NEGOTIATING INDIAN WATER RIGHTS SETTLEMENTS

Identifying Issues and Parties

NATIVE AMERICAN RIGHTS FUND AND WESTERN STATES WATER COUNCIL

Thirteenth SYMPOSIUM on the SETTLEMENT OF INDIAN RESERVED WATER RIGHTS CLAIMS August 13-15, 2013

IDENTIFYING ISSUES AND PARTIES

WHAT IS NECESSARY FOR A SUCCESSFUL SETTLEMENT?

- Each settlement has its unique issues there is no exact blueprint for how to structure a settlement
- BUT critical to success:
 - Mutual desire for a negotiated resolution
 - > Fortitude and patience to stay the course
 - > Flexibility and willingness to compromise while maintaining core principles (and clarity as to what those are)
 - Innovative approaches to supply, jurisdiction and funding issues (among others)

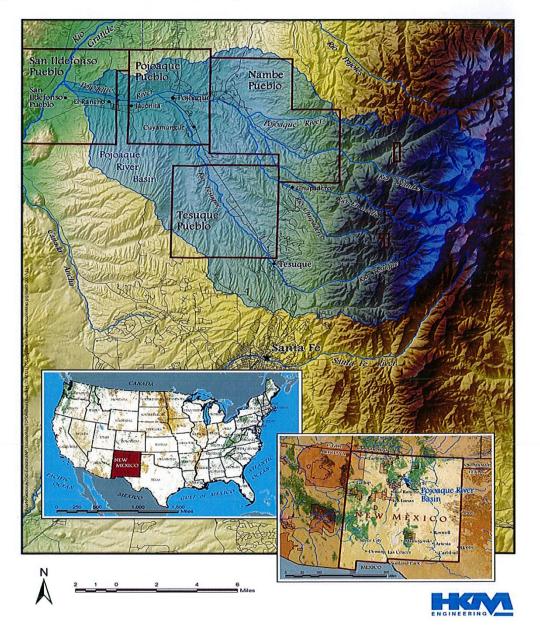
IDENTIFYING ISSUES:

- Technical (Beware the information battle you will never have enough information)
- Legal
- Political

IDENTIFYING ISSUES:

- Scope of claims to be resolved:
 - Geographic
 - Nature of the resource (e.g. surface vs. ground; reliability; desired end uses)
 - Allottees?

Figure 1-1 General Location of the Study Area



IDENTIFYING ISSUES:

- What judicial determinations do you have?
 - Aamodt (Nambé, Pojoaque, San Ildefonso, Tesuque Pueblos -NPT Basin, New Mexico) - decades of litigation provided a starting point for quantification
 - Navajo (Navajo Nation San Juan River, New Mexico) no specific judicial determinations relating to the Nation's rights
 - Abousleman (Zia, Jemez, Santa Ana Pueblos Jemez River, New Mexico) - back in court for judicial determinations after five years of settlement negotiations

IDENTIFYING PARTIES AND BINDING LARGER GROUPS:

- Two Questions:
 - Who do you need at the table?
 - How do you bind those at the table and those not at the table?

IDENTIFYING PARTIES AND BINDING LARGER GROUPS:

- Who do you need at the table?
 - Driven in large part by the issues to be resolved
 - Legal and political question
 - Answer will depend in part on your starting point (ongoing adjudication or other litigation; specific circumstances of basin or watershed at issue)
 - What waivers and releases do you need and from whom to provide certainty in perpetuity?
 - May change over time

IDENTIFYING OF PARTIES AND BINDING LARGER GROUPS:

- How do you bind those both at and not at the table?
 - Question is procedural in nature (both legal and political)
 - Federal legislation/congressional approval
 - State (or federal) court McCarran amendment judgments and decrees binding larger groups of claimants

QUESTIONS?