

# NEGOTIATING INDIAN WATER RIGHTS SETTLEMENTS

## Identifying Issues and Parties

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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?