Justice & Health

Giving a Dam: Wyoming Tribes Push to Control Reservation Water as the State Proposes Sending it to Outside Irrigators

The Eastern Shoshone and Northern Arapaho have long fought for water sovereignty on the Wind River Indian Reservation, but their effort is being challenged by federal legislation and a changing water landscape.

By Jake Bolster
February 2, 2025

Diversion Dam is where Midvale irrigators divert water from the Big Wind River, which regional tribes want to flow at higher volumes past this point. Credit: Jake Bolster/Inside Climate News

FT. WASHAKIE, Wyo.—Indigenous Peoples' Day in October was thick with smoke on the Wind River Indian Reservation, with glimmers of fall foliage along its southwestern rivers shrouded in haze beneath a fuzzy horizon. Reservoirs were shriveled by drought, wildfires raged to the northwest, snow was conspicuously absent from mountain peaks and rivers dried to trickles. It wasn't hard to imagine a future with much less water here.

Such a hereafter was at the forefront of Big Wind Carpenter's mind as they sat on a soft gray beach beside Bull Lake Dam, the first of a triumvirate of federally-built and privately-managed dams on the reservation that feed a non-Indian irrigation district, and a place Big Wind's family used to recreate when they were younger. Big Wind, a member of the Northern Arapaho, uses "they/them/their" pronouns, and asked to be identified by their nickname, after the Big Wind River running through the heart of the reservation, instead of their Anglo surname.

"I grew up here. We'd come here during the summer. We'd ice fish in the winter, and we'd set up a campfire over here," Big Wind said, pointing to a shaded area surrounded by cottonwoods and junipers. The family could usually count on hauling in ling and trout, but today the climate activist isn't so sure future generations will be able to enjoy this place in the same way. "I think of this resource not being here in the future," Big Wind said.

As humanity continues to burn fossil fuels that heat the climate, glaciers in the mountains around the reservation are receding. Without the moisture that trickles down from them, Bull Lake and other reservoirs on the reservation could soon yield much less water, making agriculture, aquatic life and even human survival on the Wind River reservation—already rife with tension—even more difficult.

"It's not looking good," Big Wind said.

Big Wind Carpenter, a member of the Northern Arapaho tribe, sits on the beach at Bull Lake, a place where Big Wind's family would recreate decades ago. Credit: Jake Bolster/Inside Climate News

That vision of a desiccated future for the reservation turned even more grim in 2023 when U.S. Rep. Harriet Hageman, a Republican and Wyoming's only House member, proposed a bill that would have directed the federal Bureau of Reclamation to give the Pilot Butte power plant, a defunct hydroelectric facility and its reservoir on the reservation, to a nearby agricultural community. The legislation giving Midvale the hydropower plant that once provided electricity to parts of Colorado, Kansas, Nebraska and Wyoming would provide that community with renewable energy each spring and summer. But it would have also further solidified non-native farmers' control over a river within the reservation. For the tribes, this move was an affront to their sovereignty, and there's concern that with a Republican trifecta in Washington, it may happen again.

They believe the water in question is theirs, and any law that transfers land or infrastructure from the federal government to private management within the boundary of their reservation is a continuation of centuries of mistreatment from both.

For the entirety of the reservation's history, its water has poured down from the snow and ice in the Wind River mountains, known to locals as "the Winds"—towering peaks home to some of the country's most stunning and climate-vulnerable glaciers. According to the Environmental Protection Agency, by 2015, snowpack in the Winds had diminished by as much as 80 percent, and researchers from Central Wyoming College studying glaciers in the range estimated in 2018 that some may disappear altogether in five or six decades.

More recent reports have found that average temperatures in the ecosystems around the Wind River reservation have risen 2.3 degrees Fahrenheit since the 1950s, and peak streamflow is occurring more than a week earlier, leaving less water to go around later in the summer when it is hottest and driest.

Bull Lake Dam is the manmade extension of a prehistoric impression on the land created to augment the flow of the Big Wind River, which runs through the heart of the Eastern Shoshone's and Northern Arapaho's reservation.

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An 1868 treaty gives the two tribes, which are both recognized as sovereign nations by the federal government, headwater rights to all the water within the boundaries of their roughly 2.2 million acre reservation.

But they have been boxed out of their water rights on the Big Wind River by decades of state-led lawsuits, which awarded control over that body of water to Midvale, an irrigation district on land within the original boundaries of the reservation that was sold over a century ago through an act of Congress. The tribes heavily contested the sale, but ultimately agreed to it.

Wyoming does not have a recognition process for tribes, so the Eastern Shoshone and Northern Arapaho pursue government-to-government relations with the state on an ad-hoc basis.

Across Wyoming's high, arid desert, water is likened to gold. On the Wind River Indian Reservation, water is known as "the gift of life." It is not just a resource for agriculture or ranching by the tribes, though they do put use it for both, but an important spiritual, recreational and aesthetic force, one to be preserved and enjoyed. The tribes want to let hundreds of millions of gallons a day from the Big Wind River pass undisturbed through Diversion Dam, the point along the river where Midvale diverts water into the Wyoming Canal for irrigation. The tribes want to use the "in-stream flow" for their religious ceremonies, fish habitat, riparian vegetation and recreation, while still leaving Midvale irrigators enough water for their crops.

But under state water law, which evolved from 19th century irrigation disputes, Wyoming has the right to adjudicate the water in the Big Wind River. Midvale irrigators, who draw the vast majority of its water, see gross profits north of $15 million annually, according to the district's website. They are not anxious to relinquish to the tribes control over the water their agricultural revenue depends on.

Leaders from the Eastern Shoshone and Northern Arapaho, enemies through most of their history who today exhibit a sometimes-uneasy alliance, agree the warming climate is changing the ecosystem around them. Both tribes agree that controlling all their natural resources, especially their water, is the best way to safeguard their communities' future health and prosperity.

But decades of mistrust between the tribes, Midvale irrigators and the state have in recent years led the Eastern Shoshone and Northern Arapaho to forge new alliances in pursuit of their water sovereignty goals, a realignment Midvale leaders say has further stressed the irrigation district's relationship with the tribes.

Building water sovereignty, whether by relitigating their water rights, defeating federal legislation or reclaiming land, remains a difficult battle for the Eastern Shoshone and Northern Arapaho, which have no clear support for the endeavor in any state or federal chamber of government. Nonetheless, the tribes see water sovereignty as critical to their future as climate change intensifies.

"We're going to see more days like this," Big Wind said, looking out on the hazy body of water. "Now is the time that we can plan."

Conveying History

About twenty miles southeast of Bull Lake sits the town of Ft. Washakie, the hub of the Wind River reservation. It is named for the famed Eastern Shoshone leader who signed his people's treaties with the United States. Almost from the moment Chief Washakie agreed to the first treaty in 1863, which granted his people 44 million acres of land spanning parts of what is now Colorado, Idaho, Nevada, Utah and Wyoming, the government, and later, Wyoming—the Equality State—began chipping away at the land and natural resources awarded to the tribes. Five years later, Washakie signed another treaty significantly shrinking the reservation to close to its current size. By the 1980s, the Wind River reservation, which had become a "temporary" home for the Northern Arapaho in 1878 after the tribe was promised but never received a reservation of its own, had been whittled down and fractured into about 2.2 million acres.

Northeast of Ft. Washakie, above the Big Wind River, lies the Midvale district, composed of about 74,000 acres. Settlers were enticed to move there beginning in 1905, after Congress approved the Land Cession Agreement of 1904, a bill for which Wyoming's lone congressional representative, Frank Mondell, lobbied heavily.

The act opened the reservation to white settlement over the objections of members of the Eastern Shoshone and Northern Arapaho, whose leaders ultimately agreed to the deal. The tribes sold their land to the federal government, which promised to use the revenue from selling the land to supply the tribes with an irrigation system south of the river, complete with state water rights.

But the federal sale was a bust. The land proved too tough to farm, and interest from would-be settlers was paltry. Those who did settle took the lands nearest the river. The government began an irrigation system for the tribe but never completed the project, or secured the promised state water rights, though it charged tribal members for water whether or not they used the half-finished ditches.

Midvale was eventually irrigated by the federal government, beginning in the 1920s after Mondell successfully maneuvered money Congress had originally marked for Indian reservations to help finance the project. Portions of the reservation ceded under the sale prompted by the 1905 Act were eventually returned to the tribes by the federal government decades later. But hundreds of thousands of other acres that were once part of the reservation remain out of the tribes' control.

Bull Lake sits depleted as wildfire smoke fills the Wind River mountains. Credit: Jake Bolster/Inside Climate News

Many tribal members on the reservation today view the land north of the Big Wind River that wasn't returned to the tribes with a mixture of suspicion, resentment and resignation. "Ceded is just another word for stolen," said Wes Martel, a member of the Eastern Shoshone who helped create the tribes' water codes in 1987 and was a member of the then Joint Business Council, the tribes' head of government.

Martel has a sun-worn face and spiky white hair with a long ponytail that gets darker the closer it gets to the middle of his back. He was a tribal leader in the last two decades of the 20th century, when the Eastern Shoshone and Northern Arapaho saw their water rights effectively put out of reach by the courts in a series of cases known as the Big Horn trilogy.

The two tribes had headwater rights baked into their 1868 treaty by almost seven decades of legal precedent, making their claims the oldest and most senior in the region. But in 1977, Wyoming sued the tribes for jurisdiction over the water within the reservation.

The litigation went on for a decade and a half. During that time, Martel and Orville St. Clair, another Eastern Shoshone member of the Joint Business Council, worked together closely. Martel recalled a large meeting in Cheyenne, Wyoming's capital, between the tribal council, their lawyers, the Department of Justice and other stakeholders, during which he became fed up with an onslaught of terms he said held no cultural or legal relevance for the tribes. He stood up and proclaimed, "this isn't an Indian water rights case. This is nothing but a white man's water case." He left the meeting a few minutes later.

In 1989, the state's 5th District Court in Washakie awarded the tribes just under half a million acre-feet of water annually within the reservation—almost 163 billion gallons of water—for "practically irrigable acres." With their water rights quantified and apparently confirmed, the tribes, as sovereign nations, asked the state's water engineer to adhere to tribal water codes and ensure there would always be 252 cubic feet of water per second (cfs)—over 113,000 gallons a minute—flowing past Diversion Dam on the Big Wind River. This would strengthen the tribes' cultural and spiritual connection with water and benefit aquatic life, riparian vegetation and recreators, they said.

"Our law is over state law," said St. Clair.

The state refused, but in 1991, the 5th District Court ruled the tribes had the right to change their water use from irrigation to in-stream flow. Then, a year later, in a decision that produced five different concurring opinions, the Supreme Court of Wyoming reversed the state district court ruling, saying that only the state of Wyoming possessed in-stream flow rights.

For the tribes, being controlled by state laws within their reservation was a violation of their sovereignty and treaty rights.

In his concurring opinion, Justice G. Joseph Cardine wrote the tribes could only use their water for in-stream flow if it was first diverted for irrigation, and then, somehow, ended up back in the Big Wind River.

Wyoming Supreme Court Justice Mike Golden sided with the tribes in a scathing dissent. "I reject the argument that the reserved water is the property of the state and the state engineer thus must have control. The reserved water rights are not within the boundaries of the state, but within the boundaries of the reservation."

"A Messy Deal"

Today, as members of the Wind River Water Resource Control Board, Martel and St. Clair are still working for water sovereignty. So when Rep. Hageman proposed a bill in May 2023 that would direct the Bureau of Reclamation to give the defunct Pilot Butte power plant on the reservation to Midvale, the two men saw history repeating itself. Under her bill, Midvale would continue to use the water for irrigation and gain a cheap, albeit seasonal, source of energy requiring no combustion and producing no greenhouse gases.

Hageman did not respond to a request for comment.

"Ever since the 1868 treaty was signed, we have had periods where the government, if they don't get their way, they're going to pass legislation" and get what they want, St. Clair said.

"None of them ever consulted us," Martel said, referring to Wyoming's congressional delegation, which includes Sen. John Barrasso, now Senate majority whip, the chamber's number two Republican, and Sen. Cynthia Lummis, also a Republican. "They didn't even have the common decency."

Neither Barrasso nor Lummis responded to repeated requests for comment.

It felt like this bill had grown directly out of the reservation's acrimonious history with Congress. "They've been stealing Indian land for so long they think it's the right thing to do," he said.

White Wyomingites don't understand how the tribes came to be on the reservation, St. Clair said, or the impact of the surrounding community on the tribal land. If settlers had never been coaxed to Midvale, "imagine what this landscape would look like," he said. "The buffalo would be thriving. Everything would be environmentally compatible."

> "They've been stealing Indian land for so long they think it's the right thing to do."
>
> — Wes Martel, Eastern Shoshone member

In response to the bill, Martel, St. Clair and other tribal members went to Washington D.C. last summer to speak with ranking U.S. House and Senate members, including Wyoming's delegation. They told them the tribes did not approve of the legislation, and added that they should be the ones to take over the shuttered hydropower facility as well as hundreds of thousands of acres in the northwest corner of the reservation—as they have been arguing for decades. But it was clear that would be an uphill fight. In Hageman's office, Martel recalled seeing a map of Wyoming that did not show the reservation.

"We've got to stand up for ourselves," he said.

At an October debate, Barrasso implied it was the Bureau of Reclamation's responsibility to consult the tribes regarding Pilot Butte. "And they didn't," he claimed. "I think that was a mistake."

Lyle Myler, head of the Bureau of Reclamation's Wyoming office, said the agency sent Midvale and each tribe's chairman a letter in January 2022 explaining the ongoing cost of maintaining the power plant and the agency's desire to find "possible paths forward" for the facility. The legislation is "something that (Midvale) pushed, working with their congressional delegation," he said. The Bureau of Reclamation reviewed a draft of the bill shared by Wyoming's congressional delegation, he noted.

Last May was the first time Myler and the tribes spoke about the legislation, he said.

This penstock feeds Pilot Butte Reservoir and is part of the aging infrastructure that used to power a hydroelectric dam. Credit: Jake Bolster/Inside Climate News

The Pilot Butte reservoir and its hydroelectric facility are "not something that was ever going to go to the tribes," said Steve Lynn, Midvale's irrigation manager. "It's kind of a messy deal if the tribes really think that's theirs." The tribes are "out of the loop" of infrastructure that brings water to the power plant, which is controlled by his irrigation district and the federal government, he said.

"It's easy to pick on the small people, the minorities," said Travis Shakespeare, a member of the Northern Arapaho and a senior hydraulic technician with the Wyoming Anticipating Climate Transitions program at the University of Wyoming. "We don't have the money for the lobbyists to be up there speaking for us."

Climate Change and "Misinformation"

The tribes and Midvale farmers are neighbors, Lynn noted, and share "the same piece of dirt." But they don't agree about climate change, its impact on the region's diminishing water cycles and how to respond to them.

"I don't want to sound like I don't care about the climate," said Lynn, who, as an irrigation manager, is deeply aware of the perils of drought and flooding. But, both of those can be cyclical, he said. He doesn't "necessarily buy into man-made climate change," he said.

Only 38 percent of Wyomingites believe climate change is a very serious problem, according to a Colorado College poll released last year.

But the tribes of the Wind River reservation do. Earlier this year, the Northern Arapaho released a priority climate action plan as part of an application for federal energy transition funding. In it, the tribe calculated its emissions, as required by the application, and suggested that installing rooftop solar, winterizing homes and purchasing electric vehicles would "balance environmental stewardship with development of the economic resources."

Seeing the Northern Arapaho acknowledge its climate impacts was a watershed moment for Big Wind. "For a long time we didn't want to place blame on ourselves for being a part of the problem," they said. "Having the Northern Arapaho Climate Action Plan is a big step in the right direction."

Climate change is creating even more urgency in the tribes to control the water on their reservation. That wouldn't disrupt Midvale irrigators' access to water, they argue. "We could take over control, have authority and be a caretaker for this and the majority of things wouldn't change." Big Wind said. "Where we're at right now, there's enough for everybody."

But with enough water to go around, Lynn said he couldn't see why the two tribes want to take control of the Big Wind River. Midvale already maintains state-mandated water levels for the river beyond Diversion Dam, he said. "I don't understand why they're concerned," Lynn said. "There's plenty of water."

From July through September of last year, when snowmelt had dried up and stored water became crucial, Midvale drew, on average, nearly 69 percent of the Big Wind River at Diversion Dam, according to Bureau of Reclamation data. Wyoming's Office of the State Engineer asks Midvale to make sure there is about 400 cfs of water below Diversion Dam only if the river is running so low that downstream users are in jeopardy of not getting enough water, said Josh Fredrickson, the office's superintendent for the area. According to Bureau of Reclamation data, since 2003, there has been an average of 531 cfs in the Big Wind River just below Diversion Dam during the irrigation months, generally considered late April to early October.

> "Why do we need to grow corn in the middle of this arid field with rocky, low soil conditions, when we could actually just keep water inside this river?"
>
> — Big Wind Carpenter, Northern Arapaho member

On paper, averaging river flows across seasons in the West tends to smooth the wild swings in the water levels. This year, a United States Geological Survey stream gauge between Diversion Dam and Riverton showed the Big Wind River with as much as 4,520 cfs during early June, when snowmelt peaks. But the gauge also regularly recorded the river running below the 252 cfs required under tribal law, including six days in May during the growing season when the flow ran as low as 166 cfs, and during a two week stretch in October in which streamflow hovered in the 170s.

"The tribes want to eventually control all the water within their jurisdiction," said St. Clair. "You're talking sovereignty, that's what that is."

Shakespeare, the Northern Arapaho member of the University of Wyoming's climate transitions program, wondered how much that kind of sovereignty would mean without the capital to revitalize and maintain dams in perpetuity. "If you have to rely on the state and federal government for funding sources, are you really sovereign?" he asked.

St. Clair, however, doesn't see federal funding, which supplements income from oil and gas drilling and casinos on the reservation, as a handout; it's a way to help preserve the tribes' economy and way of life, and to hold the U.S. to its treaty agreements, one of which guaranteed the tribes "absolute and undisturbed use and occupation of" their land, he said. "You agreed to that and we're not letting you off the hook for that."

With water's spiritual significance to the tribes and climate change already looming over the reservation's water cycles, control over the river matters. "What we have over everybody and all these agencies is we live here and we care about these resources," said St. Clair. "We give a damn, in other words."

In a white Toyota pickup, Big Wind followed the water draining from Bull Lake to where it joins the Big Wind River, which they are named after. They continued tracking it southeast towards Diversion Dam where it detoured down the Wyoming Canal. At Pilot Butte reservoir, they spoke of the benefits in-stream flow could bring to the river, its ecosystems and the tribes, whose nomadic culture was almost completely severed when they were confined to the reservation.

"Why do we need to grow corn in the middle of this arid field with rocky, low soil conditions, when we could actually just keep water inside this river?" Big Wind asked. If the tribes controlled the river and left more water in it they could "eat the berries alongside it, eat all of the plants that are growing in the riparian area and eat the fish. We can find our food right there. We wouldn't need to create this whole different system."

The Wyoming canal transports water from Diversion Dam for Midvale irrigators. Credit: Jake Bolster/Inside Climate News

Restoring the river wouldn't happen overnight, and the tribes would still farm and ranch, they said. Midvale residents could still irrigate their fields, but they would also get to enjoy the recreational and aesthetic benefits of leaving more water in the Big Wind River year round, Big Wind added.

And if droughts get more intense and longer, or if snowpack diminishes to the point where there is not enough water in the river for everyone to get their full water allotment, the tribes would have conversations about how

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to supply Midvale the water it's owed under state law, St. Clair said.

"They'd still get their water," he said. But under such circumstances, "everybody's dry. That's a dry year."

Lynn believes the tribes can access their water rights under Midvale's management of the river. "Just because we control Diversion Dam doesn't mean we do what we please," he said, adding that it would be difficult to imagine a future in which tribes control the water in the Big Wind River given the status of state and federal law.

That view amounts to "the same old lack of recognition of tribal and treaty rights" by Midvale, Martel said. "That's how they operate the system—it's all for them." He isn't surprised that Lynn disputes that humans burning fossil fuels is the main driver of climate change, but said that will likely make compromise between the two sides more difficult.

New Allies

In the absence of productive relationships between the tribes and Midvale, or Wyoming's elected officials, the Eastern Shoshone and Northern Arapaho have established connections with environmental nonprofits to strengthen their position dealing with the state.

In 2021, Martel joined the Greater Yellowstone Coalition, an organization that helps steward the ecosystems around Yellowstone, one of which is home to the headwaters of the Big Wind River. The coalition supports tribal sovereignty on environmental matters, and advocates for the removal of Diversion Dam.

Historically, the tribes have been subjected to "cultural injustice after cultural injustice," said Charles Wolf Drimal, the organization's deputy director of conservation. "Anytime there's some issue that comes up, the tribes always seem to get the short end of the stick, and that's what's going on with this Pilot Butte Conveyance Act."

The Greater Yellowstone Coalition has also supported the tribes as they seek to reclaim lands north of the Big Wind River that are currently managed by the Bureau of Reclamation, which should include Pilot Butte reservoir, Drimal added.

"We have an opportunity to right a past wrong," Drimal said. "That's our focus moving forward."

The coalition's backing of the tribes has not gone unnoticed by Midvale.

"It doesn't help to have the Greater Yellowstone Coalition telling half truths and saying that we stole their land and stole their water and all this," Lynn said. He's always open to working with the tribes, he said, but "when you keep having people bringing up the past and things you can't change—and it's a varied version of the past—it's hard to move forward... There's enough misinformation that comes from that side of the river that it keeps people fired up about things that really just aren't true."

Tribal members are open to working with Midvale, but they are not optimistic that would happen anytime soon.

"The state sees tribal issues as niche and something that doesn't affect everybody," said Big Wind, who is a tribal engagement coordinator for the Wyoming Outdoor Council, where St. Clair sits on the board of directors. For that to change, "non-native Wyomingites would have to see us as equals, the government would have to see us as equals. And I don't think that's the case today."

Those who dictate water's flow wield such influence that "I don't see that kind of power being given up so easily," they added.

Two weeks before the end of 2024, Barrasso moved to pass the Pilot Butte Power Plant Conveyance Act. On the Senate floor, he spoke of a new energy source for locals, the small size of the land proposed for transfer and savings for American taxpayers, calling the bill "a win-win." Of the tribes, he said that his "office has been actively engaged with all parties involved" and that he was confident Midvale would manage the facility to the benefit of everyone in the region.

When he was finished, Sen. Tina Smith (D-Minn.), whom tribal envoys spoke with last summer in D.C., objected, saying consultation between lawmakers and the Eastern Shoshone and Northern Arapaho was insufficient. The bill was defeated, but only for the moment. With incoming Republican majorities in the House and Senate, it was unclear how long this victory would last for the tribes.

"I'm thinking they're going to take another run at it," said St. Clair. "We're ready for it and confident we can still maintain our position."

Correction: A previous version of this story misspelled the name of Charles Wolf Drimal.

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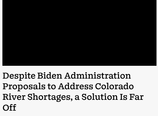

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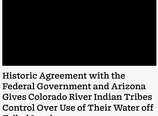

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