

Tribal Water – Tech, Talk, and Tradeoffs



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Tradeoff

Merriam-Webster Dictionary

Tradeoff = “A situation in which you must choose between or balance two things that are opposite or cannot be had at the same time”

“...Something that you do not want but must accept in order to have something that you want.”

→ A compromise.



Some Context

566 federally-recognized tribes in the U.S.

Tribal lands combined into one area would be approximately the size of the 4th largest state (MT)

Population of 5.2 million; 54% reside in rural areas

We have an average unemployment rate of 51%

We have the highest poverty rate of any race group in the U.S.



The Federal Government and Tribes have unique government-to-government relationships
→based on treaties and creation of reservations

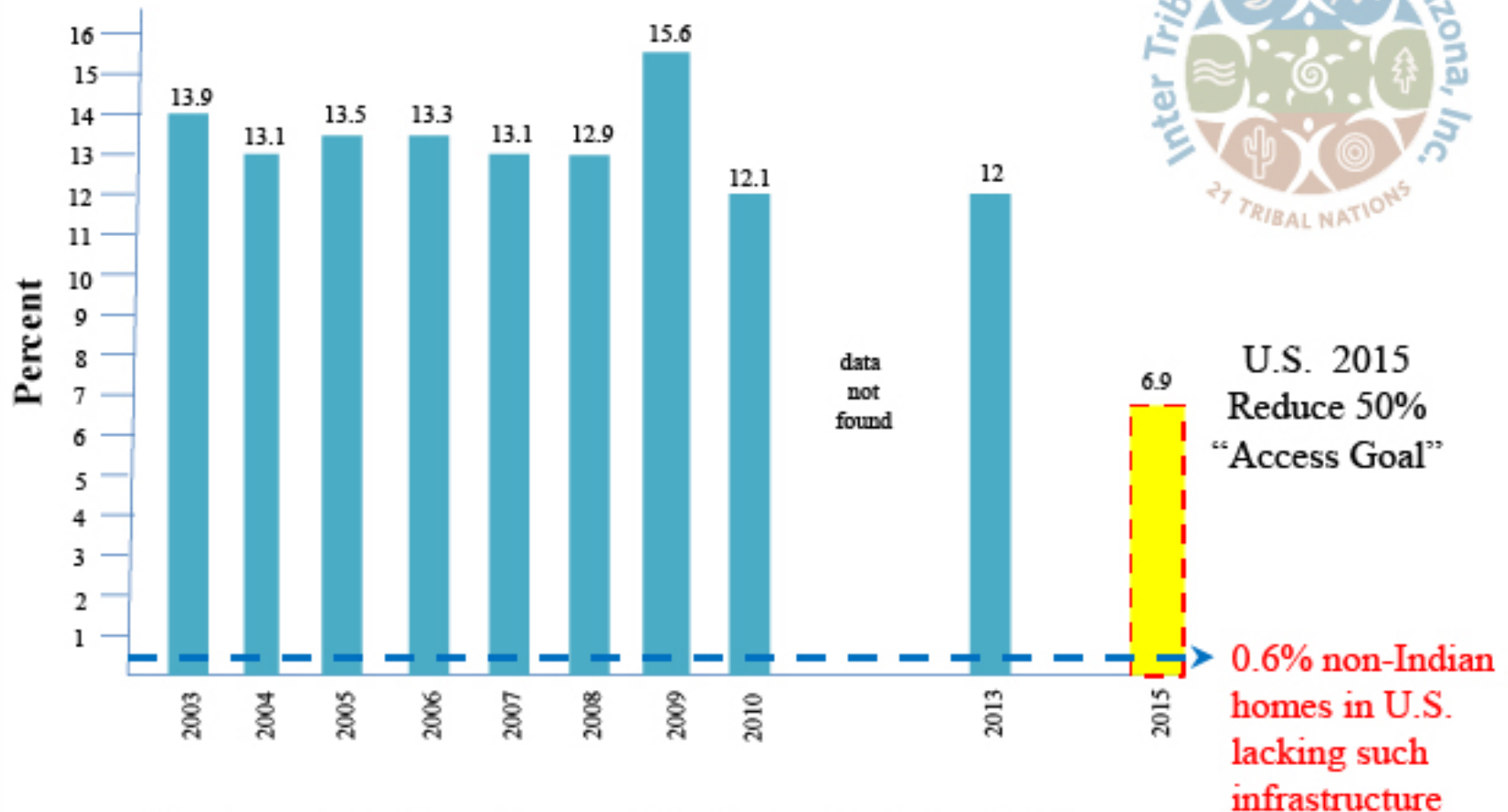
Well-established water rights case law

→Indian Reservations were created with inherent **Federal Trust Responsibility** to ensure sufficient water to support the livelihoods of the reservation residents



Access to Water & Sanitation

% of Homes in Indian Country Lacking Safe Water and/or Basic Sanitation



Based on work by the multi-agency Infrastructure Task Force (ITF)





Tribal Water Tradeoffs

Why should there be Tribal tradeoffs in the first place?
There is already a vast lack of fulfillment of federal trust responsibilities.

The right of indigenous people to live and maintain their cultural identity and ways of life that have been in balance with the natural resources since time immemorial.

~versus~

Urbanization with unlimited economic growth by consuming resources beyond rates of sustainability and instant prosperity mortgaged against future generations.



Tradeoffs of Water Rights Litigation versus Settlement

Tradeoffs of water rights (Litigation) versus (Settlement)

Both tremendously expensive in terms of money, time, and resources

Litigation

Unpredictability of court rulings

Risk of not getting any desired outcomes

Implications to other Tribal water rights cases

Settlement

Involves compromises by all parties

Resolves uncertainties, which benefits everyone

Both paths are often used together.

Litigation can resolve technical roadblock issues



Tradeoffs in Water Rights Settlements

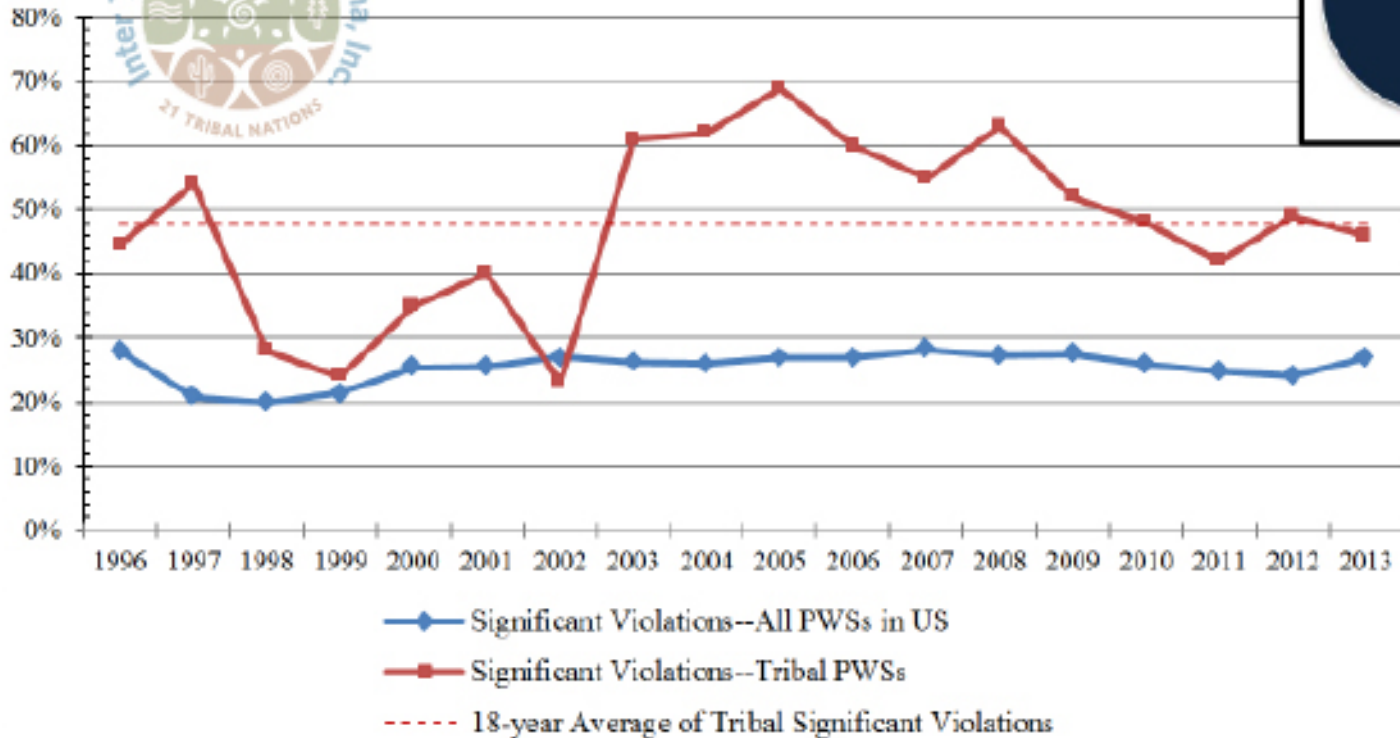
Settlement Tradeoffs can include:

- Limitations or Waivers of claims to water quality.
Example: limitation on tribe's ability to set or enforce water quality standards
 - Trade-up in the quantity of one source for a quantity of another source.
Examples:
 - (source water) for (reclaimed water)
 - (local watershed source) for (imported water; such as CAP)
[including quantity of water with lower priority]
 - Current “paper” rights for possible funding & construction of infrastructure for future “wet” water
Includes leases or sale of banked water
 - Leasing of water that economically helps support essential community services
- Unforeseen costs can arise later as result of a tradeoff
example: Unforeseen environmental regulation of the Navajo Generating Station threatens excess power sales that offset costs of CAP water

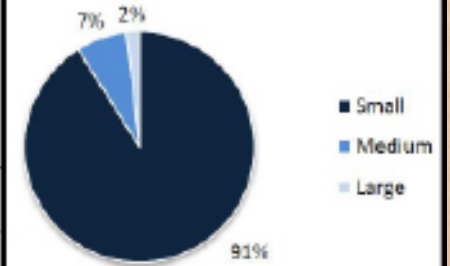


Access to Safe Drinking Water

**Significant Violations of the Safe Drinking Water Act
18-Year Profile: Tribal versus Non-Tribal
Public Water Systems (PWS)**



**PWSs in Indian Country
by Size in 2013**
Total Number of PWSs = 993



Compiled from U.S. EPA, National Public Water Systems Compliance Reports



Other Tribal Water Tradeoffs

(Funding for Infrastructure Construction) versus (Funding for Capacity Development)

- Federal funding for State Revolving Fund (SRF) allows states to strike balance between construction of water infrastructure and capacity development (training & licensure of operators for maintaining those systems.)
 - Federal funding for SRF-Tribal Set-Aside not allowed for capacity development, only construction
- Tribal organizations not directly eligible for other EPA capacity development grants

(Water Conservation) versus (Operation & Maintenance of Water Systems)

- O&M costs covered by user fees, which decreases with water conservation
- Who benefits from the conserved Tribal water?

(Small Rural water systems) versus (Large Regional water systems)

- Economies of scale improves with larger water systems
- Loss of local control and even sometimes jurisdiction
- Increased complexity and decrease in adaptability



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