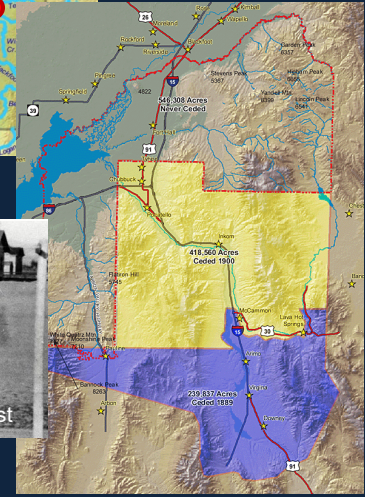


## SECURING WATER FROM BIAGAWAIT: THE ROLE OF TEK

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November 2023

# BRIEF TRIBAL HISTORY

- The Shoshone-Bannock Tribes are two distinct tribes which today are recognized as one federally recognized tribe.
- Fort Hall, Weiser, Boise, Bruneau, Raft River, Salmon River and southern Idaho Shoshone bands
- Historically, the Tribes traveled as hunter-gatherers during the spring and summer seasons, and often camped in the winter. The Fort Hall Bottoms and Henrys Fork confluence were commonly used winter camps.
- Fort Hall was established as a trading post in 1834.



## 1868 TREATY RESERVED FORT HALL RESERVATION

- The Fort Hall Reservation was established by Executive Order in 1867 and the 1868 Treaty of Fort Bridger (1.2 million acres)
- Guaranteed a reservation for the “absolute and undisturbed use and occupation” of the Tribes; and “permanent homeland”
- Cession agreements removed roughly a third of the original Reservation land base
- The present-day Fort Hall Reservation covers approximately 546,000 contiguous acres.
- 98% of Reservation is trust or tribally owned lands. 2% fee lands held by individual Tribal members and non-Indians.

# PRIOR APPROPRIATION WATER SYSTEMS IN U.S.

- Codified into law in every western state – doctrine of prior appropriation
- Four basic principles –
  - “First in time, first in right” (earliest appropriator of water from water source has continuing right to use the same amount of water)
  - Water rights are separate from land and can be sold and leased
  - In times of scarcity the person with earliest (“senior”) priority date may appropriate the water before any junior users
  - “Use it or lose it” rights are forfeited, lost if unused for a period of time

# TRIBAL WATER RIGHTS

- Winters v. United States (1908) federally reserved water rights or Winters doctrine
- Premised on the Congressional acts, Agreements, Treaties and Executive Orders that reserved tribal homelands
- Water was implicitly reserved for tribes when the tribal homelands were set aside to fulfill the purposes of the reservation
- The priority date for federally reserved water rights is the date the reservation was established

## WINTERS V. PRIOR APPROPRIATION RIGHTS

- Indian water rights are reserved therefore a tribe cannot lose its Winters rights through nonuse
- Amount of water a tribe is entitled to is not determined and limited by the tribe's initial use. A tribe with Winters rights is entitled to take all the water it needs to fulfill the purpose for which the reservation was created.
- Tribes usually have a senior water rights because reservations were created before white settlers arrived in the western states.

# IRRIGATION DEVELOPMENT

**1889:** Initial surveys for the Fort Hall Irrigation Project (FHIP) were undertaken

**1890s:** Initial construction activities on the main project canals, and water right was purchased from the Idaho Canal Company.

**1907:** Legislation passed to fund the construction of Blackfoot Dam and an improved canal system.

**1912:** Failure of Blackfoot Dam. Approximately 30,000 acres of the FHIP were able to receive adequate irrigation water supplies.

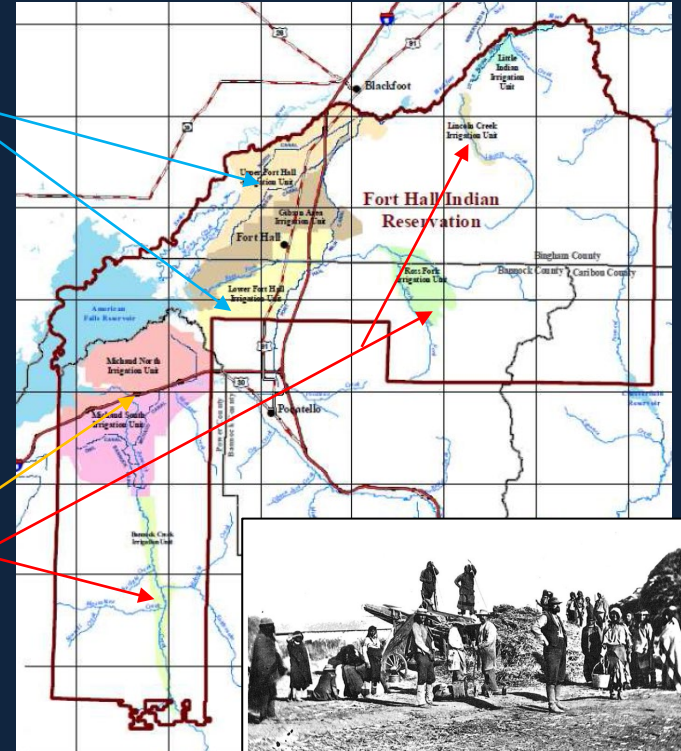
**1920s – 1930s:** Blackfoot Dam repairs, expansion of project canals, rehabilitation. Irrigated land base grew to 50,000 acres.

**1941:** FHIP construction complete. Survey recorded 47,044 irrigated acres.

**1948:** Smaller irrigated areas added to the FHIP as minor units

**1954:** Michaud Unit (21,000 acres) authorized for construction

**1977:** Michaud Unit construction completed



## THE TRIBAL-STATE-FEDERAL NEGOTIATIONS

- 1985 Idaho legislature authorized the adjudication of all claims to the use of water within the SRBA.
- State legislature directed the state to engage in good faith, government-to-government negotiations with the Shoshone-Bannock Tribes.
- November 17, 1987, Idaho district court issued an order commencing the adjudication.



## TRIBAL CULTURAL PERSPECTIVE

- Shoshone and Bannock Tribes creation story tells us that we come from water and are created from the earth in the water bodies.
- We understand the importance of water, the water people, plants, earth and their interconnection based on our creation story.
- From the time of creation, water has shaped who the Shoshone and Bannock peoples are, how we approach water matters, and our overall view of water.

## HOLY LANDSCAPES

- Protection and preservation of water resources, the holy landscapes, are extremely vital to the Tribes, as the Creation story is a foundation upon which Tribal society functions.
- Tribal values are an integral part of daily prayers, thinking and are relied upon in decision-making, and preparing positions and policies of the Tribes.
- It is not surprising that Shoshone and Bannock people lived near the waters – streams, rivers, lakes, springs – as they sought to maintain their connection and relationship with their holy landscape.

## FOUR PRIMARY GOALS

- Securing “wet water”
- Securing the majority of water through natural flows and storage of water
- Flexibility to use various sources of water for various uses
- Create a settlement document that was reality based.

## 1990 FORT HALL INDIAN WATER RIGHTS AGREEMENT

- 581,031 AFY of water from the Snake River basin for present and future uses
- Four types of water rights –
  - Natural flow
  - Groundwater
  - Reservoir-federal contract storage
  - Instream flows

## WATER USES

- Irrigation
- Domestic
- Commercial, industrial, municipal
- Stockwater
- Instream flows
- Leasing

## CERTAINTY

- Ability to lease Snake River storage water in Tribal Water Bank
- How to conduct changes and transfers of water rights
- Water right administration through a Tribal Water Code
- Blackfoot River management plan
- Intergovernmental Board to resolve disputes
- Ririe Reservoir mitigation water provided to non-Indian Snake River users

## ADMINISTRATION OF WATER RIGHTS

- Tribes administer all Tribal water rights within the Reservation pursuant to a water code
- A few non-Indian water rights are administered by State with Tribes and U.S. having right to inspect and monitor diversions
- State uses Tribes Water Dept for assistance in administration
- U.S. is responsible for administering distribution of Fort Hall Irrigation Project water rights
- Snake River water distribution and flow accounting data shared among parties

## ONGOING CHALLENGES

- Ever vigilant to protect Tribal water rights from junior users
- Over 700 objections filed against non-Indians claiming Tribal water, tribal priority date, tribal lands as place of use
- City of Pocatello claims to share Tribal priority date
- Interpretation of Agreement provisions
- Blackfoot River Management Plan – saver clause
- Subordination language in Blackfoot River unclear
- DOI moratorium on tribal water codes for IRA tribes



## CHALLENGES

- Keeping the feds engaged in implementation, and protection of Tribal water rights
- Keep detailed summary and records of negotiations and history of terms, agreement of parties because original negotiators may retire or move on
- Ongoing disagreement with the BIA over Snake River water rights and redesignation of irrigated lands in Fort Hall Irrigation Project
- Historical practices must be documented and agreement language consistent with operations

## USING TEK

- By directing research and analysis based on local community-originated concerns, Indigenous nations can provide intensely place-based and long-term observational data that can provide early warnings for emerging and cumulative issues affecting their ecosystems
- This means proactive, early, and consistent engagement with Indigenous nations on all levels of decision-making under the Agreement.
- Fundamental commitment to develop and maintain respectful relationships with tribal nations, communities and all our relations

# TEK TO PROTECT AND PRESERVE WATER

- Elders and cultural perspective
- Youth
- Community members
- Cultural Preservation and Language Department
- Technology and science members

# INFORMATION, DATA GATHERING

- Inventory all the water resources and ecosystems, conduct an assessment of community needs and priorities, and collect data regarding water availability, water demand, and water quality, impacts on animals, plants, lands, humans
- Meetings
- Interviews
- Recordings
- Field trips
- Data gathering

# BUILDING TRIBAL CAPACITY

- Institution development
- Policy and legal frameworks
- Infrastructure and human resources development
- Information systems that support and guide water management.

# BUILDING RELATIONSHIPS WITH FEDS AND STATE

- Understanding local politics, building relationships, and educating all stakeholders are key elements
- Proactive engagement and communication
- Keeping the parties engaged in the process
- Building trust
- Building collaborations on all levels
- A place at the table

## THREE PRINCIPLES

- 1. The recognition and integration of the values and knowledge of Indigenous communities will strengthen collaborative science, policy, and management outcomes for the integrity of the tribal community and its waters;

- 2. The successful incorporation of TEK into science, policy, and management plans at various scales fundamentally requires a commitment to respectful, timely, and ongoing engagement of TEK holders, Indigenous governments and organizations, and/or tribal environmental professionals who have established relationships with TEK holders and permission to share TEK;



- 3. TEK can provide early identification of current and emerging issues and inform and guide scientific research questions once general and subjective TEK information is translated into discrete and objective scientific or policy questions or actions.

## FINAL THOUGHTS

- From a legal perspective, settlement of the Tribes' water rights in the Biagaweit basin confirms the promises made in the Fort Bridger Treaty of 1868 that reserved the Fort Hall homeland.
- Viewed in the context of Tribal culture, following the Tribal Creation story and values connected to sacred water, the settlement preserved the Tribes way of life – culture, language, identity, spirituality and sense of place for present and future generations.

# WATER DEPARTMENT ACTIVITIES



Water Monitoring



Water Permitting



Water Planning



# WATER RELATED PERMITTING



Well Drilling



Water Use



Water Discharge

Sections 303(c) and 401 of the Clean Water Act

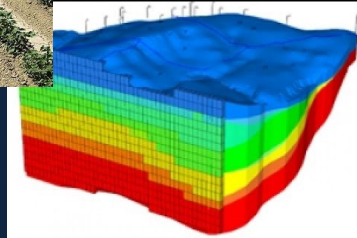


Septic Systems

# WATER PLANNING



Drought Contingency Plan



Groundwater Model  
Groundwater Management Plan



Blackfoot River  
Water Management Plan



Water Marketing Plan



Water Conservation Plan



Integrated Resource Management  
Plan

# CURRENT INITIATIVES



## Project Automation

Invest in automation across the Fort Hall Irrigation Project to increase water use efficiency



## Fish Passage

Design and install fish passage and preserve instream flows to improve fish habitat



## Water Quality Threats

Analyze threats to Reservation water quality from upstream phosphate mining and on-Reservation agricultural operations



## Regional Water Hub

Explore the concept of utilizing Tribal water rights to attract water-intensive industries to the Reservation



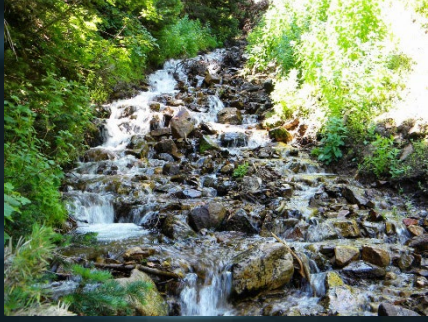
## Water Use Permitting

Issue water use permits to all existing water uses on the Reservation, taking a basin by basin approach



## Climate Change

Analyze the likely impacts of climate change on regional hydrology and specifically the Tribes' water supplies



# MAKU --THANK YOU

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Shoshone-Bannock Tribes  
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