



Indian Water Rights Settlements

WSWC/NARF Symposium

August 8, 2023

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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 39 Indian water rights settlements since 1978
 - Congressionally Approved → 35
 - Administratively Approved by DOI & DOJ → 4

Navajo Utah Signing Ceremony

May 2022



Settlement Negotiations

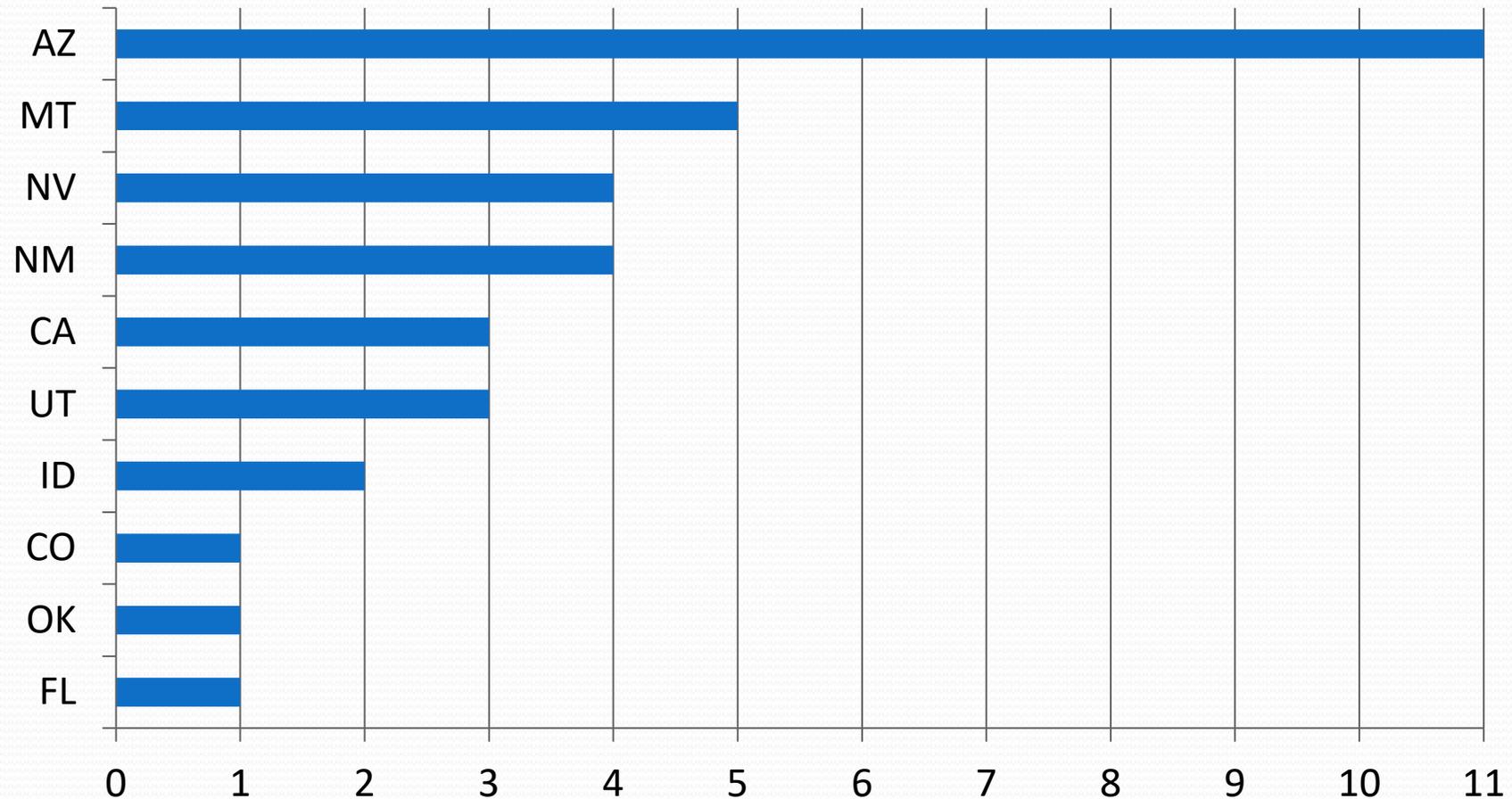
- Settlement negotiations frequently evolve from general stream adjudications but can occur without litigation in some circumstances
- DOI provides technical and other assistance to Tribes
- Settlement agreements vary from multi-party agreements to compacts among States, Tribes, and the Federal government
- 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

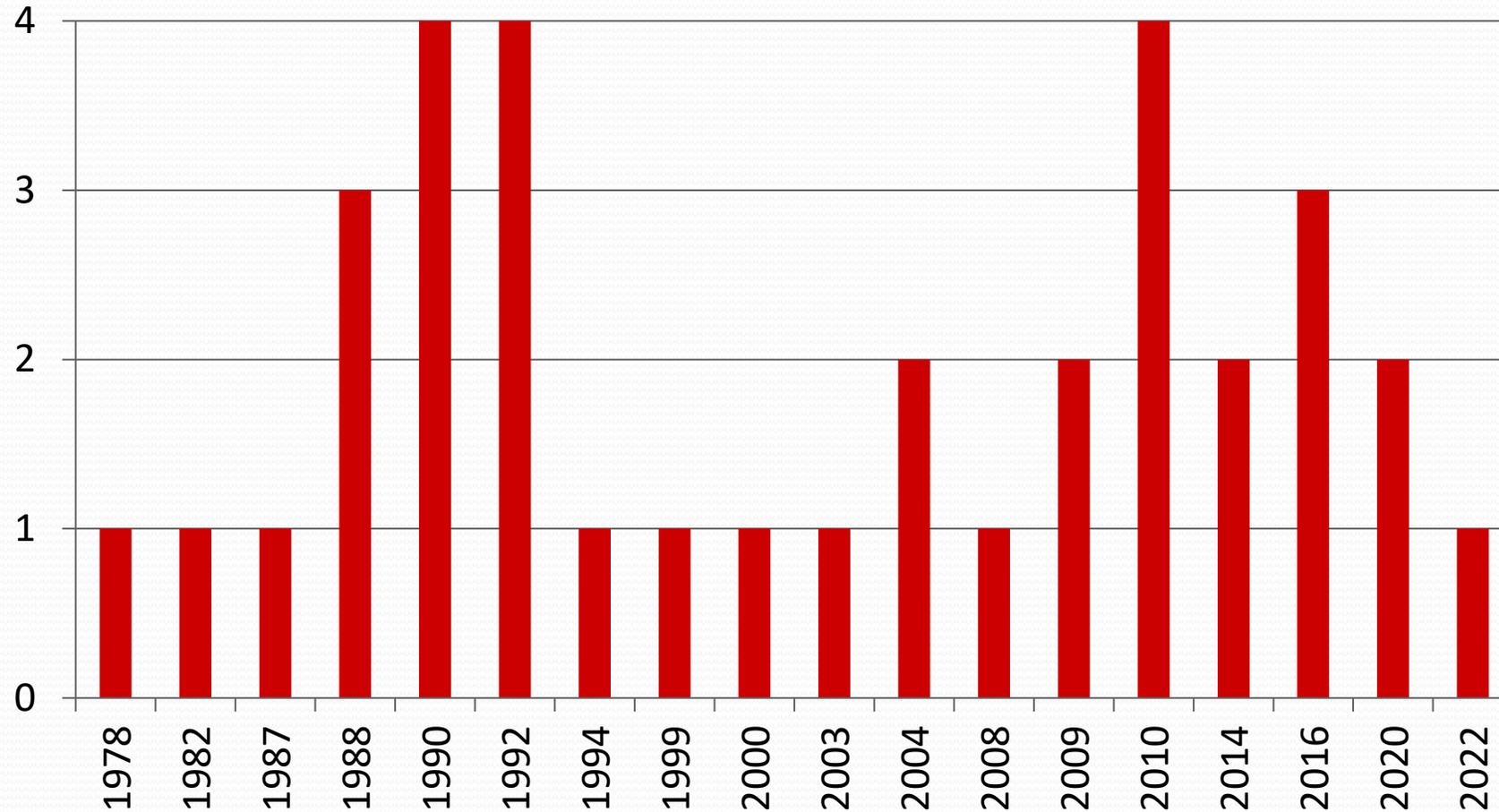
Hualapai	2023	P.L. 117-349	Arizona
CSKT	2020	P.L. 116-260	Montana
Navajo Utah	2020	P.L. 116-260	Utah
Pechanga	2016	P.L. 114-322	California
Choctaw-Chickasaw	2016	P.L. 114-322	Oklahoma
Blackfeet	2016	P.L. 114-322	Montana
White Mountain Apache	2010	P.L. 111-291	Arizona
Crow Tribe	2010	P.L. 111-291	Montana
Taos Pueblo	2010	P.L. 111-291	New Mexico
Ammodt	2010	P.L. 111-291	New Mexico
Navajo-San Juan	2009	P.L. 111-11	New Mexico
Duck Valley	2009	P.L. 111-11	Nevada
Soboba	2008	P.L. 110-297	California
Nez Perce	2004	P.L. 108-447	Idaho
Gila River	2004	P.L. 108-451	Arizona
Zuni	2003	P.L. 108-34	Arizona
Shivwits	2000	P.L. 106-263	Utah
Rocky Boys	1999	P.L. 106-163	Montana

Yavapai-Prescott	1994	P.L. 103-434	Arizona
Jicarilla Apache	1992	P.L. 102-441	New Mexico
Northern Cheyenne	1992	P.L. 102-374	Montana
Ute	1992	P.L. 102-575	Utah
San Carlos Apache	1992	P.L. 102-575	Arizona
Fort Hall	1990	P.L. 101-602	Idaho
Fort McDowell	1990	P.L. 101-628	Arizona
Fallon Paiute Shoshone	1990	P.L. 101-618	Nevada
Truckee-Carson-Pyramid Lake	1990	P.L. 101-618	Nevada
Colorado Ute	1988	P.L. 100-585	Colorado
Salt River Pima-Maricopa	1988	P.L. 100-512	Arizona
San Luis Rey	1988	P.L. 100-675	California
SAWRSA	1982	P.L. 97-293	Arizona
Ak-Chin	1978	P.L. 95-328	Arizona
Seminole Land Claims	1987	P.L. 100-228	Florida
Bill Williams River (Hualapai)	2014	P.L. 113-223	Arizona
Pyramid Lake Paiute-Fish Springs	2014	P.L. 113-169	Nevada

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

Navajo Gallup: Cutter Lateral Treatment Plant Opened June 2022



Aamodt: Pojoaque RWS 2023



Taos 2023



CSKT: Bison Range 2022



Gila River Indian Community



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 Lynn Trujillo, 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 44 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
- 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

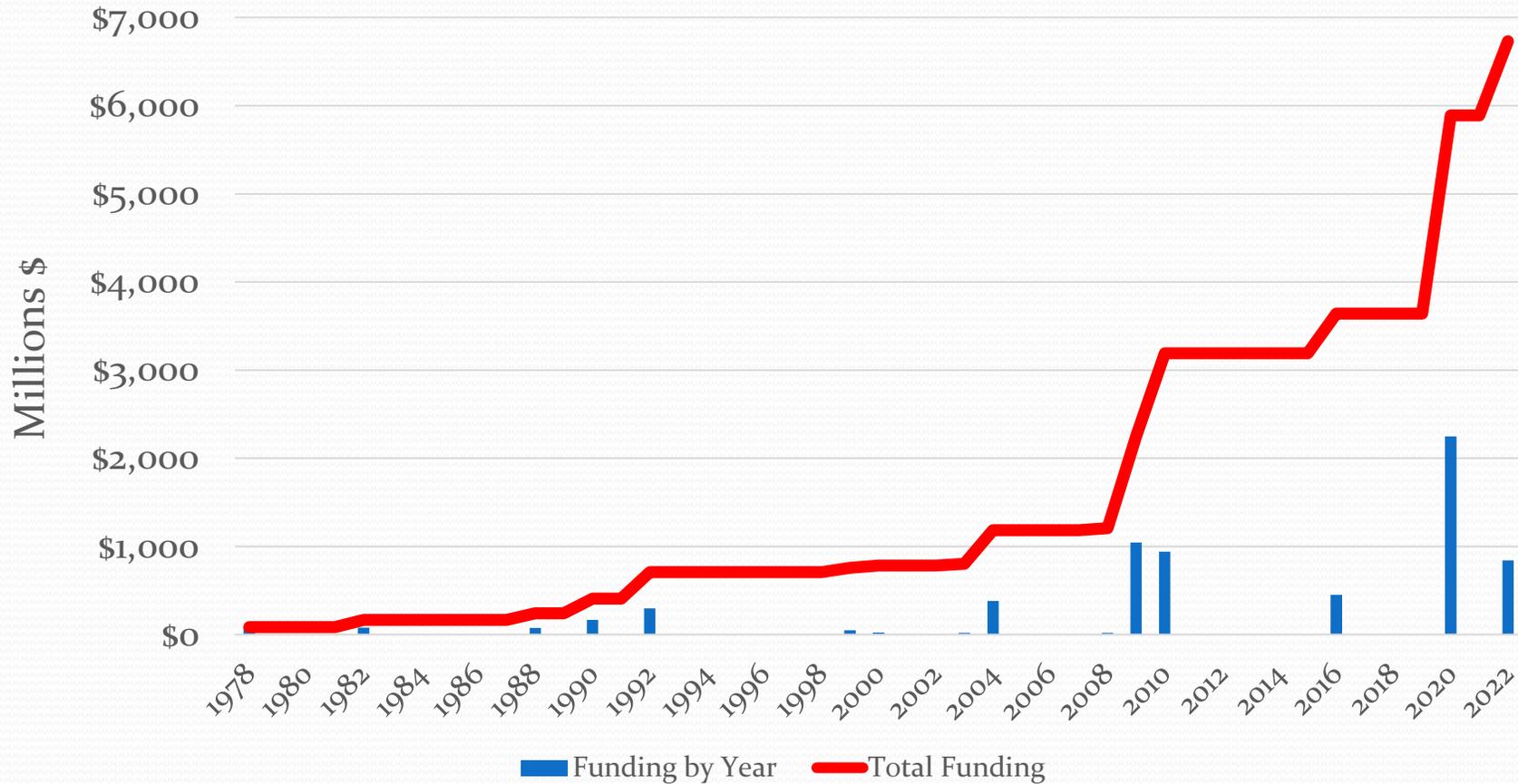
- Consistent with self-determination and sovereignty, Tribes take major leadership role in crafting settlements
- U.S. proprietary interests on behalf of Federal agencies can pose challenges
 - Forest Service
 - National Park Service
- Each Tribe has its own mechanism for negotiating
- Changes in tribal administration can be a challenge
- Tribes must "sell" settlement to membership
- Allottee issues can pose challenges

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
- Costs have been largely funded by the Federal government despite C&P provisions calling for cost sharing
- Average non-Federal monetary contribution to settlement is about 6%

Settlement Challenges

Funding Authorized for Enacted Federal IWRS



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

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 sometimes used some different funding mechanisms
 - Mandatory appropriations in enacting legislation
 - Claims Resolution Act of 2010: Included discretionary authorizations and mandatory appropriations for the White Mountain Apache, Crow, Taos, and Aamodt water rights settlements.
 - CSKT: Legislation authorized \$1.9B for the Settlement Trust Fund. \$900M was mandatory appropriations
 - Reclamation Water Settlement Fund (RWSF)
 - \$120M annually for 10 years beginning in FY 2020 (\$1.2B total)
 - Funding allocations based on specified priorities:
 1. Navajo-Gallup (up to \$500M).
 2. Other New Mexico Settlements (up to \$250M).
 3. Montana Settlements (up to \$350M).
 4. Arizona Settlements (up to \$100M)
 - Legislation was introduced in the 115th and 116th Congresses to extend the RWSF but failed

Bipartisan Infrastructure Law (Division G, Title I): Indian Water Rights Settlement Completion Fund

- Authorized \$2.5B in mandatory funding
- Available to satisfy certain obligations under Indian water rights settlements approved by Congress before enactment of the BIL (November 15, 2021)
 - Transfer to funds or accounts authorized to receive discretionary appropriations, including indexing of such amounts
- The Secretary has discretion to determine the “sequence and timing” of transfers from the Fund
 - IWRS Completion Fund Advisory Group makes allocation recommendations
 - IWRS Completion Fund Executive Committee reviews and approves allocation decisions
- Two rounds of allocations totaling \$2.26B have been made. Approximately \$242M remains

Bipartisan Infrastructure Law (Division G, Title I): Indian Water Rights Settlement Completion Fund

Allocation of IWRS Funding from the BIL Completion Fund

(\$000's)	FY 2022	FY 2023
Bureau of Indian Affairs		
Blackfeet Water Rights Settlement	101,463	9,779
Confederated Salish Kootenai Tribes - Montana Water Rights Protection Act	1,022,585	156,937
Navajo-Utah Water Settlement	210,425	39,114
White Mountain Apache Tribe Settlement Fund	109,106	-
Bureau of Indian Affairs Subtotal	1,443,579	205,830
Bureau of Reclamation		
Blackfeet Water Rights Settlement	98,765	
Crow Tribe Water Rights Settlement	-	20,000
Navajo-Gallup Water Supply Project	123,000	137,000
Gila River Indian Community - Pima Maricopa Irrigation Project	83,986	35,000
So. Arizona Water Rights Settlement - Farm Extension	32,000	8,000
San Carlos Apache Tribe (Distribution System)	-	1,500
AZ Water Settlements Act Implementation - San Carlos Irrigation Project Rehabilitation	17,308	18,225
Ak-Chin Indian Water Rights Settlement Operations, Maintenance & Replacement	-	22,000
Animas-La Plata (Colorado Ute) Operations, Maintenance & Replacement	-	3,300
Navajo-Gallup Water Supply Operations, Maintenance & Replacement	-	2,000
Nez Perce Water Rights Settlement Operations, Maintenance & Replacement	-	6,700
Bureau of Reclamation Subtotal	355,059	253,725
Department of the Interior Total	1,798,638	459,555
Indian Water Rights Completion Fund Balance after 2023 allocations		241,807

FY 2024 Budget Request's Mandatory Funding Proposal

- The President's 2024 budget requests an additional \$2.8B in mandatory funding to complete enacted and new Indian water rights settlements
 - \$250M annually for ten years for new and continuing settlements
 - \$34M annually for ten years to pay ongoing Federal settlement obligations (mostly OM&R)
 - Ak Chin
 - Colorado Ute (Animas La Plata Project)
 - Nez Perce (Columbia and Snake River Salmon Recovery Project)
 - Navajo Gallup Water Supply Project

Recently Enacted Settlement Legislation

- Hualapai Tribe Water Rights Settlement Act (Pub. L. 117-349)
- White Mountain Apache Tribe Water Rights Quantification Act of 2010 Amendment (Pub. L. 117-342)

Hualapai (Pub. L. 117-349)

- Allocates 4,000 afy of 4th priority CAP NIA to the Tribe
 - United States and the State of Arizona must firm 557.5 afy each
- Recognizes Tribe's right to all surface and groundwater on the Reservation
- Establishes \$312M trust fund for various purposes including construction of water infrastructure and acquisition additional of water rights
- Adds certain lands to the Reservation
- Places conditions on the right of the United States and the Tribe to object to certain off-Reservation groundwater uses

White Mountain Apache Tribe (Amendment) (Pub. L. 117-342)

- Amendment to the White Mountain Apache Tribe Water Rights Quantification Act of 2010
 - Extended the Enforceability deadline to December 31, 2027
 - Authorized an additional \$530M for deposit into the Cost Overrun Subaccount for planning, designing, and constructing the WMAT Rural Water Project
 - Amended the definition of “substantial completion” of the WMAT Rural Water Project to prevent need for continued funding gap amendments
 - To prevent scoring, the amendment prohibits use of the Reclamation Water Settlement Fund and the Indian Water Rights Settlement Completion Fund to fulfill the Department’s additional funding obligations

Pending Legislation

- **California:** Tule River Tribe Reserved Water Rights Settlement Act (S. 306)
- **New Mexico:** Rio San Jose and Rio Jemez Water Settlements Act (Pueblos of Acoma, Laguna, Jemez, and Zia) (S. 595/ H.R. 1304)
- **New Mexico:** Navajo-Gallup Water Supply Project Amendments Act (S. 1898/ H.R. 3977)
- **Montana:** Fort Belknap Indian Community Water Rights Settlement Act (S. 1987/ H.R. 5088)
- **Nevada/Idaho:** Technical Correction to the Shoshone-Paiute Tribes of the Duck Valley Reservation Water Rights Settlement Act (S. 950/ H.R. 1738)

Tule River, S. 306

- Introduced February 2023
- Ratifies 2007 agreement among the Tule River Tribe and local parties
- Recognizes right to divert up to 5,828 afy of surface water
- Federal Contribution: \$568M
- Fund-based Settlement: Authorized uses include planning, designing, and constructing Tule River Water Development Projects on the Reservation (\$518M) and related OM&R (\$50M)

Pueblos of Acoma, Laguna, Jemez, and Zia, S. 595/H.R. 1738

- Introduced March 2023
- Rio San Jose: Pueblos of Acoma and Laguna
 - Federal Contribution: \$850M
- Rio Jemez: Pueblos of Jemez and Zia
 - Federal Contribution: \$490M
- Fund-based Settlement: Authorized uses include: planning, permitting, constructing, operating, maintaining, and rehabilitating water projects; water rights administration; watershed protection; environmental compliance; and other purposes

Amendment to the Navajo Gallup Water Supply Project, S. 1898/H.R. 3977

- Introduced June 2023
- Extends Construction Completion Deadline to 12/31/2029
- Federal Contribution Increase: \$725.7M
- The Department testified in support of the legislation at the July 12, 2023, Senate Committee on Indian Affairs legislative hearing

Fort Belknap, S. 1987/ H.R. 5088

- Introduced June 2023 and July 2023
- Would approve the FBIC-Montana Compact recognizing Tribal Water Right of more than 446,000 afy and allocate to the FBIC 20,000 afy of storage from Lake Elwell
- Federal Contribution: \$1.34B
- The Department testified in support of the legislation at the July 12, 2023, Senate Committee on Indian Affairs legislative hearing

Duck Valley, S. 950/H.R. 1738

- The Duck Valley Settlement Act, enacted in 2009, established two trust fund accounts and allowed deposits to earn interest *after* enforceability
- The Department mistakenly invested and earned interest on those funds after deposit but *before* enforceability
- Solicitor's Office determined that that interest earned was contrary to the Antideficiency Act and must be returned to Treasury
- Amendment would authorize the appropriation of interest earned on balances in the Trust Funds during the period beginning on Oct. 1, 2009-Jan. 25, 2016
- The Administration supported a similar amendment introduced but not enacted last Congress

Anticipated Legislation

New Mexico:

- Ohkay Owingeh Pueblo (Rio Chama)
- Zuni Tribe
- “Interest fixes” for Navajo-Gallup, Aamodt, and Taos settlements
- Taos amendments

Montana:

- Crow amendments
- Blackfeet amendments

Trends

- Settlement activities have slowed significantly in Arizona while picking up momentum in New Mexico
 - Arizona settlements have historically relied on CAP water to satisfy Tribal water rights
 - The situation on the Colorado River, with shortages likely in the coming years and firming becoming more challenging, makes CAP water a less attractive option for settlements
 - The State has been less active in ongoing negotiations
 - Many New Mexico settlements heavily rely on groundwater, an arguably more reliable source (for now)
 - State parties are motivated to settle

More Trends

- Public Domain Allotments
 - We are encountering many settlements that involve areas including public domain allotments. These present unique challenges
- Land Transfers
 - CSKT included the return of the National Bison Range to the Tribes and the authorization to negotiate with the State for the exchange of State lands within the Reservation for Federal lands in the State.
 - FBIC adds approximately 16k acres of Federal land to the Reservation and directs the Secretaries of Interior and Agriculture to negotiate with the State for the exchange of 20k+ acres of land within the Reservation for Federal lands in the State.
 - Hualapai included the addition of lands to the Reservation

The Future

- With over 200 Tribes in the West that 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 that will assert their rights to the water on their reservations. Settlement requests will continue.

QUESTIONS?



Secretary's Indian Water Rights Office

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