

Tribal Settlements Nothing New in the Western Water Arena

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May 9, 2008

The proposed Klamath Basin Restoration Agreement (KBRA) has been the topic of many coffee shop discussions and widespread media coverage for much of this year. As with any intensely-debated and agreed upon settlement between divergent interests, the Klamath settlement doesn't make everyone happy. Here in the Upper Basin, one aspect of the proposed agreement that has raised many eyebrows is how Native American water rights will fit into the mix. Many people I've talked to appear surprised that tribal water rights are even part of the proposed agreement.

A group that calls itself the Klamath Off-Project Water Users (those who are not within the Klamath Irrigation Project) is campaigning against the settlement. These folks believe the agreement does not resolve water rights adjudication, and have run newspaper ads and created websites to broadcast their concerns. Attorneys representing irrigators within the Klamath Project disagree. They claim that the settlement provision simply reflects that the Project water users are not going to contest the Tribes' claims further. In other words, Project water users will effectively acquiesce to those claims, but subject to all the other conditions. They also believe that the terms of the KBRA will not and legally could not, affect the rights of any other party who is currently contesting the tribal claims in the adjudication.

All of this emphasis on settling tribal water rights is seen by some as a new, untested experiment. Actually, similar settlements have already been completed, and many others are being contemplated in other parts of the American West.

Last month, I traveled to Washington, D.C., where representatives of my organization participated in a variety of oversight and legislative hearings conducted by congressional water committees. The House Water and Power Subcommittee on April 16 conducted a hearing on Native American water rights settlements, where it was made clear that this is an area of growing importance in the Western water arena.

The purpose of this hearing was to examine the geographical and fiscal scope of Indian water rights settlements in Congress. The hearing explored the current interpretation of criteria and procedures for determining the federal financial obligation of each settlement and what water supply certainty can be gained by the resolution of these water claims. The hearing also focused on how federal and non-federal agencies currently negotiate agreements and how the settlement process can be improved.

John Sullivan, associate general manager of Arizona's Salt River Project, sits on the Family Farm Alliance Advisory Committee. He delivered testimony at this hearing that outlined his organization's extensive recent experience in water rights settlements with Arizona tribes. Importantly, he noted that the themes of collaboration and a trustworthy process, and the goals of certainty and a definitive resolution can remain the constant.

John Sullivan also emphasized the importance of water supply reliability. The availability and dedication of Central Arizona Project water was instrumental in several of the more recent Indian water rights settlements in Arizona. He urged water providers and the federal government to continue to take advantage of opportunities to develop new sources of water and stretch existing supplies. Without these opportunities, he said, the ability to find water to dedicate to future Indian settlements, without injuring other parties, will become limited.

A few common and key important findings emerged after the hearing was completed. Notably, the number of Indian settlements underway has grown from 2 last year to 13 this year. A bill supporting one of those settlements – involving Navajo water rights in New Mexico - was heard in Congress last week. You may also have seen the recent news that Northwestern tribes and the federal government have announced that agreement has been reached on a \$900 million tribal settlement on the Columbia River.

How do these recent developments apply to Klamath?

Well, with limited federal monies available in these lean economic times, the settlement agreements that will get federal funding are the ones that are supported by a broad and diverse group of stakeholder groups and agencies. Already, two major settlements are in the pipeline ahead of Klamath. With every month that passes where a settlement is not finalized, the probability improves for new settlements in other parts of the West to be introduced into the Congressional pipeline.

This will only further delay funding opportunities that will allow the settling parties on the Klamath River to actually begin working together to implement solutions for our communities.