

**WATER RIGHTS****Symposium on the Settlement of Reserved Indian Water Rights Claims****August 15, 2025  
Special Report #2674**

On August 6, the Native American Rights Fund (NARF) and WSWC virtually hosted the 19th Biennial Symposium on the Settlement of Reserved Indian Water Rights Claims. The Symposium provided an overview of the complex and multifaceted processes leading to Indian water rights settlements. The speakers covered historical context, federal policy, tribal experiences, negotiation strategies, legislative hurdles, and implementation challenges, highlighting the enduring collaborative efforts and difficulties in achieving these agreements that are critical to water security across the West.

**Introductory Remarks**

The symposium commenced with introductory remarks from John Echohawk, Executive Director of NARF, and Tony Willardson, Executive Director of WSWC, setting a tone of collaborative commitment. Both speakers underscored the shared purpose and enduring partnership between tribal organizations, state entities, and federal agencies in addressing critical water resource issues. Echohawk emphasized the long-standing importance of water rights for tribes, particularly in the arid American West. He recounted the establishment of NARF in 1970 to provide legal assistance to tribes, noting that at the time, many tribes lacked legal representation despite possessing significant rights under treaties, federal Indian law, and U.S. Supreme Court decisions. Past federal policies towards tribes were to ignore them, to force assimilation, and to terminate tribes.

Echohawk highlighted a pivotal shift in federal Indian policy under President Nixon, which began to recognize Indian self-determination, treaties, and sovereignty. This change allowed NARF, in conjunction with the federal government, to assert tribal water rights in litigation. He stressed the unique nature of tribal water rights, often senior and “reserved” for present and future uses with priority dates extending to the establishment of the reservations or even time immemorial. Echohawk described the large-scale litigation necessitated by these claims, which required joining all water users in a basin, capturing the attention of western governors and businesses. This led to the Western Governors Association hosting a meeting in 1981, where a consensus emerged among Tribes and States to pursue settlements as an alternative to protracted and costly litigation. Together they went to Washington, D.C., and the Department of the Interior (DOI) was amenable to establishing the Indian Water Rights Office. Since then, 35 Indian water rights settlements have been passed by Congress, with NARF involved in nine of them. Echohawk noted ongoing negotiations for approximately 20 settlements and about a dozen pending bills in Congress, underscoring the continued relevance and activity in this field. He concluded by affirming NARF’s commitment to these issues, noting the Symposium’s role since 1991 in reviewing progress and educating various federal, state, and tribal stakeholders.

Willardson noted the WSWC’s 60th anniversary. The WSWC, now representing 18 States, was created by Western Governors to advise them on water policy. He underscored the WSWC’s mission to ensure adequate and suitable water supplies for the West’s present and future economic and environmental needs. Willardson paid tribute to his predecessor, Craig Bell, who, along with John Echohawk, laid the groundwork for the partnership between NARF and WSWC. This symposium marked Willardson’s last as Executive Director, as he was set to retire at the end of the month. Willardson shared a personal anecdote about his great-great-grandfather, William Lee, who mediated between native peoples and pioneers in Utah, emphasizing the historical significance of communication, trust-building, and shared resource management in the West. He drew parallels to contemporary challenges of drought and water scarcity. “Today we face many challenges as sovereign Nations and States, as stewards of the land and of the waters and leaders of our people. Drought and lack of rain and snow exacerbates these challenges and threatens our ways of life. We’re gathered from all over the West, though remotely, to talk, to communicate our wants and needs, to build trust, and to work together towards a better future for our people.”

**The Federal Settlement Process**

Next, Sarah LeFlore, Acting Director of the Secretary’s Indian Water Rights Office, and Karen Budd-Falen, Advisor in the Office of the U.S. Secretary of the Interior, provided an overview of the federal approach to Indian water rights settlements. LeFlore detailed the “settlement era” that began in the 1970s, driven by the inefficiencies of litigation. She noted that 39 settlements have been completed by DOI, with 35 enacted by Congress and four approved by the Administration. Settlements often evolve from general state stream adjudications and typically involve multiple parties, though the level of state participation varies. California’s state government is generally not a party, while Montana compacts involve only the State, Tribe, and federal government. Other States, like Arizona and New Mexico, see extensive party involvement, including irrigation districts, municipalities, and other governmental entities.

Incentives for settlement include the senior priority of tribal water rights, which can cloud title for non-Indian users, who may participate to gain greater certainty for the future of their existing water uses and avoid priority calls in times of water scarcity. Settlements provide the opportunity for Tribes to secure water and necessary infrastructure. The federal government's participation stems from its trust responsibility and government-to-government relationship with Tribes, as well as a general desire for dispute resolution.

LeFlore stressed that Tribes take the lead role in negotiations, with the federal government following their direction. The Interior Department provides technical and financial assistance through the Bureau of Indian Affairs (BIA) and Bureau of Reclamation (Reclamation). Changes in tribal, state, and federal administrations can cause delays. Tribal communication with their membership is also crucial, especially where ratification by vote is required. Settlements with broad commitment from all stakeholders are more likely to be approved by the Secretary's office. An "agreement in principle" is usually reached before federal legislative approval is sought, which often requires multiple introductions of bills in Congress before enactment.

The federal settlement process is coordinated by the Working Group on Indian Water Rights Settlements, established in 1989, and the Secretary's Indian Water Rights Office (SIWRO). SIWRO was formally established within the Secretary's office in 2009 when the DOI manual was updated, but it has existed since the early 1990s. SIWRO coordinates policy issues across departmental bureaus, works closely with the Solicitor's Office, and signals the importance of settlements to the department as a whole. They receive policy direction from the Chair of the Working Group. LeFlore provided an update on SIWRO staff, noting the recent retirement of the former SIWRO Director Pam Williams and highlighting their small but dedicated team.

Federal settlement teams are established upon tribal request, considering ten factors like existing adjudications, urgency, and party commitment. These teams, comprising representatives from BIA, Reclamation, the Solicitor's Office, and the Department of Justice (DOJ), are the primary mechanism for day-to-day negotiations. Currently, there are 45 teams with 19 implementing enacted settlements, 4 negotiating, and 4 assessing potential settlements. The federal legislative approval process involves the Working Group establishing negotiation positions and SIWRO assisting in drafting legislation. Departmental testimony, cleared by the Office of Management and Budget, marks the first official federal position. Factors influencing legislative success include congressional delegation leadership, stakeholder involvement, water supply availability, and politics.

LeFlore distinguished between project-based settlements, which involve specific infrastructure construction (e.g., Navajo-Gallup Project), and fund-based settlements, which establish trust funds for Tribes to develop water infrastructure (e.g., Navajo Utah). While project-based settlements face challenges like cost overruns and lack flexibility to adapt over time, fund-based settlements are generally preferred by DOI where appropriate due to the greater federal certainty, though the department will not force this model on Tribes. Some Tribes prefer the flexibility of fund-based settlements, allowing them to control their destiny in terms of water development and potentially participate in water markets. Some pending settlements use a hybrid approach. Settlement costs vary widely, with federal funding predominating. Funding mechanisms include discretionary appropriations (BIA for trust funds, Reclamation for infrastructure), mandatory funding (in some settlements and all pending ones), the 2009 Reclamation Water Settlement Fund, and the 2021 Indian Water Rights Completion Fund (which provided \$2.5 billion but is now expended). LeFlore also highlighted emerging trends, including a slowdown in Arizona settlements due to Central Arizona Project water limitations, and increased settlement activity in New Mexico, along with amendments to enacted settlements for increased funding in the face of inflation or modified uses.

Budd-Falen, who chairs the Working Group on Indian Water Rights Settlements, emphasized the Secretary's commitment to supporting settlements and encouraged parties to be creative and inclusive and develop broad stakeholder buy-in. She encouraged realistic feasibility studies for project-based settlements to ensure cost accuracy and reduce future overruns, and encouraged fund-based settlements where appropriate. She noted the unique nature of each Tribe and settlement.

## **The Federal Settlement Process: A Tribal Perspective**

Bidtah Becker, Chief Legal Counsel for the Navajo Nation, and Wes Williams, Jr., General Counsel for the Walker River Paiute Tribe, offered tribal perspectives on water rights settlements, highlighting historical context, generational shifts, and the complexities of negotiation. Becker shared her experiences with the Navajo Nation's protracted water rights claims, emphasizing the generational nature of these efforts. She noted the shift from litigation to settlement, a path encouraged by figures like John Echohawk and supported by the federal government's trust responsibility. Becker highlighted the long history of Navajo's water claims, spanning nearly 50 years for some adjudications. She underscored the importance of tribal leadership in negotiations and the need for continuous communication with tribal members, especially when settlements require ratification. Becker discussed the Navajo Nation's move towards a hybrid settlement model that includes both project-based components, like the Navajo-Gallup Water Supply Project, which delivered clean drinking water during COVID-19, and fund-based components for future water acquisition in the lower basin. She stressed that while

project-based settlements deliver tangible infrastructure, fund-based settlements offer flexibility and allow Tribes to participate in water markets, securing resources from willing sellers. Becker also noted the increasing costs of settlements over time, arguing that upfront investment is more cost-effective than prolonged litigation. She emphasized the importance of the federal commitment to these agreements, drawing a contrast with the historical underfunding of services like the Indian Health Service.

Williams recounted the Walker River Paiute Tribe's nearly 30-year journey to settle parts of the Walker River Decree, a case initiated in 1924. He detailed the Tribe's senior water rights (1859 priority date) and their crucial claim for a recognized right to store water in Weber Reservoir. Williams explained the extensive challenges of serving defendants and the numerous, often unsuccessful, settlement attempts over the years, often derailed by broader, contentious issues like the declining Walker Lake. He highlighted a turning point when the federal court, after initially dismissing the Tribe's claims, reversed course and ruled in the Tribe's favor on numerous affirmative defenses, eliminating obstacles that had long plagued negotiations. This legal clarity ultimately opened the door for successful settlement discussions in 2024. Both Becker and Williams underscored the unique circumstances of each Tribe, the resilience required in negotiations, and the profound impact of water settlements on tribal self-determination and community well-being.

## **Negotiation and Settlement of Indian Water Rights Claims**

This session, moderated by Alice E. Walker, featured perspectives from Grace Rebling, an attorney with Osborn Maledon; Fred Lomayesva, General Counsel for the Hopi Tribe; Jay Weiner, an Administrative Law Judge with the Montana Department of Natural Resources and Conservation; Guss Guarino and Marisa J. Hazell, Trial Attorneys from the DOJ Tribal Resources Section/Environment and Natural Resources Division. Rebling and Lomayesva provided insights into the Hopi Tribe's long-standing efforts toward the settlement of their reserved water rights claims. Lomayesva emphasized the cultural and existential importance of water for the Hopi people, whose traditions are deeply tied to water scarcity in their arid lands. He detailed the Tribe's engagement in the Northeastern Arizona Indian Water Rights Settlement Act (NAWSA), highlighting the arduous, multi-generational negotiation process that involved not only federal and state entities but also other tribal nations like the Navajo and San Juan Southern Paiute. Rebling spoke to the intricate legal and technical challenges, including the quantification of rights and the development of infrastructure plans, emphasizing the need for flexibility and adaptability in negotiations given changing environmental conditions and evolving federal policies.

Weiner offered a state perspective, specifically on Montana's successful compacting process. He explained how Montana's Water Use Act of 1973 set up a framework for negotiating and codifying Indian water rights through compacts, which are then ratified by the State Legislature and Congress. Weiner highlighted the importance of a dedicated state commission (e.g., Montana's Reserved Water Rights Compact Commission) that maintains institutional knowledge and fosters consistent engagement with Tribes, developing trust and streamlining negotiations. He cited the Confederated Salish and Kootenai Tribes (CSKT) settlement as a prime example of a successful, comprehensive compact that addressed not only water rights but also land transfers and funding for infrastructure.

Guarino emphasized the DOJ's responsibility in protecting tribal trust resources through litigation where necessary, but also actively supporting and participating in settlement negotiations as a preferred alternative. Hazell elaborated on the intricate legal review process within the DOJ, ensuring that proposed settlements align with federal law, policy, and the government's trust responsibility. Both underscored the need for comprehensive agreements that address legal certainty, provide for infrastructure development, and secure appropriate federal contributions, acknowledging the significant financial and legal complexities involved in bringing these settlements to fruition. The discussion collectively highlighted the long-term commitment, intergovernmental collaboration, and adaptability required to navigate the challenging landscape of Indian water rights settlements.

## **Settlement Legislation: Getting Bills Through Congress**

Tanya Trujillo, Deputy State Engineer for the New Mexico Office of the State Engineer, moderated a discussion on the intricate process of shepherding Indian water rights settlement bills through Congress, featuring insights from congressional staff Darren Modzelewski, Counsel for the Senate Committee on Indian Affairs (minority), and Qay-Liwh Ammon, Professional Staff for the House Committee on Natural Resources (minority). Ammon started with a House perspective. She explained that the House Committee on Natural Resources is the main committee of jurisdiction, with its Subcommittee on Water, Wildlife, and Fisheries often taking the lead. Ammon reiterated the importance of clear, concise communication about the bill's benefits, both for the tribes and for regional stability. She noted that the House, with its larger membership, presents different challenges and opportunities for building coalitions. Ammon emphasized the need for persistence, as bills often take multiple congressional sessions to pass. She also spoke about the importance of demonstrating local support for the settlement, including endorsements from state and local governments, and non-tribal water users, which signals to members that the bill addresses a broad constituency.

Modzelewski offered a detailed look at the Senate side. He emphasized that the Senate Committee on Indian Affairs serves as the primary committee for these bills, though other committees like Energy and Natural Resources, and even

Appropriations, might have jurisdiction depending on the bill's specifics. Modzelewski highlighted the importance of bipartisan support, especially in a divided Congress, noting that a single Senator's objection can significantly impede progress. He stressed the need for strong advocacy from tribal leadership and state partners to educate and persuade members of Congress and their staff. He also pointed out the critical role of the Congressional Budget Office (CBO) in scoring bills, as their cost estimates heavily influence legislative viability. Modzelewski underscored that "no surprises" is a key principle for congressional staff and members — they prefer to be fully informed about a bill's implications, particularly its financial and legal aspects, to avoid unexpected issues that could derail its passage.

Both Modzelewski and Ammon agreed that successful legislative efforts hinge on proactive engagement with congressional offices, thorough preparation of supporting materials, and a unified front from all stakeholders. They highlighted the competitive nature of the legislative calendar and the need for a compelling narrative that resonates with a wide range of congressional priorities. The discussion underscored that while the path through Congress is fraught with political and procedural hurdles, consistent effort and broad-based support significantly increase the likelihood of success for Indian water rights settlement bills.

## **Settlement Legislation: Tribal Perspectives**

Daniel Cordalis, Staff Attorney at NARF, moderated a session on tribal perspectives regarding the legislative process for water rights settlements, featuring insights from the legal counsel for various Tribes, including Ryan Smith, Shareholder at Brownstein Hyatt Farber Schreck; Ryan Rusche, attorney with Sonosky Chambers Perry & Sachse; and John Bezdek, Shareholder at Water and Power Law Group PC.

Smith, who serves as counsel for the Navajo Nation, discussed the unique challenges faced by large, multi-state Tribes like the Navajo Nation in advancing settlement legislation. He emphasized the sheer scale of the Navajo Nation's claims, which span multiple States and river basins, requiring a comprehensive legislative approach that can accommodate diverse regional interests. Smith highlighted the necessity of consistent and coordinated engagement with a wide array of congressional delegations and committees, often across different House and Senate chambers. He also touched upon the complexities of internal tribal processes, including extensive consultation with chapters and leadership, which are crucial for building consensus and securing tribal ratification — a prerequisite for congressional action.

Rusche, representing the Confederated Salish and Kootenai Tribes (CSKT), offered insights from a Tribe that has successfully navigated the legislative process. He underscored the importance of strong, unified tribal leadership and a clear, well-articulated vision for the settlement. Rusche detailed how CSKT's long-standing relationship with its congressional delegation and effective public outreach helped build broad support. He also emphasized the significance of a comprehensive compact that addressed not only water rights but also other key tribal priorities, like land transfers and funding for resource management, which allowed for a more compelling legislative package. Rusche noted that even after successful passage, continued engagement with Congress is essential for securing implementation funding and addressing any unforeseen issues.

Bezdek, counsel for the Colorado River Indian Tribes (CRIT), provided a perspective rooted in the highly complex and often contentious Colorado River Basin. Bezdek highlighted the challenges of negotiating and legislating in an environment where water scarcity is paramount and competing interests are intense. He stressed the importance of carefully quantifying tribal water rights and demonstrating how a settlement can contribute to overall basin stability rather than exacerbating existing tensions. Bezdek emphasized the need for Tribes to be proactive in shaping the legislative narrative and to build alliances with other basin stakeholders, including States and water users, to present a unified front to Congress. He also discussed the strategic considerations involved in timing legislative pushes, recognizing that the broader political climate and ongoing river negotiations can significantly impact a bill's chances of success.

Collectively, the panelists underscored that tribal success in Congress for water rights settlements relies on sustained advocacy, adaptability to the political landscape, robust internal tribal consensus, and the ability to forge strategic alliances with diverse stakeholders.

## **Implementation of Indian Water Rights Settlements**

The final session of the symposium, moderated by Phillip Perez, Chairman of the Northern Pueblos Tributary Water Rights Association, discussed the critical implementation phase of Indian water rights settlements after congressional authorization. The panel featured Pueblo representatives Ryan Swazo-Hinds, Environmental Biologist, Pueblo of Tesuque; Jeff Montoya, Development Department Specialist, Pueblo of Pojoaque; Mike Lujan, Mayordomo, Pueblo of Nambé; Governor Christopher Moquino, Pueblo de San Ildefonso; and Lt. Governor Raymond Martinez, Director, Department of Environmental and Cultural Preservation, Pueblo de San Ildefonso; alongside federal and state perspectives from Jennifer Faler, Albuquerque Area Manager, Bureau of Reclamation; and Tomás Stockton, Technical Liaison, New Mexico Office of the State Engineer.

The Pueblo representatives collectively highlighted the profound impact of the settlements on their communities, emphasizing that implementation goes far beyond mere water delivery. Swazo-Hinds discussed the Pueblo of Tesuque's focus on environmental and cultural preservation, ensuring that the water secured through the settlement supports traditional practices and ecological health. Montoya shared insights from the Pueblo of Pojoaque on economic development opportunities unlocked by a secure water supply, including agricultural revitalization and sustainable community growth. Lujan spoke to the on-the-ground challenges and successes of managing water for traditional irrigation and domestic use in the Pueblo of Nambé, underscoring the importance of community engagement and capacity building in water management. Governor Moquino and Lt. Governor Martinez of the Pueblo de San Ildefonso elaborated on the comprehensive nature of their settlement, which included not only water infrastructure but also provisions for land management and cultural resource protection. They stressed that effective implementation requires ongoing intergovernmental coordination and a deep understanding of tribal sovereignty and traditional ecological knowledge.

From the federal side, Faler provided an overview of Reclamation's role in constructing and maintaining infrastructure components of settlements. She acknowledged the complexities of project management, including navigating permitting, contracting, and unforeseen construction challenges, particularly in remote areas. Faler emphasized Reclamation's commitment to working collaboratively with Tribes and other stakeholders to ensure that projects are completed efficiently and meet the intended objectives.

Stockton offered a state perspective on implementation. He discussed the mechanisms for integrating settled tribal water rights into state water administration systems, including the challenges of modifying existing decrees and managing diverse water user demands. Stockton highlighted the importance of clear communication and technical assistance from the State to ensure a seamless transition to the new water management regime.

The panel acknowledged that implementation is a continuous process requiring sustained funding, adaptive management, and strong partnerships among all parties. It involves translating legal agreements into tangible benefits, addressing unforeseen challenges, and ensuring that the long-term goals of tribal self-determination and water security are met.

Michelle Bushman, Deputy Director and General Counsel of the Western States Water Council, delivered the wrap-up remarks for the Symposium. She highlighted the complexities of settlement negotiations as an alternative to litigation, noting that while paper rights don't always lead to water access, negotiated settlements facilitate tangible infrastructure and "wet water" for Tribes. Settlements provide certainty for both tribal and non-tribal communities, especially during water shortages. They are always "local" in terms of unique needs and resources, yet they have a regional impact. Bushman emphasized that these settlements are not earmarks for local projects, but are vital for regional water security across the West. They also frequently have the benefit of fostering trust and rebuilding communities. She acknowledged the critical, sometimes intergenerational, long-term commitment of tribal, federal, and state representatives who continue to show up at the table for years and even decades of negotiations. She thanked Pam Williams for her knowledge and resilience and her many years of dedicated service at SIWRO, referring to the many times her efforts on various settlements were mentioned during the Symposium. Finally, Bushman issued an invitation for interested parties to join the NARF-WSWC Ad Hoc Group to help broadly advocate for settlements, emphasizing the need to educate Congress on the cost-effectiveness, trust responsibilities, regional water security, and profound impact of these completed agreements.