

PASCUA YAQUI TRIBE

OFFICE OF THE CHAIRMAN



United States Senate
Committee on Environment and Public Works
Subcommittee on Transportation and Infrastructure
Flagstaff City Hall
211 West Aspen Avenue
Flagstaff, Arizona 86001

**“Oversight of Projects Supported by the Water Resources Development Act of 2022 and
Infrastructure Investment and Job Act in Small, Rural and Underserved Communities in
Arizona”**

**Written Testimony of Peter Yucupicio, Chairman
Pascua Yaqui Tribe
Tucson, Arizona**

February 15, 2024, 10:30 am MST

Lios enchim aniavu, Chairman Kelly, Ranking Member Cramer, and Members of the Subcommittee. My name is Peter Yucupicio and I am the Chairman of the Pascua Yaqui Tribe of Arizona (Tribe).

I am here today to testify regarding the oversight of projects supported by the Water Resources Development Act of 2022 (WRDA) in small, rural and underserved communities in Arizona. I would like to acknowledge and express our appreciation for the opportunity to testify and thank the Subcommittee for your continued support of the Section 595 Environmental Infrastructure Program in WRDA (595 Program) in Arizona.

As discussed in greater detail below, our Tribe would like to tell you about our experience with the Section 595 Program administered by the U.S. Army Corps of Engineers (Corps) and recommend that the Committee consider additional measures to improve the ability of Tribal communities and other small, rural and disadvantaged communities to utilize the Section 595 Program in Arizona.

The Pascua Yaqui Tribe and Our Limited Access to Water

The Pascua Yaqui Tribe is a federally recognized tribe with a Reservation near Tucson, Arizona. Our Tribe was recognized by Congress pursuant to the Act of September 18, 1978, P.L. 95-375

(92 Stat. 712), as amended, and the Indian Reorganization Act of 1934 (48 Stat. 984) (IRA). We are an historic tribe with a small, 2,255 acre Reservation established for the use and benefit of our Tribe's 21,363 members. Since our Tribe's federal recognition in 1978, our Tribal government has focused on providing housing, public services, and economic opportunities for our Tribal members on our Reservation and in our Tribally recognized communities in Arizona.

Like many other tribes here in the west, the Pascua Yaqui Tribe has limited access to potable water supplies. In the case of our Tribe, we do not have a surface water supply of our own on the Reservation and our access to groundwater is extremely limited. Under a *2011 Intergovernmental Agreement between the City of Tucson and Pascua Yaqui Tribe for Potable Water Service* (Water Service IGA), our Tribe receives potable water service from our neighbor, the City of Tucson, but Tucson caps the amount of water it will deliver to the Tribe at 600 acre-feet per year + 300 acre-feet per year for public facilities. With the development of much-needed housing for our Tribal members and associated Tribal facilities, we are on course to exceed our water delivery limits with Tucson in only a few years.

The Tribal Wellness Center Non-Potable Water Line Project

The Pascua Yaqui Tribe was the first entity in Arizona to receive 595 Program funding when WRDA was authorized for use in Arizona in 2020. This 595 Program funding is being used to construct a non-potable water line to provide water to our Tribal Wellness Center where we irrigate recreational facilities, including ballfields and a public park, to encourage healthy lifestyles for our Tribal members.

Currently, the Tribe must use potable water from the City of Tucson for the Wellness Center irrigation, which directly reduces the amount of water we have available to meet other potable water needs under our Water Service IGA with Tucson. However, once the Project is built, the Tribe will conserve approximately 50 acre-feet (16,292,550 gallons) of potable water each year on the Reservation, thereby contributing to the protection of the Tribe's limited water resources and making it possible for the Tribe to provide a future potable water supply for up to 375 new homes on our Reservation. While we have many more water challenges to overcome, our 595 Project will help secure an important additional potable water supply that is needed for our growing Tribal population.

Challenges with Implementation of the 595 Program

The implementation of our Project has not been without challenges, but we hope that by illuminating them, it will help inform the Committee and the Corps about improvements to the 595 Program which would be helpful.

The Tribe recognizes that administering the 595 Program in Arizona is a new responsibility of the Corps and with that responsibility comes the obligation to develop the necessary internal Corps administrative infrastructure that will help facilitate the efficient and timely completion of projects. We also understand that providing a strong foundation for any new federal program takes time and we are happy to know that Colonel Baker in his new appointment to the Corps' Los Angeles District is working hard to make that a reality.

When the Tribe first entered into its 595 Program funding agreement with the Corps in September 2021, the Tribe had already completed Project design and engineering and was prepared to complete the necessary federal environmental compliance work to move to construction in 2022. However, due to administrative delays within the Corps during 2022 and 2023, the Tribe's Project was further delayed. Currently, the Tribe is preparing bid documents for construction of the Project, but the significant delay has increased Project costs and caused additional timing issues related to certain materials.

Cost Escalation, Supply Chain Issues and the Federal Budget

As is widely known, inflation has significantly increased construction costs in the past few years, which now makes our original Project funding amount insufficient to complete the Project. In addition, the war in Israel is expected to delay our ability to obtain a critical water filtration system that is manufactured in Israel and that is necessary for our Project. Further, the wholesale increase in the number of projects under construction as a result of recent federal investments in infrastructure across the country, is making it difficult to secure local available contractors without a substantial price increase. And finally, the lack of a federal budget for FY2024 is impeding the ability of the Corps to allocate the additional funds we need to build the Project.

While the Tribe is preparing its bid documents and would like to break ground on the Project in September 2024, these challenges may cause yet another delay in our construction schedule. As a disadvantaged community with a small 595 Project, our Tribe is disproportionately affected when these challenges occur, as they drive up our overall Project costs, which then reduces our ability to deliver other important Tribal governmental services to our Yaqui People.

Administration of the 595 Program

As the Chairman of the Pascua Yaqui Tribe, I frequently interact with tribal leaders from federally recognized Indian tribes located throughout the West and see first-hand the glaring need for additional federal investments in the development, repair, and replacement of water and wastewater infrastructure on Tribal lands, among other environmental infrastructure projects. As we are struggling with years of drought and the reality of a much hotter and drier future, Indian tribes, just like many of our neighboring communities, need increased access to financial resources and technical assistance – like those that can be provided by the 595 Program – to enhance, and in many instances retool, our existing water supply and wastewater systems to conserve water, offset potable uses, and recycle water to support the health of our environment and provide a more flexible water supply for our future.

Yet, without a 595 Program that is efficient and responsive, the overall cost of these projects will be disproportionately high on small, rural and disadvantaged communities like the Pascua Yaqui Tribe. We implore the Corps to develop a strong administrative infrastructure for the 595 Program so that it can adequately help to meet the serious water and wastewater infrastructure challenges our communities face.

In addition, we recommend more transparency for the 595 Program so that small, rural and disadvantaged communities are provided information about the Program and have the opportunity to request funding on a fair and equitable playing field. For instance, like other federal programs, the Corps should consider using Grants.gov or a similar forum to release notices of funding opportunities.

Further, we encourage the Corps to provide written standardized guidance documents for the 595 Program that can be readily accessible for Project grantees to understand the 595 Program's administrative requirements. In our experience, due to a lack of this written guidance, we have had to ask questions that have taken long periods of time for Corps' staff to answer, thereby delaying our Project. If written guidance were readily available, the Corps' staff would likely not have to field so many direct questions from the grantees and this would directly enhance the Corps' ability to manage the 595 Program.

25% Cost Share Requirement

While there are several federal grant programs available to help tribes build critical water and wastewater infrastructure on tribal lands, in many instances, these programs require a non-federal cost-share match by the tribe, often from 50% to 75% of the total project cost. While the 595 Program is an improvement, since the non-federal cost share is only 25%, even this can be a significant barrier for participation in the Program for tribes.

As this Committee knows well, constructing and repairing water and wastewater facilities and other environmental infrastructure projects requires a substantial capital expenditure for any community. In non-native communities, these types of capital improvements are typically funded through tax-payer dollars and bonds, as well as impact fees assessed to private developers. However, tribal communities do not have the same mechanisms to generate or receive tax benefits or otherwise use bonding capacity. Moreover, because tribes develop and maintain these large water resource projects to facilitate their own economic development projects or to support tribal services and tribal housing, tribes do not have the benefit of assessing impact fees on developers to help fund these projects.

The inability of Tribes to tap into sources of revenue like certain taxes, bonds, or impact fees on par with their neighboring communities magnifies the difficulty presented by the 595 Program's non-federal 25% cost share. First, without sufficient water and wastewater infrastructure, tribes are unable to engage in robust economic development projects that could provide a source of revenue to meet the 25% cost share requirement, even though the very lack of water related infrastructure is what makes the tribe eligible for the 595 Program in the first place. This presents a difficult chicken and egg situation for tribes. Second, because the 25% cost share must be non-federal, tribes are unable to use other sources of available federal dollars that they typically have access to in order to fund the non-federal 25% cost share, even if cost share is allowable under other federal programs.

In recognition of the unique circumstances faced by Indian tribes, including the limited access of tribes to revenue sources that are available to non-native communities and the dire need for water and wastewater infrastructure on tribal lands, the Tribe recommends the Committee consider

allowing Indian tribes to use available federal funding sources to meet the 25% cost share requirement of the 595 Program or eliminate this cost share requirement for tribes entirely.

The Corps' Overhead Charge

As part of the 595 Program, the Corps charges a fee for its overhead expenses related to the Project. The fee is intended to cover the costs of the Corps' management of the project and expenses for environmental compliance which must be performed by the Corps as the responsible federal agency. For the Tribe, the overhead fee is being charged against the funds that were budgeted for actual construction of the Project in proportion to the 75% / 25% cost share. This means that the overhead charge is directly reducing the amount of funds available from the Corps to construct the Project. It is also increasing the cost of development that would not otherwise be required if the Project was constructed without federal funds.

Given that the 595 Program is designed to assist small, rural and disadvantaged communities, we recommend that overhead expenses of the Corps not be allocated to projects in such a way as to reduce the actual funding that is needed by the grantee to construct a project, but rather, the overhead cost should be permitted to be added to the total project cost, with the overhead cost to be borne solely by the Corps. Without relief for the way the Corps currently allocates its overhead costs to projects, the small, rural and disadvantaged communities, like the Tribe, are still not able to develop on a level playing field with other communities that have access to other non-federal funding sources.

State Revolving Funds for Water and Wastewater Infrastructure as a Non-Federal Cost Share Resource

In Arizona, the Water Infrastructure Finance Authority (WIFA) is an independent state authority that finances the construction, rehabilitation, acquisition, and improvement of water infrastructure throughout Arizona. WIFA receives federal funds from the U.S. Environmental Protection Agency (EPA) and deploys those funds under the Drinking Water State Revolving Fund (DW-SRF) and Clean Water State Revolving Fund (CW-SRF) in combination with state funds. These SRFs provide low interest loans to communities, including Tribes, who are seeking to improve water and wastewater infrastructure, ensure reliability to safe drinking water, conserve water, improve efficiency and reuse of water resources, and augment existing water resources with renewable water supplies.

Notably, the missions of WIFA and the 595 Program are similar and complimentary. However, due to the federal nature of a portion of the funds utilized as part of the SRFs, it is challenging to utilize WIFA funds to meet the non-Federal cost share requirement of the 595 Program, even though the SRFs are primarily providing loans for projects which require payback by the non-Federal entity. If it were clear that small, rural and disadvantaged communities, like the Tribe, could pair WIFA's SRF funds with the 595 Program to meet the non-Federal cost share, the ability of the 595 Program to meet its mission would be further enhanced while also providing a solution for communities who desperately need to implement environmental infrastructure projects but remain challenged by the 25% cost-share requirement.

Reimbursement Requirement

In addition, the reimbursable nature of the 595 Program also presents barriers to tribal participation. Specifically, the 595 Program requires participating tribes to fund 75% of the construction costs of approved projects up front, with the Corps providing a subsequent reimbursement of costs to the tribe after the fact. In many instances, however, tribes lack the financial tools or tribal funding sources (as discussed above) to participate in programs like the 595 Program that only reimburse the tribe for construction costs after the fact. To ensure greater participation of tribes in the 595 Program, the Committee should consider changes to these requirements for tribal participants.

Conclusion

The changes to the 595 Program discussed in our testimony today would be a big step in helping small, rural and tribal communities to meet our critical water needs both now and into the future. We urge the Committee to consider the recommendations set forth in our testimony that have the potential to magnify the impact of the WRDA and the 595 Program in small, rural and tribal communities. We are also grateful for the inclusion of Arizona in the 595 Program and for the benefit it is bringing to help meet the water needs of our Tribe, and we hope the Program will continue to be funded in the future.

On behalf of the Pascua Yaqui Tribe, thank you for the opportunity to testify today.