



Indian Water Rights Settlements

Symposium on the Settlement of Indian Water Rights

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Indian Water Settlements

- In the 1970s, Tribes, States, local parties, and the Federal government began questioning the utility of litigation as the way of resolving water rights disputes
- Negotiated settlements, rather than protracted litigation, became the preferred approach to resolving Indian water rights conflicts
- DOI has completed 38 Indian water rights settlements since 1978
 - Congressionally Approved → 34
 - Administratively Approved by DOI & DOJ → 4

Settlement Negotiations

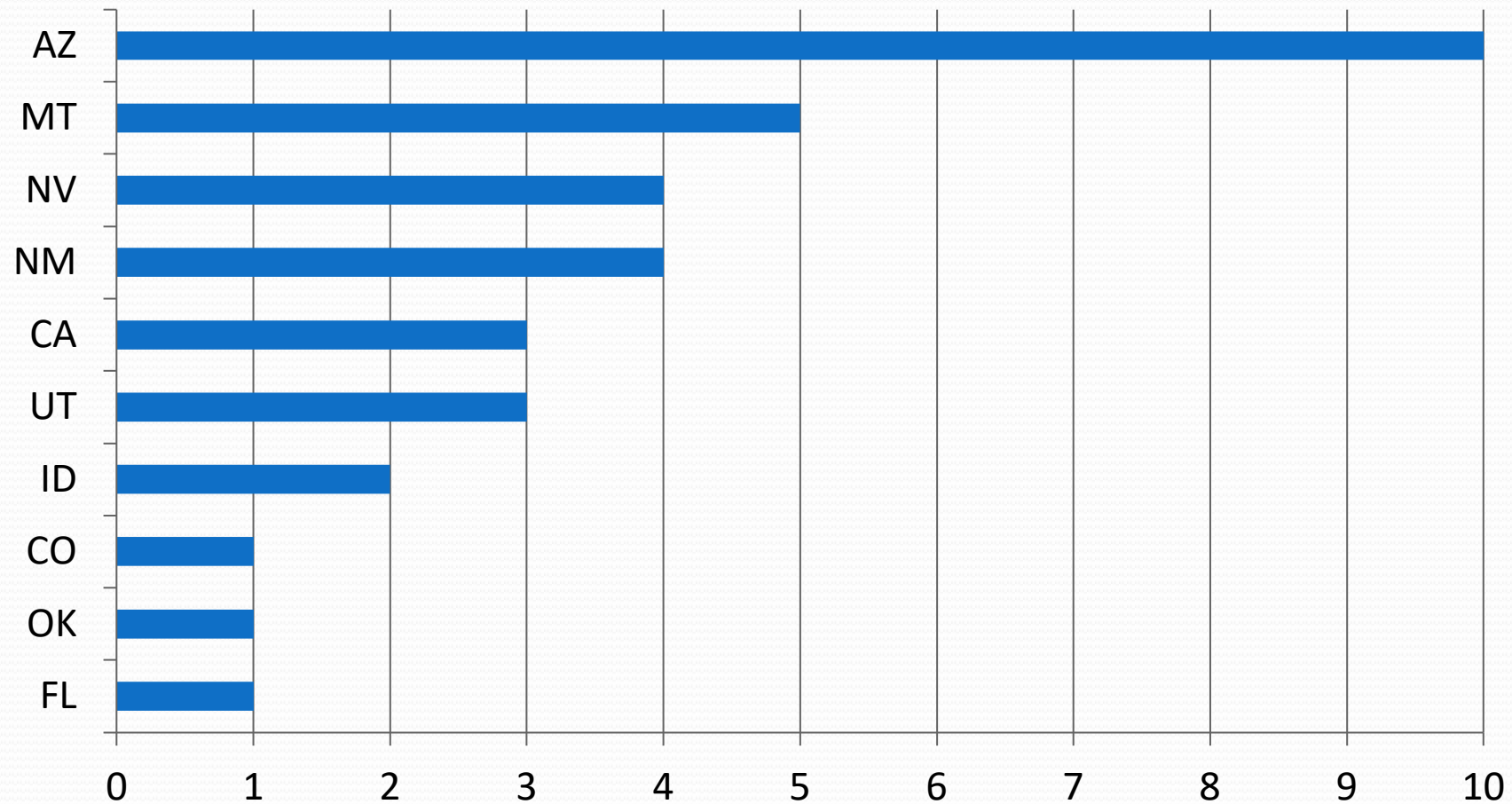
- Settlement negotiations frequently evolve from general stream adjudications, but can occur without litigation in some circumstances
- DOI provides technical and other assistance to Tribes
- Settlement agreements vary from multi-party agreements to compacts among States, Tribes, and the Federal government
- When an agreement is reached, parties typically seek Federal approval in the form of legislation
- “Stars must align” for settlement to succeed and work can go on for decades

Enacted Settlements

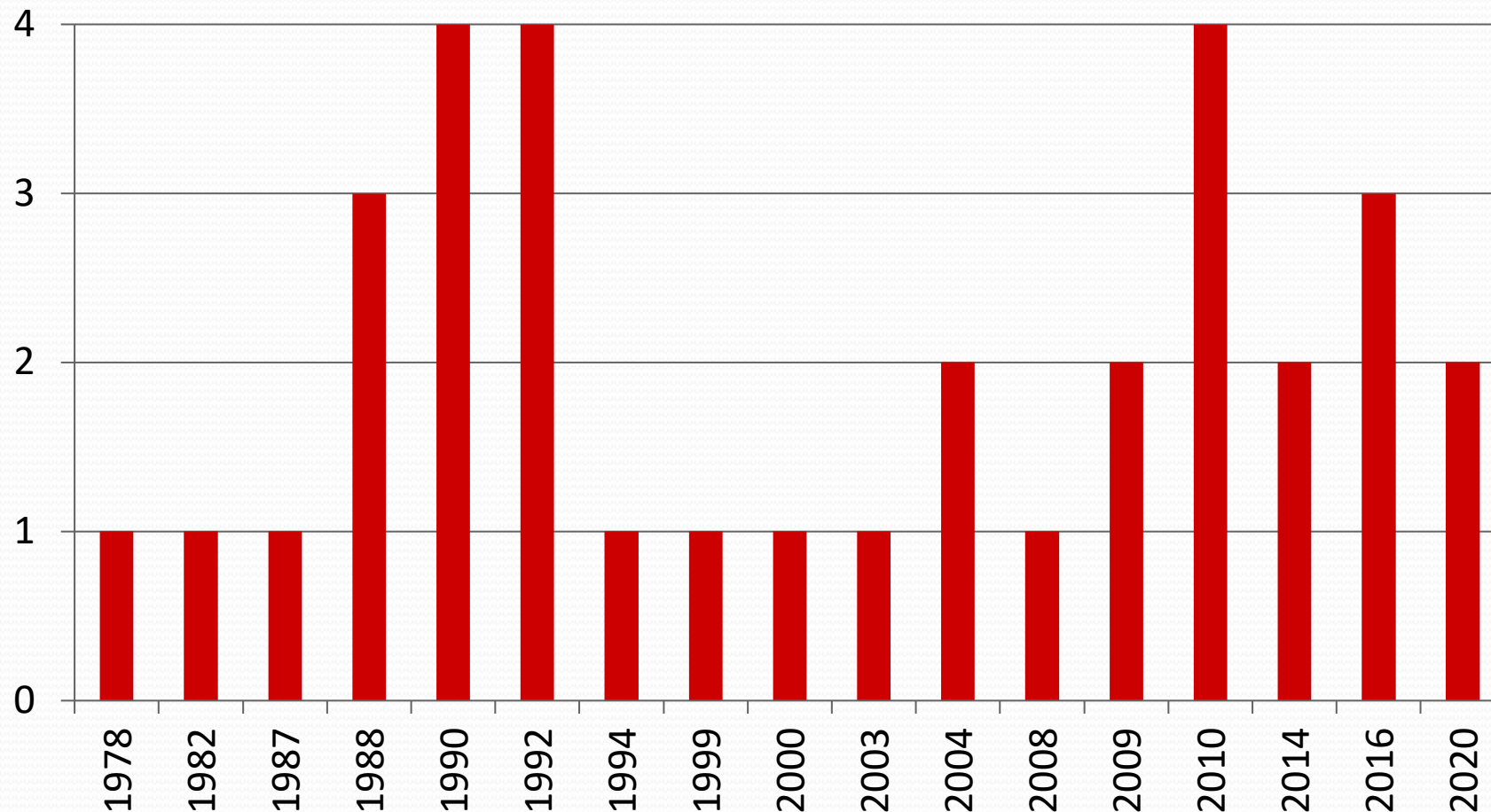
Settlement	Year	Public Law	State
CSKT	2020	P.L. 116-260	MT
Navajo-Utah	2020	P.L. 116-260	UT
Pechanga	2016	P.L. 114-322	CA
Choctaw-Chickasaw	2016	P.L. 114-322	OK
Blackfeet	2016	P.L. 114-322	MT
Bill Williams River (Hualapai)	2014	P.L. 113-223	AZ
Pyramid Lake Paiute-Fish Springs	2014	P.L. 113-169	NV
White Mountain Apache	2010	P.L. 111-291	AZ
Crow Tribe	2010	P.L. 111-291	MT
Taos Pueblo	2010	P.L. 111-291	NM
Aamodt	2010	P.L. 111-291	NM
Navajo-San Juan	2009	P.L. 111-11	NM
Duck Valley	2009	P.L. 111-11	NV
Soboba	2008	P.L. 110-297	CA
Nez Perce	2004	P.L. 108-447	ID
Gila River	2004	P.L. 108-451	AZ
Zuni	2003	P.L. 108-34	AZ

Settlement	Year	Public Law	State
Shivwits	2000	P.L. 106-263	UT
Rocky Boys	1999	P.L. 106-163	MT
Yavapai-Prescott	1994	P.L. 103-434	AZ
Jicarilla Apache	1992	P.L. 102-441	NM
Northern Cheyenne	1992	P.L. 102-374	MT
Ute	1992	P.L. 102-575	UT
San Carlos Apache	1992	P.L. 102-575	AZ
Fort Hall	1990	P.L. 101-602	ID
Fort McDowell	1990	P.L. 101-628	AZ
Fallon Paiute Shoshone	1990	P.L. 101-618	NV
Truckee-Carson-Pyramid Lake	1990	P.L. 101-618	NV
Colorado Ute	1988	P.L. 100-585	CO
Salt River Pima-Maricopa	1988	P.L. 100-512	AZ
San Luis Rey	1988	P.L. 100-675	CA
Seminole Land Claims	1987	P.L. 100-228	FL
SAWRSA	1982	P.L. 97-293	AZ
Ak-Chin	1978	P.L. 95-328	AZ

Indian Water Rights Settlements with Federal Legislation, by State



Number of Indian Water Rights Settlements by Year of Federal Legislation



Incentives to Settle

- **Tribes** – quantify water rights; use bargaining power of claims to negotiate a settlement that provides funding for water infrastructure development, economic development, protection and revitalization of cultural resources, or ecosystem restoration
- **Non-Federal Entities** – continued and assured use of water otherwise threatened by tribal claims; opportunities to obtain benefits not available in litigation (e.g., reduction in repayments for existing projects, new or rehabilitated infrastructure serving both Indians and non-Indians, etc.)
- **Federal Government** – fulfill trust responsibilities; resolve Indian water claims and potential breach of trust claims in a cost effective and less disruptive way than litigation

Factors that Influence Settlement

- Bargaining power of the entities
- Extent to which key stakeholders are involved
- Extent to which existing non-Indian water rights holders can maintain status quo on water use
- Availability of adequate water supplies or mechanisms to expand them
- Realistic deadlines that will cause pain if not met
- Local and Federal politics

Settlement Components

- Quantification of tribal water right
- Binding mechanisms, usually a decree
- Funding
- Water marketing
- Waivers
- Resource management agreements
- State legislation

Federal Settlement Process

The Working Group on Indian Water Settlements

- Established in 1989
- Comprised of all Assistant Secretaries and the Solicitor
- Responsible for making recommendations to the Secretary regarding water settlements and related policies
- Presided over by a Chairperson who is usually a Counselor to the Secretary. Current Chair is Elizabeth Klein, Senior Counselor to Secretary Deb Haaland
- Secretary's Indian Water Rights Office (SIWRO), under the direction of the Chair of the Working Group, coordinates Indian water rights settlements and interfaces with settlement teams in the field

Federal Settlement Process

(Continued)

- Upon direction from the Working Group, SIWRO establishes Federal teams to lead negotiations and implementation of settlements
- Teams are comprised of representatives from:
 - Bureau of Indian Affairs
 - Bureau of Reclamation
 - Office of the Solicitor
 - Fish and Wildlife Service
 - Department of Justice
 - Any other Federal agencies (within or outside DOI) with significant interests in the settlement
- Currently the DOI has 39 teams in the field

Criteria and Procedures

The Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims, 55 Fed. Reg. 9223-9225, Mar. 12, 1990

- Provide guidelines for the Administration's participation in settlements
- Include the factors to be considered in deciding Federal contribution to settlement cost share
- Require non-Federal cost sharing
- Flexible enough to adapt to the unique circumstances of each negotiation
- Followed by every Administration since 1990, but with differing interpretations

Federal Legislative Approval

- Basic parameters of the settlement and legislation approved by Working Group and OMB
- Legislation drafted and introduced
- Hearings scheduled
- DOI drafts initial testimony which is circulated to all DOI agencies by Office of Congressional and Legislative Affairs (OCL)
- DOI testimony revised as necessary by OCL and sent to OMB
- OMB circulates testimony to all affected Federal agencies

Federal Legislative Approval (Continued)

- OMB asks for changes to testimony based on comments received by agencies
- OMB and DOI consult on changes
- OMB clears final testimony
- Congressional roulette begins

Roles of the State and Non-Indian Users in Settlements

- Varies from State to State and sometimes from settlement to settlement
- There is no one size fits all
- Process must be flexible to deal with unique circumstances
- Failure to include key stakeholders or adequately communicate with affected constituencies can result in failure or delayed settlement and/or implementation

The Role of Tribes in Settlement

- Consistent with self-determination and sovereignty, Tribes take major leadership role in crafting settlements
- U.S. proprietary interests on behalf of Federal agencies can pose challenges
 - Forest Service
 - Park Service
- Each Tribe has its own mechanism for negotiating
- Changes in tribal administration can be a challenge
- Increased “grassroots” interest in settlements

Settlement Costs

- Costs vary widely
- \$500,000 (Yavapai-Prescott) to over \$1.9 Billion (Confederated Salish and Kootenai Tribes)
- Infrastructure costs are a driver of total settlement costs
- Settlements have grown more costly over time

Settlement Costs (Continued)

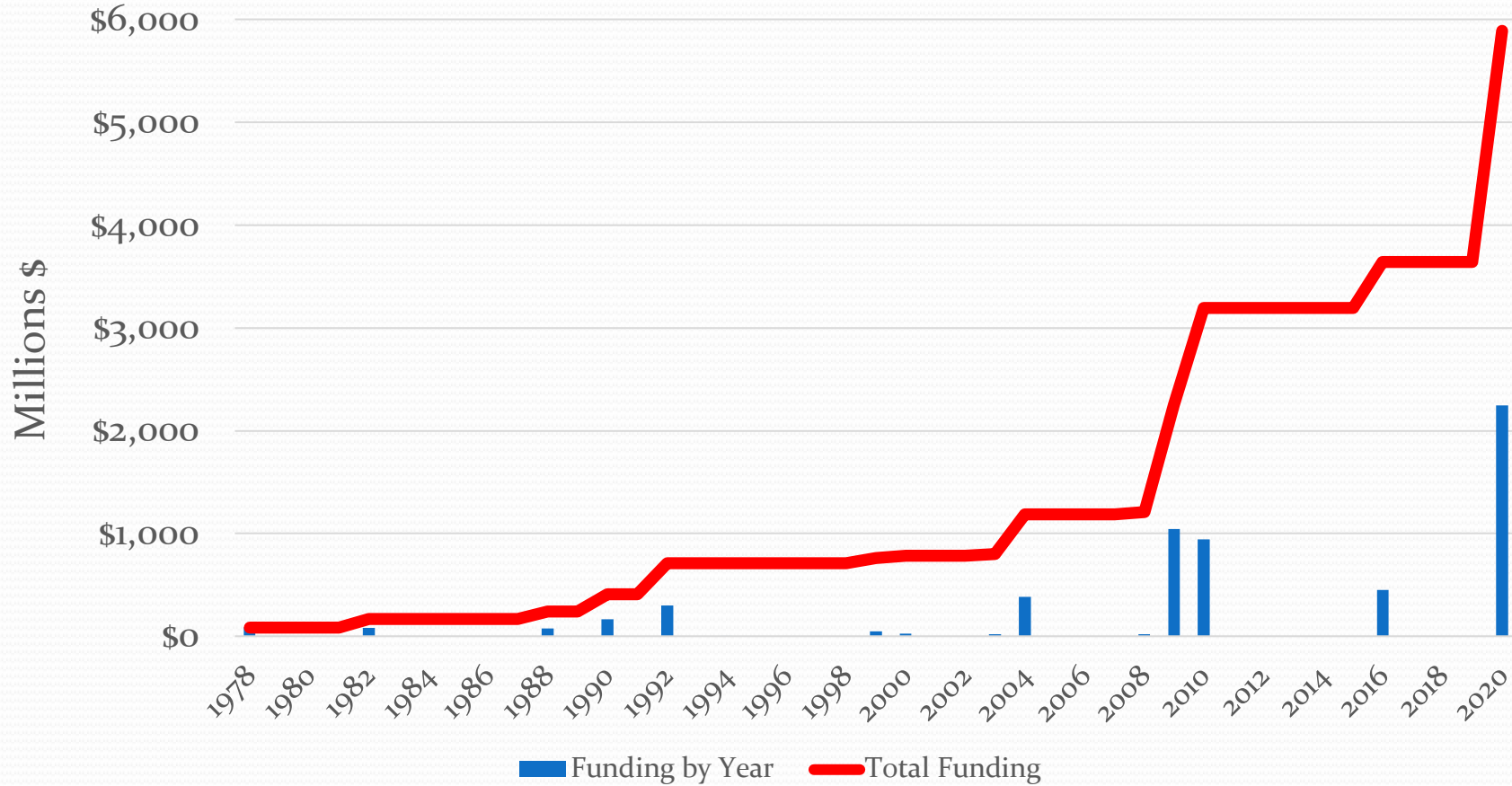
- Costs have been largely funded by the Federal government despite C&P and U.S. objections
- 0% to 50% non-Federal cost share, with lower range being more common
- Average non-Federal monetary contribution to settlement is about 6%

How Settlements Are Funded

- Historically funded by DOI's annual discretionary appropriations, primarily BIA and BOR budgets
- Recognizing the limits of discretionary budgets, Congress has used some new funding mechanisms
 - Mandatory appropriations in enacting legislation
 - Claims Resolution Act: Includes discretionary authorizations and mandatory appropriations for the White Mountain Apache, Crow, Taos, and Aamodt water rights settlements.
 - CSKT: Legislation authorized \$1.9 Billion for the Settlement Trust Fund. \$900 Million was mandatory appropriations
 - Reclamation Water Settlement Fund (RWSF)
 - \$120 Million annually for 10 years beginning in FY 2020 (\$1.2 Billion total)
 - Funding allocations based on specified priorities:
 1. Navajo-Gallup (up to \$500 Million).
 2. Other New Mexico Settlements (up to \$250 Million).
 3. Montana Settlements (up to \$350 Million).
 4. Arizona Settlements (up to \$100 Million)
 - Legislation was introduced in the 115th and 116th Congresses to extend the RWSF but failed

Settlement Challenges

Funding Authorized for Enacted Federal IWRS



*Amounts include discretionary authorizations and mandatory appropriations in enacting legislation.

Pending and Anticipated Legislation

- **Montana:** Gros Ventre and Assiniboine Tribes of the Fort Belknap Indian Community Water Rights Settlement Act (117th Cong.: S. 1911).
- **Nevada/Idaho:** Technical Correction to the Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act (117th Cong.: S. 648/H.R. 1849).
- **Arizona:** Hualapai Tribe Water Rights Settlement Act (116th Cong.: S. 1277/H.R. 2459).
- **New Mexico:** Amendment to the Navajo Gallup Water Supply Project (authorized under P.L. 111-11).

The Future

- Currently pending litigation relates to water rights of about 65 Indian Tribes in 12 States.
- More requests for federal litigation assistance are pending.
- With over 200 Tribes in the West who need access to clean, reliable water and with extreme drought conditions in those States with these Tribes, it is inevitable that DOI will continue to see a growth in the number of Tribes who will assert their rights to the water on their reservations. Settlement requests will continue.

QUESTIONS?



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