WESTERN STATES WATER COUNCIL
www.westernstateswater.org
Policy Position #2026-06

Support for Negotiated Indian Water Rights Settlements

Policy Summary

Resolving unquantified Indian reserved water rights claims is critical for western states, because tribal rights typically have priority dates that are senior to non-Indian uses, and therefore have the potential to displace other established water rights. Negotiated Indian water rights settlements are generally the best way to resolve claims to federally reserved Tribal water rights. Compared with prolonged litigation, settlements can provide greater certainty and flexibility, minimize disruption to existing water uses, promote conservation and sound water management, and create durable partnerships among Tribes, states, local communities, water users, and the federal government.

Successful settlements require meaningful federal participation and reliable funding. Settlements may resolve both water-right and breach-of-trust claims and may require infrastructure or other "physical solutions" to make Indian reserved water rights usable. Once Congress authorizes a settlement, the United States should fulfill its commitments without corresponding cuts to other Tribal or essential Department of the Interior programs.

Senate Committees of Jurisdiction
- Indian Affairs
- Energy & Natural Resources

House Committee of Jurisdiction
- Natural Resources: Water, Wildlife & Fisheries Subcommittee

Relevant Appropriations Subcommittees
- Energy & Water Development
- Interior, Environment & Related Agencies

Relevant Federal Agencies
- U.S. Department of the Interior
- U.S. Department of Justice

WSWC Urges Congress and the Administration to:

1. **Support the Negotiation Teams through the Department of the Interior's Indian Water Rights Office** These teams are responsible for providing technical support and resolving Indian water claims. Negotiated settlements can resolve claims fairly and efficiently while providing flexibility to address unique circumstances, minimize disruption to existing water uses, promote sound water management, and build cooperative relationships.

2. **Authorize negotiated settlement agreements.** The federal government holds

*The **Western States Water Council (WSWC)** is a government entity representing western state water agencies with members appointed by their respective governors. The WSWC's 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.*

Indian water rights in trust for the benefit of the tribes and should work to ensure that settlements negotiated in good faith among tribal, federal, and state governments are authorized, funded, and implemented.

3. **Provide a strong and reliable federal fiscal commitment to authorized settlements.** The United States should provide meaningful and predictable funding for authorized settlements, recognizing applicable federal trust obligations and the national benefits of resolving long standing claims.

4. **Support flexible funding and "physical solutions" needed to implement settlements.** Congress should expand appropriate use of Reclamation Fund revenues, fund-based settlements, project construction, and other practical tools that allow Tribes to put Indian reserved water rights to beneficial use.

5. **Fund authorized settlements without undermining other Tribal or essential federal programs.** Authorized Indian water rights settlements should not be treated as congressionally directed spending, and settlement funding should not require corresponding cuts to other Tribal programs or essential Department of the Interior responsibilities.

Core Message

Negotiated Indian water rights settlements can provide certainty for Tribal and non-Tribal water users, avoid costly and prolonged litigation, protect existing uses, and support solutions tailored to individual basins. Their success depends on a reliable federal commitment from negotiation through authorization, funding, and implementation.

What WSWC Is Asking For

1. **Maintain a strong federal policy favoring negotiated settlements** of Indian water rights claims over prolonged litigation.

2. **Provide durable and sufficient federal funding** for authorized settlements consistent with applicable federal trust obligations.

3. **Expand appropriate settlement funding tools**, including use of Reclamation Fund revenues, fund-based settlements, and infrastructure or other physical solutions needed for implementation.

4. **Do not treat Indian water rights settlements with regional implications as local earmarks or require offsets** from other Tribal or essential Department of the Interior programs.

5. **Develop settlements that minimize disruption to existing water uses** and comply with state water law, interstate compacts, court decrees, and other governing legal frameworks.

Closing Statement

WSWC supports negotiated Indian water rights settlements as an effective way to resolve longstanding claims, provide greater certainty, fulfill applicable federal responsibilities, protect existing water uses, and strengthen cooperation among Tribal and non-Tribal communities. Congress and the Administration should provide a dependable path from negotiation through funding and implementation so that federal settlement commitments can be fulfilled.

Nothing in this position is intended to alter or affect the authority of western states over the allocation, administration, development, or protection of waters within their borders, or the interpretation or application of any interstate compact, court decree, international treaty, tribal settlement agreement, or state water law; nor does this position take a position on the validity, quantity, priority, or other terms of any specific Indian water rights claim or proposed settlement.

Supporting Documentation

Why This Matters

Beginning in the late 19th Century, the federal government encouraged communities to settle the West, and water resources were developed to reclaim the desert through ranching and agriculture. Western settlers were directed to obtain appropriative rights under state and territorial law. The necessary process of moving water to where it was needed to support western development gave rise to an alternative system of law to govern the allocation and delivery of water. The Doctrine of Prior Appropriation ensures that, for state-recognized beneficial uses of water, those who developed and used the water first will continue to have the highest priority to use the water. Thus, senior water right holders with earlier priority dates (the date the water was first put to beneficial use) can force users with junior priority dates to curtail or stop their use in times of shortage.

Most non-Indian water development in the West occurred after the federal government entered into treaties with Indian tribes to establish permanent homelands, or reservations, for the tribes. These treaties typically did not quantify or even expressly recognize the tribes' water rights. The U.S. Supreme Court addressed this issue in *Winters v. United States,* 207 U.S. 564 (1908), holding that tribal treaties created implied water rights to adequate water to satisfy the purpose of a tribe's reservation. Federal reserved rights differ from state-based rights in that they are not limited by beneficial use requirements, are quantified based on the purposes of the reservation, and have priority dates that correspond to the date the federal government created the reservation.

Tribes often lack the funding and resources needed to adjudicate their *Winters* rights. This has created a lack of water supply and related infrastructure throughout Indian Country that hinders self-sufficient economic growth and prevents tribal governments from protecting the health, welfare, and safety of their communities.

Resolving *Winters* rights and other tribal water rights claims is critical for western states, because tribal rights typically have priority dates that are senior to non-Indian uses, and therefore have the potential to displace other established water rights. This is especially challenging where tribal rights pertain to river systems that are fully appropriated by non-Indian users. This places the federal government in a difficult position, as the water that is necessary to fulfil the purposes of the Indian reservations is often the same water already appropriated by the states with federal encouragement and infrastructure support. The un-quantified nature of many tribal rights creates great uncertainty with regard to existing state-based uses and can impede local, state, and regional economic development. That same uncertainty can impede economic development for tribes as well, and can have profound effects on traditionally cultural and ceremonial practices that have been in place for millenia. Given increasing stresses to water supplies due to prolonged drought, reduced snowpacks, and other factors, quantifying Indian water rights claims is essential for western states and tribes to address increasing water demands related to the West's growing population.

Unresolved claims can create significant uncertainty for Tribes, states, water users, communities, and the federal government. Their resolution affects not only Tribal water rights but also administration of shared rivers and aquifers, existing water uses, infrastructure investment, economic development, interstate obligations, and long-term water planning.

Negotiated settlements allow the parties to resolve legal claims while also addressing practical water-management and infrastructure issues that may be difficult to resolve through litigation alone.

Why Negotiated Settlements Are Preferred

WSWC has long supported negotiated resolution of disputed Indian water rights claims because settlements can be tailored to the unique circumstances of each basin.

Negotiated settlements can:

- give states and tribes certainty and control over the outcome of water rights adjudications;
- determine Indian water rights fairly and efficiently;
- minimize disruption to existing water uses;
- provide flexibility in developing basin-specific solutions;
- promote conservation and sound water-management practices;
- address water-supply and infrastructure needs;
- provide greater certainty to Tribal and non-Tribal water users; and
- establish cooperative partnerships and positive relationships among Indian and non-Indian communities, essential for managing shared water resources through future conflicts that arise in years of drought.

Litigation can determine legal rights, but negotiation gives affected parties greater ability to address the practical consequences of those rights and develop mutually acceptable solutions.

Federal Responsibility and Reliable Funding

The settlement of Indian water rights claims is an important aspect of the United States' trust obligations where applicable and is a matter of national interest, not solely a concern of individual Tribes or states. The United States has developed many major western water projects involving waters claimed or used by both Indian and non-Indian communities and has a responsibility to assist in resolving resulting water-use conflicts. Settlements also commonly involve waivers of Tribal water-right claims and breach-of-trust claims that otherwise could continue in litigation and potentially result in judgments against the United States.

WSWC has historically recognized that the federal obligation to fund resulting settlements is **analogous to, and no less serious than, the obligation to pay judgments rendered against the United States**.

Uncertainty over federal funding can make settlement negotiations substantially more difficult. States and Tribes may spend years negotiating agreements without confidence that the federal government will ultimately fund its share. Congress and the Administration should therefore provide a strong continuing fiscal commitment and durable funding mechanisms for authorized settlements.

Authorized settlement obligations should not be treated as congressionally directed spending or funded through corresponding reductions to other Tribal or essential Interior Department programs.

Physical Solutions and Flexible Funding Tools

Quantifying a water right does not necessarily provide a usable water supply. Some settlements require "physical solutions" to make the negotiated agreement workable.

Depending on the circumstances, those solutions may include:

- federal water-project construction or rehabilitation;
- water storage, diversion, conveyance, or treatment infrastructure;
- improved water-delivery and application techniques;
- conservation and efficiency measures;
- development of alternative or replacement water supplies; or
- settlement funds that allow Tribes to develop their own water resources.

WSWC supports expanded opportunities to use appropriate Reclamation Fund revenues for settlement-related project construction, while recognizing other legitimate needs financed by the Fund. WSWC also supports fund-based settlements where they provide an effective and flexible means of implementing negotiated agreements.

Federal policy should allow the combination of legal, financial, and physical solutions best suited to each settlement.

State, Tribal, Federal, and Local Partnership Is Critical

Indian water rights settlements require cooperation among Tribes, states, federal agencies, local governments, water suppliers, irrigation organizations, individual water users, and other affected interests. States have an important role because settlements operate within broader systems of water-right administration, existing uses, interstate obligations, infrastructure operations, and long-term water planning. Settlement negotiations and implementation should therefore include meaningful state involvement and should respect applicable state water law, interstate compacts, court decrees, and other governing legal frameworks.

Federal settlement policy should provide sufficient flexibility for locally developed solutions rather than impose a one-size-fits-all approach. The objective should be a durable agreement that provides certainty to the Tribe while minimizing disruption to existing water uses and establishing workable relationships for future water administration.

Additional Supporting Context

A. Settlement creates certainty

Resolving disputed claims allows Tribal and non-Tribal water users to make better-informed decisions about water use, infrastructure, financing, economic development, and long-term planning.

B. Settlement can produce broader benefits

Negotiated agreements can support conservation, improved water management, infrastructure development, and long-term cooperation in addition to resolving legal claims.

C. Funding certainty strengthens negotiations

Parties are more likely to invest the time and resources necessary to reach agreement when there is a credible federal path for authorization, funding, and implementation.

D. Each settlement is unique

Hydrology, legal claims, existing water uses, infrastructure, costs, and participating interests vary considerably among basins. Federal policy should preserve the flexibility needed to accommodate those differences.

Adopted by the Western States Water Council on October 22, 2026, in Las Cruces, New Mexico, without opposition; Arizona abstained.