

**Written Testimony of the
WESTERN STATES WATER COUNCIL**

**Submitted to the
House Committee on Natural Resources
Subcommittee on Water, Oceans, and Wildlife**

**Regarding Hybrid WOW Legislative Hearing
H.R. 3081, H.R. 5880, H.R. 6238, H.R. 6369, H.R. 7612, H.R. 7632, and H.R. 7633**

May 12, 2022

On behalf of the Western States Water Council (WSWC), we wish to express our support for H.R. 5880, H.R. 6238, H.R. 7632, and H.R. 7633. The WSWC is a bi-partisan government entity created by Western Governors in 1965 that represents eighteen states. Our members are appointed by and serve at the pleasure of their respective Governors, advising them on water policy issues. Our mission is to ensure that the West has an adequate, secure, and sustainable supply of water of suitable quality to meet its diverse economic and environmental needs now and in the future. The WSWC has long supported the negotiated settlements of Indian water rights claims.¹

Water in the West is a limited resource, and the unquantified water rights claims of federally-recognized tribes negatively impact tribes, states, and communities across the West. Negotiated settlements of Indian water rights are a means of ensuring the reliability of water supplies for both tribal and non-tribal communities, through well-defined water rights, and provide the certainty needed to help conserve water, address environmental needs, promote economic development, and create jobs on and off tribal lands.²

The WSWC supports tribal water rights settlements and universal access to reliable, clean drinking water for federally recognized Indian Tribes and Alaska Native communities. See **WSWC Positions #454, and #465** attached. We appreciate and support the introduction and passage of **H.R. 5880**, to amend the White Mountain Apache Tribe Water Rights Quantification Act of 2010 to modify the enforceability date for certain provisions; **H.R. 6238**, the WaterSMART Access for Tribes Act, to amend the Omnibus Public Land Management Act of 2009 to remove barriers to tribal access to water conservation and efficiency grant; **H.R. 7632**, the Tribal Access to Clean Water Act, to provide access to reliable drinkable water on tribal lands; and **H.R. 7633**, the Hualapai Tribe Water Rights Settlement Act of 2022, to approve the claims of the Hualapai Tribe and certain allottees in the State of Arizona, to authorize construction of a water project relating to those claims, and for other purposes.

The WSWC supports the provision of clean water to tribes to meet their domestic needs and recognizes that providing basic drinking water service is an essential component of the federal trust responsibility. Additionally, developing the technical, managerial, and financial capacity of tribes to operate and maintain that infrastructure is critical to the longevity of such an investment.

¹ For more information, see <https://westernstateswater.org/events/2021-symposium-on-the-settlement-of-indian-reserved-water-rights-claims/>

² See WSWC written testimony dated November 4, 2021 submitted to the House Committee on Natural Resources Subcommittee on Water, Oceans, and Wildlife regarding H. Res. 320 - Universal Access to Clean Drinking Water.

Federal programs already exist to fulfill many of these needs, but are underfunded and cumbersome to navigate.

The WSWC supports a coordinated approach across federal agencies and departments to leverage those programs in a meaningful way, and adequate funding from Congress to meet those needs. The WSWC further supports federal agency collaboration with tribes, states, and local jurisdictions to establish expedited planning, design, development, and operation of water infrastructure to meet the clean drinking water needs of tribes. In addition, the WSWC urges Congress to support, encourage, and fund negotiated settlements and adjudications relating to Indian water rights claims.

Specifically, regarding **H.R. 6238**, the WaterSMART Access for Tribes Act, the WSWC supports the development and implementation of appropriate energy and water conservation programs at all levels to minimize demands placed on our natural resources and ecosystems. In a letter to Rep. Melanie Stansbury, dated December 1, 2021, we expressed support for legislation that would allow the Secretary of the Interior as needed to reduce or waive non-federal cost sharing requirements for grants or cooperative agreements under the WaterSMART program between the Secretary and eligible Indian tribes for planning, designing, or constructing any improvement to: (1) conserve water; (2) increase water use efficiency; (3) enhance water management; or (4) accelerate the adoption and use of advanced water treatment technologies to increase water supply.

H.R. 7632 also reauthorizes the Rural Water Supply Act of 2006 (P. L. 109-451) and the Bureau of Reclamation's Rural Water Supply Program to work with rural communities, states and tribes, to assess potable water supply needs and identify options to address those needs through appraisal investigations and feasibility studies. The WSWC strongly supports Congressional action to expedite construction of authorized rural water supply projects in a timely manner, including projects that meet tribal trust and other federal responsibilities – recognizing and continuing to defer to the primacy of western water laws and tribal settlements in allocating water among users. Federal expenditures for rural water projects actually generate significant returns on the investment through increased national and local economic benefits, as well as improvements in quality of life. Western States are committed to continuing to work cooperatively with the Department of Interior and Bureau of Reclamation to meet rural water needs in the West for present and future generations. See **WSWC Position #468** attached.

The WSWC has not specifically considered **H.R. 3081**, to make certain irrigation districts eligible for Pick-Sloan Missouri Basin Program pumping power, and **H.R. 6369**, the Sun River Hydropower Authorization Act, to authorize the Secretary of the Interior to construct, operate, and maintain hydroelectric facilities as part of the Sun River Project in Montana. However, the WSWC recognizes that the water and hydropower resources of the West have been developed through partnerships between energy and water users, and continue to be inextricably connected. Further, clean, efficient, inexpensive hydropower is a vital part of the energy resources needed to meet our present and future energy demands. Hydropower is a prominent component of electricity generation in a number of western states, and important part of state renewable portfolio standards. The WSWC supports federal legislative and administrative actions to authorize and implement reasonable hydropower projects and programs that enhance our electric generation capacity and promote economic development, through efficient permitting processes, while appropriately protecting environmental resources and respecting States' 401 certification authority under the Clean Water Act and States' authority over water allocation within their borders. See **WSWC Position #479** attached.

While the WSWC has not taken a position of **H.R. 7612**, the Desalination Research Advancement Act. We have in the past supported water recycling, reuse, and desalination projects in the context of an all of the above approach to infrastructure investments and technological innovation. We have also emphasized the federal role in authorizing and appropriating funds to share in the cost of water infrastructure, and the importance of interagency coordination.



**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
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 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
regarding the
RURAL WATER SUPPLY PROJECT/INFRASTRUCTURE NEEDS
Cody, Wyoming
June 25, 2021

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, 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 and carcinogens, which impact communities’ health and their ability to comply with increasingly stringent federal water quality and drinking water mandates; and

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

WHEREAS, there are six authorized and active rural water projects located in Montana, New Mexico, North Dakota, and South Dakota of which five have yet to be completed at an estimated federal cost of around \$898 million – while costs continue to increase due to delays, inflation and the rising costs of materials and labor – and at current levels of funding completion of some project could be delayed by decades; and

WHEREAS, there is a Federal responsibility to complete authorized rural water projects, particularly those intended to fulfill in part a solemn Federal promise and trust responsibility to compensate States and federally recognized Indian Tribes for lost resources as a result of the construction of Federal flood control projects and other actions; and

WHEREAS, recognizing Federal budget constraints, a modest increase in Federal expenditures would expedite completion of authorized projects and in the long run save taxpayer money while inadequate funding levels, and untimely appropriations only increase delays and Federal costs and perpetuates rural and tribal communities’ hardships; and

WHEREAS, authorizing the increased use of Reclamation Fund revenues to expedite completion of these projects fulfills both financial and moral obligations that some beneficiaries have waited decades to see honored; and

WHEREAS, the Congress enacted the Rural Water Supply Act of 2006 (P. L. 109-451) and established the Bureau of Reclamation's Rural Water Supply Program authorizing the agency to work with rural communities, states and tribes, to assess potable water supply needs and identify options to address those needs through appraisal investigations and feasibility studies; and

WHEREAS, federal expenditures for rural water projects actually generate significant returns on the investment through increased national and local economic benefits, as well as improvements in quality of life; and

WHEREAS, Reclamation Fund receipts are largely derived from water and power sales, project repayments, and receipts from public land sales and leases, as well as oil and mineral-leasing and related royalties, from western lands adjacent to rural and tribal communities; and

WHEREAS, western States are committed to continuing to work cooperatively with the Department of Interior and Bureau of Reclamation to meet rural water needs in the West for present and future generations, within the framework of state water law, as envisioned in the Reclamation Act of 1902; and

WHEREAS, under the Reclamation Act of 1902, the Reclamation Fund was envisioned as the principal means for financing federal western water and power projects with revenues from western resources – but these receipts are only available for expenditure pursuant to annual appropriation acts; and

WHEREAS, with growing receipts – in part due to energy development across the rural West -- and limited federal appropriations for Reclamation Act purposes, the unobligated balance grows larger and larger (and is expected to soon exceed \$18 billion), while the money is actually spent elsewhere for other federal purposes contrary to the Congress' original intent; and

WHEREAS, the Western States Water Council (WSWC) has a long-standing policy in support of using receipts accruing to the Reclamation Fund for authorized projects, including rural and tribal water supply projects.

NOW THEREFORE BE IT RESOLVED, that the WSWC strongly supports Administrative and Congressional action to expedite construction of authorized rural water supply projects in a timely manner, including projects that meet tribal trust and other federal responsibilities – recognizing and continuing to defer to the primacy of western water laws and tribal settlements in allocating water among users.

BE IT FURTHER RESOLVED, that the WSWC recommend that the Administration and the Congress investigate the advantages of converting the Reclamation Fund from a special account to a true revolving trust fund with annual receipts to be appropriated for authorized purposes in the year following their deposit (similar to some other federal authorities and trust accounts).



POSITION STATEMENT
of the
WESTERN STATES WATER COUNCIL
in support of
RENEWABLE HYDROPOWER DEVELOPMENT
Arlington, Virginia
April 6, 2022

WHEREAS, the water and hydropower resources of the West have been developed through partnerships between energy and water users, and continue to be inextricably connected; and

WHEREAS, clean, efficient, inexpensive hydropower is a vital part of the energy resources needed to meet our present and future energy demands; and

WHEREAS, hydropower is the primary source of renewable electricity in the United States, representing about 48% of total renewable electricity generation, with approximately 101 gigawatts (GW) of capacity and nearly 7% of total electricity generation³; and

WHEREAS, the potential exists for further public and private development of this valuable resource, including upgrading existing generators, developing small hydro and the power potential from low-head hydro on existing man-made conduits and canals, as well as hydroelectric pumped storage projects; and

WHEREAS, such development can often be undertaken with little impact on the environmental and important ecological resources, requiring minimal further environmental review; and

WHEREAS, permitting requirements may be appropriately minimized and streamlined so as to promote reasonable development while avoiding unnecessary costs; and

WHEREAS, the future development of potential hydropower resources should be appropriately undertaken in compliance with substantive and procedural state water law and interstate compacts, and consistent with the States' authority under Clean Water Act Section 401; and

WHEREAS, the rights and preference privileges of existing water and power users should be respected; and

WHEREAS, federal legislation has from time to time been introduced to further authorize and promote the wise and sustainable development of our renewable hydropower resources, also creating jobs and reducing carbon emissions; and

³ <https://www.energy.gov/sites/prod/files/2016/10/f33/Hydropower-Vision-Chapter-2-10212016.pdf>; p. 3, 76.

WHEREAS, hydropower is a prominent component of electricity generation in a number of western states, and important part of state renewable portfolio standards; and

WHEREAS, the potential exists to increase hydropower production by as much as 189 GW by rehabilitating, expanding and upgrading existing facilities, powering non-powered dams, installing hydropower at existing conduits and canals, as well as developing new project sites.⁴

NOW THEREFORE BE IT RESOLVED that the Western States Water Council supports federal legislative and administrative actions to authorize and implement reasonable hydropower projects and programs that enhance our electric generation capacity and promote economic development, through efficient permitting processes, while appropriately protecting environmental resources and respecting States' 401 certification authority under the Clean Water Act and States' authority over water allocation within their borders.

BE IT FURTHER RESOLVED that the Western States Water Council also supports the development and implementation of appropriate energy and water conservation programs at all levels to minimize demands placed on our natural resources and ecosystems.

BE IT FURTHER RESOLVED that past, present and future hydropower development and operational changes should recognize and ensure consistency with state law and regulatory authority and delegated authority under federal law.

⁴ Ibid, pg. 95.