Policy Brief #4
April 9, 2021

The Status of Tribal Water Rights in the Colorado River Basin[1]

What This Policy Brief Is/Is Not

- This policy brief offers a snapshot of tribal water rights in the Colorado River Basin.
- While it provides a comprehensive overview, it is not intended as a definitive source of information.
- For detailed information on the water rights of individual tribes, please contact the tribes directly.[1]
- The information provided is descriptive, not prescriptive.
- This policy brief is a living document; it will be revised and updated as additional information becomes available.

[1] Another useful resource on tribal water rights is the Native American Water Rights Settlement Project, available at https://digitalrepository.unm.edu/nawrs/

Introduction

There are 30 federally recognized tribes in the Colorado River Basin. Twenty two of these tribes have recognized rights to use 3.2 million-acre feet (maf) of Colorado River system water annually, or approximately 22 to 26 percent of the Basin's average annual water supply.[2] In addition, 12 of the tribes have unresolved water rights claims, which will likely increase the overall volume of tribal water rights in the Basin. Under the Upper Colorado River Basin Compact and the U.S. Supreme Court's decree in *Arizona v. California*, all tribal water uses are counted against the apportionments made to the states. Tribes' rights are generally senior to state law-based water rights.

Currently, many tribes are not fully using their recognized rights for several reasons, including lack of necessary infrastructure and funding; antiquated and inefficient

[1] This policy brief builds on and updates the information presented in *Tribes and Water in the Colorado River Basin* (Colorado River Research Group June 2016). Many thanks to Julia Guarino, a member of the Leadership Team for the Water & Tribes Initiative and Program Director of Four Corners Environmental and Economic Justice, a project of the Getches-Wilkinson Center at University of Colorado Law School, and law student researchers Sasha Strong, Ellen Thurston, Cynthia Vitale, and Natasha Viteri. Many thanks to Anne Castle, Jason Robison, and especially Larry MacDonnell for their critical reviews, editing, and contributions to this policy brief.

[2] As detailed below in Tables 1 and 2, Colorado River Basin tribes currently hold water rights to 3,206,088 acre-feet of Colorado River system water annually. This figure is equivalent to nearly 26% of the mean annual flows of 12.44 maf at Lees Ferry from 2000-2018, and nearly 22% of the mean annual flows of 14.76 maf at Lees Ferry from 1906-2018. Together with the unresolved tribal claims, tribes in the Basin may have rights to roughly 3,610,784 acre-feet or about 29% of the mean annual flows of 12.44 maf at Lees Ferry from 2000-2018, and more than 24% of the mean annual flows of 14.76 maf at Lees Ferry from 1906-2018. For more information on historic flows, see Homa Salehabadi et al., Center for Colorado River Studies, *The Future Hydrology of the Colorado River Basin*, White Paper #4 (2020), available at https://qcnr.usu.edu/coloradoriver/files/WhitePaper4.pdf. One qualification: figures associated with tribal water rights in the Basin are sometimes difficult to ascertain with precision, and we acknowledge that uncertainty up front. That said, we have included citations to clarify the source(s) for each figure. The 30 federally recognized tribes in the Colorado River Basin include: Ak-Chin Indian Community, Chemehuevi Indian Tribe, Cocopah Indian Tribe, Colorado River Indian Tribes, Fort McDowell Yavapai Nation, Fort Mojave Indian Tribe, Gila River Indian Community, Havasupai Tribe, Hopi Tribe, Hualapai Indian Tribe, Jicarilla Apache Nation, Kaibab Band of Paiute Indians, Las Vegas Tribe of Paiute Indians, Moapa Band of Paiute Indians, White Mountain Apache, Navajo Nation, Pascua Yaqui Tribe, Quechan Indian Tribe, Salt River Pima-Maricopa Indian Community, San Carlos Apache Tribe, San Juan Southern Paiute Tribe, Shivwits Band of Paiute Indian Tribe of Utah (Constituent Band of the Paiute Indian Tribe of Utah), Southern Ute Indian Tribe, Tohono O'odham Nation, Tonto Apache Tribe, Ute Indian Tribe, Ute Mountain Ute, Yavapai-Apache Nation, Yavapai- Prescott Indian Tribe, and Pueblo of Zuni.

delivery systems; and constraints on off-reservation use. Meanwhile, existing uses of Basin water already exceed reliable supplies.[3] With tribes planning to fully develop and use their water rights,[4] other water users in the Basin are concerned about how the expanded development of tribal water rights can be integrated with existing and future non-Indian uses of Basin water.

Although there has been some creativity in past decades to find ways to satisfy tribal water rights without displacing existing uses, this issue continues to be a concern for many in the Basin. In the course of completing over 100 interviews with tribal and other leaders in the Basin in 2019, the Water & Tribes Initiative found that quantification and development of tribal water rights consistently ranked among the top issues that need to be addressed in developing the management framework that will replace the 2007 Interim Guidelines and the 2019 Drought Contingency Plans for governing the Colorado River system.[5]

This policy brief provides information on the status of the water rights of the 30 federally recognized tribes in the Colorado River Basin. It provides context for policy discussions on how to address tribes' interests in fully developing their water rights and the water scarcity challenges already facing the Basin.

The Nature of Tribal Water Rights

Tribal water rights differ from state-based water rights in several significant ways. The United States Supreme Court first recognized tribal "reserved" water rights in *Winters v. United States* (1908).[6] According to David Getches,

> "The reserved rights doctrine was created to assure that Indian lands … would have adequate water. The doctrine recognizes rights to a quantity of water sufficient to fulfill the purposes of a reservation... Although most water rights in the western United States have a priority based on when they were first put to a beneficial use, rights on … Indian lands have a priority dating back to at least as early as the reservations were established even if water use begins long after others have appropriated waters from the stream."[7]

In other words, unlike water rights arising under state law, tribal water rights are not measured by actual use and cannot be lost by nonuse.[8]

Building on the *Winters* doctrine, tribal water rights were acknowledged with a general disclaimer in the 1922 Colorado River Compact,[9] but were largely ignored until the litigation in *Arizona v. California*. In a 1963 ruling in that long-running case, the United States Supreme Court reaffirmed the *Winters* doctrine and adopted the "practicably irrigable acreage" standard to quantify reserved rights held by five tribes with reservations along the Lower Colorado River in Arizona, California, and Nevada.[10] Although "[g]enerally … reserved rights are not subject to state water laws,"[11] the Court in *Arizona v. California* specified that tribal water rights should be charged against the apportionment made to the state in which a tribe's water use occurs.[12] The 1948 Upper Colorado River Basin Compact calls for the same. Since this decision, other Colorado River Basin tribes have been working to have their water rights recognized and quantified, as well as to secure funding for infrastructure and other needs to enable them to put these rights to use.

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[3] U.S. Bureau of Reclamation, Colorado River Basin Water Supply and Demand Study (2012), https://www.usbr.gov/lc/region/programs/crbstudy/finalreport/index.html

[4] See, e.g., *Colorado River Basin Ten Tribes Partnership Tribal Water Study* (December 2018) at Chapter 5.

[5] Water & Tribes Initiative, *Toward a Sense of the Basin: Designing a Collaborative Process to Develop the Next Set of Guidelines for the Colorado River System* (2020), http://naturalresourcespolicy.org/docs/colorado-river-basin/basin-report-2020.pdf.)

[6] *Winters v. United States*, 207 U.S. 564 (1908).

[7] David H. Getches, *Water Law in a Nutshell* at 332 (West Publishing 2009).

[8] An overview of Indian reserved rights can be found in chapter 2 of Colorado River Basin, Ten Tribes Partnership Tribal Water Study, Study Report (2018), https://www.usbr.gov/lc/region/programs/crbstudy/tws/docs/Ch.%202%20Indian%20Water%20Rights%2012-13-2018.pdf.

[9] Colorado River Compact, Article VII says "Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes." As the Colorado River Research Group has explained, "[t]hese tribal rights are regarded as having been fully perfected before the 1922 Compact and are first in line to be satisfied even when there is insufficient water for uses under rights established after the Compact." Colorado River Research Group, *Tribes and Water in the Colorado River Basin* (2016).

[10] *Arizona v. California*, 373 U.S. 546 (1963).

[11] Getches, *supra* note 6 at 332.

[12] *Arizona v. California*, 373 U.S. at 601.

Recognized Rights[13]

The 2012 Colorado River Basin Water Supply and Demand Study (Basin Study) concluded that the Basin's tribes held quantified diversion rights of 2.9 million acre-feet per year (maf/yr), while also identifying a dozen tribes asserting water rights claims that remained unquantified and acknowledging that future demands associated with both undeveloped quantified rights and unquantified rights "will be a factor impacting Basin-wide water availability."[14]

In its final report, *Review of the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead Upper and Lower Colorado Basin Regions* (December 2020), the U.S. Bureau of Reclamation (USBR) recognizes that, in addition to currently unquantified rights, "tribes hold quantified rights to a significant amount of water from the Colorado River and its tributaries (approximately 3.4 maf of annual diversion rights) that often are senior in priority to those held by other users."[15]

The figures presented in this policy brief are largely consistent with the estimate in the USBR's recent report. As summarized below in Tables 1 and 2, 13 of the 30 federally recognized tribes in the Colorado River Basin have recognized water rights. Five other tribes have some recognized water rights as well as some unresolved claims. Altogether, the rights of these 18 tribes amount to 3,206,088 acre-feet per year (af/yr), equal to 26% of the Colorado River's mean flow of 12.44 maf/yr at Lee's Ferry from 2000-2018 and nearly 22% of the mean flow of 14.76 maf/yr at Lee's Ferry from 1906-2018.

Lower Basin Tribes

Table 1 summarizes the recognized rights from the Colorado River System for the 18 tribes with reservations in Lower Basin of the Colorado River. This includes the reserved water rights of the Chemehuevi, Cocopah, Colorado River Indian Tribes , Fort Mohave, and Quechan tribes as set forth in the United States Supreme Court's 2006 Consolidated Decree in *Arizona v. California.*

According to the Tribal Water Study,[16] the five tribes with water rights decreed in *Arizona v. California* are currently using over 800,000 af/yr, which alone accounts for roughly 80 percent of all tribal water rights in the Lower Basin.

Table 1 also summarizes the recognized rights from the Colorado River for tribes with reservations in central and southern Arizona. These water rights were recognized through congressionally-approved settlement agreements.

Several of the Central Arizona Tribes (Salt River Pima Maricopa Indian Community, Ft. McDowell Yavapai Nation, Ak Chin Indian Community, San Carlos Apache Tribe, and Gila River Indian Community) collectively lease approximately 117,100 af/yr or 18 % of their total water rights of the 626,806 maf/yr to non-Indian water users under leasing agreements.[17]

[13] We use this term to mean tribal water rights claims that have been finally quantified through litigation or settlement such that there are clearly identified volumes of water which a given tribe is entitled to use in priority. All diversion amounts presented in this document were compiled from Charles V. Stern, Cong. Research Serv., Indian Water Rights Settlements, (2020); the Colorado River Research Group, *Tribes and Water in the Colorado River Basin* (2016); Basin Study, *Appendix C9 Tribal Water Demand Scenario Quantification* (2012); and CAP Subcontracting Status Report (2019).

[14] The Basin Study addressed quantified and unquantified tribal water rights in two documents: Technical Report C and Appendix C9. Both documents can be accessed at Basin Study, *supra* note 3.

[15] U.S. Bureau of Reclamation, *Review of the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead Upper and Lower Colorado Basin Regions* (December 2020): 14 https://www.usbr.gov/ColoradoRiverBasin/. The USBR's numbers come from Tables 5.11-A and 5.11-B of the Tribal Water Study and Table C9-5 from the Basin Study. The 2020 USBR report is not inconsistent with the Tribal Water Study's estimate of 2.9 maf of tribal rights, as the Tribal Water Study looked only at the rights of the 10 partnership tribes while the 2020 USBR Report factored in the rights of all tribes in the Basin. The tables from the Tribal Water Study also include unresolved water rights or the ten tribes that are members of the Ten Tribe Partnership.

[16] *Colorado River Basin Ten Tribes Partnership Tribal Water Study* (December 2018): Figures 5.11 A, C, B, and D.

[17] Northern Arizona Municipal Water Users Association, *A Guide to Colorado River Water Supplies and Entitlements within the State of Arizona,* at 37-39 (2007). https://new.azwater.gov/sites/default/files/Namwua_Dishlip%20report1.pdf

Table 1 - Recognized Rights for Lower Basin Tribes[18] *(continued on next page)*

Tribe	State	Process	Total Acre-Feet/Year
Ak Chin Indian Community	AZ	Ak-Chin Indian Water Rights Settlement Act of 1978[19]	85,000[20]
Chemehuevi Indian Tribe	CA	*Arizona v. California*	11,340[21]
Cocopah Indian Tribe	AZ	*Arizona v. California*	10,847[22]
Colorado River Indian Tribes	AZ	*Arizona v. California*	662,402[23]
Colorado River Indian Tribes	CA	*Arizona v. California*	56,846[24]
Fort McDowell Yavapai Nation	AZ	Fort McDowell Indian Community Water Rights Settlement Act of 1990[25]	36,350[26]
Ft. Mojave Indian Tribe	AZ	*Arizona v. California*	103,535[27]
Ft. Mojave Indian Tribe	CA	*Arizona v. California*	16,720[28]
Ft. Mojave Indian Tribe	NV	*Arizona v. California*	12,534[29]
Gila River Indian Community	AZ	Arizona Water Settlements Act of 2004[30]	653,500[31]
Hualapai Tribe	AZ	Bill Williams River Water Rights Settlement Act of 2014	694[32]
Pascua Yaqui Tribe	AZ	CAP Contract dated December 11, 1980[33]	500[34]
Quechan Indian Tribe	AZ	*Arizona v. California*	6,350
Quechan Indian Tribe	CA	*Arizona v. California*	71,616

[18] Central Arizona Project water includes several different priorities, defined as follows: **CAP Indian Priority** refers to water contained in Contract No. 14-06-W-245 dated December 15, 1972, as amended, between the United States and the Central Arizona Water Conservation District for the delivery of Mainstream Water for the Central Arizona Project, including use of Mainstream Water on Indian lands. CAP Indian Priority water is Priority 4 water in the CAP shortage allocation system; **Colorado River Priority 3 (CRP 3)** includes entitlements pursuant to contracts between the United States and water users in the State of Arizona executed on or before September 30, 1968. These are the long-term CAP water delivery contracts with the highest priority among CAP contract holders, to be satisfied after present perfected rights (as that term is defined in the Compact and by the United States Supreme Court in *Arizona v. California*), have been satisfied; **CAP M&I Priority** includes water for municipal and industrial uses secured by contracts, secretarial reservations, and other arrangements between the United States and water users in the State of Arizona entered into or established subsequent to September 30, 1968, for use on federal, state or privately owned lands in the State of Arizona. CAP M&I Priority water is of equal priority with CAP Indian Priority water; **CAP NIA Priority** includes water for Non-Indian Agricultural uses, which are lower priority water contracts within Priority 4 of the CAP water allocation system. CAP NIA Priority water is the lowest priority amongst long-term CAP water delivery contracts. For more information, see Central Arizona Project, *Shortage Impacts to CAP Priority Pools and Customers* (April 22, 2015), https://www.cap-az.com/documents/shortage/Water-Planning-Ops.pdf.

[19] Ak-Chin Indian Community Act of 1978, Pub. L. No. 95-328, 92 Stat. 409 , as amended, Pub. L. No. 98-530, 98 Stat. 2698 (1984), *as amended*, Pub. L. No. 102-497, § 10, 106 Stat. 325 8 (1992), *as amended*, Pub. L. No. 106-285, 114 Stat. 878 (2000).

[20] Includes 25,000 CAP Indian Priority; 50,000 Colorado River Priority 3; 10,000 groundwater.

[21] Priority date of February 2, 1907. MacDonnell, Lawrence, *Colorado River Basin* (February 6, 2020), in *Waters and Water Rights*, Forthcoming. https://ssrn.com/abstract=3533445 or http://dx.doi.org/10.2139/ssrn.3533445.

[22] Id. This includes 7,681 af from *Arizona v. California* with priority dates of September 27, 1917 for lands reserved by the Executive Order of said date; June 24, 1974 for lands reserved by the Act of June 24, 1974; 1,140 af from U.S. PPR No. 8 and 2,026 af of 4th priority water.

[23] This includes priority dates of March 3, 1865 for lands reserved by the Act of March 3, 1865; November 22, 1873 for lands reserved by the Executive Order of said date; November 16, 1874; May 15, 1876 for lands reserved by the Executive Order of said date; and November 22, 1915 for lands reserved by the Executive Order of said date.

[24] Ibid.

[25] Fort McDowell Indian Community Water Rights Settlement Act of 1990, Pub. L. No. 101-628, 104 Stat. 4480, *as amended*, Pub. L. No. 109-373, 120 Stat. 2650 (2006).

[26] Water to supply this diversion entitlement is made available through the Fort McDowell Indian Community Water Settlement (1993). https://digitalrepository.unm.edu/nawrs/22/) and an additional exchange agreement with the Salt River Project. Water from Kent Decree, SRP, RWCD, FMIC.

[27] Priority date of September 18, 1890 for lands transferred by the Executive Order of said date; February 2, 1911 for lands reserved by the Executive Order of said date.

[28] Ibid.

[29] Ibid.

[30] Arizona Water Settlements Act of 2004, P.L. 108-451.

[31] Including 120,600 CAP NIA Priority; 191,200 CAP Indian Priority; and 17,000 CAP M&I Priority. The Basin Study Appendix C9 identifies 328,800 acre-feet on p. C9-28. In contrast, the CRS report (page 7) and MacDonnell identify 653,500 acre-feet, which includes CAP, Gila River, Salt River, and groundwater categories. For more information, see https://www.justice.gov/enrd/gila-river-indian-community.

[32] Includes 82 (Trust Lands Parcel 1), 312 (Parcel 2), and 300 (Parcel 3). Public Law 113-223, 128 Stat. 2096 (2014), ratifying the Big Sandy River-Planet Ranch Water Rights Settlement Agreement.

[33] Basin Study, Appendix C9, *supra* note 3.

[34] CAP Indian Priority.

[35] Priority date of January 9, 1884. Basin Study (2012), Appendix C9, *supra* note 3.

Table 1 - Recognized Rights for Lower Basin Tribes[18] *(continued)*

Tribe	State	Process	Total Acre-Feet/Year
Salt River Pima-Maricopa Indian Community	AZ	Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988[36]	122,400[37]
San Carlos Apache Tribe	AZ	San Carlos Apache Tribe Water Rights Settlement Act[38]	37,695[39]
Tohono O'Odham Nation	AZ	Southern Arizona Water Rights Settlement Act of 1982/2004[40]	74,000[41]
White Mountain Apache Tribe	AZ	White Mountain Apache Tribe Water Rights Quantification Act of 2010[42]	96,000[43]
Yavapai-Apache Nation	AZ	CAP Contract dated December 11, 1980.[44]	1,200[45]
Yavapai-Prescott Tribe	AZ	Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994[46]	1,550[47]
Zuni Indian Tribe	NM	Zuni Indian Tribe Water Rights Settlement Act of 2003[48]	10,600
Total			**2,063,807**

[36] Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, Pub. L. No. 100-512, 102 Stat. 2549, *as amended*, Pub. L. No. 102-238, 105 Stat. 1908 (1991).

[37] Includes 18,700 from Kent Decree water, 18,700; 9,074 from stored SRP water from SRP; 20,000 from Bartlett Dam agreement; 13,300 from CAP; 8,000 from RWCD; 10,000 from RID; contribution from valley cities in the amount of 20,000 acre-feet from city lands within the SRP area, in exchange for the cities receiving 22,000 acre-feet of purchased Colorado River water to be imported via the CAP system; and 23,250 (long-term average) developed groundwater on the reservation. William H. Swan, The Salt River Pima-Maricopa Settlement: An Overview, available at https://open.uapress.arizona.edu/read/untitled-494de160-7b76-4e74-9417-9a4376e73957/section/fd79c1c1-d802-403e-a696-fc863e7b5fa1.

[38] San Carlos Apache Tribe Water Rights Settlement Act of 1992, Pub. L. No. 102-575, title XXXVII, 106 Stat. 4600, *as amended*, Pub. L. No. 103-435, § 13, 108 Stat. 4566 (1994), *as amended*, Pub. L. No. 104-91, § 202, 110 Stat. 7 (1996), as amended, Pub. L. No. 104-261, 110 Stat. 3176 (1996), *as amended*, Pub. L. No. 105-18, §5003, 111 Stat. 158 (1997), *as amended*, Pub. L. No. 108-451, 118 Stat. 3573 (2004) (title IV of Arizona Water Rights Settlement Act of 2004).

[39] The San Carlos Apache Tribe also has rights to about 30,000 acre-feet of Ak Chin water if not needed by the Ak Chin. The 37,695 acre/feet includes 12,700 CAP Indian Priority; 14,065 M&I Priority; 7,300 Salt/Black San Carlos Apache Tribe Water Rights Settlement Agreement of 1999.

https://digitalrepository.unm.edu/cgi/viewcontent.cgi?article=1045&context=nawrs.

[40] Southern Arizona Water Rights Settlement Act of 1982, Pub. L. No. 97-293, title III, 96 Stat. 1261, *as amended*, Pub. L. No. 102-497, § 8, 106 Stat. 3255 (1992), as amended, Pub L. No. 108-451, 118 Stat. 3535 (2004) (title III of Arizona Water Rights Settlement Act of 2004) (Papago Tribe or Tohono O'odham Nation).

[41] Includes 37,800 CAP Indian Priority and 28,200 NIA Priority,

[42] White Mountain Apache Tribe Water Rights Quantification Act of 2010, Pub. L. No. 111-291, tit. III, 124 Stat. 3064, 3073.

[43] Includes 23,782 CAP NIA ; 1,218 CAP Indian Priority; and 71,000 Salt River watershed. White Mountain Apache Water Rights Quantification Settlement Judgment and Decree, 2014, available at https://digitalrepository.unm.edu/cgi/viewcontent.cgi?article=1095&context=nawrs.

[44] Basin Study, Appendix C9, *supra* note 3.

[45] CAP Indian Priority.

[46] Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994, Pub. L. No. 103-434, title I, 108 Stat. 4526, *as amended*, Pub. L. No. 104-91, § 201, 110 Stat. 7 (1996).

[47] Includes 1,550 water service agreement with Prescott and 1,000 Granite Creek. Yavapai-Prescott Tribe Water Rights Settlement Agreement, 1995, available at https://portal.azoah.com/oedf/documents/08A-AWS001-DWR/Prescott/Prescott502.pdf.

[48] Zuni Indian Tribe Water Rights Settlement Act of 2003, Pub. L. No. 108-34, 117 Stat. 782 (2003).

Upper Basin Tribes

As presented in Table 2, four tribes in the Upper Colorado River Basin—Jicarilla Apache Nation, Southern Ute Indian Tribe, Ute Mountain Ute Tribe, and Navajo Nation (which also has claims in the Lower Basin)—have completed water settlements that recognize at least some of their water rights to the Colorado River system.

The Ute Indian Tribe of the Uintah and Ouray Reservation, also located in the Upper Basin, had a portion of its Indian reserved water rights adjudicated and federally decreed in 1923. The Ute Indian Tribe is currently ligitigating the enforcement of the remaining portion of its Indian reserved water rights based upon a 1965 agreement between the Tribe, the federal government, and the State of Utah. The Navajo Nation and Ute Mountain Ute Tribe also have additional outstanding claims (see Table 3 for more information).

According to the Tribal Water Study, the Upper Basin Tribes are currently using over 670,000 af/yr out of a total reserved water right (including unresolved claims) of 1.8 maf/yr; in other words, the Upper Basin Tribes are using approximately 37 percent of their water rights.

Table 2 - Recognized Rights for Upper Basin Tribes[49]

Reservation/Tribe	State	Process	Total Acre-Feet/Year
Ute Indian Tribe (Uintah-Ouray)	UT	Federally Adjudicated Water Rights	179,315[50]
Southern Ute Indian Tribe	CO	Colorado Ute Indian Water Rights Settlement Act of 1988[51]	128,939
Ute Mountain Ute Tribe	CO	Colorado Ute Indian Water Rights Settlement Act of 1988[52]	100,184
Jicarilla Apache Nation	NM	Jicarilla Apache Tribe Water Settlement Act of 1992[53]	45,683
Navajo Nation	NM	Northwest New Mexico Rural Water Project Act[54]	606,660
Navajo Nation	UT	Navajo-Utah Water Rights Settlement[55]	81,500 depletion
Total			**1,142,281**

[49] The figures in this table, except for the Navajo-Utah, are based on Table 5.11-A on p. 5.11-1 of the Tribal Water Study, which builds on the initial work on tribal water rights in the Basin Study's Technical Report C and Appendix C9, *supra* note 3.
[50] *United States v. Dry Gulch Irrigation Company*, No. 4418, slip op (D. Utah 1923); *United States v. Cedarview Irrigation Company*, No. 4427, slip op (D. Utah 1923). See also Tribal Water Study, 5.1-7—8. This figure, which represents federally decreed reserved water rights, is separate and distinct from the figure presented in Table 3 for the Ute Indian Tribe.
[51] Colorado Ute Indian Water Rights Settlement Act of 1988, Pub. L. No. 100- 585, 102 Stat. 2973 (1988).
[52] Colorado Ute Indian Water Rights Settlement Act of 1988, Pub. L. No. 100- 585, 102 Stat. 2973 (1988).
[53] Jicarilla Apache Tribe Water Rights Settlement Act of 1992, Pub. L. No. 102-441, 106 Stat. 2237, *as amended*, Pub. L. No. 104-261, 110 Stat. 3176 (1996), *as amended*, Pub. L. No. 105-256, § 10, 112 Stat. 1896 (1998).
[54] Northwestern New Mexico Rural Water Projects Act Pub. L. No. 111-11.
[55] In Consolidated Appropriations Act, 2021, Section 1102, available at https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-116HR133SA-RCP-116-68.pdf.\

Unresolved Tribal Claims

As illustrated in Table 3, twelve tribes have some or all of their claims as yet unresolved. The Ute Indian Tribe of the Uintah and Ouray Reservation is located completely in the Upper Basin, while 10 tribes are located completely in the Lower Basin. The Navajo Nation has rights and claims in both the Upper and Lower Basins. Of these 12 tribes, some have a negotiation team appointed within the U.S. Department of the Interior for water rights settlement purposes, some are participating in ongoing settlement discussions, some have pending legislation or litigation, and some are awaiting ratification of a settlement or the introduction of Congressional legislation.

Table 3 - Unresolved Tribal Water Rights

Tribe	State	Status[56]	Total Acre-Feet/Year
Havasupai	AZ	Outstanding	Not available
Hopi	AZ	Outstanding	Not available
Hualupai	AZ	Settlement pending congressional action	3,414 to 4,000
Kaibab Paiute Band	AZ/UT	Outstanding	Not available
Navajo Nation	AZ	Settlement negotiations ongoing	Not available
Pascua Yaqui	AZ	Outstanding[57]	Not available
San Carlos Apache Tribe	AZ	Outstanding	Not available
San Juan Southern Paiute Tribe	AZ/UT	Outstanding	22,326[58]
Tohono O'odham Nation	AZ	Settlement negotiations ongoing (Sif Oidak District)	8,000
Tonto Apache Tribe	AZ	Settlement negotiations ongoing	Not available
Ute Indian Tribe (Uintah-Ouray)	UT	Pending litigation	370,370[59]
Yavapai-Apache Nation	AZ	Settlement negotiations ongoing[60]	Not available
Total			**404,696**

[56] Colorado River Research Group, *supra* note 14; *see also* Stern, *supra* 14; *see also* Central Arizona Project, Status of Indian Water Rights Settlements in Arizona.
[57] Basin Study, Appendix C9, *supra* note 3 explains that Pascua Yaqui has a 1980 CAP water delivery contract with the US for 500 af.
[58] Little Colorado River Adjudication, statements of claimants nos. 39-91713, 39-91714, 39-91715. These claims are subect to further amendment in the adjudication.
[59] Basin Study, Appendix C9, *supra* note 3. See Table 5.11-A on p. 5.11-1 of the Tribal Water Study.
[60] Colorado River Research Group, *supra* note 14 explains that Yavapai Apache Nation has a 1980 CAP water delivery contract with the US for 1200 af.

The Path Forward

Twenty-two of the 30 federally recognized tribes in the Colorado River Basin have recognized rights to use approximately 22 to 26 percent of the Basin's average annual water supply. Twelve of the 30 Basin tribes have unresolved water rights claims, which will likely increase the overall percent of tribal water rights in the Basin. Tribal water rights are accounted for within the apportionment of the states where the water use occurs and are generally senior to most state-based water rights.

The process of developing the management framework that will replace the 2007 Interim Guidelines and the 2019 Drought Contingency Plans provides a unique opportunity for tribal leaders to work with the federal government, the seven basin states, and various water users and stakeholders to address tribal needs, interests, and priorities alongside other basin interests in water use, development, and conservation.

For More Information

The Water & Tribes Initiative was catalyzed in 2017 to enhance the capacity of tribes to advance their needs and interests with respect to water management in the Basin, and to advance sustainable water management through collaborative problem-solving. The Initiative is guided by a broad-based Leadership Team and funded through in-kind contributions of tribes and many other organizations as well as funding from the Babbitt Center for Land and Water Policy, Catena Foundation, and the Walton Family Foundation. For more information, please go to http://naturalresourcespolicy.org/projects/water-tribes-colorado-river-basin.php.

Leadership Team

Bidtah Becker, *Navajo Nation*

Leland Begay, *Ute Mountain Ute*

Lorelei Cloud, *Southern Ute Tribe*

Maria Dadgar, *Inter Tribal Council of Arizona (Jay Tomkus, alternate)*

Jason John, *Navajo Nation (Crystal Tulley-Cordova, alternate)*

Nora McDowell, *Fort Mojave Indian Tribe*

Margaret Vick, *Colorado River Indian Tribes*

Jay Weiner, *Quechan Tribe*

Anne Castle, *Getches-Wilkinson Center, University of Colorado*

Peter Culp, *Culp & Kelly (Mary Kelly, alternate)*

Becky Mitchel, *Colorado Water Conservation Board*

Colby Pellegrino, *Southern Nevada Water Authority*

Jason Robison, *University of Wyoming, College of Law*

Garrit Voggesser, *National Wildlife Federation*

John Weisheit, *Living Rivers*

Julia Guarino, *University of Colorado (ex-officio)*

Sharon Megdal, *University of Arizona (ex-officio)*

Mike Wight, *Catena Foundation (ex officio)*

Daryl Vigil, *Jicarilla Apache Nation, co-facilitator*

Matthew McKinney, *Center for Natural Resources & Environmental Policy, co-facilitator*