WRRC
2021 Pre-Conference Webinar
Tribal Water Rights & Settlements

August 13, 2021
Zoom Meeting
Margaret J. Vick, JSD
TTP was organized in 1972 to include the tribes in the LB with confirmed mainstream water rights and the tribes in the UB with mainstream and tributary water rights.

- Study includes background on tribal water rights including a report on the differences in tribal and state-law based rights.
- Descriptions of each member tribe, their water rights, water use as of 2018 and future plans.
On-River Tribal Rights

Arizona v. California 1963 Decision

• 10 years of litigation
  • No tribal parties—US represented all tribal interests
  • Claims presented by US for Hualapai, Havasupai, Navajo in the Lower Colorado River and other tribes
  • All claims to tributaries and to water above Lake Mead dismissed

• Established the standard for quantifying Federal Reserved Indian Water Rights: enough water to irrigate the practicably irrigable acreage

  • Water rights for mainstream tribes quantified
    • Ft. Mohave Tribe (Az, Ca, Nv)
    • Chemehuevi Tribe (Ca)
    • Colorado River Indian Tribes (Az, Ca)
    • Quechan Tribe (Az, Ca)
    • Cocopah Tribe (Az)
5 Mainstream Tribal Water Rights
Az v Ca 2006 Consolidated Decree, 547 U.S. 150

<table>
<thead>
<tr>
<th>Tribe</th>
<th>Diversions AF/y</th>
<th>Acreage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ft. Mohave</td>
<td>132,789</td>
<td>20,544</td>
</tr>
<tr>
<td>Chemehuevi</td>
<td>11,340</td>
<td>1,900</td>
</tr>
<tr>
<td>CRIT</td>
<td>719,248</td>
<td>107,903</td>
</tr>
<tr>
<td>Quechan</td>
<td>77,966</td>
<td>11,694</td>
</tr>
<tr>
<td>Cocopah</td>
<td>9,707</td>
<td>1,524</td>
</tr>
</tbody>
</table>

**TOTAL** 951,050 af/y 143,565

Tribal water rights measured by an amount not to exceed (i) the maximum diversion or (ii) the amount of water to supply the consumptive use required for irrigation of the listed acreage and for satisfaction of related used which ever is less.
Tribal Water Rights Accounted for in the State in which the Irrigable Acreage is Located

I

ARIZONA

A. Federal Establishments' Present Perfected Rights

The federal establishments named in Article II, subdivision (D), paragraphs (2), (3), (4), and (5) of this decree, such rights having been decreed in Article II:

<table>
<thead>
<tr>
<th>Defined Area of Land</th>
<th>Annual Diversions (Acre-Feet)</th>
<th>Net Acres</th>
<th>Priority Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Coconino Indian Reservation</td>
<td>7,681</td>
<td>1,206</td>
<td>Sept. 27, 1917</td>
</tr>
<tr>
<td>2) Colorado River Indian Reservation</td>
<td>355,400</td>
<td>53,768</td>
<td>Mar. 3, 1865</td>
</tr>
<tr>
<td></td>
<td>286,016</td>
<td>37,808</td>
<td>Nov. 22, 1873</td>
</tr>
<tr>
<td></td>
<td>51,086</td>
<td>7,769</td>
<td>Nov. 16, 1874</td>
</tr>
<tr>
<td>3) Fort Mojave Indian Reservation</td>
<td>27,098</td>
<td>4,927</td>
<td>Sept. 18, 1890</td>
</tr>
<tr>
<td></td>
<td>75,566</td>
<td>11,691</td>
<td>Feb. 2, 1911</td>
</tr>
<tr>
<td>3a) Fort Yuma Indian Reservation</td>
<td>6,350</td>
<td>962</td>
<td>Jan. 9, 1884</td>
</tr>
</tbody>
</table>

III

NEVADA

A. Federal Establishments' Present Perfected Rights

The federal establishments named in Article II, subdivision (D), paragraphs (5) and (6) of this decree, such rights having been decreed by Article II:

<table>
<thead>
<tr>
<th>Defined Area of Land</th>
<th>Annual Diversions (Acre-Feet)</th>
<th>Net Acres</th>
<th>Priority Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>21) Fort Mojave Indian Reservation</td>
<td>12,534*</td>
<td>1,909*</td>
<td>Sept. 18, 1890</td>
</tr>
</tbody>
</table>

II

CALIFORNIA

A. Federal Establishments' Present Perfected Rights

The federal establishments named in Article II, subdivision (D), paragraphs (1), (3), (4), and (5) of this decree, such rights having been decreed by Article II:

<table>
<thead>
<tr>
<th>Defined Area of Land</th>
<th>Annual Diversions (acre-feet)</th>
<th>Net Acres</th>
<th>Priority Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>22) Chemehuevi Indian Reservation</td>
<td>11,840</td>
<td>1,900</td>
<td>Feb. 2, 1907</td>
</tr>
<tr>
<td>23) Fort Yuma Indian Reservation</td>
<td>71,616</td>
<td>10,742</td>
<td>Jan. 9, 1884</td>
</tr>
<tr>
<td>24) Colorado River Indian Reservation</td>
<td>10,745</td>
<td>1,612</td>
<td>Nov. 22, 1873</td>
</tr>
<tr>
<td></td>
<td>40,241</td>
<td>6,037</td>
<td>Nov. 16, 1874</td>
</tr>
<tr>
<td></td>
<td>5,890</td>
<td>879</td>
<td>May 15, 1876</td>
</tr>
<tr>
<td>25) Fort Mojave Indian Reservation</td>
<td>16,720</td>
<td>2,587</td>
<td>Sept. 18, 1890</td>
</tr>
</tbody>
</table>
Attributes of Mainstream Decreed Rights

- **Priority dates are earliest in the Lower Basin**
  - Not subject to shortage under the 2007 Interim Guidelines or DCP

- **Quantified by irrigable acreage**
  - Requires infrastructure to use

- **No settlements Quantification process did not include:**
  - $$$
  - Infrastructure
  - Authorization to use off-reservation through leasing, exchange or storage
Tribes with CAP Water Deliveries

- 10 Tribes served through the CAP (Directly or to Lessees)
  - Ak Chin Indian Community
  - Ft. McDowell Yavapai Nation
  - Gila River Indian Community
  - Pascua Yaqui Tribe
  - Tohono O'odham Nation
  - Tonto Apache Tribe
  - San Carlos Apache Tribe
  - White Mountain Apache Tribe
  - Yavapai Apache Nation
  - Yavapai-Prescott Tribe

Source: cap-az.org
Shortages on the Colorado River
### Shortages?

**What are they?**

- Insufficient mainstream Colorado River water available for release to satisfy annual consumptive use of seven million five hundred thousand acre-feet in Arizona, California, and Nevada.
  
  - *Basin States Project Act, 43 USC 1521 (B)*

**Effect on mainstream tribes:**

- “In the event of a determination of insufficient mainstream water to satisfy present perfected rights...the Secretary shall...first provide for the satisfaction in full of all rights of the [5 LB Tribes].

  - *Az v Ca, 547 U.S. 150, 155 - 6 (2006)*

**Effect on CAP tribes:**

- Diversions from the mainstream for the Central Arizona Project shall be so limited as to assure the availability of water in quantities sufficient to provide for the aggregate annual consumptive use by holders of present perfected rights, by other users in the State of California....

  - *Basin States Project Act, 43 USC 1521 (B)*
2007 Interim Guidelines 2019 DCP

- 2007 Interim Guidelines set the shortage criteria approved to respond to hydrologic conditions 2000 to 2004
- Guidelines define the conditions under which the Secretary would reduce water deliveries below 7.5 maf (shortage)
- Guidelines set the criteria for the Secretary to establish the Annual Operating Plan (AOP) for water deliveries below Lake Mead
  - Normal conditions: August 24-month study predicts Lake Mead elevation above elevation 1075 at the end of the year
  - Shortage conditions: Same projections but Lake Mead is at or below elevation 1075 at the end of the year
- By 2016 the hydrologic conditions had worsened leading to development of the 2019 Drought Contingency Plans
### 2007 Interim Guidelines Shortage Reductions and Incremental DCP Contributions

<table>
<thead>
<tr>
<th>Lake Mead Elevation</th>
<th>AZ 2007</th>
<th>AZ DCP</th>
<th>AZ TOTAL</th>
<th>NV 2007</th>
<th>NV DCP</th>
<th>NV TOTAL</th>
<th>CA 2007</th>
<th>CA DCP</th>
<th>CA TOTAL</th>
<th>BOR DCP</th>
<th>MX Min 323</th>
<th>MX BWSCP</th>
<th>MX Total</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>≤1090 &gt;1075</td>
<td>0</td>
<td>192K</td>
<td>192K</td>
<td>0</td>
<td>8K</td>
<td>8K</td>
<td>0</td>
<td>0</td>
<td>100k</td>
<td>0</td>
<td>41k</td>
<td>41k</td>
<td>341k</td>
<td></td>
</tr>
<tr>
<td>&gt;1075≤1050</td>
<td>320K</td>
<td>192K</td>
<td>512K</td>
<td>13K</td>
<td>8K</td>
<td>21K</td>
<td>0</td>
<td>0</td>
<td>100k</td>
<td>100k</td>
<td>50k</td>
<td>30k</td>
<td>80k</td>
<td>713k</td>
</tr>
<tr>
<td>&gt;1050≤1045</td>
<td>400K</td>
<td>192K</td>
<td>592K</td>
<td>17K</td>
<td>8K</td>
<td>25K</td>
<td>0</td>
<td>0</td>
<td>100k</td>
<td>70k</td>
<td>34k</td>
<td>104k</td>
<td>821k</td>
<td></td>
</tr>
<tr>
<td>&gt;1045≤1040</td>
<td>400K</td>
<td>240K</td>
<td>640K</td>
<td>17K</td>
<td>10K</td>
<td>27K</td>
<td>0</td>
<td>200K</td>
<td>200K</td>
<td>100k</td>
<td>70k</td>
<td>76k</td>
<td>146k</td>
<td>1,113k</td>
</tr>
<tr>
<td>&gt;1040≤1035</td>
<td>400K</td>
<td>240K</td>
<td>640K</td>
<td>17K</td>
<td>10K</td>
<td>27K</td>
<td>0</td>
<td>250K</td>
<td>250K</td>
<td>100k</td>
<td>70k</td>
<td>84k</td>
<td>154k</td>
<td>1,171k</td>
</tr>
<tr>
<td>&gt;1035≤1030</td>
<td>400K</td>
<td>240K</td>
<td>640K</td>
<td>17K</td>
<td>10K</td>
<td>27K</td>
<td>0</td>
<td>300K</td>
<td>300K</td>
<td>100k</td>
<td>70k</td>
<td>92k</td>
<td>162k</td>
<td>1,229k</td>
</tr>
<tr>
<td>&gt;1030≤1025</td>
<td>400K</td>
<td>240K</td>
<td>640K</td>
<td>17K</td>
<td>10K</td>
<td>27K</td>
<td>0</td>
<td>350K</td>
<td>350K</td>
<td>100k</td>
<td>70k</td>
<td>101k</td>
<td>171k</td>
<td>1,288k</td>
</tr>
<tr>
<td>≤1025</td>
<td>480K</td>
<td>240K</td>
<td>720K</td>
<td>20K</td>
<td>10K</td>
<td>30K</td>
<td>0</td>
<td>350K</td>
<td>350K</td>
<td>100k</td>
<td>125k</td>
<td>150k</td>
<td>275k</td>
<td>1,475k</td>
</tr>
</tbody>
</table>
CAP Cuts at 2007 Interim and DCP Trigger Points

2007 Interim Guidelines

- Other Excess
- Ag Pool
  - 320,000 (Tier 1)
  - 400,000 (Tier 2)
  - 480,000 (Tier 3)
- NIA Priority
- Indian Priority
- M&I Priority
- Priority 3

DCP Cuts

- Other Excess
- Ag Pool
  - 192,000
- NIA Priority
- Indian Priority
- M&I Priority
- Priority 3

'07 Guidelines + LBDCP Contributions by AZ

- 512,000 (T1 + 192k)
- 592,000 (T2 + 192k)
- 640,000 (T2 + 240k)
- 720,000 (T3 + 240k)
59% of NIA Priority Supplies are currently or will be Tribal.
Further Consultations

- If any Reclamation 24-month Study indicates that the minimum probability for Lake Mead will be at or below elevation 1030 the Secretary shall call additional consultations to prevent the elevation from dropping to critical levels below elevation 1020.

[Diagram showing Lake Mead elevations with June 2023 marked as critical level.]
2007 Interim Guidelines ➔ 2019 DCP

Further Consultations @ 1030

2007 IG + DCP + Further Consultations
+ Reconsultation ➔ 2026 NEW OPERATIONAL GUIDELINES
Keeping up to date....

• **Monday, August 16**: Reclamation release of August 24-month study to determine operational conditions for 2022
  - 99% chance to declare a Tier 1 Shortage
  - Az CAP & 4\textsuperscript{th} Priority Rights: Cut 512,000 af/y

• Modeling and 24-month Studies available at:
  - [https://www.usbr.gov/lc/region/g4000/riverops/crss-alt-hydrology.html](https://www.usbr.gov/lc/region/g4000/riverops/crss-alt-hydrology.html)

• CAP Monthly Board Meetings include hydrologic reports:
  - [https://www.cap-az.com/board](https://www.cap-az.com/board)

• Arizona Department of Water Resources
  - [https://new.azwater.gov/news](https://new.azwater.gov/news)