

NEGOTIATING INDIAN WATER RIGHTS SETTLEMENTS

Identifying Issues and Parties

NATIVE AMERICAN RIGHTS FUND AND WESTERN STATES WATER COUNCIL

Thirteenth SYMPOSIUM on the
SETTLEMENT OF INDIAN RESERVED WATER RIGHTS CLAIMS
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IDENTIFYING ISSUES AND PARTIES

WHAT IS NECESSARY FOR A SUCCESSFUL SETTLEMENT?

- Each settlement has its unique issues - there is no exact blueprint for how to structure a settlement
- BUT - critical to success:
 - Mutual desire for a negotiated resolution
 - Fortitude and patience to stay the course
 - Flexibility and willingness to compromise while maintaining core principles (and clarity as to what those are)
 - Innovative approaches to supply, jurisdiction and funding issues (among others)

IDENTIFYING ISSUES:

- Technical (Beware the information battle - you will never have enough information)
- Legal
- Political

IDENTIFYING ISSUES:

- Scope of claims to be resolved:
 - Geographic
 - Nature of the resource (e.g. surface vs. ground; reliability; desired end uses)
 - Allottees?

Figure 1-1 General Location of the Study Area



IDENTIFYING ISSUES:

- What judicial determinations do you have?
 - ❖ Aamodt (Nambé, Pojoaque, San Ildefonso, Tesuque Pueblos - NPT Basin, New Mexico) - decades of litigation provided a starting point for quantification
 - ❖ Navajo (Navajo Nation - San Juan River, New Mexico) - no specific judicial determinations relating to the Nation's rights
 - ❖ Abousleman (Zia, Jemez, Santa Ana Pueblos - Jemez River, New Mexico) - back in court for judicial determinations after five years of settlement negotiations

IDENTIFYING PARTIES AND BINDING LARGER GROUPS:

- Two Questions:
 - Who do you need at the table?
 - How do you bind those at the table and those not at the table?

IDENTIFYING PARTIES AND BINDING LARGER GROUPS:

- Who do you need at the table?
 - Driven in large part by the issues to be resolved
 - Legal and political question
 - Answer will depend in part on your starting point (ongoing adjudication or other litigation; specific circumstances of basin or watershed at issue)
 - What waivers and releases do you need and from whom to provide certainty in perpetuity?
 - May change over time

IDENTIFYING OF PARTIES AND BINDING LARGER GROUPS:

- How do you bind those both at and not at the table?
 - Question is procedural in nature (both legal and political)
 - Federal legislation/congressional approval
 - State (or federal) court McCarran amendment judgments and decrees binding larger groups of claimants

QUESTIONS?