

## **Indian Water Rights Policy Statement For the 2008 Presidential Administration**

Water rights are possibly the most important right many Indian tribes have yet to exercise. When reservations were established, water rights ("Winters Rights") were also reserved by Indian tribes. These water rights were intended to ensure tribes would have a sufficient supply of water to meet the agricultural, domestic, industrial, and municipal water needs of the reservations. The United States carries the legal obligation as trustee to protect these tribal rights. Ironically, despite this legal obligation, the United States government developed water policy and related infrastructure benefiting non-Indian communities without consideration of tribal interests. As a result, many tribal communities now suffer from inadequate, often compromised, water supplies. Degraded water supplies hamper reservation economic and community development, and prohibit effective fire protection. Furthermore, water resources and aquatic ecosystems crucial to tribal communities for cultural survival are often impaired by over-appropriation by non-Indian interests.

Indian tribes have sought to assert their water rights through litigation and, more recently, negotiated settlements to reverse these trends. Each method is extremely costly and lengthy, which further limits the ability of tribes to secure and utilize their water rights. The critical importance of asserting and developing Indian water rights will grow as the threats posed from climate change and population growth continue to escalate.

The benefits from tribal water rights settlements extend beyond reservation boundaries. Settlements are created in conjunction with the interests of the affected parties, including non-tribal users. Indian water settlements have been key catalysts for regional water infrastructure development, and have far reaching mutual benefits with non-tribal users. Wildlife and ecosystem conservation, too, are being considered and negotiated. An increasingly crucial priority in tribal water rights settlement negotiations has been the inclusion of in-stream flows to protect aquatic species and wetlands, both which carry cultural significance for many tribes.

However, the consistent, overarching obstacle tribes face when exercising water rights is a lack of serious and sustained fiduciary commitment from the United States. A permanent funding mechanism

for Indian water rights settlements is an absolute necessity to enable the federal government to permanently resolve this issue.

There are a number of important steps the Administration and Congress could do to facilitate the development of tribal water rights:

- **Prioritize Reclamation Fund monies to fund Indian water rights settlements-**

- The Reclamation Fund is an appropriate primary funding mechanism for Indian water rights settlements in the west. Created in 1902 to finance agricultural water projects and infrastructure to build up the 17 western states, the Reclamation Fund is ideally positioned to fund Indian water rights settlements that comply with Reclamation Act requirements. The Reclamation Fund acquires money through repayments on the sale, lease or rental of public lands, and revenues from mineral leases and timber sales. These payments have been increasing in recent years largely to increasing prices of oil and gas, and the available balance has as well. The Reclamation Fund should be Congress' primary funding source for Indian water rights settlements. There is currently legislation pending in Congress to create an Indian water settlement fund from the Reclamation Fund; this approach should be embraced by the next Administration and in the new Congress.

- **Support tribal preparation, litigation, negotiation and settlement of water rights claims**

- The Bureau of Indian Affairs (BIA) regional offices distribute vital funding to tribes to conduct essential technical studies to enable them to participate fully and effectively in the litigation and negotiation processes. Over the past decade these resources have been badly cut, to the point tribes are seriously crippled in these efforts. Additional financial and human resources are necessary to assist tribes in developing and pursuing Indian water rights claims. Currently 19 tribes are engaged in settlement discussions and nine more have requested monies for such purposes. The demand for funding and staffing is going to increase as water concerns continue to rise, and the BIA must be adequately equipped with staff

and program monies to distribute to tribes for the preparation and subsequent negotiation of water rights claims.

- **Support the Department of Interior's Indian Water Rights Office-**

- The DOI Indian Water Rights Office has been an important partner for Indian tribes when working on their settlements, providing meaningful input and resources. The Indian Water Rights Office should be permanently placed in the Department of Interior's structure, and effectively staffed, and funded to assist current and future water rights claims by the dozens of Indian tribes waiting to protect one of their most precious assets -- water.

The settlement of tribal water and land claims is one of the most important aspects of the United States' trust obligations to Indian tribes. As the next Administration begins to address current issues across Indian Country, water rights settlements must be a top priority as water issues loom over tribal and non-tribal communities alike. Water rights settlements create an opportunity for partnerships between water users that solve local problems with local knowledge while promoting tribal sovereignty. The United States needs to look at ways to improve the settlement process to create opportunities for Indian tribes and to uphold their trust responsibility. Significant obstacles exist across tribal communities, but access to a clean reliable water supply should not be one of them.