



Walker



Baker



Working With Native Americans on Water Issues

There are 566 federally recognized Native American tribes in the United States. They are independent sovereign nations. Court cases have found that Indian tribes have a status that is higher than a state. Tribes have frequently been recognized as “domestic dependent nations under its [United States]’ protection” (Presidential Documents, 2000).

This special status provides tribes with unique sovereignty rights that are recognized in the allocation of water. There are various ways tribes’ water rights are adjudicated. These include formal tribal water settlements that are ratified by Congress, other agreements, judicially declared water rights, and the Winters Doctrine. There are 28 known tribal water rights settlements that have been approved by Congress. These settlements are shown in Table 1.

The majority of the water rights settlements are west of the Mississippi in Arizona, Nevada, Idaho, California, New Mexico, Montana, and Utah. Utilities and tribes in these states have a unique opportunity to form working partnerships to meet one another’s respective water needs in a positive and collaborative manner.

The 28 congressionally approved water rights settlements vary greatly. These water adjudication settlements establish the quantity and quality of a tribal water entitlement. Although the water rights settlements provide the details of a particular tribe’s entitlement to water allocation, they generally do not provide a mechanism for actually diverting the water to the tribal reservation. (Many tribes have established these so-called “paper” water rights only to discover that although the settlement entitles them to a specific water allocation, getting the water to their land is another matter altogether. This is because many tribes lack the resources to create the water management systems necessary to divert the water to their lands.)

Water rights settlements are not the only way to obtain tribal water allocations. Several tribes have obtained adjudicated water rights through the Winters Doctrine, which provides that when an Indian reservation is established either by treaty, statute, or executive order, it is presumed that water is reserved in an amount necessary to support that reservation. Essentially, the right to some amount of water will vest once the reservation is created (United States v. New Mexico [438 U.S. 696 (1978)]; Cappaert v. United States [426 U.S. 128 (1976)]; Wyoming v. United States [492 U.S. 406 (1989)]; Arizona v. California [373 U.S. 546 (1963)]; Winters v. United States [207 U.S. 564 (1908)]). There is legitimate debate over

TABLE 1 Tribal water rights settlements

Settlement by Year	Tribe and State
Ak-Chin Indian Water Rights Settlement Act: P.L. 95-328, 92 Stat. 409 (1978), amended; P.L. 98-530, 98 Stat. 2698 (1984), amended; P.L. 102-497, 106 Stat. 3258 (1992), amended; P.L. 106-285, 114 Stat. 878 (2000)	Ak-Chin Indian Community of Papago Indians of the Maricopa, Ak-Chin Reservation; Arizona
Southern Arizona Water Rights Settlement Act: P.L. 97-293, 96 Stat. 1274 (1982), technical amendment; P.L. 102-497, 106 Stat. 3256 (1992)	San Xavier and Schuk Toak Districts, Tohono O'Odham Nation (formerly Papago); Arizona
Seminole Indian Land Claims Settlement Act of 1987: P.L. 100-228, 101 Stat. 1556 (1987)	Seminole Tribe of Florida; Florida
Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988: P.L. 100-512, 102 Stat. 2549 (1988)	Salt River Pima-Maricopa Indian Community of the Salt River Reservation; Arizona
San Luis Rey Indian Water Rights Settlement Act of 1988: P.L. 100-675, 102 Stat. 4000 (1988)	La Jolla, Ricon, San Pasquale, Pauma, Pala Bands of Mission Indians; California
Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990: P.L. 101-618; 104 Stat. 3289 (1990)	Paiute-Shoshone Tribe of the Fallon Reservation and Colony; Nevada
Fort Hall Indian Water Rights Act of 1990: P.L. 101-602; 104 Stat. 3059 (1990)	Shoshone-Bannock Tribes of the Fort Hall Indian Reservation; Idaho
Fort McDowell Indian Community Water Rights Settlement Act of 1990: P.L. 101-628, 104 Stat. 4480 (1990)	Fort McDowell Indian Community; Arizona
Truckee-Carson-Pyramid Lake Water Rights Act; P.L. 101-618, 104 Stat. 3294 (1990)	Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation; Nevada and California
Jicarilla Apache Tribe Water Settlement Act of 1992: P.L. 102-441, 106 Stat. 2237 (1992)	Jicarilla Apache Indian Tribe; New Mexico
Northern Cheyenne Indian Reserved Water Rights Settlement Act of 1992: P.L. 102-374, 106 Stat. 1186 (1992)	Northern Cheyenne Indian Tribe; Montana
San Carlos Apache Tribe Water Rights Settlement Act: P.L. 102-575, 106 Stat. 4740 (1992), technical amendment; P.L. 103-435, 108 Stat. 4572 (1994), amended; P.L. 105-18, §5003, 111 Stat. 181 (1997)	San Carlos Apache Indian Tribe; Arizona
Ute Indian Rights Settlement Act of 1992; P.L. 102-575, 106 Stat. 4650 (1992)	Northern Ute Indian Tribe of the Uintah and Ouray Reservation; Utah
Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994; P.L. No. 103-434, 108 Stat. 4526 (1994)	Yavapai-Prescott Indian Tribe; Arizona
Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement Act of 1999; P.L. No. 106-163, 113 Stat. 1778 (1999)	Chippewa Cree Indian Tribe; Montana
Colorado Ute Settlement Act Amendments of 2000; P.L. No. 106-554, 114 Stat. 2763 (2000)	Southern Ute and Ute Mountain Ute Tribes, and Navajo Nation; Colorado
Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement Act; P.L. No. 106-263, 114 Stat. 737 (2000)	Shivwits Band of Paiute Indians; Utah
Zuni Indian Tribe Water Rights Settlement Act of 2003; P.L. No. 108-34 (2003)	Zuni Indian Tribe; Arizona
Arizona Water Settlements Act of 2004; P.L. No. 108-451; 118 Stat. 3478 (2004)	Gila River Indian Community, Tohono O'Odham Nation; Arizona
Snake River Water Rights Act of 2004; P.L. No. 108-447; 118 Stat 2809, 3432-41 (2004)	Nez Perce Tribe; Idaho
Soboba Band of Luiseño Indians Settlement Act; P.L. No. 110-297; 122 Stat. 2975 (2008)	Soboba Band of Luiseño Indians; California
Northwestern New Mexico Rural Water Projects Act (Navajo-Gallup Water Supply Project/Navajo Nation Water Rights); P.L. No. 111-11; 123 Stat 1367 (2009)	Navajo Nation; New Mexico
Shoshone-Paiute Tribes of Duck Valley Water Rights Settlement Act; P.L. No. 111-11; 123 Stat 1405 (2009)	Shoshone Tribe, Paiute Tribe; Nevada
Aamodt Litigation Settlement Act; P.L. 111-291, 124 Stat. 3064 (2010)	Nambé, Pojoaque, San Ildefonso, and Tesuque Pueblos; New Mexico
Crow Tribe Water Rights Settlement Act of 2010; P.L. 111-291, 124 Stat. 3064 (2010)	Crow Tribe; Montana
White Mountain Apache Tribe Water Rights Quantification Act of 2010; P.L. 111-291, 124 Stat. 3064 (2010)	White Mountain Apache Tribe; Arizona
Taos Pueblo Indian Water Rights Settlement Act; P.L. 111-291, 124 Stat. 3064 (2010)	Taos Pueblo; New Mexico

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these reserved water rights, and concern has been raised over the difficulty of quantifying the tribal water reservation because it can only be determined on a case-by-case analysis.

Utilities and other allocated water users should be aware of adjudicated and potential tribal water rights and how they can affect the state water system. These negotiations need not be contentious. Utilities and tribes can plan for an orderly water system that accommodates tribal and state water needs through a cooperative partnership by analyzing one of the longest and most successful water rights compacts—the Seminole Rights Water Compact.

THE SEMINOLE STORY

The Seminole Tribe of Florida has the second oldest water rights compact approved by Congress and is the only one east of the Mississippi River. To effectively govern themselves and their natural resources, including water, the Seminole Tribe created a tribal constitution, tribal council, and Seminole Tribe of Florida Inc. This governance provided the basis for one of the most successful tribal businesses in the United States. Even so, it is the manner in which the Seminole Tribe used its sovereignty that has resulted in its success.

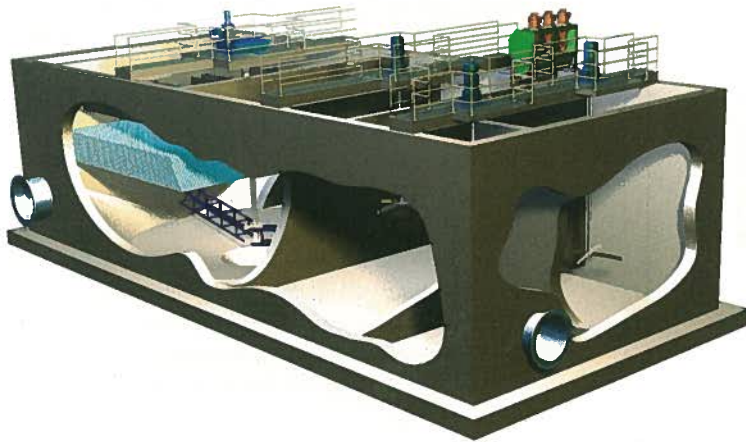
Building relationships. After decades of disappointment and controversy, in 1987 the Seminole Tribe entered into a water settlement agreement with the state of Florida and the federal government (Fla. Stat. §285.165). The Seminoles have used their water rights to create additional opportunities for their community. To do this, they began engaging in the state water system to learn how it worked and how it could benefit tribal lands. The state began to include the Seminole Tribe's water needs in its long-term plans.

The Seminole Tribe has successfully expanded its water rights entitlement by working with the state water system, tribe neighbors, and others who could assist with creating the infrastructure necessary to maximize the Seminole Tribe's water entitlement. The 1987 Water Rights Compact defined the rights and obligations of the Seminole Tribe and the state of Florida pertaining to water and the environment. Although the water settlement gave the Seminole Tribe the right to water, the tribe still needed to create an operational water system.

Being good neighbors. Having the rights and getting the water are not the same things. Between 1987 and 1999, the Seminole Tribe entered into 14 landowner agreements authorized under the Water Rights Compact that allow the Seminole Tribe to resolve water

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disputes with other landowners. In one such agreement with the United States Sugar Corp., the parties agreed to strategically locate water wells a certain distance from their common land boundaries. Another such landowner agreement with the South Florida Water Management District and several private landowners resulted in the establishment of water quality/quantity standards for water control structures upstream from tribal lands. Before this landowner agreement, these structures were operated in a manner that variously diverted water from or flooded tribal lands. By working together and planning for one another's respective water needs, the Seminole Tribe, the state of Florida, and neighboring landowners were able to create solutions to shared water issues. Eventually, the Seminole Tribe created its own utility that still provides services to private landowners near one of its reservations.

Becoming the solution to a problem. When the state and federal governments decided to engage in restoration of the Everglades, the Seminole Tribe agreed to be a partner in the efforts. Part of the plan required infrastructure to clean and manage water before it flowed into the Everglades natural system. The Seminole Tribe agreed to construct the necessary infrastructure on tribal land. The

tribe received a 50% cost share with the federal government to construct a complex water conveyance and basin management system to convey water throughout the Big Cypress Reservation. In return, the state and federal governments were assured that tribal management of these waters would result in cleaner water flowing into the Everglades.

CONCLUSION

By identifying and understanding the needs of others, the Seminole Tribe was able to obtain greater access to water for tribal lands and to receive financial assistance to create a water management system to clean and convey the water. In turn, the state of Florida was able to ensure that it could provide water for already permitted uses and was assured that state water quality standards would be met. The relationships created by and between the Seminole Tribe and the state of Florida have resulted in 25 years of successful water management.

Strategic relationships with surrounding landowners resulted in numerous landowner agreements and in a Seminole-owned and -operated utility that services neighboring landowners.

Most important, because of the relationships created among tribal and state interests, contentious issues have been resolved without litigation for more than two decades.

Better still, the governance, processes, and relationship structures that were created by the Seminoles can be recreated in virtually any location in the country by any people who would rather collaborate than litigate.

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REFERENCE

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