

Native American Tribal Water Rights in the Colorado River Basin

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Ecogeomorphology (GEL 230/ECL 297)

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Outline

- ▶ The West, CO River allocations, & water law
- ▶ Tribal water rights law & quantification
- ▶ Tribal water rights in the Colorado River basin
- ▶ Recommended policy considerations



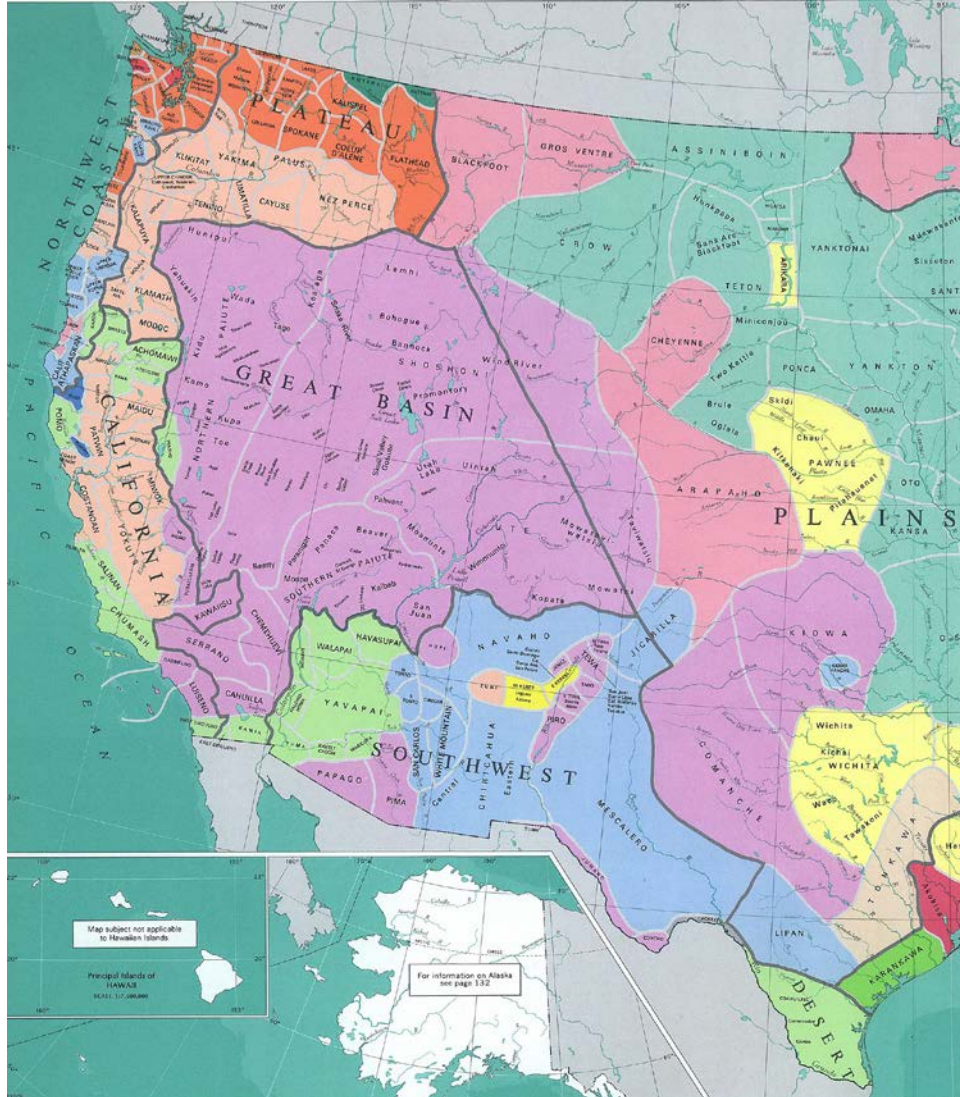
Source: U.S. Bureau of Reclamation



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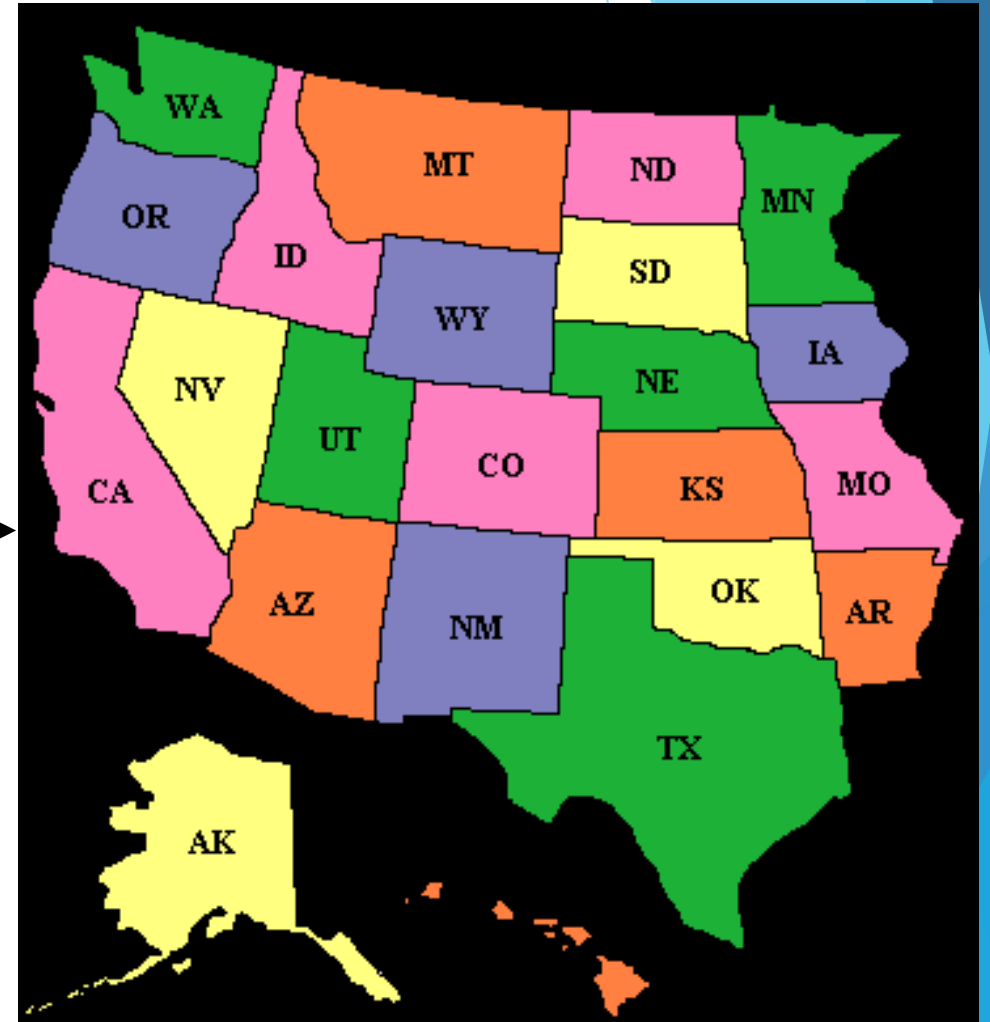
The Western United States

From this...



Source: Smithsonian Institution

to this:



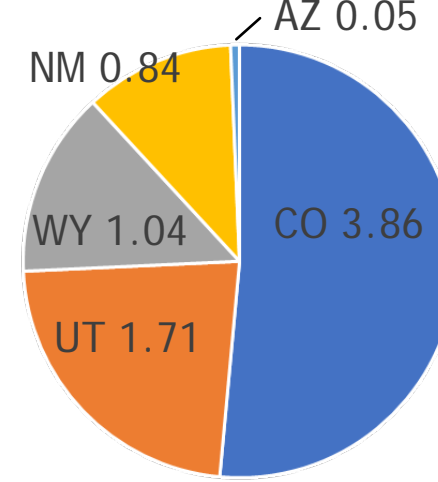
Source: American Forts

Colorado River Allocations, by State

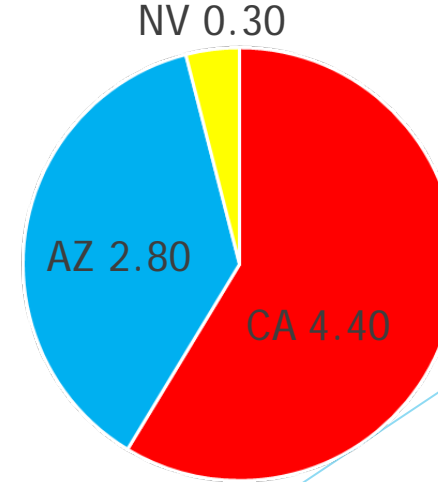


Source: U.S. Bureau of Reclamation

Upper Basin (UCRC, 1948):



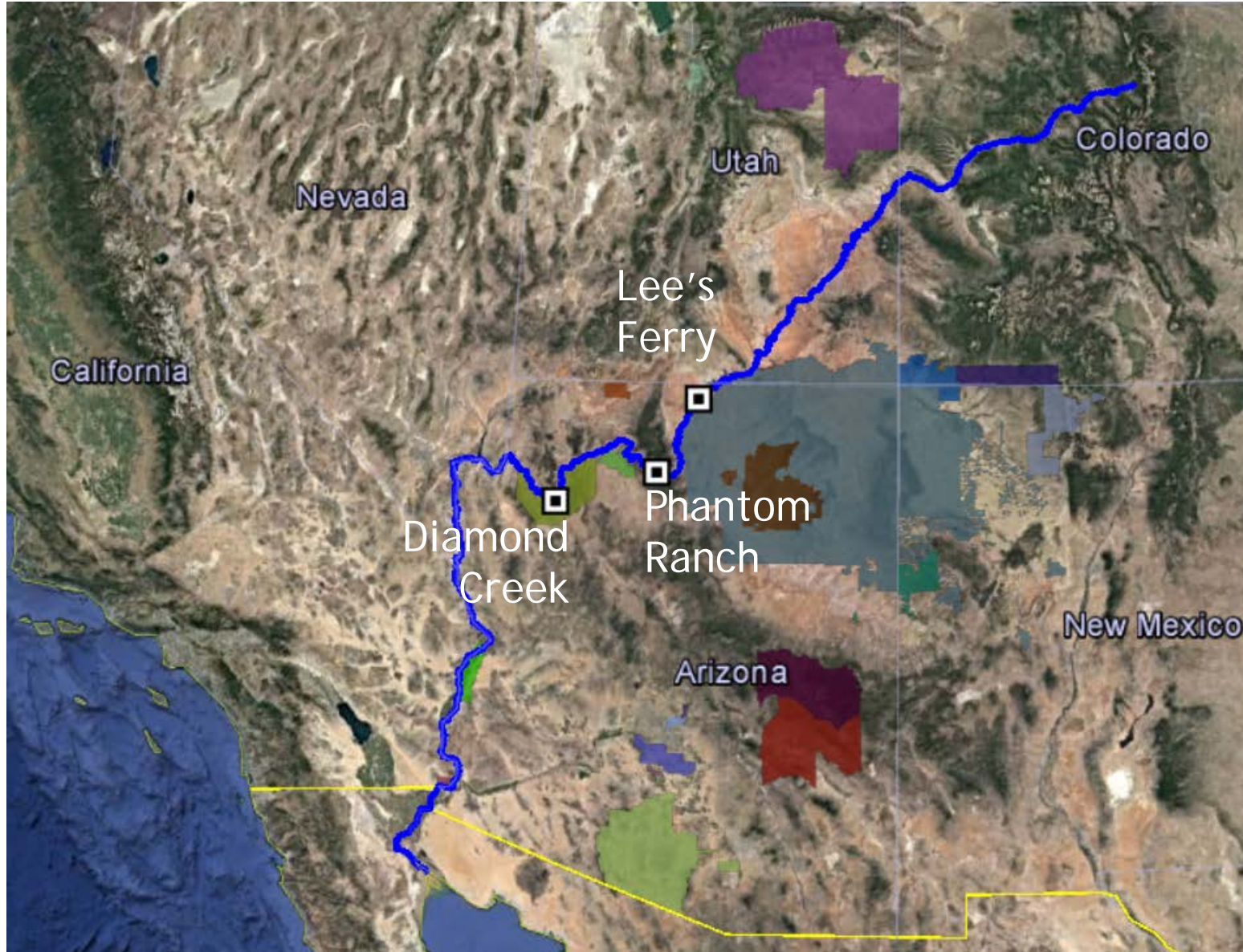
Lower Basin (BCP, 1928):



Mexico 1.5

(units are million acre-feet/year, MAFY)

Tribes* in the Colorado River Basin



Source: Aerial imagery Google Earth, Reservation boundaries U.S. Census Bureau

*Federally recognized, with Reservations

Tribes in the Colorado River Basin

1. Jicarilla Apache (NM)
2. Navajo (NM, AZ, UT)
3. Southern Ute (CO)
4. Ute Mountain Ute (CO, NM, UT)
5. Uintah & Ouray Ute (UT)
6. Chemehuevi (CA)
7. Cocopah (AZ)
8. Colorado River (AZ, CA)
9. Fort Mojave (AZ, CA, NV)
10. Hopi (AZ)
11. Quechan (CA)
12. Ak-Chin (AZ)
13. Fort McDowell Yavapai (AZ)
14. Gila River (AZ)
15. Kaibab Band of Paiute (AZ)
16. Havasupai (AZ)
17. Hualapai (AZ)
18. Pascua Yaqui (AZ)
19. Salt River Pima-Maricopa (AZ)
20. San Carlos Apache (AZ)
21. Tohono O'odham (AZ)
22. Tonto Apache (AZ)
23. White Mountain Apache (AZ)
24. Yavapai-Apache (AZ)
25. Yavapai-Prescott (AZ)
26. Zuni (NM)

Tribal Water Rights in the West

- ▶ Tribes are sovereign nations with unique natural resource issues
 - ▶ Direct trust relationship with the Federal government
 - ▶ Resources are managed alongside State agencies
 - ▶ Water use & developments will impact local communities
- ▶ The doctrine of prior appropriation governs most State water rights
 - ▶ First in time = first in right, beneficial use, can be forfeited or transferred
- ▶ Federal reserved water rights differ in key ways
 - ▶ Often very senior priority, managed alongside State rights
 - ▶ Not lost due to non-use (may never have been developed)
 - ▶ Can be changed to other uses & leased to other users (even out of state)

Quantifying Tribal Water Rights

- ▶ Court cases give legal precedent for Tribal rights quantification
 - ▶ 1908 *Winters v. United States*: Tribes have Federally reserved rights, priority of Reservation establishment, water sufficient to fulfill “primary purpose”
 - ▶ 1963 *Arizona v. California*: Reservations often established for agriculture, rights match economically feasible “practicably irrigable acreage” (PIA)
 - ▶ Other water uses also recognized (municipal, instream, cultural, storage, leasing)
- ▶ Appropriative rights are finalized through stream adjudication (Litigation)
 - ▶ All basin users must claim rights, extensive technical & legal work, long time
 - ▶ Courts have no funding power (“paper water rights”)
- ▶ Agreements can be reached with multiple parties (Settlement)
 - ▶ Approval by Tribal membership, State agencies, Congress
 - ▶ May including funding for development (“wet water rights”) or water delivery from existing projects



Tribal Water Rights in the Colorado River Basin

- ▶ *Arizona v. California* & Consolidated Decree, 1963-2006
 - ▶ Chemehuevi, Cocopah, Colorado River, Fort Mojave, Quechan
- ▶ San Juan basin settlements & court decrees, 1988-2012
 - ▶ Jicarilla Apache, Navajo, Southern Ute, Ute Mountain Ute
- ▶ Arizona Water Rights Settlements, 1978-2006
 - ▶ Settled- Ak-Chin, Fort McDowell Yavapai, Salt River Pima-Maricopa, San Carlos Apache, White Mountain Apache, Yavapai-Prescott
 - ▶ 2006 Settlement Agreement- Gila River, Tohono O'odham, Yavapai-Apache
 - ▶ Contracts- Kaibab Band of Paiute, Pascua Yaqui, Tonto Apache
- ▶ Federal negotiation & assessment teams working
 - ▶ Hopi, Havasupai, Hualapai, Navajo, Tohono O'Odham, Tonto Apache, Yavapai-Apache, Zuni
- ▶ Claims to individual rivers, incl. mainstem Colorado, still unquantified & unsettled

Tribal Water Rights in the Colorado River Basin

Upper Basin

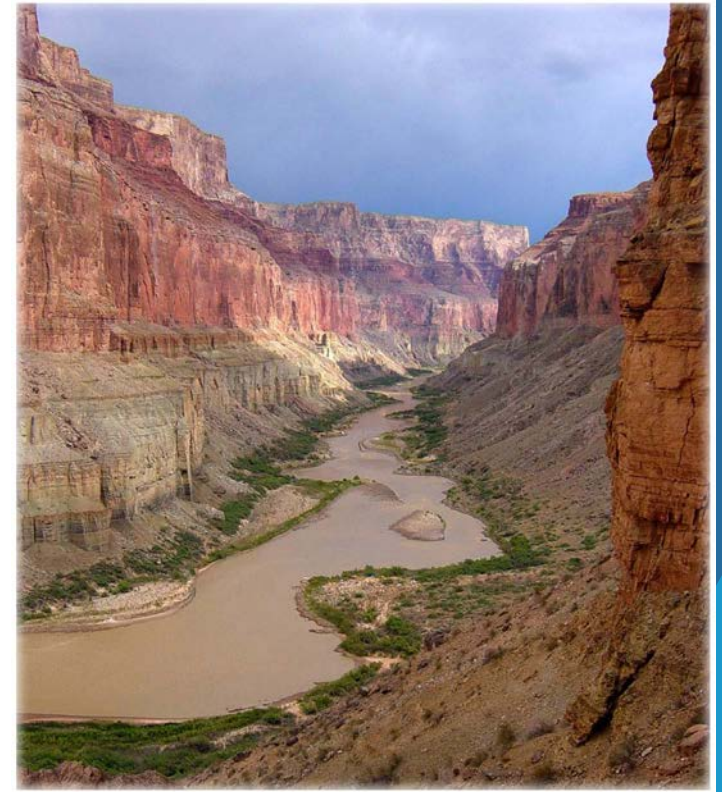
Tribe	State	Diversion (AFY)
Jicarilla Apache	NM	45,563
		5,563
Navajo	NM	606,660
		26,872
	UT	314,851
	AZ	250,000
Southern Ute	CO	137,090
Ute Mountain Ute	CO	88,358
Uintah & Ouray Ute	UT	480,594
	<i>TOTAL</i>	<i>1,955,551</i>

Lower Basin

Tribe	State	Diversion (AFY)
Chemehuevi	CA	11,340
Cocopah	CA	10,847
Colorado River	AZ	662,402
	CA	56,846
Fort Mojave	AZ	103,535
	CA	16,720
	NV	12,534
Quechan	AZ	6,350
	CA	71,616
Hopi	AZ	6,028
Ak-Chin	AZ	75,000
Fort McDowell Yavapai	AZ	36,350
Gila River	AZ	653,500
Tohono O'odham	AZ	87,200
Yavapai-Apache	AZ	1,200
Kaibab Band of Paiute	AZ	24
Pascua Yaqui	AZ	500
Salt River Pima-Maricopa	AZ	122,400
San Carlos Apache	AZ	77,435
Tonto Apache	AZ	128
White Mountain Apache	AZ	25,000
Yavapai-Prescott	AZ	1,550
Zuni	NM	5,500
	<i>TOTAL</i>	<i>2,044,005</i>

Total Rights = ~4 MAFY

**Compare to 15 MAFY total,
7.5 to each basin
(CRC, 1922)**



Source: National Parks Service

Recommended Policy Considerations

- ▶ Tribal rights have & will affect Colorado River Basin water availability
 - ▶ Development will impact other users, leasing may be crucial
- ▶ Involve Tribal communities in water planning & development
 - ▶ Federal, State, & local levels (i.e. Ten Tribes Partnership & CRWUA)
- ▶ Tribes will face challenges with future claims & development
 - ▶ Federal government has responsibilities & abilities to act
- ▶ Anticipate unquantified claims, future needs, & potential changes
 - ▶ Groundwater implications of *Agua Caliente v. Coachella*
- ▶ Cooperation & compromise, not conflict & completion
 - ▶ Tribes & governments as partners, not adversaries



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Thank You!

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