

2017 Spring Water Conference

***“Water & Resiliency: Adapting for Our Climate*”**

***Great Plains Tribal Water Alliance
Great Plains Tribal Chairman's Association***

**Prairie Knights Casino - Pavillion
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MAJOR ISSUES OF FEDERAL RESERVED INDIAN WATER RIGHTS

**Prepared for the
INDIAN LAND WORKING GROUP
ORGANIZATIONAL MEETING
BILLINGS MT**

AUGUST 13TH & 14TH 2008

MAJOR ISSUES (cont.)

1. Purpose of Reservation.

Treaty or Executive Order language is crucial to the overall scope of how much water a reservation is entitled to.

Example: “permanent homeland entitled to the arts of civilization”

“agricultural reservation”

“calculated to advance them in civilization”

“resume the pursuits of industry”



MAJOR ISSUES (cont.)

1. **Surface/Groundwater**

Interconnection of surface and groundwater makes this a single resource. Conjunctive use must be recognized and the Federal Indian Reserved Rights Doctrine must apply to both surface and groundwater.



MAJOR ISSUES (cont.)

Quantification

Winter rights must apply. This includes all water bordering, flowing through and flowing under the reservation.



MAJOR ISSUES (cont.)

Administration

Is the desired result?:

Tribal administration.

Federal administration.

State administration.

Combination of above.



MAJOR ISSUES (cont.)

Marketing/Leasing

Tribes should have the right to market or lease water.

Tribes should not have the right to market or lease water.



MAJOR ISSUES (cont.)

1. Practicably Irrigable Acreage (PIA)

Define to your terms. (Criteria)

Soils

Slope of land

Cost/benefit ratio

Climatic conditions

Types of crops

Arability

Project condition



MAJOR ISSUES (cont.)

1. **Historic lands**

Water must be dedicated to all lands presently under irrigation and land which was under irrigation at some point in time.

MAJOR ISSUES (cont.)

Future lands

All lands on the reservation which have the possibility of being irrigated at some point in the future must be identified and claims must be made for these acreages.

MAJOR ISSUES (cont.)

Priority date

Will priority date be:

Date of treaty.

Memorial priority date.

Later date.



MAJOR ISSUES (cont.)

0. Transfer of use

Tribes must always retain the right to transfer use of water from one beneficial use to another.

Example: From agricultural to in-stream flow.

From industrial to agriculture.

From hydroelectric to domestic.



MAJOR ISSUES (cont.)

1. Surplus

All surplus water on-reservation must be claimed and a portion of off-reservation water generated from reservation watersheds must also be claimed.

MAJOR ISSUES (cont.)

2. Consumptive use

Also called depletion amount, justifying the highest percentage of use will increase amounts tribes can use or consume. A 75-100% consumptive use rate is not unusual.

MAJOR ISSUES (cont.)

3. Storage

Tribes must always retain right to construct and control on-reservation dams and reservoirs. Safety of existing structures must be evaluated.



MAJOR ISSUES (cont.)

4. Water quality

The water resources of the reservation must be administered with a non-degradation policy in mind. Tribes are not only entitled to a certain quantity of water, but a certain quality of water as well. Tribal administration will insure this will be accomplished in tune with the social, economic and cultural development plans being considered.

MAJOR ISSUES (cont.)

5. Condition and Efficiency of Project

Most BIA irrigation projects are in a sad state of disrepair. If tribes are to receive full benefit of this precious resource, these systems must be rehabilitated.

MAJOR ISSUES (cont.)

6. Cultural concerns

The traditions and cultural attachment Indian people have towards water must always be in discussions. These beliefs and the spiritual way of life of Indian people is the reason for our existence.



MAJOR ISSUES (cont.)

7. Off-reservation authority

Marketing capabilities must be allowed off-reservation. Exchanges, dry-year options, storage access and transfers must be provided for.

MAJOR ISSUES (cont.)

Beneficial Use

- | | | |
|-----------------|----------------------|--------------------------------------|
| 1. Domestic | 2. Agricultural | 3. Industrial |
| 4. Mineral Dev | 5. GW Recharge | 6. Recreational |
| 7. Religious | 8. Pollution Control | 9. Municipal |
| 10. Stock Water | 11. Instream Flow | 12. Storage, Marketing
& transfer |
| 13. Cultural | 14. Hydropower gen | 15. Resource Dev |



MAJOR ISSUES (cont.)

Walton Rights


When a non-Indian purchases an allotment from a tribal member, that non-Indian receives the same priority date as the original allottee as long as that non-Indian puts that water to beneficial use in a reasonable amount of time.



MAJOR ISSUES (cont.)

SUMMARY

Whatever stage or timeframe a Tribe, Pueblo or Rancheria is in regarding water rights, they must begin to address all of these issues and develop the technical and administrative capabilities to administer, monitor & protect water!
Include the elders & community!!

The background of the slide features a blue gradient with several faint, concentric white circles that resemble ripples on water, positioned primarily in the lower half of the slide.