

**D-R-A-F-T**

Recommended Revisions to

**WGA Policy Resolution 04-07**



***Negotiated Indian Water Rights Settlements***

as first adopted

June 22, 2004

Santa Fe, New Mexico

**A. BACKGROUND**

1. The Western Governors have consistently supported negotiated settlement of Indian land and water rights disputes as stated in Western Governors' Association Resolutions 87-007, 89-011, 92-008, 95-006, 98-029 and 01-10. The advantages of negotiated settlements include: (i) the ability to be flexible and to tailor solutions to the unique circumstances of each situation; (ii) the ability to promote conservation and sound water management practices; and (iii) the ability to establish the basis for cooperative partnerships between Indian and non-Indian communities that provide practical solutions to water supply issues for all parties. *Further, as the governors state in the June 2006 report on "Water Needs and Strategies for a Sustainable Future," negotiated settlements save "millions of dollars through avoidance of prolonged and costly litigation...."*
2. The Ad Hoc Group on Indian Water Rights is comprised of the Western Governors' Association, the Native American Rights Fund, the Western Regional Council, and the Western States Water Council. Since 1981, the Ad Hoc Group has generally agreed that there is a need to quantify Indian water rights, and that negotiated settlements are preferable to litigation for purposes of quantifying these rights. Additionally, it has agreed that such settlements should be encouraged and facilitated by the federal government, both in terms of assisting in the negotiations, as well as in providing appropriate funding for the settlements. Over the years, a process has evolved with the help of the Ad Hoc Group that has contributed to the approval of several Indian water rights settlements. However, funding continues to be a key barrier to settling Indian land and water claims.
3. *While the Department of Interior, consistent with its longstanding policy, continues to espouse settlement, it has taken an increasingly narrow view of its trust responsibilities to tribes and its willingness to fund settlements that benefit non-Indians as well.*
4. Under current budgetary policy, funding of land and water right settlements must be offset by a corresponding reduction in some other discretionary component of the Interior Department's budget. It is difficult for the Administration, the states

and the tribes to negotiate settlements knowing that they may not be funded because funding can occur only at the expense of some other tribe or essential Interior Department program.

3. ~~In July 2001, Senators Domenici, Inouye, Campbell, Allard, Baucus, Bingaman, Crapo, Johnson, and Kyl introduced S. 1186, "The Fiscal Integrity of Indian Settlements Protection Act of 2001." The bill would provide a budgetary mechanism to ensure that funds will be available to satisfy the Federal Government's responsibilities with respect to negotiated settlements of disputes related to Indian water rights claims and Indian land claims.~~

## **B. GOVERNORS' POLICY STATEMENT**

1. The Western Governors continue to support negotiated rather than litigated settlement of Indian water rights disputes. The federal government has major responsibility for ensuring successful conclusion of the process, including providing information and technical assistance to tribes, providing federal negotiating teams to represent one federal voice and further the process, seeking approval of agreements, fully funding the federal share, and ensuring that the settlements are implemented.
2. Negotiations shall include the federal agencies, states, tribes, and local governments.
3. The Western Governors believe that the funding of land and water right settlements is an important obligation of the United States government. The obligation is analogous to, and no less serious than, the obligation of the United States to pay judgments which are rendered against it.
4. ~~The governors urge that steps be taken, to ensure that any land or water settlement, once authorized by the Congress and approved by the President, will be funded. If such a change is not made, parties will likely turn to litigation, which for many reasons is a much less desirable approach. the Administration to support its *longstanding* policy in favor of Indian land and water settlements with a strong *federal* fiscal commitment for meaningful federal contributions to these settlements that recognizes the trust obligations of the United States government. The *Governors* also ask that steps be taken to change current budgetary policy to ensure that any land or water settlement, once authorized by the Congress and approved by the President, will be funded *and implemented* without a corresponding offset to some other tribe or essential Interior Department program.~~

## **C. GOVERNORS' MANAGEMENT DIRECTIVE**

1. This resolution is to be posted on the Western Governors' Association website and it should be referenced and used as appropriate by Governors and staff.

2. The Western Governors' Association shall work with the Ad Hoc Group on Indian Water Rights for purposes of educating key congressional and committee staff and key federal agency staff, and in order to review and advocate steps to facilitate and implement negotiated settlements of Indian land and water rights disputes.

*This resolution was originally adopted in 1987 and readopted as WGA Resolutions 87-007, 89-011, 92-008, 95-006, 98-029 and 01-10.*