

TESTIMONY OF JOHN E. ECHOHAWK
EXECUTIVE DIRECTOR, NATIVE AMERICAN RIGHTS FUND
BEFORE THE HOUSE COMMITTEE ON NATURAL RESOURCES
APRIL 4, 2019

I want to thank the House Committee on Natural Resources for this opportunity to testify and support the passage of H.R. 1904, the Indian Water Rights Settlement Extension Act. I have been involved in representing Indian tribes in their water rights claims for 49 years and believe that passage of this Act will facilitate more settlements of these claims which would be a positive development throughout the west where most of these claims are.

I am the Executive Director of the Native American Rights Fund, the national Indian legal defense fund, headquartered in Boulder, Colorado. We were established in 1970 as a non-profit organization to provide legal advice and assistance to Indian tribes, organizations and individuals across the country on issues of national significance when they could not afford lawyers. We are governed by a board of directors consisting of Native American leaders from across the country who set the priorities on the legal issues that we should address.

One of these priority issues that our all-Native board of directors said we should address was Indian water rights. They knew that without rights to water for Indian lands in the west where water is scarce, Indian tribes would not be able to survive. They also knew that under the laws of the United States, Indian tribes have the senior rights to water ahead of most other people in the west who came and started using water after most Indian reservations were set aside.

When the federal government entered into treaties with Indian tribes establishing the reservations as permanent homelands, these treaties typically did not quantify or even expressly recognize the tribes' water rights. The U.S. Supreme Court addressed this issue in its 1908 decision in *Winters v. United States*, holding that tribal treaties created reserved rights to water to satisfy the purpose of a tribe's reservation. These federal reserved rights, or *Winters* rights, exist as federal enclaves within state legal systems and differ from water rights created under state laws because they are not limited by beneficial use requirements; are indeterminate in quantity until adjudicated; are measured by the present and future supplies needed to fulfill the purpose of a reservation instead of past uses; and have early priority dates that correspond, at a minimum, to the date the federal government created the reservation.

In the 1970s we began filing tribal water rights cases in the west with the involvement of the United States as trustee for the tribes. In the 1980s the western states became very concerned about the impact of these tribal water rights claims on state water users. Discussions began between western states, tribes and the federal government about alternatives to litigation over water rights in the west. Since that time, the Native American Rights Fund, the Western States Water Council and others have worked together to support negotiated settlements of Indian reserved water rights claims. Over the years, Congress has now approved 32 Indian water rights settlements. The Native American Rights Fund has represented tribes in cases that have been resolved by 9 of these 32 settlements.

Our experience is that in most instances, tribal, state and federal water users are able to negotiate settlements which fairly allocate the available water in those river basins. There are always costs to these settlements that must be shared by the tribal, state and federal parties. We have learned that the most difficult part of achieving a settlement is getting the federal government to pay its fair share of the settlement cost.

We have long supported using the Reclamation Fund to fund authorized Indian water rights settlements. Congress created the Reclamation Fund as part of the Reclamation Act of 1902 to finance western water development. The Fund's receipts are derived from water and power sales, project repayments and receipts from public land sales and leases in western states as well as oil and mineral-leasing related royalties. Expenditures of the Fund occur through appropriations by Congress and currently there is a large unobligated balance in the Fund.

Congress created the Reclamation Water Settlement Fund in 2009 and directed that \$120 million into the Fund per year from 2020 through 2029 for Indian water rights settlements funding. Most of that funding has already been committed to certain Indian water rights settlements, so there is a need to extend the Fund through passage of H.R. 1904, the Indian Water Rights Settlement Extension Act, so that additional tribal water rights settlements can be implemented.

We understand that the Department of Interior currently has 18 negotiation teams working on Indian water rights claims. The Native American Rights Fund is representing one tribe involved in these negotiations. We are also representing four other tribes in their water rights claims and we are hopeful that settlements may one day be reached for them. Passage of H.R. 1904 would facilitate negotiations for our tribal clients and many other tribes as well.