

The Power and Wisdom of Working Collaboratively for Indian Rights and Water Management on Native American Reservations.

prepared for the

Central States
Collaborative Workshop
St. Louis Missouri
June 23-25, 2009

Major Issues of Federal Indian Reserved Water Rights

1. **Purpose of Reservation.** Treaty or Executive Order language is crucial to the overall scope of how much water a reservation or allotment is entitled to.
2. **Surface/groundwater.** Interconnection of surface and ground water makes conjunctive use necessary in establishing duties of water.
3. **Quantification.** Winters rights apply. This includes all water bordering, flowing through and flowing under the reservation.
4. **Administration.** Who opens and shuts headgates. Tribal responsibility and authority.

Major Issues of Federal Indian Reserved Water Rights

5. **Marketing/Leasing.** Tribes have right to market or lease water.
6. **Practicably Irrigable Acreage (PIA).** Define criteria to your terms. Soils, slope of land, cost benefit ratio, climatic conditions, types of crops, arability and irrigation project condition are the seven PIA criteria.
7. **Future lands.** All lands which have the possibility of being identified as PIA at some point in the future must be identified and water claims must be made for these acreages.

Major Issues of Federal Indian Reserved Water Rights

8. **Historic lands.** Water must be claimed for all lands presently under irrigation and land which was under irrigation at some point in time.
9. **Priority date.** Date of Treaty – 1868. Immemorial priority date.
10. **Transfer of Use.** Tribes must always retain right to transfer water from one beneficial use to another.
11. **Surplus.** All surplus water on reservations must be claimed.
12. **Consumptive Use.** Also called depletion amount, substantiate the highest percentage of use (75-80%).

Major Issues of Federal Indian Reserved Water Rights

13. **Storage.** Tribes must retain right to construct and control on-reservation dams and reservoirs. Safety of existing dams must be evaluated.
14. **Water quality.** The water resources of a reservation must be administered with a non-degradation policy in mind. Tribes can adopt higher standards than the States or Federal governments.
15. **Condition and Efficiency of Irrigation Project.** Most BIA irrigation projects are in a sad state of disrepair. If tribes are to receive full benefit of this precious resource, these systems must be rehabilitated.

Major Issues of Federal Indian Reserved Water Rights

16. **Cultural concerns.** The traditions and cultural attachment Indian people have towards water must always be in discussions.
17. **Beneficial use.** The Wind River Water Code lists 15 uses.

Domestic	Municipal	Agricultural
Stock	Industrial	Instream flow
Mineral Development	Storage, Mkt & Transfer	
Recharge & supply enhancement		
Recreational	Cultural	
Religious	Hydro gen.	Pollution control
Resource Development		

Major Issues of Federal Indian Reserved Water Rights

18. Walton Rights. Any non-Indian who purchases an allotment from a tribal member/allottee shall receive the same priority date as the original owner/allottee.

Major components of Water Code Development

• 4 MAJOR AREAS

- Policy-making
- Legal
- Technical
- Administrative

Major components of Water Code Development

Policy-making

- Major development issues
- Cultural concerns involving water
- Role of water in larger tribal context
- Establishment of water policy goals and regulatory infrastructure
- Political issues affecting water management.

Major components of Water Code Development

Legal

- Status of Tribes water rights
- IRA or non-IRA
- Legal resources available
- Tribal government structure and court system
- Barriers and incentives
- Political resources available
- Codes and ordinances

Major components of Water Code Development

Technical issues

- Understanding the hydrologic cycle
- Watersheds/watershed management
- Principals and measurements
- Analysis of surface flows
- Quality of surface water supply
- Storage
- Management
- Protection strategies
- Groundwater.

Major components of Water Code Development

Technical issues (cont.)

- Research and inventory data
- Assign research responsibilities
- Resource monitoring activities
- Field data collection
- Existing supplies
- Condition of project.

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Major components of Water Code Development

Administrative

- Manpower and qualifications
- Tribal Water Engineer
- Infrastructure and development funding
- Criteria for resource use and management
- Environmental impacts

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