Native American Water Rights Settlement Database

Scope of Work

There are over 560 federally recognized tribal entities in the United States. Under the so-called *Winters* Doctrine, named after a 1908 United States Supreme Court decision in which it was first articulated, tribes have a Federal right to sufficient water to fulfill the purposes of their reservations. The nature and extent of each tribe’s water rights can determined through litigation or negotiation, and the policy of the United States is to resolve disputes regarding tribal water rights through negotiated settlements rather than litigation whenever possible. Twenty-nine (29) Native American water rights settlements have been achieved to date (see list of settlements in Table 1).¹ Some of the more difficult water disputes remain to be resolved, however. Access to existing settlements and related documents will greatly facilitate the process of negotiating future settlements.

Information about settlements and related processes is not readily available. Settlements and their subsequent implementing documents, with the exception of federal legislation, are stored in various court, state, federal and tribal repositories. Now is the time to compile and make this information more accessible. The generation of tribal, state and federal attorneys, experts, and politicians who negotiated many of the earlier settlements grows more grey. Now is the time to collect their experiences, challenges, successes and hopes. Gathering the information in a searchable database will aid future negotiators, whether tribal, federal, state, or local, to build on experience and avoid mistakes of the past. At the 2008 *Winters* Centennial Conference, commemorating the 100th anniversary of the Supreme Court’s historic decision on tribal water rights, the conference attendees – who included federal and state regulators as well as tribal leaders and representatives of public and private water users – identified the need for such a water rights settlement database.

University of Idaho College of Law Professor Barbara Cosens developed the concept for this project shortly after the *Winters* Conference. The project’s goal is to make Native American water right settlement documents and other related materials available on line for those involved in future settlement negotiations. No confidential information will be included in the database. The web interface for the database will be a clickable U.S. map which will provide visual reference and allow searches based on reservation, state, or water basin. In addition, searchable text will allow searches based on topic.

The project is divided into two (2) phases:

**Phase 1**

- Collection of settlement documents, including settlement agreements, pre-settlement claims and court orders; tribal, federal, and state settlement approvals; public outreach; post-settlement court decrees; post-settlement implementing documents, including tribal water codes; publications and legislation (see Table 2).

Participant interviews.

The project was initiated in 2009 at the University of Idaho College of Law when Professor Cosens’ water policy seminar students collected settlement documents and interviewed participants for twenty-one (21) settlements.

This proposal will provide for a law student research assistant to collect documents and interviews for the remaining eight (8) settlements and any others concluded over the next three (3) years.

Phase 2

Settlement web portal development

In 2009, the University of Idaho sought funding through the federal appropriation process for the Library Digital Initiatives Project to develop a searchable web portal for the items loaded into the Digital Asset Management System, database, CONTENTdm, and an existing server at the University of Idaho. The proposal noted that by using CONTENTdm, a software package used by libraries to store and provide access to digital versions of primary source materials, the documents will be full text searchable and exportable to WorldCat (the world’s largest network of library content), making them available on the web. The project also contemplated the creation of standardized, machine-readable (MARC) records for the documents before exportation to WorldCat to enhance access. That funding effort was not successful.

The current proposal seeks funding to move development and maintenance of the database to the University of New Mexico (UNM). A partnership of the American Indian Law Center, UNM Utton Transboundary Resources Center, and the UNM Centennial Library is prepared to complete the project initiated by Professor Cosens.

In Phase 2, professional staff will:

- Design the database and mapping, as described above, for the web portal
- Develop metadata/keywords from the documents obtained thus far
- Seek consultation on content and layout with settlement and pre-settlement tribes
- Track federal and state appropriations authorized in the settlement legislation
- Provide oversight of the project and the research assistants
- Archive interview data pursuant to agreements with interviewees
- Prepare materials that may be made public for access through the web interface

Research Assistants will:
- Prepare hardcopy documents for electronic format
- Prepare metadata
- Enter metadata
- Upload documents
- Maintain the map interface for the web site.
- Extract and analyze elements of the settlement documents
Project deliverables consist of: 1) Digitized and searchable documents, and 2) the web portal.

Add-on work: The Project team is interested in adding an additional professional member to the team. This team member, with the assistance of the legal research assistant would take the project into a subsequent phase in which in-depth analysis would be performed and the results/reports made available through the web site. Selected topics include:

- Process of conducting and implementing a settlement
- Development of templates
- Summarization of critical points of contention
- Catalysts bringing parties to the negotiating table
- Tribal and non-Indian community outreach; explaining the process and settlement to the public
- Infrastructure - what was negotiated, what was built
- Benefits to affected communities as well.
- Non-water related settlement terms, regarding land, jurisdictional, other resource issues and other terms helped resolve the water rights dispute

Additional funding from other sources will be sought for this subsequent phase.
**Table 1: Indian Water Rights Settlements:** In the following table settlements information on those shown in bold has not yet been collected. Students in Professor Cosens’ Water Policy Seminar in 2009 collected information on the settlements listed and not shown in bold.

### Arizona (9)


### California (2)


Colorado (1)


Florida (1)


Idaho (2)


Montana (4)


Nevada (3)


Oregon (1)


Utah (2)


Table 2: Proposed Database Content

Pending development of a database with text searchable data, information collected to date is stored at http://wr.civil.uidaho.edu/IndianWaterRights/SettlementDB.aspx.

Categories listed under “settlement stage” on this website cover the areas of content for the proposed database and are listed below. Only information open to the public will be made available in the database. Areas of content for the proposed database are:

- Pre-settlement litigation
- Tribal and federal claims
- Pre-settlement negotiation
- Settlement
- Tribal resolution/referendum
- State legislation
- Federal legislation
- Post-settlement court orders/decree
- Implementation
- Tribal codes
- Appropriation tracker – federal and state