

The Native American Rights Fund (NARF) and Western States Water Council (WSWC) cosponsored their 16th biennial Symposium on the Settlement of Indian Reserved Water Rights Claims on August 13-15, in Funnar, California. The meetings were held at Harrah's Southern California Resort on the San Luis Rey reservations and hosted by the Rincon, La Jolla, San Pasqual, Pauma and Pala bands of Luiseno Indians. A pre-meeting primer on Western Water Law and Indian Reserved Water Rights was presented by Norm Johnson, with the Utah Attorney General's Office. He also outlined provisions of a settlement agreement between the State of Utah and the Navajo Nation, stressing the need to come up with something that works for everyone. There are no "good guys" or "bad guys."

Executive Director John Echohawk welcomed attendees and provided a brief history of NARF, a non-profit started in 1975 to address tribal legal concerns, including the protection and quantification of water rights. Once the tribes convinced the federal government to file claims as trustee, the states, businesses and other stakeholders began to see the value of negotiating settlements over litigation.

Tony Willardson, WSWC Executive Director, noted that communication and efforts to find common ground despite our differences are key to avoiding conflict. WSWC and NARF have worked together for four decades, and the challenges of negotiating settlements, getting them passed by Congress, and implemented with adequate funding aren't getting any easier. Well-defined water rights make good neighbors, and we continue our joint efforts to resolve these claims across the West.

Following their remarks, there was a traditional Pauma band prayer and blessing ceremony. Tribal prayers were offered at the beginning of each day.

WSWC Chairman, Jeanine Jones, California Department of Water Resources, and Chairman Bo Mazzetti, Rincon Band (and President of the San Luis Rey Indian Water Authority) addressed the group. Jeanine noted that one thing we all share in common is water scarcity. We can provide greater certainty for everyone by working cooperatively, understanding our constraints and the complicated legal framework governing water development and management. Bo noted he was raised to worry about others stealing the bands' water, and that he had to change how he looked at things. These are our neighbors. Water is not just a commodity, not just something to sell, but something that has to be shared. We aren't making any more water. It has taken time to build trust and real engagement.

Jeanne Whiteing, Blackfeet Nation Water Rights Counsel, provided the keynote address. She explained that water is important to tribes culturally and traditionally, and that makes it difficult for tribes to view water use as a right that needs to be quantified in a court. However, these treaty rights are critical to maintaining a homeland and securing the future of the tribe. States and the federal government have historically been perceived as "unfriendly" to tribes. It is difficult to set that aside. Entering negotiations was politically risky for the Blackfeet leadership, and once an agreement was reached, and enacted, it still had to be ratified by referendum by tribal members. Decades of work could have been voted down, but it was important for the tribe to agree to the settlement.

Two panels followed on the basics of negotiations, including gathering background information, the role of technicians, identify parties and issues, and how to bind larger groups – with speakers from the Blackfeet Tribe, NARF, Navajo Nation, Montana Department of Justice, New Mexico Interstate Stream Commission, Oklahoma Water Resources Board, Bureau of Reclamation, and Department of the Interior.

A special panel addressed water planning, scarcity and collaboration – focused on development of the Arizona Drought Contingency Plan – given projected Colorado River shortages. Stephen Roe Lewis, Governor of the Gila River Indian Community, who spoke on the panel, was presented with a plaque and quilt honoring the memory of his late father, Rod Lewis, for his lifelong support for tribal interests and negotiated water rights settlements. Others on the panel represented The Arizona Department of Water Resources, Bureau of Reclamation, and Environmental Defense Fund. The Environmental Defense Fund shared their premier showing of "Resilience

on the River,” a video created to highlight the critical role of the Gila River Indian Community in a historic seven-state agreement to conserve water from the Colorado and build a more resilient future in the face of a nearly two-decade drought. The video is available at: <https://www.youtube.com/watch?v=RIEV9tea04c&feature=youtu.be>

Wednesday began with another invited guest, Cristina Snider, Tribal Advisor to California Governor Gavin Newsom. She specifically mentioned the Governor’s June 2019 apology to California Native Americans on behalf of the State and its citizens for the “violence, exploitation, dispossession and the attempted destruction of tribal communities,” as well as the “maltreatment and neglect California inflicted on tribes.” By Executive Order Governor Newsom also directed his Administration to engage in government-to-government consultation with California Native American tribes regarding policies that may affect tribal communities and established a Truth and Healing Council to examine, record and document narratives regarding their historical relationship.

Mike Connor, Partner, Wilmer Hale (and former Deputy Secretary of the Department of the Interior) is a recently enrolled member of the Taos Pueblo in New Mexico. He was also involved in tribal settlements as a U.S. Senate staffer. He discussed the federal trust responsibility to protect the tribes’ interests. There has been a pause in congressional approval of settlements, but the prospects are good for the next wave of settlements to go through. There are champions of settlements in the Congress, but it has been hard to get this Administration to clearly articulate its position. The cost of funding settlements in the face of a growing deficit is a challenge, but it is a worthwhile investment. Undefined, inchoate tribal rights create uncertainty. There are tremendous benefits from recognizing, adjudicating and settling tribal rights.

Alan Mikkelsen, Senior Advisor to the Secretary of the Interior for Water and Western Resource Issues, and Pam Williams, Director, Indian Water Rights Office, spoke and then took questions. Alan said that Secretary Bernhardt sent his regards and expressed his support for settlements. “For over two and a half decades, I have been a believer in the merit of resolving our long-standing water rights issues.” Alan noted that working with tribes on a government to government basis is essential. Water is a key to economic development and infrastructure investment to revitalize native communities. Interior is committed to funding and implementing existing settlements and is exploring new funding mechanisms. Failure is not an option. One alternative is a fund-based settlement, as opposed to promising a water project, that allows tribes the flexibility to determine when, where and how to build their needed water infrastructure. He also said that we “have to be realistic” as to what the federal costs and benefits are. Interior is trying to impress tribes and others with this message, even if it isn’t what they want to hear.

Pam stated that the federal view is broader than state perspectives, and sometimes the Department of the Interior struggles to figure out how their trust and other responsibilities fit together. There are federal reserved rights for tribes, but also for other reservations, then there are aboriginal rights, as well as water needs for fish, wildlife and parks. Needs are not limited to uses for agricultural, municipal and industrial purposes. There are also spiritual uses. She summarized the rise of concern for tribal water rights, as sovereigns, following a long period of western water development promoted by federal projects without regard for tribal needs. A bar chart of the number of settlements completed and in progress was presented, and Arizona tribes had the most by far. Ideally, settlement negotiations lead to binding agreements, approved by the Administration and the Congress, then implemented by (DOI). Negotiations, as opposed to litigation, are designed to provide “wet water,” not just a paper right, but with a commitment to build the infrastructure necessary to put the water to use. Settlements also allow local parties to use local knowledge and values to find creative solutions. No one gets all they want.

In response, a panel of tribal and state representatives discussed the federal government’s historical failure to protect tribal water rights, and subsequent evolution of law and policy, as well as the difficult task of now working together to achieve a sustainable future for tribal and surrounding communities. Something we don’t often talk about is that existing water rights may have to be retired to make it work. Tule River Chairman Niel Peyron shared a video describing the difficulties the tribe faces as it lacks running water for domestic, fire suppression, and other uses.

A special part of the symposium was the presentation of a film, “Once There Was a River,” about the past and future of the San Luis Rey Indian Water Rights Settlement, produced by Anecita Agustinez, now Tribal Policy Advisor, California Department of Water Resources. A panel discussion followed with representatives from the Indian Water Authority, Vista Irrigation District, City of Escondido, Metropolitan Water District of Southern California, and Interior’s Solicitor’s Office described the history of the settlement and their interactions, as well as interests and

concerns. Significant to the settlement was the importance of improving existing infrastructure to create water savings that could stretch limited water resources, such as lining the All-American and Escondido canals.

Symposium participants ended the day with a field trip through tribal lands along the San Luis Rey River, which was flowing in August and provided a beautiful setting. A discussion of the areas water management was presented at an overlook at Lake Henshaw, followed by dinner at the La Jolla Indian Campground nearby.

The final day began with a presentation by the Chippewa Cree Construction Corporation and Advanced Engineering and Environmental Services, focused on the construction projects and program development and management related to implementation of the Rocky Boys settlement in Montana. The tribe manages a portfolio of projects for the benefit of tribal members and strives to achieve economies of scale, reduce risk and costs, better communicate and provide faster response time and better services.

The process for getting bills through Congress was outlined by Brandon Ashley, Majority Deputy Staff Director, Senate Committee on Indian Affairs, and Matthew Muirragui, Majority Staff Director, House Natural Resources Committee, Subcommittee on Water, Oceans and Wildlife. Brandon's role is to shepherd settlements through the process, from introduction of a bill, to hearings, markup, committee reports, and full Senate action. He focuses on the intended outcome, settlement language, report language, and often following passage, needs for a technical fix. There really is no roadmap through the legislative process, as it is always evolving and changing. More and more the cost of settlements is questioned, and there is a need to explain why they are important. Matt addressed some of the challenges. Former House Natural Resources Committee Chair Rob Bishop (R-UT) required approval from the Department of Justice and Office of Management and Budget before scheduling hearings of settlements. That has changed, but Administration opposition to some of the current settlements is an obstacle, and the 1990 Criteria and Procedures for evaluating settlements remains in place. Unreliable future discretionary funding is another challenge that H.R. 1904 and S. 886 address with extension of a settlement fund.

Thereafter, a federal, state and tribal response panel emphasized the need to show up in person to tell your story and find a "champion" among Congressional members and staff to carry your settlement forward. Administration support still matters. Often legislation is introduced before all the settlement language is final to get the process started. There is a lot still to do. Eleven Arizona tribes still have outstanding claims. Federal concerns often transcend Administrations. Also, the precedent set for other settlements has to be considered. You have to look at the big picture.

WSWC Executive Director Tony Willardson's wrap up remarks noted that the symposium has been about our stories: stories about water, stories about lands, and stories about people – about our lives and those of our grandfathers and ancestors, about our dreams for our children, grandchildren, and great grandchildren. There are many lessons to be learned. Many here have lived or are living these stories, and the same basic stories are told differently by each of those involved from their own perspective. Stories were presented of the hardships some endure when they don't have access to safe, clean water for drinking and household purposes, or lack water for irrigation or other community developments.

Whether natives or immigrants, we are all connected to the land and water. While it has been said many times that water is life, it has also been said that water is power and money. Rincon Chairman Bo Mazzetti shared he doesn't like to view water as a commodity. Water is key to economic development, environmental protection, public health, social and cultural well-being, and often religion.

We all have our own story. Some are adventures, many are dramas. There are tragedies, and healing is a painful process. We have seen documentaries about the journeys of the Tule River Tribe and Luiseno Bands. The past is past, and we can't change that. We can learn from the good and the bad, failures and successes. We look forward to working together to build a better future for all, but progress comes too slowly in many cases and it is easy to become discouraged. We must be patient and persevere.

It is all about building relationships. Here we have had a few days to get to know each other better – to learn about each other, our history, our needs and wants, our values, and our common interests. We need to be educated. We need to educate others. We need to respect sovereignty and treat each other with dignity and

understanding. Trust is key, and it comes with experience and familiarity. We will often have to compromise. It can be hard to give, when so much has been taken. We heard how the Gila River Indian Community, with its quantified water rights, participated in Arizona's critical approval of a drought contingency plan.

There is never enough – enough water, enough money, enough time. We will have to make hard choices. We need to know what our choices are, and the impact of those choices. We need to talk to each other, really communicate, and be transparent. We need good science and information for decision-making.

We've talked about the importance of well-defined water rights. We've litigated, negotiated, legislated, renegotiated, again legislated, and sometimes litigated again. Litigation is sometime necessary to resolve some issues, but often it just raises others. It is designed to be adversarial and is divisive. Judges also by law have limited remedies. It may also take decades and is expensive.

"Peace in the Valley" is achieved when we work together and negotiate agreements that advance our common interests, allowing us to leverage resources and find solutions to the challenges that face us all. Settlements create "buy in" from the parties involved. Together we have a much better chance to find bi-partisan support for legislation and the resources to implement settlement agreements. There is now window of opportunity to advance a legislative package with multiple benefits. We also need to continue to work with the Administration – Interior, Justice and OMB – in shaping and implementing settlements and getting settlements through Congress.

Together we can find, improve and assist each other on our path to a self-reliant, prosperous and sustainable future. There are still significant future challenges that have been mentioned related to groundwater, water marketing, scarcity, climate and other uncertainties. Our journey can be frustrating, but also fascinating and rewarding.