

Owyhee River Water Agreement Overview

The Duck Valley Indian Reservation was established by Congress in 1877 and further defined by Executive Orders in 1886 and 1910. On behalf of the Duck Valley Tribe, the United States has filed various claims for reserved water rights. Water users on the Owyhee River have also filed claims for vested rights or have obtained permits for water rights under Nevada law. Many of these claims are competing, resulting in disputes and litigation.

It is the desire of all of the parties to settle the water rights claims in an amicable manner in the absence of an administrative or court process. The Owyhee Agreement serves to settle these disputed claims and fairly allocate the surface and ground water resources within the basin.

Parties to the agreement:

- Duck Valley Indian Reservation
- Individual water users on the East Fork Owyhee River
- The United States on behalf of the Tribe
- The State of Nevada

Details of the Agreement:

Negotiation of the agreement has been underway for about four years. The State of Nevada, through contract services, had Pete Morros, former State Engineer and DCNR Director head the effort. Other individuals participating in the process were Jeannie Whiteing, Esq. of Whiteing and Smith, Boulder Colorado representing the United States and Joe Ely, representing the Tribe. David Stanton, Esq. of Elko represented the upstream water users.

Under the agreement, the tribe shall have right to 111,476 acre feet of surface water annually with a priority date of April 16, 1877. The Tribe shall also have rights to springs and creeks located on tribal lands. The Tribe may use this water for any purpose that may be authorized by its governing body including use of that water off the reservation with the provision that such use be compliant with Tribal and State law.

Additionally, the Tribe may pump up to 2,606 acre feet of ground water based on water currently or historically used on the Reservation. Ground water must be appropriated in

accordance with Tribal Water Law (which must be substantially similar to Nevada Water law) but the amount cannot exceed the perennial yield within the reservation boundaries.

Water amounts for use by the upstream water users is defined in the agreement by maps of currently irrigated areas and specific duties for various uses and crops. The agreement specifies a process for determining water availability in a given hydrologic year, storage in Wildhorse Reservoir and a process of allocation in times of shortage.

The agreement has provisions for dispute resolution and defines the State Court as the court of competent jurisdiction.

Reserve rights for tribes is a major issue in the West. It is clearly stated that the agreement is not precedent setting for these rights or for future agreements in Nevada.

Through the agreement the State shall provide the services of a water commissioner to oversee and enforce this agreement. The State also agrees to fund and maintain two stream flow gages on the Owyhee River.