



Tribal Water Settlements and Funding for Tribal Water Infrastructure

Presented to WRRRC Annual Conference,

Shared Borders Shared Waters: Working Together in Times of Scarcity

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May 21, 2025

What is the
value of water?
What is the
price of water
security?

“When I was a kid in geography class, I was taught that water always flows downhill. What I’ve learned since is that water flows to money and power, wherever they may be.”

–Navajo Chairman Peterson Zah

Two years after the Supreme Court’s 1976 decision in *Colorado River*, holding that state courts could adjudicate tribal water rights under the McCarran Amendment, the first tribal water rights settlement was ratified by Congress.

Settlements

- Since 1990, DOI policy has been to settle and negotiate, rather than litigate, Indian water rights.
 - As of 2025, 39 Indian water rights settlements have been federally approved, with total estimated costs in excess of \$8.5 billion.
 - Funding for settlements: discretionary vs. mandatory funding
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Tribal Water Rights Settlements

- Flexibility of Settlements to address unique needs of communities, provide funding for projects.
- Require ability to compromise by all parties.
- Require Congressional Approval in most instances.
- Current Congressional climate is a challenge because these settlements usually require appropriation of federal funds.
- Promote cooperation rather than prolonged conflict.



Settlement: Some Benefits

Avoid potentially hostile state courts as decisionmakers

Opportunity to establish water development and water management projects.

May provide an important source of employment for tribal members.

Opportunities for marketing water off-reservation and similar agreements.

Protecting instream flows, tribal fisheries, and wetlands.

Source of funding for tribal and other local infrastructure development.

Establishing water banking provisions and practices.

Set new protocol and precedent for Tribes' cooperation with states and local communities and other stakeholders.

Settlements: Some Drawbacks



Settlements: The Role of the Federal Government

1990: Criteria and Procedures

Cites the trust responsibility of the US over Indian water rights.

- Framework for negotiating settlements in which the US participates
- Confirming benefits received by Indians are equivalent to anything given up
- Confirming Indians obtain “the ability ... to realize value from confirmed water rights resulting from settlement”
- Ensuring appropriate cost-sharing by all parties benefiting from settlement
- Sets out process and roles for federal participation in negotiations

Settlements: The Role of the Federal Government

“Our experience is that in most instances, tribal, state and federal water users are able to negotiate settlements which fairly allocate the available water in those river basins. There are always costs to these settlements that must be shared by the tribal, state and federal parties. We have learned that the most difficult part of achieving a settlement is getting the federal government to pay its fair share of the settlement cost. ”

-John EchoHawk, testimony to House Committee on Natural Resources, April 4, 2019

Recent Federal Funding Initiatives

- Reclamation Water Settlements Fund P.L. 111-11 (2009)
 - \$120M/year funded through FY2029, expenditures through 2034.
 - Prioritizes funding for specific projects/settlements: Navajo-Gallup, New Mexico (Aamodt and Abeyta) Settlements, Montana (Blackfeet, Crow, and Gros Ventre-Assiniboine) Settlements, Arizona (future Navajo) Settlement.
- Infrastructure Investment and Jobs Act (2021)
 - \$2.5 Billion for Indian Water Rights Settlement Completion Fund
 - Funds “shall be used by the Secretary ... for ... funds or accounts authorized to receive discretionary appropriations, or to satisfy other obligations ... under an Indian water settlement approved and authorized ... before the date of enactment of this Act.”
 - Secretary has broader discretion to utilize these funds to “substantially complete” eligible Indian water settlements.

Thank you!

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