of the tribe, the DOI technically interpreted the provision in the agreement to be

that the Salt River Project “may at any time store any part or all of the flow of Verde River in the reservoir, and may at any time release any quantity of water from the reservoir or it may permit the river to flow through the reservoir without regulation.”⁶¹ Throughout the 1970s and 1980s, the Salt River Project shut off all the waters and hampered Yavapai agricultural activities.⁶²

Other than their burial sites, religious freedom, and water rights, the Fort McDowell people wanted to protect their livelihood, which was based considerably on the use of their land. In addition to six thousand acres of irrigable land, they had about eight hundred head of cattle. The tribal sand and gravel business had become a successful operation and one of several major employers on the reservation. Recreation along the Verde River provided a considerable amount of income, including the issue of licenses by the tribal council. The tribe also sold permits for keeping beehives as the alternative to spraying pesticide over crops. From more than thirteen thousand hives, the Yavapai farmers produced about twenty tons of mesquite honey each year. The mesquite trees also yielded good firewood for barbecues. Traditional arts and crafts thrived by using, for example, devil’s claw pods and cottonwood branches to extract white dye and the willow trees for weaving, both of which were readily available on the reservation.⁶³

Native and non-Native people also recognized environmental values on the reservation that could not be replaced by money. A large number of environmental groups joined the Yavapai cause during the mid-1970s, as they found that the dam would destroy the nesting sites of then-endangered bald eagles. Representatives from the Sierra Club, the Audubon Society, the Arizona Wildlife Federation, and the Committee to Save Fort McDowell (founded by Caroline Butler) gathered together and rallied against the dam, wearing “Stop Orme Dam” t-shirts. Although some Yavapais showed ambivalent feelings about the eagles receiving a higher priority for protection than the community, others welcomed it as reinforcement to their opposition campaigns. At the rally, the Fort McDowell people argued that the eagle was sacred and expressed their determination to maintain their traditional role as the guardian of the sacred bird.⁶⁴

The Yavapai induced many archaeologists and anthropologists to join their cause by emphasizing the existence of rich prehistoric sites on the reservation. In 1972 and 1973, a series of archaeological surveys were conducted along the Salt and the Verde Rivers. Most excavated sites uncovered the remains of the ancient Hohokam people dating from 300 BC to AD 1200. Archaeologists uncovered ancient ball courts, trash mounds, stone dwellings, and remnants of irrigation canals. Archaeologist Glen Rice of Arizona State University reported that the dam site was particularly important for those ancient people as a trade

station. He said that the once-thriving civilization in the dam-site area exerted “political control over the subcultures further up the river.”⁶⁵

Dam promoters, however, counteracted this by producing reports that were largely based on economic studies such as the cost-benefit analysis. For example, the Natelson Company, then a newly established private economic and financial consulting firm in Los Angeles, prepared the *Socioeconomic Study of the Fort McDowell Indian Reservation and Community* in May 1976, upon a request from the Bureau of Reclamation. The report concluded that Orme Dam would not cause the destruction of Yavapai culture. It also assured that the benefit from the dam would be greater than the loss for the tribe partly because its construction would employ more Yavapai workers for ten years. On the relocated lands within the Tonto National Forest, the people would receive better housing. A large cash settlement also would be provided to them. There would be “a virtually boundless opportunity for economic benefit to the Tribe.”⁶⁶

As the CAP progressed during the 1970s, engineers and CAP promoters realized that Orme Dam would not be necessary simply for the purpose of storing water from the Colorado River. Udall and other CAP promoters began to focus on other options. One was the “Orme Dam Alternative Project,” which was included in the CAP when it was approved by Congress in 1968. In case Orme Dam was not feasible, this alternative plan was designed to increase the storage capacities of Roosevelt Dam and Horseshoe Dam. During the mid-1970s, the Bureau of Reclamation commissioned the Arizona State Museum to assess the extent to which this alternative project would affect archaeological resources. Its report, which was published in 1976, concluded that the alternative plan would have a negative impact on the resources. Other studies found environmental risks in the project. In 1978, President Carter reduced the amount of subsidy to the CAP, and the Orme Dam plan appeared to be losing ground, at least temporarily. Also, Udall and Governor Bruce Babbitt began to support the position taken by the Fort McDowell community.⁶⁷

Although the anti-Orme Dam party gradually gained political power from the late 1970s to the beginning of the 1980s, many politicians and Salt River valley residents remained supportive of the dam. In 1977, Senator Barry Goldwater remarked that if the dam and reservoir were built, “it would have made the lands bordering that lake, and these would have been Yavapai-Apache lands, worth probably as much as \$100,000 an acre.” Without the dam, “they will barely continue to have an existence on the [reservation] lands. . . . They are nice people, very sweet people,” he continued condescendingly, “but they are very lazy people, and somebody has changed their minds.”⁶⁸

During the flood years between 1978 and 1980, dam promoters emphasized the importance of constructing Orme Dam for the purpose of flood

control. Senator Dennis DeConcini stated in 1981 that the precise capability of the dam to control floods was unknown, but still “some flood control structure at the confluence of the Salt and Verde Rivers is vital.” During the same year, Phoenix-born Arizona Representative Bob Stump declared that “the issue is whether the 76 Fort McDowell families must relocate to protect the hundreds of thousands of people who suffer from Salt and Verde river floods.” Representative Rhodes similarly expressed his strong support of Orme Dam.⁶⁹

Some frustrated promoters went beyond Representative Stump’s statement and emphasized that Orme Dam would protect the lives, jobs, and property of people in Phoenix. Pat Murphy, editor-in-chief of the *Arizona Republic*, wrote, “I’m mad—mad as Hell—that high and dry Washington bureaucrats have been dilly-dallying for at least 10 years over approval of the Orme Dam, worrying more about nesting bald eagles than the lives and property and job of the people of Phoenix who must endure floods.”⁷⁰

In response to this emerging interest in flood control, the Fort McDowell tribal council and the Inter Tribal Council of Arizona passed resolutions on February 28 and 29, 1980, respectively. These resolutions refuted the notion of Orme Dam as a “flood-control” facility, saying that most of the recent flood damage “could have [been] prevented if the Salt River Project had operated the existing dams on the Salt and Verde Rivers in such a way as to minimize the amount of water flowing through Phoenix.”⁷¹ The Army Corps of Engineers investigated the flood of 1978 and found that even if Orme Dam had been completed at the confluence of the Salt and the Verde Rivers, the dam would not have prevented damage in the Phoenix metropolitan area.⁷²

The Fort McDowell community also demonstrated its strong anti-dam position in solidarity to the Salt River valley residents. In September 1981, seventy Yavapai gathered together in Phoenix and marched three days to the state capitol, demonstrating their objection to the dam and their removal. Their patient and organized campaigns against the dam finally cracked the die-hard promoters of the dam. On September 29, the Maricopa County Board of Supervisors admitted that Orme Dam would not work as a flood-control facility. On October 22, Senators Goldwater and DeConcini, along with Representative Rhodes, publicly admitted that the Orme Dam plan was now “dead.”⁷³ The following month, Interior Secretary James Watt officially announced his decision not to construct the dam. The Fort McDowell Nation celebrated this “Orme Dam Victory,” which, to this day, has been annually observed as “Orme Dam Victory Days.”⁷⁴

TWO WATER-RIGHTS SETTLEMENTS AS PEACE AGREEMENTS

Once they secured their land, the next task that the Fort McDowell and Salt River communities faced was to secure water rights. During the long fight against Orme Dam, the two tribes had not advanced their farming operations very much because of a shortage of water and a lack of sufficient irrigation ditches. In 1970, Fort McDowell could irrigate only 345 acres for crops, and within four years, the acreage had declined to 260 acres.⁷⁵ On the Salt River Reservation, Native farmers and non-Native lease holders irrigated 8,621 acres in 1970, and in 1974 the area slightly increased to 9,466 acres, largely due to the role that non-Native farmers played in leasing the reservation land.⁷⁶ The major driving factor for non-Native growers controlling reservation farming was the influence of agribusiness management with large capital investment. Because most Native people were family farmers, they could not compete with large agribusinesses in terms of capital, market access, and high-tech machinery. In 1988, Anton, president of the Pima-Maricopa Indian community, explained this situation:

You had to establish credit with one of the cotton gins or with whoever was financing it. Most of the people did not have the assets to put up as collateral. They were really at a disadvantage so they went into partnership with non-Indian farmers and began to lease whatever properties they needed to from the community members so they could farm it and then paid rents to the land owners. That was a major change. The agricultural economy was very bad here about five or six years ago when even the most successful farmers had a difficult time because of higher costs due to inflation and high fuel costs. Many people at this time, even non-Indian farmers, got out of the farming business.⁷⁷

In 1988, Anton knew only one Native person who still practiced agriculture on the reservation, but he was determined to maintain tribal agriculture “even though there is very little economic return right now.”⁷⁸

It was also clear that a greater allocation of water would be essential in order to maintain farming on the reservation. From the late 1970s through the 1980s, the Salt River community filed a number of lawsuits against the Salt River Project, the city of Phoenix, and other interests groups in the Salt River valley in order to regain its reserved rights to water. In 1982, for example, the tribe filed a suit against the United States, the Salt River Project, the Roosevelt Water Conservation District, the Arizona Public Service, and neighboring municipalities for their damage to the tribe’s entitlement to groundwater supplies. In another case, the United States filed a suit on behalf of the tribe against the city of Phoenix and other municipalities in order to recover the damage to 250 individual tribal members who needed groundwater under the

reservation. To recover the damage to the water supply from Bartlett Dam, the tribe sued the Salt River Project on the grounds of a breach of the 1935 Bartlett Dam agreement and racial discrimination.⁷⁹

In March 1988, seeking a speedy solution from this legal quagmire, Senator DeConcini introduced S.2153, and four days later, Udall, now chairman of the House Committee on Interior and Insular Affairs, introduced H.R. 4102. The DeConcini-Udall bill passed Congress on October 20, 1988, as the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act. This act was a significant achievement for the community because in the federal legislation it clearly recognized the tribe's *Winters* rights to water as part of the federal government's policy in fulfillment of its trust responsibility to Native tribes. The act provided the community with 122,400 acre-feet of water per year (a significant increase in the amount from the 14,264 acre-feet in the revised Bartlett Dam agreement of 1935), including water from the CAP. The secretary of the Interior was directed to "rehabilitate the existing irrigation system (built by the United States) and to construct additional conservation irrigation facilities."⁸⁰ Local non-Indian interests such as the Salt River Project would contribute 32,000 acre-feet of water and pay for the cost of various water exchanges and transfers. The state of Arizona would pay \$3 million to the community trust fund. However, the promised amount of water would not fully reach the Salt River Reservation because Phoenix would lease the CAP allocation of 13,330 acre-feet of water per year from the tribe for ninety-nine years. The tribe then would agree to waive "all present and future claims of water rights or injuries to water rights," including groundwater, surface water, and effluent.⁸¹

Likewise, the Fort McDowell community engaged in lawsuits during the mid-1980s against neighboring interest groups and municipalities.⁸² Similar to the Salt River tribal community, the Fort McDowell community soon entered into a political negotiation for a water-rights settlement with federal government officials. On November 28, 1990, Congress passed the Fort McDowell Indian Community Water Rights Settlement Act. It recognized the tribe's *Winters* rights to water and set aside an allocation of 13,933 acre-feet of CAP water and 3,000 acre-feet of water from the Bartlett and Horseshoe reservoirs. The secretary of the Interior and the state of Arizona would pay \$23 million and \$2 million of compensation to the tribal fund, respectively. Phoenix would lease the tribe's allocation of CAP water for ninety-nine years. In exchange, as the Salt River tribe did, the tribe would waive all present and future claims of *Winters* rights to groundwater, surface water, and effluent.⁸³

The implication and intention of waiving *Winters* rights to water were not clearly explained by government officials at the time, although it appears that the settlements followed the guideline set by the PIA test in *Arizona v.*

California. This legal test, which quantified *Winters* rights to water on reservations, placed heavy emphasis on economics-oriented valuation in establishing equity among disputed stakeholders. In 1991, Lloyd Burton concluded that contemporary Native water settlements revealed a common feature, or what he called an “Indian blanket.” This analogy meant that contemporary Native water agreements narrowly defined water rights of Native peoples by tying them to some specific economic benefit in order to “buy off the Indians and secure funding to develop their own water resources.” However, an indebted Congress met difficulties in fully delivering all benefits it promised to tribes. Burton contends that this situation, which was typically observed during the 1970s, resembled what Native ancestors experienced after signing treaties.⁸⁴

However, as I reflect further on the Salt River and Fort McDowell settlements, I find two serious flaws in this analogy. First, waiving *Winters* rights did not mean relinquishing indigenous rights to water or sovereign power over water. The tribes still retained their self-governing power over water and other resources on reservations. Second, even historic treaties were not necessarily extinguishment documents. Most treaties represented agreements between the federal government and tribal representatives about maintaining peace and friendship. Drawing on these two points, I interpret the two water settlements as something similar to peace treaties, in which the United States, indigenous tribes, and other stakeholders, including cities and municipalities, agreed to end the dispute over water rights. By agreeing with the quantified definition of their reserved water rights, the tribes agreed not to engage in a further battle against neighbors or the United States in regard to water. One notable problem in these settlements was that the valuation of the *Winters* rights was highly based on agricultural needs, while the decree included other needs or what Chief Justice Joseph McKenna phrased “all beneficial use” of water.⁸⁵ This point of legal interpretation has to be discussed more by legal experts, policy makers, indigenous peoples, surrounding communities, and other stakeholders. My point is that the history of water disputes did not end with the signing of the settlements. As in peace treaties, the signatories of the settlements need to revisit and clarify the original intent and promises along with unclear terms and phrases. As in the past, this ongoing process will produce outcomes from the cross-cultural negotiations and interactions.

CONCLUSION

Reflecting on the legal and political fights for water rights and against Orme Dam that I have discussed, one point comes out clearly in capturing the shape of indigenous agency: the Salt River Pima-Maricopa Indian community and

the Fort McDowell Yavapai Nation strove to improve their negotiation skills by using the best means available when they met challenges to the sustenance of their livelihood and self-governance. The Fort McDowell Yavapai Nation cultivated leadership by having Montezuma collaborate with Chief Yuma in opposing the removal plan. During the second half of the twentieth century, the Yavapai improved their negotiation capacity by working with Native-rights activists, environmental groups, archaeologists, and lawyers to fight successfully against Orme Dam, which was backed by powerful political figures. Cultural and religious claims also characterized Yavapai politics, which were buttressed by the American Indian Religious Freedom Act of 1978, the Archaeological Resources Protection Act of 1979, and the Native American Graves Protection and Repatriation Act of 1990, among others.

The Salt River Pima-Maricopa Indian community, however, appeared less visible in terms of leadership and campaign strategies. To be more precise, the Pima-Maricopa Indian community did not develop the same type of leadership as the neighboring Yavapai Nation, partly because this community did not face the threat of complete relocation from the Salt River Reservation, nor did they find Orme Dame a major threat to their livelihood. Eventually, however, both the Pima-Maricopa Indian community and the Fort McDowell Yavapai Nation hired lawyers, especially during the 1980s, to secure their water rights, which had been marginalized. Considering a large number of stakeholders in water-rights development in the Phoenix metropolitan area alone, both nations were successful in achieving settlements with the federal government and other major stakeholders in the vicinity. Trial lawyers, Native and non-Native, played significant roles in negotiating these settlements but did not dominate the negotiation process. In principle, lawyers must observe their clients' best interests by actively engaging in cross-cultural communications.

The Pima-Maricopa Indian community and the Fort McDowell Yavapai Nation fought for water rights in order to secure their livelihood as farmers and ranchers. Native farmers on the two reservations adopted American ways of farming, but they also began to resume traditional farming activities. During the mid-1980s, for example, Native farmers on the Salt River Reservation commenced the Agricultural Resources Project, which was to grow nutritious crops and native foods. The Fort McDowell Yavapai Nation engaged in a similar endeavor called the jojoba bean project.⁸⁶ Although these projects were still in the experimental stage, they reflected the attempts of the tribes to create their own agricultural industries by incorporating American agrarianism somewhat.

As demonstrated here, indigenous agency on the Salt River and Fort McDowell reservations can be better understood as an evolving and hybrid entity. It evolved when Native peoples faced problems such as relocation, water

allocation, and inundation of their land by the construction of dams. This evolution differed between the two neighboring communities partly because each community responded to locally specific problems. The regional characteristics in agency can be intensified further by individual characteristics of the leaders and the roles that community members played. The agency is also hybrid because Native leaders and other tribal members incorporated nontraditional elements or even assimilation tools into their politics, including English communication skills, various sociopolitical activism, and legal dispute-resolution methods. The most recent outcome of this hybridity in Native water politics was the two water-rights settlement acts, which, as I argue, resembled Native peace treaties. As peace treaties required cross-cultural negotiations and interactions, these settlements took shape when tribal members, politicians, lawyers, and others cooperated, even though these documents do not necessarily satisfy everyone involved. After all, the history of Native water policy in central Arizona reveals human dramas, which are more complex and colorful than the often-dominant storyline that emphasizes racial conflicts and the victimization of Native peoples.

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NOTES

1. If one takes into account statutes such as the Southern Arizona Water Rights Settlement Act of 1982, the Arizona Water Settlements Act of 2004, and the Omnibus Public Lands Management Act of 2009, which included not only Native peoples but also other stakeholders, the number is more than 20. See Daniel McCool, *Native Waters: Contemporary Indian Water Settlements and the Second Treaty Era* (Tucson: University of Arizona Press, 2002), 48–49; Merrell-Ann S. Phare, *Denying the Source: The Crisis of First Nations Water Rights* (Surrey, BC: Rocky Mountain Books, 2009), 85–89; Bonnie G. Colby, John E. Thorson, and Sarah Britton, *Negotiating Tribal Water Rights: Fulfilling Promises in the Arid West* (Tucson: University of Arizona Press, 2005), xxiii.

2. Other than McCool's *Native Waters*, some notable book-length publications about Native water-rights settlements in the field of jurisprudence and political science include Lloyd Burton, *American Indian Water Rights and the Limits of Law* (Lawrence: University Press of Kansas, 1991); Thomas R. McGuire, William B. Lord, and Mary G. Wallace, eds., *Indian Water in the New West* (Tucson: University of Arizona Press, 1993); Daniel McCool, *Command of the Waters: Iron Triangles, Federal Water Development, and Indian Water* (Tucson: University of Arizona Press, 1994); John E.

Thorson, Sarah Britton, and Bonnie G. Colby, eds., *Tribal Water Rights: Essays in Contemporary Law, Policy, and Economics* (Tucson: University of Arizona, 2006).

3. For a good discussion regarding the implications of peace treaties, see J. R. Miller, *Compact, Contract, Covenant: Aboriginal Treaty-Making in Canada* (Toronto: University of Toronto Press, 2009), 33–65.

4. Kenichi Matsui, *Native Peoples and Water Rights: Irrigation, Dam, and the Law in Western Canada* (Montreal, QC: McGill-Queen's University Press, 2009).

5. McCool, *Native Waters*, xiii.

6. *Ibid.*

7. Here I do not mean to downplay the impact of racism, which did exist and affected people's reactions to water-rights issues.

8. David H. DeJong, "'See the New Country': The Removal Controversy and Pima-Maricopa Water Rights, 1869–1879," *Journal of Arizona History* 33, no. 4 (1992): 375.

9. *Ibid.*, 376, 381.

10. Sen. Comm. on Interior and Insular Affairs, *Indian Water Rights of the Five Central Tribes of Arizona*, 94th Cong., 1st Sess. (Washington, DC: Government Printing Office, 1976), 139–40.

11. The Wipukpa and Yavapah bands moved to Prescott, a former territorial capital. The Tolkopaya Band moved west toward present-day Wickenburg, Arlington, Palomas, Mohawk, and Yuma. Sigrid Khera, "The Yavapai: Who They Are and From Where They Come," in *The Yavapai of Fort McDowell: An Outline of Their History and Culture*, ed. Jonodev Osceola Chaudhuri (Mesa, AZ: Mead Publishing, 1995), 9.

12. US Department of the Interior, Bureau of Indian Affairs (hereinafter referred to as DOI and BIA), *Annual Report of the Board of Indian Commissioners* (Washington, DC: Government Printing Office, 1906), 98–99.

13. *Ibid.*, 100–1.

14. Timothy Braatz, *Surviving Conquest: A History of the Yavapai Peoples* (Lincoln: University of Nebraska Press, 2003), 218–20.

15. Earl A. Zarbin, *Salt River Project: Four Steps Forward, 1902–1910* (Phoenix, AZ: Salt River Project, 1986), 1.

16. Norris Hundley Jr., *The Great Thirst: Californians and Water, 1770s–1990s* (Berkeley: University of California Press, 1992), 115–16.

17. The service was placed within the Geological Survey of the DOI. In 1907, it became an independent bureau in the department. See A. E. Rogge, D. Lorne McWatters, Melissa Keane, and Richard P. Emanuel, *Raising Arizona's Dams: Daily Life, Danger, and Discrimination in the Dam Construction Camps of Central Arizona, 1890s–1940s* (Tucson: University of Arizona Press, 1995), 8–9.

18. Salt River Project, *The Taming of the Salt* (Phoenix, AZ: Communications and Public Affairs Department, 1979), 66–67; Rogge et al., *Raising Arizona's Dams*, 7; Zarbin, *Salt River Project*, 1–7; H.R. Comm. on Expenditures in the DOI, *Investigation on the Salt and Gila Rivers—Reservations and Reclamation Service*, 62nd Cong., 3rd Sess. (Washington, DC: Government Printing Office, 1913), 311.

19. Sen. Comm. on Interior and Insular Affairs, *Indian Water Rights of the Five Central Tribes of Arizona*, 155; Salt River Project, *The Taming of the Salt*, 75–79; US DOI, Geological Survey, *Annual Report of the Reclamation Service, 1903–1904* (Washington, DC: Government Printing Office, 1905), 129–33.

20. US DOI, *Annual Report of the Board of Indian Commissioners for 1902* (Washington, DC: Government Printing Office, 1903), 15.

21. A section of the Indian Appropriation Act of April 10, 1869, authorized the Board of Indian Commissioners to respond to the need for assimilating Native peoples under the auspices of Christian denominations. It consisted of unpaid philanthropists appointed by President Ulysses Grant to assist the secretary of the Interior in implementing Native policies. This board was abolished during the Frank D. Roosevelt administration. See Francis Paul Prucha, ed., *Documents of United States Indian Policy*, 2nd ed. (Lincoln: University of Nebraska Press, 1990), 126–29; Vine Deloria Jr. and Clifford Lytle, *The Nations Within: The Past and Future of American Indian Sovereignty* (New York: Pantheon Books, 1984), 62.

22. The reason behind this failure of federal government agents in responding to Native water needs was partly the collaborative relationship between federal government officials and Salt River valley irrigation promoters. This relationship was revealed in the 1913 report by the House Committee on Expenditures in the DOI, which investigated the way that the Reclamation Service (which separated from the US Geological Survey and became the Bureau of Reclamation in the DOI after 1907) conducted its service in the Salt and the Gila River valleys. E.g., William H. Code, who became the reclamation engineer for the BIA, used his position to accommodate a speculative entrepreneur like A. J. Chandler, who today is known as the founder of the city of Chandler. Code recommended that Congress appropriate \$540,000 for constructing canals and irrigation ditches on the Gila River Reservation. Although this recommendation seemed to be beneficial to the Pimas and Maricopas, Code also recommended that the DOI authorize the selling of 18,000 acres of reservation lands adjacent to the ranch that Chandler owned. According to the same report, Chandler held more than 18,000 acres of cultivated land, which he acquired fraudulently by using “dummy entry” under the Desert Land Act. Once the irrigation canals were built on the reservation, water reached the Chandler ranch. As soon as the commission report revealed this malpractice, Code resigned his position and became vice president of Chandler’s bank at Mesa. See Bureau of Reclamation History Program, “Brief History of the Bureau of Reclamation,” <http://www.usbr.gov/history/BRIEFHist.pdf> (accessed May 15, 2010), 4; H.R. Comm. on Expenditures in the DOI, *Investigations on the Salt and Gila Rivers*, 4–13.

23. Zarbin, *Salt River Project*, 94–113; H.R. Comm. on Expenditures in the DOI, *Investigation on the Salt and Gila Rivers*, 3–4; Sen. Comm. on Interior and Insular Affairs, *Indian Water Rights of the Five Central Tribes of Arizona*, 390.

24. He was the son of assassinated President James A. Garfield.

25. Zarbin, *Salt River Project*, 94–113.

26. *United States v. Walker River Irrigation District*, 104 F.2d 234 (9th Cir. 1939).

27. Burton, *American Indian Water Rights and the Limits of Law*, 40.

28. US DOI, *Annual Report of the Board of Indian Commissioner for 1906* (Washington, DC: Government Printing Office, 1907), 21.

29. Sen. Comm. on Interior and Insular Affairs, *Indian Water Rights of the Five Central Tribes of Arizona*.

30. *Walker River*, 104 F.2d 334 (9th Cir. 1939). See also Felix S. Cohen, *Handbook of Federal Indian Law* (Washington, DC: Government Printing Office, 1942), 317.

31. Sen. Comm. on Interior and Insular Affairs, *Indian Water Rights of the Five Central Tribes of Arizona*, 18–19.

32. *Ibid.*, 18–19, 140, 392, 400–1; Steve Nickson, *Indian Water Rights* (Washington, DC: Institute for the Development of Indian Law, 1979), 31–32; Richard Foreman, *Indian Water Rights: A Public and Administrative Mess* (Danville, IL: The Interstate Printers and Publishers, 1981), 107; Bradford Luckingham, *Phoenix: The History of a Southwestern Metropolis* (Tucson: University of Arizona Press, 1989), 46.

33. The delay clearly affected Native agriculture. On the Salt River Reservation, Native farmers cultivated 6,884 acres in 1913, although at least 12,009 acres were regarded as irrigable. During the following year, the cultivated acreage declined slightly to 6,870 acres. By 1920, the acreage had dropped further to 6,697 acres, while the Native population on the reservation increased from 1,214 in 1914 to 1,302 in 1920. Because the 1920 acreage figure included the land cultivated by non-Indian leaseholders, this reduced cultivated acreage suggests that the delay of water delivery discouraged more and more Native farmers, and Native residents became more dependent on outside sources for food. US DOI, *Annual Report of the Board of Indian Commissioners* (Washington, DC: Government Printing Office, 1917), 56; *Annual Report of the Commissioner of Indian Affairs* (1913), 47, 110; *Annual Report of the Commissioner of Indian Affairs* (1914), 104, 160; *Annual Report of the Commissioner of Indian Affairs* (1920), 165.
34. Act of May 18, 1916, ch. 125, 39 Stat. 123–30.
35. *Ibid.*, 123–32; Sen. Comm. on Interior and Insular Affairs, *Indian Water Rights of the Five Central Tribes of Arizona*, 135.
36. Sen. Comm. on Interior and Insular Affairs, *Indian Water Rights of the Five Central Tribes of Arizona*, 140.
37. *Ibid.*, 229–33.
38. *Weekly Arizona Republican*, May 18, 1905.
39. Peter Iverson, *Carlos Montezuma and the Changing World of American Indians* (Albuquerque: University of New Mexico Press, 1982), 79–81.
40. Sen. Comm. on Interior and Insular Affairs, *Indian Water Rights of the Five Central Tribes of Arizona*, 400–1.
41. Quoted in Iverson, *Carlos Montezuma*, 85.
42. The emphasis is in the original document.
43. Carlos Montezuma to R. A. Ballinger, January 30, 1911, Carlos Montezuma Collection (hereinafter referred to as Montezuma Collection), MSS-060, box 3, folder 3.
44. C. F. Hauke to Carlos Montezuma, March 11, 1911, Montezuma Collection, MSS-060, box 3, folder 3.
45. Iverson, *Carlos Montezuma*, 84–91; William Coffeen, “The Effects of the Central Arizona Project on the Fort McDowell Indian Community,” *Ethnohistory* 19, no. 3 (1972): 352.
46. Coffeen, “The Effects of the Central Arizona Project,” 353.
47. Richard L. Berkman and W. Kip Viscusi, *Damming the West* (New York: Grossman Publishers, 1973), 105–7; Hundley, *The Great Thirst*, 203–18.
48. Berkman and Viscusi, *Damming the West*, 108–30; Coffeen, “The Effects of the Central Arizona Project,” 355; Philip L. Fradkin, *A River No More: The Colorado River and the West* (Tucson: University of Arizona Press, 1981), 247–53.
49. US DOI, Bureau of Reclamation, *Orme Dam and Reservoir, Central Arizona Project, Arizona-New Mexico: Draft Environmental Statement* (Boulder City, NV: The Region, 1976), 1–2, 15.
50. Coffeen, “The Effects of the Central Arizona Project,” 373–74.
51. Phillip Dorchester to Morris Udall, April 1965, Central Arizona Project Association Records, 1922–1974, MSS-100, box 5, folder 8, Department of Archives and Manuscripts, Arizona State University Libraries (hereinafter referred to as CAP Association Records).
52. Richard Johnson to Morris Udall, April 8, 1965, CAP Association Records, 1922–1974, MSS-100, box 5, folder 8.
53. Filmore Carlos to Morris Udall, April 7, 1965, CAP Association Records, 1922–1974, MSS-100, box 5, folder 8.
54. Morris Udall to Douglas J. Wall, March 17, 1965, CAP Association Records, 1922–1974, MSS-100, box 5, folder 8.

55. Dick Winchell, "The Treachery of Orme Dam," *Wassaja: The Indian Historian* 13 (November 1980): 45–46.
56. *Ibid.*; Peter Iverson, "The Cultural Politics of Water in Arizona," in *Politics in the Postwar American West*, ed. Richard Lowitt (Norman: University of Oklahoma Press, 1995), 33; Paul Loewes, "Sitting on Gold: The Yavapai Resistance to Orme Dam, 1989," Chicano Collections, ME CHI IG-15.1, Department of Archives and Manuscripts, Arizona State University.
57. Sen. Comm. on Interior and Insular Affairs, *Indian Water Rights of the Five Central Tribes of Arizona*, 594–95.
58. Karla Elling, "High Noon at Fort McDowell," *Scottsdale Progress/Saturday Magazine* (April 11, 1981), 5. See also Bill Hess, "The Battle for Fort McDowell," *Nations: The Native American Magazine* 1 (August 1981): 17.
59. Elling, "High Noon at Fort McDowell," 5.
60. Sen. Comm. on Interior and Insular Affairs, *Indian Water Rights of the Five Central Tribes of Arizona*, 400–5, 566–67.
61. This quote from Article 4 of the Bartlett Dam Agreement is cited in the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, Pub. L. No. 100-512, 102 Stat. 2551.
62. Elling, "High Noon at Fort McDowell," 5; Tribal Land and Water Resources Symposium et al., *Report of the Symposium on Tribal Land and Water Resources* (Phoenix: Arizona Commission of Indian Affairs, 1988), 26–29.
63. Hess, "The Battle for Fort McDowell," 17; Elling, "High Noon at Fort McDowell," 5; Ann Johnson, "Home Means More to Her than Money," *Phoenix Gazette*, September 9, 1980.
64. Loewes, "Sitting on Gold," 4; devil's claw was also used for basketry by Pima people. See Daniel E. Moerman, *Native American Ethnobotany* (Portland, OR: Timber Press, 1998), 436.
65. US DOI, Bureau of Reclamation, *Orme Dam and Reservoir*, 104–5.
66. Natelson Company, *Socioeconomic Study of the Fort McDowell Indian Reservation and Community with or without the Development of Orme Dam and Reservoir*. Prepared for the US DOI, Bureau of Reclamation, Arizona Project Office (Los Angeles: Natelson Company, 1976), 5–11.
67. Steven L. Fuller, A. E. Rogge, and Linda M. Gregonis, *Orme Dam Alternatives: The Archaeological Resources of Roosevelt Lake and Horseshoe Reservoir*, 2 vols. (Tucson: Cultural Resources Management Section, Arizona State Museum, University of Arizona, 1976), v; Arizona Office of Economic Planning and Development, *Environmental Socio-Economic Subcommittee Progress Report*, no. 1 (Phoenix, AZ: Office of Economic Planning and Development, 1977), 3a; Winchell, "The Treachery of Orme Dam," 45.
68. Elling, "High Noon at Fort McDowell," 5. Goldwater was an ardent supporter of dam projects during most of his political career. However, in a 1997 documentary interview, the aged and retired Goldwater was asked about his position on Glen Canyon Dam on the Colorado River, which he advocated during the early 1960s. He said, "I'd vote against it." "When you dam a river," he continued, "you always lose something." See Sandra Postel and Brian Richter, *Rivers for Life: Managing Water for People and Nature* (Washington, DC: Island Press, 2003), 1–2.
69. Elling, "High Noon at Fort McDowell," 5.
70. Iverson, "The Cultural Politics of Water in Arizona," 33–34.
71. Fort McDowell Mohave-Apache Indian Community, *Resolution no. 80-3*, February 28, 1980, Arizona Historical Foundation Archives, Arizona State University.
72. Inter Tribal Council of Arizona, *Resolution no. 80-96*, February 29, 1980, Arizona Historical Foundation Archives, Arizona State University.
73. Loewes, "Sitting on Gold," 8.

74. Christina Ravashiere, "Tiny Yavapai Indian Tribe Wins Battle to Keep Dam from Flooding Its Land," *Christian Science Monitor*, November 24, 1981; Debra Utacia Krol, "From Poverty to Prosperity, the Long-time VP of Fort McDowell in Arizona Lives the American Dream," *Arizona Capitol Times*, November 14, 2008.

75. Natelson Company, *Socioeconomic Study of the Fort McDowell Reservation and Community*, ii–46.

76. Non-Native growers farmed more than 87% of the irrigated land. Sen. Comm. on Interior and Insular Affairs, *Indian Water Rights of the Five Central Tribes of Arizona*, 257–74.

77. John Myers and Robert Gryder, eds., *The Salt River Pima-Maricopa Indians* (Phoenix, AZ: Life's Reflections, 1988), 106.

78. Ibid.

79. Sen. Select Comm. on Indian Affairs, *Salt River Pima-Maricopa Indian Water Rights Settlement Act of 1988* (Washington, DC: Government Printing Office, 1988), 4; Chuck Hawley, "Tribe Sues Users of Ground Water for \$150 million," *Arizona Republic*, December 24, 1982; William H. Swan, "The Salt River Pima-Maricopa Settlement: An Overview," in *Indian Water in the New West*, ed. Thomas R. McGuire, William B. Lord, and Mary G. Wallace (Tucson: University of Arizona Press, 1993), 118–19.

80. Select Comm. on Indian Affairs, *Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988*, S. Rep. No. 100-495 at 5 (1988).

81. Sen. Select Comm. on Indian Affairs, *Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988*, 5, 13; Pub. L. No. 100-512, 102 Stat. 2549. The agricultural operation on the Salt River Reservation continued to be dominated by non-Native growers. The BIA managed the ditches and other irrigation works. According to Daniel McCool, the Salt River Reservation irrigation project during the 1990s was "dilapidated, underfunded, and poorly managed, with water leased at below-market prices." In October 2000, H.R. 2820 resolved to transfer the ownership and management of irrigation works on the reservation to the community. See McCool, *Native Waters*, 104; H.R. "Salt River Pima-Maricopa Indian Community Irrigation Works Ownership," 106th Cong., 2nd Sess. (October 2000).

82. Defendants included the Salt River Project Agricultural Improvement and Power District, the Salt River Valley Water Users' Association, the Roosevelt Water Conservation District, the Central Arizona Water Conservation District, and the cities of Chandler, Glendale, Mesa, and Phoenix.

83. Fort McDowell Indian Community Water Rights Settlement Act of 1990, Pub. L. No. 101-628, 104 Stat. 4480. On December 14, 1993, the secretary of the Interior signed a contract with the Salt River Project in order to store and reregulate Kent decree water. The Fort McDowell Yavapai Nation then expanded its farm by drawing water from the Verde River with a computerized pumping station. The new venture farms included 50,000 pecan trees and more than 30,000 citrus trees. See US DOI, "Statement of Findings, Implementation of the Fort McDowell Indian Community Water Rights Settlement Act of 1990, Public Law 101-628," 59 FR 5609; Rory Majenty, "27th Annual Orme Dam Victory Days—Celebrating 'The Dam That Never Was,'" www.ftmcdowell.org/communityevents/ormendam08/aboutod.htm (accessed May 15, 2010).

84. Burton, *American Indian Water Rights and the Limits of Law*, 126–27, 138.

85. Chief Justice McKenna wrote his famous opinion that "Indians had command of the lands and the waters—command of all their beneficial use, whether kept for hunting, 'and grazing roving herds of stock,' or turned to agriculture and the arts of civilization." See *Winters v. United States*, 207 U.S. 576 (1908).

86. Myers and Gryder, *The Salt River Pima-Maricopa Indians*, 107; Gary Paul Nabhan, *Enduring Seeds: Native American Agriculture and Wild Plant Conservation* (Berkeley, CA: North Point Press, 1989), 63–64; Elling, "High Noon at Fort McDowell," 5.