

STATUS OF ARIZONA TRIBAL WATER RIGHTS SETTLEMENTS

KEN SLOWINSKI

CHIEF COUNSEL

WESTERN STATES WATER COUNCIL

SPRING 2019 MEETING

March 21, 2019

Arizona Indian Tribes

- There are 22 Federally recognized Indian tribes in Arizona.
- Arizona ranks first among all states in the percentage of tribal land in the state – 27.7% (Alaska is the second highest at 10.7%.)



Arizona Indian Tribes



PROTECTING ARIZONA'S
WATER SUPPLIES
for ITS NEXT CENTURY

0 12.5 25 50 75 100 Miles



Indian Water Rights – Groundwater

- 1999 Arizona Supreme Court Decision:
 - The federal reserved water rights doctrine applies not only to surface water but to groundwater.
 - A reserved right to groundwater may only be found where other waters are inadequate to accomplish the purpose of a reservation.
 - Once a federal reservation establishes a reserved right to groundwater, it may invoke federal law to protect its groundwater from subsequent diversion by holders of junior state law water rights.



Arizona Tribes With Water Rights Through Litigation

- In *Arizona v. California* (1963), the U.S. Supreme Court adjudicated the federal reserved water rights of four Indian tribes near the Colorado River in the Lower Basin:
 - Cocopah Tribe – 7,681 AF (1917 priority date)
 - Colorado River Indian Tribes – 662,402 AF (1865-1874)
 - Fort Mojave Indian Tribe – 103,535 AF (1890-1911)
 - Fort Yuma (Quechan) Indian Tribe – 6,350 AF (1884)
- **Total amount of Colorado River water awarded – 779,968 AF** (27% of Arizona’s 2.8 million AF share of the Lower Colorado River).



Arizona Tribes With Water Rights Through Settlement

- Ten Arizona tribes have water rights through a Congressionally approved settlement (three are partial settlements):
 - Ak Chin Indian Community (1984)
 - Tohono O’odham Nation (partial settlement) (1982/2004)
 - Salt River-Pima Maricopa Indian Community (1988)
 - Fort McDowell Yavapai Nation (1990)
 - San Carlos Apache Tribe (partial settlement) (1992)
 - Yavapai-Prescott Indian Tribe (1994)
 - Zuni Indian Tribe (2003)
 - Gila River Indian Community (2004)
 - White Mountain Apache Tribe (2010)
 - Hualapai Tribe (partial settlement) (2014)



Arizona Tribes With Outstanding Water Rights Claims

- Eleven Arizona Tribes have outstanding water rights claims:
 - Havasupai Tribe
 - Hualapai Tribe (claims for main reservation)
 - Hopi Tribe
 - Kaibab Paiute Tribe
 - Navajo Nation
 - Pasqua Yaqui Tribe
 - San Carlos Tribe (claims to Gila River)
 - San Juan Southern Paiute Tribe
 - Tohono O'odham Nation (claims in central and southern Arizona)
 - Tonto Apache Tribe
 - Yavapai Apache Nation



Current Status of Tribal Settlement Negotiations in Arizona

- Hualapai Tribe – Comprehensive settlement agreement signed by the Tribe and the state parties and awaiting legislation to be introduced in Congress.
- Settlement discussions ongoing for several years:
 - Tonto Apache Tribe
 - Yavapai-Apache Tribe
- Settlement discussions in early stages:
 - Havasupai Tribe
 - Tohono O’odham Nation



Current Status of Tribal Settlement Negotiations in Arizona

- Settlements previously under negotiations but not currently being negotiated:
 - Navajo Nation
 - Hopi Tribe



Arizona Tribal Water Rights Negotiations

Questions?

