
NATIVE AMERICAN WATER SETTLEMENTS IN ARIZONA, 1978- PRESENT

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INTRODUCTION

- This research was partially funded by the WRRRA Section 1046 from the USGS and through the University of Arizona's WRRC.
- Tribal Nations have a nation-to-nation political relationship with the United States, which recognizes their sovereignty and right to self-determination.
- Over 100 years after the inception of the reserved water rights doctrine, many Native American tribes continue to face water insecurity.
- Two main ways have emerged through which tribes can legally quantify their water rights:
 - Litigation
 - Water settlements
- Main question: How have Indian water settlements in Arizona evolved since 1978?



METHODS AND METHODOLOGY

- Due to time and monetary constraints, as well as the sensitivity of researching water rights within Native American nations, this research undertook a robust literature and archival methodology.
- 40 books, journal articles, and law journal articles were reviewed to determine the relevance of the research.
- 11 Native American water settlement acts in Arizona were reviewed and analyzed to determine how they have changed between 1978 and the present in the context of tribal sovereignty and self-determination.
- Used a historical and discourse analysis to analyze the 11 Indian water settlements in Arizona, as well as related literature.



PURPOSE OF RESEARCH

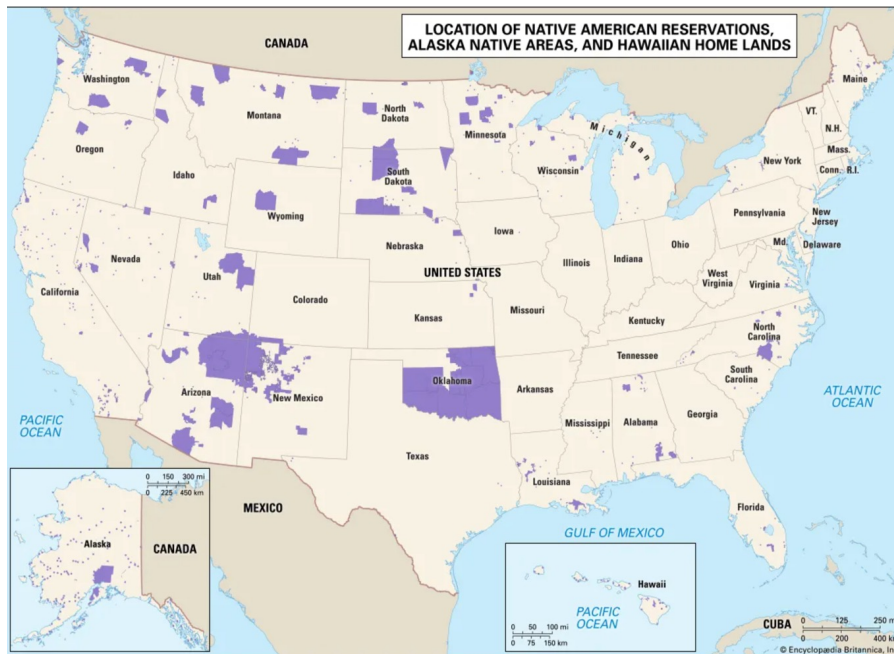
- This research project was designed to be an educational tool rather than a prescriptive tool.
- Acknowledging that there are different levels of reader, this research intends to inform readers about the history of Native American reserved water rights, how such water rights have evolved through the litigation and water settlements processes, and how such processes facilitate Native American water sovereignty and self-determination.
- The 104b portion of the research focuses on the evolution of the 11 Indian water settlements in Arizona within the broader context of the reserved water rights doctrine.
- It is not the intention of this research to disempower or insult tribes that have undergone either the water litigation or settlement process.
- The analysis conducted in this research is my own and any interpretation errors are my own.

HISTORICAL CONTEXT OF THE NATIVE AMERICAN RESERVED WATER RIGHTS DOCTRINE

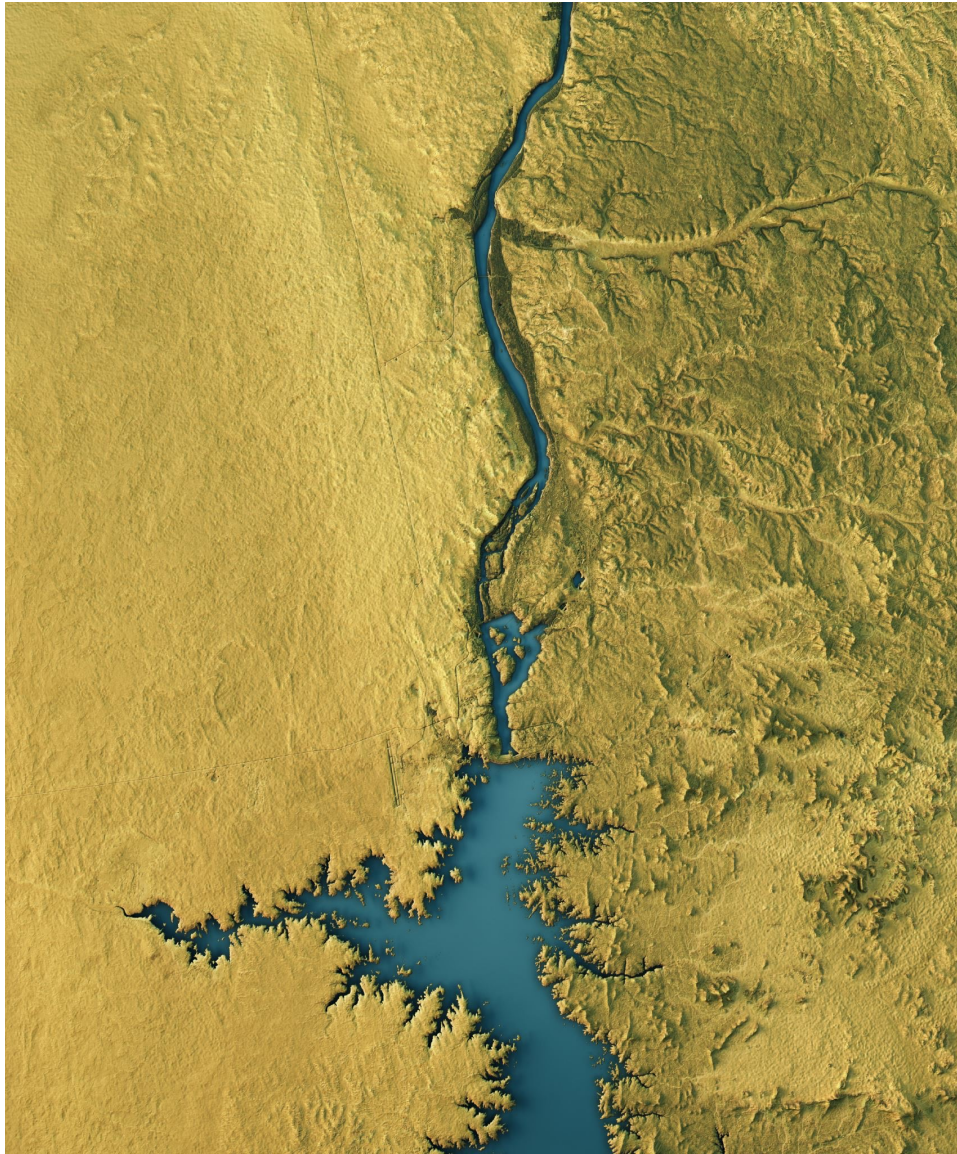


- Immediately after the United States became a country, its government sought to expand its territory.
- After the Revolutionary War, the United States gained access to the Ohio Valley, which was followed by the Louisiana Purchase, and for what is now the American southwest, the Treaty of Guadalupe Hidalgo in 1848 and the Gadsden Purchase of 1853 were instrumental.
- As the United States expanded westward, it also encountered Native American nations, with whom it developed a nation-to-nation relationship.
- *Cherokee Nation v. Georgia* (1831) and *Worcester v. Georgia* (1832) established the federal trust relationship and affirmed the sovereign nature of Native American nations, especially in relation to states.
- The Indian Removal Act of 1830 forcibly removed Native American nations from east of the Mississippi River to the then Indian Country, which is now Oklahoma.

RESERVATIONS, ASSIMILATION, AND ALLOTMENT



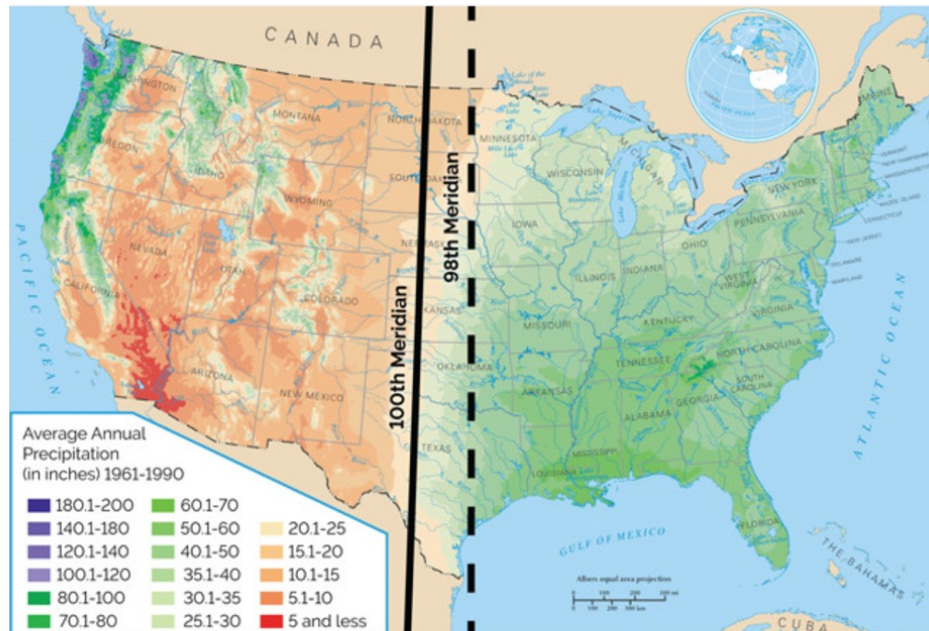
- The United States encouraged Euro-American settlement of the newly opened territories in the American west through the Homestead Act of 1862 and the Desert Land Act of 1877.
- Native American reservations emerged as a way for the United States to contain Native American nations to an enclosed area of land while tribes obtained a secure homeland.
- Many reservations that were created in the latter part of the 19th Century were part of treaties signed between Native American nations and the United States.
- One of the most egregious violations of treaties signed between the United States and is the General Allotment Act of 1887.
- Context: Arizona was a territory between 1863 and 1912, when it became a state.



THE RISE OF THE WINTERS DOCTRINE

- Native American nations and Euro-American settlers were competing for the limited water resources in the arid western part of the country by the 1890s.
- Confined to their reservations, many Native American nations faced an existential threat.
- Euro-American settlers were using the prior appropriation doctrine to divert water and build dams in rivers that Native American tribes also depended on.
- In the early 1900s, Euro-American settlers were diverting too much water upstream from the Fort Belknap reservation in Montana, which threatened the purpose of the reservation.
- As trustee, the United States represented the tribes of the Fort Belknap reservation in a lawsuit that reached the United States Supreme Court.
- In *Winters v. United States* (1908), the United States Supreme Court ruled that Native American reservations had reserved water rights, which must fulfill the purpose of the reservation.

THE THREE DOCTRINES OF WATER LAW IN THE UNITED STATES



- There are three doctrines of water law in the United States:
 - The Riparian Doctrine
 - The Prior Appropriation Doctrine
 - The Reserved Rights Doctrine
- Generally, the Riparian Doctrine governs water rights in the eastern part of the country, where water is more abundant, and rights are derived from waters that are appurtenant to a land someone owns. Water uses are bound by the reasonable use doctrine.
- The Prior Appropriation Doctrine governs water rights in the western part of the country, west of the 100th Meridian and are ruled by a hierarchical system of senior and junior water appropriators. Water uses are bound by the beneficial use doctrine and water appropriations require a diversion and public claim of appropriable waters.
- The Reserved Rights Doctrine governs that such water rights were reserved at the time when the reservation was established. Such waters must be used for the purpose of the reservation and cannot be lost due to non-use.

THE RESERVED RIGHTS DOCTRINE BETWEEN 1908 AND 1963

- Court administrators were reluctant to apply the reserved rights doctrine in the years following the ruling of *Winters v. United States* in 1908.
 - There were a few cases that were successful in legally securing water rights for Native American tribes in this period, but they did not make major advances for the reserved rights doctrine.
 - In Arizona, the water rights of the Gila River Indian Community and the San Carlos Apache Tribe were decreed by the Globe Equity Decree of 1935.
 - In Nevada, the water rights of the Pyramid Lake Reservation were decreed by the Orr Ditch Decree of 1944.
 - Neither the Globe Equity Decree nor the Orr Ditch Decree led to final water security for the involved Native American tribes, which led to additional water litigation.
 - *Arizona v. California* (1963) established the Practicable Irrigable Acreage standard for the quantification of reserved water rights.
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THE MCCARRAN AMENDMENT

- In 1952, the United States Congress passed the McCarran Amendment, through which the United States waived its sovereign immunity in water litigation cases so that such cases would be litigated in state courts.
- The McCarran Amendment did not initially apply to Native American reserved water rights.
- In its adjudication of *United States v. District Court in and for Eagle County*, the United States Supreme Court ruled that the McCarran Amendment applied to federal reserved water rights cases.
- In 1976, the United States Supreme Court ruled that the McCarran Amendment applied to Native American reserved water rights cases through *Colorado River Water Conservation District v. United States* (1976).
- Through *Arizona v. San Carlos Apache Tribe of Arizona* (1983), the United States Supreme Court ruled that the McCarran Amendment applied to water litigation that was initiated by a Native American tribe and it also applied in states that had enabling acts that reserved jurisdiction over Native American lands to Congress.





THE RISE OF NATIVE AMERICAN WATER SETTLEMENTS

- In 1978, the first Congressionally ratified Native American water rights settlement took place through the Ak Chin Water Settlement Act in Arizona.
- Since then, a total of 35 Congressionally ratified Native American water settlement acts have taken place. 11 of these Native American settlements emerged from Arizona.
- Generally, Native American water settlements have been characterized by their greater flexibility regarding water uses, off-reservation water leasing, and federal appropriations for the construction of water infrastructure.
- There are different ways through which Native American water settlements can take place:
 - Most Native American water settlements began through the litigation process.
 - Recently, however, Native American water settlements have been initiated without the involvement of protracted litigation.

NATIVE AMERICAN WATER SETTLEMENTS IN ARIZONA

- There are 22 federally recognized Native American tribes in Arizona.
- To date, 10 Native American tribes have either partially or fully settled their water rights in the state.
- The Northeastern Arizona Indian Water Rights Settlement Act (NAIW RSA) is currently pending before Congress.
- NAIW RSA would settle the water rights of the Navajo Nation, the Hopi Tribe, and the San Juan Southern Paiute Tribe.



TABLE OF NATIVE AMERICAN WATER SETTLEMENTS IN ARIZONA

Settlement Act	Tribe	Year of Enactment; Amendment
Ak-Chin Indian Community Act	Ak Chin Indian Community	1978; amended in 1984, 1992, and 2000
Southern Arizona Water Rights Settlement Act	Tohono O'odham Nation (partial settlement for San Xavier and Schuk Toak Districts only)	1982; amended in 1992 and 2004
Salt River Pima-Maricopa Indian Community Water Rights Settlement Act	Salt River Pima-Maricopa Indian Community	1988; amended in 1991
Fort McDowell Indian Community Water Rights Settlement Act	Fort McDowell Indian Community	1990; amended in 2006
San Carlos Apache Tribe Water Rights Settlement Act	San Carlos Apache Tribe	1992; amended in 1994 twice, 1996 twice, and 1997
Yavapai-Prescott Indian Tribe Water Rights Settlement Act	Yavapai-Prescott Indian Tribe	1994; amended in 1996
Zuni Indian Tribe Water Rights Settlement Act	Zuni Indian Tribe	2003
Gila River Indian Community Water Rights Settlement Act	Gila River Indian Community	2004
White Mountain Apache Tribe Water Rights Quantification Act	White Mountain Apache Tribe	2010; amended in 2018, 2020, and 2023
Bill Williams River Water Rights Settlement Act	Hualapai Tribe	2014
Hualapai Tribe Water Rights Settlement Act	Hualapai Tribe	2022

ANALYSIS OF THE 11 NATIVE AMERICAN WATER SETTLEMENTS IN ARIZONA

- The Native American water settlement acts of Arizona have been evolving with Arizona water law.
- Generally, the uses of the water allocated to tribes through the settlement process has evolved from just being for irrigation purposes (farming) to any use that the tribe deems necessary.
- The federal appropriations allocated to Native American water settlements have been increasing due to factors like inflation and increasing costs of materials needed to build water infrastructure.
- In some instances, it appears that tribes give away some of their rights through the settlement process; however, the nature of such settlements is to negotiate and compromise on items that are vital to each of the parties involved.
- In a more balanced situation, the state, the United States, and other interested parties/stakeholders also compromise on items that are vital to them.

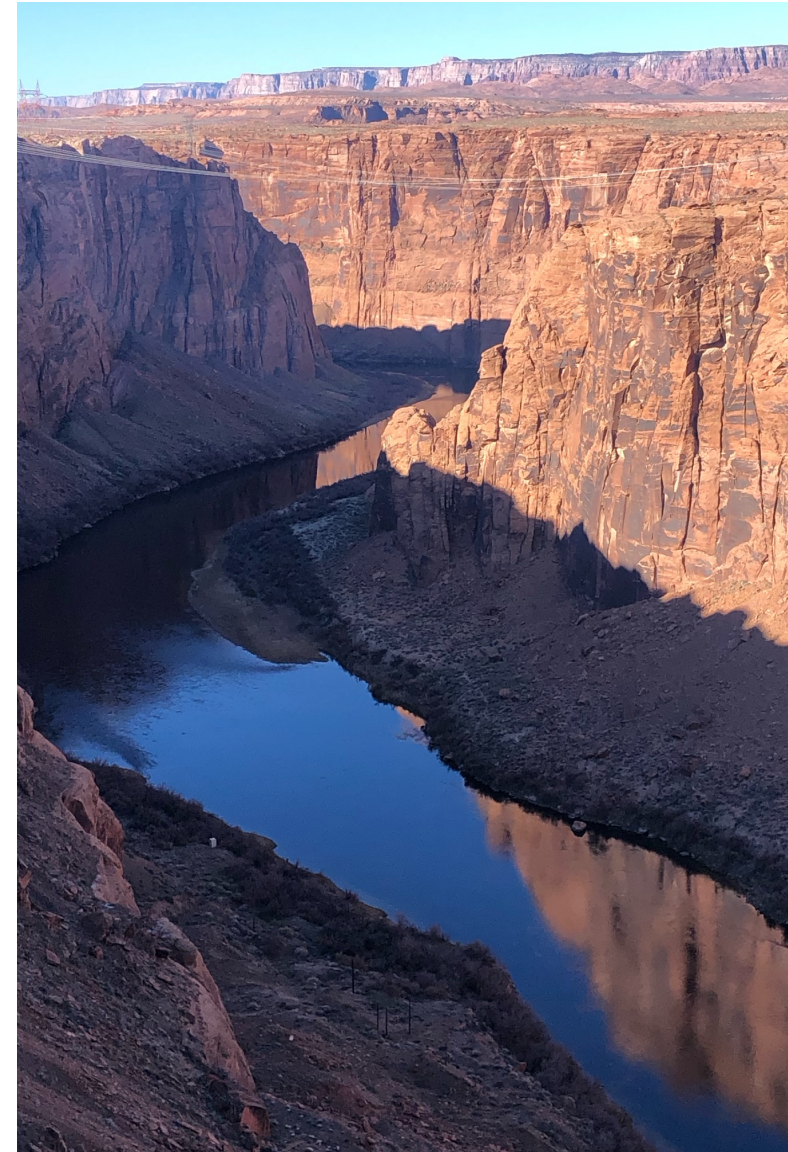


TABLE OF WATER USES AND RESTRICTIONS WITHIN NATIVE AMERICAN WATER SETTLEMENTS IN ARIZONA

Settlement Act	Uses of the Water	Restrictions to the Uses of Water
Ak-Chin Indian Community Act of 1978; amended in 1984, 1992, and 2000	Irrigation (1978); any use (1984 amendment); water can be leased outside the reservation, but only within the Tucson, Pinal, and Phoenix Active Management Areas (1992 amendment).	Water uses are authorized in the Tucson, Pinal, and Phoenix Active Management Areas (1992 amendment); the water leases can only happen with a contract that has been ratified by the tribal council and approved by the Secretary of the Interior.
Southern Arizona Water Rights Settlement Act of 1982; amended in 1992 and 2004	Any purpose, as long as it is within Arizona (2004 amendment). The water may be sold or exchanged.	The sale or exchange of water must be ratified by tribal council and approved by the Secretary of the Interior.
Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988; amended in 1991	Not specified (water exchanges).	Water cannot be sold, leased, transferred or used outside the reservation.
Fort McDowell Indian Community Water Rights Settlement Act of 1990; amended in 2006	Not specified (water exchanges).	Water leasing can only occur within the Pinal, Pima, and Maricopa counties.
San Carlos Apache Tribe Water Rights Settlement Act of 1992; amended twice in 1994, twice in 1996, and once in 1997	Not specified (water exchanges and reallocations). Water leases are allowed.	Water may be leased within Maricopa, Pinal, and Pima counties. Water leases may also occur to Chandler, Glendale, Goodyear, Mesa, Peoria, Phoenix, Scottsdale, Tempe, and Gilbert.
Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994; amended in 1996	Municipal, industrial, recreational, and agricultural purposes.	Water may only be used for municipal, industrial, recreational, and agricultural purposes.
Zuni Indian Tribe Water Rights Settlement Act of 2003	Rehabilitation of riparian areas and other purposes.	The water may not be sold, leased, or transferred to any other place.
Gila River Indian Community Water Rights Settlement Act of 2004	CAP Water can be leased, distributed, and exchanged. The water may be used outside the reservation for Community purposes.	CAP Water may be leased, exchanged, or allocated within the counties of Maricopa, Pinal, Pima, La Paz, Yavapai, Gila, Graham, Greenlee, Santa Cruz, or Coconino. The water may not be leased or exchanged outside Arizona. Any waters obtained through the Gila River Agreement, the Globe Equity Decree, the Haggard Decree may not be sold, leased, transferred, and used outside the reservation, other than exchange.
White Mountain Apache Tribe Water Rights Quantification Act of 2010; amended in 2018, 2020, and 2023	CAP water may be used on or off reservation for any purpose.	CAP water may be leased or exchanged in the counties of Maricopa, Pinal, Pima, and Yavapai. Tribal water may not be used outside Arizona.
Bill Williams River Water Rights Settlement Act of 2014	Colorado River water rights may be used off reservation for irrigation purposes or for storage.	Water storage credits may not be sold or exchanged.
Hualapai Tribe Water Rights Settlement Act of 2022	CAP water may be used on or off reservation for any purpose, as long as it is in the lower basin of the state and not in Navajo, Cochise, and Apache Counties.	Long-term storage credits may be assigned in accordance to state law. Leases outside the reservation are allowed, but there are restrictions regarding the type of water that is being leased.

TABLE OF NATIVE AMERICAN SETTLEMENTS AND RIGHTS WAIVERS IN ARIZONA (EXCERPTS)

Settlement Act	Waivers of Rights
Ak-Chin Indian Community Act of 1978; amended in 1984, 1992, and 2000	-Release of all claims against the United States for breach of the trust responsibility regarding water rights. -Waiver of any and all water claims from time immemorial to the present against the United States, Arizona, or any other agency, person, corporation or municipal corporation.
Southern Arizona Water Rights Settlement Act of 1982; amended in 1992 and 2004	-Waiver and release of all water claims within the Tucson AMA and Upper Santa Cruz Basin from time immemorial to the date of agreement signing.
Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988; amended in 1991	-Extinguishment of allottee's claims against the United States and all other persons through 12/31/1991. -Waiver of all present and future water rights claims or injuries from time immemorial to the date of agreement against the United States, Arizona, or any agency or political subdivisions, person or corporation. -Waiver of sovereign immunity by the United States and the tribe to be joined in court for lawsuits regarding the interpretation of this settlement agreement.
Fort McDowell Indian Community Water Rights Settlement Act of 1990; amended in 2006	- All past, present, and future water claims and injuries are waived by the Community. -The United States and the Community waive sovereign immunity should a lawsuit be filed in regard to the interpretation of this settlement.
San Carlos Apache Tribe Water Rights Settlement Act of 1992; amended twice in 1994, twice in 1996, and once in 1997	-Waiver and release of all claims of water rights and injuries to water rights from time immemorial to the effective date of this Act, and any and all future claims of water rights against the United States, Arizona, any agency or subdivision, any other person, corporation, or municipal corporation. -Waiver of sovereign immunity for the Tribe and the United States in regard to lawsuits related to the interpretation of this Act.

TABLE OF NATIVE AMERICAN SETTLEMENTS AND RIGHTS WAIVERS IN ARIZONA (EXCERPTS - CONTINUED)

Hualapai Tribe Water Rights Settlement Act of 2022	-The Hualapai Tribe and the United States, except for Allottees, waive and release any claims against the Arizona and any other individual, entity, corporation, or municipal corporation for all past, present, and future claims for water rights. -Waiver and release of claims against the United States by the tribe, but not by the allottees: past, present, and future claims for water rights including rights to the Colorado River arising from time immemorial, thereafter, forever; past, present, and future claims for water rights to Colorado River water, arising from time immemorial, and thereafter, forever that are based on the aboriginal occupancy of land. -Waivers and releases of claims by the United States as trustee for allottees. -Waiver and release of claims by the United States against the Hualapai Tribe. -Bill Williams River Phase 2 Water Rights Settlement Agreement Waiver, Release, and Retention of Claims: release of all claims of the United States against Freeport under federal, state, and any other law for any past or present claim for injury to water rights resulting from the diversion of water for mining purposes. -Limited waiver of sovereign immunity: the United States and the Hualapai waive sovereign immunity for lawsuits where the interpretation of this Act, the Bill Williams River settlement agreement phase 2 or the Hualapai Tribe settlement agreement comes into question.
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CONCLUSION

- Water settlements offer a convergence point where Native American tribes can enter the negotiating table as equal parties to the United States, states, and other stakeholders like cities, towns, and irrigation districts.
 - The settlement process is very similar to the treaty process of the late 1800s. One main difference between the treaties of the past and the water settlements of the present is that there are more parties involved in the process, which adds strength to the settlements themselves.
 - As the oldest, and often most senior water stakeholder in the American Southwest, it is imperative that Native American tribes continue to have a voice in water matters that may affect them.
 - History is foundational to understanding why water rights are so contentious in the American Southwest. The present has new challenges, which increases the imperative for stronger water negotiations and greater water conservation in the region.
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THANK YOU



Any questions are
appreciated.

