

Tribal Water Uses in the Colorado River Basin

Tribal Water Rights

Inventory of Tribal Water Rights in the Colorado River Basin

Below is an approach to examining the potential of tribal water marketing in the Colorado River Basin. It includes tribes' water rights from sources additional to or other than Bureau of Reclamation projects. It also notes past and present leasing or water transfer activities and notes any authorities limiting or sculpting these acts. Finally, it mentions substantial unsettled claims which may impact future water management in the Colorado River Basin.

Unsettled tribal water rights in the Basin are substantial. For instance, the proposed settlement agreement between the Navajo Nation and the state of Utah alone would provide the Nation with an additional 314,851 acre-feet per year (afy) of Colorado River Basin water, with 81,500 afy of depletion. Other tribes, including the Hualapai and Havasupai, have substantial reservation land bases, but are just now beginning to negotiate settlements of their federal reserved rights. Once recognized and utilized, these rights will have substantial impacts on the distribution of water resources in the Colorado River Basin.

Similarly, water marketing, or voluntary water transfers, could have serious implications for Colorado River water users. Tribes are engaging in a variety of different forms of water marketing. While the unsettled legal questions surrounding tribal water marketing remain substantial, the situation on the ground demonstrates that tribes are finding creative ways to avoid potential barriers of legal uncertainties. Each tribe is in a unique situation. The Jicarilla Apache has held two water auctions while some tribes in Arizona agreed during the settlement process to restrict their leasing activities to particular counties.

Our objective is to start to portray a more holistic view of tribal water marketing in the Colorado River Basin. We strive to show the full extent of waters controlled by tribes and to emphasize the role that tribes will play the future allocation of Colorado River Basin waters. By emphasizing water marketing, we demonstrate the role that tribes are already playing in redistributing basin waters.

Upper Colorado River Basin Tribes

<u>Rightsholder</u> (state)	<u>Estimated Entitlements (afa)</u>	<u>Entitlement Source /</u> <u>Unsettled Claims</u>	<u>Marketing Provisions /</u> <u>Activities</u>
Jicarilla Apache Nation (NM)	40,000 (32,000 for consumptive use) [1] and an additional 5,683 for historic uses.	Jicarilla Apache Tribe Water Rights Settlement Act, P.L. 102-441, 106, Stat. 2237 (1992).	The Nation has leased to a variety of different entities including the city of Santa Fe, the Public Service Company of NM, individual farmers, and an Elk's Lodge. The 1992 Settlement explicitly permits the Nation to transfer water from the Colorado River Basin to the Rio Grande Basin. Any leasing must be done in accordance with NM state law. In July of 2011, the Nation held the first-ever tribal water auction and auctioned off 6,000 afy. The Nation held a second auction in 2012.

Navajo Nation (NM)	606,660 / 325,670 from the San Juan River Basin.[2]	Settlement [P.L. 111-11 (2009); San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement Agreement (April 19, 2005).] Pending final approval.	Rights may be leased long-term within NM with SOI approval; out-of-state leasing requires approval of NM Interstate Stream Commission.
Navajo Nation (AZ)	Unsettled rights to the mainstem of the Colorado, the Little Colorado River, and the Gila. The most recent draft of the Navajo-Hopi Little Colorado Settlement Act (S. 2109) would have awarded the Tribe 160,000 afa from the LCR, approx. 90,000 afa from tributary washes, plus water from the N & C aquifers.[3]	Proposed Navajo-Hopi Little Colorado River Settlement Agreement (2012).	The Nation has been involved in a long-term lease agreement with the Navajo Generating Station (NGS). The proposed LCR Settlement would have renewed the Tribe's lease with NGS. The Tribe also leases water to Peabody Energy..
Navajo Nation (UT)	Presently, the Tribe is engaged in negotiations with the state of Utah to settle claims to the San Juan River and mainstem of the Colorado. The federal government is not yet involved in the process. A 2011 draft settlement recognized an annual diversion of 314,851 afa (81,500 depletion).[4]	No final settlement.	— / —
Southern Ute Indian Tribe (CO)	137,090	Colorado Ute Indian Water Rights Settlement Act, Pub. L. No. 100-585, 102 Stat. 2973 (1988); Colorado Ute Settlement act Amendments	The original settlement was intentionally left neutral on the topic of water marketing. Presently, the Tribe can voluntarily sell, exchange, lease,
Ute Mountain	88,358 [7]		

<p>Ute Tribe (CO, NM, and UT) [6]</p>	<p>The Tribe is currently litigating its rights in New Mexico and has not yet litigated or settled rights in Utah.</p>	<p>of 2000, Pub. L. No. 106-554, 114 Stat 2763 (2000) with minor amendments in Pub. L. 110-161 (December 26, 2007).[5]</p>	<p>use, or otherwise dispose of a portion of a water right off – reservation. However, that portion of the Tribe’s water right “shall be changed to a Colorado state water right.”The Tribe attempted a water marketing arrangement from the ALP but failed to reach a timely agreement with the State of Colorado.</p>
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<p>Ute Indian Tribe of Uintah and Ouray Reservation (“Northern Utes”) (UT)</p>	<p>480,594 / 258,943</p>	<p>Revised Ute Indian Compact of 1990 ratified in PL. 102-575, 106 Stat. 4600 (1992).</p>	<p>The Tribe has been looking to review the Ute Indian Water Compact to determine its best opportunities to market water.[8] The Tribe submitted a Study option promoting tribal water marketing.</p>
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Lower Colorado River Basin Tribes

<u>Rightsholder (state)</u>	<u>Estimated Entitlements (afa)</u>	<u>Entitlement Source / Unsettled Claims</u>	<u>Marketing Provisions / Activities</u>
Chemehuevi Indian Tribe	11,340	Decree [<i>Arizona v. California</i> , 547 U.S. 150 (2006)]; supplemental decrees (1979	Subject to the restrictions in the <i>Arizona v. California</i> decrees. There is some uncer-

(CA)		and 1984).]	tainty surrounding whether the appurtenance language in the decrees restricts the <i>Arizona v. California</i> tribes to using water on reservation lands in the absence of a Congressional fix.
Cocopah Indian Tribe (AZ)	10,847[9]	<i>See above.</i>	No independent water leasing. The Tribe leases the majority of reservation land to non-Indian agriculture with enough water to irrigate crops.[10]
Colorado River Indian Tribes (AZ)	Maximum of 662,402 [11]	<i>See above.</i>	No present marketing. The Tribes use nearly all of their entitlement for irrigation on the reservation.[12]
Colorado River Indian Tribes (CA)	56,846	<i>See above.</i>	<i>See above.</i>
Fort Mojave Indian Tribe (AZ)	103,535	<i>See above.</i>	In the early 1990s, the Tribe sought to introduce legislation permitting it to lease 5,000 of its Colorado River water allocation in Arizona for up to 25 years.[13] However, the Tribe

requested that the legislation be deferred.[\[14\]](#)

Fort Mojave Indian Tribe (CA)	16,720	<i>See above.</i>	<i>See above.</i>
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Fort Mojave Indian Tribe (NV)	12,534	<i>See above.</i>	<i>See above.</i>
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Hopi Tribe (AZ)	<p>Contract for 6,028 and an unsettled claim to the Little Colorado River. The Hopi Tribal Council voted to approve the most recent proposed settlement. The proposed settlement would have provided the Tribe with on-reservation surface water and groundwater. It also reserved a quantity of water from the mainstem Colorado River for a future settlement of the Hopi Tribe's mainstem water rights claims.[15]</p>	<p>Contract [Contract No. 04-XXX-30-W0432, December 14, 2004.] Proposed Navajo-Hopi Little Colorado River Settlement Agreement (2012).</p>	No marketing activities.
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Navajo Nation (AZ)	<i>See Navajo Nation discussion above.</i>	<i>See Navajo Nation discussion above.</i>	<i>See Navajo Nation discussion above.</i>
(Lower Basin only)			

Quechan Indian Tribe (AZ)	6,350	Decree [<i>Arizona v. California</i> , 547 U.S. 150 (2006); supplemental decrees (1979 and 1984); final Consolidated Decree (2006).]	The Quechan forbearance agreement with California’s Metropolitan Water District is, for all practical purposes, a water marketing agreement. [16]
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Quechan Indian Tribe (CA)	71,616	<i>See above.</i>	<i>See above.</i>
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Ak-Chin Indian Community (AZ)	<p>The Community’s entire entitlement is up to 108,300 afy (including groundwater pumping and pre-San Carlos transfer water) and the smallest quantity assured is 72,000.</p> <p>[17]</p>	<p>1978 Ak-Chin Settlement Agreement P.L. 95-328, 92 Stat. 409 (1978); Ak-Chin Indian Water Rights Settlement Act of 1984[18]; Ak-Chin Water Use Amendments Act, Pub. L. No. 106-285, 114 Stat. 878 (2000).</p>	<p>The 1978 settlement Act restricted tribal water uses to agriculture. In 1984 it was changed to permit the Community to use water for “any use.”[19] The 1992 Act amended the 1984 settlement to authorize the Ak-Chin Indian Community to lease portions of its CAP water within the Central Arizona Water Conservation District[20] and expressly sanctioned a lease with Del Webb Corporation. Ak-Chin Water Use Amendments Act of 2000[21] was enacted “to clarify certain provisions concerning the leasing of such water rights, and for other purposes.”</p>
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Fort McDowell Yavapai Nation (AZ)	36, 350[22]	The Fort McDowell Indian Community Water Rights Settlement Act of 1990, P.L. 101-628, 104 Stat, 4480 (1990); Kent Decree.	The Settlement Act restricts the Community to leasing only a portion of its CAP allocation “for use and reuse in Pima, Pinal or Maricopa counties.” The Community leases water to the City of Phoenix and the Phelps Dodge Corporation. [23]
Gila River Indian Community (AZ)	653,500 (including mainstem Colorado) (311,800 afy of Central Arizona Project [CAP] water makes it the largest allocator of CAP water in the state[24])	The Gila River Indian Community Water Rights Settlement Act, P.L. 108-451 (2004) (part of the Arizona Water Rights Settlement Agreement).	The Salt River Project (SRP) is helping the Community to engage in CAP recharge projects to accrue long-term water storage credits for CAP. Under the 2004 Act off-reservation sales and leasing are permitted but leasing out of state is prohibited.
Gila River Indian Community NIAR (AZ) (Non-Indian Agriculture Relinquished)			
Kaibab Band of Paiute Indians (AZ)	The Tribe receives up to 7,884,000 gallons of water from the National Park Service in exchange for 1/3 of the water pumped from the Pipe Spring National Monument.	Water Agreement between NPS and Kaibab Paiute Tribe, April 13, 1972.	The Tribe exchanges portion of its allowance to the National Park Service in return for potable water. ^[25]
Havasupai Tribe	Unsettled claims to groundwater on the Coconino Plateau and the main-	Tribe has not yet settled its water rights claims but has	No water marketing.

(AZ)	stem Colorado.		been assigned a federal negotiating team.	
Hualapai Tribe	Unsettled claims to the groundwater on the Coconino Plateau and the mainstem Colorado.		Tribe has not yet settled its water rights claims but has been assigned a federal negotiating team.	No water marketing.
(AZ)				
Pascua Yaqui Tribe		500	1980 CAP contract with the Secretary of the Interior. [26]	In 1992, the Tribe turned down the opportunity to market water to Tucson. No current marketing.
(AZ)				
Salt River Pima-Maricopa Indian Community		122,400 [27]	1910 Kent Decree; Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, Pub. L. No. 100-512, 102 Stat. 2549 (1988).	The Settlement permits leasing of CAP water to local cities[28] but prohibits it from banking water.[29] The Community leases to a variety of private entities including a Wal-Mart on the reservation.
(AZ)				
Salt River Pima-Maricopa Indian Community				
(AZ) (Priority 3 Main-stream)				
			The San Carlos Apache	The Act authorized the Tribe

<p>San Carlos Apache Tribe (AZ)</p>	<p>77, 435 total</p> <p>Including the transfer below; up to 61,645 of that is CAP. Please see endnote explaining the full extent of the Tribe’s rights.[30]</p>	<p>Tribe Water Rights Settlement Act of 1992, P.L. 102-575, 106 stat. 4740 (1992). [31]</p>	<p>to engage in limited leasing of its CAP contract water supplies. [32] The Tribe has leased to Phoenix, Phelps Dodge [33] , the City of Scottsdale and the town of Gilbert. [34]</p>
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<p>San Carlos Apache Tribe (Ak-Chin Transfer)</p>	<p>Average of 30,800[35] (amt included above)</p>	<p>— / —</p>	<p><i>See above.</i></p>
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<p>Tohono O’odham Nation (AZ)</p>	<p>87, 200</p> <p>The entire Tohono O’odham CAP award amounts to 66,000 afy. [36]</p>	<p>Southern Arizona Water Rights Settlement Act P.L. 97-293, 96 Stat. 1261 (1982); technical amendment; P.L. 102-497, 106 Stat. 3526 (1992); Title III of the Arizona Water Settlements Act of 2004; P.L. No. 108-451; 118 Stat. 2809, 3432-41 (2004). Additional CAP delivery contract.</p>	<p><i>Information forthcoming.</i></p>
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<p>Tohono O’odham Nation (San Xavier) (AZ)</p>	<p>128^[37]</p>	<p>Contract made on December 11, 1980. [38]</p>	<p>No current water marketing.</p>
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White Mountain Apache Tribe (AZ)	25,000	124 Stat. 3064 P.L. 111–291. Title III. (2010). The White Mountain Apache Tribe Water Quantification provisions of the 2010 Claims Resolution Act settled the White Mountain Apache Tribe’s claims to both the Gila and the Little Colorado Rivers in Arizona. Contract 08–XX–30–W0529.	The Act permits the Tribe to use water for any purpose. None of the Tribe’s 25,000 CAP water is delivered to the reservation. 22,500 will be leased to the various cities and 2,500 will be leased back to the Central Arizona Water Conservation District.	
Yavapai-Apache Nation (AZ)	1,200	The Yavapai-Apache Nation also has unsettled claims to the Verde River. ^[39]	The Arizona Water Settlement Act, P.L. No. 108-451; 118 Stat. 2809, 3432-41 (2004). .[40]	No current marketing.
Yavapai-Prescott Tribe (AZ)	1,550 ^[41]	(additional groundwater pumping)	1994 Yavapai-Prescott Indian Tribe Water Settlement Act, P.L. 103-434, 108 Stat. 4526 (1994).	The Act authorizes the Tribe and the City of Prescott to market CAP water to the City of Scottsdale (complicated exchange arrangement).
Zuni Indian Tribe (Zuni Heaven Reservation) (NM)	5,500		Zuni Indian Tribe Water Rights Settlement Act of 2003, Pub. L. No. 108-34, 117 Stat. 782.	No water marketing. The Act restricts water to non-consumptive uses on reservation (or other Zuni) lands.

[1] 33,500 from the Navajo Reservoir and the remaining 6,500 from the San Juan-Chama Project.

[2] New Mexico Office of the State Engineer, Exec. Summary of the San Juan River Basin in New Mexico Navajo Nation Water Rights Settlement (Apr. 19, 2005), *available at* <http://www.ose.state.nm.us/water-info/NavajoSettlement/NavajoExecutiveSummary.pdf>.

[3] Navajo-Hopi Little Colorado River Water Rights Settlement Agreement, Navajo-Hopi, Mar. 8, 2012), *available at* [http:// http://nnwrc.org/wp-content/uploads/2012/04/NHLCRS-Settlement-Agreement_13098967_16-23.pdf](http://http://nnwrc.org/wp-content/uploads/2012/04/NHLCRS-Settlement-Agreement_13098967_16-23.pdf).

[4] Utah Code Ann. § 51-9-702 (2012).

[5] Although the Colorado Ute Tribes originally settled their water rights claims in the Colorado Ute Indian Water Rights Settlement Act of 1998, Pub. L. 100-585, 102 Stat. 2973 (1988), an essential element of the settlement could not be completed (the Animas La-Plata Project) and the Tribes went back to the negotiating table. The 2000 Amendments (Pub. L. 106-554) reduced the quantity of water the tribes would receive.

[6] Diversion / consumption quantities are given for Colorado only because the rights are unquantified in New Mexico and Utah, but litigation is ongoing in New Mexico.

[7] Under the 1988 Colorado Ute Settlement Act, the Tribe had 92,000 afy from the Dolores and Animas-La Plata Projects (ALP), 27,400 from on-reservation rivers, and was entitled to continue using groundwater for existing uses. The 2000 amendments reduced the Tribe's ALP award to 33,050 of diversion with an average annual depletion not to exceed 16,525. <http://www.usbr.gov/uc/progact/animas/faq.html>

[8] Carol Berry, *Future Resources are Key to Planning for Ute Tribes*, Indian Country (May 3, 2011), <http://indian-countrytodaymedianetwork.com/article/future-resources-are-key-to-planning-for-ute-tribes-31679>.

[9] U.S. Dep't of the Interior – Bureau of Reclamation, *Appendix C9—Tribal Water Demand Scenario Classification, Colorado River Basin Water Supply and Demand Study 25* (May 22, 2012), http://www.usbr.gov/lc/region/programs/crbstudy/finalreport/Technical%20Report%20C%20-%20Water%20Demand%20Assessment/TR-C_Appendix9_FINAL_Dec2012.pdf (the Tribe is currently in litigation to claim 2,400 additional acres of irrigable lands, which would give the Tribe further water rights).

[10] Any marketing would be subject to the restrictions in the *Arizona v. California* decrees. There is some uncer-

tainty over whether the appurtenance language in the decrees restricts the *Arizona v. California* tribes to using water on reservation lands in the absence of a Congressional fix.

[11] CRIT water rights consist of “annual quantities not to exceed (i) 719,248 acre-feet of diversions from the mainstream or (ii) the quantity of mainstream water necessary to supply the consumptive use required for irrigation of 107,903 acres and for the satisfaction of related uses, whichever of (i) or (ii) is less.”

[12] *Supra*, note 12.

[13] The substantive provisions of the Act were included in Section 2, *Authorization of Use of Water*. The entirety of Section 2 required:

“(a) DISPOSITION OF WATER RIGHTS- The Fort Mojave Indian Tribe (hereinafter referred to as the `Tribe'), whose water rights were adjudicated in *Arizona v. California*, 373 U.S. 546 (1963), 460 U.S. 605 (1983); Decree 376 U.S. 340 (1964); Supplemental Decree 439 U.S. 419 (1979); Second Supplemental Decree 466 U.S. 144 (1984), is hereby authorized to lease, or enter into an option to lease, or to exchange or temporarily dispose of, for use within the State of Arizona, not more than 5,000 acre-feet of water to which the Tribe is entitled for beneficial use as part of its Arizona allocation of Colorado River water; except that, in no case shall any such lease, exchange or disposal of such water be for a period in excess of 25 years. In no case shall the Tribe permanently alienate any such water right.”

(b) CONTRACT- In the event the Tribe leases, exchanges or disposes of water pursuant to subsection (a), such action shall be pursuant to a contract that has been accepted and ratified by a Resolution of the Fort Mojave Tribal Council and approved and executed by the Secretary of the Interior.

[14] *Supra*, note 12.

[15] “The Hopi Tribe has claimed reserved water rights from four sources: on-reservation surface water and groundwater, surface water from the Little Colorado River, and surface water from the mainstem Colorado River. The proposed settlement would confirm the Hopi Tribe’s rights to on-reservation surface water and groundwater, reserve a quantity of water from the mainstem Colorado River for a future settlement the Hopi Tribe’s mainstem water rights claims, provide for the development of essential on-reservation water delivery infrastructure, and establish a framework for the sustainable management of the N-Aquifer which is currently threatened by unmanaged pumping. In return, the Tribe would waive its claims to the Little Colorado River and its damages claims for injuries to water rights or water quality that occur before the settlement goes into effect.”

Press Release, Hopi Tribe, Hopi Tribe Endorses Historic Little Colorado Water Rights Settlement, (June 21, 2012) (available at

<http://www.hopi-nsn.gov/LinkClick.aspx?fileticket=qHYJ7wTMjUo%3d&tabid=169>).

[16] According to the terms of the decree, the Tribe has the sole option to forbear and assign up to 13,000 of that allocation to MWD in exchange for a cash payment.

Paragraph 6 Provides:

“... the rate that Metropolitan shall pay to the Tribe for water shall be ... escalated at 2.5% per year...” In understanding the authority of the federal government over state law, it is essential to recall that *Winters* upheld the power of the government to exempt waters from appropriation under state law.

Paragraph 4 Provides:

“Metropolitan and the Tribe further agree that if the Tribe chooses to limit currently proposed development and utilization of practicably irrigable acreage ... and instead allows such water to pass through the priority system and be diverted by Metropolitan ... Metropolitan agrees to pay the Tribe ... provided that such water is actually available for use and is received by Metropolitan.”

[17] The Ak-Chin Indian Water Rights Settlement Act of 1984 amended the original settlement to require the Secretary of the Interior to deliver “annually a permanent water supply from the main project works of the Central Arizona Project “of not less than seventy-five afa” except in “times of shortage” when the Secretary may reduce the supply to 72,000 afa. In wet years the Tribe may receive up to an additional 10,000 afa (85,000 afa).

[18] Pub. L. No. 98-530, 98 Stat. 2698(1984) (relating to the water rights of the Ak-Chin Indian Community).

[19] *Supra* note 12, at § 7(j).

[20] Robert Glennon & Michael J. Pearce, *Transferring Mainstem Colorado River Water Rights: The Arizona Experience*, 49 Ariz. L. Rev. 235, 236 (2007).

[21] Act of October 10, 2000. Pub. L. No. 106-285, 114 Stat. 878 (to amend the Act entitled “An Act relating to the water rights of the Ak-Chin Indian Community” to clarify certain provisions concerning the leasing of such water rights, and for other purposes).

[22] The Tribe's total allocation of 36,350 is divided as follows: -Kent Decree, 7,060 -Salt River Project, 6,730 -RWCD, 3,200 -FMIC CAP Allocation 18,233 (a total Verde River diversion right of 19,192 in the exchange)

[23] *Id.* at ¶ 21.4.

[24] "The Gila River Indian Community was allocated 173,100 acre-feet of irrigation water in 1983. Under an August 7, 1992 agreement among RWCD, the United States, and the Gila River Indian Community, RWCD purportedly relinquished the remainder of its CAP entitlement for the use and benefit of GRIC. The relinquished entitlement was quantified as 18,600 acre-feet and reallocated to the Community under §204(b)(1)(A) of the Arizona Water Settlements Act, Pub. L. 108-451. The Act also reallocated to the Community 18,100 acre-feet of the former HVID entitlement and 102,000 acre-feet of non-Indian agricultural priority water relinquished pursuant to the Arizona Water Settlement Agreement. See Pub. L. 108-451, §§204(b)(1)(B) and 204(b)(1)(D)."United States Bureau of Reclamation, *CAP Subcontracting Status Report*. October 1, 2012, available at www.usbr.gov/lc/phoenix/reports/capgilbert/EAGilbertCAPlease.pdf.

[25] Dave Sharrow & Lynn Cudlip, Appendix M. Summary of Water Quality and Quantity Vital-Signs Workshop, NCPN Monitoring Plan, M-12 (2003).

[26] Pascua Yaqui Tribe, Office of the Chairman, Pasquia Yaqui Tribe's Comments to Advanced Notice of Proposed Rulemaking – Assessment of Anticipated Visibility Improvements at Surrounding Class I Areas and Cost Effectiveness of Best Available Retrofit Technology for the Four Corners Power Plant and Navajo Generating Station – Docket No. EPA-R09-OAR-2009-0598 (December 14, 2009).

[27] Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, Pub. L. No. 100-512, 102 Stat. 2549(1988) (before the 1988 decree the Community had secured 18,766 from the 1910 Kent Decree, 20,000 from the 1935 Bartlett Dam agreement, 13,300 of CAP allocation).

[28] *Id.*

[29] Interview with Michael Byrd, Salt River Reservation (Nov. 13, 2012).

[30] "The Colorado River water available to the Tribe as part of the 1999 settlement for the San Carlos Apache Indian Reservation includes: 12,700 afa of CAP Indian priority; 14,665 afa of CAP M&I priority water n; 3,480 afa of CAP M&I priority water previously allocated to the town of Globe; and the excess water (unquantified) not required to be delivered to the Ak-Chin Indian Reservation under subsection (f)(2) of Section 2 of the Ak-Chin Water Rights Settlement Act of 1984." Source: U.S. Dep't of the Interior Bureau of Reclamation, Environmental Assessment: CAP Water Lease from the San Carlos Apache Tribe to the Town of Gilbert (November 2010), <http://www.usbr.gov/lc/phoenix/reports/capgilbert/EAGilbertCAPlease.pdf>. "In a normal water supply year on

the Colorado River—i.e., when no more than 27,500 acre-feet of the original Ak-Chin allocation is needed for delivery to the Ak-Chin Indian Community—the San Carlos Apache Tribe allocation is 61,645 acre-feet. The former Phelps Dodge water and the former Globe water retain their original M&I CAP priority.” United States Bureau of Reclamation, CAP Subcontracting Status Report. October 1, 2012, *available at www.usbr.gov/lc/phoenix/reports/capgilbert/EAGilbertCAPlease.pdf*.

[31] San Carlos Apache Tribe Water Rights Settlement Act of 1992, Pub. L. No. 102-575, § 3710(c), 106 Stat. 4740.

[32] Other sources suggest that the magnitude of entitlement for the Gila River Indian Community (CAP and mainstream) is 653,500 afy..

[33] *Id.*

[34] *Id.*

[35] “Whatever portion of the original Ak-Chin CAP allocation is not needed to satisfy delivery obligations to the Ak-Chin Indian Community (30,800 acre-feet in a normal year) is available for delivery to the San Carlos Apache Tribe.” United States Bureau of Reclamation, CAP Subcontracting Status Report. October 1, 2012, *available at www.usbr.gov/lc/phoenix/reports/capgilbert/EAGilbertCAPlease.pdf*.

[36] Dep’t of the Interior, Secretary Norton Signs Water Rights Agreement for Tohono O’odham Nation (March 30, 2006). The Nation also has a contract for an additional 8,000 of CAP water for the Sif Oidak District of the Nation. Under the terms of the settlement, the San Xavier District can pump 10,000 of groundwater annually and the Shuck Toak District of the Sells Reservation can pump 3,200.

[37] Inter-Tribal Council of Arizona, Inc., Projecting Tribal Water Use (February 11, 2011).

[38] The Sparks Law Firm, Comments on the DRAFT Environmental Impact Statement for the Colorado River Interim Guidelines for Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead – TONTO APACHE TRIBE. (April 27, 2007).

[39] Steve Ayers, *Quick route to water rights settlement scuttled*, Verde Independent (September 29, 2012), <http://verdenews.com/main.asp?SectionID=1&SubsectionID=1&ArticleID=50404>.

[40] Through the CAP contract, in years of shortage the Nation’s CAP rights could be renege or minimized—rights, which through CAP are to be protected by the Secretary. *Id.*

[41] The Settlement Act permitted the relinquishment of the Tribe's CAP contract, the proceeds to be used for a water service contract with the City of Prescott for 550 afa; it also provided 1,000 of surface water from Granite Creek; right to pump groundwater within the reservation boundaries. Sections 8 & 9. 1994 Yavapai-Prescott Indian Tribe Water Settlement Act.
