



About Tribal Water Settlements

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Water rights settlements enable Tribes to quantify their water rights, limit ongoing conflicts over water, and secure water infrastructure and access for their communities. Settlements can offer win-win options for non-Tribal neighbors as well.



Historic Background

- Tribal water rights are grounded in the federal reserved water rights doctrine established by the Supreme Court in *United States v. Winters* (1908). [See NARF's *Indian Water Rights 101*](#).
- The federal government left Tribal water rights unprotected for decades after the 1908 *Winters* case. Meanwhile extensive federally funded development brought water resources to non-Tribal communities across the West.
- Beginning in the 1970s, the federal government began favoring water settlements to avoid protracted litigation. This was formalized as federal policy in 1990.



Tribal Water Rights Settlements Overview

- All stakeholders can benefit from water settlements because they reduce uncertainty surrounding water rights and can result in infrastructure projects serving both Tribal and non-Tribal communities.
- Settlement negotiations often emerge from a general stream adjudication or other forms of litigation, but do not have to. [See NARF's General Stream Adjudications](#).
- A settlement agreement typically requires an act of Congress and an appropriation of funding. The large federal price tag associated with settlements poses the primary hurdle to finalization.



There have been 39 successful Tribal water rights settlements: 35 congressionally approved, 4 administratively approved.

The University of New Mexico's Native American Water Rights Settlement Project maintains a complete list of these settlements.



Settlement Process

Settlements can take decades to complete and typically include these four key stages:



Information on each stage is provided in the following slides.





Pre-Negotiation

- As an alternative to adjudication or litigation, a Tribe may pursue a negotiated settlement.
- The federal pre-negotiation process begins when Tribes and nonfederal parties submit a **formal request for negotiations** to the Secretary of the Interior.
- The Department of the Interior creates a [federal assessment team](#) (where no active litigation exists) or a [federal negotiation team](#) and conducts fact-finding and analysis to form and present a **federal negotiating position**, including a recommended federal funding contribution.
 - [Additional executive agencies](#), such as the Department of Justice and the Office of Management and Budget (OMB), provide important insight during this process.

The **federal role in settlements** is governed by the DOI's Working Group on Indian Water Settlements policy: [Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims](#) (Federal Register, Vol. 55, No. 48, March 12, 1990).

Negotiation

- The [federal negotiations team](#) works with relevant parties to reach a settlement.
 - The negotiation process varies by state and by Tribe.
 - Changes in Tribal governments may affect the process.
- The Department of Interior oversees the negotiations process through the Secretary's Indian Water Rights Office (SIWRO).
- The Bureau of Indian Affairs' [Branch of Water Resources](#) and [Water Rights Negotiation/Litigation Program](#) provides technical, factual, and funding to support Tribal water rights claims.





Settlement

- Once parties reach an agreement in principle, the settlement is presented to Congress in the form of legislation championed by sponsors in the House and Senate.*
- The executive branch typically does not submit formal legislative proposals for settlements to Congress.
 - The Administration will comment on its support for or opposition to individual settlements in testimony or by letter.
 - OMB must clear the final testimony given by the Administration.
- After Congressional approval, the parties must approve and sign the final agreement. When there is an existing judicial process, the court must enter the settlement as a final decree.

If the Administration determines Congress is not required to approve the settlement, such as when it does not require an appropriation of federal funding, it may be **approved administratively** by the Secretary of Interior, the U.S. Attorney General, or by judicial decree.

[*Click here to learn more about how laws get made in the U.S.](#)



Implementation

- SIWRO oversees implementation through a [federal implementation team](#).
- Implementation requiring federal infrastructure development is carried out by the appropriate federal agency.
- BIA and the Bureau of Trust Funds Administration (BFTA) typically manage trust funds established for Tribal implementation.
- Implementation may require Congressional approval for modifications, for example, for further funding.

If a settlement began through *litigation or adjudication*, the parties must **reconcile** the original agreement with the congressionally approved terms. Once the court hears objections and approves the settlement, it enters a **final decree and judgment**.

Benefits of Settlements

- Tribes can use their *Winters* "paper water" rights claims as bargaining power to obtain "wet water"—water the Tribe can put to use.
 - [See *Indian Water Rights 101*](#).
- Settlements can include:
 - Infrastructure projects or funding, trust funds, and other negotiated agreements, like land acquisitions.
 - Provisions for revitalization of cultural resources or ecosystem restoration.
 - Explicit congressional approval for off-reservation Tribal water marketing.



Settlements Challenges

- The largest challenge faced by Tribes seeking approval of a water rights settlement is the issue of implementation cost.
 - Since 2015, Congress and OMB have asserted **more oversight** to ensure that the settlement saves costs relative to litigation.
 - **Cost-sharing requirements** vary across individual settlements and can create financial barriers to access, though average non-federal contribution is about 6%.
- Other challenges Tribes face when seeking to implement a settlement are **limited water sources**, which are increasingly threatened due to climate changes and drought, and; political maneuvering to get Congress to pass settlement legislation.





Settlement Components

Settlement components vary, but often include:

- Quantification of a tribal water right
- Binding mechanism for enforcing the settlement, typically a decree
- Funding
- Water marketing provisions
- Waiver provisions
- Resource management agreements
- Water administration
- State legislation, as necessary

Project-Based and Fund-Based Settlements

Project-Based Settlements	Fund-Based Settlements
Require the construction of specific infrastructure , usually described in the legislation or an engineering report	Establish trust funds for use by Tribes for various water-related purposes described in the settlement legislation
<i>Examples: Navajo-Gallup Pipeline, Aamodt, WMAT</i>	<i>Examples: Navajo-Utah, CSKT</i>
Many settlements include fund-based and project-based components (hybrid)	



Waiver Provisions

- A waiver provision is a provision of the settlement that **releases all claims for water rights beyond the scope of the rights recognized under the Settlement Agreement.**
- This bolsters the certainty of settlement agreements for non-Tribal entities.
- Waivers can be a point of contention for Tribal Nations, who may see them as a further erosion of sovereignty.
- Tribes seeking a settlement must weigh the value of the settlement terms against this release of future water rights claims.



Federal Funding for Settlements

- Often funded through discretionary appropriations, though some settlements have included mandatory funding.
- Some mandatory funding sources:

Reclamation Water Settlements Fund, P.L. 111-11 (2009)

- Source of additional funding for priority settlements
- Provides \$120 million/year in mandatory funding through FY2029

Indian Water Rights Settlement Completion Fund

- Congress appropriated \$2.5 billion under the Infrastructure Investment and Jobs Act (P.L. 117-58)
- All settlements authorized prior to IIJA's enactment are eligible for funding allocation



Resources

- Charles Stern & Mariel Murray, Indian Water Rights Settlements, CRS Report (Dec. 3, 2024), <https://crsreports.congress.gov> (R44148).
- [Native American Water Rights Settlement \(NAWRS\) documents | University of New Mexico.](#)

