

# Native American Water Rights Settlement Database

## Scope of Work

There are over 560 federally recognized tribal entities in the United States. Under the so-called *Winters* Doctrine, named after a 1908 United States Supreme Court decision in which it was first articulated, tribes have a Federal right to sufficient water to fulfill the purposes of their reservations. The nature and extent of each tribe's water rights can be determined through litigation or negotiation, and the policy of the United States is to resolve disputes regarding tribal water rights through negotiated settlements rather than litigation whenever possible. Twenty-nine (29) Native American water rights settlements have been achieved to date (see list of settlements in Table 1).<sup>1</sup> Some of the more difficult water disputes remain to be resolved, however. Access to existing settlements and related documents will greatly facilitate the process of negotiating future settlements.

Information about settlements and related processes is not readily available. Settlements and their subsequent implementing documents, with the exception of federal legislation, are stored in various court, state, federal and tribal repositories. Now is the time to compile and make this information more accessible. The generation of tribal, state and federal attorneys, experts, and politicians who negotiated many of the earlier settlements grows more grey. Now is the time to collect their experiences, challenges, successes and hopes. Gathering the information in a searchable database will aid future negotiators, whether tribal, federal, state, or local, to build on experience and avoid mistakes of the past. At the 2008 *Winters* Centennial Conference, commemorating the 100<sup>th</sup> anniversary of the Supreme Court's historic decision on tribal water rights, the conference attendees – who included federal and state regulators as well as tribal leaders and representatives of public and private water users – identified the need for such a water rights settlement database.

University of Idaho College of Law Professor Barbara Cosens developed the concept for this project shortly after the *Winters* Conference. The project's goal is to make Native American water right settlement documents and other related materials available on line for those involved in future settlement negotiations. No confidential information will be included in the database. The web interface for the database will be a clickable U.S. map which will provide visual reference and allow searches based on reservation, state, or water basin. In addition, searchable text will allow searches based on topic.

The project is divided into two (2) phases:

### Phase 1

- Collection of settlement documents, including settlement agreements, pre-settlement claims and court orders; tribal, federal, and state settlement approvals; public outreach; post-settlement court decrees; post-settlement implementing documents, including tribal water codes; publications and legislation (see Table 2).

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<sup>1</sup> Whiting, Jeanne, *Indian Water Rights: The Era of Settlement, THE FUTURE OF RESERVED WATER RIGHTS – THE WINTERS CENTENNIAL: WILL ITS COMMITMENT TO JUSTICE ENDURE?* Barbara Cosens and Judith Royster editors, publication pending, University of New Mexico Press.

- Participant interviews.

The project was initiated in 2009 at the University of Idaho College of Law when Professor Cosens' water policy seminar students collected settlement documents and interviewed participants for twenty-one (21) settlements.

This proposal will provide for a law student research assistant to collect documents and interviews for the remaining eight (8) settlements and any others concluded over the next three (3) years.

## Phase 2

- Settlement web portal development

In 2009, the University of Idaho sought funding through the federal appropriation process for the Library Digital Initiatives Project to develop a searchable web portal for the items loaded into the Digital Asset Management System, database, CONTENTdm, and an existing server at the University of Idaho. The proposal noted that by using CONTENTdm, a software package used by libraries to store and provide access to digital versions of primary source materials, the documents will be full text searchable and exportable to WorldCat (the world's largest network of library content), making them available on the web. The project also contemplated the creation of standardized, machine-readable (MARC) records for the documents before exportation to WorldCat to enhance access. That funding effort was not successful.

The current proposal seeks funding to move development and maintenance of the database to the University of New Mexico (UNM). A partnership of the American Indian Law Center, UNM Utton Transboundary Resources Center, and the UNM Centennial Library is prepared to complete the project initiated by Professor Cosens.

In Phase 2, professional staff will:

- Design the database and mapping, as described above, for the web portal
- Develop metadata/keywords from the documents obtained thus far
- Seek consultation on content and layout with settlement and pre-settlement tribes
- Track federal and state appropriations authorized in the settlement legislation
- Provide oversight of the project and the research assistants
- Archive interview data pursuant to agreements with interviewees
- Prepare materials that may be made public for access through the web interface

Research Assistants will:

- Prepare hardcopy documents for electronic format
- Prepare metadata
- Enter metadata
- Upload documents
- Maintain the map interface for the web site.
- Extract and analyze elements of the settlement documents

Project deliverables consist of: 1) Digitized and searchable documents, and 2) the web portal.

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Add-on work: The Project team is interested in adding an additional professional member to the team. This team member, with the assistance of the legal research assistant would take the project into a subsequent phase in which in-depth analysis would be performed and the results/reports made available through the web site. Selected topics include:

- Process of conducting and implementing a settlement
- Development of templates
- Summarization of critical points of contention
- Catalysts bringing parties to the negotiating table
- Tribal and non-Indian community outreach; explaining the process and settlement to the public
- Infrastructure - what was negotiated, what was built
- Benefits to affected communities as well.
- Non-water related settlement terms, regarding land, jurisdictional, other resource issues and other terms helped resolve the water rights dispute

Additional funding from other sources will be sought for this subsequent phase.

**Table 1: Indian Water Rights Settlements:** In the following table settlements information on those shown in bold has not yet been collected. Students in Professor Cosens' Water Policy Seminar in 2009 collected information on the settlements listed and not shown in bold.

Arizona (9)

1. **White Mountain Apache Tribe Water Rights Quantification Act of 2010, Pub. L. No. 111-291, title III, 124 Stat. 3064, 3073.**
2. Arizona Water Settlements Act of 2004 (Gila River, Tohono O'odham, San Carlos), Pub. L. No. 108-451, 118 Stat. 3478.
3. Zuni Indian Tribe Water Rights Settlement Act of 2003 (Zuni Heaven), Pub. L. No. 108-34, 117 Stat. 782 (2003).
4. Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994, Pub. L. No. 103-434, title I, 108 Stat. 4526, *as amended*, Pub. L. No. 104-91, § 201, 110 Stat. 7 (1996).
5. San Carlos Apache Tribe Water Rights Settlement Act of 1992, Pub. L. No. 102-575, title XXXVII, 106 Stat. 4600, *as amended*, Pub. L. No. 103-435, § 13, 108 Stat. 4566 (1994), *as amended*, Pub. L. No. 104-91, § 202, 110 Stat. 7 (1996), *as amended*, Pub. L. No. 104-261, 100 Stat. 3176 (1996), *as amended*, Pub. L. 105-18, § 5003, 111 Stat. 158 (1997).
6. **Fort McDowell Indian Community Water Rights Settlement Act of 1990, Pub. L. No. 101-628, 04 Stat. 4469 (1990).**
7. Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, Pub. L. No. 100-512, 102 Stat. 2549, *as amended*, Pub. L. No. 102-238, 105 Stat. 1908 (1991).
8. **Southern Arizona Water Rights Settlement Act of 1982 (Tohono O'odham), Pub. L. No. 97-293, title III, 96 Stat. 1261, *as amended*, Pub. L. No. 102-497, § 8, 106 Stat. 3255 (1992), *as amended*, Arizona Water Rights Settlement Act of 2004, Pub. L. No. 108-451, 118 Stat. 3478 (2004).**
9. **Ak-Chin Indian Community Act of 1978, Pub. L. No. 95-328, 92 Stat. 409, *as amended*, Pub. L. No. 98-530, 98 Stat. 2698 (1984), *as amended*, Pub. L. No. 102-497, § 10, 106 Stat. 3258 (1992), *as amended*, Pub. L. No. 106-285, 114 Stat. 878 (2000).**

California (2)

10. Soboba Band of Luiseno Indians Settlement Act, Pub. L. No. 110-297 (2008).
11. San Luis Rey Indian Water Rights Settlement Act (La Jolla, Rincon, San Pasquale, Pauma, and Pala Bands of Mission Indians), Pub. L. No. 100-675, title I, 102 Stat. 4000 (1988), *as amended*, Pub. L. No. 102-154, 105 Stat. 990 (1991), *as amended*, Pub. L. No. 105-256, § 11, 112 Stat. 1896 (1998), *as amended*, Pub. L. No. 106-377, § 211, 114 Stat. 1441 (2000).

Colorado (1)

12. Colorado Ute Indian Water Rights Settlement Act of 1988 (Southern Ute and Ute Mountain Ute), Pub. L. No. 100-585, 102 Stat. 2973, *as amended*, Pub. L. No. 104-46, 109 Stat. 402 (1995), *as amended*, Pub. L. No. 106-554, title III, 114 Stat. 2763 (2000).

Florida (1)

13. Seminole Indian Land Claims Settlement Act of 1987, Pub. L. No. 100-228, § 7, 101 Stat. 1556 (1987).

Idaho (2)

14. Snake River Water Rights Act of 2004 (Nez Perce Tribe), Pub. L. No. 108-447 118 Stat. 2809 (2004).
15. Fort Hall Indian Water Rights Settlement Act of 1990, Pub. L. No. 101-602, 104 Stat. 3059 (1990).

Montana (4)

16. **Crow Tribe Water Rights Settlement Act of 2010, Pub. L. No. 111-291, title IV.**
17. Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999, Pub. L. No. 106-163, 113 Stat. 1778 (1999).
18. Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992, Pub. L. No. 102-374, 106 Stat. 1186, *as amended*, Pub. L. No. 103-263, §§ 1-1(a), 108 Stat. 707 (1992).
19. Fort Peck-Montana Compact (Assiniboiné and Sioux Tribes of the Fort Peck Reservation, Montana), MCA 85-20-201 (1985).

Nevada (3)

20. Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act, Pub. L. No. 111-11, Part X, Subtitle C, 123 Stat. 991 (2009).
21. Truckee-Carson-Pyramid Lake Water Rights Settlement Act of 1990, Pub. L. No. 101-618, title II, 104 Stat. 3289 (1990).
22. **Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990, Pub. L. No. 101-618, title I, 104 Stat. 3289, as amended, Pub. L. No. 109-221, § 104, 120 Stat. 336 (2006).**

New Mexico (4)

- 23. Taos Pueblo Indian Water Rights Settlement Act of 2010, Pub. L. No. 111-291, title V, 124 Stat. 3064, 3122.**
- 24. Aamodt Litigation Settlement Act of 2010 (Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque), Pub. L. No. 111-291, title VI, 124 Stat. 3064, 3133.**
- 25. Northwestern New Mexico Rural Water Projects Act (Navajo San Juan Settlement), Pub. L. No. 111-11, Part X, Subtitle B, 123 Stat. 991 (2009).**
- 26. Jicarilla Apache Tribe Water Rights Settlement Act of 1992, Pub. L. No. 102-441, 106 Stat. 2237, *as amended*, Pub. L. No. 104-261, 110 Stat. 3176 (1996), *as amended*, Pub. L. 105-256, 12 Stat. 1896 (1998).**

Oregon (1)

- 27. Confederated Tribes of the Warm Springs Reservation Water Rights Settlement Agreement (1997).**

Utah (2)

- 28. Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement Act of 2000, Pub. L. No. 106-263, 114 Stat. 737 (2000).**
- 29. Ute Indian Water Rights Settlement Act of 1992, Pub. L. No. 102-575, title V, 106 Stat. 4600 (1992).**

## **Table 2: Proposed Database Content**

Pending development of a database with text searchable data, information collected to date is stored at <http://wr.civil.uidaho.edu/IndianWaterRights/SettlementDB.aspx> .

Categories listed under “settlement stage” on this website cover the areas of content for the proposed database and are listed below. Only information open to the public will be made available in the database. Areas of content for the proposed database are:

- Pre-settlement litigation
- Tribal and federal claims
- Pre-settlement negotiation
- Settlement
- Tribal resolution/referendum
- State legislation
- Federal legislation
- Post-settlement court orders/decrees
- Implementation
- Tribal codes
- Appropriation tracker – federal and state