



March 21, 2024

Department of the Interior Support for Tribal Water Projects

Congress regulates tribal affairs, including tribal access to water resources, pursuant to its constitutional authority. In addition, the federal government has a federal trust responsibility to protect tribal treaty rights, lands, assets, and water resources on behalf of federally recognized Tribes (hereinafter *Tribes*) and tribal members. The federal government supports water projects and activities for Tribes through multiple agencies and programs, including the Bureau of Reclamation (BOR) and the Bureau of Indian Affairs (BIA) in the Department of the Interior (DOI). This In Focus discusses major DOI efforts to support tribal water projects, including Indian water rights settlements (IWRS), Indian irrigation projects, and rural water projects.

Indian Water Rights Settlements

Dating to a 1908 Supreme Court ruling (*Winters v. United States*, 207 U.S. 564, 575-77), courts generally have held that many Tribes have a reserved right to water sufficient to fulfill the purpose of their reservations and that this right took effect on the date the reservations were established. This means that, in the context of a state water law system of prior appropriation (common in many U.S. western states), many Tribes have priority water rights over those of non-Indian users with water rights and access established subsequent to the Indian reservations' creation. Although many Tribes hold senior water rights through their reservations, the quantification of these rights in many cases remains undetermined and subject to state legal processes.

IWRS are a means of dispute resolution that allow Tribes to quantify their unresolved water rights, while also procuring access to water through infrastructure and other related expenses. In exchange, non-tribal users gain assurances related to water rights and potential litigation.

The federal government, through the Secretary of the Interior's Indian Water Rights Office, takes a leadership role in coordinating the negotiation and implementation of individual settlements. In addition to Tribes and federal government representatives, settlement negotiations may involve states, water districts, and private water users (i.e., water rights holders), among others. Although IWRS are a popular approach to solving Indian water rights disputes, disagreements may arise regarding specific compromises in individual settlements that are deemed unacceptable by one or more parties.

Approval and implementation of IWRS typically require federal action—often in the form of congressional approval in enacting legislation. As of early 2024, Congress had enacted 35 such settlements. Of these, the federal government currently has an active implementation role in

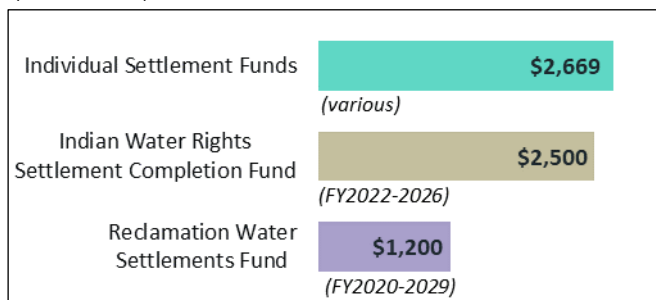
19 settlements. Another 20 settlements are currently in the negotiation phase.

The federal government, through congressional authorizing legislation and in concert with tribal stakeholders, has been directed to implement various activities and infrastructure specific to (and deemed appropriate for) individual IWRS. This includes funding and support for major water storage and conveyance infrastructure, groundwater management, irrigation projects, and municipal water systems, among other things. Congress also has approved funding for the ongoing operations and maintenance of some tribal water systems.

In authorizing legislation Congress has in some cases included permanent (mandatory) funding for selected activities and projects associated with individual settlements. Congress also has approved broader mandatory funds available to fund enacted IWRS, subject to specific criteria. Major mandatory funding sources for IWRS are depicted below in **Figure 1**. The Reclamation Water Settlements Fund (enacted in 2010 in P.L. 111-11), is available to fund certain priority IWRS, and the Indian Water Rights Settlement Completion Fund (P.L. 117-58) is available to fund all settlements approved as of the date of that bill's enactment (November 2021).

Figure 1. Mandatory Funding for Indian Water Rights Settlements

(\$ in millions)



Source: Congressional Research Service.

Federal funding outside of these sources is typically provided through annual discretionary appropriations for the BOR or BIA. For example, BIA's Indian Land and Water Claim Settlements and Miscellaneous Payments to Indians (ILWC) account includes funding to implement IWRS. The BOR also funds individual settlements through discretionary funding for its Water and Related Resources Account. For more information, see CRS Report R44148, *Indian Water Rights Settlements*, by Charles V. Stern; and CRS Report R47723, *Bureau of Indian Affairs: Overview of Budget Issues and Options for Congress*, by Mariel J. Murray.

BIA Tribal Water and Indian Irrigation

The Snyder Act of 1921 authorized BIA to operate programs and spend federal funds for the benefit and assistance of Tribes and tribal members, including water resources. The act specifically directed BIA to operate and spend funds for the extension, improvement, operation, and maintenance of existing tribal agricultural irrigation systems, as well as providing for the development of tribal water supplies. BIA's Water Resources Program helps Tribes protect and manage tribal water resources. For example, BIA performs technical studies to help Tribes gather hydrology data and develop best practices for water use. In addition, BIA helps Tribes create drought management plans that include water conservation techniques and undertake projects to support Indian water rights.

Since the late 1800s, DOI has provided irrigation for tribal lands through the Indian Irrigation Service. Most Indian irrigation construction activities ended in the 1940s, when the Indian Irrigation Service ceased to exist and DOI transferred project operation and maintenance to BIA. BIA currently has 15 irrigation projects across 780,000 acres in 10 western states, mostly on tribal reservations. These projects serve 25,000 tribal and non-tribal water users.

Congress funds BIA's Water Resources Program and Indian irrigation facilities within BIA's Operation of Indian Programs (OIP) account, in annual discretionary appropriations acts for the Department of the Interior, Environment, and Related Agencies. Congress also has provided supplemental appropriations for these activities. For example, the Infrastructure Investment and Jobs Act (IIJA; P.L. 117-58) provided \$250 million over five years to the BIA Construction account, including at least \$50 million to address irrigation and power systems and \$200 million to address safety of dams, water sanitation, and other facilities.

In addition, the Water Infrastructure Improvements for the Nation Act of 2016 (P.L. 114-332), as amended, established an Indian Irrigation Fund to repair, replace, modernize, or perform maintenance on certain Indian irrigation projects. The act, as amended, directed the Department of the Treasury to deposit \$35 million in the fund each fiscal year through FY2028.

Other BOR Programs: Rural Water, Disadvantaged Community Domestic Water Supply, and Technical Assistance

Since 1980, Congress has authorized BOR to undertake the design and construction, and sometimes the operations and maintenance (O&M), of specific *rural water supply projects* intended to deliver potable water supplies to rural communities in western states, largely in North Dakota, South Dakota, Montana, and New Mexico. These projects serve tribal reservations and nontribal rural communities with nonexistent, substandard, or declining water supply or water quality. The federal government pays up to 100% of the costs for tribal rural water supply projects, including O&M. Five BOR rural water projects or their components benefit tribal communities. Utilizing annual appropriations and \$1 billion from the IIJA for rural water projects, BOR

continues to construct authorized rural water projects and to provide O&M assistance for tribal components. For more information, see CRS Report R46308, *Bureau of Reclamation Rural Water Projects*, by Anna E. Normand.

Section 50231 of the Inflation Reduction Act (IRA; P.L. 117-169) contained \$550 million, available through FY2031, for BOR to provide up to 100% of the cost for the planning, design, and construction of water projects where the primary purpose is to provide domestic water supplies to disadvantaged communities or households. Using this authority, BOR anticipates awarding funding to certain eligible tribal WaterSMART grants without the typical 50% nonfederal cost-share requirement. For more information, see CRS In Focus IF12437, *Bureau of Reclamation Funding in the Inflation Reduction Act (P.L. 117-169)*, by Charles V. Stern and Anna E. Normand.

BOR also operates a Native American Affairs Technical Assistance Program that, among other things, helps Tribes develop, manage and protect their water and related resources. Program activities include assisting Tribes to better understand their water-related needs and to develop water resources on Indian reservations through traditional and innovative technologies. These funds are made available through contracts, financial assistance agreements, or direct services.

Issues for Congress

The 118th Congress may continue to express interest in tribal water resource issues, including through legislation and oversight of BIA's water resources, irrigation, and dam programs and funding for these programs. Congress also may consider authorization, funding, and oversight efforts for various other related water resource activities (e.g., implementation of ongoing Indian water rights settlements), as well as any issues related to the implementation and oversight of recent additional funding legislation, such as that provided in the IIJA.

In addition to oversight and funding of ongoing tribal water resources activities, Congress may consider proposals to increase tribal participation in water infrastructure financial assistance programs. Tribal representatives have asserted that high cost-share requirements of several tribal water infrastructure programs create a barrier to entry. This issue could involve proposals to alter the cost-share requirements for Tribes for broader water resources programs, such as Reclamation's WaterSMART grant program. The 118th Congress also may consider new Indian water rights settlements for individual Tribes, some of which have been introduced but not enacted. The related issue of extending mandatory funding mechanisms for existing settlements (e.g., the Reclamation Water Settlements Fund) and/or authorizing such mechanisms for newly enacted settlements also may be of interest to Congress.

Charles V. Stern, Specialist in Natural Resources Policy
Mariel J. Murray, Specialist in Natural Resources Policy
Anna E. Normand, Specialist in Natural Resources Policy

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.