

Tensions emerge as a top Arizona official discusses tribes' unresolved water claims

[Ian James](#)



Tom Buschatzke, director of the Arizona Department of Water Resources, speaks at the state Capitol in January 2019. *(Photo: Mark Henle/The Republic)*

Many of Arizona's Native tribes have long-standing claims to water rights that haven't yet been settled, and a

discussion of efforts to negotiate possible agreements took center stage at a meeting of Gov. Doug Ducey's water council.

The meeting grew tense after Arizona's top water official gave a presentation on the status of tribes' unresolved water claims, and then didn't allow leaders of four tribes to speak.

Arizona Department of Water Resources Director Tom Buschatzke said he sent letters a week ago to all 22 federally recognized tribes in Arizona inviting them to speak about the issue at upcoming meetings later this year.

That stance drew criticism from Arizona House Minority Leader Charlene Fernandez, D-Yuma, and sharply worded letters from the leaders of four tribal nations, which laid out grievances about how state officials have been treating their water cases.

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Buschatzke [gave a presentation](#) on Friday for the meeting reviewing the history of federal and state law regarding water for Indian reservations, the amounts of water that some tribes have obtained through congressionally approved settlements, and the status of 11

tribes' outstanding water rights claims.

Buschatzke said it's important to clarify Indian water rights claims because "unresolved claims create significant uncertainty for water users in our state." Each tribe has priority water rights based on the date its reservation was established, he said, and may be entitled to large amounts of water.

State officials have been involved in negotiations with representatives of some tribes in recent years.

"We're looking forward to getting back in the room with Navajo Nation and Hopi Tribe when they're ready to do so," Buschatzke said. He summarized ongoing discussions with the Tonto Apache Tribe, the Yavapai-Apache Nation, and the Havasupai Tribe, among others.



Arizona Department of Water Resources Director Tom Buschatzke speaks at a meeting in Phoenix in 2019. (Photo: Nick Oza/The Republic)

In his March 2 letter to tribes' leaders, Buschatzke invited them to make presentations to the governor's Water Augmentation, Innovation and Conservation Council at upcoming meetings in June and September.

"We think it's important the council provide the opportunity to hear the tribes' perspectives," Buschatzke said. "I don't anticipate that we will be able to hear from every tribe who wants to speak simply in one meeting. That's part of the reason that we started out here with this discussion."

Fernandez said that the topic was supposed to be on the

agenda at the last meeting in December. When it wasn't, she asked for the discussion to be scheduled, and later brought it up with Buschatzke in January.

Fernandez said she has wanted Native American leaders to have an opportunity "to engage with this council and a discussion of the state's policies towards tribal water settlements."

"I see several tribal leaders in the room with us, and they all traveled very far to be here today," Fernandez said.



Charlene Fernandez, Arizona House of Representatives minority leader, makes comments to the crowd at the grand opening ceremony for the

She pointed out leaders in the audience from the Navajo Nation, the Pascua Yaqui Tribe, the Tonto Apache Tribe, and the Yavapai-Apache Nation, all of which have unresolved water claims. Fernandez said she had the impression they would be able to speak.

Buschatzke replied that when they spoke in January, he came away with the idea that she wanted all 22 tribes to be invited.

"I thought this was the best way to create a level playing field, for all the tribes to have an opportunity to speak and not choose one tribe over another in this process," he said.

That didn't satisfy Fernandez, who asked why the tribes' leaders hadn't been informed in January. She repeated her question of whether the tribes' representatives would be able to speak.

"I believe pursuant to the letter, which was clear, we will give them an opportunity to speak at future meetings," Buschatzke said.

Fernandez replied that she felt it was "inappropriate" not to hear what the leaders from the tribes had to say.

"I'm really concerned that they had to travel so far and

they're not going to be heard today," Fernandez said. Since the topic was supposed to be discussed in December, she said, "it's going to be almost a year waiting to hear from this critical part of Arizona's community."

Chuck Podolak, Ducey's natural resources policy adviser, said the governor's office would be willing to work with Buschatzke to "figure out if there's another way to provide a forum."

Buschatzke said he and his department will consider suggestions that council members offered, including a webinar or possibly a special meeting.

Fernandez reiterated that she thought it was unfair for tribes' leaders not to be allowed time at the meeting, and she apologized to those who came that they weren't given an opportunity to speak.

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Farrell Hoosava, a member of the Tonto Apache Tribal Council, said the tribe has been working toward a water settlement since 1980. He said it was disheartening not to be able to speak at the meeting.

"It's been this back and forth forever," Hoosava said. "There's little roadblocks that are always put in place."

He said he thinks it's unfortunate that key players who make decisions about Arizona water policy seem to have a different mindset than his tribe.

"We should have people sitting at the table for that with them," Hoosava said.



The CAP Canal winds through a neighborhood on one side and the desert on the other in Phoenix as seen from the Deem Hills Recreation Area on December 12, 2018. *(Photo: David Wallace/The Republic)*

The four tribes whose leaders attended the meeting sent letters and statements to Buschatzke and the water council.

The Tonto Apache Tribe [said in its statement](#) that it aims to achieve a fair water settlement and has been working

toward it with Ducey's administration, the town of Payson, Salt River Project, the Central Arizona Project and the federal government.

"We look forward to sitting down with those parties again towards the end of this month," the tribe said. "But our progress toward settlement has been dramatically slowed by the Ducey Administration's demand to include inappropriate policy riders in our settlement."

Among other things, the Tonto Apache Tribe objected to a condition proposed by state officials that the tribe waive its right "to object to all future off-reservation groundwater pumping no matter its potential effect on our water rights."

LEVERAGE: [Lawmakers aim to use casino pacts to press tribes on water disputes](#)

Navajo Nation Attorney General Doreen McPaul [said in a letter to Buschatzke](#) that she was disappointed she wasn't allowed to speak to the council.

"The state cannot develop a meaningful policy regarding the settlement of tribal water claims without the involvement of affected Arizona tribes," McPaul wrote.

She said while the Navajo Nation has a congressionally approved settlement for much of its claims in New Mexico, and pending legislation for a settlement in Utah, its efforts

to settle its claims in Arizona have been unsuccessful.

Among the reasons, she cited what she called a “failure of the state to treat Indian people fairly.”

“The Governor has expressed his administration’s support for tribal water settlements,” McPaul wrote. “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.”



The Central Arizona Project Canal delivers water from the Colorado River to cities from Phoenix to Tucson. (Photo: Mark Henle/The Republic)

Chairman Robert Valencia of the Pascua Yaqui Tribe

[reminded Buschatzke in his letter](#) that he had asked to speak at the meeting. Valencia said Indian tribes in Arizona have been discouraged from reaching settlements by a state policy that certain provisions of previous settlements should be included in future settlements.

"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," Valencia wrote.

He said no other state requires this concession, and it's a major hurdle for a reservation with insufficient land to meet its future needs for housing and economic development.

"Unfortunately, the state's insistence on this provision forces our Tribe to choose between houses for our families and water certainty," Valencia said, calling that condition "unreasonable and harmful."

Weighing in on behalf of the Yavapai-Apache Nation, Chairman Joe Huey and Vice Chairwoman Tanya Lewis urged the council and the governor [in their letter](#) to "prioritize the completion of Indian water rights settlements."

They raised some of the same objections as other

indigenous leaders, saying they have been frustrated that as they negotiate over water in the Verde Valley, the state “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 those terms don’t fit the circumstances of the Yavapai-Apache Nation.

They said their priority is to achieve a 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.”



An irrigation canal delivers water to fields in the Gila River Indian Community near Chandler, Ariz. (Photo: Sean Logan, Sean Logan/The Republic)

Tribal land accounts for 27.7% of Arizona's land area, more than any other U.S. state.

For tribes, the benefits of settling claims include avoiding costly and time-consuming court cases, Buschatzke said.

When he spoke to the council, Buschatzke said the state considers sources of water for possible settlements including Colorado River water from the Central Arizona Project, other surface water, groundwater and treated wastewater effluent.

Some of the tribes that already have water settlements played a key role last year in helping Arizona develop a plan for using less Colorado River water as part of a three-state deal called the [Lower Basin Drought Contingency Plan](#).

Under the agreement, Arizona has started taking less water from Lake Mead this year. The state's plan for managing potential water cutbacks through 2026 involves deliveries of "mitigation" water to help lessen the blow for some farmers and other entities, as well as compensation payments for those that contribute water, including the Colorado River Indian Tribes and the Gila River Indian Community.

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While water supplies are facing growing strains in Arizona, political tensions over tribes' unresolved water claims also appear to be on the rise.

In January, Republican leaders at the state Legislature [introduced a bill](#) that would force tribes with outstanding water claims to settle before they could negotiate new casino pacts with the state. The bill is opposed by Democrats who call it an attack on tribes. The measure hasn't yet been taken up by any committee.

Reach reporter Ian James at ian.james@arizonarepublic.com or 602-444-8246. Follow him on Twitter: [@BylanJames](#).

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