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amount of time for parties to articulate their individual needs. Even so, settlements are favored over litigation because they encourage resolution rather that frame settlements as purely adversarial.

Next, Williams discussed the way in which the federal government funds these settlements. In 2009, from the same Omnibus Appropriations bill that enacted the Navajo Water Rights Settlement Act, Congress created a reservation settlement fund that is apportioned from the Bureau of Reclamation fund containing billions of dollars. The reservation settlement fund only applies to settlements with a Bureau of Reclamation component and does not relieve financial pressure on the Bureau of Indian Affairs. The reservation settlement fund is intended to last until 2029 and provide roughly $120 million per year for certain identified settlements. These include the Crow and Blackfeet Tribes in Montana that settled for roughly $400 million each, and the Navajo Tribe in Arizona that settled for one billion dollars.

Finally, O'Brien extended the dialogue by differentiating the types of available funding. She first explained that congressionally enacted settlements rely on discretionary funding which only authorizes appropriations for each individual settlement. This discretionary funding is given to the Bureau of Indian Affairs and the Bureau of Reclamation (when projects involve a water settlement component) when the agencies ask for funds in their programmatic budget to fulfill financial obligations when settlements are enacted.

On the other hand, the 2010 Claims Resolution Settlement Act provided mandatory congressional funding for Indian water rights settlements enacted under this statute. For Congress to appropriate mandatory funding, it must find a same-year offset, meaning Congress reallocates funding from one program into another needing the mandatory funds. One of the first Indian water settlements receiving mandatory funding was the Crow Tribe Water Rights Settlement Act, which is almost fully funded, unlike the discretionary funding for the Pechanga and Blackfeet Tribes water rights settlements which are funded over time.

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THE PUBLIC TRUST DOCTRINE: A MODERN DEBATE OVER A CLASSIC DOCTRINE

Three speakers came together to discuss their views on the public trust doctrine as it applies to the current state of water law. Jennifer Harder moderated the discussion. She is a professor of law at the University of the Pacific, McGeorge School of Law, in Sacramento, California. The first part of the discussion was led by Buzz Thompson of O'Melveny & Myers, who is also a professor at Stanford Law School. He was followed by J. Craig Smith of Smith Hartvigsen, PLLC, located in Salt Lake City, Utah. Cynthia Koehler, cofounder and executive director of WaterNow Alliance, a non-profit organization based in San Francisco, concluded the discussion.

Thompson introduced the panel topic and provided general background information regarding the public trust doctrine and its application to the area of water rights. He informed the audience that the application of the public trust doctrine to water law sports about fifty years of legal history. Yet, this doctrine remains extremely controversial as it exposes a variety of legal puzzles. Only a handful of state courts have written on the subject; for example, both the California Supreme Court and the Hawaii Supreme Court published landmark opinions regarding the public trust doctrine in water law. Generally, states recognize that water is a public resource, exclusively owned by the state, even if states also recognize a variety of water rights held by private individuals.

Thompson pointed to several concerns regarding the public trust doctrine. Some believe that the doctrine will give courts a license to engage in strong judicial intervention. Others feel that this doctrine is simply a form of broken judicial takings. Yet still, others are worried that this doctrine is anti-majoritarian because the legislature may not be able to override judicial opinions on the applicability of the doctrine. There is an even split amongst courts who have addressed this topic; states such as California have applied the public trust doctrine to their state consumptive water laws, while other states, including Colorado, have explicitly rejected the application of the doctrine to water rights. At this time, it is unclear as to whether applying the public trust doctrine will yield positive or negative consequences.

Smith followed Thompson's introduction with his views on the public trust doctrine in the context of the prior appropriation system. He does not believe that the public trust doctrine should be applied to water law where the prior appropriation doctrine governs and private property rights are at stake. Smith feels that this public trust movement reflects the general unease the public feels about private property rights over a public resource. For example, in Utah, like in many arid western states, private water rights held by individuals or private companies are key to the value of their property holdings. The properties of many land owners would be essentially worthless if those private water rights are taken away. The value of the land is tied to the water rights that comes with it. Smith believes that the well-established prior appropriation system works well and will continue to work well, even if we are not comfortable with the idea.

A current case in Utah arose from a unique situation created by a clash between the public trust doctrine and prior appropriation. The questions posed were: whether water is a public resource; if the public has a right to access the water, to what extent would that encroach on the rights of private individuals; can a certain amount of limited trespass be allowed through private property to access water sources; and should this sort of access be limited to only navigable waters? Smith concluded that in the future, state legislatures must pick a side because the two doctrines conflict with each other on a fundamental basis. If both doctrines exist together, there will be much confusion and inconsistences in state policies and laws, which will in turn hurt those who has invested an immense amount of resources in water infrastructure and legislation.

Koehler took the opposite view in her discussion of the public trust doctrine in water law. She began by noting that the public trust doctrine is actually quite old, extending back to England and the concept of sovereign ownership - the monarchy owns resources that benefit the citizenry and hold such resources in trust. This idea immigrated to the United States and several U.S. Supreme

Court cases in the Nineteenth Century established that each state, as its own sovereign, has the right and responsibility to hold public resources in trust for the benefit of its citizens. Although Koehler agrees with Craig that the public trust doctrine impose limitations on private enterprises, she believes that this is necessary to protect the interest of state citizens. The key question to ask is: to what extent is it acceptable for the public trust doctrine to limit private property rights?

Koehler demonstrated situations where the destruction or damage to natural resources and the environment is so severe and so prevalent that the state has a duty to step in and intervene. States have an obligation to preserve the value of such resources for future generations. Water, like other aspects of nature - the land, the sea, the air, is a different type of property, public property. Such property cannot be parceled out and used in the same way as other more traditional kinds of private property. To withhold access to water would have a significant impact on the general population and society as a whole. Koehler feels that to view water as a resource equivalent to other types of private property is misguided and dangerous. This kind of view, when reflected in policy and law, will only cause harm to state citizens and to the state's natural environmental, as well as, create irreparable damage to natural resources and alter our nation's environment permanently.

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