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# 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 Department of the Interior (DOI) supports water projects and activities for Tribes through multiple departmental agencies and programs, including the Bureau of Reclamation (BOR) and the Bureau of Indian Affairs (BIA). 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

Since 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 non-tribal users with water rights established subsequent to the reservations' creation. The quantification of these rights in many cases remains 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.

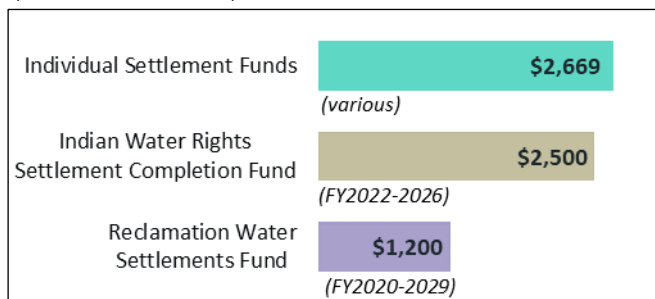
The federal government, through the Secretary of the Interior's Indian Water Rights Office, takes a leadership role in coordinating the negotiation and implementation of individual settlements. In addition to Tribes and federal government representatives, settlement negotiations may involve states, water 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.

Congress passed authorizing legislation that has directed the federal government—in concert with tribal stakeholders—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 operation and maintenance (O&M) 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 35 settlements approved as of the date of that bill's enactment (November 15, 2021).

**Figure 1. Mandatory Appropriations for IWRs**  
(nominal \$ in millions)



**Source:** Congressional Research Service.

**Notes:** Settlements generally receive “no-year” funding, meaning it remains available until expended, without limitation as to fiscal year. As of FY2024, much of these funds has not been obligated. Congress may supplement these funds in future legislation.

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 for water resources. The act specifically directed BIA to operate and spend funds for the extension, improvement, and O&M of existing tribal agricultural irrigation systems, as well as to provide 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 undertakes 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 O&M 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 annually through FY2028.

## Selected BOR Programs

Since 1980, Congress has authorized BOR to undertake the design and construction, and sometimes 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 non-tribal 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 P.L. 117-169, commonly known as the Inflation Reduction Act (IRA), appropriated \$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. Under this authority, BOR announced \$320 million to assist Tribes under a new Tribal Domestic Water Supplies Program. Funding is limited to up to \$3 million for planning studies, up to \$5 million for design projects, and up to \$50 million for construction projects.

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 tribal reservations through traditional and innovative technologies. These funds are made available through contracts, financial assistance agreements, or direct services. In Section 80004 of the IRA, Congress supplemented this program's annual funding by including \$12.5 million for near-term relief actions to mitigate drought for Indian tribes "impacted by the operation of a Reclamation project." BOR announced this funding opportunity in December 2023.

## Issues for Congress

The 118<sup>th</sup> Congress may continue its involvement in tribal water resource issues, including through legislation and oversight of DOI's water resources, irrigation, and dam programs and funding for these programs. Congress also may consider funding and oversight efforts for various other related water resource activities (e.g., ongoing IWRS projects), as well as issues related to recent funding, such as IIJA and IRA funding.

In addition to oversight and funding of ongoing tribal water resources activities, Congress may consider proposals to increase tribal participation in broader water infrastructure financial assistance programs. Tribal representatives have asserted that high cost-share requirements of some water infrastructure financial support programs create a barrier to entry. Some have proposed altering the cost-share requirements for Tribes from these programs. The 118<sup>th</sup> Congress is also considering new IWRS (e.g., H.R. 5088, S. 1987, S. 306). The related issue of extending mandatory funding mechanisms for existing settlements and/or authorizing such mechanisms for newly enacted settlements also may be of interest to Congress.

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