



CONFEDERATED TRIBES
of the
GOSHUTE RESERVATION

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Concerns on the Snake Valley Water Settlement

The following is an outline of concerns of the Confederated Tribes of the Goshute Reservation (hereinafter "Tribe") in response to the proposed Snake Valley Water Settlement (hereinafter "settlement") between Utah and Nevada.

Position on the settlement

Executive and administrative precedence surrounding the reasoning of the settlement

Violation of Federal judicial precedence, treaties, and Federal Trust Responsibilities

Summary of Concerns

I. THE SETTLEMENT IGNORES THE CONFEDERATED TRIBES OF THE GOSHUTE RESERVATIONS RESERVED WATER RIGHTS.

For over a century, it has been understood federal law that Indian Tribes have rights to large, but often still unquantified amounts of water. When Indian reservations are created, natural resources, including water sufficient to satisfy the purposes of the reservation, are reserved automatically.¹ As a result, tribal reserved water rights represent an "exception to the general rule that allocation of water is the province of the states."² Although waters are open to appropriation under the laws of various Western states, such laws do not have jurisdiction over of federal reservations.³ Unlike appropriative rights, Indian reserved water rights are not based on diversion and beneficial use, which are requisites to obtaining and maintaining a water permit under the appropriation system. Instead, under reserved rights, a sufficient amount of water is reserved to

¹ *Arizona v. California*, 373 U.S. 546, 600 (1963); *Winters v. United States*, 207 U.S. 564 (1908)

² *Cohen's Handbook of Federal Indian Law*, Felix Cohen, Sec. 19.01(1)

³ *Cappaert v. U.S.*, 426 U.S. 128, 143-145 (1976); *Fed. Power Comm'n v. Oregon*, 349 U.S. 435 (1955)

fulfill the purposes for which a reservation was established.⁴ The Tribes federally-reserved water rights have been completely ignored in the settlement.

II. MOST LIKELY, THERE IS SIGNIFICANT INTERBASIN TRANSFER BETWEEN THE TRIBES CURRENT WATER SOURCE IN THE DEEP CREEK BASIN WITH THE SNAKE VALLEY BASIN.

To the aforementioned points, in conjunction with its exploratory technical field investments, the Tribe can claim a current and substantial interest in the water assets in the Deep Creek Basin, and by numerous technical accounts, by way of inter basin transfer trends, whereby the Deep Creek Basin has a reasonable propensity to serve as a significant recharge/discharge source for the Snake Valley Basin, the Tribe also claims substantial interest in Snake Valley allocations.

Insofar as this interest is reasonably consequential to the Tribes' well-being, especially in economically trying times, the Tribe is unsatisfied by the unchecked tenacity of the settlement to immediately allocate rights without sufficient technical data assuring the protection of the Tribes' interests in the water assets in an adjoining basin. And while the Tribe was provided a comment period, the Tribe impresses that it should have been consulted prior to any comment period, given its sound status in the past, as an interested party. It was not consulted or otherwise considered in the development of the settlement to date, and therefore feels the agreement is inherently premature.

Additionally, an authentic comment period requires the free availability of information surrounding the topic under scrutiny. To date, neither Utah nor Nevada will release the records, upon explicit request, deliberating basis for the development of the settlement, and so the Tribe is paralyzed in efforts to provide calculated and informed comment of the settlement.

III. THE SETTLEMENT VIOLATES UTAH'S OWN ADMINISTRATIVE PROCEDURE ACCORDING TO THE RULING ON THE TRIBE'S REQUEST FOR AN APPROPRIATION.

The Tribe finds the proposed settlement especially troubling because it provides for a 200,000 acre/foot allocation on technical grounds it deemed insufficient to allocate 50,000 acre/feet, only months before the agreement. On June 23, 2009, application number 17-217 (A77473) was effectively rejected, citing a lack of sufficient technical data for an immediate allocation. The settlement cites the exact same studies and data as the Tribe's request, but finds it sufficient to allocate four times the amount requested by the Tribe. The Tribe's requests for reconsideration has been accepted, but given the clandestine nature of the settlement's development in relation to the order of multiple congruent events, the Tribe believes that perhaps the reconsideration has merely been granted on political grounds.

⁴ *Cohen's* at Sec. 19.01(1); *Winters v. U.S.*, 207 U.S. 564

Proposed Solution

Given the aforementioned elements, the Tribe respectfully requests the following:

- In a separate action, the State of Utah grant the Tribe's request for an immediate allocation of 30,000 Acre/Feet, representing a portion of the Tribe's federally recognized reserved water rights, which is consistent with the terms of the settlement.
- That the Tribe receive a graduated allocation of 5,000 acre/feet each additional year, not to exceed 50,000 Acre/Feet in total, at the same percentage-adjusted rates the settlement engages for testing and subsequent increase.

This agreement would allow the Tribe to protect its federally reserved water rights immediately while allowing the residents of the Deep Creek Basin to monitor any potential interbasin transfer.

The Tribe presumes, upon such an agreement, it has no apparent interest to further pursue any other applications or requests, and will immediately withdraw such items that exist to date. Further, it would guarantee all data and findings it earns from federal grant moneys, in turn made eligible by its state-affirmed water right, will be entirely and immediately available for the State of Utah to review as it pleases.

The Tribe feels such a request is reasonable and well within the realms of the technical and political position the state has taken with the settlement. It feels it presents a technically humble request and asks the state to make every effort to maintain an dialogue representative of genuine efforts to help the Tribe find resolve in its efforts to secure its nature resources interests.