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Proposed Extension of the Reclamation Water Settlements Fund

Since 1978, the federal government has entered into 36 water rights settlements with individual Indian tribes. These Indian water rights settlements are a means of resolving ongoing disputes related to Indian water rights among tribes, federal and state governments, and other parties (e.g., water rights holders). Some settlements have been approved by Congress in authorizing legislation that also provides funding for projects that allow tribes to access and develop their water resources. (For more information on these settlements in general, see CRS Report R44148, *Indian Water Rights Settlements*.)

Historically, federal funding for Indian water rights settlements has been provided through discretionary appropriations. In recent years, however, Congress also has approved mandatory funding for some settlements. Congress created the Reclamation Water Settlements Fund (RWSF) in 2009 as a dedicated source of additional funding for existing and future Indian water rights settlements. The fund is administered by the Bureau of Reclamation (Reclamation, a water resources management agency within the Department of the Interior) and is authorized to receive \$120 million per year in mandatory funding from FY2020 through FY2029.

Some Members of Congress have been interested both in the annual allocation and prioritization of projects within the RWSF and in proposals for its extension. However, none of the extensions proposed in the 115th and 116th Congresses have been enacted.

Background

Congress generally has authorized mandatory funding (i.e., direct funding, without further congressional action required) for Indian water rights settlements in one of three forms:

1. **Mandatory funding for specific individual settlements.** Examples include several individual settlements authorized and funded in P.L. 111-291.
2. **Redirection of existing receipts.** The primary example is the Arizona Water Rights Settlement Act (P.L. 108-451), which redirected certain receipts within the Lower Colorado River Basin Development Fund to Indian water rights settlements.
3. **Mandatory funding through the RWSF.** The RWSF is available to fund Indian water rights settlements with \$120 million per year from FY2020 to FY2029.

The remainder of this report focuses on the RWSF.

Direction and Structure for the Reclamation Water Settlements Fund

Title X of the Omnibus Public Land Management Act of 2009 (P.L. 111-11, 43 U.S.C. §407) authorized mandatory spending for certain Indian water rights settlements. It also authorized discretionary funding for a number of settlements. The legislation created a new Treasury fund—the RWSF—and scheduled funds to be deposited and available in the fund beginning in FY2020. The act directs the Secretary of the Treasury to deposit \$120 million into the fund for each year from FY2020 to FY2029 (i.e., outside of the 10-year scoring window), for a total of \$1.2 billion. The funds are directed from the revenues that otherwise would be deposited into the Reclamation Fund and are made available without any further appropriations. (For more information on the Reclamation Fund, see CRS In Focus IF10042, *The Reclamation Fund*.)

In P.L. 111-11, Congress directed the Secretary of the Treasury to deposit \$120 million per year, from FY2020 to FY2029, into the Reclamation Water Settlements Fund. The fund provides a dedicated source of funding to support certain Indian water rights settlements.

In P.L. 111-11, Congress directed that the RWSF may be used to implement a water rights settlement agreement approved by Congress that resolves, in whole or in part, litigation involving the United States. Congress also stated that the fund may be used for other settlement agreements where the implementing legislation requires Reclamation to provide financial assistance for, or to plan, design, or construct, a water project. The act assigned tiers of priority that provided certain individual settlements—both enacted and not yet enacted—with priority access to these funds (**Table 1**).

If any of the priority settlements was not authorized by December 31, 2019, the amounts reserved for that settlement were to revert to the fund and become eligible for other authorized uses. Additionally, if not all funding is expended after the authorized priority settlements are fully funded, and before the expiration of the fund itself, those appropriations could be used for other authorized Indian water rights settlements. Although the last appropriations to the RWSF are currently scheduled to be made in FY2029, the fund itself would not sunset until the end of FY2034, at which time any unexpended balances would be transferred back to the General Fund of the Treasury.

Table I. Priority Tiers and Settlements for the Reclamation Water Settlements Fund (RWSF)

Priority Tier	Settlement/Project Name (Enacting Legislation)	Maximum RWSF Funding Authorized
First	New Mexico Settlements: Navajo-Gallup Water Supply Project/Navajo Nation Water Settlement (P.L. 111-11)	\$500 million
	Aamodt Settlement (P.L. 111-291); Abeyta (Taos Pueblo) Settlement (P.L. 111-291)	\$250 million
Second	Montana Settlements: Crow Settlement (P.L. 111-291); Blackfeet Settlement (P.L. 114-322); Gros Ventre and Assiniboine Tribes of the Fort Belknap Reservation (not enacted) ^a	\$350 million
	Arizona Settlements: Navajo Nation Lower Colorado (not enacted) ^a	\$100 million
No Tier	All other approved settlements	n/a

Source: Congressional Research Service, based on P.L. 111-11 and authorizing legislation referenced above.

a. Funds reserved for settlements that were not enacted by December 31, 2019, revert to the fund for other authorized uses.

Status

Five of the seven settlements that Congress designated as potentially eligible (pending authorization) to receive priority RWSF funding were authorized prior to the December 31, 2019, deadline and are thus expected to receive some level of RWSF funds. Congress provided four of these settlements with additional mandatory appropriations (i.e., funding in addition to that provided in P.L. 111-11) in 2012 (P.L. 111-291). The settlements receiving additional funding from P.L. 111-291 included the Navajo Nation/Navajo-Gallup Water Supply Project (\$180 million); the Aamodt Settlement (\$82 million); the Taos Pueblo Settlement (\$66 million); and the Crow Settlement (\$302 million). Only one of these settlements (Taos Pueblo) has been fully funded and is therefore not expected to draw down its share of funding from the RWSF. It is unclear to what extent mandatory appropriations (as well as any discretionary appropriations provided by Congress) for the other settlements will affect each settlement's drawdown of the RWSF and its resulting availability for use on other settlements.

The authorizing legislation for each RWSF-prioritized settlement includes a deadline by which the settlement must be fully appropriated. These dates may affect the timing of future RWSF allocations. For New Mexico settlements, the Navajo-Gallup Project must be fully appropriated by a deadline of December 2024 and the Aamodt Settlement deadline is June 2024. For Montana settlements, the Blackfeet Settlement deadline is January 2025 and the Crow Settlement deadline is June 2030.

In February 2020, Reclamation formally announced the first allocation of RWSF funding: \$100 million for the Navajo-Gallup Project and \$20 million for the Blackfeet Settlement. In its FY2021 budget request, Reclamation noted that it planned to allocate \$102 million of FY2021 RWSF funds for the Navajo-Gallup project and stated that

remaining funding allocations would be announced in a work plan after appropriations are enacted.

Congressional Interest

Congress has expressed interest in how the RWSF will be allocated in the coming years, as well as in a potential long-term extension of the RWSF. In the 116th Congress, H.R. 2 would extend the fund in perpetuity at the current funding level of \$120 million per year, beginning in FY2031 (i.e., appropriations would lapse in FY2030). Separately, both H.R. 1904 and Title II, Section 210 of the draft House Energy and Water appropriations bill, as reported by the House Appropriations Committee, would extend transfers to the fund in perpetuity (i.e., there would be no lapse in FY2030). S. 886, as reported in the Senate, would have extended current mandatory appropriations to the fund for 10 years beyond the current authorization (i.e., appropriations from FY2030 to FY2039). S. 886 also would have capped at \$90 million the cumulative allocations from the fund for individual authorized settlements. This extension was not included in the amended version of the bill passed by the Senate.

Those in favor of extending the RWSF note that there are significant additional needs expected for both authorized and yet-to-be-approved Indian water rights settlements. They argue that assured funding for these settlements would allow associated projects to be completed in a timely manner and would meet a key federal responsibility to tribes. Some argue that open-ended funding (i.e., no expiration) for the RWSF would not be a prudent use of taxpayer dollars, whereas others believe that discretionary appropriations, rather than mandatory appropriations, are the preferable approach for funding approved settlements.

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