

Native American Rights Fund

Indigenous Peoples' Rights

<https://www.narf.org/cases/kickapoo-water-rights/>

Campaign and Advocacy

Decades ago, the Kickapoo Tribe entered into an agreement with state and federal entities to address the tribes water needs. To date, the reservoir has not been built and the watershed has been developed to near depletion.

Status: Active

More than two decades ago, the Kickapoo Tribe in Kansas entered into an agreement with several state and federal entities under which the tribe would develop a reservoir project to address the tribes water rights and needs. In the intervening years, the reservoir has not been built, and the water resources of the watershed have been developed to near depletion of the tribes senior federal water rights.

According to the federal Environmental Protection Agency, the water supply for the tribes reservation at times, depending on hydrologic conditions, can be in violation of the Safe Drinking Water Act of 1974. The Kickapoo people are concerned about their ability to safely drink, bathe, or cook with local tap water. At times, especially during drought conditions, there is not enough water on the reservation to provide basic municipal services to the community. The tribes fire department cannot always provide adequate fire protection due to the water shortage. The proposed reservoir project is the most cost effective and reliable means by which the tribe can improve the water supply.

In June 2006, the Kickapoo Tribe in Kansas, represented by NARF, filed a federal court lawsuit in an effort to enforce express promises made to the Tribe to build a Reservoir Project. The Nemaha Brown Watershed Joint Board # 7, the Natural Resources Conservation Service of the U.S. Department of Agriculture, and the State of Kansas made these promises to the Tribe in the 1980s and 90s. In the intervening years these parties have been actively developing the water resources of the watershed, resulting in the near depletion of the Tribes senior federal water rights in the drainage. The federal government, the state, and the local watershed district all concede the existence of the Tribes senior Indian reserved water rights; the real issue is the amount of water needed to satisfy the Tribes rights, and the source of that water.

In 2017, Senator Moran and then-Congresswoman Jenkins introduced companion bills to approve the settlement agreement between the Tribe and the State of Kansas. Although the bill was approved by the Senate Indian Affairs Committee, it did not pass the full Senate nor was the companion measure considered by the House. Similar legislation failed in 2019.

Finally, in 2020, Congress passed a Kickapoo Tribe water project study. This provision kicked off a new study and re-evaluation of the Plum Creek Project that the Tribe has been pursuing for years. Natural Resources Conservation Service (NRCS) of the Department of the Agriculture will undertake the study. Given the Tribes successful negotiation in 2016 of its water rights with the State of Kansas, the final settlement approving legislation can move forward once the study provides the appropriations numbers necessary for water storage and usage in the Plum Creek Project once completed.

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