March 11, 2020

Tom Buschatzke, Chairman
Council Members
GOVERNOR’S WATER AUGMENTATION,
INNOVATION AND CONSERVATION COUNCIL
Arizona Department of Water Resources
1111 West Washington Street Suite 310
Phoenix, Arizona 85007

RE: Support for the Pascua Yaqui Tribe and the Need to Complete Indian Water Rights Settlements in Arizona

Chairman Buschatzke and Members of the Council:

It is my pleasure to write to you today to express my support, as Mayor of the City of Tucson, for our neighbors and partners, the Pascua Yaqui Tribe. The Tribe would like to work with Tucson and perhaps other settling parties in our region to secure a permanent settlement of its water rights and claims in Arizona’s ongoing General Stream Adjudication. As the Mayor of Tucson, I believe it is important to explore any solution that benefits both the City of Tucson and the Pascua Yaqui Tribe, particularly when it comes to one of our most important resources – water. It is also important that any Indian water settlement with the Pascua Yaqui Tribe be tailored not only to the individual circumstances of the Tribe, but also reflects the unique relationship that the Tribe has with the City of Tucson, Pima County, and our region.

The City of Tucson has a long history of working with the Pascua Yaqui Tribe, including in the development of innovative water partnerships. For example, in 2011 we entered into a Water Services Agreement and Water Storage Agreement with the Tribe that was the first of its kind to create a framework for wheeling CAP water brought into the region for storage and subsequent delivery to their Reservation. In fact, elements of these Agreements later served as a template for Tucson’s water agreements with Metro Water and its groundbreaking water storage arrangement with the City of Phoenix. With this background, I look forward to seeing what sort of water solutions we could achieve together if we are able to work on an Indian water rights settlement with the Tribe.

I also understand, however, that the Pascua Yaqui Tribe faces significant barriers to settlement stemming from the State of Arizona’s unique condition that requires Indian tribes to waive their right to take lands into trust under the normal administrative process as a condition of settlement.

In addition to our innovative partnerships on water resources, Tucson and the Tribe have also reached an agreement to take Tribal land within the City of Tucson into trust pursuant to the normal administrative process. This agreement also establishes our respective future responsibilities to deliver and fund services and build infrastructure on that land—including water service. In this case, where the City and the Tribe have already reached an agreement to resolve issues posed by the placement of land into trust, the State’s requirement is an obstacle.
I am encouraged that the Governor’s Water Augmentation, Innovation, and Conservation Council, a body created to advise Governor Ducey on water policy matters, is engaged in and understands the importance of Indian water settlements. I look forward to assisting the Council in developing a policy that will encourage settlement of Indian water rights for the Pascua Yaqui tribe. This settlement should be based solely on what is best for the Tribe, their local and regional partners, and the State of Arizona.

We look forward to continuing to work with the Pascua Yaqui Tribe and the Department of Water Resources in a collaborative and mutually beneficial way in the coming years.

Sincerely,

Regina Romero,
Mayor, City of Tucson

Cc: Timothy Thomure, Director, Tucson Water
March 13, 2020

Tom Buschatzke, Chair
Governor’s Water Augmentation, Innovation and Conservation Council
Arizona Department of Water Resources
1110 W Washington Street Suite 310
Phoenix, AZ 85007

Re: Tribal Water Rights and Settlements in Arizona

Dear Chair Buschatzke,

I write to provide the comments of the Navajo Nation on the issue of the state’s policy regarding the settlement of tribal water rights claims. I attended the meeting of the GWAICC today and had planned to address the Council, if only briefly, on this important topic. I was disappointed, as were other tribal leaders in attendance, that we were not permitted to offer our views after your discussion on this topic. As the Nation has stated repeatedly, the state cannot develop a meaningful policy regarding the settlement of tribal water claims without the involvement of affected Arizona tribes. Thus, for the record, I submit my comments by this letter.

The Navajo Nation understands the benefits of water rights settlements. The Nation has a congressionally approved settlement for the majority of its water rights claims in New Mexico, and settlement legislation that would resolve all of the Nation’s water rights claims in Utah is now pending before Congress for approval.

Unfortunately, the Nation’s efforts to amicably resolve its claims in Arizona have been unsuccessful. In the Nation’s view this failure is due in large part to fundamental problems with the way the state and non-Indian stakeholders, such as the Salt River Project and CAWCD, approach negotiations to settle tribal water claims. Examples of these misguided efforts include:

- **Failure of the state to treat Indian people fairly.** The Governor has expressed his administration’s support for tribal water settlements. However, there appears to be little concern for the welfare of the State’s tribal citizens. Instead, the state treats tribes as adversaries and competitors for the state’s limited water supplies, rather than working cooperatively to solve state-wide water issues, and to address the enormous problems endemic to the state’s Indian Reservations that are directly related to inadequate water supplies and water delivery infrastructure.

- **Failure of the state to recognize that tribes have reserved water rights.** The United States Supreme Court recognized in 1908 that in establishing Indian reservations, both the tribes and the federal government reserved the water necessary to make those reservations viable permanent homelands for Indian people. Yet unlike any other state of which the Nation is aware, Arizona refuses
to recognize in settlement agreements that tribes have reserved water rights that are imbued with unique attributes and entitled to protections greater than state law based rights.

- **Demanding tribal concessions in water settlements that have nothing to do with water as a matter of state “policy.”** In the Nation’s failed settlement of its Arizona water rights claims, the state demanded that the Nation waive its ability to take lands into trust through the Department of Interior administrative process, requiring Congressional approval to acquire additional Reservation lands. Many of the Nation’s leaders found this provision to be an invasion of the Nation’s sovereign authority over its lands and so abhorrent as to render the settlement untenable. The State should abandon its needlessly combative approach by recognizing that:
  - Policy riders are a deterrent to productive settlement negotiations.
  - Conditions agreed to by one tribe should not result in a “policy” requiring that condition in every subsequent settlement.
  - A one size fits all approach to settlements with tribes, each with unique factual situations, needs and concerns, is not effective, fair or good policy.

The state has gone so far as to use its political power to interfere with the Nation’s settlement in New Mexico. In a remarkable move motivated solely by self-interest, the state and other state parties insisted that the congressional legislation to approve the Nation’s settlement of its San Juan River Basin rights in New Mexico restrict the Nation’s ability to use 6,411 acre-feet of water reserved for the Nation in the Arizona Water Settlements Act until such time as the Nation settles its Arizona water rights claims. Although the Nation’s New Mexico settlement includes infrastructure that will deliver water to the Nation’s capitol in Window Rock and other Navajo communities in Arizona at no cost to the state, the state would deny its Navajo citizens access to clean drinking water as leverage to force the Nation to settle its Arizona water rights claims because of its desperate need for water.

The benefits of settling tribal water claims are undeniable. Tribal settlements offer opportunities for creative solutions to address critical tribal water needs as well those of surrounding communities. The Navajo-Gallup Water Supply Project, funded as part of the Navajo New Mexico settlement, is a regional water system benefiting Navajo tribal members and their neighbors. Settlements tend to foster a broader, more inclusive sense of community. In contrast, litigation typically pits interests of one group against another, sowing discord and tearing communities apart.

In conclusion, the Nation seeks the better, higher path that settlement offers. We encourage the members of the GWAICC to work with tribes to secure a state policy that truly favors tribal water rights settlements, which will inure to the benefit of the state as a whole.

Navajo Nation

Doreen N. McPaul
Attorney General
Re: The Position of the Pascua Yaqui Tribe on the State’s Policy of Discouraging Indian Water Rights Settlements

As the Tribal Council of the Pascua Yaqui Tribe, we write to express our position on the policy of the state related to Indian water rights settlements. In our February 24, 2020 letter to Director Buschatzke, we respectfully requested an opportunity to address the Council today. We asked for this opportunity to express our strong desire to work with the City of Tucson, and perhaps other settling parties in our region, to secure a permanent settlement of our water rights in Arizona’s ongoing General Stream Adjudication.

However, the Council should be aware that our Tribe, as well as other Indian tribes in Arizona, have been discouraged from settlement by the State of Arizona’s policy that certain provisions included in prior Indian water rights settlements be included in future Indian settlements, regardless of the impact to the tribe and their settling partners.

In particular, it has been the policy of this state for some time that Arizona will not agree to Indian water rights settlement unless the settling tribe agrees that it will no longer take additional lands into trust through the normal administrative process authorized by the Indian Reorganization Act of 1934. No other state in the country requires this concession as part of a water rights settlement. But our Tribe is young and growing, and our Reservation land base is not sufficient to meet the housing and economic development needs for the future of our community. Unfortunately, the state’s insistence on this provision forces our Tribe to choose between houses for our families and water certainty for our Tribe and our neighbors. While we understand that our Tribe must make real compromises as part of settlement, this sort of toll for settlement that is unrelated to water is unreasonable and harmful.

While we have been highly discouraged by the state’s policies on Indian water settlement, our Tribe has a long history of working on innovative water partnerships, including with the City of Tucson. We have entered into a Water Services Agreement and Water Storage Agreement with the City that was the first of its kind to create a framework for wheeling CAP water brought into the region for storage and subsequent delivery to our Reservation. We were also able to order additional CAP water for delivery to the region during the depths of the recession that would not
have otherwise been ordered and delivered to Tucson at the time, providing benefits to our Tribe and the region as a whole. With our proven track record of finding innovative water solutions, we look forward to seeing the types of water solutions we could achieve with our settling partners, if we are able to work on settlement free of policy riders required by the state. Like other Indian water settlements, a settlement of our water rights would provide water certainty for our Tribe and our settling partners, while also bringing federal resources into the region to support mutually beneficial water projects.

The Tribe remains committed to partnering with the City of Tucson and our neighbors to bring innovative water solutions to Southern Arizona. But the time has come for the State of Arizona to set aside historic and ideologically driven policy riders on settlement in favor of a policy that encourages settlement and reflects the importance of Indian water rights settlements for our neighbors and the state as a whole.

We believe the Governor’s Water Augmentation, Innovation, and Conservation Council is the right place for the state to develop this new policy, and we hope to have a more robust opportunity to address the Council in the near future.

Sincerely,

[Signature]

Robert Valencia, Chairman
Pascua Yaqui Tribe
Statement of the Tonto Apache Tribe to the GWAICC
Regarding Indian Water Right Settlements

The Tonto Apache Tribe is deeply invested in achieving a just and equitable settlement of our water rights claims in order to ensure that the Tribe has the water security it needs to grow and thrive and that our neighbors have certainty regarding their water rights as well. We continue to devote significant time and resources in our efforts to work cooperatively with the Ducey Administration, the Town of Payson, the Salt River Project, the Central Arizona Project, and the United States to advance our settlement as efficiently and effectively as possible. We look forward to sitting down with those parties again towards the end of this month.

But our progress toward settlement has been dramatically slowed by the Ducey Administration’s demand to include inappropriate policy riders in our settlement, the purpose of which the State seems unable or unwilling to explain beyond the fact that they have been included in certain prior Indian water rights settlements. Most notably, the Ducey Administration presently insists that, as a condition of settlement, we must agree to waive our right to object to all future off-reservation groundwater pumping no matter its potential effect on our water rights, and that we must give up a vital tool that we have used successfully in the past to expand our small reservation so that we can make it a true homeland for our growing population – namely our right to use the Department of the Interior’s administrative process to take land into trust. Neither of these provisions is appropriately tailored to the particular circumstances of the Tonto Apache Tribe.

We fully recognize that successful negotiations often involve difficult compromises. As part of reaching an equitable settlement, we are prepared to make hard choices when it comes to protecting existing off-reservation water users, particularly our neighbors in the Town of Payson. Indeed, the framework of the settlement we have been negotiating is built on our successful, cooperative relationship with Payson, whose interests and input would also be considered as part of any administrative land-into-trust process. But there is simply no justification to require that we give up the right to object to all groundwater development that might occur in the future, a condition which risks rendering our water rights functionally illusory. And to require us to obtain an act of Congress to add even one additional acre to our reservation so that we have enough room to house all of our Tribal members – which is our Tribe’s goal – is similarly untenable. These policy riders are almost perfectly calibrated to make settlement impossible.

This Council, with its diverse membership and breadth of knowledge and experience, and its charge to identify innovative solutions for complicated questions of Arizona water policy, should take up the issue of these sorts of policy riders and help clear these obstructions along the path to successful Indian water rights settlements in Arizona. Thank you.
March 13, 2020

Tom Buschatzke, Chairman  
Council Members  
GOVERNOR’S WATER AUGMENTATION,  
INNOVATION AND CONSERVATION COUNCIL  
Arizona Department of Water Resources  
1111 West Washington St., Suite 310  
Phoenix, AZ 85007  

RE: The Yavapai-Apache Nation’s Concerns with the State’s Policy Towards Indian Water Rights Settlements.

As the Chairman and Vice-Chairwoman of the Yavapai-Apache Nation, we write to encourage this Council to advise the Governor to prioritize the completion of Indian water rights settlements in Arizona. As you know, Indian water rights settlements avoid costly litigation, provide water certainty, and bring federal resources to support water infrastructure and mutually beneficial projects. For over a decade, the Nation has been working with our neighboring communities, SRP and others to secure a water rights settlement that will fairly balance the water and land needs of the Nation with those of our neighbors and friends in the Verde Valley, as well as interests downstream in Phoenix.

We have been frustrated, however, that as we work hard to meet the water challenges in the Verde Valley, the State of Arizona continues to impose barriers to settlement by requiring that terms negotiated in prior Indian water rights settlements must be included in our settlement, even if these terms do not fit the facts and circumstances of the Nation. One of the largest examples of this problem, is the state’s insistence that we waive our right to take lands into trust as a condition of settlement, even though our land base is inadequate to support our young and growing population. While the state has indicated that it might agree to a limited “exception” to its policy for a small number of identified lands near our Reservation, under conditions dictated by the state, our efforts to meet the state’s demands have added years of delay and a significant additional cost to the settlement process – again, even though the state’s demand is unrelated to water.
More recently, we have seen the state require that another Arizona Indian tribe forever waive its right to protect the groundwater resources under its reservation as a condition of settlement. If these terms were imposed on the Nation, as the state traditionally does for future settling tribes, it would destroy any reason for the Nation to settle our water rights in the first place.

We ask this body, which has been appointed to advise the Governor on water, to ask itself what Arizona should be doing to achieve Indian water rights settlements. We hope the answer will include a recognition that water settlements should be based solely on what is best for the settling tribe, their local and regional partners, and the State of Arizona as a whole, and not on outdated policies that have no place in finding real solutions on water.

We know that water is life. This is as true today as it was in the time of our elders. For this reason, it remains a strong priority of the Yavapai-Apache Nation to achieve a final water settlement that will help support the health and vitality of the Verde River and ensure a stable water supply, both for our Reservation and for our neighboring communities. We have put many of the building blocks in place for settlement, and we hope the state will help us to achieve this goal, and realize the water certainty it brings, as soon as possible.

Yours Truly,

YAVAPAI-APACHE NATION

[Signature]
Jon Huey, Chairman

[Signature]
Tanya Lewis, Vice-Chairwoman