

**Testimony of  
Steven C. Moore  
Senior Staff Attorney  
Native American Rights Fund  
Boulder, Colorado**

**Before the Senate Committee on Indian Affairs**

**Oversight Hearing on Indian Water Rights:  
Addressing the Needs of Native Communities  
Through Indian Water Rights Settlements**

**May 20, 2015**

“In the history of the United States Government's treatment of Indian tribes, its failure to protect Indian water rights for use on the Reservations it set aside for them is one of the sorrier chapters.”

*National Water Commission, Water Policies for the Future: Final Report to the Resident and to the Congress of the United States, 475 (Govt. Prtg. Off. 1973) at 475.*

**Introduction**

Mr. Chairman, I want to thank you for holding this hearing and giving me an opportunity to testify. I am Steven Moore, a senior attorney with the Native American Rights Fund, the national Indian legal defense fund headquartered in Boulder, Colorado.

One of the most important Native American legal issues NARF has addressed in the past 45 years of our existence has been Indian tribal reserved water rights. During that time, we have been involved in nine tribal water rights cases that have resulted in negotiated settlements approved by Congress. We are currently representing five tribes on their water rights claims in various stages of litigation and/or settlement – the Klamath Tribes in Oregon, the Tule River Tribe in California, the Agua Caliente Band of Cahuilla Indians in California, the Kickapoo Tribe in Kansas, and the Nez Perce Tribe in Idaho.

## Background

For centuries prior to European contact, Native Americans had sufficient land and water to provide for their needs. The rivers ran free of dams, impoundments and artificial waterways, allowing for ecosystems to support themselves naturally. Many tribes, especially in the Pacific Northwest, lived off fish runs, harvesting them only at levels that supported their people while sustaining the fish populations. Other tribes in the Southwest had complex irrigation and water purification systems to use the limited water most efficiently. The functional water “policy” of Native American tribes was to protect and preserve this sacred resource. Tribal ceremonies celebrated water, and cultural values to protect and honor water were practiced from generation to generation.

Indian tribes possess substantial water claims to support viable reservation homelands and off-reservation fishing, hunting and gathering rights specifically reserved by tribes as part of their 19<sup>th</sup> century treaty negotiations with the United States. These reserved rights to land and other natural resources were part of a bargained for exchange, in which the United States sought and received the perpetual relinquishment of land to open vast territory for westward expansion and settlement. Indeed, tribes ceded title to **millions** of acres in the process. Then and now, Indian tribes expect the United States will honor its promises.

A cornerstone of the promise is the federal trust responsibility. The United States expressly acknowledges that “Indian water rights are vested property rights for which the United States has a trust responsibility, with the United States holding legal title to such water in trust for the benefit of the Indians.” 1990 Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims, 55 Fed. Reg. 9223 (March 12, 1990)(“Criteria and Procedures”).

Yet, during the same historical era as the treaty and reservation era, the United States also enacted laws and implemented policies encouraging the settlement of arid western lands and the development of the scarce water resources in what became “former” Indian aboriginal territory. Such laws included those permitting the homesteading of “surplus” Indian reservation lands, when reservations were allotted under the authority of the General Allotment Act of 1884, the Homestead Acts beginning in 1862, and the Reclamation Act of 1902. (These laws were silent on their effect on prior,

pre-existing Indian tribal rights to the use of water, rights that under federal cannot be abrogated without express consent of Congress.)

During the early and mid-1900s, the United States entered into a period of mass water infrastructure development in the arid West to stimulate the depressed economy and to accommodate population growth. Although these projects affected tribal water rights, they were developed with little to no consideration or assertion of such rights. As a result, private water users, businesses, and government entities have enjoyed the benefits of water development while, in most instances, tribes have been left wanting. The lack of development of senior tribal water rights, however, has created significant uncertainty in the Western system of water allocation and use. Because many tribes have not yet asserted their prior and paramount, reserved water rights, non-Indian irrigation and other commercial interests in many parts of the United States are concerned about the durability of their junior water rights.

Moreover, in most cases large-scale water projects in the West were built to the detriment of tribal water rights because they allocate the majority of water available to non-Indian users. The National Water Commission in 1973, for example, recognized that the federal government had promoted and subsidized non-Indian water development at the expense of vested tribal rights. *National Water Commission, Water Policies for the Future: Final Report to the Resident and to the Congress of the United States*, 475 (Govt. Prtg. Off. 1973) at 476-7.

The Klamath Irrigation Project in Southern Oregon is a prime example. Created in 1902, the project irrigates thousands of agricultural acres by diverting water from the Upper Klamath Lake in Southern Oregon that flows into the Klamath River in Northern California. The project provides subsidized water to non-Indian farmers but disregards senior tribal water rights. The Klamath River, through its journey from the high desert to the ocean, supports the Klamath, Yurok, Karuk and Hoopa Tribal fisheries. The project does not accommodate water for instream flows for tribal fisheries, but instead diverts water to support the irrigation project. In 2003, the largest fish kill in American history, occurred on the Klamath River when 60,000 salmon died due to lack of adequate water flows after a large diversion was made up river for the Irrigation Project. The federal government acknowledges the potential environmental consequences of these diversions but refused to alter its course despite its trust obligation to

protect Tribal fisheries. The Native American Rights Fund represents the Klamath Tribes in litigation over and potential settlement of this situation.

Thus, the United States created the conflict over the development and use of western water resources. These conflicting tribal and settler rights and expectations must ultimately be resolved. It is therefore the responsibility of the United States to facilitate and fund the resolution of such conflicts consistent with its trust responsibility to Indian tribes, irrespective of whether it is in a litigation or settlement context.

Tribes will always view these processes as a two-edged sword. On the one hand there are benefits to be gained from quantifying and decreeing Indian water rights – the delivery of wet water. Yet, there are costs for tribes. There is always the feeling that something else of importance to Indian people is being taken away by the majority society and that the work of Manifest Destiny continues largely unabated.

### **Ad Hoc Group on Indian Water Rights**

In 1982, the Ad Hoc Group on Indian Water Rights was formed. Its membership consists of the Native American Rights Fund, the Western Governors Association, the Western States Water Council and the Western Business Roundtable (formerly the Western Regional Council). Although the Ad Hoc Group's constituents were pitted against each other in litigation over Indian water rights claims, the Ad Hoc Group came together because of our shared interest in assuring the federal government paid its fair share of the costs of Indian water rights settlements that were negotiated in order to avoid litigation. The federal government should pay its fair share of the settlement costs because it failed as trustee to protect Indian water rights in the West, and instead encouraged states and non-Indians to develop and use water, thereby becoming the primary cause of the litigation between Indians and non-Indians over this issue.

Over the years, NARF, along with its Ad Hoc Group partners, has worked to educate each Administration and Congress on the importance of having favorable federal policies on Indian water rights settlements. These successful efforts have resulted in **29 Indian water rights settlements** being enacted into law. In our experience, securing the funding for the federal government's fair share of the cost is the most difficult problem to overcome in an Indian water rights settlement. Constrained federal budgets in recent

years have been compounded by a misunderstanding among some that funding these Indian water rights settlements is congressionally directed spending. It is not. As Senators Kyle and Toomey made clear in a 2012 colloquy on the Senate floor, it is spending to fulfill financial obligations of the United States. It is imperative that each Administration and Congress work together and fund the federal government's obligations of each negotiated Indian water rights settlement in order to rectify the results of its failed water policies.

### **Resolution of Indian Water Rights Through Litigation**

Historically tribal water rights claims were resolved in the court systems. Federal courts have jurisdiction over tribal water rights claims unless the state has initiated a general stream adjudication on a waterway utilized by a tribe. In such cases, the state court has jurisdiction over tribal water rights claims pursuant to the McCarran Amendment. Lengthy litigation often results in "paper water" rights with no funding for water infrastructure development. Moreover, the aggressive nature of litigation divides the community of water users into adversarial camps and thereby reinforces old political debates over water usage. For all parties, litigation is expensive and can take decades. For these reasons most tribes, states and private water users prefer negotiated settlements of water rights.

At the present time, there are many cases in the courts, predominantly in the western United States, involving the adjudication of Indian reserved water rights. A large portion of the water in the west is at stake in these cases – over 45 million acre-feet of water according to a Western States Water Council survey in 1984.

The purpose of these cases is to define or quantify the amount of water that tribes are entitled to under their reserved water rights. Although tribal claims are typically based on agricultural uses of water, some claims are also being made for non-agricultural water uses that also fulfill the purposes for which the reservations were created. These cases are typically huge and complex, pitting the states and thousands of private water claimants under state law against the tribes and the federal government as trustee for the tribes.

Complex water rights litigation has cost tribes millions of dollars in technical and legal costs, though, with no apparent end in sight. Several

federal cases in New Mexico have spanned five to six decades. The Gila River and other tribes in Arizona have been involved in state water litigation since 1974, with at least nine trips to the Arizona Supreme Court (not all involving Indian water issues, *per se*, but the tribes are parties to the litigation and presumably have had to actively participate). The Wind River Tribes in Wyoming have suffered a similar litigation fate, fighting in state court since 1977, with almost as many trips to the Wyoming Supreme Court. The Confederated Salish and Kootenai Tribes in Montana have been on a similar path, but very recently the Montana Legislature finally approved and the governor signed a comprehensive negotiated settlement.

### **The Primacy of Indian Water Rights Under the *Winters* Doctrine**

The doctrine of prior appropriation directed most allocation of water in the West at the beginning of the 20<sup>th</sup> century during westward expansion. Prior appropriation was the principle that the first parties to physically divert and use the water for “beneficial use” should have the first right to the water. Subsequent rights to the same water were only entitled to water not used by those with senior rights. This principal governs state water law, and created a priority system for water allocation. However, tribal water rights are not governed by state law.

Indian water rights are based on federal law because they were reserved in the treaties and executive orders that created the reservations. The Supreme Court acknowledged federal reserved water rights for Indian reservations in the 1908 case, *Winters v. United States*, 207 U.S. 564 (1908). *Winters* came from a dispute between tribes on the Fort Belknap Reservation and upstream non-Indian water users on the Milk River in Montana. During drought conditions, large diversions by the upstream users inhibited Indian diversions on the Reservation. The United States, on behalf of the tribes filed a lawsuit in federal court in 1905 to enjoin the upstream diversion. On review, the Supreme Court held that treaties created an implied water right, a “*Winters* right”, necessary to meet the purposes of the reservation, and prohibited uses of water by non-Indians that interfered with the tribes. *Winters* accomplished this by establishing a priority date for tribal reserved water rights as of the date the reservation was created. Since most Indian reservations were created prior to outside settlement by non-Indians, *Winters* rights usually give tribes the earliest priority date and most senior rights.

The Supreme Court in *Arizona v. California*, 373 U.S. 546 (1963) established that *Winters* water rights are quantified by determining how much water is necessary to irrigate the arable acreage on the reservation. Known as the "PIA" standard, it assumes the federal government set aside Indian reservations with the singular purpose of developing agrarian societies. In recent years, the courts have broadened the purposes behind establishing reservations. In *Colville Confederated Tribes v. Walton*, 647 F.2d 42 (9<sup>th</sup> Cir. 1981), for instance the Ninth Circuit Federal Court of Appeals noted the general purpose of the Reservation was to provide a homeland for the Indians. It claimed this was a broad purpose and must be liberally construed to benefit the Indians. The court supplemented the PIA standard with water for instream flows to support tribal fisheries. In *United States v. Adair*, 723 F.2d 1394 (9<sup>th</sup> Cir. 1983), the same court rejected the notion of Indian reservations having one singular agrarian purpose, and also awarded water for agriculture and instream flows. In *Gila River*, 35 F.3d 68 (Ariz. 2001), the court rejected the singular purpose PIA standard to adopt the multi-purpose homeland standard which provides for livestock watering, municipal, domestic and commercial water uses. The Court in *Arizona v. California*, and following in *Menominee Tribe v. United States*, 391 U.S. 404 (1968), also made it is clear that Indian reservations were intended to serve as homelands where tribes could create livable self-sustaining communities whether the purpose be agrarian or to support other ways of life. These cases demonstrate that each reservation can have several purposes for which it was reserved that require broad interpretation to meet tribal water needs.

More recently, tribes have established that the *Winters* doctrine extends not only to surface water but to groundwater. Tribes such as the Gila River Tribe in Arizona, and the Agua Caliente Band of Cahuilla Indians in Palm Springs, California, have had to litigate their right to groundwater in the desert environs in which their reservations are located. Other tribes such as the Lummi in Washington State and the Confederated Salish and Kootenai Tribes in Montana have been engaged in long struggles to secure rights to groundwater.

### **Settlement of Indian Water Rights**

The process of settling water rights claims allows the community of water users to address an array of water problems using creative solutions that are not available through litigation. This flexibility provides incentives

for all water users on a waterway to be privy to the negotiations. In most cases, the settlement of water rights claims becomes part of a larger water bill that includes agricultural, economic, and government water rights claims. The Snake River Water Rights Act of 2004 settled water rights claims on the Snake River of Idaho including those of several federal agencies and departments, the Nez Perce Tribe, represented by the Native American Rights Fund, the State of Idaho, agricultural and timber producing interests. The Snake River Settlement Agreement accommodated non-Indian Upper Snake River interests by honoring an existing water release agreement from the Upper Snake River, and by providing habitat protection and restoration in the Salmon and Clearwater basins under Section 6 of the Endangered Species Act.

The Nez Perce Tribe also secured a reliable water supply, instream flows, the transfer into trust of BLM on-reservation land, right to access 600 hundred springs and fountains on federal land off-reservation and the authorization of \$90 million for tribal domestic water and sewer, and habitat improvements. Instream flows in over 200 streams and rivers were decreed under state law. The Settlement benefited all parties by providing stability regarding the scope of water rights on the Snake River, and by providing funding to develop such rights. Additionally, the parties obtained more benefits through land and water transfers with funding to develop such interests under the Settlement than would have been possible in court.

Throughout the West, states, tribes and private water users are recognizing settlements as an opportunity to resolve long term water and related environmental problems. No longer are these just Indian water rights settlements, they are basin wide agreements, driven by local circumstances and interests, that resolve long standing problems experienced by all water users in a watershed. Between 1978 and 2014, Congress enacted 29 Indian water rights settlement acts. Requests for federal involvement in Indian water rights settlements have been constant since 1978 and they are going to continue to increase. The federal government, working with local communities, must be prepared to respond with adequate resources to resolve once and for all the water conflicts occurring in Indian Country.

### **Much Unfinished Work Remains**

The passage of time makes the resolution of Indian water rights more complex and difficult. Watersheds with un-quantified and un-decreed

Indian water rights have typically been viewed as having a “cloud” on the availability of the resource. That has been the impetus, in large measure, for states to commence general stream adjudications, and to haul federal and Indian into state court to sort out rights. But state governments are as financially hard pressed, if not more so, than the federal government, and adjudications are very expensive. The result is the protection – sometimes unwittingly, sometimes intentionally – of the status quo, in the face of unresolved Indian claims. The giving away of more and more water in river systems for non-Indian purposes, either through state regulation or, equally insidiously, the non-regulation of groundwater development or small pond/impoundment proliferation, ultimately advances the interests of some of those who oppose Indian water rights. And with each molecule of water that is given away to non-Indian interests as tribes await the assistance of the United States to assert, litigate and /or settle their water rights, the ultimate resolution of competing claims to water in any watershed becomes more difficult.

While tremendous progress has been made to date in the settlement and sorting out of Indian water rights, much more work remains. Despite and against all odds, Indian tribes have secured about two dozen water settlements over the past 35-40 years, since federal Indian policy encouraged settlement – and the government began to invest the financial and human resources necessary to achieve settlements – as opposed to prolonged litigation. Dozens more tribes are either in various stages of the negotiation process, or are in the queue waiting for the resources to engage in the process. Sadly, in the recent 10-15 years we have seen a general trend toward the dwindling of these resources, just at a time when enhanced resources could have seen more settlements mature, ripen and come to fruition.

While many large and complex settlements have been achieved over the past several decades, a look forward is equally daunting. Consider the remaining possibilities: California and its more than 100 federally recognized tribes; Oklahoma with its 39 tribes sharing essentially two river systems; the other Midwestern tribes with similar concerns to those in Oklahoma over groundwater over-development and water quality impairment; the tribes of the Dakotas and their reliance on the Missouri River system which, with the Mississippi, is the most heavily regulated commercial river in the United States; the coastal tribes in California, Oregon and Washington with their enormous cultural and economic interest

in salmon fisheries and related habitat; the Great Lakes Tribes with off-reservation fishing and gathering habitat protection interests; and the tribes of the northeast and southeast which share many of the concerns faced by their brothers and sisters in the rest of the country. And what of the tribes and Native villages in Alaska, and the Native Hawai'ian community in the Pacific?

We know for a fact that climate change will likely not spare any region of the country, particularly the western United States where we find the largest land-owning tribes with the largest need for water. The crushing drought in California, and the recent water wars between Georgia and Florida are but a presage of the pressures to come. How will tribes' interests play out against these larger forces?

Given the finite and very limited ground and surface water supplies, particularly in the West, one tried and true method in past successful Indian water settlements has been the reliance on water infrastructure – primarily in the form of concrete – to increase the size of the pie available to the stakeholders to a settlement. The several Arizona Indian water settlements are largely dependent on the construction of the Central Arizona Project. The new Navajo-Gallup settlement depends on building a pipeline several hundred miles in length. Of the remaining several hundred Indian tribes without quantified and decreed water rights, are we dependent on a new era of dam and other infrastructure construction? Is that even possible, given the complex array of federal, state and local laws confronting new developments?

The PAI standard for quantifying Indian reservation water rights also can unfairly disadvantage tribes with reservation lands that either are not economically irrigable due to soil or arid climatic conditions, and, as we consider the claims of tribes east of the 100<sup>th</sup> Meridian, disadvantage tribes with reservation lands not typically viewed as requiring irrigation to make them agriculturally productive.

Finally, climate change looms as the wildest of wild cards. State and local governments are already busily engaged in studying the effects of global warming on already limited and over-stressed water supplies. And planning the changes necessary to prepare for and manage/mitigate the effects thereof. Tribes typically lack the resources to conduct the same level of planning and preparation, and so will be even more disadvantaged in

litigating, negotiating and settling their water rights in this ever-shifting context.

## **Solutions**

Real solutions must come from the legislative and executive branches of the United States government. Some will involve financial capital, but others lie in structural and organizational changes made within the federal government to effectuate a more just and expeditious resolution of Indian water claims. Federal mechanisms and the means to level the playing field for tribes must be put in place. Tribes must be given access to all necessary data and information from which they can make informed decisions and set priorities about protecting and asserting their water rights. This will enable them to more fully engage their state and local partners in the resolution of Indian water rights.

One state-created model is the Montana Reserved Water Rights Compact Commission. Since its creation in 1979, the Commission has completed compacts with the seven resident Montana tribes.<sup>1</sup> Are there useful lessons to be learned from the Montana Indian tribes' experiences with the Montana Compact Commission, and ways to improve on it as a federal model? At a minimum, what sets the Montana process apart is the express acknowledgement in state law that Indian tribes have senior Winters water rights. Second, the state committed the resources to see the work done. The resulting settlement compacts are not perfect, but they reflect the value of political leadership and hard work to achieve lasting solutions. The neighboring state of Idaho has also achieved settlements with the resident tribes in the Snake River Basin – the Nez Perce, Shoshone-Bannock and Shoshone Paiute. Idaho utilized a litigation framework rather than a compacting process, which resulted generally in a more adversarial and thus antagonistic structure, but positive settlements, while taking more time, resulted nonetheless. The remaining North Idaho Adjudication is framed similarly. Congress could learn from the lessons the states, particularly Montana. As noted above, much work remains and it will take substantial leadership and resources from the Congress to achieve lasting solutions across Indian Country.

---

<sup>1</sup> Completed tribal compacts are with: Assiniboine & Sioux Tribes of the Fort Peck Reservation; Northern Cheyenne Tribe; Crow Tribe; Gros Ventre & Assiniboine of the Fort Belknap Reservation; the Chippewa Cree of the Rocky Boy's Reservation, the Blackfeet Tribe, and the Confederated Salish and Kootenai Tribes.

## **Recommendations for Fiscal Change - A Permanent Funding Mechanism for Indian Water Settlements**

It is time for a change. The federal government must prioritize settling tribal water rights claims, and it must consider options to accommodate a growing number of settlements. Indian Country can no longer tolerate the lack of water and water infrastructure that has inhibited them from developing their communities. The federal government has an obligation as trustee to assist in the development of tribal water rights and Congress must look to create a permanent funding mechanism for tribal water settlements.

The federal Reclamation Fund is an appropriate mechanism to fund tribal water rights settlements, as part of its mandate is to fund tribal water settlements. With more attention and development, the Reclamation Fund could provide the majority of funding for tribal water settlements. Congress has already recognized the Reclamation Fund for these means, as the 2009 Navajo-Gallup Settlement authorized for the first time tapping into the Fund to develop a water delivery system on the Navajo Reservation. Authorization to tap into additional funding from the Fund for other Indian water settlements should be enacted by Congress.

Another possible source of funding is the federal Judgment Fund. The resolution of Indian water rights is a fundamental legal obligation of the United States, after all. And like other legal obligations paid out of the federal Judgment Fund,<sup>2</sup> these settlements are not earmarks, and should not be subject to the political whim of Congress. Indian water settlements which achieve the support of all stakeholders in any given state or states with interests in a particular watershed should not be allowed to become political footballs.

---

<sup>2</sup> In 1956, Congress established the Judgment Fund, which is a permanent, indefinite appropriation to pay judgments against federal agencies that are not otherwise provided for by other appropriations. In 1961, legislation was enacted allowing the Judgment Fund to pay, among other things, Department of Justice (DOJ) settlements of ongoing or imminent lawsuits against federal agencies. The Judgment Fund is intended to allow for prompt payment of settlements and awards to claimants, thereby reducing the assessment of interest against federal agencies (where allowed by law) during the period between the rendering and payment of such settlements and awards. The Judgment Fund makes such payments upon certification that a court has handed down an award or that a settlement has been reached. The Judgment Fund is currently managed by the Department of the Treasury's Financial Management Service (FMS).

## Conclusion

The foregoing challenges in Indian Country all connect to water. Their solutions lie in water. Water is sacred. Tribes have proven they are very capable partners and players in water adjudication and settlement frameworks when they have financial resources to participate meaningfully. Most tribes and their down-stream neighbors prefer to negotiate water settlements since they provide the flexibility to resolve long-term water problems using environmental solutions that are not available in the court system, while saving time and money that would otherwise be expended in litigation. Settlements remove water uncertainty by defining the scope and priority date of each water users' rights without employing the expensive, adversarial roles of litigation.

The federal government has a legal obligation set forth in the treaties to protect and develop Indian water rights. Although the federal government's historical treatment of Indian water rights was less than adequate, this Congress has the opportunity to take a new direction. The future of Indian Nations depends on a consistent commitment from the federal government to develop water supplies and infrastructure in Indian communities. Many states, in recognition that their water problems are inextricably tied to tribal water problems have already made this guarantee.

Today in this testimony we have set forth suggestions for the future commitment of the federal government to Indian water settlements. Our four decades experience working with tribes and states on these issues has convinced us that obtaining funding is the largest impediment to resolving water problems in the West. We request that Congress to remove this obstacle and create a permanent funding mechanism for all facets of Indian water rights settlements. In doing so, this Congress can join their constituents to help resolve water problems in the West.

We thank the Committee for providing us with the opportunity to discuss these issues. The Native American Rights Fund and our clients stand ready to work with the Senate Indian Affairs Committee to achieve *meaningful* solutions for bringing clean, reliable supplies of water to Indian Country.

**Attachments to Testimony of  
Steven C. Moore  
Senior Staff Attorney  
Native American Rights Fund  
Boulder, Colorado**



**Before the Senate Committee on Indian Affairs**



**Oversight Hearing on Indian Water Rights:  
Addressing the Needs of Native Communities  
Through Indian Water Rights Settlements**



**May 20, 2015**



**Fact Sheet – Indian Water Rights Settlements  
Native American Rights Fund and Western States Water Council**



**The Importance of Indian Water Rights Settlement Funding  
Native American Rights Fund and Western States Water Council**



**1990 Interior Department Criteria & Procedures**



**Settlements Approved by Congress**



**Current List of Federal Negotiation, Implementation  
and Assessment Teams**



## **FACT SHEET – INDIAN WATER RIGHTS SETTLEMENTS**

### **March 2014**

- Tribes throughout the West have water right claims that could potentially displace state water rights, creating uncertainty that hinders state water management.
- Tribes often lack the resources to quantify their water rights, which has resulted in an absence of potable water and depressed economies for many tribal communities. Many tribes also lack the resources to turn quantified “paper” rights into “wet water.”
- The federal government has a trust responsibility to protect tribal water rights and a major responsibility to help tribes adjudicate their rights.
- Negotiated settlements are the preferred means of quantifying tribal water right claims because they provide greater certainty and help tribes with funding to build critical drinking water and other types of infrastructure, while not displacing established state uses.
- Settlements save federal taxpayers millions of dollars by avoiding prolonged and costly litigation, and by resolving tribal breach of trust claims against the federal government.
- Settlements involve a quid-pro-quo in which tribes receive federal funding in exchange for waiving tribal water-related claims against the U.S. As such, settlements are not earmarks and are analogous to, and no less serious than, the obligation of the U.S. to pay judgments rendered against it.
- Many federal budgetary policies hinder settlement negotiation and implementation, including offset requirements that balance settlement funding with reductions in some other discretionary program.
- Congress and the Administration should fund and implement authorized settlements without corresponding offsets to other tribal or Department of the Interior programs.
- Congress and the Administration should provide tribes with sufficient resources to participate in the settlement process, including providing full funding for the Department of the Interior’s Indian Water Rights Office and its settlement assessment, negotiation, and implementation teams.
- Congress and the Administration should fully utilize the monies that accrue to the Reclamation Fund for their intended purpose of supporting western water development, including water infrastructure projects that are part of authorized settlements.
- The Council and NARF support the Reclamation Water Settlements Fund (RWSF), which Congress enacted in 2009 to finance authorized settlements with money from the Reclamation Fund. Because of “pay go” requirements, the RWSF will not receive money until FY 2020, leaving a significant funding gap. Congress also authorized the RWSF for only 10 years. The RWSF should be permanent.
- The Council and NARF support S. 715, the Authorized Rural Water Projects Completion Act, which would use the Reclamation Fund to finance projects related to authorized settlements.



## **THE IMPORTANCE OF INDIAN WATER RIGHTS SETTLEMENT FUNDING\***

For over 30 years, the Western States Water Council and the Native American Rights Fund have worked together to support the negotiated settlement of Indian reserved water rights claims.<sup>1</sup> While Congress has authorized 27 Indian water rights settlements, the water rights claims of many more tribes remain un-quantified and the cost and complexity of resolving these rights is increasing sharply. However, obtaining federal funding to promote and implement the negotiated resolution of these claims has proven to be difficult. Providing the federal funding needed to support settlements is a trust obligation that is critical to the well-being of Indian Country, the West, and the nation as a whole. Funding is also necessary to settle major claims against the United States that would otherwise result in costly, protracted, and divisive litigation.

### **I. THE PRIOR APPROPRIATION DOCTRINE AND INDIAN WATER RIGHTS**

For well over a century, the doctrine of prior appropriation has governed the allocation of water in most western states. Under this system, the right to divert water from a stream is based on the notion of “first in time, first in right,” which means that the first party to physically divert and use water for “beneficial use” has priority to use the water. Thus, senior water right holders with earlier priority dates (the date the water was first put to beneficial use) can force users with junior priority dates to curtail or stop their use in times of shortage.

Most non-Indian water development in the West occurred after the federal government entered into treaties with Indian tribes to establish permanent homelands, or reservations, for the tribes. These treaties typically did not quantify or even expressly recognize the tribes’ water rights. The U.S. Supreme Court addressed this issue in its 1908 decision in *Winters v. United States*,<sup>2</sup> holding that tribal treaties created implied water rights to adequate water to satisfy the purpose of a tribe’s reservation. These federal reserved rights, or “*Winters* rights,” exist as federal enclaves within state legal systems and differ from water rights created under state laws because they are not limited by beneficial use requirements; are indeterminate in quantity until adjudicated; are measured by the present and future supplies needed to fulfill the purpose of a reservation instead of past uses; and have priority dates that correspond to at least the date the federal government created the reservation.

### **II. THE NEED TO RESOLVE INDIAN WATER RIGHTS CLAIMS**

Tribes often lack the funding and resources needed to adjudicate their *Winters* rights. This has created a lack of water supply and related infrastructure throughout Indian Country that prevents tribal governments from protecting the health, welfare, and safety of their communities.

---

\* The staff of the Western States Water Council (WSWC) and the Native American Rights Fund (NARF) prepared this paper in February 2014. Although both organizations are on record as collectively supporting Indian water rights settlements and settlement funding, the views expressed herein are the authors’ and do not necessarily reflect the views of the individual members of the two organizations.

For example, over 40% of tribal members in the Navajo Nation haul water for domestic use, and this lack of potable water has caused various illnesses.<sup>3</sup> Members of the Kickapoo Tribe of Kansas,<sup>4</sup> the Chippewa Cree of Montana, and others also haul water for basic domestic needs.

The absence of adequate and reliable potable water supplies has contributed to unemployment and mortality rates on reservations that are much higher than those of adjacent non-Indian communities. In California, the lack of an adequate water supply has prevented the Tule River Tribe from providing fire protection, housing, and economic opportunities to tribal members. The Tribe has unemployment and mortality rates that are 50% higher than Tulare County as a whole and has been unable to act on hundreds of housing applications.<sup>5</sup>

Further, resolving *Winters* rights claims is critical for western states, because tribal rights typically have priority dates that are senior to non-Indian uses, and therefore have the potential to displace established state-issued rights. This is especially problematic where tribal rights pertain to river systems that are fully appropriated by non-Indian users. The un-quantified nature of many tribal rights creates great uncertainty with regard to existing state-based uses and can impede local, state, and regional economic development. Given increasing stresses to water supplies due to prolonged drought, reduced snowpacks, and other factors, quantifying Indian water rights claims and determining their impacts on state-issued rights is essential for western states to address increasing water demands related to the West's growing population.

### **III. WHY SETTLEMENTS ARE PREFERRED**

Settlements are the preferred manner of resolving Indian water rights claims. First, they give states and tribes certainty and control over the outcome of water rights adjudications for tribal claims, whereas litigated outcomes are fraught with uncertainty. Second, settlements build positive relationships between states, tribes, and the federal government, which are essential because water is a shared resource that all parties must cooperatively manage after adjudication. Third, Indian water rights claims are extremely complex and settlements enable tribes and non-Indian neighbors to take a comprehensive approach, allowing them to craft mutually beneficial solutions tailored to their specific needs, including the development of water infrastructure that increases available water supplies for all users. Fourth, settlements can provide mechanisms that enable tribes to turn quantified rights into "wet water," while litigation typically provides tribes with "paper rights" only. Fifth, settlements are often less costly and less time-consuming than litigation, which can last for decades and can be extremely expensive for all parties.

### **IV. THE NEED FOR FEDERAL FUNDING**

The federal government holds Indian water rights in trust for the benefit of the tribes and is joined as a party in all water rights adjudications involving tribes. This means that the federal government has a fiduciary duty to protect tribal water rights and has a major responsibility (particularly the Department of the Interior) to help tribes adjudicate their rights and ensure that settlements are funded and implemented. It also means that each settlement must be authorized by Congress and approved by the President.

In many cases, tribes have significant breach of trust claims against the federal government for failing to protect their water rights. Generally, as part of a settlement, tribes will waive these claims and a portion of their claimed water rights in consideration for federal funding to build needed drinking water infrastructure, water supply projects, and tribal fishery

restoration projects. Consequently, the obligation to fund settlements is analogous to, and no less serious than, the United States' obligation to pay judgments rendered against it.

Nevertheless, interpretations of the federal trust responsibility vary from one administration to another and require intensive discussions often on a settlement-by-settlement basis. Some prior administrations have taken a narrow view of this trust responsibility and of settlements that benefit non-Indians, asserting that federal contributions should be no more than the United States' calculable legal exposure, which is difficult to determine. It has long been an accepted premise that the federal government should bear the primary responsibility for funding tribal settlements. Congress should consider the federal government's fiduciary duty towards the tribes and ensure that appropriations for authorized settlements are sufficient to ensure fair and honorable resolutions of tribal claims. Such an approach not only serves the interests of the United States in ensuring successful resolution of tribal rights, but assists western states in resolving these difficult and potentially disruptive claims.

#### A. Funding During the Settlement Process

Tribes need federal funding to retain attorneys and undertake the complex and costly technical studies that are a necessary prerequisite to any negotiation. Tribes also rely on federal negotiating teams appointed by the Department of the Interior's Indian Water Rights Office, which provide a unified federal voice and furthers the settlement process, a matter of crucial importance for states as well. Denying funds for these programs is tantamount to denying tribes the ability to adjudicate their water rights. Thus, Congress and the Administration should fully fund the Indian Water Rights Office and provide tribes, as well as their appointed negotiating teams, with sufficient resources to participate in the settlement process.

#### B. Authorizing Funding to Implement a Settlement

In the arid West, where water is scarce and tribal rights often pertain to fully-appropriated stream systems, settlements typically require the construction of water storage and delivery projects to allow all water users to use existing water supplies more advantageously. These projects generally do not reallocate water from existing non-Indian water users, but allow tribes to develop water supplies in exchange for foregone claims to additional water. Without federal monetary resources to build these projects, settlements are simply not possible in many cases.

While federal support is essential to settlements, a number of western states have acknowledged that they should bear an appropriate share of settlement costs. To this end, western states have appropriated tens of millions of dollars for existing settlements and devoted significant in-kind resources, including the administrative resources associated with the negotiation process and the value of foregone water rights.

#### C. Appropriating Funding For Settlements

Congressionally-authorized settlements are being funded, but there is a need for increasing appropriations. Moreover, Congress has adopted a moratorium on earmarks, which is how some characterize funding for Indian water rights settlements. But settlements are *not* earmarks benefiting a specific state or congressional district. Rather they represent serious trust (and moral) obligations of the United States. They involve a quid-pro-quo in which tribes receive federal funding in exchange for waiving tribal water-related claims against the federal

government. If Congress is unable to implement settlements as a result of earmark reform, litigation will be the primary means of resolving tribal water right claims. This could result in decades of associated legal expenses and court-ordered judgments against the United States that would likely exceed the total costs of settlement, thereby increasing costs for federal taxpayers.

In addition, current budgetary policy (pay go) requires water rights settlement funding to be offset by a corresponding reduction in some other discretionary program. It is difficult for the Administration, states, and tribes to negotiate settlements knowing that funding is uncertain or may only occur at the expense of some other essential tribal or Interior Department program.

Congress should consider the unique legal nature of settlements, namely that the United States is receiving something of significant value in exchange for appropriating settlement funds and fulfilling its tribal trust responsibility, thereby avoiding potentially costly litigation.

#### D. The Reclamation Fund

The Council and NARF have long supported using the Reclamation Fund to fund authorized settlements. Congress created the Fund as part of the Reclamation Act of 1902 to finance federal water and power projects in the seventeen western states.<sup>6</sup> The Fund's receipts are derived from water and power sales, project repayments, and receipts from public land sales and leases in the seventeen western states, as well as oil and mineral-leasing related royalties. However, the receipts that accrue to the Fund each year are only available for expenditure pursuant to annual appropriations acts. Over the years, rising energy prices and declining federal appropriations from the Fund for Bureau of Reclamation purposes have resulted in an increasingly large unobligated balance that is expected to total \$14.3 billion by the end of FY 2015.<sup>7</sup> Contrary to Congress' original intent, much of the unobligated balance is being used to support other federal purposes instead of western water development.

Title X of the Omnibus Public Lands Management Act of 2009 will expand the Fund's authorized uses by establishing a Reclamation Water Settlements Fund (RWSF) in the U.S. Treasury to finance Reclamation projects that are part of Congressionally-approved Indian water right settlements. The RWSF will receive up to \$120 million per year from Fund transfers, which are prioritized for settlements in New Mexico, Montana, and Arizona.<sup>8</sup> Because of "pay go" requirements, authorized transfers to the RWSF were delayed until FY 2020, creating a significant gap in funding for projects associated with authorized settlements, the costs of which may increase significantly by FY 2020. In addition, Congress only authorized the RWSF to be funded for 10 years, and authorized disbursements from the RWSF only through 2034.

The Congress and the Administration should fully support the use of the funds that accrue to the Reclamation Fund for their intended purpose of supporting western water development, including water infrastructure projects that are part of authorized Indian water rights settlements. One way to ensure stability in settlement implementation would be to make both the authorized annual transfers to the RWSF and the ability to expend monies from the RWSF permanent. Such funding should not be subject to further appropriation or spending offsets.

#### V. **THE CONSEQUENCES OF NOT FUNDING SETTLEMENTS**

If settlements are not authorized and funded, tribes may have no choice but to litigate their water rights claims, which would be very problematic. It may result in tribes obtaining

“paper rights,” but without a way to turn those rights into “wet water” to sustain and develop their communities. Litigated outcomes could also displace established state-issued water rights that are essential to meet non-Indian industrial, residential, and municipal needs in the West, causing great economic and social turmoil.

For instance, the Navajo Nation’s settlement with New Mexico, which Congress has authorized, provides the Nation with an amount of water within New Mexico’s Colorado River Compact allocation. The settlement still requires court-approval and could fail for a lack of appropriated funds. If it fails, the Navajo Nation would have no choice but to litigate its water rights claims. The United States has already filed claims on behalf of the Navajo Nation that exceed New Mexico’s Colorado River apportionment under the Compact. If the United States and the Navajo Nation were to prevail on these claims, the allocation of water between the seven Colorado River Basin states could be jeopardized, disrupting the entire Southwestern economy.<sup>9</sup>

Montana has also reached settlements with the Fort Belknap and Blackfeet Tribes as part of a state-wide adjudication process aimed at resolving all water rights claims in the state. However, until Congress authorizes these settlements, state-issued water rights in basins where these tribes have claims will remain in limbo. If Congress delays authorization, the tribes may litigate their claims in court, which could disrupt established non-Indian uses.

In addition to the previously mentioned costs associated with litigated outcomes, postponing the implementation of Indian water rights settlements will be far more expensive for the federal government in the long-run because growing water demands, decreasing water supplies, construction cost inflation and other factors will only increase the costs of resolving these claims.

## VI. CONCLUSION

The national obligation to Indian water rights settlements is a finite list that grows shorter with each settlement. Nevertheless, the cost of implementing settlements will continue to rise the longer it is delayed. Postponing this duty only increases costs to the federal government, perpetuates hardships to Indians, and creates uncertainty for all water users, hindering effective state and regional water planning and development.

## Endnotes

---

<sup>1</sup> The WSWC is a water policy advisory body affiliated with the Western Governors’ Association that consists of representatives appointed by the governors of eighteen western states. NARF is a legal defense fund for Native American tribes, organizations, and individuals.

<sup>2</sup> 207 U.S. 564 (1908).

<sup>3</sup> *Concerning S. 1771 – Northwest New Mexico Rural Water Projects Act: Hearing on S. 1771 Before the S. Comm. on Energy and Natural Resources*, 110<sup>th</sup> Cong. 8 (2007) (statement of Joe Shirley, Jr., President, Navajo Nation).

<sup>4</sup> *Testimony of John Echohawk on behalf of the Native American Rights Fund: Oversight Hearing on Indian Water Rights Settlements Before the Subcomm. on Water and Power of the H. Comm. on Natural Resources*, 110<sup>th</sup> Cong. 7-8 (2008) (statement of John Echohawk, Executive Director, NARF) [hereinafter Echohawk Testimony].

<sup>5</sup> *In Support of S. 789, the Tule River Tribe Water Development Act: Hearing to Receive Testimony on S. 637, S. 789, S. 1080, and S. 1453 Before the Subcomm. on Water and Power of the S. Comm. on Energy and Natural Resources*, 111<sup>th</sup> Cong. 7 (2009) (statement of Ryan Garfield, Chairman, Tule River Tribe); Echohawk Testimony, *supra* note 4, at 7.

<sup>6</sup> Reclamation Act, Pub. L. 57-161, 32 Stat. 388 (1902).

<sup>7</sup> THE APPENDIX, BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2015, 655 (March 2014),

---

<http://www.whitehouse.gov/sites/default/files/omb/budget/fy2015/assets/int.pdf>.

<sup>8</sup> Omnibus Public Lands Management Act, Pub. L. No. 111-11, 123 Stat. 991 (2009). Section 10501 of Title X requires the Secretary of the Treasury to deposit \$120 million into the fund for fiscal years 2020-2029. It prioritizes this funding for: (1) the Navajo-Gallup Water Supply Project and the Taos and Aamodt settlements in New Mexico; (2) settlement agreements between Montana with the Blackfeet Tribe, the Crow Tribe, or the Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Reservation if a settlement(s) is subsequently approved and authorized by an act of Congress; and (3) a settlement agreement between Arizona and the Navajo Nation.

<sup>9</sup> The Colorado River Basin states are: Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming. Even if a court determined that the Compact limits the Navajo Nation's claims to amounts within New Mexico's apportionment, the Nation would still have a substantial claim against the federal government for lost water rights.

Westlaw

55 FR 9223-01

Page 1

55 FR 9223-01, 1990 WL 325541 (F.R.)

(Cite as: 55 FR 9223)

NOTICES

DEPARTMENT OF THE INTERIOR

Working Group in Indian Water Settlements; Criteria and Procedures for  
the Participation of the Federal Government in Negotiations for the  
Settlement  
of Indian Water Rights Claims

Monday, March 12, 1990

AGENCY: Department of the Interior.

ACTION: Policy Statement.

SUMMARY: It is the policy of this Administration, as set forth by President Bush on June 21, 1989, in his statement signing into law H.R. 932, the 1989 Puyallup Tribe of Indians Settlement Act, that disputes regarding Indian water rights should be resolved through negotiated settlements rather than litigation. Accordingly, the Department of the Interior adopts the following criteria and procedures to establish the basis for negotiation and settlement of claims concerning Indian water resources.

EFFECTIVE DATE: March 12, 1990.

ADDRESSES: Comments may be addressed to: Mr. Tim Glidden, Department of the Interior, MS 6217-MIB, 18th and C Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Tim Glidden, Chairman, Working Group on Indian, Water Settlements, 202-343-7351.

SUPPLEMENTARY INFORMATION: These criteria and procedures were developed by the Working Group on Indian Water Settlements from the Department of the Interior.

These criteria and procedures supersede all prior Departmental policy regarding Indian water settlement negotiations. The criteria provide a framework for negotiating settlements so that (1) The United States will be able to participate in water settlements consistent with the Federal Government's responsibilities as trustee to Indians; (2) Indians receive

equivalent benefits for rights which they, and the United States as trustee, may release as part of a settlement; (3) Indians obtain the ability as part of each settlement to realize value from confirmed water rights resulting from settlement; and (4) The settlement contains appropriate cost-sharing by all parties benefiting from the settlement.

Dated: March 6, 1990.

Timothy Glidden,

Chairman, Working Group on Indian Water Settlements.

#### Criteria and Procedures for Indian Water Rights Settlements

##### *Preamble*

Indian water rights are vested property rights for which the United States has a trust responsibility, with the United States holding legal title to such water in trust for the benefit of the Indians.

It is the policy of this Administration, as set forth by President Bush on June 21, 1989, in his statement signing into law H.R. 932, the 1989 Puyallup Tribe of Indians Settlement Act, that disputes regarding Indian water rights should be resolved through negotiated settlements rather than litigation.

Accordingly, the Department of the Interior adopts the following criteria and procedures to establish the basis for negotiation and settlements of claims concerning Indian water resources. These criteria and procedures supersede all prior Departmental policy regarding Indian water settlement negotiations. The criteria provide a framework for negotiating settlements so that (1) The United States will be able to participate in water settlements consistent with the Federal Government's responsibilities as trustee to Indians; (2) Indians receive equivalent benefits for rights which they, and the United States as trustee, may release as part of a settlement; (3) Indians obtain the ability as part of each settlement to realize value from confirmed water rights resulting from settlement; and (4) The settlement contains appropriate cost-sharing by all parties benefiting from the settlement.

##### *Criteria*

1. These criteria are applicable to all negotiations involving Indian water rights claims settlements in which the Federal Government participates.

Claims to be settled through negotiation may include, but are not limited to, claims:

(a) By tribes and U.S. Government to quantify reserved Indian water rights.

(b) By tribes against the U.S. Government.

(c) By tribes and the U.S. Government against third parties.

2. The Department of the Interior will support legislation authorizing those agreements to which it is a signatory party.

3. Settlements should be completed in such a way that all outstanding water claims are resolved and finality is achieved.

4. The total cost of a settlement to all parties should not exceed the value of the existing claims as calculated by the Federal Government.

5. Federal contributions to a settlement should not exceed the sum of the following two elements:

a. First, calculable legal exposure--litigation cost and judgment obligations if the case is lost; Federal and non-Federal exposure should be calculated on a present value basis taking into account the size of the claim, value of the water, timing of the award, likelihood of loss.

b. Second, additional costs related to Federal trust or programmatic responsibilities (assuming the U.S. obligation as trustee can be compared to existing precedence.)--Federal contributions relating to programmatic responsibilities should be justified as to why such contributions cannot be funded through the normal budget process.

6. Settlements should include non-Federal cost-sharing proportionate to the benefits received by the non-Federal parties.

7. Settlements should be structured to promote economic efficiency on reservations and tribal self-sufficiency.

8. Operating capabilities and various resources of the Federal and non-Federal parties to the claims negotiations should be considered in structuring a settlement (e.g. operating criteria and water conservation in Federal and non-Federal projects).

9. If Federal cash contributions are part of a settlement and once such contributions are certified as deposited in the appropriate tribal treasury, the U.S. shall not bear any obligation or liability regarding the investment, management, or use of such funds.

10. Federal participation in Indian water rights negotiations should be conducive to long-term harmony and cooperation among all interested parties

through respect for the sovereignty of the States and tribes in their respective jurisdictions.

11. Settlements should generally not include:

a. Local contributions derived from issuing bonds backed by or guaranteed by the Federal Government.

b. Crediting to the non-Federal share normal project revenues that would be received in absence of a cost share agreement.

c. Crediting non-Federal operation, maintenance, and rehabilitation (OM&R) payments to non-Federal construction cost obligations.

d. Imposition by the Federal Government of fees or charges requiring \*9224 authorization in order to finance the non-Federal share.

e. Federal subsidy of OM&R costs of Indian and non-Indian parties.

f. U.S. participation in an economically unjustified irrigation investment; however investments for delivery of water for households, gardens, or domestic livestock may be exempted from this criterion.

g. Per-Capita distribution of trust funds.

h. Crediting to the Federal share existing annual program funding to tribes.

i. Penalties for failure to meet a construction schedule. Interest should not accrue unless the settlement does not get budgeted for as specified in item 15 below.

j. Exemptions from Reclamation law.

12. All tangible and intangible costs to the Federal Government and to non-Federal parties, including the forgiveness of non-Federal reimbursement requirements to the Federal Government and items contributed per item 8 above, should be included in calculating their respective contributions to the settlement.

13. All financial calculations shall use a discount rate equivalent to the current water resources planning discount rate as published annually in the Federal Register.

14. All contractual and statutory responsibilities of the Secretary that affect or could be affected by a specific negotiation will be reviewed.

15. Settlement agreements should include the following standard language: Federal financial contributions to a settlement will normally be budgeted for, subject to the availability of funds, by October 1 of the year following the year of enactment of the authorizing legislation (e.g., for a settlement enacted into law in August 1990, funding to implement it would normally be contained in the FY 1992 Budget request and, if appropriated, be available for obligation on October 1, 1991).

16. Settlements requiring the payment of a substantial Federal contribution should include standard language providing for the costs to be spread-out over more than one year.

#### *Procedures*

##### Phase I--Fact Finding

1. The Department of the Interior (Department) will consider initiation of formal claims settlement negotiations when the Indian tribe and non-Federal parties involved have formally requested negotiations of the Secretary of the Interior (Secretary).

2. The Department will consult with the Department of Justice (Justice) concerning the legal considerations in forming a negotiating team.

If Department decides to establish a team, the Office of Management and Budget (OMB) and Justice shall be notified, in writing. Justice should generally be a member of any negotiating team.

a. The Department's notification should include the rationale for potential negotiations, i.e., pending litigation and other background information about the claim already available, makeup of the team (reason that Justice is not a member of a team, if applicable), and non-Federal participants in the settlement process.

b. The date of the notification marks the beginning of the fact-finding period.

3. Not later than nine months after notification, a fact-finding report outlining the current status of litigation and other pertinent matters will be submitted by the team to the Department, OMB, and Justice. The fact-finding report should contain information that profiles the claim and potential negotiations. The report should include:

a. A listing of all involved parties and their positions.

b. The legal history, if any, of the claim, including such relevant matters as prior or potential litigation or court decisions, or rulings by the Indian Claims Commission.

c. A summary and evaluation of the claims asserted for the Indians.

d. Relevant information on the non-Federal parties and their positions to the claim.

e. A geographical description of the reservation and drainage basin involved, including maps and diagrams.

f. A review and analysis of pertinent existing contracts, statutes, regulations, and legal precedent that may have an impact on the settlement.

g. A description and analysis of the history of the United States' trust activities on the Indian reservation.

4. During Phases I, II, and III, the Government (through the negotiating team or otherwise) will not concede or make representatives on likely U.S. positions or considerations.

#### Phase II--Assessment and Recommendations

1. As soon as possible, the negotiating team, in concert with Justice, will conduct and present to the Department an assessment of the positions of all parties, and a recommended negotiating position. The purpose of the assessment is to (1) measure all costs presuming no settlement, and (2) measure complete settlement costs to all of the parties. The assessment should include:

a. Costs presuming no settlement--Estimates for quantifying costs associated with all pending or potential litigation in question, including claims against the United States and claims against other non-Federal parties together with an assessment of the risk to all parties from any aspect of the claim and all pending litigation without a settlement. A best/worst/most likely probability analysis of the litigation outcome should be developed.

b. An analysis of the value of the water claim for the Indians.

c. Costs Presuming Settlement--quantification of alternative settlement costs to all parties. This includes an analysis showing how contributions, other than those strictly associated with litigation, could lead to settlement (e.g., facilities to use water, alternative uses of water, and alternative financial considerations).

2. All analysis in the assessment should be presented in present value terms using the planning rate used for evaluating Federal water resource projects.

#### Phase III--Briefings and Negotiating Position

1. The Working Group on Indian Water Settlements will present to the Secretary a recommended negotiating position. It should contain:

a. The recommended negotiating position and contribution by the Federal Government.

b. A strategy for funding the Federal contribution to the settlement.

c. Any legal or financial views of Justice or OMB.

d. Tentative position on major issues expected to arise.

2. Following the Secretary's approval of the Government's negotiating position, Justice and OMB will be notified before negotiations commence.

#### Phase IV--Negotiations Towards Settlement

1. OMB and Justice will be updated periodically on the status of negotiations.

2. If the proposed cost to the U.S. of settlement increases beyond the amount decided in Phase III, if the negotiations are going to exceed the estimated time (or break down), or if Interior proposes to make significant changes in the Government negotiating position or in the U.S. contribution to the settlement, the original recommendation and negotiating position will be revised using the procedures identified above.

\*9225 3. Briefings may be given to the Congressional delegations and the Committees consistent with the Government's negotiating position.

[FR Doc. 90-5532 Filed 3-9-90; 8:45 am]

BILLING CODE 4310-RP-M

55 FR 9223-01, 1990 WL 325541 (F.R.)

END OF DOCUMENT

© 2007 Thomson/West. No Claim to Orig. US Gov. Works.

## SETTLEMENTS APPROVED BY CONGRESS

Updated August 2013

NAME / CITATION	TRIBE(S)/STATE(S)	SIGNIFICANT FEATURES OF SETTLEMENT/ QUANTITY (AC-FT/YR)	TOTAL EXPENDITURES
<p><b>Ak-Chin Indian Water Rights Settlement Act</b> Pub.L. 95-328, 92 Stat. 409 (1978), <i>amended</i>, Pub.L. 98-530, 98 Stat. 2698 (1984), <i>amended</i>, Pub.L. 102-497, 106 Stat. 3258 (1992), <i>amended</i>, Pub. L. 106-285, 114 Stat. 878 (2000).</p>	<p>Ak-Chin Indian Community of Papago Indians of the Maricopa, Ak-Chin Reservation</p> <p>ARIZONA</p>	<ul style="list-style-type: none"> <li>• First Indian water settlement;</li> <li>• Federal government and Indian Community were only parties to original settlement;</li> <li>• No local cost share provision required;</li> <li>• Unrestricted water marketing and use under 1992 Amend. Allows off-reservation leasing in certain nearby counties;</li> <li>• Surface water imported from foreign source to satisfy entitlement;</li> <li>• Federal government agreed to deadline for implementation;</li> <li>• Federal government assumed total liability for cost of failure to deliver; 85,000 afa</li> <li>• Legislation in 2000 gave the tribe authority to enter into either options to renew a lease or renewals of a lease for no more than the original term of a lease up to 100 years long, whereas it earlier denied any post-100 year option. The amendment also provides that the tribe may not permanently alienate the water at issue.</li> </ul>	<ul style="list-style-type: none"> <li>• Federal:               <ul style="list-style-type: none"> <li>- Total of \$29.2M to Indian Community (not including \$15M in <i>damages</i>) (emphasis added);</li> <li>- estimated \$50K for feasibility study.</li> <li>- \$3.4M to Indian Community for economic development.</li> <li>- \$25.3M as loan forgiveness.</li> <li>- Total of \$27.2M to irrigation district;</li> <li>- \$9.4M for construction &amp; conservation; \$17.8M as loan forgiveness</li> </ul> </li> </ul>
<p><b>Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990</b> Pub.L. 101-618; 104 Stat. 3289 (1990).</p>	<p>Paiute-Shoshone Tribe of the Fallon Reservation and Colony</p> <p>NEVADA</p>	<ul style="list-style-type: none"> <li>• Original intent to settle tribal claims for Federally promised irrigation system;</li> <li>• Developed into claims for reserved rights;</li> <li>• Secretary to identify water sources subsequent to settlement;</li> <li>• Environmental dilemmas in two river basins required complex and inter-connected settlements with two tribes;</li> <li>• Development Fund established to improve irrigation system and enhance economic development on the Reservation;</li> <li>• Federally approved Tribal management plan required for administration;</li> <li>• Interstate Allocation Agreement required for reservoir operations;</li> <li>• Limited marketing subject to State law;</li> <li>• <i>See also</i>, Truckee-Carson Pyramid Lake Water Rights Settlement Act;</li> <li>• 10,588 afa</li> </ul>	<ul style="list-style-type: none"> <li>• Federal               <ul style="list-style-type: none"> <li>- \$43M for Fallon Paiute Shoshone Tribal Development Fund (i.e., \$3M in 1992, and \$8M each year thereafter until 1997)</li> </ul> </li> </ul>
<p><b>Fort Hall Indian Water Rights Act of 1990</b> Pub.L. 101-602; 104 Stat. 3059 (1990).</p>	<p>Shoshone-Bannock Tribes of the Fort Hall Indian Reservation</p> <p>IDAHO</p>	<ul style="list-style-type: none"> <li>• Heavy reliance on unallocated Federal storage space required to satisfy Tribes' <i>Winters</i> entitlement and to mitigate impacts to local water users within a highly developed system;</li> <li>• Water bank authorized which will allow the Tribes to lease their water rights to local water users off-Reservation;</li> <li>• Tribes allowed to lease all or part of water entitlement on the Reservation;</li> <li>• Tribal Development established in addition to Federal funds provided to develop a reservation water management system;</li> <li>• Instream flow protection allowed (whereas instream flow protection a contentious issue in the Wind River-Big Horn litigation);</li> <li>• Flexible use of Tribes' water on reservation permits traditional uses including agriculture, fish, and wildlife, and environment;</li> <li>• Three member Intergovernmental Board established to mediate or resolve disputes;</li> <li>• 581,031 afa</li> </ul>	<ul style="list-style-type: none"> <li>• Federal               <ul style="list-style-type: none"> <li>- \$10M to Tribal Development Fund;</li> <li>- \$7M to Tribes for development of a reservation water management system;</li> <li>- \$5M appropriated to BIA for acquisition of lands and grazing rights adjacent to Grays Lake to enhance the operation and management of the FHIIP as well as providing collateral benefits for the Fish and Wildlife Service Refuge at Grays Lake;</li> <li>- Federal contract storage rights or studies related to settlement (appropriations unknown)</li> </ul> </li> </ul>

<p><b>Fort McDowell Indian Community Water Rights Settlement Act of 1990</b></p> <p>Pub.L. 101-628, 104 Stat. 4480 (1990).</p>	<p>Fort McDowell Indian Community</p> <p>ARIZONA</p>	<ul style="list-style-type: none"> <li>• Complex multi-party water purchases, exchanges, and storage arrangements;</li> <li>• Much controversy over water supply and sources;</li> <li>• Secretary allowed to identify and acquire water sources subsequent to Settlement;</li> <li>• Indian Community to receive indigenous water supplies from the Verde River;</li> <li>• Off-reservation leasing of CAP water limited to 99 year lease with City of Phoenix Community Development Fund established to enhance economic development;</li> <li>• Federal loan provided to Indian Community to construct delivery system;</li> <li>• Environmental preservation and studies required prior to most water acquisitions;</li> <li>• Instream flow protection to protect endangered species and river habitat;</li> <li>• 36,350 afa</li> </ul>	<ul style="list-style-type: none"> <li>• Federal <ul style="list-style-type: none"> <li>- \$23M for Community Development Fund;</li> <li>- Land and water purchases from unidentified sources including 13,933 afa of CAP water purchased from HVID (appropriations unknown);</li> <li>- Environmental studies associated with land and water purchases (appropriations unknown);</li> <li>- 25 year contract with SRP to store Kent Decree water rights (appropriations unknown; Community able to use some of its Kent Decree water depending on availability and canal conditions);</li> <li>- \$13M loan to Indian Community (not considered a Federal contribution) (emphasis added);</li> </ul> </li> <li>• State/Local <ul style="list-style-type: none"> <li>- \$2M for Community Development Fund;</li> <li>- \$5M up-front payment for 99 year lease to city of Phoenix (not considered a contribution) (emphasis added)</li> </ul> </li> <li>• Tribe <ul style="list-style-type: none"> <li>- \$13M in Federal loan monies to construct delivery systems</li> </ul> </li> </ul>
<p><b>Jicarilla Apache Tribe Water Settlement Act of 1992</b></p> <p>Pub.L. 102-441, 106 Stat. 2237 (1992).</p>	<p>Jicarilla Apache Indian Tribe</p> <p>NEW MEXICO</p>	<ul style="list-style-type: none"> <li>• Subcontracting or marketing allowed on or off reservation;</li> <li>• Lease or subcontract terms limited to 99 years;</li> <li>• Subcontracts subject to state law;</li> <li>• Significant Secretary approval process prior to subcontracting;</li> <li>• Tribal water right can not be forfeited or relinquished for nonuse;</li> <li>• Much discussion of the "Law of the River" and prohibiting interstate marketing;</li> <li>• Significant environmental compliance and conservation measures required;</li> <li>• 40,000 afa</li> </ul>	<ul style="list-style-type: none"> <li>• Federal <ul style="list-style-type: none"> <li>- \$6M to Trust Fund;</li> <li>- estimated \$1,056,250 in non-reimbursable construction costs;</li> <li>- waiver of OM&amp;R costs (amount unknown)</li> </ul> </li> </ul>
<p><b>Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992</b></p> <p>Pub.L. 102-374, 106 Stat. 1186 (1992).</p>	<p>Northern Cheyenne Indian Tribe</p> <p>MONTANA</p>	<ul style="list-style-type: none"> <li>• Tongue River Dam repair and enlargement major part of settlement;</li> <li>• Much discussion over administration and jurisdiction over tribal water right and Tongue River Dam Project;</li> <li>• Three member Board set up to resolve disputes;</li> <li>• Tribe allowed to administer water right after adopting Tribal Water Code;</li> <li>• Water marketing and transfers allowed on and off the reservation;</li> <li>• Most off-reservation marketing subject to State law;</li> <li>• Tribal water right may be used on the reservation for any purpose and without regard to State law;</li> <li>• Ten-year marketing moratorium with Crow Tribe for water stored in the Big Horn Reservoir;</li> <li>• Trust Fund unrestricted except for per capita payments;</li> <li>• 91,330 afa</li> </ul>	<ul style="list-style-type: none"> <li>• Federal <ul style="list-style-type: none"> <li>- \$21.5M to the Cheyenne Indian Reserved Water Right Trust Fund;</li> <li>- \$31.5M for use in the repair and enlargement of the TRDP;</li> <li>- Environmental compliance (estimated at \$2M);</li> <li>- Tribe's proportionate share of OM&amp;R costs for water stored behind the Tongue River Dam (estimated at \$3,000 annually until 1997 and \$28,000 annually thereafter); - \$3.5M for fish and wildlife enhancement on the TRDP</li> </ul> </li> <li>• State <ul style="list-style-type: none"> <li>- Repayment of the \$11.5M loan to the Tribe;</li> <li>- \$5M to TRDP for contract costs; - \$4.2M to the TRDP in non-contract costs</li> </ul> </li> <li>• Tribe <ul style="list-style-type: none"> <li>- OM&amp;R costs and capital costs associated with water used or sold for M&amp;I purposes from Big Horn Reservoir (amt. unknown)</li> </ul> </li> </ul>

<p><b>Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988</b></p> <p>Pub.L. 100-512, 102 Stat. 2549 (1988).</p>	<p>Salt River Pima-Maricopa Indian Community of the Salt River Reservation</p> <p>ARIZONA</p>	<ul style="list-style-type: none"> <li>• Complex and creative multi-party water exchanges, lease-backs, and storage arrangements (including effluent exchange) between two Indian Communities, seven Phoenix area cities, and three irrigation districts;</li> <li>• Indian Community arranged to receive indigenous water supplies from the Salt River, Verde River, and groundwater beneath the Reservation (e.g., very small amount of imported water used to satisfy entitlement);</li> <li>• Significant, "equitable" local cost sharing required by Federal government;</li> <li>• Marketing of water prohibited except for lease-exchange agreement with Phoenix (water uses unrestricted on reservation);</li> <li>• Very large Community Trust Fund established to develop and maintain facilities and enhance economic development;</li> <li>• Provision to resolve allottee water claims;</li> <li>• 122,400 afa</li> </ul>	<ul style="list-style-type: none"> <li>• Federal <ul style="list-style-type: none"> <li>- Total of \$47,470,000 to the Salt-River Community Trust Fund;</li> <li>- \$10M for CAP facility construction (not considered a contribution since entirely allocable to P.L. 90-537, the underlying CAP authorization)</li> </ul> </li> <li>• State/Local <ul style="list-style-type: none"> <li>- \$55,933,000 from local water users for contributing 32,000 afa of water (utilizing a value of around \$1,800 per afa);</li> <li>- \$9M from local cities put in escrow to acquire 22,000 afa of Colorado River water;</li> <li>- \$3M from the State of Arizona to community Trust Fund;</li> <li>- \$16M in exchange for allocated CAP water (not considered a contribution since it is compensation for a 99 year lease agreement)</li> </ul> </li> <li>• Tribe <ul style="list-style-type: none"> <li>- \$2M to Community Trust Fund</li> </ul> </li> </ul>
<p><b>San Carlos Apache Tribe Water Rights Settlement Act</b></p> <p>Pub.L. 102-575, 106 Stat. 4740 (1992), <i>tech amend.</i>, Pub.L. 103-435, 108 Stat. 4572 (1994), <i>amended</i>, Pub.L. 105-18, § 5003, 111 Stat. 181 (1997).</p>	<p>San Carlos Apache Indian Tribe</p> <p>ARIZONA</p>	<ul style="list-style-type: none"> <li>• Directs the Secretary of the Interior to reallocate an additional specified amount of water from the Central Arizona Project for the San Carlos Apache Tribe;</li> <li>• Provides for the diversion of 7,500 afy from the Black River;</li> <li>• Requires the Tribe or its lessee to pay any water service capital charges or municipal and industrial subcontract charges for any water use or lease from the effective date of the Act through FY 1995;</li> <li>• Directs the Secretary to designate for the benefit of the Tribe such active conservation capacity behind Coolidge Dam on the Gila River as the Secretary is not using to meet the obligations of the San Carlos Irrigation Project (SCIP) for irrigation storage. Limits any water stored by the Tribe to the dam's first spill water;</li> <li>• Establishes the San Carlos Apache Tribe Development Trust Fund within the Treasury to contain the funds appropriated for it, the funds provided by Arizona under the agreement, and the funds received from the tribal water leases authorized by this Act;</li> <li>• Directs the Secretary to carry out all necessary environmental compliance during the implementation phase of this settlement. Authorizes appropriations;</li> <li>• Directs the Secretary to establish a groundwater management plan for the San Carlos Apache Reservation;</li> <li>• Declares that concessions for recreation and fish and wildlife purposes on San Carlos Lake may be granted only by the Tribe's governing body;</li> <li>• A 1997 amendment settled a right-of-way dispute with Phelps Dodge Corporation and provided for a lease and exchange of 14,000 afy of Central Arizona Project water</li> </ul>	<ul style="list-style-type: none"> <li>• Federal <ul style="list-style-type: none"> <li>- \$38.4M for Development Fund (94%);</li> <li>- Land and water purchases from Planet Ranch located on Bill Williams River in Arizona (appropriations unknown);</li> <li>- Environmental studies, compliance, and mitigation costs to BR associated with land and water allocations or purchases (appropriations unknown);</li> <li>- Construction, operation, maintenance and replacement costs for CAP water facilities (appropriations unknown)</li> </ul> </li> <li>• State/Local <ul style="list-style-type: none"> <li>- \$3M for Development Fund (6%);</li> <li>- Purchase of around 58,735 afa of surface water (amount unknown)</li> </ul> </li> </ul>

<p><b>San Luis Rey Indian Water Rights Settlement Act of 1988</b></p> <p>Pub.L. 100-675, 102 Stat. 4000 (1988).</p>	<p>La Jolla, Ricon, San Pasquale, Pauma, Pala Bands of Mission Indians</p> <p>CALIFORNIA</p>	<ul style="list-style-type: none"> <li>• Problems with water source identification (e.g., originally proposed water from Central Valley Project amended to require "supplemental" water from lining the All American Canal);</li> <li>• Conservation measures required to fulfill Bands' water entitlement by lining the All American Canal in order to reduce seepage;</li> <li>• Existing water canals and systems used to deliver "supplemental" water;</li> <li>• No new facility construction required to be financed by the Federal government;</li> <li>• "Equitable allocation" of local water supply required reallocation of San Luis Rey River system evenly between Bands and non-Indian users;</li> <li>• \$30M Development Fund established;</li> <li>• Indian Water Authority established as inter-tribal entity to market water and administer Development Fund;</li> <li>• 16,000 afa</li> </ul>	<ul style="list-style-type: none"> <li>• Federal <ul style="list-style-type: none"> <li>- \$30M for Development Fund;</li> <li>- Lining of All American Canal (appropriations unknown);</li> <li>- Use of existing delivery systems (amount unknown);</li> <li>- Groundwater recharge program (amount unknown)</li> </ul> </li> <li>• State/Local <ul style="list-style-type: none"> <li>- Purchase of water that is surplus to the Bands' needs on the reservations (amount unknown);</li> <li>- Use of existing local water delivery systems to convey Bands' share of local water to the reservations (amt. unknown);</li> <li>- O&amp;M and replacement of existing delivery systems for San Luis Rey water (amount unknown);</li> <li>- Costs associated with Warner Well Field (estimated to range from \$1.5 to \$3.18M)</li> </ul> </li> <li>• Bands <ul style="list-style-type: none"> <li>- O&amp;M costs associated with delivery of supplemental water through existing facilities;</li> <li>- Costs associated with Warner Well Field (estimated at over \$2M annually)</li> </ul> </li> </ul>
<p><b>Seminole Indian Land Claims Settlement Act of 1987</b></p> <p>Pub.L. 100-228, 101 Stat. 1556 (1987).</p>	<p>Seminole Tribe of Florida</p> <p>FLORIDA</p>	<ul style="list-style-type: none"> <li>• First Indian water settlement in the Eastern United States;</li> <li>• No prior water rights litigation preceding settlement, but the settlement did resolve litigation and permit challenges on non-water related issues;</li> <li>• No Federal funding required;</li> <li>• Compact compromises between the <i>Winters</i> doctrine and riparian doctrine;</li> <li>• Compact gives Tribe absolute preference to ground water;</li> <li>• Tribal water right perpetual in nature and not subject to State renewal;</li> <li>• Compact allows Tribe to issue permits and administer its water rights;</li> <li>• Compact allows Tribe significant participation in water and land related decisions;</li> <li>• Compact gives Tribe jurisdiction to manage its water resources;</li> <li>• Compact given force of Federal law for purposes of enforcing the tribe's rights and obligations in Federal District Court</li> </ul>	<ul style="list-style-type: none"> <li>• None</li> </ul>

<p><b>Southern Arizona Water Rights Settlement Act</b>  Pub.L. 97-293, 96 Stat. 1274 (1982), <i>tech. amend.</i>,  Pub.L. 102-497, 106 Stat. 3256 (1992).</p>	<p>San Xavier and Schuk  Toak Districts, Tohono  O'Odham Nation  (formerly Papago)</p> <p>ARIZONA</p>	<ul style="list-style-type: none"> <li>• Water provided from CAP allocation and reclaimed effluent water from Tucson;</li> <li>• Nation guaranteed a "firm" delivery of water even in dry seasons;</li> <li>• Federal government assumed liability for failure to deliver water and replacement costs;</li> <li>• Construction costs of Federal facilities required to deliver entitlement is entirely allocable to Pub.L. 90-537, (the underlying CAP authorization), not SAWRSA;</li> <li>• Limited off-reservation leasing in Tucson AMA;</li> <li>• Two independent trust funds established, a Tribal and Cooperative Fund;</li> <li>• Settlement and implementation delayed due to dispute over ownership and allocation of water between allottees and Nation;</li> <li>• 66,000 afa</li> </ul>	<ul style="list-style-type: none"> <li>• Federal <ul style="list-style-type: none"> <li>- Estimated \$1M to establish water management plan and conduct certain studies; - \$5.25M to "Cooperative Fund";</li> <li>- \$15M to Nation's Trust Fund;</li> <li>- Up to \$3.5M, if needed, to cover fluctuations in construction costs for "on-reservation" improvements only (amount unknown);</li> <li>- Up to \$3.3M in annual contingent liability for replacement water for damages for failure to deliver entitlement (to be paid from interest of "Cooperative Fund");</li> <li>- Estimate \$65M for construction of Phase B of Tucson Aqueduct; estimated \$50M to acquire reclaimed effluent water and increase capacity of the Tucson Aqueduct to deliver such water; estimated \$19M to improve on-reservation irrigation systems; unknown amount for O&amp;M; (above amounts not included since costs entirely allocable to P.L. 90-537, the underlying CAP authorization)</li> </ul> </li> <li>• State/Local <ul style="list-style-type: none"> <li>- \$2.75M from the State of Arizona, \$1.5M from the City of Tucson, and \$1M from local non-Indian users to "Cooperative Fund";</li> <li>- Forgone profits to City of Tucson from contributing 28,200 afa of reclaimed effluent water at cost to Federal government (amount unknown)</li> </ul> </li> <li>• Nation <ul style="list-style-type: none"> <li>- estimated \$1M for construction of site specific on-reservation farm ditches, subjugation of land, and O&amp;M cost (to be paid from interest of trust fund)</li> </ul> </li> </ul>
<p><b>Truckee-Carson-Pyramid Lake Water Rights Act</b>  Pub.L. 101-618, 104 Stat. 3294 (1990).</p>	<p>Pyramid Lake Paiute Tribe  of the Pyramid Lake  Reservation</p> <p>NEVADA  (CALIFORNIA)</p>	<ul style="list-style-type: none"> <li>• Environmental dilemma and Endangered Species Act were major issues driving the settlement;</li> <li>• Key provision involving reservoir operation and administration requires Interstate Allocation Agreement;</li> <li>• Some unidentified water sources to be acquired subsequent to settlement;</li> <li>• Economic Development Fund established for economic development on the Reservation;</li> <li>• Fisheries Fund established to enhance, restore, and conserve Pyramid Lake fish;</li> <li>• Limited water marketing is subject to State law;</li> <li>• Municipalities to install water meters for conservation purposes;</li> <li>• Environmental dilemmas in two river basins required complex and inter-connected settlements with two tribes – <i>See also</i>, Fallon Paiute-Shoshone Settlement Act;</li> <li>• 520,000 afa</li> </ul>	<ul style="list-style-type: none"> <li>• Federal <ul style="list-style-type: none"> <li>- \$25M for Pyramid Lake Paiute Fisheries Fund;</li> <li>- \$40M to the Pyramid Lake Paiute Economic Development Fund (in five equal annual installments from 1993 to 1997);</li> <li>- Land and water purchases from unidentified sources (appropriations unknown);</li> <li>- Environmental studies associated with land and water purchases (appropriations unknown)</li> </ul> </li> <li>• State/Local <ul style="list-style-type: none"> <li>- Local conservation acquisitions (contribution unknown)</li> </ul> </li> </ul>

<p><b>Ute Indian Rights Settlement Act of 1992</b>  Pub.L. 102-575, 106 Stat. 4650 (1992).  <i>*Utah and the Tribe are working on an implementation plan/compact</i></p>	<p>Northern Ute Indian Tribe of the Uintah &amp; Ouray Reservation   UTAH</p>	<ul style="list-style-type: none"> <li>• Primary purpose of settlement was to resolve claims against the Federal government for breach of Deferral Agreement where United States failed to construct ultimate phase projects of the CUP and Tribe deferred use and development of tribal land and water;</li> <li>• One of two settlements fully Federally funded (<i>See also</i>, Ak-Chin Settlement);</li> <li>• Limited local cost share provisions commencing in the year 2042 for use or purchase of 35,500 afa of tribal water;</li> <li>• Monies appropriated to enhance Tribal fish, wildlife and environment in lieu of constructing promised ultimate phase water projects;</li> <li>• Off-reservation leasing provision strips tribes' water of its reserved character and exposes tribal water to State law;</li> <li>• "Neutral" marketing provisions may allow tribe to sell water in the future depending on "Law of the River";</li> <li>• Largest Development Fund established to enhance economic development and compensate for breach of Federal agreement;</li> <li>• Ute Water Compact has not yet been approved by either the Tribe or State;</li> <li>• 481,000 afa</li> </ul>	<ul style="list-style-type: none"> <li>• Federal <ul style="list-style-type: none"> <li>- Total appropriations: \$198,500,000 (represents damages for breach of Deferral Agreement);</li> <li>- \$45M for Tribal farming operation;</li> <li>- \$5M for Cederview Reservoir repair;</li> <li>- \$10M for stream improvements;</li> <li>- \$500,000 for Bottle Hollow Reservoir clean up;</li> <li>- \$10M for recreational enhancement;</li> <li>- \$3M for municipal water system;</li> <li>- \$125M for Tribal Development Fund;</li> <li>- estimated \$2M per year for 50 years (\$100M) in Bonneville revenues (represents future damages for use of 35,500 afa of tribal water)</li> </ul> </li> <li>• State/Local <ul style="list-style-type: none"> <li>- 7 percent of the then fair market value of 35,500 afa of Bonneville agricultural water which has been converted to M&amp;I water beginning in the year 2042 (amount unknown)</li> </ul> </li> </ul>
<p><b>Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994</b>  Pub.L. No. 103-434, 108 Stat. 4526 (1994).</p>	<p>Yavapai-Prescott Indian Tribe   ARIZONA</p>	<ul style="list-style-type: none"> <li>• Environmental issues, groundwater restrictions, and inability to use prior CAP allocations from the Verde River required Tribe and municipality to relinquish CAP water for alternate sources;</li> <li>• Settlement mutually benefited the Tribe and city and required much cooperation;</li> <li>• Municipality required to provide Tribe water and sewage services "in perpetuity";</li> <li>• Tribe and city both required to relinquish, assign or sell prior CAP allocations;</li> <li>• "Water Replacement Fund" established to manage all money associated with the relinquishment of Tribe's and city's prior CAP allocation;</li> <li>• Water Fund, or water bank, to be used by city to acquire new water sources;</li> <li>• Water Fund to be used by Tribe to defray its costs associated with water and sewage services and to develop or maintain on-reservation water facilities;</li> <li>• Tribe to develop a groundwater management plan in consultation with the State;</li> <li>• Allows marketing of effluent generated on-reservation;</li> <li>• 1,550 afa</li> </ul>	<ul style="list-style-type: none"> <li>• Federal <ul style="list-style-type: none"> <li>- \$200,000 to Water Fund for use by the Tribe to defray its costs associated with Judicial confirmation of the settlement;</li> <li>- Such sums as may be necessary to establish, maintain and operate a gauging station on Granite Creek (amount unknown)</li> </ul> </li> <li>• State <ul style="list-style-type: none"> <li>- \$200,000 to Water Fund for use by the Tribe to defray its costs associated with the water service agreement</li> </ul> </li> </ul>

<p><b>Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement Act of 1999</b></p> <p>Pub.L. No. 106-163, 113 Stat. 1778 (1999).</p>	<p>Chippewa Cree Indian Tribe</p> <p>MONTANA</p>	<ul style="list-style-type: none"> <li>• Approves and ratifies the Water Rights Compact entered into on April 14, 1997, by the Tribe and the State of Montana. Directs the Secretary of the Interior to execute and implement the Compact;</li> <li>• Satisfies any entitlement to Federal Indian reserved water of any tribal member solely from the water secured to the Tribe by the Compact;</li> <li>• Authorizes the Tribe, subject to the approval of the Secretary and the State, to transfer any portion of the Tribal water right for use off the Reservation by service contract, lease, exchange, or other agreement;</li> <li>• Directs the Secretary: to plan, design, and construct specified water development projects on the Reservation; and at the request of the Tribe, to enter into an agreement with the Tribe to carry out such activity through the Tribe's annual funding agreement entered into under the self-governance program under the Indian Self-Determination and Education Assistance Act;</li> <li>• Establishes a trust fund to fulfill the purposes of the Act;</li> <li>• Directs the Secretary to perform a feasibility study of Tiber Reservoir water and related resources in North Central Montana to evaluate alternatives for a municipal, rural, and industrial water supply for the Reservation</li> </ul>	<ul style="list-style-type: none"> <li>• Federal <ul style="list-style-type: none"> <li>- FY 1999 feasibility study appropriations = \$1M, FY 2000 = \$3M;</li> <li>- \$21 M for the Chippewa Cree Fund;</li> <li>- \$13M for on-reservation development;</li> <li>- \$1M for administration costs</li> </ul> </li> <li>• State <ul style="list-style-type: none"> <li>- Contribution of \$150,000 to be used for water quality discharge monitoring wells and monitoring program, diversion structure on Big Sandy Creek, a conveyance structure on Box Elder Creek, and the purchase of contract water from Lower Beaver Creek Reservoir</li> </ul> </li> <li>- Subject to the availability of funds, the State shall provide services valued at \$400,000 for administration required by the Compact and for water quality sampling required by the Compact</li> </ul>
<p><b>Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement Act</b></p> <p>Pub.L. No. 106-263, 114 Stat. 737 (2000).</p>	<p>Shivwits Band of Paiute Indians</p> <p>UTAH</p>	<ul style="list-style-type: none"> <li>• Grants the Band the right in perpetuity to divert, pump, impound, use, and reuse a total of 4,000 afy from the Virgin River and Santa Clara River systems to be taken as follows: 1,900 acre-feet from the Santa Clara Project and 2,000 acre-feet from the St. George Water Reuse Project - with first priority to the reuse water provided from the St. George Project; and 100 acre-feet from groundwater on the Shivwits Reservation;</li> <li>• Permits the Band to use water from the springs and runoff on the Reservation. Declares that the amount used from such sources will be reported annually to the Utah State Engineer by the Band and requires the amount to be counted against the annual Water Right;</li> <li>• Provides that the Shivwits Water Right shall not be subject to loss by abandonment, forfeiture, or nonuse. Authorizes the Band to use or lease the Water Right for: (1) any purpose permitted by tribal or Federal law anywhere on the Reservation; and (2) any beneficial use off the Reservation</li> </ul>	<ul style="list-style-type: none"> <li>• Federal <ul style="list-style-type: none"> <li>- \$20 M for establishment of Shivwits Band Trust Fund - to be used for infrastructure costs of obligations imposed on the Santa Clara Project, and the St. George Reuse Project to deliver required water to the Band.</li> </ul> </li> </ul>

<p><b>Colorado Ute Settlement Act Amendments of 2000</b></p> <p>Pub.L. No. 106-554, 114 Stat. 2763 (2000).</p>	<p>Southern Ute and Ute Mountain Ute Tribes, and Navajo Nation</p> <p>COLORADO</p>	<ul style="list-style-type: none"> <li>• Amends the Colorado Ute Indian Water Rights Settlement Act of 1988 to authorize the Secretary of the Interior to complete construction of, and utilize a reservoir and infrastructure to operate facilities to divert and store water from the Animas River to provide a municipal and industrial water supply to the San Juan Water Commission, Animas-La Plata Conservancy District, State of Colorado, La Plata Conservancy District of New Mexico, Southern Ute and Ute Mountain Ute tribes, and Navajo Nation;</li> <li>• Construction costs required to deliver each tribe's water allocation shall be nonreimbursable;</li> <li>• Authorizes the Secretary to construct a water line to augment the existing system that conveys municipal water supplies to the Navajo Indian Reservation at or near Shiprock, New Mexico. Makes construction costs for the water line nonreimbursable;</li> <li>• Authorizes appropriations to the Southern Ute and Ute Mountain Ute Tribal Resource Funds;</li> <li>• Establishes the Colorado Ute Settlement Fund in the Treasury and authorizes appropriations to the Fund to complete the construction of Project facilities and the Navajo Nation water line;</li> <li>• Requires the construction of facilities, and allocation of water supply to the Indian tribes, provision of funds</li> </ul>	<ul style="list-style-type: none"> <li>• Federal - \$8 M annually from 2002 to 2006 to establish the Southern Ute Tribal Resource Fund, and the Ute Mountain Ute Tribal Resource Fund</li> </ul>
<p><b>Zuni Indian Tribe Water Rights Settlement Act of 2003</b></p> <p>Pub.L. No. 108-34 (2003).</p>	<p>Zuni Indian Tribe</p> <p>ARIZONA</p>	<ul style="list-style-type: none"> <li>• Provides the resources to acquire water from willing sellers for the tribe in Arizona in the Little Colorado River Basin;</li> <li>• Grandfathers existing water uses and waives claims against many future water uses;</li> <li>• Provides funding necessary to enable the Zuni Tribe to acquire water rights from willing sellers in lieu of having a Federal reserved rights to surface water or groundwater;</li> <li>• The Tribe is required to make payments in lieu of all current State, county, and local ad valorem taxes that would otherwise apply if those lands were not held in trust;</li> <li>• Funding to restore, rehabilitate, and maintain the Zuni Heaven Reservation, including the Sacred Lake, wetlands, and riparian areas;</li> <li>• Requires the Secretary of the Interior to take legal title of specified lands in the Gila and Salt River Base and Meridian into trust for the benefit of the Zuni tribe. Those lands have no Federally reserved water right;</li> <li>• The U.S. holds all Zuni owned state water rights in trust for the Tribe;</li> <li>• Prohibits the United States, except in certain instances, from removing jurisdiction to Federal courts for disputes over intergovernmental agreements entered into under these trust land agreements</li> </ul>	<ul style="list-style-type: none"> <li>• Federal government is to appropriate \$19.25 M to the Zuni Indian Tribe Water Rights Development Fund;</li> <li>• The Secretary is to allocate \$3.5 M for fiscal year 2004, to be used for the acquisition of water rights and associated lands, and other activities carried out, by the Zuni Tribe to facilitate the enforceability of the Settlement Agreement, including the acquisition of at least 2,350 afy of water rights;</li> <li>• The Zuni Heaven Reservation restoration is to be accomplished by using \$5.25 M in 2004, 2005, and 2006, for a total of \$15.75 M</li> </ul>
<p><b>Arizona Water Settlements Act of 2004</b></p> <p>Pub.L. No. 108-451; 118 Stat. 3478 (2004)</p>	<p>Gila River Indian Community, Tohono Oodham Nation</p> <p>ARIZONA</p>	<ul style="list-style-type: none"> <li>▪ Finalizes settlement reached in 1982;</li> <li>▪ Resolves a long-standing dispute between Arizona and the Federal government over nearly \$2 B in repayments for CAP construction;</li> <li>▪ Reallocates 102,000 afa of CAP water to Gila River Indian Community (consisting of the Pima Tribe and the Maricopa Tribe);</li> <li>▪ Reallocates 28,200 afa of CAP water to Tohono O'odham Nation;</li> <li>▪ Reallocates 67,300 afa of CAP water to "Arizona Indian Tribes;"</li> <li>▪ Includes a groundwater component whereby the Tohono O'odham Nation can pump up to 13,200 afa</li> </ul>	<ul style="list-style-type: none"> <li>▪ Budgets \$250 M to the Future Indian Water Settlement Subaccount of the Lower Colorado Basin Development fund, to be used for Indian water rights settlements in Arizona approved by Congress after the date of enactment of the Arizona Water Settlements Act;</li> <li>▪ Federal government will deposit \$53 M in the Gila River Indian Community Water OM&amp;R Trust Fund;</li> <li>▪ Federal government to pay \$52.3 M for the rehabilitation of the San Carlos Irrigation Project;</li> <li>▪ Federal Government to pay \$66 M to the New Mexico Unit Fund</li> </ul>

<p><b>Snake River Water Rights Act of 2004</b> Pub.L. No. 108-447; 118 Stat 2809, 3432-41 (2004)</p>	<p>Nez Perce Tribe  IDAHO</p>	<ul style="list-style-type: none"> <li>▪ Purpose of the Act is "to achieve a fair, equitable, and final settlement of all claims of the Nez Perce Tribe . . . to the water of the Snake River Basin within Idaho;"</li> <li>▪ Provides a consumptive use water right of 50,000 afy with a priority date of 1855;</li> <li>▪ The consumptive use water right is not subject to loss by abandonment, forfeiture, or nonuse;</li> <li>▪ The Secretary of the Interior is to transfer land to the Bureau of Indian Affairs in trust for the Tribe with a value not to exceed \$7 M;</li> <li>▪ Includes significant appropriations and other measures for salmon and steelhead restoration efforts</li> </ul>	<ul style="list-style-type: none"> <li>▪ Federal government is to appropriate \$60.1 M to the Nez Perce Water and Fisheries Fund over the span of fiscal years 2007 to 2013;</li> <li>▪ Federal government is to appropriate \$23 M to the Nez Perce Tribe Domestic Water Supply Fund between fiscal years 2007 and 2011;</li> <li>▪ Federal government is to appropriate \$38 M to the Salmon and Clearwater River Basins Habitat Fund between fiscal years 2007 and 2011. It is worth noting that this fund is separate and distinct from the Nez Perce Water and Fisheries fund</li> </ul>
<p><b>Soboba Band of Luiseño Indians Settlement Act</b> Pub.L. No. 110-297; 122 Stat. 2975 (2008)</p>	<p>Soboba Band of Luiseño Indians  CALIFORNIA</p>	<ul style="list-style-type: none"> <li>▪ Finalizes settlement reached in 2006 between the Soboba Band of Luiseño Indians and three California water districts;</li> <li>▪ Creates a 50 year plan in which the Tribe and the water districts agree to certain concessions to create a safe yield for the San Jacinto River Basin;</li> <li>▪ Gives the Tribe the "prior and paramount right, superior to all others" to pump 9,000 afy from the Basin;</li> <li>▪ Provides that the Tribe will limit the exercise of its Tribal Water Right to 4,100 afy for 50 years;</li> <li>▪ Awards the Tribe 127.7 acres of land owned by the water districts;</li> <li>▪ Requires the water districts to construct, operate, and maintain a project that will recharge the Basin with 7,500 afy of imported water through 2035;</li> <li>▪ Requires water districts and other ground water producers to implement a Water Management Plan (WMP) to "address the current Basin overdraft, and recognize and take into account the Tribal Water Right;"</li> <li>▪ Permits the Tribe to lease water to other users in the WMP area</li> </ul>	<ul style="list-style-type: none"> <li>▪ Federal <ul style="list-style-type: none"> <li>- \$5.5M to the Soboba Band of Luiseño Indians Water Development Fund for each of FY 2010 and 2011 to pay or reimburse costs associated with constructing, operating, and maintaining water and sewage infrastructure, and other water-related projects;</li> <li>- \$5M to the San Jacinto Basin Restoration Fund for each of FY 2010 and 2011 to reimburse the costs associated with constructing, operating, and maintaining the Federal portion of the basin recharge project.</li> </ul> </li> <li>▪ Local <ul style="list-style-type: none"> <li>- Water districts to provide the Tribe with \$17M in funds that the Tribe will manage in its sole discretion;</li> <li>- \$1M credit deducted from water and sewage financial participation fees charged to the Tribe by one of the water districts</li> </ul> </li> </ul>

<p><b>Northwestern New Mexico Rural Water Projects Act (Navajo-Gallup Water Supply Project/Navajo Nation Water Rights)</b></p> <p>Pub.L. No. 111-11; 123 Stat 1367 (2009)</p>	<p>Navajo Nation NEW MEXICO</p>	<ul style="list-style-type: none"> <li>▪ Establishes the Reclamation Water Settlements Fund: \$1.2 B (\$120 M to be deposited annually from FY 2020 through 2029) for use by the Secretary of the Interior to fund Indian water rights settlements with priority for Navajo-Gallup (\$500 M); Aamodt &amp; Taos (NM) (\$250M); Blackfeet, Crow, Fort Belknap (MT) (\$350 M); Navajo Colorado River (AZ) (\$100M);</li> <li>▪ Authorizes the construction and operation of the Navajo-Gallup Water Supply Project (37,764 afy) for municipal, industrial, commercial, and domestic uses on the Navajo Nation in northwestern New Mexico and northwestern Arizona, the City of Gallup, New Mexico, and the Jicarilla Apache Nation;</li> <li>▪ Authorizes the Secretary of the Interior to execute Settlement Agreement, which confirms Navajo water rights to divert/deplete 606,660/325,670 afy as follows: (1) Navajo Indian Irrigation Project - 508,000/270,000 afy; (2) Hogback Irrigation Project - 48,550/21,280 afy; (3) Fruitland Irrigation Project - 18,180/7,970 afy; (4) Navajo-Gallup - 22,650/20,780 afy; (5) Animas-LaPlata Project - 4,680/2,340 afy; (6) Misc. municipal uses-2,600/1,300 afy; (7) Tributary groundwater -2,000/2,000 afy; and (8) additional historic and existing rights to be determined by hydrosurvey;</li> <li>▪ Recognizes rights of the Navajo Nation to: (1) divert supplemental carriage water; (2) develop additional ground water on Navajo lands; (3) retain water rights acquired under state law; (4) maintain additional rights to <i>de minimus</i> residential domestic stock uses not served by public supply systems; (5) have a contractual right to storage to supply Navajo uses under the Animas-La Plata Project; and (6) re-use tail water or waste water under certain conditions;</li> <li>▪ Individual Nation members that have been allotted land by the United States are not bound by the Settlement and may have additional claims;</li> <li>▪ Secretary of the Interior has not signed the Settlement Agreement executed by the Navajo Nation and the State of New Mexico in 2005</li> </ul>	<ul style="list-style-type: none"> <li>▪ Federal <ul style="list-style-type: none"> <li>- \$6M to the Navajo Nation Water Resources Development Trust Fund for each of fiscal years 2010-2014;</li> <li>- \$4M to the Navajo Nation Water Resources Development Trust Fund for each of fiscal years 2015 through 2019;</li> <li>- \$870M for the Navajo-Gallup Water Supply Project for the period of fiscal years 2009 through 2024;</li> <li>- \$30M for conjunctive use ground water wells for the period of fiscal years 2009 through 2019;</li> <li>- Not more than \$7.7M for the rehabilitation of the Fruitland Indian Irrigation Project for fiscal years 2009 through 2016;</li> <li>- Not more than \$15.4M for the rehabilitation of the Hogback-Cudei Irrigation Project for fiscal years 2009 through 2019;</li> <li>- \$ 11M for non-Indian irrigation projects for the period of fiscal years 2009 through 2019</li> </ul> </li> <li>▪ State <ul style="list-style-type: none"> <li>- Contribute a share of the construction costs of the Navajo-Gallup Water Supply Project of not less than \$50M, except that the state shall receive credit for funds contributed to construct water conveyance facilities;</li> <li>- 50% cost share of rehabilitation of non-Indian ditches</li> </ul> </li> <li>▪ Local <ul style="list-style-type: none"> <li>- City of Gallup and Jicarilla Apache Nation to reimburse United States up to 35% of allocated share of capital costs for Navajo-Gallup Water Supply Project</li> </ul> </li> </ul>
<p><b>Shoshone-Paiute Tribes of Duck Valley Water Rights Settlement Act</b></p> <p>Pub.L. No. 111-11; 123 Stat 1405 (2009)</p>	<p>Shoshone Tribe Paiute Tribe NEVADA</p>	<ul style="list-style-type: none"> <li>▪ Finalizes settlement between the Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada, and upstream water users;</li> <li>▪ Provides the Tribes with a water right that includes a Federal reserved right to: (1) 111,476 afy of surface water from the East Fork Owyhee River Basin; and (2) the entire flow of all springs and creeks originating within the Reservation;</li> <li>▪ Recognizes and protects the Tribes' claim to 2,606 acre-feet of ground water per year "as part of its water right;"</li> <li>▪ Entitles Tribes to all water in the Wild Horse Reservoir subject to certain exceptions, and provides that the Tribes shall operate the Reservoir in accordance with a plan of operations develop and agreed upon with the United States;</li> <li>▪ Creates conditions under which upstream users can: (1) divert sufficient surface water to irrigate 5,039 acres; and (2) require the Tribes to release up to 265 afy from the Wild Horse Reservoir;</li> <li>▪ Tribes may use and store all surface water not used by upstream users;</li> <li>▪ Surface water right that upstream users abandon or forfeit shall become part of the Tribes' water right;</li> <li>▪ Tribes shall enact a water code to administer tribal water rights;</li> <li>▪ Department of Interior has not signed the Settlement</li> </ul>	<ul style="list-style-type: none"> <li>▪ Federal <ul style="list-style-type: none"> <li>- \$9M to the Shoshone-Paiute Tribes Water Rights Development Fund for each of fiscal years 2010-2014;</li> <li>- \$3M to the Shoshone-Paiute Tribes Operation and Maintenance Fund for each of fiscal years 2010-2014</li> </ul> </li> <li>▪ State <ul style="list-style-type: none"> <li>- Services for the "implementation and administration" of the settlement, including the services of a water commissioner;</li> <li>- Funding and maintenance for streamgages and a stage recording station</li> </ul> </li> </ul>

<p><b>Crow Tribe Water Rights Settlement Act of 2010</b> Pub.L. 111-291, 124 Stat. 3064 (2010)</p>	<p>Crow Tribe MONTANA</p>	<ul style="list-style-type: none"> <li>▪ Provides funding to improve irrigation projects, industrial and municipal water system upgrades, and ensure safe drinking water for the Tribe;</li> <li>▪ Establishes a base for the Tribe to build energy development projects;</li> <li>▪ Creates a Crow Tribal Water Right with the following components: <ul style="list-style-type: none"> <li>- <u>Bighorn River</u>: 650,000 afy consisting of: (1) 500,000 afy of natural flow from the river including ground water for existing and future Tribal uses; and (2) 150,000 afy of storage from Bighorn Lake for new Tribal development, of which only 50,000 afy can be used off-Reservation. Another 150,000 afy is allocated to supplement the natural flow right but is not available for other uses;</li> <li>- <u>Drainages other than the Bighorn River</u>: Provides that the Tribe may use all available surface water, ground water, and storage water on the Reservation not needed to satisfy current water uses;</li> <li>- <u>Ceded Strip</u>: 47,000 afy from any water source on lands or interests on the ceded strip which Congress restored to the Tribe, or on any lands acquired and held in trust for the Tribe. If the water source is the Bighorn River, the amount developed will be deducted from the on-Reservation water allocated to the Tribe from the river;</li> <li>- <u>Other</u>: Water rights the Tribe acquires as appurtenances to land become part of the Tribal Water Right</li> </ul> </li> <li>▪ Closes certain basins and sub-basins to new water appropriations under State law; generally allows small domestic and stock uses, as well as changes and water rights transfers to continue;</li> <li>▪ Tribe will administer Tribal Water Right and State will administer water rights recognized under state law;</li> <li>▪ Tribe and Montana Department of Natural Resources and Conservation will review all Tribal development to determine if it will impact current water users;</li> <li>▪ Any unresolved disputes will be referred to the Crow-Montana Compact Board</li> </ul>	<ul style="list-style-type: none"> <li>▪ Federal: <ul style="list-style-type: none"> <li>- \$461M overall;</li> <li>- \$131.8M for Crow Irrigation Project;</li> <li>- \$246.4M for MR&amp;I System;</li> <li>- \$4.8M for Tribal Compact Administration;</li> <li>- \$20M for Energy Development Projects;</li> <li>- \$47M for MR&amp;I System OM&amp;R;</li> <li>- \$10M for Crow Irrigation Project OM&amp;R</li> </ul> </li> <li>▪ State: <ul style="list-style-type: none"> <li>- \$15M for use and benefit of the Tribe;</li> <li>- The state will also pass through all state production taxes on Crow coal development</li> </ul> </li> </ul>
--	-------------------------------	---	--

<p><b>White Mountain Apache Tribe Water Rights Quantification Act of 2010</b></p> <p>Pub.L. 111-291, 124 Stat. 3064 (2010)</p>	<p>White Mountain Apache Tribe</p> <p>ARIZONA</p>	<ul style="list-style-type: none"> <li>▪ Confirms 2009 White Mountain Apache Tribe (WMAT) Water Rights Quantification Agreement;</li> <li>▪ Confirms Tribe's 1871 priority right to divert 74,000 afa from Salt River;</li> <li>▪ Confirms Tribe's right to additionally divert at least 25,000 afa from Salt River through exchange of CAP water for total of 99,000+ afa;</li> <li>▪ Authorizes leasing of up to 25,000 afa CAP Water annually for 100 years;</li> <li>▪ Requires Secretary to construct reservation wide drinking water project;</li> <li>▪ Confirms Tribe's right to build two reservoirs totaling 18,000 acre-feet storage;</li> <li>▪ Restores Secretarial Power Site Reserves to Tribe;</li> <li>▪ Establishes 12 mile groundwater protection buffer zone along Tribe's northern boundary with National Forest;</li> <li>▪ Confirms Tribe's administrative authority over water use within Reservation;</li> <li>▪ Requires transfer of title to drinking water system to Tribe after three years of operation;</li> <li>▪ Requires United States and State of Arizona to annually firm for Tribe 7,500 acre-feet of WMAT CAP water (3,750 afa each) to M&amp;I priority water for 100 years;</li> <li>▪ Allocates 25,000 afa CAP Water to Tribe in perpetuity</li> </ul>	<ul style="list-style-type: none"> <li>▪ Federal: <ul style="list-style-type: none"> <li>- \$126.2 M mandatory appropriation for dam, treatment plant, pumping stations, 60 mile pipeline for reservation wide drinking water system;</li> <li>- \$24 M mandatory appropriation for Cost Overrun Fund for drinking water system;</li> <li>- \$50 M mandatory appropriation for WMAT Operation, Maintenance and Repair Trust Fund for the drinking water system;</li> <li>- \$2.5 M mandatory appropriation to operate and maintain drinking water system until title to system is transferred by Secretary to WMAT;</li> <li>- \$113.5M authorized for WMAT Settlement Fund, includes \$35M [\$24M Mandatory Appropriation and \$11M authorized] for Cost Overrun Fund;</li> <li>- Unknown cost for United States to annually firm 3,750 afa of WMAT CAP Water to M&amp;I priority water for 100 years;</li> <li>- Funding is indexed in accordance with engineering indices for construction costs</li> </ul> </li> <li>▪ State/Local: <ul style="list-style-type: none"> <li>- \$2M from State for reservation drinking water system;</li> <li>- \$20.7M to annually firm 3,750 afa of WMAT CAP Water to M&amp;I priority water for 100 years</li> </ul> </li> </ul>
<p><b>Aamodt Litigation Settlement Act</b></p> <p>Pub.L. 111-291, 124 Stat. 3064 (2010)</p>	<p>Nambé, Pojoaque, San Ildefonso, and Tesuque Pueblos</p> <p>NEW MEXICO</p>	<ul style="list-style-type: none"> <li>▪ One of the longest running Federal cases in the U.S.;</li> <li>▪ Pueblos will not make priority calls against non-Pueblo groundwater users so long as non-Pueblo users agree to eventually obtain water from a non-Pueblo water utility system when available;</li> <li>▪ If non-Pueblo groundwater use exceeds specified levels, they must reduce use to stay free from priority administration;</li> <li>▪ Provides protection for existing non-Pueblo surface users against future water development by the Pueblos;</li> <li>▪ Codifies water-sharing arrangements between Indian and neighboring communities;</li> <li>▪ To alleviate pressure on the underlying aquifer, the settlement requires the design and construction of a Regional Water System which will import acquired and San Juan Chama Project water from the Rio Grande for use by both Pueblo and non-Pueblo parties;</li> <li>▪ Total allotment of 6,096 afa to the Pueblos (this includes water for existing and future basin use, as well as supplemental, acquired, and reserved Water) from a combination of the Pojoaque Basin and Regional Water System</li> </ul>	<ul style="list-style-type: none"> <li>▪ Federal: <ul style="list-style-type: none"> <li>- \$174.3M total;</li> <li>- \$106.4M construction of the Regional Water System and environmental compliance activities;</li> <li>- 37.5M to help pay Pueblos' share of the cost to operating, maintaining, and replacing Pueblo Water Facilities and the Regional Water System \$15M for Aamodt Settlement Fund;</li> <li>- \$5.4M for acquisition of water rights for the benefit of the Pueblos;</li> <li>- \$5M to pay for the acquisition of Nambé's reserved right for the use of all four Pueblos;</li> <li>- \$5M to pay for the pre-completion operation, maintenance and replacement costs associated with Pueblo Water Facilities of the Regional Water System</li> </ul> </li> <li>▪ State/Local: <ul style="list-style-type: none"> <li>\$116.9M total</li> </ul> </li> </ul>

<p><b>Taos Pueblo Indian Water Rights Settlement Act</b> Pub.L. 111-291, 124 Stat. 3064 (2010)</p>	<p>Taos Pueblo  NEW MEXICO</p>	<ul style="list-style-type: none"> <li>▪ Funds to be used to: (1) acquire additional water rights; (2) plan, develop, and improve water production, farmlands, and water infrastructure; (3) restore and preserve the Buffalo Pasture, a natural wetland which has cultural and religious significance to the Pueblo;</li> <li>▪ Authorize the Pueblo to market 2,215 acre-feet from the San Juan-Chama Project water rights upon the Secretary of Interior's approval;</li> <li>▪ Authorizes right to divert and consume surface waters from the Taos Valley Stream System to irrigate 5,712.78 acres with an aboriginal priority date;</li> <li>▪ Pueblo agrees to limit irrigation to the 2,322 acres currently irrigated, and to extend irrigation only after acquiring and retiring offsetting water right;</li> <li>▪ Gives Pueblo a right to divert and consume 1,600 acre-feet of groundwater for municipal, domestic and industrial uses</li> </ul>	<ul style="list-style-type: none"> <li>▪ Federal: <ul style="list-style-type: none"> <li>- \$124M total, consisting of: (1) \$88M to construct and maintain water infrastructure; and (2) \$36M towards non-Pueblo projects benefited by the agreement, with Federal government providing 75% cost-sharing</li> </ul> </li> <li>▪ State/Local: <ul style="list-style-type: none"> <li>- \$20M contributed overall, including: (1) \$12M for planning, design and construction; and (2) \$8M for long term costs related to non-Pueblo projects benefited by the agreement</li> </ul> </li> </ul>
--	--	--	--

**Abbreviations:**

- afa: acre-feet per annum
- afy: acre-feet per year
- CAP: Central Arizona Project
- M&I: Municipal and Industrial
- OM&R: Ongoing Maintenance and Repair

## **Negotiation Teams**

	<u><b>Negotiation</b></u>	<u><b>Tribe</b></u>	<u><b>Members</b></u>	<u><b>Agency</b></u>
1	<b>Abousleman New Mexico</b>	<b>Pueblos of Jemez, Pueblo of Santa Ana, Pueblo of Zia</b>	John Peterson* Cynthia Abeyta Leann Summers	BOR-Denver FWS-Albuquerque COE-Albuquerque
2	<b>Blackfeet Montana</b>	<b>Blackfeet Tribe (Rocky Mountain)</b>	Doug Oellermann* John Anevski Robbin Wagner Kelly Titensor Brad Bridgewater John Chaffin Jane Cottrell Jody Miller Bill Hansen	BOR-Billings BIA-Billings FWS-Bozeman BOR-Wash DC DOJ-Denver SOL-Billings USFS-Missoula BLM-Missoula NPS-Ft. Collins
3	<b>Fallbrook California</b>	<b>Cahuilla Band of Mission Indians, Pechanga Band of Luiseno Mission Indians, Ramona Band</b>	Doug Garcia* Patrick Barry William Steele Christopher Watson Jon Avery	BIA-Sacramento DOJ-Wash DC BOR-Temecula CA SOL-Wash DC FWS-Calsbad CA
4	<b>Flathead Montana</b>	<b>Confederated Salish &amp; Kootenai Tribes of the Flathead Reservation</b>	Duane Mecham* Megan Estep David Harder Gwen Christensen	SOL-Portland FWS-Denver DOJ-Denver BOR-Yakima
5	<b>Fort Belknap Montana</b>	<b>Gros Ventre and Assiniboine Tribes</b>	John Chaffin Mark Albers Robbin Wagner Douglas Davis Brad Bridgewater John Anevski*	SOL-Billings BLM-Malta FWS-Bozeman BOR-Billings DOJ-Denver BIA-Billings
6	<b>Kerr McGee New Mexico</b>	<b>Pueblos of Acoma and Laguna and Navajo Nation</b>	Greg Mehojah* Brian Parry Brad Bridgewater	SOL-Albuquerque BOR-Salt Lake DOJ-Denver

7	<b>Hualapai Arizona</b>	<b>Hualapai Tribe</b>	Michael Gheleta Ruth Thayer John Buehler Bill Hansen Cathy Wilson John Nystedt Mark D'Aversa Vanessa Boyd-Willard	SOL-Phoenix BOR-Boulder City USFS-Flagstaff NPS-Fort Collins BIA-Phoenix FWS-Flagstaff BLM-Phoenix DOJ-Denver
8	<b>Little Colorado Arizona</b>	<b>Navajo Nation, Hopi Tribe, San Juan Southern Paiute Tribe</b>	Vacant Lesley Fitzpatrick Richard Holbrook Chris Banet Vanessa Boyd-Willard William Wells Vanessa Ray-Hodge Ruth Thayer*** Mike Williams	BOR-Phoenix FWS-Phoenix OSM-Denver BIA-Albuquerque DOJ-Denver BLM-Phoenix SOL-Wash DC BOR-NV USFS-AZ
9	<b>Lummi Washington</b>	<b>Lummi Tribe and Nooksack Tribe</b>	Nolan Shishido* John Peterson	SOL-Portland BOR-Denver
10	<b>Tohono O'odham  Arizona</b>	<b>Tohono O'odham Nation</b>	Cathy Wilson* Katherine Verburg Vanessa Ray-Hodge Patrick Barry Doug Duncan Ruth Thayer	BIA-Phoenix SOL-AZ SOL-AZ DOJ-Wash DC FWS-AZ BOR-Boulder City
11	<b>Tonto Apache</b>	<b>Tonto Apache Tribe</b>	Leslie Myers * Cathy Wilson Raymond Roessel Katherine Verburg Mike Martinez Patrick Barry	BOR-Phoenix BIA-Phoenix BIA-Phoenix SOL FWS DOJ
12	<b>Tule River  California</b>	<b>Tule River Indian Tribe</b>	David Gore* Amy Aufdemberge Patricia Rivera Charles Jachens	BOR-Sacramento SOL-Sacramento BOR-Sacramento BIA-Sacramento
13	<b>Upper Gila River/San Carlos  Arizona</b>	<b>San Carlos Apache Tribe and the Gila River Indian Community</b>	Lawrence Marquez* Cathy Wilson Patrick Barry Jason M. Douglas Katherine Verburg	BOR-Phoenix BIA-Phoenix DOJ-Wash DC FWS-Tucson SOL-Phoenix
14	<b>Umatilla</b>	<b>Confederated Tribes of</b>	Duane Mecham*	SOL-Portland

	<b>Oregon</b>	<b>the Umatilla Indian Reservation</b>	Kevin Martin Guss Guarino Tim Personius Terrance Conlon Mike Carrier	USFS-Oregon DOJ-Colorado BOR-Boise USGS FWS
<b>15</b>	<b>Walker River Nevada</b>	<b>Walker River Paiute Indian Tribe, Bridgeport Indian Colony, Yerington Paiute Tribe</b>	Cathy Wilson** Robert M. Lewis Kenneth Parr	BIA-Phoenix COE-Portland BOR-Nevada
<b>16</b>	<b>Yavapai-Apache Arizona</b>	<b>Yavapai-Apache Nation</b>	Lawrence Marquez* Jean Calhoun Raymond Roessel John Buehler Patrick Barry Bill Hansen Katherine Verburg Vanessa Ray-Hodge	BOR-Phoenix FWS-Tucson BIA-Phoenix USFS-Flagstaff DOJ-Wash DC NPS-Colorado SOL-Phoenix SOL-Phoenix
<b>17</b>	<b>Zuni/Ramah Navajo New Mexico</b>	<b>Pueblo of Zuni, and Ramah Navajo Nation</b>	Greg Mehojah* Ruth Thayer Brad Bridgewater Melissa Mata Debby Lucero	SOL-Albuquerque BOR-Nevada DOJ-Denver FWS-Albuquerque BLM-New Mexico
<b>18</b>	<b>Navajo Utah Utah</b>	<b>Navajo Tribe</b>	Wayne Pullan* Vanessa Ray-Hodge Guss Guarino Megan Estep Sharon Pinto Bill Hansen	BOR-Utah SOL-Wash DC DOJ-Denver FWS-Denver BIA-New Mexico NPS-Colorado

## Implementation Teams

	<u>Team</u>	<u>Tribe</u>	<u>Members</u>	<u>Agency</u>
1	<b>Aamodt</b>  <b>New Mexico</b>	<b>Nambé, Pojoaque, San Ildefonso, and Tesuque Pueblos</b>	Chris Banet* Guss Guarino Art Valverde Greg Mahojah	BIA-Albuquerque DOJ-Denver BOR-Albuquerque SOL-Albuquerque
2	<b>Animas La Plata</b>  <b>Colorado</b>	<b>Ute Mountain Ute &amp; Southern Ute</b>	John Bezdek* Chris Banet Catherine Rugen Ryan Christianson David Campbell	SOL-Wash DC BIA-Albuquerque OST-Albuquerque BOR-Durango FWS-Albuquerque
3	<b>Crow</b>  <b>Montana</b>	<b>Crow Tribe</b>	Douglas Davis* Robbin Wagner John Chaffin David Harder Jerry Case John Anevski	BOR-Billings FWS-Bozeman SOL-Billings DOJ-Denver NPS-Ft Smith BIA-Billings
4	<b>Duck Valley</b>	<b>Shoshone- Paiute Tribes of the Duck Valley Reservation</b>	Cathy Wilson Adrienne Marks Jeff Foss Vanessa Boyd-Willard Grant Vaughn	BIA-Phoenix BOR-Wash DC FWS-Boise DOJ-Denver SOL-Salt Lake
5	<b>Fallon</b>  <b>Nevada</b>	<b>Paiute- Shoshone Tribe of the Fallon Reservation and Colony</b>	Cathy Wilson* Terri Edwards	BIA-Phoenix BOR-Carson
6	<b>Fort Hall</b>  <b>Idaho</b>	<b>Shoshone- Bannock Tribes of the Fort Hall Indian Reservation</b>	Duane Mecham* Matt Howard David Redhorse	SOL-Portland BOR-Boise BIA-Portland
7	<b>Fort McDowell</b>  <b>Arizona</b>	<b>Fort McDowell Indian Community</b>	Lawrence Marquez* Duane Mecham Raymond Roessel	BOR-Phoenix SOL-Portland BIA-Phoenix

8	<b>Gila River Arizona</b>	<b>Gila River Indian Community</b>	Lawrence Marquez* Jonathan Cody Jason Douglas Patrick Barry Katherine Verburg	BOR-Phoenix BIA-Phoenix FWS-Tucson DOJ-Wash DC SOL-Phoenix
9	<b>Navajo-San Juan  New Mexico</b>	<b>Navjo Nation</b>	Chris Banet Patrick Page Gus Guarino David Campbell Robert Hall Dave Trueman	BIA-Albuquerque BOR-Farmington DOJ-Denver FWS-Albuquerque SOL-Albuquerque BOR-Salt Lake
10	<b>Nez Perce Idaho</b>	<b>Nez Perce Tribe</b>	Duane Mecham* Jerry Gregg David Redhorse	SOL-Portland BOR-Boise BIA-Portland
11	<b>Pyramid Lake Nevada</b>	<b>Pyramid Lake Paiute Tribe of the Pyramid Lake</b>	Terri Edwards Cathy Wilson Grant Vaughn	BOR-Carson City BIA-Phoenix SOL-Salt Lake City
12	<b>Rocky Boys Montana</b>	<b>Chippewa Cree</b>	Douglas Davis* John Anevski Robbin Wagner John Chaffin	BOR-Billings BIA-Billings FWS-Bozeman SOL-Billings
13	<b>San Carlos  Arizona</b>	<b>San Carlos Apache Indian Tribe</b>	Vacant Cathy Wilson Vanessa Ray-Hodge Jason Douglas	BOR-Phoenix BIA-Phoenix SOL-Salt Lake FWS-Tucson
14	<b>San Luis Rey   California</b>	<b>La Jolla, Ricon, San Pasquale, Pauma, Pala Bands of Mission Indians</b>	Robert Laidlaw* Bill Steele Amy Dutschke Chris Watson Judy Rabinowitz Matt Landon	BLM-Sacramento BOR-Temecula BIA-Sacramento SOL-Wash DC DOJ-Sacramento USGS-San Diego
15	<b>SAWRSA Arizona</b>	<b>San Xavier and Schuk Toak Districts, Tohono O'Odham Nation</b>	Lawrence Marquez* Katherine Verburg Donna Peterson Jason Douglas	BOR-Phoenix SOL-AZ BIA-Nashville FWS-Tucson

16	<b>Shivwits Utah</b>	<b>Shivwits Band of Paiute Indians</b>	Cathy Wilson*	BIA-Phoenix
17	<b>Taos  New Mexico</b>	<b>Taos Pueblo</b>	John Peterson* George Dennis Brad Bridgewater Chris Banet Greg Mahojah Terina Perez	BOR-Denver FWS-Albuquerque DOJ-Denver BIA-Albuquerque SOL-Albuquerque BOR-Albuquerque
18	<b>Uintah &amp; Ouray Utes  Utah</b>	<b>Ute Indian Tribe of the Uintah &amp; Ouray Reservation</b>	Reed Murray* Johanna Blackhair Grant Vaughn Wayne Pullan Scott Bergstrom Patrick Barry	ASWS-Utah BIA-Utah SOL-Salt Lake BOR-Utah SOL-Wash DC DOJ-Wash DC
19	<b>White Mountain Apache   Arizona</b>	<b>White Mountain Apache Tribe</b>	Patrick Barry* Cathy Wilson Patrick Barry* Katherine Verburg Vanessa Ray-Hodge	SOL-Phoenix BIA-Phoenix BOR-Phoenix SOL-Phoenix SOL-Phoenix
20	<b>Zuni Heaven  Arizona</b>		Chris Banet* Grant Vaughn Lesley Fitzpatrick Leslie Meyers Vanessa Boyd-Willard Adrienne Marks Grant Vaughn	BIA-Albuquerque SOL-Utah FWS-Phoenix BOR-Phoenix DOJ-Denver BOR-Wash DC SOL-Utah

## Assessment Teams

**Havasupai  
Tribe  
Arizona**

**Havasupai Tribe**

Michael Gheleta  
Ruth Thayer  
John Buehler  
Bill Hansen  
Cathy Wilson  
John Nystedt  
Mark D'Aversa  
Vanessa Boyd-Willard

SOL-Phoenix  
BOR-Boulder City  
USFS-Flagstaff  
NPS-Fort Collins  
BIA-Phoenix  
FWS-Flagstaff  
BLM-Phoenix  
DOJ-Denver