

TULE RIVER INDIAN TRIBE SETTLEMENT BRIEFING MATERIALS

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INDIAN WATER RIGHTS SETTLEMENTS ARE NOT “EARMARKS”

American Indian tribes have substantial federal law based claims to water for the support of viable, livable reservation homelands. Early in the 112th Congress, Republicans imposed a ban on “Congressionally Directed Spending” or “earmarks.” These terms are defined in the Standing Rules of the Senate and the Rules of the House of Representatives.¹ As a result of these bans, there is a concern that Indian water rights settlements may be defined as earmarks. That, however, is not and should not be the case. Anti-earmark groups such as the Citizens Against Government Waste and Taxpayers for Common Sense have rejected this argument because of the unique legal nature of Indian water settlements.² Many have shown, as discussed in the points below, that Indian water settlements are not earmarks.

THE FEDERAL GOVERNMENT RECEIVES VALUE AND THERE IS A QUID PRO QUO

- Indian water settlements are not earmarks because Tribes provide waivers of their valid claims to water and damages in exchange for federal funding.³
- Tribes also give up a percentage of their water rights in return for funding.⁴

IF THERE IS A REFUSAL, SETTLEMENTS WILL NO LONGER BE POSSIBLE

- If Congress refuses to pass these settlements as a result of earmark reform, the federal government and non-Indian parties will no longer be able to settle these claims and will be forced to remain in endless litigation that will exceed the cost of settlement.⁵
- Parties that have already agreed on an amicable resolution will be forced into the adversarial Courts to resolve the matter.

¹ Standing Rules of Senate, Rule XLIV, paragraph 5(a); Rules of the House of Representatives, Rule XXI, clause 9(e); see also Ryan A. Smith, *Indian Water Settlements Outlook for the 112th Congress and Beyond*, THE WATER REPORT, August 15, 2011, at 4.

² See Talking Points Memo, 11/24/10, available at: <http://tpmdc.talkingpointsmemo.com/2010/11/did-jon-kyl-score-a-200m-earmark-three-days-after-ban.php>; Taxpayers for Common Sense, WHITE MTN. APACHE TRIBE'S GOLD IS DRINKING WATER (THE WHITE MTN. APACHE INDEPENDENT), 12/10/10, available at: <http://www.taxpayer.net/media-center/article/white-mountain-apache-tribes-gold-is-drinking-water>; see also Evan Glass and Dana Bash, CNN, DEMOCRATS ACCUSE GOP SENATOR OF BREAKING PLEDGE ON EARMARKS, TRUE?, 11/24/10, available at: <http://politicalticker.blogs.cnn.com/2010/11/24/democrats-accuse-gop-senator-of-breaking-pledge-on-earmarks-true/?iref=allsearch>.

³ See INDIAN WATER RIGHTS: PROMOTING THE NEGOTIATION AND IMPLEMENTATION OF WATER SETTLEMENTS IN INDIAN COUNTRY, 112 Cong. 634 (S. Hrg. 112-634), at 29-30 (2012).

⁴ See Smith, *Indian Water Settlements Outlook for the 112th Congress and Beyond*, THE WATER REPORT at 4; see also COHEN'S HANDBOOK OF FEDERAL INDIAN LAW § 19.05, at 1256, n. 95 (Nell Jessup Newton ed., 2012) (“COHEN'S HANDBOOK”) (“Virtually all tribes agree to a lesser quantity of water than they would claim in litigation.”) (citing Indian Water Rights: An Analysis of Current and Pending Indian Water Rights Settlements pt. IV (Bur. of Indian Affairs 1996)).

⁵ See INDIAN WATER RIGHTS: PROMOTING THE NEGOTIATION AND IMPLEMENTATION OF WATER SETTLEMENTS IN INDIAN COUNTRY, 112 Cong. 634 (S. Hrg. 112-634), at 29 (“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.”); Smith, *Indian Water Settlements Outlook for the 112th Congress and Beyond*, THE WATER REPORT at 4; see also Taxpayers for Common Sense, White Mtn. Apache Tribe's Gold is Drinking Water (The White Mtn. Apache Independent), 12/10/10, available at: <http://www.taxpayer.net/media-center/article/white-mountain-apache-tribes-gold-is-drinking-water> (“The cost of litigation, I'm guessing, would be in the millions.”).

IF THERE IS NO SETTLEMENT, COURTS COULD AWARD MORE AND THERE WOULD BE NO CERTAINTY

- It is clear that Tribes have long had *Winters*⁶ rights to water. If there is no settlements a Court could award a Tribe more water and federal money than it would have received through a congressional settlement.⁷
- There would be further conflicts with other non-Indian water users.
- There would be potential disruptions of non-Indian water supplies and therefore uncertainty for all water users in the area, including major agricultural, industrial, residential, and municipal uses.⁸

THIS IS A NATIONAL MATTER, NOT A LOCAL MATTER

- The underlying premise of the *Winters* doctrine is the government's promise, implicit in the establishment of the reservations, to make them livable and to enable the tribes to become self-sustaining.⁹
- As a result, settling Indian water rights is national in scope and something each administration has looked to do nationally, without regard to individual circumstance.¹⁰
- This is a broad national imperative that the U.S. Government, as trustee, has an obligation to do.¹¹
- Congress has specifically recognized the federal government's "trust responsibilities to protect Indian water rights and assist Tribes in the wise use of those resources."¹²

EXAMPLES WHERE THE HOUSE FOUND SETTLEMENTS NOT TO BE EARMARKS

- Taos Pueblo Indian Water Rights Settlement Act¹³
- Aamodt Litigation Settlement Act¹⁴
- Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act¹⁵
- Soboba Band of Luiseño Indians Settlement Act¹⁶

CONCLUSION

Indian water settlements are not earmarks because the federal government receives value and consideration, there is a legal and moral obligation to settle, this is a national matter, and Congress has not identified such settlements as earmarks. Further, if there are no settlements then Tribes will be forced to litigate and potentially obtain greater sums of money and water, and other major non-Indian uses could be interrupted and be uncertain.

⁶ *Winters v. United States*, 207 U.S. 564 (1908).

⁷ Smith, *Indian Water Settlements Outlook for the 112th Congress and Beyond*, THE WATER REPORT at 4.

⁸ See INDIAN WATER RIGHTS: PROMOTING THE NEGOTIATION AND IMPLEMENTATION OF WATER SETTLEMENTS IN INDIAN COUNTRY, 112 Cong. 634 (S. Hrg. 112-634), at 30 ("Litigated outcomes could also provide Tribes with senior water rights that could displace established state-issued water rights that are essential to meet non-Indian industrial, residential, and municipal needs in the West. 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."); Smith, *Indian Water Settlements Outlook for the 112th Congress and Beyond*, THE WATER REPORT at 4.

⁹ COHEN'S HANDBOOK §19.06 at 1257.

¹⁰ See INDIAN WATER RIGHTS: PROMOTING THE NEGOTIATION AND IMPLEMENTATION OF WATER SETTLEMENTS IN INDIAN COUNTRY, 112 Cong. 634 (S. Hrg. 112-634), at 21, 29.

¹¹ *Id.*

¹² Western Water Policy Review Act of 1992, Pub. L. No 102-575, title XXX, § 3002(9), *reprinted at* 42 U.S.C. § 371.

¹³ H.R. Rep. No. 111-395, at 18 (2010) ("H.R. 3254 does not contain any congressional earmarks ...").

¹⁴ H.R. Rep. No. 111-390, at 27 (2010) ("H.R. 3342 does not contain any congressional earmarks ...").

¹⁵ H.R. Rep. No. 110-815, at 13 (2008) ("H.R. 5293 does not contain any congressional earmarks ..."); *see also* 155 Cong. Rec. S162-01, at 2.

¹⁶ H.R. Rep. No. 110-649, at 13 (2008) (same).



INDIAN WATER RIGHTS SETTLEMENTS

Settlements Generally

- Secure Tribal water rights
- Fulfill the promise of the United States to tribes that Indian reservations would provide a permanent homeland suitable for living
- End decades of controversy and contention among tribes and neighboring communities
- Provide certainty and foster cooperation in the management of water resources
- Are a high priority for this Administration¹
- Waive portions of Tribal rights to water and damages in exchange for guarantees of smaller quantities of water and economic assistance in developing water resources²
- Direct the Secretary of Interior to sign the settlement agreement
- Direct the Secretary of Interior to implement the settlement agreement

Appropriations

- All of the most recent settlements include mandatory direct spending, compliant with PAYGO³
- Indian water settlements are not earmarks⁴
- All of the settlements authorize funds either specifically for water development, management projects, or economic development.⁵

Legal Basis

- Indian water rights have long been established under the *Winters* doctrine.⁶
- Under *Winters*, Indian Tribes are entitled to sufficient water “to satisfy the future, as well as the present, needs of the Indian Reservations” and the United States reserved at least enough water to “irrigate all the practicably irrigable acreage on the reservations.”⁷

¹ See INDIAN WATER RIGHTS: PROMOTING THE NEGOTIATION AND IMPLEMENTATION OF WATER SETTLEMENTS IN INDIAN COUNTRY, 112 Cong. 634 (S. Hrg. 112-634), at 5 (2012).

² See Cohen’s Handbook of Federal Indian law § 19.05, at 1250, n. 54 (Nell Jessup Newton ed., 2012) (“COHEN’S HANDBOOK”).

³ Ryan A. Smith, *Indian Water Settlements Outlook for the 112th Congress and Beyond*, The Water Report, August 15, 2011, at 3-4.

⁴ 112 Cong. 634 (S. Hrg. 112-634) at 8-9, 20-21, 29-31; see also Ryan A. Smith, *Indian Water Settlements Outlook for the 112th Congress and Beyond*, THE WATER REPORT, August 15, 2011, at 4.

⁵ COHEN’S HANDBOOK, § 1905, at 1250, n. 55.

⁶ See *Winters v. United States*, 207 U.S. 564 (1908).

⁷ *Arizona v. California*, 373 U.S. 546, 600-601 (1963).

S. HRG. 112-634

INDIAN WATER RIGHTS: PROMOTING THE
NEGOTIATION AND IMPLEMENTATION OF
WATER SETTLEMENTS IN INDIAN COUNTRY

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

MARCH 15, 2012

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stantiate the United States' claims for Indian trust water rights. For fiscal years 2010 to 2012, funding for this program averaged around \$8 million. For FY 2013, the budget request is for \$8.6 million.

Another program within the Department that provides assistance for Indian water rights claims is the Native American Affairs Program (NAAP) within the Bureau of Reclamation (Reclamation). NAAP provides technical support for Indian water rights settlements, and to assist tribal governments to develop, manage and protect their water and related resources. This office also provides policy guidance for Reclamation's work with tribes throughout the organization in such areas as the Indian trust responsibility, government-to-government consultations, and Indian self-governance and self-determination. For fiscal years 2010 to 2012, funding for this program averaged around \$6.8 million. For FY 2013, the budget request is for \$6.4 million.

One of the questions that we must wrestle with, and that we would like to engage this Committee and other stakeholders in further discussions of, is how to fund Indian water rights settlements going forward. Until recently, water rights settlements generally were funded through the Department's discretionary appropriations. Work to be performed under the settlements by Reclamation has come out of Reclamation's budget, and other settlement costs generally have come out of the BIA's budget.

Recognizing that discretionary budgets have been coming under increasing pressure in these tight budget times, Congress recently has included provisions for a variety of innovative funding mechanisms in water rights settlements. The Claims Resolution Act, for example, provided approximately \$650 million of direct funding for the water rights settlements enacted therein, plus an additional \$180 million of funding for the Navajo-San Juan settlement enacted in Pub. L. No. 111-11 (Mar. 30, 2009). Consistent with the budget rules established by the Statutory Pay-As-You-Go Act of 2010 (PAYGO), Pub. L. No. 111-139 (Feb. 12, 2010), Congress must provide for offsets of direct spending contained in legislation in order to avoid increases in projected deficits, and all spending contained in the Claims Resolution Act was fully offset.

Another approach that Congress took in section 10501 of Pub. L. No. 111-11 (Mar. 20, 2009) was the creation of the Reclamation Water Settlement Fund. Starting in 2020, this fund will provide a limited level of funding in Indian water rights settlements enacted by Congress involving a role for Reclamation. Because funds from this source are direct spending not subject to further appropriation, increased use of this fund would require offsets to meet the requirements of statutory PAYGO. Congress also provided some funding for future Indian water rights settlements through provisions of the Arizona Water Rights Settlement Act of 2004, Pub. L. No. 108-451 (Dec. 10, 2004), providing that \$250 million be made available from the Lower Colorado River Basin Development Fund to fund Indian water rights settlements in the State of Arizona. Again, since it provides for direct spending, increased use of this fund would require offsets to meet the requirements of statutory PAYGO.

Another issue that settlements face is the need to raise awareness of the value of these settlements to all sides, including at the federal level. Some in Congress are now questioning whether Indian water rights settlements represent an overall benefit to taxpayers when balanced against the potential consequences and costs of continued litigation over Indian water rights claims. In the settlements that this Administration has supported, and that we would support in the future, I can tell you that we believe the answer is a resounding yes. The consequences and costs of litigation are different for every particular settlement and, as discussed in the Administration's testimony presented on Indian water rights settlement bills in the last Congress, are not always susceptible to simple quantification. They include the rancor between neighbors that contested litigation can cause, which may last long after the water rights have been adjudicated, as well as the prolonged uncertainty due to the time it takes to litigate complex stream adjudications. Both rancor and uncertainty can have substantial economic consequences for both Indian and non-Indian communities, preventing needed investments in businesses and infrastructure that require reliable water supplies in order to function.

To be clear, Indian water rights settlements should not be categorized as "earmarks." The U.S. Supreme Court's *Winters* doctrine establishes the senior rights of Indian tribes to water to fulfill reservation purposes. Water rights and related resources are trust assets of tribes, and water rights settlements enable the Federal Government to protect and enhance those assets. As described in this testimony, the Department has an established program that guides the process of negotiating Indian water rights settlements that satisfy federal criteria. Under the *Criteria and Procedures*, the Administration carries out careful analysis of the appropriateness of the costs of the settlement. Our support is not provided lightly; we have come

to this Committee and testified regarding our concerns with proposed water rights settlements that we do not find to have met our requirements for reducing costs, including appropriate cost shares, and producing results. Settlements that are approved through this process are not earmarks.

V. Conclusion

State and local governments, as well as Indian tribes, favor water rights settlement because they can be directly involved in shaping their own destinies, rather than having their fate to be decided by the stroke of a judge's pen. The Federal Government should continue to encourage these local efforts to resolve outstanding issues and establish water management regimes that can be the basis for, rather than a drag upon, strong local economic development.

Protracted litigation does not, ultimately, provide solutions to the real problems that communities are facing. Indian water rights settlements can spur desperately needed cooperation. From shortage sharing to water marketing to protection of instream flows, settlements allow people to identify the needed mechanisms to enable investments in a common future. In addition to establishing the basis for the courts to decree rights, these settlements often include infrastructure projects allowing tribes to make use of their water. Recent settlements have provided for projects that will provide desperately needed access to safe drinking water on reservations. These projects can improve public health, providing basic foundations for improving health indicators such as infant mortality rates, and stimulating and sustaining economic development and growth in tribal communities.

According to the Indian Health Service (IHS), today, less than 1 percent of the population in the United States is without access to safe water, while more than 12 percent of American Indian and Alaska Native homes are without access to safe water.¹ As a result, for the young and old, water-hauling is a way of life on some reservations—a full-time job that limits economic opportunities and perpetuates a cycle of poverty. In these communities, tribal members routinely truck water from storage tanks at stock ponds, or other non-potable or contaminated sources, raising serious public health concerns. According to IHS, many of the homes without access to safe water are at an extremely high risk for gastrointestinal and respiratory diseases at rates similar to developing countries.²

In conclusion, I want to underscore how important this Administration believes these settlements to be. Secretary Salazar is a strong supporter of Indian water rights settlements, and he has been personally involved in efforts to make these settlements a reality. As discussed in this testimony, Indian water rights settlements, when they are done right, produce critical benefits for tribes and bring together communities to improve water management practices in some of the most stressed water basins in the country. Moreover, Indian water settlements ensure that Indian people have safe, reliable water supplies and the means to develop their homelands. I hope that I have a chance to work with this Committee and with all the stakeholders assembled today on additional settlements that can accomplish these worthy goals.

The CHAIRMAN. Thank you. May I ask you to wait a few minutes here? I would like to, before moving to Mr. Laverdure, to ask the Vice Chairman of the Committee and Senator Udall for his opening statement. And we will proceed back to Mr. Laverdure.

STATEMENT OF HON. JOHN BARRASSO, U.S. SENATOR FROM WYOMING

Senator BARRASSO. Thank you, Mr. Chairman. I am very pleased to be with you and thank you for holding this hearing on Indian water settlements. Water is a vital resource, as we know, in any community, including Indian communities. We all know that a community cannot thrive without an adequate, reliable supply of water.

¹ See Testimony of Robert McSwain, Deputy Director, Management Operations, Indian Health Service, before the United States Senate Committee on Banking and Housing, Oversight Hearing on: *Coordination between Federal Agencies Involved in Native American Housing and/or Infrastructure Development* (Mar. 8, 2012) at 4.

² *Id.*

role the Federal Government can and is willing to play. That is part, of what we have tried to do, not only in the negotiations that we have been intimately involved in, but also for those negotiations that are subsequently occurring that they know what the expectations are with respect to waivers, with respect to non-federal contribution, with respect to parameters associated with the federal contribution.

So I think those expectations and then involving a federal negotiation team as early as possible in that process really starts to build some efficiency into the process. And of course, part of getting a federal negotiating team is the representation and the understanding that all the parties that need to be involved in the process are willing to negotiate, actively want to see a negotiation. That is one of our criteria for putting together a team. And that is just incredibly important to the process, to get everybody at the table as early as possible.

The CHAIRMAN. Thank you for your response.

Mr. Laverdure, early financial support is an essential ingredient to initiate settlement questions. What federal resources are available to tribes in the early stages of water settlements, and considering the economic conditions of the Country, what alternative sources of seed funding are or should be made available?

Mr. LAVERDURE. Thank you, Chairman Akaka.

In terms of the funding that is out there, we have really three sources. The first is water resources planning, the second is water rights litigation and negotiation and then the final is the implementation. I think you heard quite a bit about it from the Commissioner on implementation. So I will focus on the first two.

Currently, and for our fiscal year 2013 budget, we have \$5.73 million in water resources planning requests and then in the litigation-negotiation pile, we have about \$8.6 million, for a total of \$14.3 million. As you heard, the number of teams with up to 16 appointed negotiating teams, those dollars are made available depending on which phase of the settlement that they may be in. Sometimes it may be very early on, where they are going to need an assessment. They will then utilize the funds on a competitive grant basis to hire technical experts to generate the studies, reports, the hydrology, the water allocations, et cetera, so that they can begin the next phase, which would be the negotiation phase.

That is when you have the second pot of funds. Typically there is a variety of factors that are put into the grant process. But they have pending legislation or longstanding litigation, there is a priority that is provided. So a number of other factors are taken into account. But those are the primary pools of funds to start and then execute negotiations for that senior tribal water right.

The CHAIRMAN. Thank you very much for that. That is always good information that tribes can seek to use here.

Let me ask Secretary Hayes, can you reiterate why Indian water settlements are not considered earmarks?

Mr. HAYES. Gladly, Senator. And I address this in my written testimony. We clearly state in that written testimony, which you have accepted for submittal, thank you, that water rights settlements are not earmarks. Why? We are resolving fundamental legal rights of American citizens. We are doing so because we have a

trust responsibility. We have a special trust responsibility and it leads us to fulfill our legal obligations and our moral obligations. We are looking to do that across the Nation, without regard to locality, without regard to individual circumstance. This is a broad, national imperative that we have in the U.S. Government as trustee.

So there is no earmark quality to Indian water rights settlements, in our judgment.

The CHAIRMAN. Thank you. Thank you very much for that explanation.

I would like to ask Senator Udall whether you have any further questions.

Senator UDALL. I don't have any additional questions. Thank you, Mr. Chairman.

The CHAIRMAN. I want to thank you so much. Your responses will be helpful. And of course, each of us has said, there is so much more to do on this. A kind of problem we have had in the past was, we have let it go. And before you know it, a century has gone by. We need to do better than that, and really deal with some of the issues that are preset. That is what I am trying to do, is bring them up and flush it out and try to find answers as to how we can do it.

Of course, funding has been always a basic resource that is needed. Maybe it is about time we not only depend on the Federal Government to come across with those. But maybe we need to leverage other resources as well, in trying to deal with these issues and challenges that we will be facing.

But we have to work on this together. I am so glad that we have personnel and people whose hearts are in the right place, and we need to just continue to press for solutions to these and to make it clear, so we know what the problem is, and try to deal with it.

So it has been good to hear from you about, from your experiences and your responsibilities, what is the best way of dealing with this. So again, I am saying all of this to say thank you so much, mahalo nui loa for your efforts and I look forward to working with you. Thank you.

Mr. HAYES. Mr. Chairman, I want to thank you for your leadership, and Senator Udall, for your leadership in these matters. We cannot do this without your leadership and we very much thank you again for calling this hearing and providing us the opportunity to remind the American people collectively of what our mission is and what we must do. Thank you.

The CHAIRMAN. Thank you very much. Thank you, Del and Mike.

Now I would like to invite the second panel to the witness table. Mr. John Echohawk, who is Executive Director of Native American Rights Fund. And Ms. Maria O'Brien, Chair of the Legal Committee of the Western States Water Council. I want to welcome both of you and look forward to working with you. We would like to hear your testimony. So I am going to ask Mr. Echohawk, thank you very much, you have quite a huge and great background over the years. We always look forward to your comments and look forward to that today. So will you please proceed with your testimony?

V. 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 water rights adjudications involving tribes. This means that the Federal Government has a fiduciary duty to protect tribal water rights and has a responsibility 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/or 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 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 timely, fair and honorable resolutions of tribal claims. Such an approach not only serves the interest 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 experts to undertake the complex and costly legal and technical studies that are a mandatory prerequisite to any negotiation. States and tribes also rely on federal negotiating teams under the Indian Water Rights Office within the Department of the Interior, which provide one federal voice and expedites the settlement process. Failing to adequately fund these programs hinders the resolution of tribal claims, thereby prolonging uncertainty regarding state-issued rights. Thus, Congress and the Administration should fully fund the Indian Water Rights Office and provide tribes 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 often require the construction of water storage and delivery projects to augment or allow existing water supplies to be used more advantageously by all water users. These projects generally do not reallocate water from existing non-Indian water users, but allow tribes to develop additional water supplies in exchange for foregone claims. 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 also acknowledged that they are willing to 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 their water rights.

C. Appropriating Funding For Settlements

Congressionally-authorized settlements are receiving funding, but there is a need for increasing appropriations. Moreover, the House Republican Conference adopted a moratorium on earmarks in the 112th Congress that apparently includes Indian water rights settlements. Settlements are not earmarks benefiting a specific state or congressional district, but represent trust obligations of the United States. They involve a quid-pro-quo in which tribes receive federal funding in exchange for waivers of tribal breach of trust 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 tribal or essential Interior Department program. Consequently, Congress should consider the unique legal nature of settlements, namely that the United States is receiving something of value in exchange for appropriating settlement funds and fulfilling its tribal trust responsibility, thereby avoiding potentially costly litigation.

D. The Reclamation Water Settlements Fund

In addition to the tool of direct appropriations which Congress has available to it to fund Indian Water Rights settlements, Title X of the Omnibus Public Lands Management Act, which became law in 2009, established a Reclamation Water Settlements Fund in the U.S. Treasury to finance Reclamation projects that are part of Congressionally-approved Indian water right settlements. The Fund will provide up to \$120 million per year for ten years with money transferred from the Reclamation Fund and prioritized for settlements in New Mexico, Montana, and Arizona. However, the Fund will not begin receiving money until FY 2020, leaving a significant gap in funding for various projects, the costs of which may increase significantly by FY 2020.

E. The Emergency Fund for Indian Safety and Health (EFISH)

One way Congress might address this gap is by appropriating money to the Emergency Fund for Indian Safety and Health (EFISH), authorized by Title VI of the United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act 2008. EFISH currently authorized about \$600 million for water supply projects that are part of Indian water settlements approved by Congress over a five-year period beginning October 1, 2008. This funding is above amounts made available under any other provision of law.

EFISH funding is only authorized through FY 2012, and the Administration has not yet requested money for EFISH in its budget requests. It is still in the process of creating a required spending plan for these funds. One way to address the absence of a federal spending plan might be for Congress to promptly appropriate authorized money into Reclamation's Settlements Fund, which already prioritizes funding in specified amounts for approved settlements.

VI. The Consequences of not Funding Settlements

If settlements are not authorized and funded, tribes may have no choice but to litigate their water claims. This is problematic because it may give them "paper rights," but may not provide them with a way of turning those rights into "wet water." Litigated outcomes could also provide tribes with senior water rights that could displace established state-issued water rights that are essential to meet non-Indian industrial, residential, and municipal needs in the West.

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 little 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.

Montana has also reached settlements with the Fort Belknap and Blackfeet Tribes as part of a state-wide adjudication process aimed at resolving its federal reserved water rights claims by 2020. 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 increasing water demands, decreasing water supplies, and other factors will only increase the costs of resolving these claims.

VII. Conclusion

The national obligation to Indian water rights settlements is a finite list that grows shorter with each settlement. Nevertheless, the cost of implementing them will only continue to rise. Postponing this duty only increases its costs to the Fed-

eral Government, perpetuates hardships to Indians, and creates uncertainty for all water users, hindering effective state and regional water planning and development and economic investment and security. The WSWC appreciates the opportunity to testify on this important matter and looks forward to working with the Committee and Congress to support the negotiated resolution of Indian water rights claims.

Attachment

RESOLUTION OF THE WESTERN STATES WATER COUNCIL (POSITION NO. 336)

IN SUPPORT OF INDIAN WATER RIGHTS SETTLEMENTS

IDAHO FALLS, IDAHO—OCTOBER 7, 2011

WHEREAS, the Western States Water Council, an organization of eighteen western states and adjunct to the Western Governors' Association, has consistently supported negotiated settlement of Indian water rights disputes; and

WHEREAS, the public interest and sound public policy require the resolution of Indian water rights claims in a manner that is least disruptive to existing uses of water; and

WHEREAS, negotiated quantification of Indian water rights claims is a highly desirable process which can achieve quantifications fairly, efficiently, and with the least cost; and

WHEREAS, the advantages of negotiated settlements include: (i) the ability to be flexible and to tailor solutions to the unique circumstances of each situation; (ii) the ability to promote conservation and sound water management practices; and (iii) the ability to establish the basis for cooperative partnerships between Indian and non-Indian communities; and

WHEREAS, the successful resolution of certain claims may require "physical solutions," such as development of federal water projects and improved water delivery and application techniques; and

WHEREAS, the United States has developed many major water projects that compete for use of waters claimed by Indians and non-Indians, and has a responsibility to both to assist in resolving such conflicts; and

WHEREAS, the settlement of Native American water claims and land claims is one of the most important aspects of the United States' trust obligation to Native Americans and is of vital importance to the country as a whole and not just individual tribes or States; and

WHEREAS, the obligation to fund resulting settlements is analogous to, and no less serious than the obligation of the United States to pay judgments rendered against it; and

WHEREAS, Indian water rights settlements involve a waiver of both tribal water right claims and tribal breach of trust claims that otherwise could result in court-ordered judgments against the United States and increase costs for federal taxpayers; and

WHEREAS, current budgetary pressures and legislative policies make it difficult for the Administration, the states and the tribes to negotiate settlements knowing that they may not be funded because either they are considered earmarks or because funding must be offset by a corresponding reduction in some other expenditure, such as another tribal or essential Interior Department program;

NOW, THEREFORE, BE IT RESOLVED, that the Western States Water Council reiterates its support for the policy of encouraging negotiated settlements of Indian water rights disputes as the best solution to a critical problem that affects almost all of the Western States; and

BE IT FURTHER RESOLVED, that the Western States Water Council urges the Administration to support its stated policy in favor of Indian land and water settlements with a strong fiscal commitment for meaningful federal contributions to these settlements that recognizes the trust obligations of the United States government; and

BE IT FURTHER RESOLVED, that Congress should expand opportunities to provide funding for the Bureau of Reclamation to undertake project construction related to settlements from revenues accruing to the Reclamation Fund, recognizing the existence of other legitimate needs that may be financed by these reserves; and

BE IT FURTHER RESOLVED, that Indian water rights settlements are not and should not be defined as Congressional earmarks; and

BE IT FURTHER RESOLVED, that steps be taken to ensure that any water settlement, once authorized by the Congress and approved by the President, will be funded without a corresponding offset, including cuts to some other tribal or essential Interior Department program.

The CHAIRMAN. Thank you. Thank you very much, Chairwoman. Let me ask you each a question and I will defer to Senator Udall. Mr. Echohawk, in your testimony you mention that NARF has been involved in tribal water rights settlements for decades. Can you please discuss how settlements have evolved over time with respect to funding, cost and the parties involved? And has the process improved or not improved?

Mr. ECHOHAWK. Over the 30 years that we have worked with the Western States Water Council on this issue, we have always found that the funding is the most difficult issue. And of course over that period of time, the Federal Government has gone through a lot of ups and downs in terms of its budget, the monies that are available and funding mechanisms to fund these settlements.

I remember one of the first battles that we fought was basically trying to make sure that funds that went to the tribal water rights settlements were not taken directly out of the Bureau of Indian Affairs budget, where basically the tribes had to fund their own settlements. So that was one of the battles that we had to fight early on. It just kind of progressed over the years. But finding the funding has always been the issue. It is frankly still the major issue today.

The CHAIRMAN. I see. We are always looking for a solution to that. I would take that we still are looking for a better solution. Maybe together we can try to work this out.

Ms. O'Brien, you mentioned that differences in the way various Administration have interpreted the federal trust responsibility have prolonged the settlement process. Given your experience working in the field, what would you recommend to shorten the lengthy negotiation process?

Ms. O'BRIEN. Mr. Chairman, I think that in his testimony, or in answer to a question, Commissioner Connor touched upon some of the essentials to the answer to your question. I think for purposes of State and all stakeholders participating in the negotiation process, clarity from the federal teams, from the Administration in terms of what will be appropriate and supportable in terms of settlements from the beginning is absolutely essential. Full engagement of federal teams from the commencement, with clear communication throughout the various arms of the Federal Government is absolutely essential.

So I think it is both clarity and engagement. Some of that requires funding, some of that requires clear policy that is not just clear internally to the Federal Government and the Administration, but clear to stakeholders who are trying to work collaboratively and cooperatively with the federal teams.

The CHAIRMAN. Thank you for your responses. Senator Udall?

Senator UDALL. Thank you, Chairman Akaka. It is great to have two very able witnesses with us, and Maria O'Brien, great to have you here. I know you have worked extensively in this area, and you are with a New Mexico firm. I was reading through your bio here,

111TH CONGRESS }
2d Session } HOUSE OF REPRESENTATIVES { REPORT
111-390

AAMODT LITIGATION SETTLEMENT ACT

JANUARY 12, 2010.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3342]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 3342) to authorize the Secretary of the Interior, acting through the Commissioner of Reclamation, to develop water infrastructure in the Rio Grande Basin, and to approve the settlement of the water rights claims of the Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Aamodt Litigation Settlement Act”.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—POJOAQUE BASIN REGIONAL WATER SYSTEM

Sec. 101. Authorization of Regional Water System.
Sec. 102. Operating Agreement.
Sec. 103. Acquisition of Pueblo water supply for the Regional Water System.
Sec. 104. Delivery and allocation of Regional Water System capacity and water.
Sec. 105. Aamodt Settlement Pueblos’ Fund.
Sec. 106. Environmental compliance.
Sec. 107. Authorization of appropriations.

TITLE II—POJOAQUE BASIN INDIAN WATER RIGHTS SETTLEMENT

Sec. 201. Settlement Agreement and contract approval.
 Sec. 202. Environmental compliance.
 Sec. 203. Conditions precedent and enforcement date.
 Sec. 204. Waivers and releases.
 Sec. 205. Effect.

SEC. 2. DEFINITIONS.

In this Act:

(1) AAMODT CASE.—The term “Aamodt Case” means the civil action entitled State of New Mexico, ex rel. State Engineer and United States of America, Pueblo de Nambe, Pueblo de Pojoaque, Pueblo de San Ildefonso, and Pueblo de Tesuque v. R. Lee Aamodt, et al., No. 66 CV 6639 MV/LCS (D.N.M.).

(2) ACRE-FEET.—The term “acre-feet” means acre-feet of water per year.

(3) AUTHORITY.—The term “Authority” means the Pojoaque Basin Regional Water Authority described in section 9.5 of the Settlement Agreement or an alternate entity acceptable to the Pueblos and the County to operate and maintain the diversion and treatment facilities, certain transmission pipelines, and other facilities of the Regional Water System.

(4) CITY.—The term “City” means the city of Santa Fe, New Mexico.

(5) COST-SHARING AND SYSTEM INTEGRATION AGREEMENT.—The term “Cost-Sharing and System Integration Agreement” means the agreement to be executed by the United States, the State, the Pueblos, the County, and the City that—

(A) describes the location, capacity, and management (including the distribution of water to customers) of the Regional Water System; and

(B) allocates the costs of the Regional Water System with respect to—

(i) the construction, operation, maintenance, and repair of the Regional Water System; and

(ii) rights-of-way for the Regional Water System; and

(iii) the acquisition of water rights.

(6) COUNTY.—The term “County” means Santa Fe County, New Mexico.

(7) COUNTY DISTRIBUTION SYSTEM.—The term “County Distribution System” means the portion of the Regional Water System that serves water customers on non-Pueblo land in the Pojoaque Basin.

(8) COUNTY WATER UTILITY.—The term “County Water Utility” means the water utility organized by the County to—

(A) receive water distributed by the Authority; and

(B) provide the water received under subparagraph (A) to customers on non-Pueblo land in the Pojoaque Basin.

(9) ENGINEERING REPORT.—The term “Engineering Report” means the report entitled “Pojoaque Regional Water System Engineering Report” dated September 2008 and any amendments thereto, including any modifications which may be required by section 101(d)(2).

(10) FUND.—The term “Fund” means the Aamodt Settlement Pueblos’ Fund established by section 105(a).

(11) OPERATING AGREEMENT.—The term “Operating Agreement” means the agreement between the Pueblos and the County executed under section 102(a).

(12) OPERATIONS, MAINTENANCE, AND REPLACEMENT COSTS.—

(A) IN GENERAL.—The term “operations, maintenance, and replacement costs” means all costs for the operation of the Regional Water System that are necessary for the safe, efficient, and continued functioning of the Regional Water System to produce the benefits described in the Settlement Agreement.

(B) EXCLUSION.—The term “operations, maintenance, and replacement costs” does not include construction costs or costs related to construction design and planning.

(13) POJOAQUE BASIN.—

(A) IN GENERAL.—The term “Pojoaque Basin” means the geographic area limited by a surface water divide (which can be drawn on a topographic map), within which area rainfall and runoff flow into arroyos, drainages, and named tributaries that eventually drain to—

(i) the Rio Pojoaque; or

(ii) the 2 unnamed arroyos immediately south; and

(iii) 2 arroyos (including the Arroyo Alamo) that are north of the confluence of the Rio Pojoaque and the Rio Grande.

(B) INCLUSION.—The term “Pojoaque Basin” includes the San Ildefonso Eastern Reservation recognized by section 8 of Public Law 87-231 (75 Stat. 505).

EARMARK STATEMENT

H.R. 3342 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

ADDITIONAL VIEWS

The Aamodt Litigation Settlement Act (H.R. 3342) would quantify the Indian water rights of the Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque ("Four Pueblos") and end 43 years of Federal litigation involving over 2,500 defendants (State of New Mexico, ex rel. State Engineer v. Aamodt). The Settlement will also bring long-term certainty and stability to Pueblo and non-Pueblo water users in the Pojoaque Basin.

H.R. 3342 would ratify the comprehensive settlement agreement and related cost-sharing agreements, entered into by the State of New Mexico, the Four Pueblos, other local governments, and individual water users dated May 2006. The settlement agreement evolved out of the efforts of the Federal Indian Water Settlement Negotiations Team, which included the Department of the Interior and the Department of Justice.

Similar to the Taos Pueblo Settlement Act, H.R. 3342 reflects significant work, time and diligent efforts by the Four Pueblos and their local, state and Federal partners. This settlement agreement is consistent with the Administration's views of supporting negotiations as an inherent responsibility as Federal trustee to Indian tribes and their members.

Included with these views is a November 4, 2009, letter submitted by the Northern Pueblos Tributary Association ("Association") in response to the October 22, 2009, letter to the Subcommittee on Water and Power by Commissioner Michael L. Connor regarding H.R. 3342.

Responding to the Commissioner's concern that unanticipated cost increases and the legislation's budget authorization, the Association stated that the cost-sharing agreement should be executed as a condition of beginning construction—a requirement already included in H.R. 3342 at section 101(d)(1).

The Commissioner also suggested that Bureau of Reclamation be required to consult with the Four Pueblos and the other non-Federal parties, a requirement the Association and the Committee believe is already incumbent on the Bureau. Further, as the Association points out, this consultation will present the best opportunity to discuss any change in the allocation of cost overruns which may arise.

The Association agreed to language changes proposed by the Commissioner as regards access to San Juan Chama project water to fulfill the terms of the settlement by inserting the word "construction" before the word "cost" in Section 103(e)(1)(C), as well as a clarification of the Secretary's authorization to pay operation, maintenance, and replacement costs for the regional water systems in Section 107(c).

In summary, the Aamodt Litigation Settlement Act resolves longstanding water-related claims by the Four Pueblos, reduces the

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TAOS PUEBLO INDIAN WATER RIGHTS SETTLEMENT ACT

JANUARY 12, 2010.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3254]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 3254) to approve the Taos Pueblo Indian Water Rights Settlement Agreement, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Taos Pueblo Indian Water Rights Settlement Act”.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Purpose.
- Sec. 3. Definitions.
- Sec. 4. Pueblo rights.
- Sec. 5. Pueblo water infrastructure and watershed enhancement.
- Sec. 6. Taos Pueblo Water Development Fund.
- Sec. 7. Marketing.
- Sec. 8. Mutual-Benefit Projects.
- Sec. 9. San Juan-Chama Project contracts.
- Sec. 10. Authorizations, ratifications, confirmations, and conditions precedent.
- Sec. 11. Waivers and releases.
- Sec. 12. Interpretation and enforcement.
- Sec. 13. Disclaimer.

SEC. 2. PURPOSE.

The purposes of this Act are—

- (1) to approve, ratify, and confirm the Taos Pueblo Indian Water Rights Settlement Agreement;
- (2) to authorize and direct the Secretary to execute the Settlement Agreement and to perform all obligations of the Secretary under the Settlement Agreement and this Act; and
- (3) to authorize all actions and appropriations necessary for the United States to meet its obligations under the Settlement Agreement and this Act.

SEC. 3. DEFINITIONS.

In this Act:

(1) **ELIGIBLE NON-PUEBLO ENTITIES.**—The term “Eligible Non-Pueblo Entities” means the Town of Taos, El Prado Water and Sanitation District (“EPWSD”), and the New Mexico Department of Finance and Administration Local Government Division on behalf of the Acequia Madre del Rio Lucero y del Arroyo Seco, the Acequia Madre del Prado, the Acequia del Monte, the Acequia Madre del Rio Chiquito, the Upper Ranchitos Mutual Domestic Water Consumers Association, the Upper Arroyo Hondo Mutual Domestic Water Consumers Association, and the Llano Quemado Mutual Domestic Water Consumers Association.

(2) **ENFORCEMENT DATE.**—The term “Enforcement Date” means the date upon which the Secretary publishes the notice required by section 10(f)(1).

(3) **MUTUAL-BENEFIT PROJECTS.**—The term “Mutual-Benefit Projects” means the projects described and identified in articles 6 and 10.1 of the Settlement Agreement.

(4) **PARTIAL FINAL DECREE.**—The term “Partial Final Decree” means the Decree entered in *New Mexico v. Abeyta* and *New Mexico v. Arellano*, Civil Nos. 7896-BB (U.S. 6 D.N.M.) and 7939-BB (U.S. D.N.M.) (consolidated), for the resolution of the Pueblo’s water right claims and which is substantially in the form agreed to by the Parties and attached to the Settlement Agreement as Attachment 5.

(5) **PARTIES.**—The term “Parties” means the Parties to the Settlement Agreement, as identified in article 1 of the Settlement Agreement.

(6) **PUEBLO.**—The term “Pueblo” means the Taos Pueblo, a sovereign Indian tribe duly recognized by the United States of America.

(7) **PUEBLO LANDS.**—The term “Pueblo lands” means those lands located within the Taos Valley to which the Pueblo, or the United States in its capacity as trustee for the Pueblo, holds title subject to Federal law limitations on alienation. Such lands include Tracts A, B, and C, the Pueblo’s land grant, the Blue Lake Wilderness Area, and the Tenorio and Karavas Tracts and are generally depicted in Attachment 2 to the Settlement Agreement.

(8) **SAN JUAN-CHAMA PROJECT.**—The term “San Juan-Chama Project” means the Project authorized by section 8 of the Act of June 13, 1962 (76 Stat. 96, 97), and the Act of April 11, 1956 (70 Stat. 105).

(9) **SECRETARY.**—The term “Secretary” means the Secretary of the Interior.

(10) **SETTLEMENT AGREEMENT.**—The term “Settlement Agreement” means the contract dated March 31, 2006, between and among—

- (A) the United States, acting solely in its capacity as trustee for Taos Pueblo;
- (B) the Taos Pueblo, on its own behalf;
- (C) the State of New Mexico;
- (D) the Taos Valley Acequia Association and its 55 member ditches (“TVAA”);
- (E) the Town of Taos;
- (F) EPWSD; and
- (G) the 12 Taos area Mutual Domestic Water Consumers Associations (“MDWCAs”), as amended to conform with this Act.

(11) **STATE ENGINEER.**—The term “State Engineer” means the New Mexico State Engineer.

(12) **TAOS VALLEY.**—The term “Taos Valley” means the geographic area depicted in Attachment 4 of the Settlement Agreement.

SEC. 4. PUEBLO RIGHTS.

(a) **IN GENERAL.**—Those rights to which the Pueblo is entitled under the Partial Final Decree shall be held in trust by the United States on behalf of the Pueblo and shall not be subject to forfeiture, abandonment, or permanent alienation.

(b) **SUBSEQUENT ACT OF CONGRESS.**—The Pueblo shall not be denied all or any part of its rights held in trust absent its consent unless such rights are explicitly abrogated by an Act of Congress hereafter enacted.

versions of the legislation are similar, and our cost estimates are the same.

Estimate prepared by: Federal costs: Jeff LaFave; Impact on state, local, and tribal governments: Melissa Merrell; Impact on the private sector: Marin Randall.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 3254 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

110TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } 110-649

SOBOBA BAND OF LUISEÑO INDIANS SETTLEMENT ACT

MAY 15, 2008.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany H.R. 4841]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 4841) to approve, ratify, and confirm the settlement agreement entered into to resolve claims by the Soboba Band of Luiseño Indians relating to alleged interferences with the water resources of the Tribe, to authorize and direct the Secretary of the Interior to execute and perform the Settlement Agreement and related waivers, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Soboba Band of Luiseño Indians Settlement Act”.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds the following:

(1) The Soboba Band of Luiseño Indians is a federally recognized Indian tribe whose Reservation of approximately 6,000 acres, extending east and north from the banks of the San Jacinto River in Riverside County, California, was created by an Executive Order dated June 19, 1883, and enlarged and modified by subsequent Executive Orders, purchases, and an Act of Congress.

(2) The Tribe's water rights have not been quantified, and the Tribe has asserted claims for interferences with the water resources of its Reservation, which the Tribe maintains have rendered much of the Tribe's Reservation useless for habitation, livestock, or Agriculture. On April 20, 2000, the Tribe filed a lawsuit against The Metropolitan Water District of Southern California for interference with the Tribe's water resources and damages to its Reservation allegedly caused by Metropolitan's construction and operation of the San Jacinto Tunnel, which is part of the Colorado River Aqueduct. The lawsuit, styled

Soboba Band of Luiseño Indians v. Metropolitan Water District of Southern California, No. 00-04208 GAF (MANx), is pending in the United States District Court for the Central District of California.

(3) The Tribe also has made claims against Eastern Municipal Water District and Lake Hemet Municipal Water District, located adjacent to the Reservation, seeking to secure its water rights and damages arising from alleged past interference with the Tribe's water resources.

(4) After negotiations, which included participation by representatives of the Tribe, the United States on behalf of the Tribe, The Metropolitan Water District of Southern California, Eastern Municipal Water District, and Lake Hemet Municipal Water District, a Settlement Agreement has been developed to determine the Tribe's water rights, resolve all of its claims for interference with the water resources of, and damages to, its Reservation, provide for the construction of water projects to facilitate the exercise of the Tribe's rights, and resolve the lawsuit referenced in paragraph (2) of this section.

(5) The Settlement Agreement provides that—

(A) Eastern Municipal Water District and Lake Hemet Municipal Water District acknowledge and assure the Tribe's prior and paramount right, superior to all others, to pump 9,000 acre-feet of water annually from the San Jacinto River basin in accordance with the limitations and other conditions set forth in the Settlement Agreement;

(B) Eastern Municipal Water District and The Metropolitan Water District of Southern California will contract to supply water to Eastern Municipal Water District and Eastern Municipal Water District will use this water to recharge water supplies into the basin; and

(C) the three water districts will make substantial additional contributions to the settlement, including the conveyance of certain replacement lands and economic development funds to the Tribe, to carry out the Settlement Agreement's provisions.

(b) PURPOSES.—The purposes of this Act are—

(1) to approve, ratify, and confirm the Settlement Agreement entered into by the Tribe and non-Indians entities;

(2) to achieve a fair, equitable, and final settlement of all claims of the Soboba Band of Luiseño Indians, its members, and the United States on behalf of the Tribe and its members, to the water of the San Jacinto River basin;

(3) to authorize and direct the Secretary of the Interior to execute and perform all obligations of the Secretary under the Settlement Agreement; and

(4) to authorize the actions and appropriations necessary to meet obligations of the United States under the Settlement Agreement and this Act.

SEC. 3. DEFINITIONS.

In this Act:

(1) RESTORATION FUND.—The term "Restoration Fund" means the San Jacinto Basin Restoration Fund established by section 6.

(2) DEVELOPMENT FUND.—The term "Development Fund" means the Soboba Band of Luiseño Indians Water Development Fund established by section 7.

(3) RESERVATION.—

(A) IN GENERAL.—The term "Reservation" means the Soboba Indian Reservation created by Executive Order dated June 19, 1883, and enlarged and modified as of the date of enactment of this Act by Executive Orders and an Act of Congress.

(B) EXCLUSIONS.—For the purposes of this Act, the term "Reservation" does not include—

(i) the 950 acres northwest of and contiguous to the Reservation known as the "Jones Ranch", purchased by the Soboba Tribe in fee on July 21, 2001, and placed into trust on January 13, 2003;

(ii) the 535 acres southeast of and contiguous to the Reservation known as the "Horseshoe Grande", purchased by the Soboba Tribe in fee in seven separate transactions in June and December 2001, December 2004, June 2006, and January 2007; and

(iii) the 478 acres north of and contiguous to the Reservation known as "The Oaks", purchased by the Soboba Tribe in fee on April 4, 2004.

(4) SECRETARY.—The term "Secretary" means the Secretary of the Interior or a designee of the Secretary.

(5) SETTLEMENT AGREEMENT.—The term "Settlement Agreement" means that agreement dated June 7, 2006, as amended to be consistent with this Act, together with all exhibits thereto. The parties to the Settlement Agreement are the Soboba Band of Luiseño Indians and its members, the United States on behalf of the Tribe and its members, The Metropolitan Water District of Southern

Trust funds that are held and managed in a fiduciary capacity by the federal government on behalf of Indian tribes are treated in the budget as nonfederal funds. As a result, outlays would be recorded on the budget in the year that all funds are provided to the tribe and the settlement agreement is final. Therefore, CBO estimates that this provision would result in discretionary spending of \$11 million in 2011. Once the settlement is final, subsequent use of those funds by the tribe would have no further impact on the federal budget.

Estimated impact on state, local, and tribal governments: H.R. 4841 would restrict the tribe's ability to use and lease water it receives as part of the settlement agreement, and that restriction would be an intergovernmental mandate as defined in UMRA. Because the tribe has voluntarily agreed to that restriction in the settlement, CBO estimates that the mandate would impose no new costs on the tribe, and therefore, the threshold established in UMRA would not be exceeded.

Estimated impact on the private sector: H.R. 4841 contains no private-sector mandate as defined in UMRA.

Estimate prepared by: Federal Costs: Leigh Angres; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on Private Sector: MarDestinee Perez.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 4841 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

110TH CONGRESS }
2d Session } HOUSE OF REPRESENTATIVES { REPORT
110-815

SHOSHONE-PAIUTE TRIBES OF THE DUCK VALLEY RESERVATION WATER RIGHTS SETTLEMENT ACT

JULY 31, 2008.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany H.R. 5293]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 5293) to approve the settlement of the water rights claims of the Shoshone-Paiute Tribes of the Duck Valley Reservation in Nevada, to require the Secretary of the Interior to carry out the settlement, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act”.

SEC. 2. FINDINGS.

Congress finds that—

(1) it is the policy of the United States, in accordance with the trust responsibility of the United States to Indian tribes, to promote Indian self-determination and economic self-sufficiency and to settle Indian water rights claims without lengthy and costly litigation, if practicable;

(2) quantifying rights to water and development of facilities needed to use tribal water supplies is essential to the development of viable Indian reservation economies and the establishment of a permanent reservation homeland;

(3) uncertainty concerning the extent of the Shoshone-Paiute Tribes’ water rights has resulted in limited access to water and inadequate financial resources necessary to achieve self-determination and self-sufficiency;

(4) in 2006, the Tribes, the State of Idaho, the affected individual water users, and the United States resolved all tribal claims to water rights in the Snake River Basin Adjudication through a consent decree entered by the District

Court of the Fifth Judicial District of the State of Idaho, requiring no further Federal action to quantify the Tribes' water rights in the State of Idaho;

(5) as of the date of enactment of this Act, proceedings to determine the extent and nature of the water rights of the Tribes in the East Fork of the Owyhee River in Nevada are pending before the Nevada State Engineer;

(6) final resolution of the Tribes' water claims in the East Fork of the Owyhee River adjudication will—

- (A) take many years;
- (B) entail great expense;
- (C) continue to limit the access of the Tribes to water, with economic and social consequences;
- (D) prolong uncertainty relating to the availability of water supplies; and
- (E) seriously impair long-term economic planning and development for all parties to the litigation;

(7) after many years of negotiation, the Tribes, the State, and the upstream water users have entered into a settlement agreement to resolve permanently all water rights of the Tribes in the State; and

(8) the Tribes also seek to resolve certain water-related claims for damages against the United States.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to resolve outstanding issues with respect to the East Fork of the Owyhee River in the State in such a manner as to provide important benefits to—

- (A) the United States;
- (B) the State;
- (C) the Tribes; and
- (D) the upstream water users;

(2) to achieve a fair, equitable, and final settlement of all claims of the Tribes, members of the Tribes, and the United States on behalf of the Tribes and members of Tribes to the waters of the East Fork of the Owyhee River in the State;

(3) to ratify and provide for the enforcement of the Agreement among the parties to the litigation;

(4) to resolve the Tribes' water-related claims for damages against the United States;

(5) to require the Secretary to perform all obligations of the Secretary under the Agreement and this Act; and

(6) to authorize the actions and appropriations necessary to meet the obligations of the United States under the Agreement and this Act.

SEC. 4. DEFINITIONS.

In this Act:

(1) AGREEMENT.—The term "Agreement" means the agreement entitled the "Agreement to Establish the Relative Water Rights of the Shoshone-Paiute Tribes of the Duck Valley Reservation and the Upstream Water Users, East Fork Owyhee River" and signed in counterpart between, on, or about September 22, 2006, and January 15, 2007 (including all attachments to that Agreement).

(2) DEVELOPMENT FUND.—The term "Development Fund" means the Shoshone-Paiute Tribes Water Rights Development Fund established by section 8(b)(1).

(3) EAST FORK OF THE OWYHEE RIVER.—The term "East Fork of the Owyhee River" means the portion of the east fork of the Owyhee River that is located in the State.

(4) MAINTENANCE FUND.—The term "Maintenance Fund" means the Shoshone-Paiute Tribes Operation and Maintenance Fund established by section 8(c)(1).

(5) RESERVATION.—The term "Reservation" means the Duck Valley Reservation established by the Executive order dated April 16, 1877, as adjusted pursuant to the Executive order dated May 4, 1886, and Executive order numbered 1222 and dated July 1, 1910, for use and occupation by the Western Shoshones and the Paddy Cap Band of Paiutes.

(6) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(7) STATE.—The term "State" means the State of Nevada.

(8) TRIBAL WATER RIGHTS.—The term "tribal water rights" means rights of the Tribes described in the Agreement relating to water, including groundwater, storage water, and surface water.

(9) TRIBES.—The term "Tribes" means the Shoshone-Paiute Tribes of the Duck Valley Reservation.

(10) UPSTREAM WATER USER.—The term "upstream water user" means a non-Federal water user that—

quirement would be an intergovernmental mandate as defined in UMRA because it would place a statutory requirement on the tribe that is separate from provisions of the agreement. CBO estimates that the cost of the mandate would be small and well below the threshold established in UMRA (\$68 million in 2008, adjusted annually for inflation). Furthermore, appropriations resulting from authorizations for the development fund could be used to pay for any such costs.

Estimated impact on the private sector: H.R. 5293 contains no private-sector mandates as defined in UMRA.

Previous CBO estimate: On August 8, 2007, CBO transmitted a cost estimate for S. 462, the Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act, as ordered reported by the Senate Committee on Indian Affairs on July 19, 2007. Although the bills are very similar, our estimates of costs are different. Our estimate of discretionary spending under H.R. 5293 is lower because we now assume a later enactment date for the legislation. Also, CBO now considers that tribal interest payments under both pieces of legislation would increase direct spending rather than discretionary spending (as we estimated under S. 462). Those interest payments under H.R. 5293 would increase direct spending by \$6 million. That estimate applies to S. 462 as well.

Estimate prepared by: Federal costs: Leigh Angres; Impact on State, Local, and Tribal Governments: Melissa Merrell; and Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 5293 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

155 Cong. Rec. S162-01, 2009 WL 36234 (Cong.Rec.)

Congressional Record --- Senate
Proceedings and Debates of the 111st Congress, First Session
Wednesday, January 7, 2009

***S162 OMNIBUS PUBLIC LAND MANAGEMENT ACT OF 2009 RULE XLIV COMPLIANCE**

Mr. BINGAMAN.

Mr. President, pursuant to rule XLIV of the Standing Rules of the Senate, I hereby certify that, to the best of my knowledge and belief, the Omnibus Public Land Management Act of 2009 does not contain any limited tax benefits, limited tariff benefits, or congressionally directed spending items, as those terms are defined in rule XLIV.

Rule XLIV broadly defines the term "congressionally directed spending item" to include "a provision . . . included primarily at the request of a Senator . . . authorizing . . . a specific amount of discretionary budget authority . . . for . . . expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process."

The Omnibus Public Land Management Act of 2009 is a collection of over 150 public land bills that were reported from the Committee on Energy and Natural Resources during the 110th Congress, for which we have not been able to get unanimous consent to take up and pass during the 110th Congress. I have included them in the Omnibus Public Land Management Act of 2009 to facilitate their early consideration in the new Congress, and not "primarily at the request of a Senator."

Nevertheless, even though no Senator has specifically requested me to include a congressionally directed spending item in the Omnibus Public Land Management Act of 2009, in the interest of furthering the transparency and accountability of the legislative process, I have posted on the Web site of the Committee on Energy and Natural Resources a complete list of all provisions in the Omnibus Public Land Management Act of 2009 that authorize a specific amount of spending authority that is targeted to a specific State or locality, other than through a statutory or administrative formula-driven or competitive award process. The list includes the name of the principal sponsors of the Senate bills in the 110th Congress that have been incorporated in the Omnibus Public Land Management Act.

In addition, I have added several other non-public-land measures from the 110th Congress at the request of the majority leader. Most of these provisions were included in the Advancing America's Priorities Act-S. 3297-in the 110th Congress. They include: the Christopher and Dana Reeve Paralysis Act, subtitle B of title I of S. 3297; four parts of subtitle B, relating to oceans, of title V of S. 3297; and title VII of S. 3297, relating to the authorization of a greenhouse facility for the Smithsonian Institution. These provisions were determined not to constitute "congressionally directed spending items" in the Advancing America's Priorities Act. See 153 Cong. Rec. S7509-7510, July 26, 2008.

In addition, I have added the Coastal and Estuarine Land Conservation Program Act, H.R. 1907 in the 110th Congress, and the Smithsonian Institution Facilities Authorization Act of 2008, H.R. 6627 in the 110th Congress, at the request of the majority leader. The grant program established under Coastal and Estuarine Land Conservation Program Act, section 12507 in the Omnibus Public Land Management Act, does not constitute a congressionally directed

spending item because the funds are to be allocated through a competitive grant process. The authorizations in the Smithsonian Institution Facilities Authorization Act, sections 15101 and 15102 of the Omnibus Public Land Management Act, do not appear to constitute congressionally directed spending items because they were requested by the Board of Regents of the Smithsonian Institution, and because they originated in the House of Representatives, where the committees of jurisdiction determined they did not constitute congressional **earmarks**. See H. Rept. 110-842, part 1, at 5, 2008, Committee on House Administration, and H. Rept. 110-282, part 2, at 4, 2008, Committee on Transportation and Infrastructure.

Finally, I have added the Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act, H.R. 5293 in the 110th Congress, at the request of the majority leader. This act ratifies a water rights settlement among the Shoshone-Paiute Tribes of the Duck Valley Reservation, individual water users, and the State of Nevada. Section 8 of H.R. 5293, section 10807 of the Omnibus Public Land Management Act, creates two trust funds to settle the legal claims of the Shoshone-Paiute Tribes against the United States for compromising **tribal water** rights and failing to maintain the Duck Valley Indian Irrigation Project. They do not appear to constitute congressionally directed spending items because they were included to settle pending legal claims rather than "primarily at the request of a Senator," and because they originated in the House of Representatives, where the committee of jurisdiction determined that they did not constitute congressional **earmarks**. See H. Rept. 110-815 at 11, 2008, Committee on Natural Resources.

I ask unanimous consent that the list be printed in the

Record.

There being no objection, the material was ordered to be printed in the

Record, as follows:

THE OMNIBUS PUBLIC LAND MANAGEMENT ACT OF 2009-S. 22

Provisions in the Omnibus Public Land Management Act of 2009 authorizing appropriations in a specific amount for expenditure with or to an entity or targeted to a specific State, locality, or congressional district, other than through a statutory or administrative formula-driven or competitive award process: ***S163**

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

155 Cong. Rec. S162-01, 2009 WL 36234 (Cong.Rec.)

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Kyl Hounded For \$200M 'Earmark' — But Experts Say It Doesn't Break GOP Ban



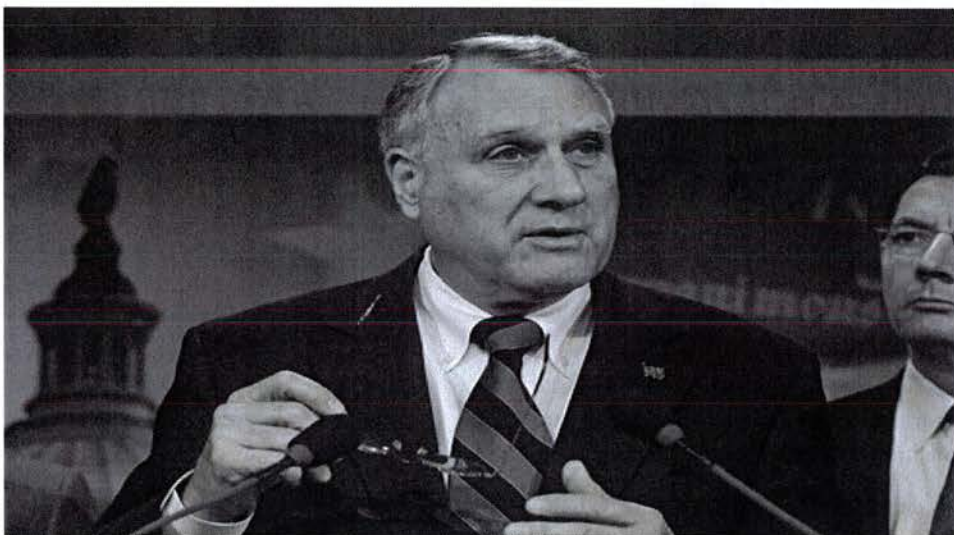
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EVAN MCMORRIS-SANTORO - NOVEMBER 24, 2010, 3:02 PM | 14991

Democrats today are shopping around what they're saying is a really juicy (if totally predictable) tale of Republican hypocrisy: Just days after the Senate GOP caucus imposed a voluntary moratorium on earmarking, Sen. Jon Kyl (R-AZ) dumped \$200 million in extra cash for his home state into a spending bill right before final passage.

But experts insisted to TPM today that what Kyl did isn't nearly as clear or egregious as the AP made it out to be.

Here's the AP story Democrats are so excited about:

Only three days after GOP senators and senators-elect renounced earmarks, Arizona Sen. Jon Kyl, the No. 2 Senate Republican, got himself a whopping \$200 million to settle an Arizona Indian tribe's water rights claim against the government. Kyl slipped the measure into a larger bill sought by President Barack Obama and passed by the Senate on Friday to settle claims by black farmers and American Indians against the federal government.

There it is: Kyl put extra spending for his home state into a bill that went beyond what was originally requested. "Earmark!" the Democrats are shouting, followed almost immediately by, "Hypocrite!" (It should be noted that Democrats are deeply divided over earmarking, with Obama calling it a bad thing and most Democrats in Congress saying the practice is worthwhile).

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Trayvon Martin's Father Vows To Keep Fighting For Son's Cause

28 minutes ago

Tracy Martin, Trayvon Martin's father, hopes the foundation he co-founded in his murdered son's name will help allow something positive to come from his death, he said Wednesday as he ... [Read More →](#)

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So is Kyl's \$200 million an earmark? Other Republicans have already tried to redefine what exactly constitutes an earmark in the wake of the GOP ban — like Rep. Michele Bachmann (R-MN), who said that “advocating for transportation projects for one's district in my mind does not equate to an earmark.” Sen. Saxby Chambliss (R-GA) also tried to carve out some earmark exceptions for himself.

Two anti-earmark watchdogs I spoke with today took something of a similar line — saying that what Kyl did isn't earmarking in the official sense. But, one suggested, that may not matter as much as Kyl might hope it does.

“There's a lot of nuance and any comment you include from [us] should note that,” Taxpayers for Common Sense vice president Steve Ellis told me. “We're into earmark shades of grey.”

Sen. Patrick Leahy (D-VT) didn't see any nuance when he attacked the additional money added by Kyl. Here's what he said, according to the AP:

“I do know an earmark when I see it. And this, my friends, is an earmark,” Leahy said in a prepared floor statement. He said Kyl's project would help the White Mountain Apaches “make snow at their ski resort, improve water flow to their casino and build fish hatcheries to improve local fish production.”

“Those projects don't appear to be directly funded by the bill,” the AP reports, “though the measure's wording is confusing.”

Ellis said Leahy and the Democrats jumping on Kyl today may actually be jumping the gun instead.

“Despite Sen. Leahy's gleeful protestations to the contrary, there's no way Congress (Republican or Democrat) would consider this an official earmark — too much money,” he told me. The government was going to have to pay the Arizona tribe at some point, Ellis said, so “so Uncle Sam was going to be coming up with the cash whether or not Sen. Kyl got it in,” Ellis said.

Ellis' group is vehemently anti-earmark, and he said that last year's federal budget had “\$6 billion worth of provisions we considered an earmark that Congress did not.” Kyl's addition to the settlement bill “leads you down the earmark path,” Ellis said, but he added, “I don't think this would violate the Senate GOP moratorium, because that is based on the Senate earmark definition.”

Citizens Against Government Waste, a conservative-leaning anti-earmark group whose distaste for the practice equals Taxpayers for Common Sense, didn't see the nuance that Ellis did. President Tom Schatz told me that what Kyl did wasn't an earmark — in fact, he said it didn't even raise any hackles with his crew at all.

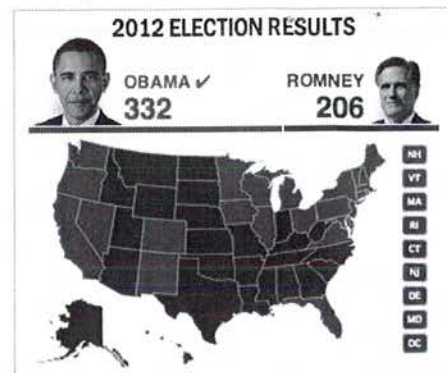
“Not from an earmarking standpoint, no,” Schatz said. He added that Indian settlements are a “special issue” that need to be “dealt with.”

“The Indian [settlement] stuff is complicated,” he said. But whether what Kyl did ran afoul of the CAGW's 100% opposition to earmarking is less complicated, Schatz said.

“Nope,” he said flatly. He pointed to the fact that the bill containing the additional funds passed the Senate unanimously (by voice vote) as evidence that Kyl's addition didn't violate the GOP earmark ban. Senators like Tom Coburn (R-OK) and Jim DeMint (R-SC) — who are leading the charge against earmarking in the Senate — would have raised the alarm if Kyl's additional funds broke the GOP's new rules, he said.

Despite the fact that Kyl may not have violated the letter of the earmark moratorium, conservatives who are pushing for an end to earmarks may still see what Kyl did as a violation of the spirit of the ban. A Maine tea party leader told *Slate's* Dave Weigel that Kyl's \$200 million addition sounded like an earmark to him, and that was enough for him to join the Democrats in raising the hypocrisy flag.

“Absolutely bloody daft,” the tea partier told Weigel. “[Kyl] seems to be keen to back away from



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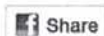


GOP promises faster than the did in '94. If there is an example of why the tea party movement needs to keep a keen eye on the GOP this is it."

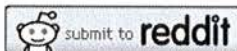
Update: Ellis from Taxpayers for Common Sense emails that though Kyl's addition to the settlement bill is not *technically* an earmark by Congressional definition, it will more than likely appear in the TCS' undisclosed list of earmarks the group keeps every year.

"It would probably end up in our earmark database," he said.

"It was authorized and appropriated at the same time, it wasn't in the presbud, was done at the behest of a lawmaker, and was added on to (largely) separate legislation," Ellis added. "We do a lot of analysis before we compile our undisclosed list but this seems like a likely candidate."

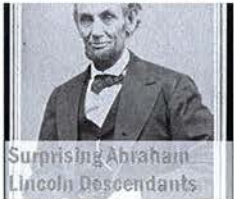
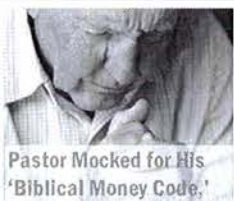


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RESOLUTION
of the
WESTERN STATES WATER COUNCIL
in support of
INDIAN WATER RIGHTS SETTLEMENTS
Idaho Falls, Idaho
October 7, 2011

WHEREAS, the Western States Water Council, an organization of eighteen western states and adjunct to the Western Governors' Association, has consistently supported negotiated settlement of Indian water rights disputes; and

WHEREAS, the public interest and sound public policy require the resolution of Indian water rights claims in a manner that is least disruptive to existing uses of water; and

WHEREAS, negotiated quantification of Indian water rights claims is a highly desirable process which can achieve quantifications fairly, efficiently, and with the least cost; and

WHEREAS, the advantages of negotiated settlements include: (i) the ability to be flexible and to tailor solutions to the unique circumstances of each situation; (ii) the ability to promote conservation and sound water management practices; and (iii) the ability to establish the basis for cooperative partnerships between Indian and non-Indian communities; and

WHEREAS, the successful resolution of certain claims may require "physical solutions," such as development of federal water projects and improved water delivery and application techniques; and

WHEREAS, the United States has developed many major water projects that compete for use of waters claimed by Indians and non-Indians, and has a responsibility to both to assist in resolving such conflicts; and

WHEREAS, the settlement of Native American water claims and land claims is one of the most important aspects of the United States' trust obligation to Native Americans and is of vital importance to the country as a whole and not just individual tribes or States; and

WHEREAS, the obligation to fund resulting settlements is analogous to, and no less serious than the obligation of the United States to pay judgments rendered against it; and

WHEREAS, Indian water rights settlements involve a waiver of both tribal water right claims and tribal breach of trust claims that otherwise could result in court-ordered judgments against the United States and increase costs for federal taxpayers; and

WHEREAS, current budgetary pressures and legislative policies make it difficult for the Administration, the states and the tribes to negotiate settlements knowing that they may not be funded because either they are considered earmarks or because funding must be offset by a corresponding reduction in some other expenditure, such as another tribal or essential Interior Department program;

NOW, THEREFORE, BE IT RESOLVED, that the Western States Water Council reiterates its support for the policy of encouraging negotiated settlements of Indian water rights disputes as the best solution to a critical problem that affects almost all of the Western States; and

BE IT FURTHER RESOLVED, that the Western States Water Council urges the Administration to support its stated policy in favor of Indian land and water settlements with a strong fiscal commitment for meaningful federal contributions to these settlements that recognizes the trust obligations of the United States government; and

BE IT FURTHER RESOLVED, that Congress should expand opportunities to provide funding for the Bureau of Reclamation to undertake project construction related to settlements from revenues accruing to the Reclamation Fund, recognizing the existence of other legitimate needs that may be financed by these reserves; and

BE IT FURTHER RESOLVED, that Indian water rights settlements are not and should not be defined as Congressional earmarks; and

BE IT FURTHER RESOLVED, that steps be taken to ensure that any water settlement, once authorized by the Congress and approved by the President, will be funded without a corresponding offset, including cuts to some other tribal or essential Interior Department program.

*(See also Nos. 250, 275, and 310)
Originally adopted March 21, 2003
Revised and reaffirmed Mar 29, 2006 and October 17, 2008*



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March 17, 2010

The Honorable Daniel K. Inouye
Chairman of the Senate
Committee on Appropriations
722 Hart Building
Washington, D.C. 20510-1102

The Honorable Dave Obey
Chairman of the House
Committee on Appropriations
2314 Rayburn House Office Building
Washington, D.C. 20515-4907

The Honorable Thad Cochran
Ranking Member of the Senate
Committee on Appropriations
113 Dirksen Senate Office Building
Washington, D.C. 20510-2402

The Honorable Jerry Lewis
Ranking Member of the House
Committee on Appropriations
2112 Rayburn House Office Building
Washington, D.C. 20515

Dear Senators Inouye and Cochran and Representatives Obey and Lewis:

On behalf of the Western Governors' Association, we are writing to express our support for the appropriation of significant funds for water supply projects benefiting Native Americans, as authorized by the United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (P.L. 100-293). Title VI authorizes the Emergency Fund for Indian Safety and Health (EFISH), which provides for domestic Native American water supply needs, as well as water right settlement funding.

A crucial element of effective water supply planning and management in the West is the resolution of the considerable water right claims of Native Americans. Western Governors and our water policy advisory body, the Western States Water Council, have long supported negotiated settlements of such claims rather than protracted, expensive and uncertain litigation. To this end, Western Governors and the Council have worked with the Native American Rights Fund, the Department of the Interior and others to promote negotiated settlements, and some 23 settlements have been authorized by Congress.

Our report, *Water Needs and Strategies for a Sustainable Future: Next Steps*, calls for action to "ensure that any land or water settlement, once authorized by the Congress and approved by the President, will be funded and implemented in a timely manner without a corresponding offset to some other tribe or essential Interior Department program." In addition WGA Policy Resolution 07-3 states: "The Western Governors believe that the funding of land and water rights settlements is an important obligation of the United States government [that] is analogous

The Honorable Daniel K. Inouye
The Honorable Thad Cochran
The Honorable Dave Obey
The Honorable Jerry Lewis
March 17, 2010
Page 2

to, and no less serious than, the obligation of the United States to pay judgments which are rendered against it.”

The funding authorized by Title VI of the Act would provide essential federal support for settlement of Native American water right claims throughout the West and would help fulfill the federal government’s trust obligations to Native Americans. Twenty United States Senators, many from Western states, have written the Administration urging it to include a total of \$667,000,000 in the Fiscal Year 2011 Budget Request for the purposes authorized by Title VI of the Act (including not only water supply projects, but also law enforcement activities and health programs in Indian Country). Importantly, this request should be over and above any amounts already included in the baseline budgets for the Department of Interior and its respective water-related programs, and for Native American and Alaska Native law enforcement, health programs and water right settlement-related projects. Western Governors fully support this request and urge Congress to appropriate the requested EFISH funds.

Thank you for your consideration of this important issue.

Sincerely,



C.L. "Butch" Otter
Governor of Idaho
WGA Vice Chairman and Lead Governor for Water



Bill Richardson
Governor of New Mexico
WGA Lead Governor for Water



M. Michael Rounds
Governor of South Dakota
WGA Lead Governor for Water



Bill Ritter, Jr.
Governor of Colorado
WGA Lead Governor for Water



In The News

White Mountain Apache Tribe's gold is drinking water (The White Mountain Independent)

December 10, 2010

Programs:

With the signing of the Claims Resolution Act of 2010, the White Mountain Apache Tribe is closer to seeing a drinking water project come to fruition.

The bill passed in the Senate in November and has recently passed in the House of Representatives. President Barack Obama signed the bill into law Wednesday.

Part of the Claims Resolution Act included a settlement for the White Mountain Apache Tribe. The White Mountain Apache Tribe Water Rights Quantification Act confirms the tribe's water settlement and authorizes over \$200 million in funding for a drinking water project on the reservation, the Miner Flat Dam and Reservoir.

Dave Brown, a St. Johns attorney who represents many cities and towns in the White Mountains, as well as farmers, ranchers and water districts in the area, said the facility will be built in the North Fork of Whiteriver.

"They really do need a drinking water source for Whiteriver, Canyon Day and Carrizo," he said.

Under the settlement, Brown said the White Mountain Apache Tribe waives all claims to water in the Little Colorado River, except for a couple of wells up by McNary. In return, the tribe gets benefits as outlined in a 2004 settlement for the Gila River Indian Community. That includes 50,000 acre-feet of water per year, half of which the tribe already uses Brown said, and 27,000 acre-feet of water per year from the Central Arizona Project. Brown added they can lease that water to cities if they cannot use it themselves.

An acre-foot of water is just over 325,000 gallons. The State of Montana says that nation-wide is considered to be the usage of one family for one year. In the southwest, according to the City of Santa Fee, NM, the average family uses one quarter of that amount.

The federal funding for the Miner Flat project, Brown said, will be used in different areas. He said around \$127 million to \$130 million will be used for construction of the dam, around \$50 million for operations, maintenance and replacement, around \$25 million for cost overruns and around \$2.5 million for the United States to operate it for the first year.

Brown said there are still two hurdles facing the White Mountain Apache Tribe Water Rights Quantification Act. He said the adjudication judge in both the Gila and Little Colorado rivers has to approve both settlements. If that occurs, he said, the Arizona Department of Water Resources will put out a report within the next six months to a year and people will have a chance to review and comment on it. He said water users in the Gila and Little Colorado rivers will also have a chance to object to it.

Brown said this has been a very long process, starting in the late 60s and early 70s with various tribes in Arizona making claims for water in federal court. Over time, he said the Forest Service, Bureau of Land Management and National Park Service also started to make water claims.

To help process all these claims, Brown said the state passed adjudications statutes to figure out who has rights to water and where. He said the United States filed a claim on the White Mountain Apache Tribe's behalf in the 1980s, as the tribe was a trustee.

Brown said the major claims were by the Navajo, Hopi, Zuni and White Mountain Apache tribes, and their claims far exceeded the amount of water that exists in Arizona. Brown said Zuni claims were settled seven years ago, while negotiations to settle Navajo and Hopi claims are ongoing.

The 2004 Gila River Indian Community settlement, he said, would provide much of the groundwork for the White Mountain Apache settlement through the 2004 Arizona Water Settlement Act, which Sen. Jon Kyl sponsored.

"A lot of the funding for the Apache and the water was authorized by Congress in that earlier settlement."

That settlement, Brown said, authorized a certain amount of Central Arizona Project water for future tribal settlements, including the White Mountain Apache Tribe. He said negotiations with the White Mountain Apache Tribe, who filed claims for water in the Little Colorado River and Salt River basin, began after that 2004 act. He said the White Mountain Apache Tribe's claim was the pumping of water up to the rim affected the availability of water, both ground water and stream water, to the reservation.

Brown said Kyl met with a group of the parties involved five years ago in Hon Dah and negotiations on the settlement lasted three years. The settlement was reached two years ago and has been awaiting federal approval.

The White Mountain Apache Tribe Water Rights Quantification Act was introduced by Kyl in the Senate in 2008 and later in the House by Rep. Ann Kirkpatrick. The bill, Brown said, is to satisfy part of the Cobell Legislation, in which the United States was sued for mismanaging trust funds for the tribes. The White Mountain Apache Tribe was one such tribe.

"It's to pay an obligation for the United States."

Still, Democrat Party officials are blasting Kyl, a Republican, for inserting the White Mountain Apache Tribe Water Rights Quantification Act into the Claims Resolution Act of 2010, calling it an earmark. However, officials with the Department of the Interior and Taxpayers for Common Sense, an anti-earmark group, said Kyl's action did not constitute an earmark, but a settlement of a claim against the United States government, according to a Nov. 24 CNN news story.

The settlement, Brown said, also benefits White Mountain communities in the Little Colorado River basin, like Show Low and Pinetop-Lakeside, because now those communities do not have to litigate.

"The cost of litigation, I'm guessing, would be in the millions."

Kyl said on Nov. 19 that legislation in the entire Claims Resolution Act is fully offset, making it budget neutral. Kyl's office said the act was made budget neutral with actions in other budget areas. Such offsets, they said, include anti-fraud measures that will reduce the amount of overpayments of unemployment insurance, extended customs user fees and rescinding \$562 million of unobligated Department of Agriculture surplus funds.



November 24th, 2010

04:48 PM ET

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3 years ago

Democrats Accuse GOP Senator of Breaking Pledge on Earmarks. True?

Posted by

[CNN's Evan Glass and Dana Bash](#)

Washington (CNN) – Democratic Party officials are blasting out emails accusing the Senate's second ranking Republican of backtracking on his pledge not to seek earmarks, but a closer look by CNN shows their accusations appear unfounded.

At issue – a \$200 million project to provide drinking water for an Indian tribe in Senate Minority Whip Jon Kyl's home state of Arizona.

Democrats say Kyl violated his GOP caucus' newly-pledged ban on earmarks by inserting funds into legislation last week, in order to settle a decades-old land dispute between the White Mountain Apache Tribe and the federal government.

Democrats were seizing on a report from the Associated Press which said Kyl slipped the money into a larger settlement for black farmers and American Indians.

"Jon Kyl's hypocrisy knows no bounds. It only took three short days for politician Jon Kyl to hypocritically break his no-earmarks pledge by 'slipping' a \$200 million earmark into a larger bill," said Democratic Senatorial Campaign Committee Press Secretary Deirdre Murphy.

A spokesman for Kyl is defending his support for the "White Mountain Apache Tribe Water Rights Quantification Act of 2010," as it is officially known, saying it has been a long-negotiated deal between federal agencies and the tribe that has the backing of President Barack Obama.

"What is not accurate is to call the United States government's settlement of a claim against it an earmark," said Kyl spokesman Andrew Wilder.

"Saying we 'slipped' it into the package is nonsense designed to insinuate something untoward. Kyl first introduced the settlement on behalf of the parties in 2008 and has worked to get it through ever since. But even though it passed with unanimous support Friday, some wish to play political games with it," Wilder said.

In fact, some in the Obama administration agree with Kyl.

Dan DuBray, a spokesman for the Bureau of Reclamation, part of the Interior Department, says the \$200 million was part of a settlement they negotiated with the tribe, and that everyone agreed it was a good idea to pair it with the black farmers' legislation, because by law settlements such as this must be approved by Congress.

"We don't see it as an earmark at all," said Dan DuBray.

Also included in the 272-page legislation are settlements for other Native American groups outside Kyl's state of Arizona: Montana's Crow Tribe and New Mexico's Taos Pueblo and Pojoaque River Basin communities. Democrats Max Baucus (Montana) and Jeff Bingaman (New Mexico) championed funding for those projects.

Anti-earmark crusaders also say the Democrats' claim falls short.

"There's no way Congress (Republican or Democrat) would consider this an official earmark," said Steve Ellis, spokesman for the anti-earmark group Taxpayers for Common Sense, in an email to CNN. "This does deal with a pay me now or pay me later settlement issue, so Uncle Sam was going to be coming up with the cash whether or not Sen. Kyl got it in."

The Democratic National Committee, which insists Kyl submitted an earmark, believes the discrepancy comes down to how one defines the term.

A 2007 bill sponsored by Sen. Jim DeMint (R-SC), one of the most ardent earmark foes in Congress, defines an earmark as any spending outside "a statutory or administrative formula-driven" process. Kyl's funding for the Apache Tribe's program was negotiated by the executive branch and supported by federal statute.

If approved by the House of Representatives, the law would give the White Mountain Apache water rights to thousand of acres and provide funding for a dam and reservoir.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 13: Mr. COHEN.
H.R. 25: Mr. BOOZMAN.
H.R. 211: Mr. REYES.
H.R. 333: Mr. PASCRELL.
H.R. 417: Ms. HIRONO and Mr. WEINER.
H.R. 537: Ms. MATSUI and Mr. KING of New York.
H.R. 571: Mr. GRIJALVA.
H.R. 600: Mr. CLEAVER.
H.R. 716: Ms. ROYBAL-ALLARD.
H.R. 793: Mr. MANZULLO.
H.R. 930: Mr. FILNER.
H.R. 953: Mr. CARTER.
H.R. 997: Mr. MCKEON.
H.R. 1126: Ms. TSONGAS.
H.R. 1175: Mr. SESTAK.
H.R. 1361: Mr. CASTLE and Mr. GERLACH.
H.R. 1551: Ms. WATERS and Ms. CHU.
H.R. 1570: Mr. CAMP.
H.R. 1589: Mr. MOORE of Kansas.
H.R. 1645: Mr. REYES.
H.R. 1778: Mr. WALZ, Mr. SESTAK, and Mr. LIPINSKI.
H.R. 1873: Mr. TONKO and Mrs. MALONEY.
H.R. 1925: Mr. PATRICK J. MURPHY of Pennsylvania and Mr. AL GREEN of Texas.
H.R. 1956: Mr. CHANDLER.
H.R. 2055: Ms. SHEA-PORTER and Mr. PIERLUISI.
H.R. 2143: Mrs. KIRKPATRICK of Arizona.
H.R. 2256: Mr. MAFFEI.
H.R. 2350: Ms. BALDWIN, Mr. HODES, and Mr. ROTHMAN of New Jersey.
H.R. 2377: Mr. SIMPSON, Mr. GERLACH, Mr. TIM MURPHY of Pennsylvania, and Mr. MARSHALL.
H.R. 2478: Mr. HOLDEN, Mr. ALTMIRE, Mr. PETERSON, Mrs. KIRKPATRICK of Arizona, Mr. MOLLOHAN, and Ms. HARMAN.
H.R. 2546: Mr. SESTAK and Mr. CONNOLLY of Virginia.
H.R. 2567: Ms. EDWARDS of Maryland and Mr. NADLER of New York.
H.R. 2605: Mr. TIAHRT.
H.R. 2624: Mr. TIM MURPHY of Pennsylvania, Mr. GERLACH, Mr. JOHNSON of Illinois, and Mr. MARSHALL.
H.R. 2788: Mrs. LOWEY.
H.R. 2811: Mr. FARR and Mr. FATTAH.
H.R. 2842: Mr. ROYCE.
H.R. 2849: Mr. MURPHY of Connecticut.
H.R. 2923: Mr. PETERSON.
H.R. 2941: Mr. WALZ and Ms. SUTTON.
H.R. 3010: Mr. TIM MURPHY of Pennsylvania and Mr. MARSHALL.
H.R. 3011: Mr. ROONEY.
H.R. 3012: Mr. LUJÁN.
H.R. 3042: Ms. LINDA T. SÁNCHEZ of California.
H.R. 3043: Mr. OLVER, Mr. JACKSON of Illinois, Mr. CLEAVER, Ms. ZOE LOFGREN of California, and Mr. BOSWELL.
H.R. 3054: Mr. COHEN.
H.R. 3090: Mr. RUSH.
H.R. 3105: Mrs. MCMORRIS RODGERS.
H.R. 3125: Mr. TERRY, Mrs. CHRISTENSEN, and Mr. ROGERS of Michigan.
H.R. 3251: Mr. PRICE of Georgia.
H.R. 3264: Ms. CHU, Mr. SESTAK, and Mr. DAVIS of Illinois.
H.R. 3308: Mrs. BIGGERT.
H.R. 3315: Mrs. MALONEY.
H.R. 3321: Mr. GONZALEZ.
H.R. 3343: Ms. CLARKE.
H.R. 3355: Mrs. HALVORSON.
H.R. 3362: Mr. SHERMAN, Ms. JACKSON LEE of Texas, and Mr. JONES.
H.R. 3488: Mr. HINCHEY.
H.R. 3536: Mr. HIGGINS.
H.R. 3652: Ms. ZOE LOFGREN of California.
H.R. 3664: Mr. BISHOP of New York.
H.R. 3688: Mr. SHULER.
H.R. 3695: Mr. MCINTYRE, Mr. CHANDLER, Ms. DELAURO, Mr. FARR, Mr. HASTINGS of

Florida, Mr. COURTNEY, Mr. MASSA, Ms. CHU, and Mr. THOMPSON of Mississippi.
H.R. 3721: Mr. HODES.
H.R. 3758: Mr. OWENS.
H.R. 3790: Mr. ROE of Tennessee, Mr. HILL, Mr. BISHOP of New York, Mr. TONKO, and Mr. GOODLATTE.
H.R. 3838: Mr. TONKO, Mrs. MALONEY, and Mr. SESTAK.
H.R. 3943: Ms. SLAUGHTER, Mrs. HALVORSON, Mr. ISRAEL, Mr. TIM MURPHY of Pennsylvania, Mr. PERRIELLO, Mr. AL GREEN of Texas, and Mr. GRAVES.
H.R. 3974: Mr. BISHOP of Georgia, Mr. JACKSON of Illinois, Mr. STARK, Ms. CLARKE, Ms. SHEA-PORTER, Ms. ZOE LOFGREN of California, Mr. CUMMINGS, and Ms. SCHAKOWSKY.
H.R. 3990: Mr. DAVIS of Illinois and Mr. JOHNSON of Georgia.
H.R. 3995: Mr. JACKSON of Illinois, Mr. MASSA, Ms. SCHAKOWSKY, and Mr. RUSH.
H.R. 4003: Mr. MURPHY of New York.
H.R. 4004: Mr. GUTIERREZ, Mr. JOHNSON of Georgia, and Mr. FOSTER.
H.R. 4021: Ms. SCHAKOWSKY and Mr. MCMAHON.
H.R. 4034: Mr. OWENS and Mr. SMITH of Washington.
H.R. 4037: Mr. ELLISON.
H.R. 4109: Ms. LINDA T. SÁNCHEZ of California.
H.R. 4129: Mr. STARK.
H.R. 4138: Mr. SOUDER.
H.R. 4149: Ms. BALDWIN.
H.R. 4155: Mr. LUJÁN.
H.R. 4247: Mr. HARPER and Ms. SCHAKOWSKY.
H.R. 4249: Mr. WILSON of South Carolina.
H.R. 4255: Mr. STEARNS, Mr. SOUDER, Ms. GRANGER, Mr. KILDEE, Mr. FORBES, Mr. UPTON, and Mr. OWENS.
H.R. 4256: Mr. MCDERMOTT.
H.R. 4262: Mr. TIM MURPHY of Pennsylvania.
H.R. 4264: Ms. BALDWIN.
H.R. 4278: Mr. CARNAHAN.
H.R. 4291: Mr. ELLISON, Mrs. CHRISTENSEN, and Ms. CHU.
H.R. 4295: Mr. HODES.
H.R. 4298: Mr. NADLER of New York.
H.R. 4324: Mr. COSTELLO and Mr. KISSELL.
H.R. 4325: Mr. AL GREEN of Texas and Mr. FILNER.
H.R. 4329: Mr. FORBES.
H.R. 4356: Mr. BARTLETT, Mr. WOLF, Ms. DEGETTE, Mr. COURTNEY, Mr. HALL of New York, Mr. KILDEE, and Mr. LIPINSKI.
H.R. 4360: Mr. STARK, Mrs. NAPOLITANO, Mr. FARR, Mr. GARAMENDI, Mr. THOMPSON of California, and Mr. LANGEVIN.
H.R. 4374: Mr. HARE.
H.R. 4375: Mr. JONES.
H.R. 4386: Mr. MCDERMOTT.
H.R. 4392: Mr. TOWNS, Ms. EDDIE BERNICE JOHNSON of Texas, Mrs. CHRISTENSEN, Mr. CLEAVER, Mr. CONYERS, and Mr. RANGEL.
H.R. 4393: Ms. RICHARDSON.
H.R. 4400: Mr. WILSON of South Carolina.
H.R. 4402: Mr. KAGEN, Mr. MCGOVERN, Mr. PASTOR of Arizona, Mr. BLUMENAUER, Mr. ELLISON, and Mr. FRANK of Massachusetts.
H.R. 4403: Mr. ELLISON, Mr. PETERSON, and Mr. MICHAUD.
H.R. 4415: Mr. HARPER and Mr. LINDER.
H.R. 4426: Mr. ROTHMAN of New Jersey, Mr. MICHAUD, Mr. COURTNEY, Mr. BRALEY of Iowa, Mr. KAGEN, Mr. GENE GREEN of Texas, Mr. SCHAUER, Ms. TSONGAS, Ms. HIRONO, Mr. JACKSON of Illinois, Mr. BISHOP of New York, and Mr. FILNER.
H.R. 4427: Mr. SHUSTER, Mr. BRADY of Pennsylvania, Mr. BARTLETT, Mr. ROE of Tennessee, and Mr. POE of Texas.
H.R. 4450: Mr. CHAFFETZ.
H.R. 4453: Mr. JONES, Mr. DUNCAN, and Mr. BURTON of Indiana.
H. Con. Res. 13: Mr. JACKSON of Illinois and Mr. FILNER.

H. Con. Res. 154: Mr. TOWNS.
H. Con. Res. 170: Mr. RAHALL.
H. Con. Res. 175: Mr. SESTAK.
H. Res. 200: Ms. KAPTUR and Mr. COOPER.
H. Res. 236: Ms. LORETTA SANCHEZ of California.
H. Res. 252: Ms. CHU.
H. Res. 443: Mr. JOHNSON of Georgia.
H. Res. 486: Ms. LORETTA SANCHEZ of California.
H. Res. 567: Mr. MCCARTHY of California.
H. Res. 699: Mr. OWENS.
H. Res. 709: Ms. CHU.
H. Res. 762: Mrs. LOWEY and Mrs. MALONEY.
H. Res. 803: Ms. JENKINS.
H. Res. 847: Mr. BONNER and Mr. HASTINGS of Washington.
H. Res. 888: Mr. LANCE and Mr. SCHOCK.
H. Res. 902: Mr. CORLE, Mr. HOIT, Ms. SCHAKOWSKY, Ms. ZOE LOFGREN of California, Mr. MARKEY of Massachusetts, and Mr. HINCHEY.
H. Res. 943: Mr. HUNTER.
H. Res. 954: Mr. BOOZMAN.
H. Res. 959: Mr. SOUDER, Mr. PAUL, Ms. GRANGER, and Mr. CONAWAY.
H. Res. 977: Mr. ROONEY, Mr. REHBERG, Mr. LINDER, Mr. SHUSTER, Mr. TURNER, Mr. SESSIONS, Mr. BROWN of South Carolina, Mr. BROWN of Georgia, Mr. TIBERI, and Mr. MACK.
H. Res. 988: Ms. GRANGER.
H. Res. 997: Mr. GENE GREEN of Texas, Mr. COSTELLO, Ms. KILPATRICK of Michigan, Ms. LINDA T. SÁNCHEZ of California, Mr. HOEKSTRA, Mr. UPTON, and Mr. MASSA.
H. Res. 1003: Mr. MORAN of Virginia, Ms. EDWARDS of Maryland, Ms. BALDWIN, Mr. FALOMAVAEGA, Ms. CASTOR of Florida, Mr. NADLER of New York, Mr. BERMAN, Mr. MOORE of Kansas, Ms. DELAURO, Mr. JOHNSON of Georgia, Mr. ARCURI, and Mr. STUPAK.
H. Res. 1008: Mr. DAVIS of Illinois, Mr. DOYLE, Mr. EHLERS, Mr. GRIJALVA, Mr. NEAL of Massachusetts, Ms. ROS-LEHTINEN, Mr. WOLF, Mr. CALVERT, Mr. TAYLOR, and Mr. TERRY.
H. Res. 1010: Mr. WATT and Ms. CHU.
H. Res. 1011: Mr. SHULER, Mr. POLIS, Mr. ORTIZ, Mr. MEEK of Florida, Mr. SABLAN, Mr. RUSH, Mr. SPRATT, Mr. KIRK, Mr. THOMPSON of California, Ms. HARMAN, Ms. KAPTUR, Mr. COSTA, Mr. GONZALEZ, and Mrs. KIRKPATRICK of Arizona.
H. Res. 1013: Mr. WOLF and Mr. CROWLEY.
H. Res. 1014: Ms. FOX, Mr. FRANK of Massachusetts, Mr. BURTON of Indiana, Mr. MCMAHON, Mr. HOLDEN, Mr. ADLER of New Jersey, and Mrs. MCCARTHY of New York.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, OR LIMITED TARIFF BENEFITS

Under clause 9 of rule XXI, lists or statements on congressional earmarks, limited tax benefits, or limited tariff benefits were submitted as follows:

The amendment to be offered by Representative MCCLINTOCK, or a designee, to H.R. 1065, the White Mountain Apache Tribe Water Rights Quantification Act of 2009, does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

The amendment to be offered by Representative MCCLINTOCK, or a designee, to H.R. 3254, the Taos Pueblo Indian Water Rights Settlement Act, does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

The amendment to be offered by Representative MCCLINTOCK, or a designee, to H.R. 3342, the Aamodt Litigation Settlement Act, does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.



The Water Report™

Water Rights, Water Quality & Water Solutions in the West

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INDIAN WATER SETTLEMENTS

OUTLOOK FOR THE 112TH CONGRESS AND BEYOND

by Ryan A. Smith, Brownstein Hyatt Farber Schreck, LLP (Washington, DC)

INTRODUCTION

Indian water settlements are complex, obscure, and frequently expensive. To make matters worse, they require congressional approval before they can become enforceable. Consequently, once a tribe settles its water rights claims with the relevant local parties, it must then face the daunting task of moving its settlement through the federal legislative process — which can and does take years.

The looming federal budget deficit and current ban on “earmarks” have made it even more challenging to advance an Indian water settlement through Congress. Given these challenges, in order for an Indian water settlement to have any chance of becoming law, as a threshold matter it cannot increase the federal deficit. Moreover, settlement parties must be able to distinguish their settlement from an “earmark” and demonstrate to congressional members that their settlement’s value warrants its federal price tag.

For the most part, these concepts are new. Consequently, proponents of Indian water settlements will be forced to reexamine their approach to these important settlements.

INDIAN WATER RIGHTS

Western water law is complicated. Indian water law is even more complicated.

In the majority of the western United States, the doctrine of prior appropriation applies and provides that water rights are established at the time water is put to beneficial use. Water rights for Indian reservations, however, are based on the *Winters* doctrine, which provides that when the federal government creates an Indian reservation, it also reserves water to fulfill the purposes of the reservation. *Winters v. United States*, 207 U.S. 564, 576-577 (1908). These reserved water rights cannot be lost due to non-use, *Hackford v. Babbitt*, 14 F.3d 1457, 1461, n. 3 (10th Cir. 1994).

The priority date of reserved water rights is the date the reservation was created by executive order, treaty, or by Congress. See *Cappaert v. United States*, 426 U.S. 128, 138 (1976); *Arizona v. California*, 373 U.S. 546, 598-600 (1963). Where a preexisting tribal use of the waters at issue existed before the creation of the reservation (such as for instream flows for fisheries), the priority date is time immemorial. See *United States v. Adair*, 723 F.2d 1394 (9th Cir. 1983), *cert denied*, 467 U.S. 1252 (1984). Because most western Indian reservations were created in the 1800s and early 1900s, tribes generally have senior water rights to non-Indian water users. Historically, however, very few tribes have had the financial resources to assert and develop their water rights. As a result, many non-Indian water users have become reliant on tribal water.

Tribal Settlements

Compromise

Over the last several decades, conflicts between Indian and non-Indian users have increased as tribes have started to assert and develop their water rights. Fortunately, there has also been a trend in recent years to resolve these conflicts through negotiated settlements as opposed to litigation.

Generally, as part of an Indian water settlement, a tribe agrees to forego a significant percentage of its claimed water rights in consideration for water-related infrastructure funding. The value of the amount of water a tribe forgoes may be worth thousands of dollars per acre-foot. In exchange for this funding, the tribe also waives its water rights claims against the federal and state non-Indian parties. In doing so, the settlements resolve some of the largest outstanding water claims in the West, avoid decades of litigation, provide certainty to the local non-Indian water users regarding their future water supplies, and fund needed tribal water supply projects.

Because the settlements generally require federal funding to become enforceable, Congress must approve them. Congress is also required to approve an Indian water settlement under the Non-Intercourse Act (25 U.S.C. § 177). Reaching a settlement among the parties is very challenging. Obtaining congressional approval of the settlement is equally, if not more challenging.

WATER SETTLEMENTS IN THE 111TH CONGRESS

In November 2010, Congress passed four Indian water settlements totaling approximately \$1 billion as part of the Claims Resolution Act of 2010 (the "Settlements Act"). Pub. L. No. 111-291.

THE FOUR WATER SETTLEMENTS INCLUDED IN THE SETTLEMENTS ACT ARE:

- the White Mountain Apache Tribe Water Rights Quantification Act (Arizona)
- the Crow Tribe Water Rights Settlements Act (Montana)
- Aamodt Litigation Settlement Act (New Mexico)
- Taos Pueblo Indian Water Rights Settlements Act (New Mexico)

Federal & State Indian Reservations

(see website: www.uoregon.edu/~pchamber/indianaffairs_files)



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Tribal Settlements

"PAYGO" Provisions

"Discretionary" & "Direct" Spending

PAYGO Offset

New Settlement Model

Bipartisan Support

These four settlements will provide permanent water supplies to the White Mountain Apache Tribe, the Crow Tribe, the Taos Pueblo, and the Aamodt case pueblos, including the Pojoaque, Tesuque, San Ildefonso, and Nambe pueblos in New Mexico. More specifically, they "will build and improve reservation water systems, rehabilitate irrigation projects, construct a regional multi-pueblo water system, and codify water-sharing arrangements between Indian and neighboring communities." Press Release, Department of the Interior, Salazar: *Settlement Agreement with First Americans Mark Historic Progress in Reconciliation, Empowerment* (Dec. 8, 2010).

But for the unique way the settlements were drafted and packaged, they would have never become law. A critically important aspect of the Settlements Act is the fact that it complied with the Pay-As-You-Go (PAYGO) Act, Pub. L. No. 111-139 (2010). PAYGO requires that any direct spending and revenue provisions in a bill not increase the federal deficit. There are two types of federal spending: "discretionary" and "direct." Discretionary spending is controlled by annual appropriations acts, which fund "routine activities commonly associated with such federal government functions as running executive branch agencies, congressional offices and agencies, and international operations of the government." D. Andrew Austin, and Mindy Levit, Cong. Research Serv., Title I, *Trends in Discretionary Spending*, CRS Report RL34424, 1 (June 10, 2009). A bill with discretionary spending merely authorizes an appropriation. It does not actually appropriate any funds. On the other hand, direct spending is generally established in permanent law and "includes federal government spending on entitlement programs as well as other budget outlays controlled by laws other than appropriation acts." D. Andrew Austin, and Mindy Levit, Cong. Research Serv., *Mandatory Spending Since 1962*, CRS Report, RL33074, p. 1 (Feb. 16, 2010). If direct spending is included in a bill, the funding becomes available automatically. Direct spending (unlike discretionary spending) is not contingent on the annual appropriations process.

The Settlements Act contained both discretionary and direct spending. In order to comply with PAYGO, all of the direct spending in the legislation was "offset" — which means that the direct spending authorized in the settlements was matched either by a commensurate reduction in existing direct spending programs or by an increase in revenue to the United States Treasury. For example, the Settlements Act: (1) reduces federal direct spending by approximately \$4.9 billion from 2011-2020 by reforming the Unemployment Compensation Program; and (2) increases revenue to the US Treasury by approximately \$2 billion by extending Customs Users Fees for a certain period of time. (The bill also includes other savings.) The Congressional Budget Office estimated that the Settlements Act will reduce the federal deficit by \$1 million within the 10-year budget window notwithstanding the direct spending contained in the bill. *Estimate of the situation Pay-As-You-Go effects for H.R. 4783, the Claims Resolution Act of 2010*, as passed by the Senate on November 19, 2010, (available at www.cbo.gov/ftpdocs/119xx/doc11977/hr4783.pdf). This process, in essence, means that the savings in the bill coupled with the increase in revenue to the US Treasury was \$1 million greater than the amount of direct spending authorized in the legislation.

Additionally, in order to address the budgetary concerns of a few key Senators, the discretionary spending authorized in the Settlements Act was offset by reducing existing discretionary spending elsewhere. Specifically, the Settlements Act reduced the existing authorization level for Indian water settlements contained in Title VI of the Tom Lantos and Henry J. Hyde United States Global Leadership Against HIV/AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (Pub. L. No. 110-293 (2008)); Title VI of the law authorized \$1 billion for congressionally approved Indian water settlements.

Never before has legislation authorizing an Indian water settlement offset direct spending and discretionary spending. Given the current budget climate, this approach may be the new model on how to fund Indian water settlements.

Another factor that contributed to the passage of the Settlements Act was its bipartisan congressional support in both the House and the Senate. Sen. Kyl (R-AZ), Sen. McCain (R-AZ), Rep. Kirkpatrick (D-AZ), Rep. Shadegg (R-AZ), Rep. Flake (R-AZ), Rep. Pastor (D-AZ), Rep. Grijalva (D-AZ), Rep. Giffords (D-AZ), Rep. Mitchell (D-AZ), and Rep. Franks (R-AZ) sponsored the White Mountain Apache Tribe's water settlement; Sen. Tester (D-MT), Sen. Baucus (D-MT), and Rep. Rehberg (R-MT) sponsored the Crow settlement; and Sen. Bingaman (D-NM), Sen. Udall (D-NM), Rep. Lujan (D-NM), and Rep. Heinrich (D-NM) sponsored the Aamodt and Taos settlements. The settlements also eventually had Administration support, but only after a number of changes were made to the settlements to satisfy its concerns.

Finally, the water settlements were attached to two other settlements strongly supported by the Administration — the Cobell lawsuit brought by Native Americans and the Pigford II discrimination lawsuit brought by African-American farmers. Because both of these settlements were priorities of President Obama, the sponsors had assistance from the Administration in moving the Settlements Act.

Without the combination of factors discussed above, the package of water settlements would probably not have become law.

NEW CHALLENGES FACING INDIAN WATER SETTLEMENTS

THE 112TH AND FUTURE CONGRESSES FACE NEW BUDGET CLIMATETribal
Settlements

Budget Neutral

Quid-Pro-Quo

Benefits
At RiskNet Benefits
Issues

In the era of budget cuts and the newly-imposed Republican ban on “earmarks,” the future of Indian water settlements in the 112th Congress and future Congresses appears to be uncertain, at best. As discussed below, however, a few things are clear — settlements must be budget neutral, the earmark issue must be overcome, and the parties must be able to assign a value to their settlement.

Settlements Must be Budget Neutral

Given the current budget climate and the fact that the Settlements Act was budget neutral, it is very unlikely that the House Majority or the Senate Minority would support any bill that increases the federal deficit. Consequently, if direct spending is included in settlement legislation, it must be offset by decreasing direct spending or increasing revenue somewhere else in the budget. If authorizations for appropriations (discretionary spending) are included in the settlement legislation, an existing authorization must be decreased to offset the new discretionary spending.

Indian Water Settlements Are Not “Earmarks”**SETTLEMENT PARTIES MUST BE READY TO EXPLAIN WHY**

Early in the 112th Congress, Republicans imposed a ban on “Congressionally Directed Spending” or “earmarks.” “Congressionally Directed Spending” is defined in the Senate as “a provision or report language included primarily at the request of a Senator providing, authorizing, or recommending a specific amount of discretionary budget authority, credit authority, or other spending authority for a contract, loan, loan guarantee, grant, loan authority, or other expenditure with or to an entity, or targeted to a specific State, locality or Congressional district, other than through a statutory or administrative formula-driven or competitive award process.” Standing Rules of the Senate, Rule XLIV, paragraph 5(a). The House definition is virtually the same. Rules of the House of Representatives, Rule XXI, clause 9(e).

Certain members of Congress have argued that water settlements are earmarks because they authorize spending for a particular tribe in a specific state. Anti-earmark groups such as the Citizens Against Government Waste, however, have rejected this argument because of the unique legal nature of Indian water settlements. Talking Points Memo, 11/24/10, available at: <http://tpmdc.talkingpointsmemo.com/2010/11/did-jon-kyl-score-a-200m-earmark-three-days-after-ban.php>. Indeed, as noted, the federal government is receiving something of value — i.e., the waivers — in consideration for the funding authorized in the settlement. Moreover, tribes generally give up a significant percentage of their water rights in return for federal funding — there is a quid-pro-quo for the funding authorized in the settlements.

If Congress refuses to pass these settlements as a result of earmark reform, the federal government and non-Indian parties will no longer be able to settle Indian water claims and will be forced to remain mired in endless litigation. Additionally, if these claims are not settled, courts could award tribes more federal dollars and water than they would have received through congressionally-approved settlements, leading to increased costs to the US taxpayer, further conflicts with local non-Indian water users, and potential major disruptions of non-Indian water supplies.

Parties Must be Able to Assign a Value to Their Settlement

Recently, the Chairman of the Natural Resources Committee, US Representative Doc Hastings (R-WA), stated “[a]s part of the future of Indian water settlement bills, Congress will be asked to spend hundreds of millions of dollars, depending on the settlement in question. In these times of fiscal austerity, *Congress will need to know whether the amounts it is being asked to authorize are good not only for tribal and nearby non-tribal interests, but also for the American taxpayer.*” Neal Kirby, (Chairman Hastings’ Interview with the Tribal Business Journal Natural Resources Comm. 2/6/11) available at: <http://naturalresources.house.gov/Blog/?postid=223699> (emphasis added).

Rep. Hastings’ comment touches on a point raised by the Chairman of the House Subcommittee on Water and Power, Rep. Tom McClintock (R-CA). In 2010, then-ranking member McClintock asked the US Department of Justice (DOJ) whether the four water settlements included in the Settlements Act represent a net benefit to taxpayers when balanced against the “consequences and cost of litigation.” Although it is a valid question, DOJ understandably did not directly answer Mr. McClintock’s question because it presumably did not want to admit any potential liability to the tribes. Instead, in a response to McClintock dated January 19, 2010, DOJ stated that the consequences and costs of litigation “are not susceptible to quantification.” DOJ was correct inasmuch as it is nearly impossible to assign a dollar value to a settlement based solely on the potential liability of the federal government.

Therefore, in determining the proper amount of funding for an Indian water settlement, Congress should not limit its analysis to the potential liability of the United States. As discussed in more detail below, it should also consider the federal government’s trust relationship with tribes, water needs in Indian Country, the impact Indian water claims have on non-Indian communities, and the value of the water the tribe is giving up in the settlement.

Tribal Settlements

Reclamation Policy

Federal Responsibilities

Water Treatment Crisis

Supply Systems

TRUST RELATIONSHIP WITH TRIBES AND THE FEDERAL GOVERNMENT

The federal government has a trust relationship with Indian tribes and, as a result, owes tribes certain federal duties. This trust responsibility extends to the protection, development, and management of tribal resources, including water. See *Pyramid Lake Paiute Tribe vs. Morton*, 354 F. Supp. 252, 257 (D.D.C. 1972); *Pyramid Lake Paiute Tribe v. U.S. Department of the Navy*, 898 F.2d 1410 (9th Cir. 1990).

THE INDIAN POLICY OF THE US BUREAU OF RECLAMATION STATES AS FOLLOWS:

TRUST RESOURCES: The United States government has an Indian trust responsibility to protect and maintain rights reserved by or granted to Indian Tribes or Indian individuals by treaties, statutes, and executive orders. Reclamation, as a federal executive agency, shares this responsibility.

TRUST ASSET PROTECTION: Reclamation will carry out its activities in a manner that protects trust assets and avoids adverse impacts when possible. When Reclamation cannot avoid adverse impacts, it will provide appropriate mitigation or compensation.

WATER RIGHTS: The Department of the Interior's policy is to attempt to resolve Indian reserved water rights claims through negotiated settlements rather than litigation when feasible. Reclamation actively supports and participates in the Department's settlement negotiation and implementation activities.

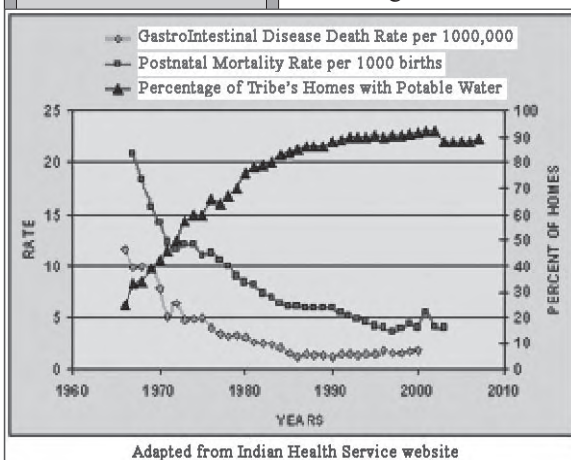
Indian Policy of the Bureau of Reclamation, www.usbr.gov/native/naao/policies/policy.html (last visited Aug. 2, 2011)

Given the federal government's unique trust obligation to tribes and their resources, federal funding for Indian water settlements is an appropriate exercise of the federal government's trust responsibility. See Bonnie G. Colby, John E. Thorson & Sarah Britton, *Negotiating Tribal Water Rights Fulfilling Promises in the Arid West*, 14 (2005) (quoting current Bureau of Reclamation Commissioner Michael Connor, who was then majority staff counsel, US Senate Energy and Natural Resources Committee).

DRINKING WATER CRISIS IN INDIAN COUNTRY

Indian water settlements also play a vital role in meeting the United States' policy of addressing the drinking water crisis in Indian Country. Congress has found that: "Indian people suffer an inordinately high incidence of disease, injury, and illness directly attributable to the absence of or inadequacy of (safe water supply systems)." 25 U.S.C. §1632(a)(2). According to the United States Indian Health Service (IHS), "[s]afe and adequate water supply and/or waste disposal facilities are lacking in approximately 12% of American Indian and Alaska Native homes, compared to 1% of homes for the U.S. general population." IHS fact sheets, available at <http://info.ihs.gov/SafeWater.asp> (last visited Aug. 2, 2011). A recent cost-benefit analysis cited by IHS indicates that for every dollar IHS spends on sanitation facilities to serve eligible existing homes, at least a twentyfold return in health benefits is achieved. *Id.*

In some areas of Indian Country, deficiencies in adequate water supply or waste disposal are as high as 30%. Bureau of Reclamation, *North Central Arizona Water Supply Study*, 13-14 (October 2006). As a result, many tribal members do not have a reliable source of clean drinking water, and in many cases, must haul water from miles away to their homes. According to the Bureau of Reclamation, "[m]any of the water haulers rely on non-potable water sources for their water supply and/or unsanitary tanks for the transport and storage of water." *Id.*



Congress has expressly stated that "it is in the interest of the United States, and it is the policy of the United States, that all Indian communities and Indian homes, new and existing, be provided with safe and adequate water supply systems and sanitary sewage waste disposal systems as soon as possible." 25 U.S.C. § 1632(a)(5). Since most water settlements provide funding for tribal water supply systems, they present a unique opportunity for the federal government to implement this policy while at the same time receiving the benefit of the waivers provided in the settlements.

Water settlements also potentially decrease the long-term costs associated with fighting the diseases that result from having inadequate water supply systems. Indeed, Congress has specifically found that: "[t]he long-term cost to the United States of treating and curing such disease, injury, and illness is substantially greater than the short-term cost of providing such (water) systems." *Id.* at §1632(a)(3).

Tribal Settlements

Reclamation Projects

Water Valuation

IMPACT ON NON-INDIAN WATER USERS

Congress should also consider the impact that Indian water rights claims have on non-Indian water users. Federal reclamation policy in the early 1900s encouraged the settlement of the West by non-Indians and the development of arid lands. The National Water Commission observed that “with few exceptions the [Reclamation] projects were planned and built by the federal government without any attempt to define, let alone protect, prior rights that Indian tribes might have had in the waters used for the projects.” Colby et al., *Negotiating Tribal Water Rights Fulfilling Promises in the Arid West*, 16 (quoting US National Water Commission, *Water Policies for the Future*, 474-475 (Water Information Center, 1973)). As a result, tribes frequently have been unable to fully use their water rights, whereas non-Indians have become reliant on the water reserved for the tribes. *Id.* In large part, federal policies have created these conflicts over water between tribes and non-Indian water users. Accordingly, it should have a role in resolving them.

By settling the tribal claims, the non-Indian water users receive certainty regarding future supplies. Since the tribes generally settle for less water than the amount they may be legally entitled to, any impact to non-Indian water users is mitigated.

THE VALUE OF THE TRIBAL WATER

Finally, Congress should consider the value of the water the tribe is giving up as part of its settlement. For instance, the United States, on behalf of the White Mountain Apache Tribe and in its capacity as trustee of the tribe’s reserved water rights, filed claims in the Gila River Adjudication in Arizona to approximately 180,000 acre-feet of water annually from the Salt River system based on the tribe’s *Winters* rights. S. Rep. No. 111-119, at 35 (2010). As part of the White Mountain Apache Tribe’s settlement, the tribe agreed to quantify its water rights at 99,000 acre-feet annually. The value of the water at issue is approximately \$6,000 an acre-foot. *Id.* Therefore, the potential value of the water that the tribe gave up equaled approximately \$480 million, which was far greater than the funding authorized in the tribe’s settlement. (This figure, however, assumes that the tribe would have been successful in asserting its claims in the ongoing adjudication.) Accordingly, the value of the water-related claims the tribe gives up as part of its settlement is an essential factor that Congress should consider.

From the tribe’s perspective, it is important to note that the White Mountain Apache Tribe only agreed to quantify its water rights for an amount less than the 180,000 acre-feet per year because its settlement authorized federal funding for, among other things, a dam, reservoir and water delivery system. Therefore, the tribe wisely gave up a portion of its paper water rights in return for a dependable and adequate “wet” water supply.

CONCLUSION

Indian water settlements are vital to water management in the West. They provide certainty to water users, allow tribes to waive water-related claims against the federal and state parties, avoid decades of litigation, and provide desperately needed water supply infrastructure for tribes. Despite their importance, settlements face an uphill battle in Congress.

In order to make the settlements more palatable to Congress, Indian water settlements must be, at a minimum, budget-neutral. The parties will also have to convince members of Congress that their particular water settlement is beneficial to US tax payers and not an “earmark.” Finally, the settlement parties will need to educate members of Congress as to how these settlements resolve significant water disputes while simultaneously playing a vital role in addressing the drinking water crisis in Indian Country and meeting the federal government’s trust responsibility.

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V. THE BASIS FOR THE TULE RIVER TRIBE'S CLAIM FOR THE TRANSFER OF BUREAU OF LAND MANAGEMENT AND FOREST SERVICE LANDS INTO TRUST FOR THE BENEFIT OF THE TRIBE

Ratification of the settlement agreement will require approval by Congress. The reservoir and water storage project, and related water infrastructure, which are the centerpiece of the agreement, will require federal appropriations to build. Federal appropriations for this purpose will secure partial fulfillment of the compensation due the Tribe for the historic and future monetary damages experienced, as outlined above.

Another component of compensation under consideration by the Tribe is the transfer of: (1) about 9,037 acres of federal public land, currently in the Sequoia National Monument, and under the management and administration of the U.S. Forest Service, and (2) approximately 2,000 acres of land under the management and administration of the Bureau of Land Management. The attached maps show the location of these tracts of land. The 9,037 acres (est.) encompass the remaining lands which comprise the uppermost reaches of the South Fork Tule River watershed. The BLM lands are small isolated parcels immediately adjacent to the north and south of the Reservation.

The Tribe estimates the current value of the BLM and USFS lands and the timber located thereon to be in the range of \$8 to \$25 million, but a formal appraisal has not been done by the Tribe or the federal agencies to date.

As the summary relating to the Tribe's damages claim against the United States reveals, the Tribe has strong legal, moral and equitable claims to the restoration of additional land to its Reservation land base. In the 19th Century the United States illegally dispossessed the Tribe of over 50,000 acres of land. The restoration of approximately 11,00 acres of BLM and Forest Service land to the Tribe is a fair and honorable step for the Congress to take in this instance. These BLM and Forest Service lands also possess valuable, ancient traditional and cultural values and resources to the Tribe and its members. There are known and recorded cultural sites on this acreage that trace use of these lands to the Yokut people.

The Tribe is very concerned about catastrophic wild fires starting on either the BLM or the Forest Service lands and spreading quickly on to current Reservation lands. Such a fire or fires would create serious erosion problems, and would thereby have a devastating impact on the quality of the Tribe's only surface water supply, the South Fork of the Tule River. Water quality degradation in the South Fork Tule River would also seriously impact the Tribe's downstream neighbors, including TRA, STIDC, Lake Success and the City of Porterville. The Tribe is also concerned not only about fuel loading issues, but about the outbreak of insect and disease epidemics which have impaired the health of the forest, and which could also quickly spread on to the Reservation forest lands. Maintaining a healthy and productive forest are primary management objectives of the Tribe, and this land transfer would help the Tribe in achieving these objectives

We look forward to a continuing dialogue with the BLM and Forest Service on the transfer of these lands to the Department of the Interior to be held in trust for the Tribe.

SETTLEMENTS APPROVED BY CONGRESS

Updated August 2011

NAME / CITATION	TRIBE(S)/STATE(S)	SIGNIFICANT FEATURES OF SETTLEMENT/ QUANTITY (AC-FT/YR)	TOTAL EXPENDITURES
Ak-Chin Indian Water Rights Settlement Act 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).	Ak-Chin Indian Community of Papago Indians of the Maricopa, Ak-Chin Reservation ARIZONA	<ul style="list-style-type: none">• First Indian water settlement;• Federal government and Indian Community were only parties to original settlement;• No local cost share provision required;• Unrestricted water marketing and use under 1992 Amend. Allows off-reservation leasing in certain nearby counties;• Surface water imported from foreign source to satisfy entitlement;• Federal government agreed to deadline for implementation;• Federal government assumed total liability for cost of failure to deliver;• 85,000 afa• 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.	<ul style="list-style-type: none">• Federal:<ul style="list-style-type: none">- Total of \$29.2M to Indian Community (not including \$15M in <i>damages</i>) (emphasis added);- estimated \$50K for feasibility study.- \$3.4M to Indian Community for economic development.- \$25.3M as loan forgiveness.- Total of \$27.2M to irrigation district;- \$9.4M for construction & conservation; \$17.8M as loan forgiveness
Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990 Pub.L. 101-618; 104 Stat. 3289 (1990).	Paiute-Shoshone Tribe of the Fallon Reservation and Colony NEVADA	<ul style="list-style-type: none">• Original intent to settle tribal claims for Federally promised irrigation system;• Developed into claims for reserved rights;• Secretary to identify water sources subsequent to settlement;• Environmental dilemmas in two river basins required complex and inter-connected settlements with two tribes;• Development Fund established to improve irrigation system and enhance economic development on the Reservation;• Federally approved Tribal management plan required for administration;• Interstate Allocation Agreement required for reservoir operations;• Limited marketing subject to State law;• <i>See also</i>, Truckee-Carson Pyramid Lake Water Rights Settlement Act;• 10,588 afa	<ul style="list-style-type: none">• Federal<ul style="list-style-type: none">- \$43M for Fallon Paiute Shoshone Tribal Development Fund (i.e., \$3M in 1992, and \$8M each year thereafter until 1997)
Fort Hall Indian Water Rights Act of 1990 Pub.L. 101-602; 104 Stat. 3059 (1990).	Shoshone-Bannock Tribes of the Fort Hall Indian Reservation IDAHO	<ul style="list-style-type: none">• 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;• Water bank authorized which will allow the Tribes to lease their water rights to local water users off-Reservation;• Tribes allowed to lease all or part of water entitlement on the Reservation;• Tribal Development established in addition to Federal funds provided to develop a reservation water management system;• Instream flow protection allowed (whereas instream flow protection a contentious issue in the Wind River-Big Horn litigation);• Flexible use of Tribes' water on reservation permits traditional uses including agriculture, fish, and wildlife, and environment;• Three member Intergovernmental Board established to mediate or resolve disputes;• 581,031 afa	<ul style="list-style-type: none">• Federal<ul style="list-style-type: none">- \$10M to Tribal Development Fund;- \$7M to Tribes for development of a reservation water management system;- \$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;- Federal contract storage rights or studies related to settlement (appropriations unknown)

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

<p>Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988</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"> • 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; • 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); • Significant, “equitable” local cost sharing required by Federal government; • Marketing of water prohibited except for lease-exchange agreement with Phoenix (water uses unrestricted on reservation); • Very large Community Trust Fund established to develop and maintain facilities and enhance economic development; • Provision to resolve allottee water claims; • 122,400 afa 	<ul style="list-style-type: none"> • Federal <ul style="list-style-type: none"> - Total of \$47,470,000 to the Salt-River Community Trust Fund; - \$10M for CAP facility construction (not considered a contribution since entirely allocable to P.L. 90-537, the underlying CAP authorization) • State/Local <ul style="list-style-type: none"> - \$55,933,000 from local water users for contributing 32,000 afa of water (utilizing a value of around \$1,800 per afa); - \$9M from local cities put in escrow to acquire 22,000 afa of Colorado River water; - \$3M from the State of Arizona to community Trust Fund; - \$16M in exchange for allocated CAP water (not considered a contribution since it is compensation for a 99 year <i>lease</i> agreement) • Tribe <ul style="list-style-type: none"> - \$2M to Community Trust Fund
<p>San Carlos Apache Tribe Water Rights Settlement Act</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"> • 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; • Provides for the diversion of 7,500 afy from the Black River; • 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; • 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; • 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; • Directs the Secretary to carry out all necessary environmental compliance during the implementation phase of this settlement. Authorizes appropriations; • Directs the Secretary to establish a groundwater management plan for the San Carlos Apache Reservation; • Declares that concessions for recreation and fish and wildlife purposes on San Carlos Lake may be granted only by the Tribe's governing body; • 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 	<ul style="list-style-type: none"> • Federal <ul style="list-style-type: none"> - \$38.4M for Development Fund (94%); - Land and water purchases from Planet Ranch located on Bill Williams River in Arizona (appropriations unknown); - Environmental studies, compliance, and mitigation costs to BR associated with land and water allocations or purchases (appropriations unknown); - Construction, operation, maintenance and replacement costs for CAP water facilities (appropriations unknown) • State/Local <ul style="list-style-type: none"> - \$3M for Development Fund (6%); - Purchase of around 58,735 afa of surface water (amount unknown)

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

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

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

<p>Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement Act of 1999</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"> • 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; • Satisfies any entitlement to Federal Indian reserved water of any tribal member solely from the water secured to the Tribe by the Compact; • 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; • 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; • Establishes a trust fund to fulfill the purposes of the Act; • 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 	<ul style="list-style-type: none"> • Federal <ul style="list-style-type: none"> - FY 1999 feasibility study appropriations = \$1M, FY 2000 = \$3M; - \$21 M for the Chippewa Cree Fund; - \$13M for on-reservation development; - \$1M for administration costs • State <ul style="list-style-type: none"> - 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 - 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
<p>Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement Act</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"> • 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; • 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; • 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 	<ul style="list-style-type: none"> • Federal <ul style="list-style-type: none"> - \$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.

<p>Colorado Ute Settlement Act Amendments of 2000</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"> 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; Construction costs required to deliver each tribe's water allocation shall be nonreimbursable; 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; Authorizes appropriations to the Southern Ute and Ute Mountain Ute Tribal Resource Funds; 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; Requires the construction of facilities, and allocation of water supply to the Indian tribes, provision of funds 	<ul style="list-style-type: none"> Federal - \$8 M annually from 2002 to 2006 to establish the Southern Ute Tribal Resource Fund, and the Ute Mountain Ute Tribal Resource Fund
<p>Zuni Indian Tribe Water Rights Settlement Act of 2003</p> <p>Pub.L. No. 108-34 (2003).</p>	<p>Zuni Indian Tribe</p> <p>ARIZONA</p>	<ul style="list-style-type: none"> Provides the resources to acquire water from willing sellers for the tribe in Arizona in the Little Colorado River Basin; Grandfathers existing water uses and waives claims against many future water uses; 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; 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; Funding to restore, rehabilitate, and maintain the Zuni Heaven Reservation, including the Sacred Lake, wetlands, and riparian areas; 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; The U.S. holds all Zuni owned state water rights in trust for the Tribe; 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 	<ul style="list-style-type: none"> Federal government is to appropriate \$19.25 M to the Zuni Indian Tribe Water Rights Development Fund; 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; 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
<p>Arizona Water Settlements Act of 2004</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"> Finalizes settlement reached in 1982; Resolves a long-standing dispute between Arizona and the Federal government over nearly \$2 B in repayments for CAP construction; Reallocates 102,000 afa of CAP water to Gila River Indian Community (consisting of the Pima Tribe and the Maricopa Tribe); Reallocates 28,200 afa of CAP water to Tohono O'odham Nation; Reallocates 67,300 afa of CAP water to "Arizona Indian Tribes;" Includes a groundwater component whereby the Tohono O'odham Nation can pump up to 13,200 afa 	<ul style="list-style-type: none"> 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; Federal government will deposit \$53 M in the Gila River Indian Community Water OM&R Trust Fund; Federal government to pay \$52.3 M for the rehabilitation of the San Carlos Irrigation Project; Federal Government to pay \$66 M to the New Mexico Unit Fund

<p>Snake River Water Rights Act of 2004</p> <p>Pub.L. No. 108-447; 118 Stat 2809, 3432-41 (2004)</p>	<p>Nez Perce Tribe</p> <p>IDAHO</p>	<ul style="list-style-type: none"> ▪ 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;” ▪ Provides a consumptive use water right of 50,000 afy with a priority date of 1855; ▪ The consumptive use water right is not subject to loss by abandonment, forfeiture, or nonuse; ▪ 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; ▪ Includes significant appropriations and other measures for salmon and steelhead restoration efforts 	<ul style="list-style-type: none"> ▪ 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; ▪ Federal government is to appropriate \$23 M to the Nez Perce Tribe Domestic Water Supply Fund between fiscal years 2007 and 2011; ▪ 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
<p>Soboba Band of Luiseño Indians Settlement Act</p> <p>Pub.L. No. 110-297; 122 Stat. 2975 (2008)</p>	<p>Soboba Band of Luiseño Indians</p> <p>CALIFORNIA</p>	<ul style="list-style-type: none"> ▪ Finalizes settlement reached in 2006 between the Soboba Band of Luiseño Indians and three California water districts; ▪ 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; ▪ Gives the Tribe the “prior and paramount right, superior to all others” to pump 9,000 afa from the Basin; ▪ Provides that the Tribe will limit the exercise of its Tribal Water Right to 4,100 afa for 50 years; ▪ Awards the Tribe 127.7 acres of land owned by the water districts; ▪ 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; ▪ 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;” ▪ Permits the Tribe to lease water to other users in the WMP area 	<ul style="list-style-type: none"> ▪ Federal <ul style="list-style-type: none"> - \$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; - \$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. ▪ Local <ul style="list-style-type: none"> - Water districts to provide the Tribe with \$17M in funds that the Tribe will manage in its sole discretion; - \$1M credit deducted from water and sewage financial participation fees charged to the Tribe by one of the water districts

<p>Northwestern New Mexico Rural Water Projects Act (Navajo-Gallup Water Supply Project/Navajo Nation Water Rights)</p> <p>Pub.L. No. 111-11; 123 Stat 1367 (2009)</p>	<p>Navajo Nation</p> <p>NEW MEXICO</p>	<ul style="list-style-type: none"> 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 & Taos (NM) (\$250M); Blackfeet, Crow, Fort Belknap (MT) (\$350 M); Navajo Colorado River (AZ) (\$100M); 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; 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; 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; Individual Nation members that have been allotted land by the United States are not bound by the Settlement and may have additional claims; Secretary of the Interior has not signed the Settlement Agreement executed by the Navajo Nation and the State of New Mexico in 2005 	<ul style="list-style-type: none"> Federal <ul style="list-style-type: none"> \$6M to the Navajo Nation Water Resources Development Trust Fund for each of fiscal years 2010-2014; \$4M to the Navajo Nation Water Resources Development Trust Fund for each of fiscal years 2015 through 2019; \$870M for the Navajo-Gallup Water Supply Project for the period of fiscal years 2009 through 2024; \$30M for conjunctive use ground water wells for the period of fiscal years 2009 through 2019; Not more than \$7.7M for the rehabilitation of the Fruitland Indian Irrigation Project for fiscal years 2009 through 2016; Not more than \$15.4M for the rehabilitation of the Hogback-Cudei Irrigation Project for fiscal years 2009 through 2019; \$ 11M for non-Indian irrigation projects for the period of fiscal years 2009 through 2019 State <ul style="list-style-type: none"> 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; 50% cost share of rehabilitation of non-Indian ditches Local <ul style="list-style-type: none"> 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
<p>Shoshone-Paiute Tribes of Duck Valley Water Rights Settlement Act</p> <p>Pub.L. No. 111-11; 123 Stat 1405 (2009)</p>	<p>Shoshone Tribe Paiute Tribe</p> <p>NEVADA</p>	<ul style="list-style-type: none"> Finalizes settlement between the Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada, and upstream water users; 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; Recognizes and protects the Tribes' claim to 2,606 acre-feet of ground water per year "as part of its water right;" 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; 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; Tribes may use and store all surface water not used by upstream users; Surface water right that upstream users abandon or forfeit shall become part of the Tribes' water right; Tribes shall enact a water code to administer tribal water rights; Department of Interior has not signed the Settlement 	<ul style="list-style-type: none"> Federal <ul style="list-style-type: none"> \$9M to the Shoshone-Paiute Tribes Water Rights Development Fund for each of fiscal years 2010-2014; \$3M to the Shoshone-Paiute Tribes Operation and Maintenance Fund for each of fiscal years 2010-2014 State <ul style="list-style-type: none"> Services for the "implementation and administration" of the settlement, including the services of a water commissioner; Funding and maintenance for streamgages and a stage recording station

<p>Crow Tribe Water Rights Settlement Act of 2010</p> <p>Pub.L. 111-291, 124 Stat. 3064 (2010)</p>	<p>Crow Tribe</p> <p>MONTANA</p>	<ul style="list-style-type: none"> ▪ Provides funding to improve irrigation projects, industrial and municipal water system upgrades, and ensure safe drinking water for the Tribe; ▪ Establishes a base for the Tribe to build energy development projects; ▪ Creates a Crow Tribal Water Right with the following components: <ul style="list-style-type: none"> - <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; - <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; - <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; - <u>Other</u>: Water rights the Tribe acquires as appurtenances to land become part of the Tribal Water Right ▪ 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; ▪ Tribe will administer Tribal Water Right and State will administer water rights recognized under state law; ▪ Tribe and Montana Department of Natural Resources and Conservation will review all Tribal development to determine if it will impact current water users; ▪ Any unresolved disputes will be referred to the Crow-Montana Compact Board 	<ul style="list-style-type: none"> ▪ Federal: <ul style="list-style-type: none"> - \$461M overall; - \$131.8M for Crow Irrigation Project; - \$246.4M for MR&I System; - \$4.8M for Tribal Compact Administration; - \$20M for Energy Development Projects; - \$47M for MR&I System OM&R; - \$10M for Crow Irrigation Project OM&R ▪ State: <ul style="list-style-type: none"> - \$15M for use and benefit of the Tribe; - The state will also pass through all state production taxes on Crow coal development
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<p>White Mountain Apache Tribe Water Rights Quantification Act of 2010</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"> Confirms 2009 White Mountain Apache Tribe (WMAT) Water Rights Quantification Agreement; Confirms Tribe's 1871 priority right to divert 74,000 afa from Salt River; 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; Authorizes leasing of up to 25,000 afa CAP Water annually for 100 years; Requires Secretary to construct reservation wide drinking water project; Confirms Tribe's right to build two reservoirs totaling 18,000 acre-feet storage; Restores Secretarial Power Site Reserves to Tribe; Establishes 12 mile groundwater protection buffer zone along Tribe's northern boundary with National Forest; Confirms Tribe's administrative authority over water use within Reservation; Requires transfer of title to drinking water system to Tribe after three years of operation; 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&I priority water for 100 years; Allocates 25,000 afa CAP Water to Tribe in perpetuity 	<ul style="list-style-type: none"> Federal: <ul style="list-style-type: none"> \$126.2 M mandatory appropriation for dam, treatment plant, pumping stations, 60 mile pipeline for reservation wide drinking water system; \$24 M mandatory appropriation for Cost Overrun Fund for drinking water system; \$50 M mandatory appropriation for WMAT Operation, Maintenance and Repair Trust Fund for the drinking water system; \$2.5 M mandatory appropriation to operate and maintain drinking water system until title to system is transferred by Secretary to WMAT; \$113.5M authorized for WMAT Settlement Fund, includes \$35M [\$24M Mandatory Appropriation and \$11M authorized] for Cost Overrun Fund; Unknown cost for United States to annually firm 3,750 afa of WMAT CAP Water to M&I priority water for 100 years; Funding is indexed in accordance with engineering indices for construction costs State/Local: <ul style="list-style-type: none"> \$2M from State for reservation drinking water system; \$20.7M to annually firm 3,750 afa of WMAT CAP Water to M&I priority water for 100 years
<p>Aamodt Litigation Settlement Act</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"> One of the longest running Federal cases in the U.S.; 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; If non-Pueblo groundwater use exceeds specified levels, they must reduce use to stay free from priority administration; Provides protection for existing non-Pueblo surface users against future water development by the Pueblos; Codifies water-sharing arrangements between Indian and neighboring communities; 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; 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 	<ul style="list-style-type: none"> Federal: <ul style="list-style-type: none"> \$174.3M total; \$106.4M construction of the Regional Water System and environmental compliance activities; 37.5M to help pay Pueblos' share of the cost to operating, maintaining, and replacing Pueblo Water Facilities and the Regional Water System \$15Mfor Aamodt Settlement Fund; \$5.4M for acquisition of water rights for the benefit of the Pueblos; \$5M to pay for the acquisition of Nambe's reserved right for the use of all four Pueblos; \$5M to pay for the pre-completion operation, maintenance and replacement costs associated with Pueblo Water Facilities of the Regional Water System State/Local: <ul style="list-style-type: none"> \$116.9M total

Taos Pueblo Indian Water Rights Settlement Act Pub.L. 111-291, 124 Stat. 3064 (2010)	Taos Pueblo NEW MEXICO	<ul style="list-style-type: none">▪ 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;▪ Authorize the Pueblo to market 2,215 acre-feet from the San Juan-Chama Project water rights upon the Secretary of Interior's approval;▪ 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;▪ Pueblo agrees to limit irrigation to the 2,322 acres currently irrigated, and to extend irrigation only after acquiring and retiring offsetting water right;▪ Gives Pueblo a right to divert and consume 1,600 acre-feet of groundwater for municipal, domestic and industrial uses	<ul style="list-style-type: none">▪ Federal:<ul style="list-style-type: none">- \$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▪ State/Local:<ul style="list-style-type: none">- \$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
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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

Presidential Budget Requests for Indian Land and Water Claims Settlements pursuant to various laws.

Fiscal Year	Requested Funds*
2014	35,655,000
2013	36,293,000
2012	32,855,000
2011	46,480,000
2010	21,627,000
2009	21,627,000
2008	34,069,000
2007	33,946,000
2006	24,754,000
2005	34,771,000
2004	32,636,000
2003	24,870,000
2002	24,870,000

*Each of these requests is pursuant to specific Indian Settlements.