

Navajo Nation Law CLE

Section 4

Stanley Pollack

Navajo-Hopi Little Colorado
River Water Rights
Settlement

Navajo-Hopi Little Colorado River Water Rights Settlement

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Stanley M. Pollack is the Assistant Attorney General for the Water Rights Unit of the Navajo Nation Department of Justice in Window Rock, Arizona. Since 1985, he has represented the Navajo Nation in all matters affecting the tribe's water resources, including five general stream adjudications in Arizona and New Mexico. He negotiated the Navajo Nation San Juan River Basin in New Mexico Water Rights Settlement approved by Congress in 2009 and is litigating the implementation of that settlement in New Mexico state court. He is also actively engaged in negotiations concerning the Navajo Nation's water rights to the Little Colorado and Colorado Rivers in Arizona -- and the Nation's rights in the Upper Colorado River basin in Utah. Mr. Pollack has lectured extensively on Indian Reserved Rights, Colorado River issues, and the impact of the Endangered Species Act on tribal water rights. He received his law degree from the University of Colorado in 1978 and pursued undergraduate and graduate studies in water resources at the University of Michigan. He is admitted to the bars of Arizona, Michigan, New Mexico and the Navajo Nation. He is also admitted to practice before various federal courts, including the Ninth and Tenth Circuits, the Federal Court of Claims and the U.S. Supreme Court.



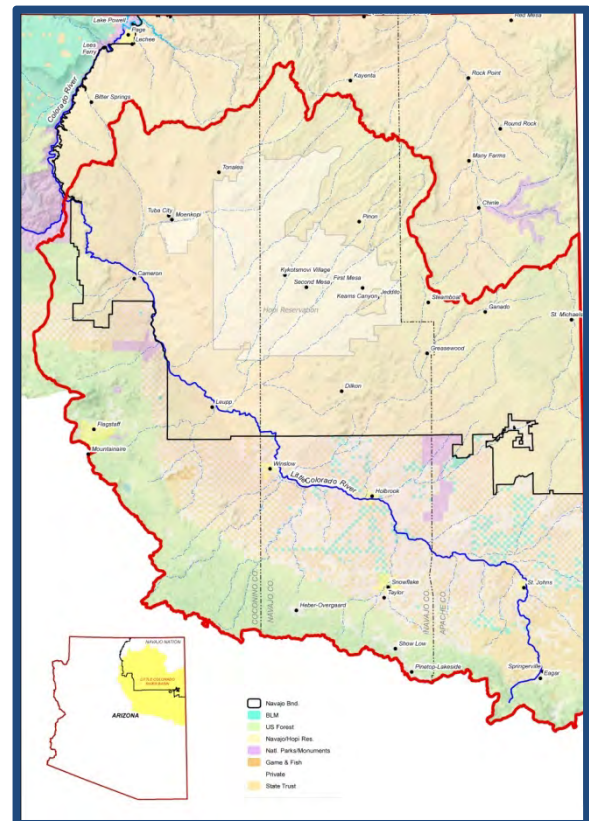
BACKGROUND

a. Hydrology

The Little Colorado River Basin encompasses an area of 26,964 square miles in northeast Arizona and northwest New Mexico, 21,667 square miles lies in Arizona.¹ The Little Colorado River (LCR) is a northwest-flowing tributary of the Colorado River in the Lower Colorado River Basin. Water flows year round in the headwaters of the LCR near the White Mountains and downstream where there is groundwater discharge. However, by the time the LCR enters the Navajo reservation the river channel is frequently dry, flowing only when there is runoff from rainfall and snowmelt.²

It is difficult to determine with precision the total supply of surface water that the Navajo Nation could claim in litigation because there are few records of the historic natural flow of LCR prior to the major appropriations from the LCR which started in the latter part of the 19th Century. The surface water supply in the LCR system is erratic, and it fluctuates greatly year-to-year. Additionally, there are two principal runoff periods when there are significant flows in the LCR – during spring snowmelt and summer thunderstorms.

The Arizona Department of Water Resources (ADWR) estimates that the LCR system produces on average about 222,000 acre-feet per year (afy).³ However, even if there were no upstream users of water before it reaches the Navajo Nation, much of the water produced within the system is lost to infiltration, evaporation and transpiration before reaching the Navajo Nation boundary.⁴ This average annual flow represents a higher practical limit of the potential available water supply that that the Navajo Nation could claim in litigation.



¹ Arizona Department of Water Resources (ADWR), *Hydrology of the Little Colorado River System: Special Report to the Settlement Committee*, October 1989, at 2-1.

² Id. at 5-2; Block, D. and Hiza Redsteer, M., *A Dryland River Transformed—The Little Colorado, 1936-2010*, USGS Fact Sheet 2011-3099, November 2011.

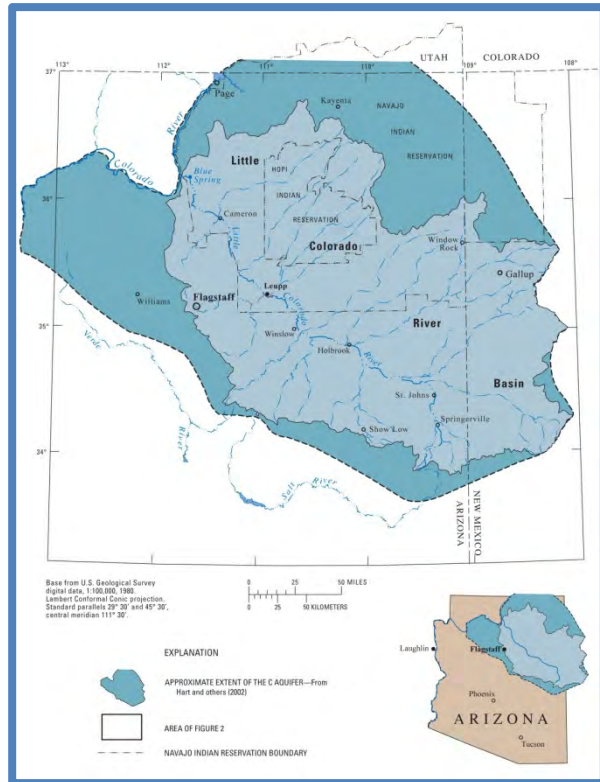
³ ADWR at 5-3.

⁴ ADWR at 5-2 - 5-3.

The gage flow records at Cameron indicate that on average approximately 163,000 afy of surface water flows through the LCR on the Navajo Nation; however, the water supply is highly variable. In some years the gage flow is less than 30,000 afy, but in 1973 the gage flow exceeded 815,000 afy.⁵ To make this water suitable for beneficial uses, storage is necessary. Storage has geotechnical challenges and requires significant capital expenditures.

The LCR Basin contains significant underground water resources. The Coconino Aquifer (C-aquifer) is a large regional aquifer system in the Little Colorado River Basin with several hundred million acre-feet of water in storage.⁶ The aquifer is a source of water for domestic, municipal, industrial, agricultural, and recreational water uses where the water quality is good. Ground-water withdrawals from the C-aquifer in the Little Colorado River Basin totaled 140,100 acre-feet in 1995. This amount is a little less than half of the average annual, natural discharge from the basin of 319,000 acre-feet. Water withdrawals mainly for municipal, industrial, and agricultural uses have resulted in significant drawdown of the water table in the central and upper parts of the basin.

The C-Aquifer represents an important supply of groundwater to meet Navajo municipal, industrial and agricultural demands, especially for the southern portion of the Navajo Reservation.



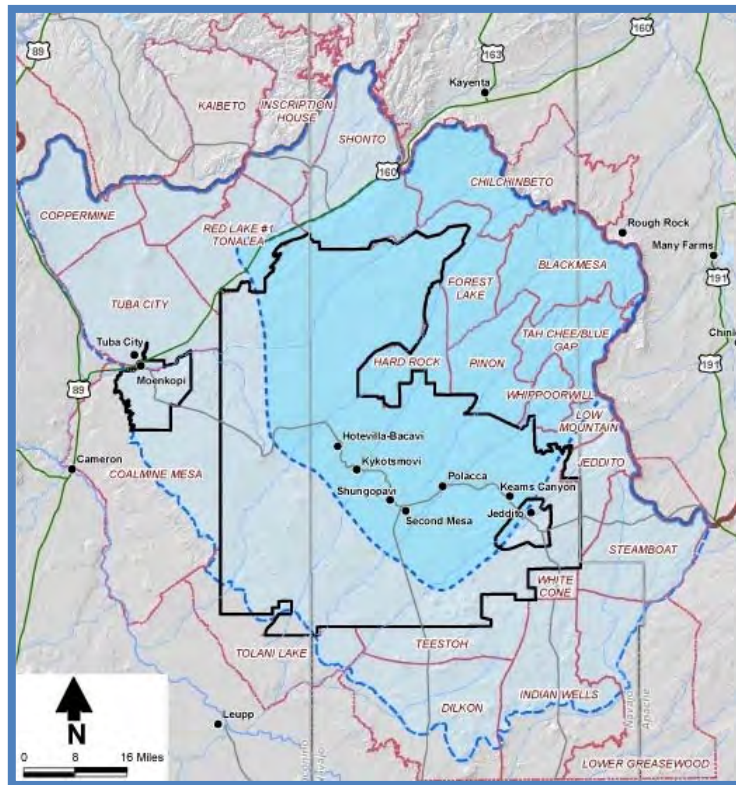
The Navajo Aquifer (N-Aquifer) is the primary source of water for municipal and industrial users in the Black Mesa area of Northeastern Arizona. The Navajo Nation and Hopi Tribe rely on the N-Aquifer to meet municipal, domestic, livestock and irrigation needs, and springs fed by discharge from the aquifer have religious and cultural importance. Since Peabody Western Coal Company (Peabody) began mining coal on Black Mesa in 1968, and using N-aquifer water to slurry coal, the aquifer has been the subject of a long term monitoring program, numerous

⁵ ADWR at A-2.

⁶ Hart, R.J., Ward, J.J., Bills, D.J., and Flynn, M.E., 2002, *Generalized Hydrogeology and Ground-Water Budget for the C Aquifer, Little Colorado River Basin and Parts of the Verde and Salt River Basins, Arizona and New Mexico*, U.S. Geological Survey Water-Resources Investigations Report 02-4026, 54 p.; Bureau of Reclamation, 2006. *C Aquifer Water Supply Study - Report of Findings*. U.S. Bureau of Reclamation: Phoenix, AZ. April 2006.

hydrologic investigations, and several ground-water modeling studies.⁷ A summary of the hydrogeology, geochemical investigations, and modeling efforts was completed as part of a comprehensive report on Navajo and Hopi water supply needs, supplies and impacts in 2003.⁸

The Navajo Nation and the Hopi Tribe have agreed that any LCR settlement must include plans for the use and management of the N-Aquifer, and every proposed settlement since the early 1990's has included provisions for the management of the N-aquifer.



b. Litigation (In re the General Adjudication to Use Water from the Little Colorado River System and Source, Civil Case No. 6417, Superior Court for Apache County.)⁹

The Little Colorado River General Stream Adjudication, filed February 17, 1978, is a judicial proceeding to determine the nature, extent, and priority of all water rights within the LCR Watershed. The LCR case involves all of the water rights throughout most of northeastern and north-central Arizona north of the Mogollon Rim, including rights of the Hopi Tribe, Navajo Nation, San Juan Southern Paiute Tribe, Zuni Pueblo, and a small portion of the rights of the White Mountain Apache Tribe. The case will also decide the rights of thousands of non-Indian

⁷ E.g. Lopes, T.J. and Hoffmann, J.P., 1997. Geochemical Analyses of ground-water Ages, Recharge Rates, and Hydraulic Conductivity of the N Aquifer, Black Mesa Area, Arizona. U.S. Department of the Interior U.S. Geological Survey Water - Resources Investigations Report 96-4190, 1997; Macy, J.P., 2010, Groundwater, surface-water, and water-chemistry data, Black Mesa area, northeastern Arizona, 2008-2009: U.S. Geological Survey Open-File Report 2010-1038, 43 p.; OSMRE, 2011, draft Cumulative Hydrologic Impact Assessment of the Peabody Western Coal Company Kayenta Mine, Office of Surface Mining Reclamation and Enforcement, Western Region.

⁸ HDR Engineering, Inc. 2003. *Western-Navajo Hopi Water Supply Needs, Alternatives, and Impacts* (Errata, July 17, 2003), Volume 3, Task 4.2, Appendices A-1 through A-6.

⁹ State courts have jurisdiction to adjudicate Indian water claims by virtue of the McCarran Amendment, 43 U.S.C. § 666, which allows the United States to be sued in state court for the purpose of quantifying federal and tribal water rights in a general stream adjudication. *Arizona v. San Carlos Apache Tribe*, 463 U.S. 545 (1983).

parties – small farmers and domestic users, cities and towns like Flagstaff and Winslow, large irrigation districts, and major electric utilities such as the Salt River Project, Arizona Public Service Company and Tucson Electric Power. The Arizona State Land Department is also a party, as is the United States in its capacity as trustee for the affected Tribes and on behalf of federal agencies like the Bureau of Land Management, the Forest Service and National Park Service. The case encompasses the entire LCR drainage within the State of Arizona. There are approximately 3,100 claimants in the state general stream adjudication filing 10,927 Statements of Claimants.

The Navajo Nation claims aboriginal, historic, appropriative and reserved rights to the use of all the water necessary for the Navajo Reservation to be the permanent homeland for the Navajo people. Such rights to water have been judicially recognized by the United States Supreme Court in *Winters v. United States*, 207 U.S. 564, 567 (1908). “Winters rights” or “reserved rights” have the following attributes:

- priority dates based on the date the lands were taken into trust where the water is to be used
- are satisfied out of the unappropriated water available when the lands were taken into trust
- apply to all tribes whether lands were set aside by treaty, statute or executive order
- are not lost through non-use and cannot be abandoned

The *Winters* doctrine does not stand for the proposition that tribes always possess the most senior right or that tribes are entitled to all the water arising on, flowing through, or under their reservations.¹⁰

A more difficult issue is the extent to which water has been reserved for the benefit of tribes for non-agricultural uses. The Arizona Supreme Court recently held that PIA is not the exclusive quantification measure for determining water rights on Indian lands, and the quantity of water reserved must satisfy both present and future needs of the reservation as a livable homeland. *In Re: The General Adjudication of All Rights to Use Water in the Gila River System and Source*, 35 P. 3d 68, 76 (Ariz. 2001).

SETTLEMENT

Settlement Activities have been ongoing, off and on since the mid 1990’s. In the 1990’s a settlement was negotiated that included a Lake Powell Pipeline to bring water from the Colorado River to various Navajo and Hopi communities and to replace the use of N-Aquifer water for the slurryline operated by Peabody Western Coal Company. Those settlement efforts ended after the Navajo Nation sued Peabody and its utility customers, Southern California

¹⁰ The Navajo Nation and Hopi Tribe claim reserved rights to groundwater pursuant to *In Re: The General Adjudication of All Rights to Use Water in the Gila River System and Source*, 989 P.2d 739 (Ariz. 1999); cert. denied 120 Sup. Ct. 2705 (2000).

Edison and the Salt River Project, over allegations of misconduct arising out of the coal leases that were amended in 1987.¹¹

In the early 2000's settlement discussions revolved around the development of the C-aquifer to use as an alternate supply of water for the slurryline and to build drinking water infrastructure for Navajo and Hopi Communities. Those negotiations failed after Southern California Edison decided to close the Mohave Generation Station and the slurryline.¹²

Settlement negotiations resumed in 2004 after the Navajo Nation sued the Department of the Interior for failing to adequately protect Navajo Nation water rights to the Colorado River in the Lower Basin.¹³ The parties to the Colorado River litigation agreed that it would be prudent to explore a possible settlement of the Navajo Nation's Colorado River claims in conjunction with a settlement of the Nation's Little Colorado River claims. The parties were successful in negotiating the Northeastern Arizona Indian Water Rights Settlement Agreement (NAIWRSA) resolving the claims of the Navajo Nation and the Hopi Tribe to the Colorado River in the Lower Basin and to the Little Colorado River. The centerpiece of that settlement was the authorization of a Colorado River water supply for both tribes and the construction of the Western Navajo Pipeline to bring drinking water to Navajo and Hopi communities. The Navajo Nation approved the NAIWRSA in November 2010;¹⁴ however, in April 2011, Arizona Senator Kyl announced he could not support the NAIWRSA because of the high cost of the Western Navajo Pipeline.¹⁵

Negotiators for the Navajo Nation rejected the concept of a Colorado River settlement that did not include the Western Navajo Pipeline but proposed scaling back the NAIWRSA to include only a Little Colorado River settlement. The settling parties negotiated the Navajo-Hopi Little Colorado River Water Rights Settlement, and Senators Jon Kyl and John McCain introduced S. 2109 on February 14, 2012 to authorize the settlement.¹⁶ Congressmen Ben Quayle and Paul Gosar introduced H.R. 4067, legislation identical to S. 2109, two days later.

One particularly controversial provision of S. 2109 / H.R. 4067 involved the extension of certain agreements relating to the Navajo Generating Station in northern Arizona. Under the NAIWRSA, the Navajo Nation would settle its claims to both the Little Colorado River and the Colorado River, thereby satisfying conditions necessary for the delivery of water to Navajo communities in Arizona through the Navajo-Gallup Water Supply Project. Those conditions were proscribed by Congress in P.L. 111-11 as part of the 2009 settlement of the Navajo

¹¹ *Navajo Nation v. Peabody Holding Company, et al*, No. CIV.A. 99-0469EGS (D.D.C.)

¹² <http://www.sce.com/PowerandEnvironment/PowerGeneration/MohaveGenerationStation/default.htm>

¹³ *Navajo Nation v. United States Department of the Interior*, U.S. District Court, Arizona, CIV 03 0507 PCT PGR.

¹⁴ http://www.navajonsn.gov/News%20Releases/NNCouncil/Nov10/110810_Navajo_Nation_Council_approves_Northeastern_Arizona_Indian_Water_Rights_Settlement.pdf

¹⁵ Sen. Kyl seeks lower cost for tribal water rights <http://64.38.12.138/News/2011/001593.asp>

¹⁶ http://www.kyl.senate.gov/legis_center/naamericans.cfm

Nation's water rights to the San Juan River in New Mexico.¹⁷ In the absence of a Colorado River settlement, the Navajo Nation no longer had the means to deliver 6,411 afy of water set aside for use by the Navajo Nation as part of the Arizona Water Settlements Act of 2004.¹⁸ The settling parties agreed to support an amendment of the 2009 New Mexico settlement legislation to allow the 6,411 afy of water to be delivered to the Navajo communities, despite the absence a Colorado River settlement; however, certain conditions relating to the extension of the operations of the Navajo Generation Station would need to occur.¹⁹

A schematic describing the reservation of Colorado River water in the settlement, including the 6,411 afy, can be found at the end of these materials.

The Navajo-Hopi Little Colorado River Water Rights Settlement was heavily criticized by "grass roots" organizations, in large part, because of the controversial provisions dealing with the Navajo Generation Station.²⁰ On June 15, 2012, the Hopi Tribal Council passed a resolution opposing S.2109.²¹ On July 5, 2012, the Navajo Nation Council rejected the settlement.²²

OUTLOOK

The future of the settlement is uncertain.²³ Tribal leaders are deliberating their next steps.²⁴

¹⁷ Section 10603(c), Public Law 111-11, March 30, 2009, Northwestern New Mexico Rural Water Projects Act.

¹⁸ Section 104(a)(1)(B)(ii), Public Law 108-451, December 10, 2004, Central Arizona Project Settlement Act of 2004.

¹⁹ Section 201, S. 2109.

²⁰ E.g. <http://navajotimes.com/politics/2012/0412/041212benally.php>

²¹ <http://www.knau.org/post/hopi-tribal-council-rejects-kyls-water-settlement-bill>

²² <http://www.navajo-sn.gov/News%20Releases/NNCouncil/2012/July2012/FOR%20IMMEDIATE%20RELEASE%20-%20Council%20rejects%20water%20rights%20settlement%20legislation,%20demands%20more%20for%20the%20people.pdf>

²³ <http://indiancountrytodaymedianetwork.com/2012/08/06/tribal-leaders-seek-clear-path-in-little-colorado-river-water-rights-127617>

²⁴ <http://ktar.com/22/1570061/Tribal-waterrights-bill-all-but-dead>

SUMMARY OF THE PROPOSED SETTLEMENT AGREEMENT	Paragraph
Little Colorado River Basin Surface Water	
<p>Mainstem LCR Right to use all unappropriated surface water reaching the Navajo Nation from the Mainstream of the Little Colorado River</p> <ul style="list-style-type: none"> ■ Approximately 160,000 afy, very difficult to capture and use ■ No new non-Indian surface water irrigation permitted ■ No new reservoirs upstream of the Navajo Reservation permitted 	¶ 4.5
<p>Washes Approximately 90,000 afy, very difficult to capture and use. Navajo/Hopi Management Plan governs uses of the shared washes (Jeddito, Polacca, Oraibi, Dinnebito & Moenkopi)</p> <ul style="list-style-type: none"> ■ All historic and existing irrigation is protected ■ No large impoundments (> 75 af) permitted upstream of either tribe; Possible joint alluvial wash project with Hopi Tribe on Moenkopi Wash ■ No limits on uses of the washes below the Hopi Tribe or on other washes 	¶ 6.1 ¶ 4.4
Little Colorado River Basin Ground Water	
<p>N-Aquifer - Navajo/Hopi N-Aquifer Management Plan</p> <ul style="list-style-type: none"> ■ Each tribe with unlimited right to use ground water for domestic and municipal uses ■ Each tribe is limited to 2,000 afy of industrial use from the confined portion of the N-aquifer; no limits on the unconfined portion of the N-aquifer ■ Some protections for springs; including Shalako Spring (at Pasture Canyon) ■ Increased modeling and metering by USGS ■ Tribes to revisit the management plan in ten years 	¶ 6.2
<p>C-Aquifer – Protection Zones</p> <ul style="list-style-type: none"> ■ No limits on Navajo on-Reservation uses ■ Non-Navajos may not locate new non-exempt wells (>35 gpm) within 2 sections (~ 2 miles) of the Navajo Nation boundary or any well > 500 gpm in area 2 to 6 sections from boundary; or wells greater than 7,500 afy in Protection Area 3 (beyond 6 miles from boundary) ■ Parties agree to abide by limitations prior to Congressional approval of the settlement and will seek state legislation to bind non-parties 	¶ 4.2 ¶ 7.0
All other aquifers & alluvium - Right to use all water without limits	¶ 4.2
Municipal Water Development Projects	
<ul style="list-style-type: none"> • Leupp-Dilkon Regional Groundwater Project (\$125.6 million): Project to provide 4,776 afy of C-aquifer water to Leupp, Bird Springs, Tolani Lake, Teesto, Dilkon, Indian Wells, L Greasewood & White Cone • Ganado Regional Groundwater Project (\$73.4 million): Project to provide 5,600 afy of C-aquifer water to Ganado, Kinlichee, Jeddito, Cornfields, Steamboat, Klagehoh and Wide Ruins • OM&R Fund: \$23 million to help with operation, maintenance and replacement of the projects 	¶ 10.1
Settlement Funding	
<p>Settlement Cost – \$358 million; no waivers are effective until the Secretary determines that sufficient monies are in the Groundwater Projects Fund to build the Groundwater Projects and other conditions have been met</p>	¶ 12

Other	
<ul style="list-style-type: none"> • 24,589 afy of 4th Priority Colorado Water reserved until 2030 for possible Colorado River Settlement • Water provisions of the plant site lease for NGS are affirmed 	¶ 13

SUMMARY OF S.2109
Navajo-Hopi Little Colorado River Water Rights Settlement Act of 2012

TITLE I – Navajo-Hopi Little Colorado River Water Rights Settlement Agreement

Sec. 101 – Ratifies the settlement and authorizes the Secretary to execute the Settlement Agreement

Sec. 102 – Provides that the water rights of the Navajo Nation, Hopi Tribe, and allottees in the LCR Basin (recognized and described in the Settlement Agreement) will be held in trust by the United States and will not be subject to loss by nonuse, forfeiture or abandonment

Sec. 103 – Authorizes the planning, design and construction of the Leupp-Dilkon Groundwater Project and the Ganado Groundwater Project; also authorizes the Hopi Groundwater Project

Sec. 104 – Authorizes appropriations in the following amounts:

- \$199 million to plan, design and construct the Navajo Groundwater Projects
- \$113 million to plan, design and construct the Hopi Groundwater Project
- \$23 million for Navajo Project OM&R; \$5 million for Hopi OM&R
- \$5 million to develop a management plan for the N-Aquifer
- \$10.4 million to develop a Pasture Canyon springs protection program
- Recognizes the State contribution of \$1 million for each Tribe

Sec. 105 – Describes the waivers of claims that must be executed by the Tribes and the United States

Sec. 106 – Provides that the benefits recognized in the Settlement Agreement will satisfy all claims of the Tribes to the Little Colorado River Basin;

-- Amends the Navajo-Hopi Land Dispute Settlement Act of 1996 to allow water to be transported off of trust lands acquired by the Hopi Tribe under that Act to meet the municipal needs of the City of Winslow

Sec. 107 – Limits the ability of either Tribe to take land into trust by requiring Congressional authorization for such acquisition, but preserves existing authorizations in the Navajo-Hopi Settlement Acts of 1974 and 1996

Sec. 108 – Sets out the conditions that must be met for the waivers to become effective and to permit construction of the Groundwater Projects to proceed (planning, design, archaeological and environmental work can proceed prior to the Enforceability Date)

- Provides that the Act is repealed if the conditions are not met by 10/31/2022

Sec. 109 and 110 – Standard legislative language concerning administration and environmental compliance.

TITLE II – Central Arizona Project Water

Sec. 201 – Authorizes the Secretary to reallocate 6,411 AFY of CAP NIA water upon a finding that the conditions established in this section have been met. Conditions include:

- The NGS lease has been extended through 12/23/2044;
- The ROWs and easements for NGS facilities have been extended;
- Peabody has leased sufficient coal from the Nation and the Hopi Tribe to operate NGS through the end of the extended lease term;
- OSMRE has approved the Kayenta Mine permit authorizing extraction of sufficient coal to meet the requirements of NGS through the extended lease term
- The NGS water contract has been extended by BOR through the extended NGS lease term

- Provides that if these conditions are not met by October 31, 2022, this Title is repealed

Sec. 202 – Provides for the reallocation of the 6,411 CAP NIA water when the conditions are met, and:

- Provides for firming of that 6,411 of CAP NIA water to the equivalent of CAP M&I priority for 100 years from 1/1/2008;
- Sets forth the terms of delivery and use of the CAP NIA water

Sec. 203 and Sec. 204 – Deal with Colorado River accounting issues and the law of the Colorado River

Sec. 205 – Describes technical amendments to the Omnibus Public Land Management Act of 2009

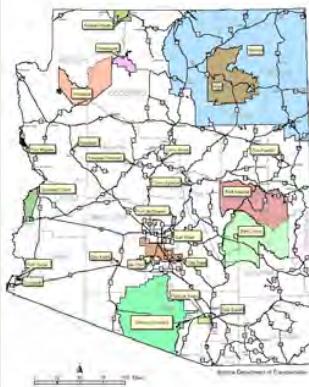
Sec. 206 – Provides that the Colorado River water previously included in the NAIWRSA will be reserved for a future Colorado River settlement, and provides that in the event of litigation the reserved water may be used to satisfy any litigation award

Sec. 207 – Authorizes an appropriation in the amount of \$3.3 million to complete the feasibility study for the Western Navajo Pipeline project as part of the North Central Arizona Water Supply Study

NAVAJO-HOPI LITTLE COLORADO RIVER WATER RIGHTS SETTLEMENT



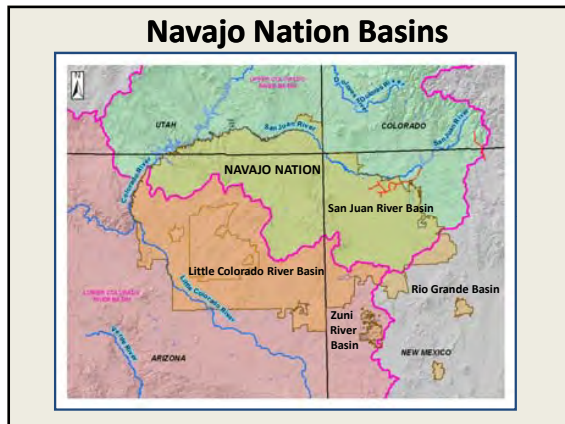
**There are 22
federally
recognized Indian
tribes in Arizona**





Colorado River Basin

- Seven basin states
- Almost all of the Navajo Nation is in the basin
- San Juan River is part of the Upper Basin
- Little Colorado River is part of the Lower Basin



Little Colorado River System & Source

- Includes all surface water
 - Little Colorado River
 - Tributaries & Washes
- Includes all ground water
 - C-aquifer
 - N-aquifer
 - Other aquifers
- Does not include mainstem Colorado River

Little Colorado River System and Source Water Rights Adjudication – filed in 1979

- About 3,100 claimants in LCRA:
 - Five Indian Nations
 - Non-Indian Cities (Flagstaff, Winslow, Holbrook, St. Johns, Springerville, etc.)
 - Three Power Plants
 - Various Irrigation Districts

LCR Litigation / Settlement History

- LCR Adjudication Commences (1979)
- Statements of Claimant filed (1985)
- Silver Creek Litigation (1991–1994)
- Settlement Negotiations (1994–1999)
- *NN v. SRP, PWCC, & SCE* (1999)
- *NN v. Department of Interior* (2003)
- Colorado River / LCR Negotiations commence (2004)
- NNC approves NAIWRSA (November 4, 2010)
- Sen. Kyl: NAIWRSA with WNP "too expensive" (March 23, 2011)
- Sens. Kyl & McCain introduce S. 2109 (February 14, 2012)
- Attorneys' Agreement (March 8, 2012)

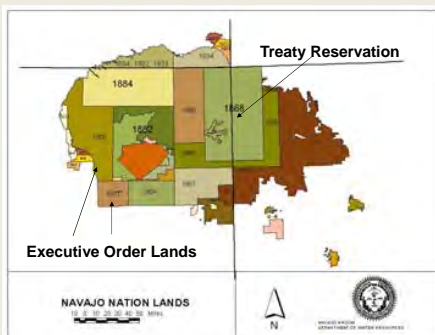


Factors Favoring Settlement



- (1) Endless litigation
- (2) Geography
- (3) Priority dates are not clear cut
- (4) Hydrologic uncertainties
- (5) Disputes concerning groundwater
- (6) Need for drinking water infrastructure

Priority Dates



Little Colorado River



Unappropriated flows – about 160,000 afy

Surface Water - Little Colorado River

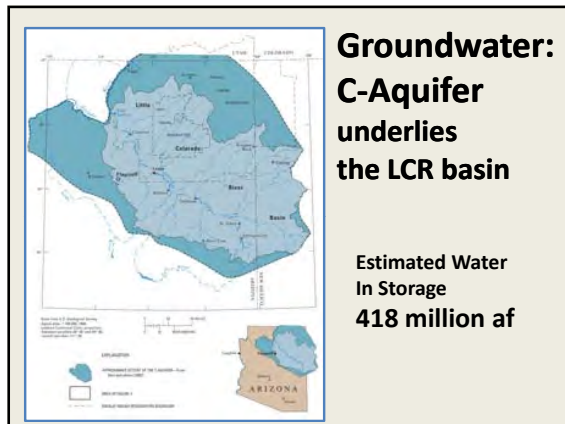


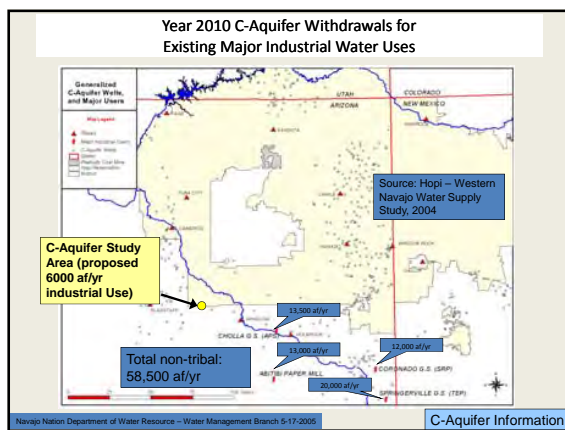
- Navajo historic uses recognized in decree (40,780 afy)
- Navajo Nation right to use all of the unappropriated flows – estimated to be 160,000 afy at the Reservation boundary out of the total 220,000 estimated natural flow
- Existing non-Navajo uses protected (approximately 60,000 afy)
- Future non-Navajo water uses restricted

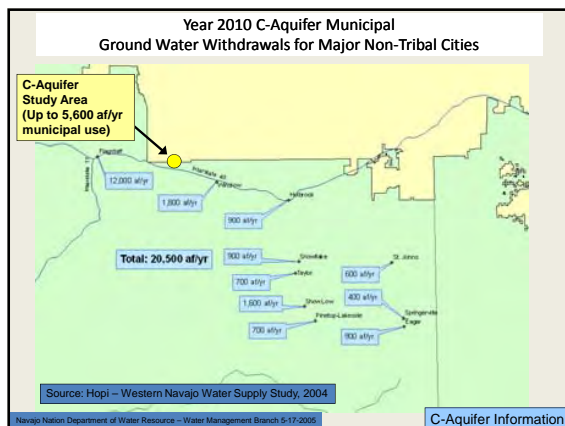
Surface Water: LCR Washes

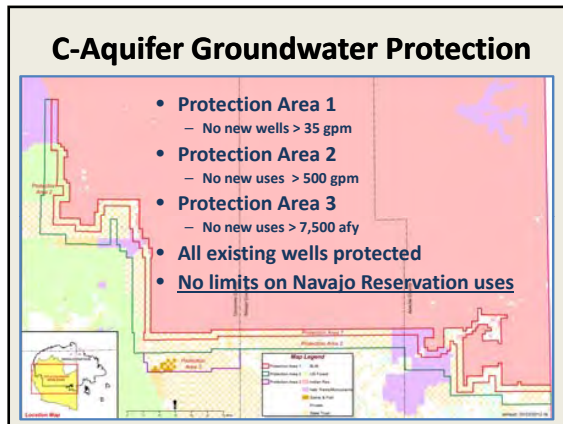
- The Navajo Nation has the right to use all water in the LCR tributaries (washes) that cross the Navajo Reservation
- Five washes shared with the Hopi Tribe are subject to joint management plan

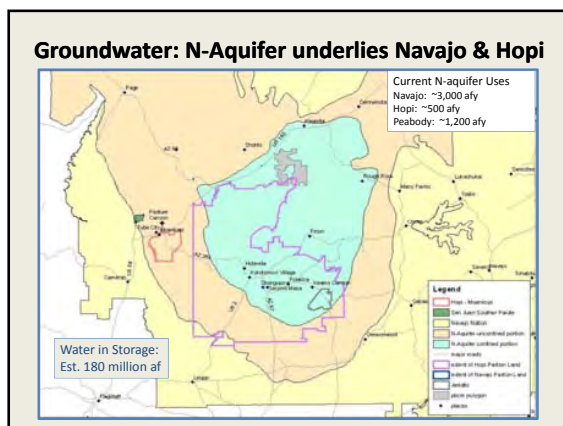


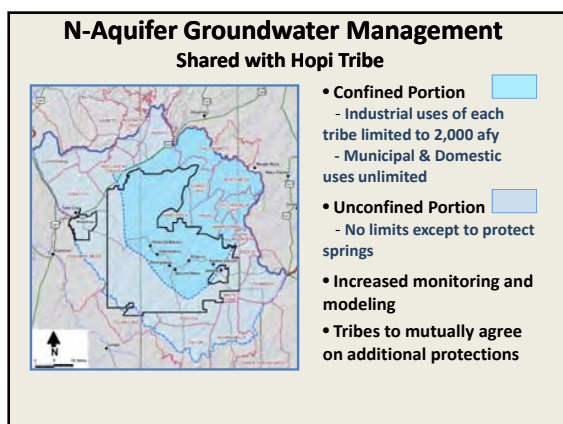












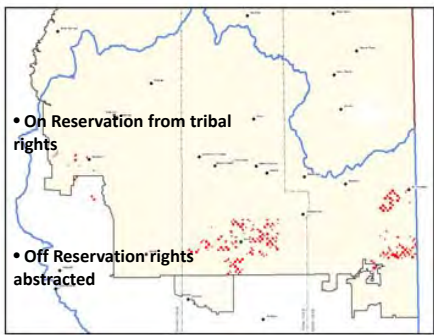
Special Provisions for Pasture Canyon




Protection Zone for Springs


No new wells within this Protection Area

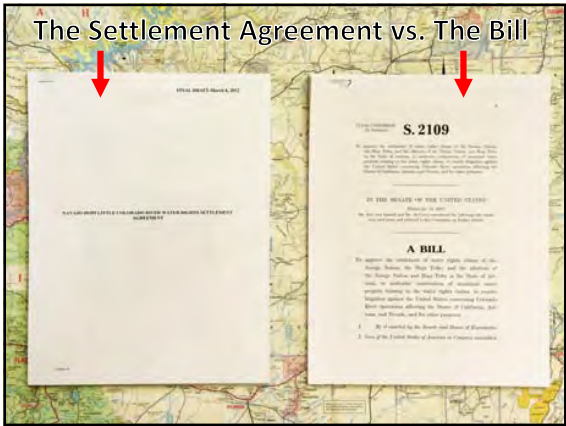
Allottees



- On Reservation from tribal rights
- Off Reservation rights abstracted

Water Infrastructure Projects
(not available through litigation)





The Settlement Agreement & The Federal Legislation	
Navajo-Hopi Little Colorado Water Rights Settlement Agreement <ul style="list-style-type: none">•An agreement between the parties, including Arizona, cities, irrigation districts and other major water users•Recognizes the surface and groundwater rights of the Navajo Nation and Hopi Tribe that will be part of the court's order•Provides protections for Navajo water rights to be enacted into State law•Describes the projects that will be built to deliver groundwater to Navajo communities•Includes waivers of claims for additional water in the LCR Basin	Navajo-Hopi Little Colorado Water Rights Settlement Act of 2012 (S. 2109 / H.R. 4067) <ul style="list-style-type: none">• Federal legislation is required to ratify the settlement agreement and authorize the United States to sign the agreement• Authorizes the water delivery projects and appropriations of funds to build the projects• Reserves Colorado River water for a possible future Navajo settlement• Provides an option for delivery of CAP water through the Navajo-Gallup Water Supply Project to Navajo communities in Arizona• Includes waivers of claims for additional water in the LCR Basin


Components of Settlement approved by NNC (2010) Northeast Arizona Indian Water Rights Settlement
<ul style="list-style-type: none">• Mainstem Colorado River Water<ul style="list-style-type: none">– 31,000 afy Colorado River/Central Arizona Project ("CAP") Water; 13,000 afy Firmed for 100 Years• LCR Surface Water<ul style="list-style-type: none">– All Unappropriated Mainstem LCR Water– All Water in LCR Washes except Washes Shared with Hopi Tribe• LCR Groundwater<ul style="list-style-type: none">– N-aquifer – Agreement with Hopi– C-aquifer - Navajo Uses Largely Unlimited; Protection Areas limit non-Navajo pumping near Navajo Reservation• Municipal Infrastructure Projects<ul style="list-style-type: none">– Western Navajo Pipeline– Leupp Dilkon Groundwater Project– Ganado Groundwater Project– 6,411 afy in NGWSP for Navajo Arizona communities

Components of proposed Navajo-Hopi Little Colorado River Settlement

- **Mainstem Colorado River Water Settlement**
 - 21,000 afy Colorado River/Central Arizona Project ("CAP") Water; 12,000 afy Firmed for 100 Years
- **LCR Surface Water**
 - All Unappropriated Mainstem LCR Water
 - All Water in LCR Washes except Washes Shared with Hopi Tribe
- **LCR Groundwater**
 - N-aquifer – Agreement with Hopi
 - C-aquifer - Navajo Uses **Largely** Unlimited; Protection Areas limit non-Navajo pumping near Navajo Reservation
- **Municipal Infrastructure Projects**
 - ~~Western Navajo Pipeline~~
 - Leupp Dilkon Groundwater Project
 - Ganado Groundwater Project

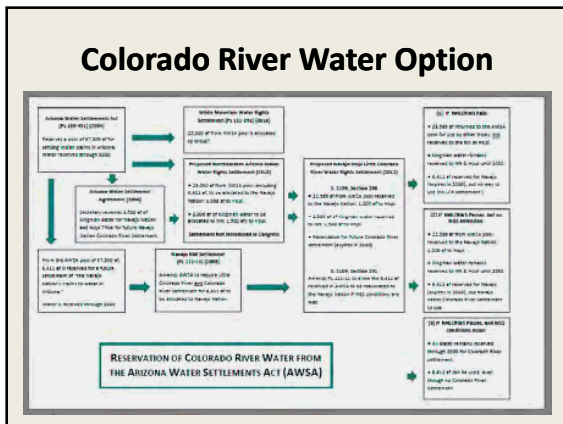
6,411 afy in NGWSP for Navajo-Arizona communities

(the Settlement legislation authorizes the use of 6,411 afy in the NGWSP conditioned on the continued operation of NGS; if this condition fails, the 6,411 will not be available)



Colorado River Water

- Option for delivery of 6,411 afy CAP NIA water for Arizona communities through the Navajo-Gallup Water Supply Project
- Reallocation of CAP water subject to continued operation of NGS, including extension of operating agreements
- Failure to exercise CAP water option does not invalidate the Settlement Agreement



Foundation for Future Colorado River Settlement



- S. 2109 reserves 26,089 afy for a possible future Colorado River settlement
- Authorizes \$3.3 M for a Feasibility Study of the Western Navajo Pipeline
- Hopi portion of WNP constructed
- NHLCRWRS reduces total cost of Colorado River Settlement

Settlement Funding Authorization Total = \$358.7 million



**IF CONGRESS FAILS TO FUND THE PROJECTS –
TRIBES GIVE NO WAIVERS AND THERE IS NO SETTLEMENT**

Factors Hurting the Settlement

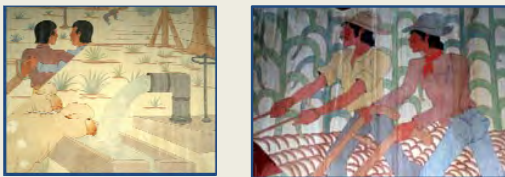


- (1) Legislation introduced prior to final agreement
- (2) Water rights not waived
- (3) Convolutud waivers
- (4) NGS issues
- (5) Restrictions on lands into trust
- (6) Anti-marketing terms

Future of the LCR Settlement - Uncertain







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