

ARIZONA TRIBAL WATER RIGHTS: ADJUDICATIONS AND SETTLEMENTS

TRIBAL WATER RIGHTS &
SETTLEMENTS
2021 PRE-CONFERENCE
WEBINAR

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COLLEGE OF AGRICULTURE & LIFE SCIENCES
COOPERATIVE EXTENSION

**WATER RESOURCES
RESEARCH CENTER**

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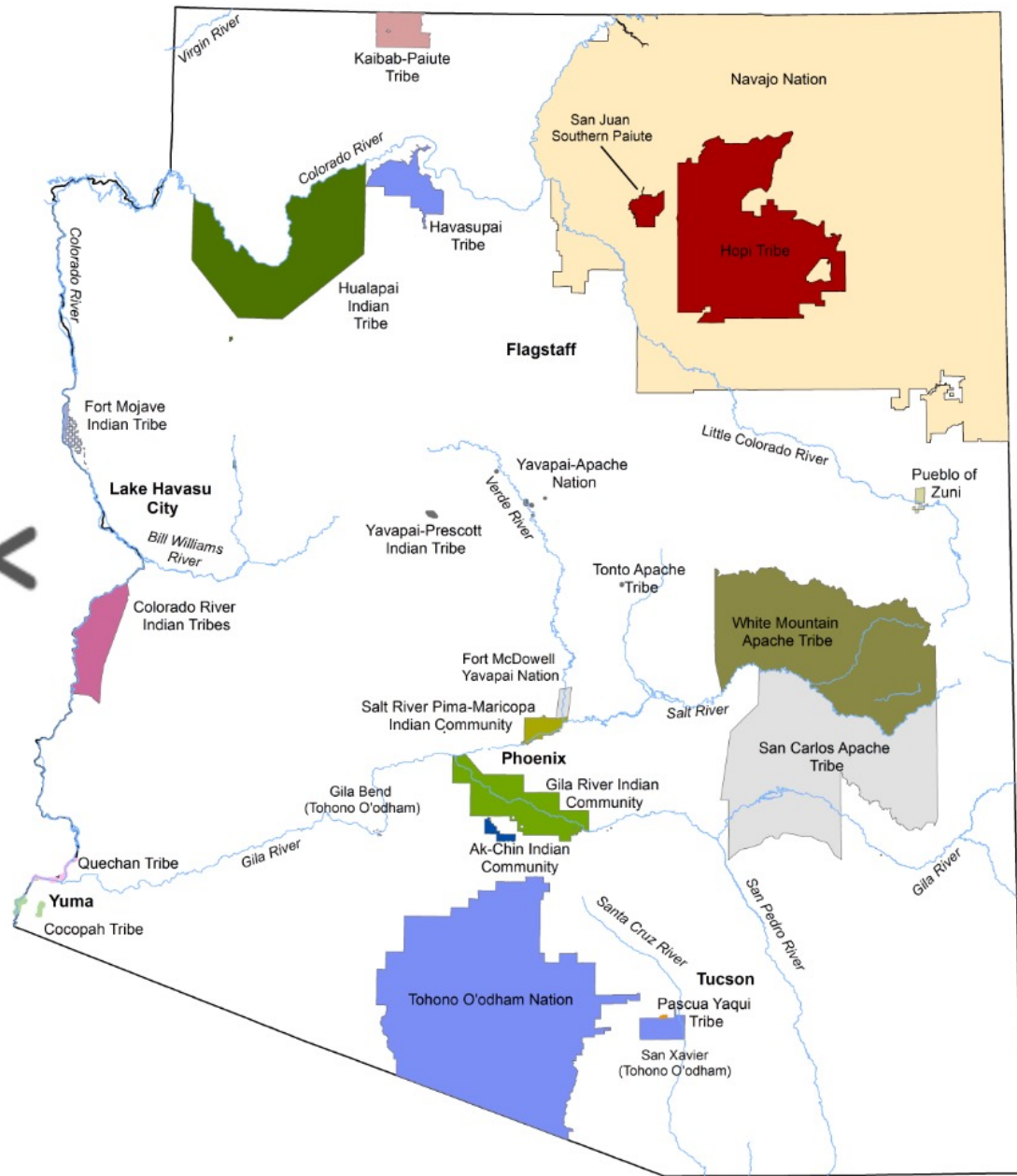
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Tribal Homelands In Arizona



- There are **22** federally recognized Indian Tribes in Arizona.
- Indian Reservations make up **28%** of the total land base of Arizona.
- Reservations only represent a small portion of the aboriginal territory of the Tribes which at one time covered all of Arizona.
- Many Reservations are near rivers within existing Tribal territories to ensure that Tribal people would have continuing access to a water source.
- Most Arizona Reservations pre-date Arizona statehood in 1912.

ARIZONA'S WATER RIGHTS ADJUDICATION CASES

- ❑ Began in the 1970's to quantify all the rights to use appropriable water within the Little Colorado River Watershed and Gila River Watershed in Arizona.
- ❑ The Adjudications include federal claims for water for Indian Tribes and other federal lands (e.g. *National Forests, BLM Lands, National Parks, Military Reservations*)

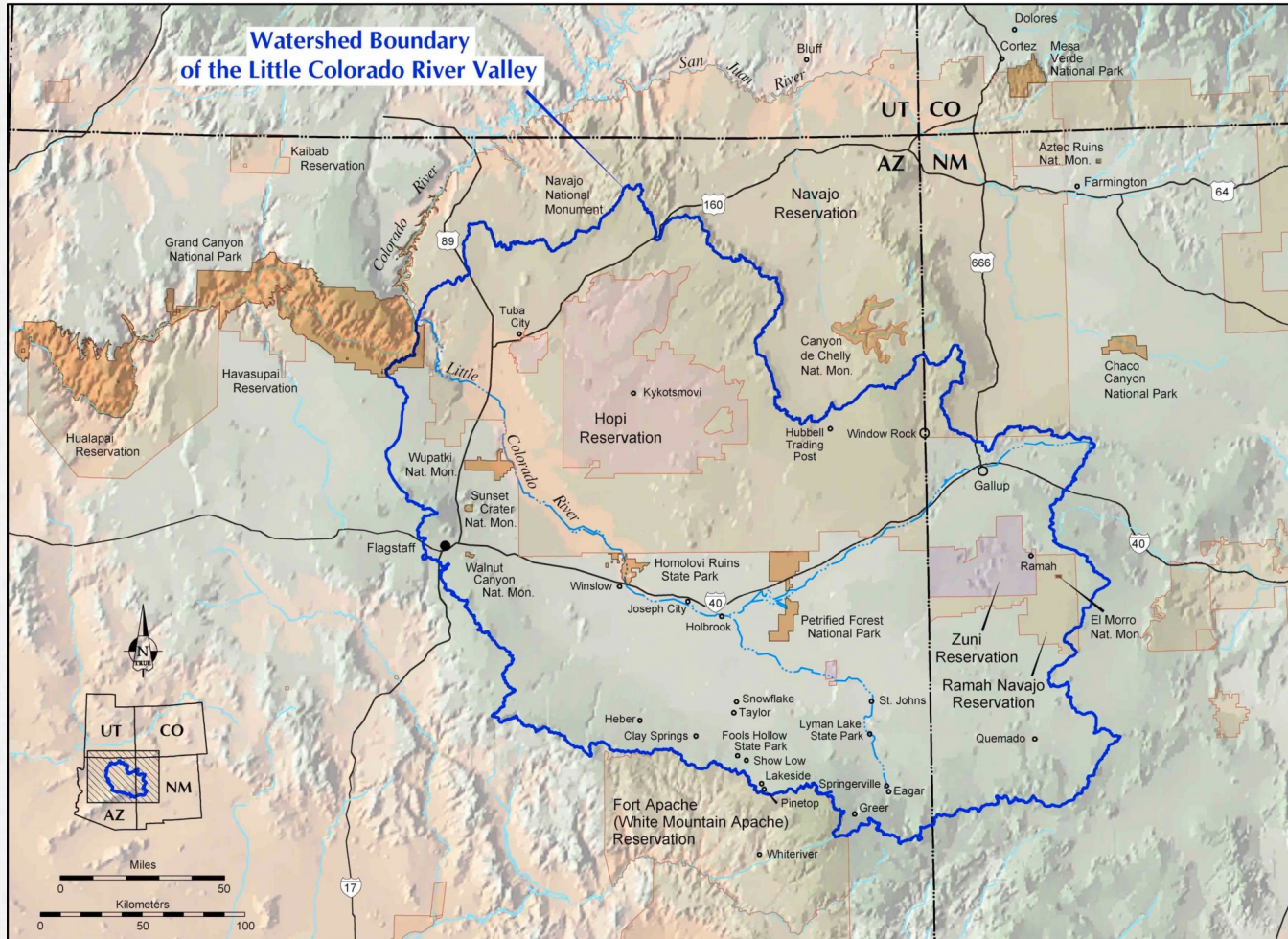
<http://www.superiorcourt.maricopa.gov/SuperiorCourt/GeneralStreamAdjudication/Index.asp>

GILA RIVER ADJUDICATION



LITTLE COLORADO RIVER (LCR) ADJUDICATION

Preliminary Planning Map: Little Colorado River Valley National Heritage Area March 9, 2005



**ARIZONA'S "PERMANENT TRIBAL HOMELAND"
STANDARD FOR TRIBAL WATER RIGHTS
OR.... *WINTERS AND AZ V. CA CONTINUED***

***In Re the General Adjudication of All Right to
Use Water in the Gila River System and
Source***

201 Ariz. 307, 35 P.3d 68 (2001)

Arizona Supreme Court

The purpose of a federal Indian reservation is to serve as a "permanent home and abiding place" to the people living there...quantifying an Indian reserved [water] right is a fact-intensive, reservation-specific inquiry that must address numerous factors."

ELEMENTS OF A PERMANENT TRIBAL HOMELAND FEDERAL RESERVED WATER RIGHT IN ARIZONA'S ADJUDICATIONS

Water Needed For:

- Domestic / Residential
- Commercial
- Industrial
- Mining
- Stock Watering
- Agriculture & Irrigation
- Traditional Cultural Practices
- Religious Use
- Recreation
- Wilderness
- Other important uses required to permanently sustain the Tribe on the Reservation

Some of the Considerations:

- Practicably Irrigable Acreage (PIA)
- Tribal History of Water Use
- Future Tribal Population
- Economy of the Tribe
- Tribal Development Projects



FEDERAL RESERVED RIGHT TO GROUNDWATER

In Re the General Adjudication of All Right to Use Water in the Gila River System and Source, 195 Ariz. 411, 989 P.2d 739 (1999) (Arizona Supreme Court)

- This AZ State Court decision in 1999 precedes the *Agua Caliente* decision by the 9th Circuit Court of Appeals (Federal Court) in 2017.
- Federal reserved rights extend to groundwater to the extent groundwater is necessary to accomplish the purpose of a reservation.
- In Arizona, there is no property right to groundwater, only a right of reasonable use. *Bristor v. Cheatham, 75 Ariz. 227, 237-38 (1953)*.
- For Tribes, a federal reserved right to groundwater is a property right.

STATUS OF TRIBAL WATER RIGHTS SETTLEMENTS IN ARIZONA

SETTLED OR DECREED

- Cocopah Indian Tribe (AZ v. CA)
- Colorado River Indian Tribe (AZ v. CA)
- Fort Mohave Indian Tribe (AZ v. CA)
- Quechan Indian Tribe (AZ v. CA)
- Ak-Chin Indian Community (1978/1984)
- Salt River Pima-Maricopa Indian Community (1988)
- Fort McDowell Yavapai Nation (1990)
- San Carlos Apache Tribe (Partial) (1992)
- Yavapai-Prescott Indian Tribe (1994)
- Pueblo of Zuni (2003)
- Gila River Indian Community (2004)
- Tohono O'Odham Nation (Partial) (2004)
- White Mountain Apache Tribe (2010)
- Hualapai Tribe (Partial) (2014)

NOT YET FULLY SETTLED OR DECREED

- Navajo Nation (Partial) (LCR Adj.)
- Hopi Tribe (LCR Adj.)
- San Juan Southern Paiute Tribe (LCR Adj.)
- Pascua Yaqui Tribe (Gila Adj.)
- San Carlos Apache Tribe (Partial) (Gila Adj.)
- Tohono O'Odham Nation (Partial) (Gila Adj.)
- Tonto Apache Tribe (Gila Adj.)
- Yavapai-Apache Nation (Gila Adj.)
- Havasupai Tribe (Gila Adj.)
- Hualapai Tribe (Partial) (No Adj.)
- Kaibab Band of Paiute Indians (No Adj.)

BASIC STEPS TO OBTAINING AN INDIAN WATER RIGHTS SETTLEMENT

- ❑ **Federal Indian Water Rights Negotiation Team is Appointed by the Department of the Interior**
 - ❑ See Criteria and Procedures for Settlement of Indian Water Rights, 55 F.R. 9223 (Mar. 12, 1990)
 - ❑ Secretary's Indian Water Rights Office (SIWRO) within the Department of the Interior coordinates all federal Indian water rights settlement efforts.
- ❑ **Parties negotiate and agree on terms**
- ❑ **Congressional legislation to approve the settlement must pass**
- ❑ **Adjudication Court approves the settlement to enter a decree of water rights for the Tribe (if case pending)**
- ❑ **Settlement is implemented**

CHALLENGES TO OBTAINING A SETTLEMENT

- ❑ **Willingness of Parties to Compromise**
- ❑ **Availability of Water Sources**
 - *Local water sources, CAP water, effluent, other*
- ❑ **Cost of Settlement**
 - *Project-based v. Fund-based settlement*
- ❑ **Obtaining Executive and Congressional Approval**
 - *Congress and Executive Branch tend to change their viewpoint regarding settlements with changes in composition of Congress and the currently serving Administration*
- ❑ **Obtaining Approval of the Adjudication Court**

POST-SETTLEMENT CHALLENGES

❑ **Project-Based Settlement**

- *Environmental compliance, project modifications, additional funding needs, etc.*

❑ **Unpredicted Changes in Water Availability**

- ❑ *climate change*

❑ **Unpredicted Changes in Funding Availability**

- *Shortages in fund performance, additional appropriations*

❑ **Disagreements in Meaning of Settlement Language**

- *What can tribes do under their settlements, calculation of water allocated to tribe under settlement*

THE END



“As long as the river flows, life will be good.”

Mary Sine, Yavapai-Apache Tribal Elder, circa 1937