

May 27, 2021

The Honorable Brian Schatz, Chair
Senate Committee on Indian Affairs
United States Senate
838 Hart Senate Office Building
Washington, DC 20510

The Honorable Lisa Murkowski, Vice-Chair
Senate Committee on Indian Affairs
United States Senate
838 Hart Senate Office Building
Washington, DC 20510

Dear Chair Schatz and Vice-Chair Murkowski,

On behalf of the Native American Rights Fund (NARF), the National Congress of American Indians (NCAI), and the Western States Water Council (WSWC), we are writing to express and reiterate our strong support for construction, operation, and maintenance of critical water infrastructure, particularly in tribal and rural regions of the West. Many existing water infrastructure projects have long been authorized by Congress but lack adequate appropriations to complete construction, delaying by decades the infrastructure desperately needed for drinking water and economic and environmental stability. Additionally, existing programs across multiple agencies have been authorized by Congress to support drinking water infrastructure for tribal communities, but lack adequate funding and coordinated interagency effort. These neglected projects and programs have contributed to the disproportionate impact of the pandemic on tribal communities.¹

Our organizations have long supported negotiated settlements of Indian water rights claims. Infrastructure built as part of many of these settlements is vital to tribal and non-tribal communities across the West, where water resources are scarce. Many of these settlements include project commitments that are vital to bringing clean drinking water to tribal communities, as well as ensuring tribes have access to water needed for agriculture, economic development, and fish and wildlife. Settlements also fulfill long-neglected federal trust and treaty obligations to tribes, which until settled, expose taxpayers nation-wide to expensive litigation and court decrees that may recognize tribal water rights, but may or may not provide tribes with the resources to develop that water. The cost of meeting those obligations increases as time passes.

Once authorized by Congress, these settlements often languish waiting for federal funding. We strongly support fully funding all enacted water settlements as part of addressing water infrastructure needs throughout tribal regions in the West. Similarly, ongoing construction of authorized rural water projects that benefit tribes have been ongoing for two decades and still lack

¹ See, e.g., Universal Access to Clean Water for Tribes in the Colorado River Basin (April 2021), available at <http://www.naturalresourcespolicy.org/docs/water-tribes/wti-full-report-4.21.pdf>

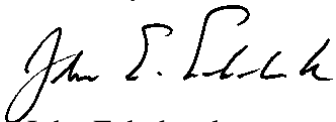
adequate funding. For example, the Fort Peck Reservation/Dry Prairie Rural Water System (Montana) was authorized in 2000 (P.L. 106-382) but has only been 75% funded with a balance remaining of \$85M as of 2020. The Rocky Boy's/North Central Montana Rural Water System, authorized in 2002 (P.L. 107-331), has only been 35% funded, with a balance remaining of \$266.2M in 2020. Appropriations for these projects has trickled in at around \$10M per fiscal year, with recent increases to \$30M per fiscal year. Other rural water projects lacking a specific tribal component in New Mexico, North Dakota, and South Dakota have likewise been delayed.

We also support an extension of the Reclamation Water Settlements Fund (RWSF), created by Section 10501 of the Omnibus Public Land Management Act of 2009 (43 U.S.C. 407), in order to ensure that future water settlements have access to funding. The RWSF provides a stable and dependable source of funding for the construction of critical infrastructure authorized by Congress as part of these settlements and sets priorities for spending. The 2009 Act authorizes transfers from the Reclamation Fund to the RWSF for fiscal years 2020 through 2029, as well as withdrawals from the RWSF for construction of infrastructure authorized by Congress as part of negotiated water rights settlements. It should be noted that Reclamation Fund receipts largely come from royalties on fossil fuels extracted from federal lands.

In addition to the water projects included in these settlements, tribes across the U.S. face many challenges in addressing basic water needs. There are, for example, tribal communities across the West that do not have ready access to safe drinking and wastewater systems, despite federal programs that already exist to help meet these needs.

We urge you to prioritize federal funding to meet these urgent needs, especially as Congress is considering potential infrastructure packages. We have included WSWC policy positions in support of these efforts. Thank you for your consideration.

Sincerely,



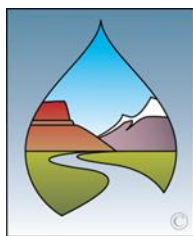
John Echohawk
NARF Executive Director



Dante Desiderio
NCAI Chief Executive Officer



Tony Willardson
WSWC Executive Director



RESOLUTION
of the
WESTERN STATES WATER COUNCIL
in support of
UNIVERSAL ACCESS TO RELIABLE, CLEAN DRINKING WATER FOR
FEDERALLY RECOGNIZED INDIAN TRIBES AND ALASKA NATIVE COMMUNITIES

Texas Hosted Spring Virtual Meetings
March 25, 2021

WHEREAS, access to reliable, clean drinking water is an essential human need that is critical to the public health, well-being, educational attainment, and economic development of all communities in the United States; and

WHEREAS, lack of access to reliable, clean drinking water has long been a significant problem for many federally recognized Indian Tribes and Alaska Native communities such that nearly half of all households still do not have access to reliable, clean drinking water, and are significantly more likely than non-Native households to lack indoor plumbing; and

WHEREAS, reliable, clean drinking water may be unavailable to households in federally recognized Indian Tribes and Alaska Native communities for a number of reasons, including because—

- (1) there is no piped water system connecting to the house;
- (2) the water available to the household does not meet minimum standards protective of human health;
- (3) the water and sanitation infrastructure is deteriorating, insufficient or non-existent; or
- (4) federally recognized Indian Tribes and Alaska Native communities are unable to support the operation and maintenance needs of existing water and sanitation infrastructure; and

WHEREAS, federal programs administered through the Department of the Interior, Indian Health Service of the Department of Health and Human Services, the Environmental Protection Agency, the Department of Agriculture, and other federal and state agencies have been not been fully successful in developing and/or maintaining the infrastructure necessary to provide reliable, clean drinking water in some federally recognized Indian Tribes and Alaska Native communities; and

WHEREAS, many federally recognized Indian Tribes and Alaska Native communities have unresolved Indian water rights claims, which may not be immediately resolved, due in part to the complex and significant issues typically involved in the adjudication or negotiated settlement of Indian water rights claims; and

WHEREAS, the Western States Water Council recognizes the sovereignty of the states to administer and distribute the waters of each state and that adjudication of Indian water rights claims occur through state water rights adjudications, and strongly supports the negotiated settlement of Indian water rights claims; and

WHEREAS the development of drinking water infrastructure for federally recognized Indian Tribes and Alaska Native communities is often included in the settlement of Indian water rights claims, but the Western States Water Council recognizes that because of the length of time it takes to successfully adjudicate or negotiate settlement of Indian water rights claims, an alternative means for immediate action is needed to provide funding to develop drinking water infrastructure for federally recognized Indian Tribes and Alaska Native communities; and

WHEREAS, the trust responsibility of the Federal Government to ensure the survival and welfare of federally recognized Indian tribes and Alaska Native communities includes the provision of safe and reliable drinking water infrastructure for basic water services; and

WHEREAS, the ongoing COVID–19 pandemic has had a disproportionate impact on federally recognized Indian Tribes and Alaska Native communities due to multiple factors including lack of access to running water, and has provided a stark reminder that access to reliable, clean drinking water to support basic personal hygiene practices is a matter of life or death for all citizens of the United States.

NOW, THEREFORE, BE IT RESOLVED that the Western States Water Council supports the provision of reliable, clean drinking water to meet the domestic needs of federally recognized Indian Tribes and Alaska Native communities and recognizes that providing access to reliable, clean drinking water through water infrastructure, coupled with developing the technical, managerial, and financial capacity to operate and maintain that infrastructure, is an essential component of the Federal trust responsibility to Native Americans; and

BE IT FURTHER RESOLVED, that while recognizing that adjudication or negotiated settlement of Indian water right claims is critically important, and that the provision of reliable, clean drinking water and related infrastructure is frequently an important component of adjudications and settlements, the Western States Water Council believes that a final adjudication or settlement is not and should not be a prerequisite to providing reliable, safe drinking water infrastructure to federally recognized Indian Tribes and Alaska Native communities; and

BE IT FURTHER RESOLVED, that the Western States Water Council urges the Administration and Congress to support, encourage, and fund the appropriate, expedited resolution of negotiated settlements and adjudications relating to Indian water rights claims; and

BE IT FURTHER RESOLVED, that the Western States Water Council urges the Administration to employ a coordinated approach working across departmental and agency boundaries in collaboration with Tribal governments; and

BE IT FURTHER RESOLVED, that the Western States Water Council also urges Federal agencies and Tribal governments to coordinate and work collaboratively with appropriate State and local jurisdictions to establish expedited planning, design, development, and operation of infrastructure necessary to provide reliable, affordable, and clean drinking water for federally recognized Indian Tribes and Alaska Native communities in accordance with applicable law.



**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
in support of
INDIAN WATER RIGHTS SETTLEMENTS
Fall No Host – Virtual Meeting
October 15, 2020**

WHEREAS, the Western States Water Council, an instrumentality of eighteen western states advising Western Governors on water policy, has consistently supported negotiated settlement of disputed Indian water rights claims; and

WHEREAS, the public interest and sound public policy require the resolution of Indian water rights claims in a manner that is least disruptive to existing uses of water; and

WHEREAS, negotiated resolution of Indian water rights claims is a highly desirable process which can achieve the final determination of Indian water rights fairly, efficiently, and with the least cost; and

WHEREAS, the advantages of negotiated settlements include: (i) the ability to be flexible and to tailor solutions to the unique circumstances of each situation; (ii) the ability to promote conservation and sound water management practices; and (iii) the ability to establish the basis for cooperative partnerships between Indian and non-Indian communities; and

WHEREAS, the successful resolution of certain claims may require “physical solutions,” such as development of federal water projects and improved water delivery and application techniques; and

WHEREAS, the United States has developed many major water projects that compete for use of waters claimed by Indians and non-Indians, and has a responsibility to both to assist in resolving such conflicts; and

WHEREAS, the settlement of Native American water rights claims is one of the most important aspects of the United States’ trust obligation to Native Americans and is of vital importance to the country as a whole and not just individual tribes or States; and

WHEREAS, the obligation to fund resulting settlements is analogous to, and no less serious than the obligation of the United States to pay judgments rendered against it; and

WHEREAS, Indian water rights settlements involve a waiver of both tribal water right claims and tribal breach of trust claims that otherwise could result in court-ordered judgments against the United States and increase costs for federal taxpayers; and

WHEREAS, current budgetary pressures and legislative policies make it difficult for the Administration, the states and the tribes to negotiate settlements knowing that they may not be funded because either they are considered earmarks or because funding must be offset by a

corresponding reduction in some other expenditure, such as another tribal or essential Interior Department program;

NOW, THEREFORE, BE IT RESOLVED, that the Western States Water Council reiterates its support for the policy of encouraging negotiated settlements of disputed Indian water rights claims as the best solution to a critical problem that affects almost all of the Western States; and

BE IT FURTHER RESOLVED, that the Western States Water Council urges the Administration to support its stated policy in favor of Indian water rights settlements with a strong fiscal commitment for meaningful federal contributions to these settlements that recognizes the trust obligations of the United States government; and

BE IT FURTHER RESOLVED, that Congress should expand opportunities to provide funding for the Bureau of Reclamation to undertake project construction related to these settlements from revenues accruing to the Reclamation Fund, recognizing the existence of other legitimate needs that may be financed by these reserves; and

BE IT FURTHER RESOLVED, that Indian water rights settlements are not and should not be defined as Congressional earmarks; and

BE IT FURTHER RESOLVED, that steps be taken to ensure that any Indian water rights settlement, once authorized by the Congress and approved by the President, will be funded without a corresponding offset, including cuts to some other tribal or essential Interior Department program.

**Originally adopted March 21, 2003
Revised and reaffirmed Mar 29, 2006, October 17, 2008, October 7, 2011,
October 10, 2014, and October 20, 2017
(See also Nos. 250, 275, 310, 336, 376, and 412)*



RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding the
RURAL WATER and WASTEWATER PROJECT/INFRASTRUCTURE NEEDS
and
U.S. DEPARTMENT of AGRICULTURE PROGRAMS

**Adopted via Executive Committee Conference Call
March 6, 2020**

WHEREAS, in the West, water is indeed our “life blood,” a vital and scarce resource the availability of which has and continues to circumscribe growth, development, our economic and environmental well-being and quality of life; and

WHEREAS, across the West, many small, rural and tribal communities are experiencing water supply shortages due to drought, declining streamflows and groundwater supplies, and inadequate infrastructure, with some communities hauling water over substantial distances to satisfy their potable water needs; and

WHEREAS, often water supplies that are available to these communities are of poor quality and may be impaired by naturally occurring and man-made contaminants, including arsenic, copper, lead, and carcinogens, which impact communities’ health and their ability to comply with increasingly stringent federal water quality and drinking water mandates; and

WHEREAS, many small, rural and tribal communities (including colonias) also face challenges related to meeting federal mandates for wastewater treatment; and

WHEREAS, at the same time, many small, rural and tribal communities in the West suffer from significant levels of unemployment and simply lack the financial capacity and expertise to plan, finance and construct needed drinking water and wastewater system improvements; and

WHEREAS, there is a Federal responsibility to assist these communities in meeting related federal mandates to achieve water and wastewater public health goals; and

WHEREAS, USDA’s water and wastewater grant and loan programs help provide financing for clean and reliable drinking water systems, sanitary sewage disposal, solid waste disposal and stormwater drainage for individual households, businesses, cooperatives, private non-profits, and state and local governmental entities and tribal communities – many without access to private, commercial credit on reasonable terms or other federal financial assistance (including the SRFs); and

WHEREAS, these programs help very small, financially distressed communities by providing long-term low interest loans (up to 40 years at fixed rates determined by need), loan guarantees, and grants (if funds are available), and related programs provide technical assistance and training grants; and

WHEREAS, these wise investments of federal dollars can help businesses and manufacturers to locate or expand operations in these communities, providing an economic boost, as well as environmental improvements and other long-term returns.

NOW THEREFORE BE IT RESOLVED, that the Western States Water Council urges the Administration and Congress to carefully consider the needs of small, rural and tribal communities and businesses and provide or otherwise ensure they have access to financial and technical assistance sufficient to ensure they can meet federal water quality and drinking water mandates, as well as achieve public health goals.