

# **Gathering of Tribes and Others at 2017 CRWUA**

## **Sense of the Meeting**

### **Introduction**

At the invitation of the Ten Tribes Partnership, the Lincoln Institute of Land Policy, the Walton Family Foundation, and the William and Flora Hewlett Foundation, over 50 people attended a 2.5 hour gathering on December 13, 2017 during the annual Colorado River Water Users Association annual meeting. See Appendix 1 for a list of participants.

The objectives of this gathering were to (1) share interests and perspectives about what is important in the Colorado River Basin relative to land, water, and tribal communities; (2) begin to identify overlapping needs and interests; and (3) explore opportunities on how we might work together on shared interests in 2018 and beyond.

Darryl Vigil set the stage by explaining that tribes have a sacred duty to protect the river, and that duty is increasingly a challenge due to a number of trends – population growth; land and infrastructure development; climate change; and the imbalance between water supply and demand. The basin currently faces an annual shortfall of about 1.0 MAF (and rising), while tribes have legal rights to about 2.9 MAF annually, strongly suggesting that the tribes could play a major role in helping balance supply and demand. After some additional comments by the facilitators (Darryl Vigil and Matt McKinney), the participants introduced themselves. The three foundations then offered some comments on their goals and activities in the basin, followed by comments by several conservation NGOs. The participants then engaged in an open conversation about needs, opportunities, and potential next steps.

### **Foundation Perspectives**

The Walton Family Foundation (Walton) explained that its fundamental interest in the Colorado River Basin is to improve water management to advance sustainability. Walton believes that the most meaningful, durable solutions for sustainability must involve the basin's tribal nations. Walton looks forward to working on shared interests and advancing common goals, and appreciates the opportunity to help catalyze this dialogue.

The William and Flora Hewlett Foundation (Hewlett) explained that the primary goal of its western conservation strategy is to conserve the ecological integrity of the North American West for nature and the people and communities that call these landscapes home. It is currently in the process of conducting a refresh of its strategy and looking for opportunities for philanthropy to play a meaningful role in empowering communities to engage in the public discussion about the future of their lands and rivers, and lay the foundation for emboldened and enduring conservation.

The Babbitt Center for Land and Water Policy, a program of the Lincoln Institute of Land Policy, is committed to better integrating land and water policy decisions for two reasons: (1) land and water resources planning and management are often disconnected, with those involved in managing these resources unaware of each other's activities; and (2) how we plan and use land has an impact on water, and water availability has an increasing impact on how we can use land. Given that tribes are stewards of significant land and water resources in the Colorado River Basin, the Babbitt Center is committed to working with tribes on issues of mutual interest.

### **Conservation NGO Perspectives**

Several conservation organizations provided some perspective on their interests and aspirations in the Colorado River Basin;

- The Nature Conservancy operates on a principle of “voice, choice, and action” in terms of working with indigenous people worldwide. It would like to see tribes have a more meaningful place at basin-wide tables related to drought management, interim guidelines, and so on. It would like to work with tribes on water issues in the Colorado River Basin, including but not limited to work on voluntary and compensated markets, project work in areas that tribes care about, and building the capacity of future tribal leaders to achieve sustainability.
- Audubon is committed to finding solutions to the supply/demand imbalance throughout the basin. Building on recent work with tribes and others, Audubon is actively searching for additional opportunities to promote and support sustainability throughout the basin. To achieve these goals and aspirations, the Audubon Society believes that it is imperative to break-down existing silos, align around common interests, and develop common sense solutions for the next 10-50 years.
- The Colorado River Sustainability Campaign seeks opportunities to work with tribes and others to advance sustainability through collaborative partnerships.

All of the conservation organizations either explicitly or implicitly said that they (1) respect tribal sovereignty, rights, and self-determination as key ingredients to working with tribes; and (2) desire to work more closely with tribes throughout the basin to advance shared interests and objectives.

In closing, the conservation organizations asked the tribes “Where can we work together? Where are the opportunities to partner with conservation NGOs?”

### **Open Discussion**

During the open discussion, several tribal leaders offered some perspective on their needs, interests, hopes, aspirations, and frustrations:

- Develop and pursue opportunities that empower tribes to move a basin-wide conversation forward. In order to do this, whatever tribes do must benefit tribes individually and collectively. Several people suggested that there are many opportunities to enter into partnerships that benefit tribes and the entire basin.
- Broadly share tribal viewpoints on land, water, and other issues facing the basin; inform and shape public opinion through editorials, online media, and so on.
- Clarify the role of tribal water marketing as one (potential) opportunity to help both tribes and the basin as a whole. Facilitating such exchanges would generate much needed capital for tribal water projects and other needs, and likewise provide much needed water to help bridge the gap between supply and demand. However, there are a number of legal and institutional constraints to tribal water marketing:
  1. Only a few tribes have an explicit legal right to market water according to their Supreme Court decrees or negotiated settlements; other tribes would need to seek Congressional authorization for such transactions;
  2. Tribes currently can only market water within their home state given that their water allocation is part of that state's allocation and the Law of the River generally precludes the interstate transfer of any state's apportionment; and
  3. According to current law and practice, unused tribal water goes back into the system, so there is no opportunity to lease or otherwise market that water.

Given these constraints, several people suggested that one option is to find ways to work within the existing legal and institutional framework to find mutually beneficial solutions. Other people suggested that tribes should talk to members of Congress and seek legislative solutions if appropriate.

- Determine what role tribes can/should play in basin-wide negotiations to revise and update the Interim Guidelines. The Interim Guidelines will expire in 2026 and the states and metropolitan water providers are already starting conversations on how to revise and update the guidelines. How can tribes get involved and provide some leadership on this issue?
- Explore strategies to negotiate another pulse flow to bring water back to the Colorado River Delta (in spring 2014 a pulse flow was released from Morelos Dam as part of Minute 319, an agreement between the United States and Mexico under the 1944 US-Mexico Treaty. How can this pulse flow become a regular, sustainable objective in managing the river?

- Learn lessons from the recently completed negotiations on Minute 323. This negotiation between two sovereign nations (U.S. and Mexico) may serve as a model of sorts to help tribes enter into government-to-government negotiations with federal and state agencies. Like Mexico, tribes are sovereign nations and have quantified water rights. Apparently, conservation groups were involved in the Minute 323 negotiations in a more meaningful way than the tribes.
- Provide drinking water and other basic needs to tribal communities; forty percent of the Navajo people do not have running water.
- Improve water measurement in the lower basin to better account for tribal use and potential water savings.
- Acknowledge the tribes' spiritual mandate to protect the river and focus on sacred landscapes. Explore opportunities to work with conservation NGOs and employ their scientific and technical resources to sustain these special places.
- Explore how tribes can play a more active and meaningful role in reshaping the Law of the River, which is not a static arrangement. As demonstrated by the Interim Guidelines and the drought contingency plans in the upper and lower basins, it is flexible, adaptive, and evolving. The tribes should build on this reality to promote more durable solutions to sustainable land and water use.

### **Options Moving Forward**

The participants generally agreed to work together on shared interests and objectives. Several specific options for moving forward emerged from the dialogue. These options are not presented in any order of priority, and numbers are used to facilitate ease of reference and communication:

1. Clarify the implications of the BOR-tribal water study; develop appropriate strategies for policy and management in light of the findings and conclusions. Consider the possibility of a briefing session and/or webinar once the final report is released.
2. Advance the role and place of tribes in basin-wide forums, such as the upper and lower basin drought contingency plans, Interim Guidelines, System Conservation Pilot Program, and so on. One option here is to prepare an options paper that outlines various opportunities and strategies for engagement. This paper should be grounded in the legal and institutional arrangements within the basin, and reflect lessons learned from collaborative efforts within the Colorado River Basin (e.g., the recent negotiation that led to Minute 323) as well as the role of tribes in other river basins in the American West (e.g., Columbia and Missouri). One strategy along these lines may be to work more closely with conservation NGOs and ask them to help

advance (in some informal way) tribal needs and interests in various regional conversations.

3. Consult with tribal leaders to explore the merits of developing some type of an atlas of traditional tribal knowledge of the basin. Such an atlas would not only emphasize tribes' connection to their ancestral homelands, but also help set policy priorities, manage resources, and enhance their sovereignty. Depending on the needs and interests of tribes, this effort could use modern mapping and database tools to preserve the knowledge for future generations, as well as contribute traditional ecological knowledge to the scientific and technical knowledge of the basin. Some or all of this work could potentially be incorporated into the *State of the Basin* report being prepared by the Babbitt Center for Land and Water Policy.
4. Explore the merits of convening a tribally-led workshop or summit in 2018 to further identify shared interests and develop strategies (and a work plan) to address some or all of the following issues:
  - 1) Maximizing the ability of tribes to use water on reservations (e.g., for domestic consumption, irrigated agriculture, commercial use, sacred purposes, and so on);
  - 2) Maximizing the flexibility to facilitate and implement off-reservation use of tribal water (e.g., via water marketing, leasing, etc.);
  - 3) Securing infrastructure investments, including but not limited to reliable devices to measure stream flows;
  - 4) Supporting tribes that have not yet finalized their water rights settlement agreements;
  - 5) Developing and using water while sustaining the natural environment and cultural traditions and values;
  - 6) Highlighting stories of innovative land use, water management, and sustainable development; and
  - 7) Addressing other topics mentioned earlier in this document.

The Intertribal Council of Arizona (ITCA) is willing to consider co-convening a follow-up workshop or other appropriate activity (along with the Ten Tribes Partnership, the Lincoln Institute, and other partners) contingent on direction from its Executive Board and member tribes. One goal here is to invite and engage all of the tribes in the Colorado River Basin, starting with the tribes that participate in the Ten Tribes Partnership and ITCA.

Another suggestion within this context is to consider the use of scenario planning as a framework to help facilitate this conversation, identify areas and projects for collaboration with tribes, and select specific projects that could readily be implemented on the ground to build momentum for greater collaboration and to allow for lessons learned.

## Appendix 1

### Gathering of Tribes & Others 2017 CRWUA

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