

NATIVE AMERICAN WATER SOVEREIGNTY AND SELF-DETERMINATION: AN
ANALYSIS OF HOW NATIVE AMERICAN TRIBES SUSTAIN WATER SECURITY IN THE
AMERICAN SOUTHWEST

By

Aminta Arely Menjivar Maldonado

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As members of the Dissertation Committee, we certify that we have read the dissertation prepared by: Aminta Arely Menjivar Maldonado, titled: Native American Water Sovereignty and Self-Determination: An Analysis of How Native American Tribes Sustain Water Security in the American Southwest, and recommend that it be accepted as fulfilling the dissertation requirement for the Degree of Doctor of Philosophy.

 _____ Prof. Melissa Tatum	Date: <u>9 Apr 2025</u>
 _____ Dr. Benedict Colombi	Date: <u>04/09/2025</u>
 _____ Prof. Heather Whiteman Runs Him	Date: <u>4/9/2025</u>
 _____ Dr. Sharon Megdal	Date: <u>4/9/2025</u>
 _____ Dr. Marcela Vasquez-Leon	Date: <u>4/9/2025</u>
 _____ Dr. Ronald Trosper	Date: <u>4/9/2025</u>

Final approval and acceptance of this dissertation is contingent upon the candidate's submission of the final copies of the dissertation to the Graduate College.

We hereby certify that we have read this dissertation prepared under our direction and recommend that it be accepted as fulfilling the dissertation requirement.

 _____ Professor Melissa Tatum Dissertation Committee Co-Chair James E. Rogers College of Law	Date: <u>25 Apr 2025</u>
 _____ Dr. Benedict Colombi Dissertation Committee Co-Chair American Indian Studies	Date: <u>25 Apr 2025</u>

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The analysis and views portrayed throughout this dissertation are mine and do not necessarily reflect on the views and analyses of my dissertation committee members and co-Chairs. Any errors contained in this dissertation are also mine. In addition, the terms Native American and American Indian are used throughout this dissertation to refer to the original inhabitants of what is now the United States. The term Indigenous Peoples is used to refer to the original inhabitants of places that have been colonized since 1492. No disrespect is meant through the use of such terms.

DEDICATION

I dedicate this dissertation to the underprivileged youth of the world who aspire success through education. The road is tough but very rewarding.

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ABSTRACT

The recognition of Native American sovereignty and self-determination has evolved in conjunction with the growth of the United States as a country since 1776. Federally recognized Native American tribes have nation-to-nation relationships with the United States that can only be altered through Acts of Congress. As the United States strengthened throughout the 19th Century, it adopted laws and policies designed to absorb Native American tribes into the mainstream of the country. Native American reservations were established to serve as the permanent homelands of Native American tribes. In 1908, the Supreme Court of the United States established the reserved rights doctrine through its ruling in *Winters v. United States* (1908). The *Winters* ruling affirmed reserved water rights for Native American tribes so that Native American reservations would fulfill their original purpose of being permanent homelands for tribes.

Native American tribes have struggled to legally secure their water rights since 1908. Today, Native American tribes that seek to legally secure their water rights must either undergo the litigation process or the water rights settlement process. This dissertation investigated and analyzed the two main ways through which Native American tribes can legally secure their water rights while retaining as much sovereignty as possible. The investigation determined that the litigation process can be very detrimental for tribal sovereignty and self-determination. While the water rights settlement process can be just as problematic for tribal sovereignty and self-determination as litigation, the fact that settlements are based on negotiations affords much more flexibility to tribes. While this dissertation argues that the water rights settlement process is more conducive to the protection of tribal sovereignty and self-determination than the litigation process, it is the prerogative of tribes to decide which process is better for them.

CHAPTER 1: RESEARCHING NATIVE AMERICAN WATER SOVEREIGNTY AND SELF-DETERMINATION IN THE AMERICAN SOUTHWEST

Native American reserved water rights are intrinsically tied to the history of the United States and the motivations behind its settlement of the territory it now lays claim to (Dunbar-Ortiz, 2014; Immerwahr, 2019; Saito, 2020; Deloria, 1985). The process of colonizing and settling the continent did not happen overnight as it took close to 175 years for the original thirteen colonies to evolve from the time of the Pilgrims to the time of the Revolutionaries (Dunbar-Ortiz, 2014; Dunbar-Ortiz, 2021; Saito, 2020; Immerwahr, 2019; Mann, 2006). An additional 250 years have passed since the Revolutionary war to the year 2025, where Native American tribes continue to struggle for their water rights (Royster et al., 2023; Royster, 2011; Anderson, 2010; Anderson, 2015). Thus, to understand the state of Native American reserved water rights today, especially in relation to Native American sovereignty and self-determination, one must do so in the context of the history of the United States.

A Brief History of Native American Law and Policy

Native American sovereignty and self-determination are core principles of Native American identity in the United States. Before the arrival of European settlers to what is now the United States, Indigenous tribes inhabited the continent and had their own societies independent of any European sovereign (Dunbar-Ortiz, 2014; Mann, 2006; Deloria, 1985). Such Indigenous Peoples developed their own civilizations with their own languages, trade, cultures, and histories (Mann, 2006; Graever & Wengrow, 2021). The narrative that the Euro-American settlers brought

civilization to the continent has been debated and debunked by scholars of Native American history (Dunbar-Ortiz, 2014; Mann, 2006; Deloria, 1985; Graever & Wengrow, 2021).

The debunking of such theories of Native American inferiority has been done through rigorous studies of written accounts of the earlier days of European colonization in the North American continent (Mann, 2006; Graever & Wengrow, 2021; Deloria, 2006). Archeological investigations have shown that the pre-Columbian Indigenous civilizations were very sophisticated (Mann, 2006; Graever & Wengrow, 2021). Mann confirms through his research that the guns of early European settlers were not as powerful as Native American arrows (Mann, 2006). Nonetheless, somewhere along the line of history, a narrative arose that portrayed Native American nations as inferior to Euro-American civilization.

The focus of this dissertation is not about the root of the ideologies that gave rise to the United States and narratives that Native American cultures and systems were inferior to European ones. What is important to this dissertation is that such ideologies did arise, and they did become prominent since at least the beginning of the 19th Century, which in turn shaped the laws and policies of the United States in relation to Native Americas. Before that, some Native American tribes were even in negotiations with the nascent United States to become states of the Union in the future (Deloria, 1985; Dunbar-Ortiz, 2014). Hence, from a legal and political perspective, the United States did recognize the independent sovereignty of Native American nations from the beginning (Deloria, 1985; Dunbar-Ortiz, 2014).

Such recognition and acceptance can be confirmed through the numerous internationally binding treaties that the United States signed and ratified with Native American tribes (Deloria, 1985; Fletcher, 2016; Canby, 2015). The nature of settler colonialism as described by Wolfe (2006) and Whyte (2016), however, is one that requires the destruction of the Native culture and

the replacement of such Native culture by the settler one. Once the United States became a country, the settler colonial imperative was to replace Native American cultures with mainstream, non-Native American United States culture regardless of any treaties that were signed between the United States and Native American nations (Wolfe, 2006; Whyte, 2016).

From the legal and political perspective, the attack came in the form of laws and policies designed to use the logic of the settler colonial power, the United States, to undermine Native American sovereignty and self-determination (Fletcher, 2016; Canby, 2015; Deloria, 1985; Wilkins & Lomawaima, 2001). First came the Trade and Intercourse Acts from the 1790s into the early 1800s (Fletcher, 2016; Canby, 2015; Deloria, 1985). After that came the cases that are recognized as the foundation or canons of construction for the legal relationship between Native American tribes and the United States (Fletcher, 2016; Canby, 2015; Deloria, 1985; Wilkins & Lomawaima, 2001). Such cases form part of the Marshall Trilogy, named after the United States Supreme Court Chief Justice at the time, Justice John Marshall.

The Marshall Trilogy cases are *Johnson v. McIntosh* in 1823, *Cherokee Nation v. Georgia* in 1831, and *Worcester v. Georgia* in 1832 (Fletcher, 2016; Canby, 2015; Deloria, 1985). Overall, the Marshall Trilogy cases established the federal trust relationship and declared the United States as trustee of the now domestic dependent nations of the country, Native American tribes (Fletcher, 2016; Canby, 2015; Deloria, 1985). Such cases also legally set the foundation for the subordinate nature of Native American tribes before the power of the United States. In fact, the language used in *Cherokee Nation v. Georgia* (1831) explicitly said that Native American tribes were now “in a state of pupillage. Their relations to the United States resemble that of a ward to his guardian.” (*Cherokee Nation v. Georgia*, 1831).

How did Indigenous nations that had been either formidable allies or foes to the nascent United States during the Revolutionary War become downgraded to wards of the United States, who now “[addressed] the President [of the United States] as their Great Father” (*Cherokee Nation v. Georgia*, 1831)? The answer to this question is complex and multifaceted, and beyond the scope of this dissertation. Nonetheless, the reality is that the United States did not take long to assert its superiority over Native American tribes (Fletcher, 2016; Canby, 2015; Deloria, 1985; Deloria, 1988; Dunbar-Ortiz, 2014). *Cherokee Nation v. Georgia* (1831) took place around 55 years after the beginning of Revolutionary War in 1776 (*Cherokee Nation v. Georgia*, 1831). Tribes that had been promised statehood during the Revolutionary War never became States of the Union (Deloria, 1985). Additionally, the United States proceeded to swiftly appropriate, through war, purchase, or treaty the lands and resources west of the Appalachian Mountains (Deloria, 1985; Fletcher, 2016; Dunbar-Ortiz, 2014; Immerwahr, 2019). Native American nations were in the way of the United States’ territorial expansion. Law and policy were powerful tools employed by the United States to not only cement its power over Native American tribes but also make tribes less of an obstacle to its westward expansion.

The rest of the 19th Century was a whirlwind of wars, treaties, territorial purchases, and increasing devastation of Native American lives, cultures, and territorial ownership (Fletcher, 2016; Dunbar-Ortiz, 2014; Dunbar-Ortiz, 2021). After establishing that Native American tribes were wards of the United States, the United States began to increasingly assert its will upon them, especially through policies of removal and containment (Fletcher, 2016; Canby, 2015; Deloria, 1985; Dunbar-Ortiz, 2014). The Indian Removal Act of 1830 and the numerous Trails of Tears that followed preceded the reservation era (Fletcher, 2016; Canby, 2015; Deloria, 1985; Dunbar-Ortiz, 2014). Native American reservations were generally created either through treaty,

agreement, or Executive Order (Fletcher, 2016; Canby, 2015; Deloria, 1985). Due to the Indian Removal Act of 1830, which decreed that Native Americans east of the Mississippi River must be removed to the lands west of the Mississippi River, the majority of Native American reservations were established in the western part of the country (Dunbar-Ortiz, 2014; Fletcher, 2016).

Originally, Native American reservations were ostensibly created to provide a homeland for Native American tribes and such reservations would be protected from Euro-American settler encroachment (Dunbar-Ortiz, 2014; Fletcher, 2016; Deloria, 1985); however, reservations were also created to contain Native Americans and to keep them from interfering with the expansionist project of the United States (Dunbar-Ortiz, 2014; Fletcher, 2016; Deloria, 1985). Soon after the establishment of many Native American reservations in the mid to late 19th Century, the United States introduced the General Allotment Act of 1887, which aimed to break down the Native American reservations into individual plots of land (Fletcher, 2016; Canby, 2015; Deloria, 1985; Dunbar-Ortiz, 2014; Bobroff, 2001). The architects of the General Allotment Act theorized that Native Americans would be converted into the European system of farming once they owned individual plots of land (Greenwald, 2002; Fletcher, 2016; Canby, 2015; Deloria, 1985; Dunbar-Ortiz, 2014; Bobroff, 2001). The General Allotment Act of 1887 was replaced by the Indian Reorganization Act of 1934 (Fletcher, 2016; Canby, 2015; Deloria, 1985; Dunbar-Ortiz, 2014).

By 1934, the United States realized that the assimilationist policies of the late 1800s had only succeeded in making Native American tribes economically dependent on the United States but not necessarily in assimilating tribes to Euro-American culture (Fletcher, 2016; Canby, 2015; Deloria, 1985; Dunbar-Ortiz, 2014). The Indian Reorganization Act of 1934 attempted to reinstate Native American sovereignty and self-determination, but only on the surface (Fletcher,

2016; Canby, 2015; Deloria, 1985; Dunbar-Ortiz, 2014). Fundamentally, the Indian Reorganization Act required signatory tribes to not only design their governments after that of the United States, but also to defer ultimate decision making to the Secretary of the Interior of the United States (Fletcher, 2016; Canby, 2015; Deloria, 1985; Dunbar-Ortiz, 2014). Despite its flaws, the period when the Indian Reorganization Act took place was a glimmer of hope in an environment where the law of the United States ruled supreme over Native American affairs.

The Indian Reorganization Act was followed by the Termination Era of the 1950s and 1960s, through which the United States sought to end federal recognition of Native American tribes (Fletcher, 2016; Canby, 2015; Deloria, 1985; Dunbar-Ortiz, 2014). The United States justified the Termination Era on the fact that certain Native American tribes had reached a level of self-sufficiency enough to become independent from the United States' guardianship (Fletcher, 2016; Canby, 2015; Deloria, 1985; Dunbar-Ortiz, 2014). Termination relegated tribes to a racial minority in the United States with no territory and no government-to-government relationship with the United States (Fletcher, 2016; Canby, 2015; Deloria, 1985; Dunbar-Ortiz, 2014). Based on the fundamentals of Native American law and policy, Native American tribes have a legal relationship with the United States, which is different than being a racial group with no territorial rights within the country (*Cherokee Nation v. Georgia*, 1831; *Worcester v. Georgia*, 1832; Deloria, 1985; Dunbar-Ortiz, 2014).

After the enactment of the Indian Reorganization Act, Native American tribes had the opportunity to design their own governments. Such governments carried similar structures to that of the United States, with three branches of government, as well as certain levels of jurisdictions (Fletcher, 2016; Canby, 2015; Deloria, 1985; Dunbar-Ortiz, 2014). The legal system of the United States divides crimes and jurisdictions between civil and criminal activities and disputes.

Questions over who had criminal and civil jurisdiction over tribal affairs began to be scrutinized by Congress and the Courts from the 1950s onward, with Public Law 280 enacted by Congress in 1953 (Fletcher, 2016; Canby, 2015; Deloria, 1985; Wilkins & Lomawaima, 2001).

Public Law 280 delegated criminal and civil jurisdiction for controversies that occurred in Native American reservations to five states, which were California, Minnesota, Nebraska, Oregon, and Wisconsin (Fletcher, 2016; Canby, 2015; Wilkins & Lomawaima, 2001). In 1978, the Supreme Court of the United States ruled on *Oliphant v. Suquamish Indian Tribe* (1978) and affirmed that tribes did not have criminal jurisdiction over crimes committed by non-Indians in Native American reservations (Fletcher, 2016; Canby, 2015; Hendry & Tatum, 2016). In *Nevada v. Hicks* (2001), the Supreme Court ruled that state enforcement officers could carry out warrant orders within Native American reservations (Fletcher, 2016; Canby, 2015; Hendry & Tatum, 2016). Such actions by Congress and the United States follow a pattern, which is to diminish Native American sovereignty and self-determination over time (Wilkins & Lomawaima, 2001; Getches, 2019; Hendry & Tatum, 2016).

The fundamentals of Native American law and policy, comprised of the Marshall Trilogy cases, established that the only entity that had jurisdiction over Native American affairs, especially on tribal lands was the United States (*Cherokee Nation v. Georgia*, 1831; *Worcester v. Georgia*, 1832). Conversely, the Marshall Trilogy cases also formed a foundation for the narrative that Native American tribes were subservient to the United States and therefore, inferior in their development as a civilization (Fletcher, 2016; *Cherokee Nation v. Georgia*, 1831). The actions of the United States after the establishment of the Marshall Trilogy cases and the implementation of the Indian Removal Act of 1830 cemented such a narrative within the ethos of

the country (Dunbar-Ortiz, 2014; Fletcher, 2016; Canby, 2015). As a result, the Marshall Trilogy cases have carried the burden of being both positive and negative for Native American tribes.

Not many court cases or Acts of Congress carry the same burden as the United States Supreme Court cases known as the Marshall Trilogy cases. In a historical pattern where the United States legal and political machine ensures its superiority over Native American legal and political systems, such cases are unique. Native American tribes saw a brief glimmer of positivity when their legal and political rights were upheld through the Indian Reorganization Act of 1934 (Dunbar-Ortiz, 2014; Fletcher, 2016; Canby, 2015). Such hopes were thwarted by the laws and policies of the 1950s, mainly Public Law 280 and the Termination Era Acts of the 1950s and 1960s. Although the period between the late 1960s and 2025 has been labeled the Self-Determination Era, several decisions by the United States Supreme Court have seriously undermined Native American sovereignty and self-determination.

Fundamentals of United States Water Law

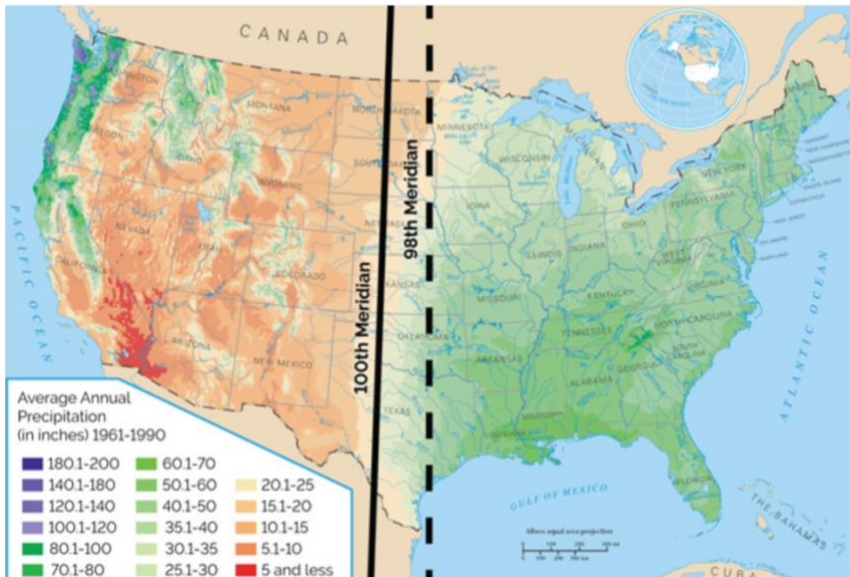


Figure 1 - Map of 100th Meridian

<https://www.earthmagazine.org/article/dividing-line-past-present-and-future-100th-meridian/>

The foundation of Native American water rights lies with *Winters v. United States* (1908), a United States Supreme Court case adjudicated in 1908 (*Winters v. United States*, 1908; Royster et al., 2023; Royster, 2011; Anderson, 2015; Anderson, 2010; Hawkins, 2012;

McGovern, 1994). The adjudication of *Winters* gave rise to what is known as Winters doctrine,

or the reserved rights doctrine (Royster et al., 2023; Royster, 2011; Anderson, 2015; Wilkins & Lomawaima, 2001). Today, there are three main legal doctrines that control the governance and use of water in the United States (Craig et al., 2017; Royster et al., 2023; Glennon, 2009; Glennon, 2002; Thompson et al., 2018). The three legal doctrines are the riparian doctrine, the prior appropriation doctrine, and the reserved rights doctrine (Craig et al., 2017; Royster et al., 2023; Glennon, 2009; Glennon, 2002). In the eastern part of the country, the riparian doctrine is paramount due to the abundance of water (Craig et al., 2017; Glennon, 2009; Glennon, 2002; Thompson et al., 2018).

Under the riparian doctrine, the right to use water is based on one's ownership of lands that border a waterway (Craig et al., 2017; Glennon, 2009; Glennon, 2002; Thompson et al., 2018). Such waterways are legally recognized to be appurtenant to the land that they border (Craig et al., 2017; Glennon, 2002; Thompson et al., 2018). Landowners in the eastern part of the country are legally allowed to use the waters appurtenant to their properties so long as such uses meet the reasonable use doctrine, meaning that their use of the water must be reasonable and not cause harm to other users (Craig et al., 2017; Glennon, 2002; Thompson et al., 2018). An unreasonable use of water under the riparian doctrine would be a paper mill that pollutes the water that other users downstream would otherwise use (Thompson et al., 2018; Glennon, 2009). Such a system of water governance would not function well in the western part of the United States because there are fewer sources of water there (Craig et al., 2017; Thompson et al., 2018; Glennon, 2009; Glennon, 2002).

As settler colonialism expanded westward from the original 13 Colonies of the United States, a novel system of water governance emerged. The newly established territories and states in the lands west of the 100th Meridian began to adopt the prior appropriation doctrine to manage

the waters of the region (Craig et al., 2017; Glennon, 2009; Glennon, 2002; Thompson et al., 2018, see Figure 1). The prior appropriation doctrine emerged due to greater scarcity of water in the western part of the country (Craig et al., 2017; Glennon, 2009; Glennon, 2002; Thompson et al., 2018). As such, the prior appropriation doctrine created a first come, first served system where appropriators had to establish their claim first to have a senior claim to the waters of a given source (Craig et al., 2017; Glennon, 2009; Glennon, 2002; Thompson et al., 2018).

The prior appropriation doctrine created a hierarchy of senior and junior water appropriators that has endured to the 21st Century (Craig et al., 2017; Glennon, 2009; Glennon, 2002; Thompson et al., 2018). The senior appropriators have water claims with older priority dates, whereas the junior appropriators have water claims with more recent priority dates (Craig et al., 2017; Glennon, 2009; Glennon, 2002; Thompson et al., 2018). In order to establish a water rights claim under the prior appropriation doctrine, appropriators had to divert the water from the source or make a public claim to the water (Craig et al., 2017; Thompson et al., 2018). Additionally, they had to ensure that the water in question was appropriable and from an appropriable source (Craig et al., 2017; Thompson et al., 2018). Lastly, the water appropriator had to dedicate the water for beneficial uses (Craig et al., 2017; Thompson et al., 2018).

The third system of water governance that developed in the United States is the reserved rights doctrine, which is a combination of the prior appropriation doctrine and the riparian doctrine and applies to all federal reservations (Craig et al., 2017; Royster et al., 2023; Thompson et al., 2018; McGovern, 1994; *Arizona v. California*, 1963). Under the reserved rights doctrine, users have a priority date, which is the date when the reservation was established and the water often must be appurtenant to the reservation, although that is not always the case (Craig et al., 2017; Royster et al., 2023; Thompson et al., 2018). Originally, the reserved rights

doctrine only applied to the water rights of Native American reservations (*Winters v. United States*, 1908; Royster et al., 2023; *Arizona v. California*, 1963). Over time, however, it has been extended to apply to all types of federal reservations, including not only Native American reservations, but also to federal reservations for military bases, national parks, and national forests (Royster et al., 2023; *Arizona v. California*, 1963; *United States v. New Mexico*, 1978).

Between 1908 and 1978, Native American tribes mainly used the litigation process to legally secure their water rights (Royster et al., 2023; Folk-Williams, 1988; Hays, 2006; McGovern, 1994). After 1978, Native American tribes began working with the federal government, states, and other stakeholders to settle their water rights claims through Congressionally ratified water settlements (Royster et al., 2023; McCool, 2002; Bark & Jacobs, 2009; USDOJ, 2025). Water related collaborations between states and Native American tribes began in 1978, with the Ak-Chin Water Settlement Act in Arizona (DOI, 2025; McCool, 2002). In theory, Native American water settlements are better than water litigation because they are less contentious, take less time, are less costly, and facilitate federal appropriations for the construction of water infrastructure within Native American reservations (Cosens, 2003; McCool, 2002; McGovern, 1994; Folk-Williams, 1988; Stern, 2017).

Water settlements, however, can be just as contentious as water litigation, can take a very long time to negotiate, and are very expensive, both in the negotiation phase and the implementation phase (DeJong, 2014; Hays, 2006; Klee & Mecham, 2005; Stern, 2017). Nonetheless, water settlements do offer the opportunity of greater water sovereignty and self-determination to Native American tribes (Chambers & Echohawk, 1991; Colby & Young, 2018; Bark & Jacobs, 2009; Bark, 2009; Bark, 2006). Ultimately, the Native American water settlement process is not as streamlined as initially envisioned by the negotiating parties. Since 1978, only

35 Native American water settlements have been ratified by Congress (USDOJ, 2025). There's also the question of what tribes give up in exchange for wet water rights and funding for water infrastructure on reservation lands.

Native American Water Sovereignty and Self-Determination

The implications of how and why the reserved rights doctrine began to legally apply to all federal reservations and not just Native American reservations is important to this dissertation. Such a process indicates a homogenization trend of how American Indian law and policy is viewed by the legal system of the United States. The trend highlights a move from viewing Native American law and policy as distinct from mainstream American law and policy to seeing no difference between the two. Such a trend is not surprising given that the United States has historically attempted to absorb Native American tribes into mainstream society through various assimilationist laws and policies (Dunbar-Ortiz, 2014; Canby, 2015; Fletcher, 2016; Anderson, 2015; Deloria, 1985).

There are several reasons why such a trend could be viewed as detrimental to Native American sovereignty and self-determination; however, one major reason is that Native Americans have historically enjoyed a politically driven relationship with the United States and not necessarily a race-driven one, in theory (Wilkins & Lomawaima, 2001; Fletcher, 2016; Canby, 2015; Saito, 2020). On paper, Native American tribes enjoy a government-to-government relationship with the United States federal government and are separate entities from the states of the Union (Wilkins & Lomawaima, 2001; Fletcher, 2016; Canby, 2015; Anderson, 2015). Reality, however, demonstrates that Native American sovereignty and self-determination has not always been upheld throughout the history of the United States (Dunbar-Ortiz, 2014; Anderson, 2015; Anderson, 2010; Royster, 2011).

A historical analysis of Native American law and policy through the lens of reserved water rights reveals a concerted effort on the part of the United States legal and political system to diminish Native American sovereignty and self-determination over time (Anderson, 2015; Anderson, 2010; Anderson, 2006b; Brienza, 1992; Getches, 2019; Hendry & Tatum, 2016). While Native American sovereignty and self-determination has been diminishing, the power of states over the tribes located within their boundaries has increased (*Colorado River Water Conservation District v. United States*, 1976; *Oliphant v. Suquamish Indian Tribe*, 1978; *Arizona v. San Carlos Apache Tribe*, 1983; *Nevada v. Hicks*, 2001). Importantly, such a trend has been observed within the history of Native American attempts to legally secure their water rights, regardless of whether they undergo the litigation or water settlement process (Royster et al., 2023; Anderson, 2010; Cosens, 2003; Royster, 2011; Brienza, 1992).

The evolution of Native American water rights provides an excellent example of how Native American sovereignty and self-determination has been eroding over the years (*Colorado River Water Conservation District v. United States*, 1976; *Arizona v. San Carlos Apache Tribe*, 1983; *Arizona v. Navajo Nation*, 2023). Conversely, a legal and historical analysis of Native American water rights could provide clues as to how such rights could be strengthened in the future. For the purpose of this dissertation, Native American sovereignty and self-determination refer to the inalienable rights that Native American Nations have as sovereign nations separate from states and with the United States as trustee (*Cherokee Nation v. Georgia*, 1831; *Worcester v. Georgia*, 1832; Wilkins & Lomawaima, 2001). Regarding water rights, Native American tribes who fully exercise their sovereignty and self-determination would be able to decide how to manage, govern, distribute, and administer such rights.

Purpose of Research and Research Questions

The main purpose of this dissertation is to review the extent to which Native American sovereignty and self-determination have been weakened by the legal and political system of the United States. A significant part of this investigation also focuses on ways through which Native American water sovereignty and self-determination may be strengthened through the existing frameworks of water litigation and water settlements. Through the trust relationship between the United States and Native American tribes, the lands, territories, and resources of Native Americans are held in trust by the United States (Fletcher, 2016; Wilkins & Lomawaima, 2001; Deloria, 1985; Agee, 2011; Anderson, 2006a). Hence, natural resources like water, uranium, and coal are managed by the United States as trustee (Fletcher, 2016; Wilkins & Lomawaima, 2001; Deloria, 1985; Agee, 2011; Anderson, 2006a). For example, when mining contracts are issued for a mining company to conduct mining operations within a Native American reservation, the contracts must ultimately be approved by the Secretary of the Interior (Fletcher, 2016; *Cherokee Nation v. Georgia*, 1831).

Water is essential for economic development activities and for life, which makes it an essential resource for both Native American tribes and the United States. As such, a fundamental focus of this dissertation is to investigate and review how Native American tribes can retain sovereignty and self-determination over their water rights when they undergo the water litigation or settlement process. Native American water sovereignty and self-determination have been subject to the same fate as other kinds of sovereignty and self-determination that tribes inherently have, such as the ability to prosecute their own tribal members for major crimes (Fletcher, 2016; Wilkins & Lomawaima, 2001; Deloria, 1985; Agee, 2011; Anderson, 2006a). In order to understand how Native American water sovereignty and self-determination have been weakened

by the laws and policies of the United States over the years, one must also understand how Native American water law interacts with American Indian law and policy in general.

Methods and Methodology

Due to the sensitivity of researching Native American sovereignty and self-determination through the lens of water rights, time, and monetary constraints, the research for this dissertation was mainly done through archival and scholarly research. First, a robust literature search was conducted to determine if the research undertaken by this dissertation will contribute to the fields of Native American Studies and Law. Over 35 scholarly and law journal articles, as well as books about Native American reserved water rights were reviewed. Second, 11 water settlement acts that have been Congressionally ratified for tribes in Arizona were reviewed. A detailed review of what was gained by the tribe, waived, added or withdrawn through amendments, funding received, and quantity of water rights received was made. Tables were created to organize the information gathered from the review of the 11 Native American water settlements in Arizona. Finally, the information and data gathered through this research was analyzed and synthesized to answer the questions posited for this dissertation.

Positionality Statement

This dissertation was conceived out of concern that water, essential to life and sacred to Indigenous Peoples around the world, has been privatized and commodified in many places around the world. In the United States, water is considered a usufructuary right, meaning that it is in theory owned by the public but can also be alienated from the public for beneficial purposes (Thompson et al., 2018; Glennon, 2009). In the western part of the United States, the prior appropriation doctrine has reigned to the point that some water experts in the region have warned that there are no more appropriable water rights in the American Southwest (Glennon, 2009;

Glennon, 2002; Thompson et al., 2018). The prior appropriation doctrine allows appropriators to appropriate the surface waters of the region for beneficial use (Craig et al., 2017; Glennon, 2009; Thompson et al., 2018). Thus, although water is considered a public good, the prior appropriation doctrine is a form of privatization because once the water is appropriated by an appropriator, it cannot be appropriated by someone else (Craig et al., 2017; Thompson et al., 2018; Glennon, 2009).

Moreover, United States foreign policy was exerted on Native American tribes from the founding of the country and up until the latter part of the 1800s (Dunbar-Ortiz, 2021; Dunbar-Ortiz, 2014; Saito, 2020; Deloria, 1985). As an Indigenous woman from El Salvador, with Lenca and Spaniard heritage, the concept of United States foreign policy is fundamental to the development of this dissertation. United States foreign intervention in El Salvador during the 1980s prolonged a civil war there, which caused a mass exodus of migrants from El Salvador to the United States, which included my family. Historian Roxanne Dunbar-Ortiz explains the relationship between United States foreign interventions and subsequent influx of immigrants from the affected country into the United States (Dunbar-Ortiz, 2021). My parents immigrated to the United States due to the poverty and violence that the civil war caused upon the population of El Salvador. I left El Salvador at the age of 10, without much knowledge about my own Indigenous background. It was not until I was an undergraduate student at the University of Denver, that I began learning the true history of the Indigenous Peoples of the American continent, from Canada and all the way to Tierra del Fuego in South America.

The rhetoric about Indigeneity in El Salvador during the years that I attended elementary school there was that El Salvador was a nation of *mestizos*, meaning that there was no majority white or Indigenous population in the country. In the words of one of my former elementary

school teachers, we, the students in her classroom were mestizos because our skin tone did not depict either enough whiteness or Indigenous pigments. As a result, I grew up believing my identity as *mestizo*, while ignoring any connection to a particular Indigenous identity.

Such an ignorance of my own Indigenous background stems from the history of El Salvador, war, and poverty. Both sides of my family come from the mountains of the country, which form the boundary between El Salvador and Honduras. Historically, El Salvador criminalized Indigenous identities after a massacre in 1932, through which the state murdered thousands of Indigenous persons who had risen up against the government (Tilley, 2002; Gellman, 2019; Chevez, 2016). Henceforth, the Indigenous Peoples of El Salvador went into a default of blending into the *mestizo* population and actively maintaining their Indigenous identity behind closed doors or actively denying their Indigeneity in all its forms (Tilley, 2002; Gellman, 2019; Chevez, 2016).

The anti-Indigenous rhetoric of El Salvador employed overt racist tactics to thwart any potential future Indigenous uprisings in the country. Such racist tactics have manifested over time in a population that views Indigeneity as inferior, dumb, ugly, and anti-development. As such, not many *mestizos* in El Salvador acknowledge their tribal identities (Tilley, 2002). Such people would rather acknowledge their European ancestry. The anti-Indigenous rhetoric in the country has been internalized to the point where mothers don't pause when they tell their children to "not behave like an Indian" when their child throws a tantrum or when an adult calls themselves an "Indio" when making a foolish mistake. With such negative connotations, it is no surprise that many *mestizos* in El Salvador will actively deny their Indigenous roots.

Nonetheless, I was born into this culture, bearing the *mestizo* identity and critically observing my

own behavior, as well as that of others around me. For example, I witnessed the racism against a great-aunt whose physiognomy was more Indigenous than that of my grandmother.

In early 2021, I decided to pursue a PhD in American Indian Studies at the University of Arizona in order to reconnect with my own Indigenous roots and to learn about the root causes of the issues we have in society today. Four years later, I have achieved what I set out to do. I have reconnected with my Indigenous roots and tapped into a network of Lencas who were displaced by the war and poverty that shook El Salvador during the latter part of the 20th Century. As for the root causes of the problems that we have in society today, I have concluded that the forces of settler colonialism are a significant component to such strife. It is no mistake that despite global societal advances, the so-called Global South remains mired in poverty and violence. My family would have likely remained in El Salvador were it not for the poverty and violence fomented by the civil war. As a result, one must recognize the clear connection between foreign intervention and migration. People don't leave their countries just because they want to get rich quicker. Some do, but the vast majority would rather stay in their countries if it were safe and feasible to do so.

In the United States, many Native American tribes experience similar levels of poverty and violence to that of some countries in the Global South, yet they are in their own homelands. The similarities are striking, and they can be traced to the forces of classical colonialism, which sought to only extract resources and labor from the colonies to settler colonialism, which has sought to destroy and replace Indigenous societies (Wolfe, 2006; Whyte, 2016). The history of the United States is rife with examples of how the nation state systemically and methodically stripped Native American tribes from their territories, lands, and resources to eventually compel

them to be fully dependent on its mercy (Dunbar-Ortiz, 2014; Deloria, 1985; Anderson, 2006b; Wilkins & Lomawaima, 2001).

Similarly, after the colonies of Spain gained independence in 1821, the United States did not take long to cast its colonial ambitions on Latin America (Dunbar-Ortiz, 2021; Immerwahr, 2019). The Monroe Doctrine of 1823 affected both the Indigenous Peoples of North America and Latin America (Dunbar-Ortiz, 2021; Immerwahr, 2019). Through the Monroe Doctrine, the United States decreed that the Indigenous Peoples of the Americas, as well as the nascent Latin American nations were under its protection and out of the reach of other European empires who might want to further colonize the region (Dunbar-Ortiz, 2021; Immerwahr, 2019). Thus, although the United States generally did not overtly colonize the countries of Latin America, its influence over the region has been felt by countless generations through the economic influence of its corporations and the force of its military, not unlike Native American tribes (Dunbar-Ortiz, 2014, Dunbar-Ortiz, 2021; Immerwahr, 2019).

A significant colonial drive of the United States in the 19th Century was to expand its territory from “sea to shining sea”, meaning that the country would expand from the Atlantic coast to the Pacific coast (Dunbar-Ortiz, 2014; Deloria, 1985; Immerwahr, 2019). In its quest to achieve this goal, the United States colonized vast areas of North America that were inhabited by Indigenous Peoples and were also much dryer than the eastern part of the country (Dunbar-Ortiz, 2014; Deloria, 1985; Craig et al., 2017). The United States actively encouraged and incentivized Euro-American settlers to move into the western part of the country and turn the arid region into productive farms, mines, and cities (DeJong, 2014; Dunbar-Ortiz, 2014; Deloria, 1985).

Such activities competed with the Indigenous Populations in the region, who also needed the water for their daily activities, economies, and wellbeing (DeJong, 2014; Dunbar-Ortiz,

2014; Deloria, 1985; Wilkins & Lomawaima, 2001). The competing interests and uses of the waters of the region gave rise to the prior appropriation doctrine, which is mainly managed by states in the present, and the reserved rights doctrine, which applies to Native American reserved water rights, as well as federal reserved water rights (Craig et al., 2017; Glennon, 2009; Royster et al., 2023). The reserved rights doctrine recognizes that Native American reservation need water rights to achieve their purpose, which was generally to serve as the permanent homeland of the tribes living there (Royster et al., 2023; Fletcher, 2016; Deloria, 1985; Wilkins & Lomawaima, 2001). Despite the legal recognition of their water rights, Native American tribes have been struggling to legally secure their water rights for more than 100 years (Royster et al., 2023; Royster, 2011; Brienza, 1992; Anderson, 2010).

Water is essential for a healthy and plentiful life, whether one is human or any other living organism on Earth. Water is also vital for the economic health of both Native American tribes and non-Indigenous entities in the western part of the country. While problematic, the prior appropriation doctrine highlights the importance of water for economic development by emphasizing that appropriated waters must be used for beneficial purposes (Glennon, 2009; Craig et al., 2017; Thompson et al., 2018). The western part of the country is so arid that it often requires appropriators to develop infrastructure to capture the water and deliver it to the site where it will be used (Craig et al., 2017; Thompson et al., 2018; Glennon, 2009). As a result, the fact that many Native American tribes are still struggling to secure legal access to their water rights is problematic for their economic development, as well as their wellbeing. While the focus of this dissertation is Native American sovereignty and self-determination, the angle of analysis is Native American water rights sovereignty and self-determination. I decided to take such an

angle with my research because it is very difficult, if not impossible to achieve sovereignty and self-determination without tangible water rights.

Additionally, water is not only pivotal to the sovereignty and self-determination of Native Americans in the United States, but also essential to the sovereignty and self-determination of Indigenous Peoples around the world. Hence, this dissertation is designed to be an educative tool rather than a prescriptive tool. As an academic researcher, it is not my role to tell Native American tribes what to do with their water rights, but to document the existing processes through which Native American tribes can gain legal access to their water rights. The ways through which Native American tribes can secure their water rights in the United States might serve as a model through which Indigenous Peoples around the world may do so as well. Because of water's pivotal role to virtually every aspect of life and especially economic development, both nation states and transnational corporations have sought to control it. Examples of such attempts include the privatization of water infrastructure, privatization of water itself, and hydroelectric dams (Barlow & Clarke, 2004; Shiva, 2016). It is my hope that by recognizing and emphasizing the complex connections between settler colonialism, American Indian law and policy, the foreign policy of the United States, and migration through the lens of Native American water law, I can educate others about such important topics.

Literature Review

The topic of Native American water rights has been written about in numerous books, academic articles, and law journal articles. Over 35 scholarly works were reviewed to determine the relevance and importance of the research conducted for this dissertation. After such a review, it was determined that research related to Native American sovereignty and self-determination is important and relevant. The scholarly works affirm that there is a strong relationship between

Native American law and policy and Native American reserved water rights. Both systems were created by the legal minds of the United States. Among the levels of scholarship that focus on these topics, there are those that review thoroughly the relationship between Native American law and policy and Native American reserved water rights but stop short of critically analyzing sovereignty and self-determination through such a relationship.

For the purposes of this literature review, the scholarly works were divided into four broad categories:

- 1) overview of Native American reserved water rights,
- 2) Native American water litigation,
- 3) Native American water settlements, and
- 4) Native American water litigation and settlements in relation to water sovereignty and self-determination.

Eight of the articles reviewed focused solely on an overview of Native American water rights, and three of the articles focused solely on Native American litigation. The rest of the articles focused on either Native American water settlements only or Native American water litigation and settlements in the context of Native American sovereignty and self-determination. Of these sources, 14 focused solely on Native American water settlements and 15 focused on Native American water litigation and settlements in the context of Native American sovereignty and self-determination. The concentration of articles in the latter categories indicates that scholars and academics understand both the complexity of Native American water rights and the fact that increasingly, Native American tribes are leaning more toward settlements than litigation.

Beyond the four main categories described above, there are questions of how thoroughly those articles reviewed Native American reserved water rights and whether the arguments in the

articles leaned toward the settlement process or the litigation process. For example, under the first category, an overview of Native American reserved water rights, Anderson (2006a) gives an analysis of Native American water litigation and settlements. The analysis is good, but it is not very thorough as it begins with the development of the Winters Doctrine and does not mention Native American water sovereignty and self-determination. Breckenridge (2006), Cosens (2002), DeJong (2007), Massie (1987), McGreal and Eden (2021), Royster (2006b), and Royster (1994) also provide a general overview of Native American water rights with various levels of thoroughness.

The various levels of thoroughness in the first category depend on the specific lens through which the authors review water law. Breckenridge (2006) focuses on Native American water codes, so the scope of his analysis is narrowed to laws and policies affecting Native American water codes. Cosens (2002) and DeJong (2007) focus on Native American water law through the lens of Arizona law, which narrows the scope to the state level while they also reference national water law. McGreal and Eden (2021) are also constrained by their focus on Arizona law, but because their article is about Arizona groundwater law, the section about Native American water rights in Arizona is small. The articles by Royster (2006b and 1994) also meet with similar constraints because Royster (2006b) is about Native American groundwater law and Royster (1994) is about the various interpretations of the reserved rights doctrine. In all, the articles in the first category provide a snapshot of Native American reserved water rights in general, but they are inhibited by the constraints of their given topics and the complexity of Native American water rights in general.

The second category within this literature review is one that focuses mainly on Native American water litigation. The sources in this category are written by Crass (1997), Hedden-

Nicely (2016), and Royster (2011). Similarly to the first category, the articles in this category are limited by the lens through which Native American water rights are being reviewed. Of the three sources in this category, the Crass (1997) article is the most thorough because it focuses on how the reserved rights doctrine has been weakened by the court system in the United States. The writings of Hedden-Nicely (2016) and Royster (2011) on the other hand, have a very narrow focus, which therefore constrains their scope. For example, Hedden-Nicely (2016) focuses on how the McCarran Amendment was ultimately applied to Native American reserved water rights by the United States Supreme Court. Conversely, Royster (2011) focuses on the development of the Winters Doctrine since 1908. Despite their overall narrow focus, the articles and chapter in this section offer valuable insights into how the litigation process has affected Native American reserved water rights.

In contrast to the category on Native American water litigation, the category on Native American water settlements is comprised of 14 sources. The articles and books in this category are written by Bark and Jacobs (2009), Bark (2009), Bark (2006), Bertram (2017), Chambers and Echohawk (1991), Colby and Young (2018), Colby et al. (2005), Cosens (2003), Curley (2021), DeJong (2014), Klee and Mecham (2005), Lewis and Hestand (2006), McCool (2002), and McCool (1993). Such articles cover a range of topics related to Native American water settlements. Bark and Jacobs (2009), Bark (2009), Bark (2006), DeJong (2014), and Lewis and Hestand (2006) focus on Native American water settlements in Arizona. As a result, such articles focus on the history of Native American water settlements, their benefits, and their potential weaknesses in the context of Arizona.

Bertram (2017), Chambers and Echohawk (1991), Colby and Young (2018), Colby et al. (2005), and Klee and Mecham (2005) focus mainly on the potential benefits of Native American

water settlements as a whole. Curley (2021) and McCool (2002), on the other hand, focus on critiquing Native American water settlements, although McCool (2002) offers a more balanced critique through which he analyzes the pros and cons of such water settlements. Lastly, Cosens (2003) and McCool (1993) discuss ways through which Native American water settlements can strengthen Native American water rights.

In all, the category on Native American water settlements, along with the subcategories identified, demonstrate that there is a strong interest on the part of Native American water rights scholars to investigate the topic. The strength of such sources lies in the valuable information that they provide regarding such an important tool for Native American tribes to secure their water rights. Nonetheless, their weaknesses are similar to the categories on the overview of Native American water rights and Native American water litigation because some of them just focus on the water settlement process and do not offer a robust background of Native American reserved water rights. In order for readers to understand why Native American water settlements are beneficial for Native American tribes and other parties involved, it is important for authors to facilitate at least an overview of how Native American water rights developed historically. Such context facilitates understanding of the complexity of Native American water rights and why the negotiation process may be more appealing to the parties involved.

The fourth and final category of sources reviewed in this literature review focus on Native American water litigation and settlements in relation to Native American sovereignty and self-determination. The articles are written by Agee (2011), Anderson (2015), Anderson (2010), Anderson (2006b), Brienza (1992), Candrian (2011), Clayton (2024), DesRosier (2015), Folk-Williams (1988), Getches (1986), Hawkins (2012), Hays (2006), Joyce (2024), McGovern (1994), and Royster (2006a). Such sources demonstrate that scholars of Native American water

law are aware that Native American water settlements offer potential solutions for greater sovereignty and self-determination to tribes. The articles written by Anderson (2015), Anderson (2010), Anderson (2006b), Brienza (1992), Folk-Williams (1988), and McGovern (1994) offer very thorough analysis of Native American water litigation and settlements in relation to Native American sovereignty and self-determination; however, of these articles, the one written by Anderson (2010) surpasses all of the other articles in this category in terms of thoroughness of analysis combined with a robust review of the history related to Native American water law.

Agee (2011) and Clayton (2024) do not offer a thorough historical review of Native American water history with their analysis. Similarly, the articles by Candrian (2011), DesRosier (2015), Getches (1986), Hawkins (2012), Hays (2006), Joyce (2024), and Royster (2006a) are limited by the scope of their topics. Candrian's (2011) article focuses on the struggles by the Navajo Nation to secure its water rights. DesRosier's (2015) article focuses on Native American sovereignty and self-determination through water settlements and in-stream flows in the Pacific Northwest. Similarly, Hays (2006) focuses on the struggles of the Nez Perce tribe to secure their water rights through both litigation and the water settlement process. Getches (1986), Hawkins (2012), and Joyce (2024) focus on actions that tribes can take to legally secure their water rights. Specifically, Getches (1986) and Joyce (2024) write about Native American water marketing, whereas Hawkins (2012) writes about Native American water rights implementation. Finally, Royster (2006a) focuses on actions that the United States can take to strengthen the federal trust relationship.

Ultimately, this literature review has demonstrated that the field of Native American water rights is well researched. Nonetheless, such research is often fragmented and limited to the scope of a particular water topic being researched. Additionally, an issue observed in the majority

of the literature reviewed for this dissertation is that the connection between Native American water rights, Native American law and policy, and United States history is often overlooked or reviewed in a fragmented manner. Native American water rights are very contentious and while it appears that tribes are increasingly leaning toward the settlement process, such a process requires careful negotiation. Having an informed and educated negotiation team is imperative for the success of future water settlement negotiations. Anderson (2010) was the only article that came close to the breath of information that this dissertation covers.

The main difference between this dissertation and Anderson (2010) is that this research emphasizes Native American water rights in the southwest of the United States and specifically reviews the litigation and settlement process in Arizona. Such a difference is important because much of the research conducted on Native American water rights requires localized knowledge as water issues will often be related to the particular climate of the region in question. Thus, this literature review also confirms that this dissertation adds relevant knowledge to the fields of American Indian Studies and Law through the research of Native American water sovereignty and self-determination in the American southwest.

Map of Chapters

This dissertation is comprised of 6 chapters, including this introductory chapter. The purpose of Chapter 1 was to introduce the topic, the relevance of the research, the methods and methodology for the research, and the positionality statement of the author. Chapter 2 will review the history of Native American water rights in the context of United States history. Chapter 3 will review Native American water litigation. Chapter 4 will review Native American water settlements. Chapter 5 will conduct a comparative analysis of Native American water litigation and water settlements in the context of Arizona. Lastly, Chapter 6 will review the current

panorama of Native American water sovereignty and self-determination and propose a path forward.

CHAPTER 2: EMERGENCE OF NATIVE AMERICAN WATER RIGHTS IN THE CONTEXT OF UNITED STATES SETTLER COLONIALISM

Much history has taken place between the establishment of the foundational principles of American Indian law and policy in the early 1800s and 2025. As a result, in order to understand how Native American water sovereignty and self-determination have eroded over the years, one must take a historical approach. The history of the United States is intertwined with the history of Native American tribes. When the United States was seeking independence from the British Crown, it allied with certain Native American tribes (Dunbar-Ortiz, 2014; Deloria, 1985). As a nascent country, the United States signed and ratified legally binding treaties with Native American tribes to secure additional territory and resources (Dunbar-Ortiz, 2014; Fletcher, 2016; Deloria, 1985). Such treaties are important for Native American water rights because they form the foundation for what eventually became Native American reservations.



Figure 2 - Westward Expansion of the US
<https://education.nationalgeographic.org/resource/territorial-gains/>

The Marshall Trilogy and its Far-Reaching Implications

Nearly 50 years after the American Revolution, the United States was figuring out ways through which it could expand its territory despite the Native Americans already

inhabiting such lands (Canby, 2015; Fletcher, 2016; Wilkins & Lomawaima, 2001; Immerwahr,

2019). Native Americans had stood between Euro-American settler ambitions for expansion and the lands beyond the Appalachian Mountains since the western boundary of the thirteen colonies was marked by those mountains (Immerwahr, 2019; Fletcher, 2016). In fact, historians Daniel Immerwahr and Roxanne Dunbar-Ortiz have written about how a major reason behind the Revolutionary War was the restriction on territorial expansion imposed by the British Crown (Immerwahr, 2019; Dunbar-Ortiz, 2014).

The Proclamation of 1763 prohibited Euro-American expansion beyond the western boundaries of the original 13 colonies (Immerwahr, 2019; Canby, 2015; Fletcher, 2016). Such a restriction did not deter Euro-American expansion and by 1823, the territory of the United States had expanded into the Ohio Valley and into the lands obtained through the Louisiana Purchase of 1803 (Dunbar-Ortiz, 2021; Dunbar-Ortiz, 2014; Immerwahr, 2019). Inevitably, numerous Native American nations were forcibly displaced through this original wave of expansion (Deloria, 1985; Dunbar-Ortiz, 2014; Canby, 2015; Fletcher, 2016).

As the United States expanded westward and strengthened as a nation, it was imperative to determine the role of Native American tribes within its own legal system (Dunbar-Ortiz, 2014; Dunbar-Ortiz, 2021; Fletcher, 2016; Canby, 2015). Having spatial and political control over the matters that took place within Indian Country was fundamental to the territorial and economic goals of the United States (Dunbar-Ortiz, 2014; Deloria, 1985; Fletcher, 2016; Anderson, 2015). By 1823, the United States Congress had already passed a series of Trade and Intercourse acts that dictated that Native American tribes could conduct business only with the United States (Canby, 2015; Fletcher, 2016). As a result, Native American tribes could not conduct business with either states or Euro-American settlers (Canby, 2015; Fletcher, 2016).

Another major restriction on the ability of Native American tribes to conduct business with whomever they wanted to, came through the passage of the Monroe Doctrine in 1823 (Dunbar-Ortiz, 2021; Immerwahr, 2019). The Monroe Doctrine prohibited further incursion by European empires on the American continent (Dunbar-Ortiz, 2021; Immerwahr, 2019). Native American tribes were affected by the Monroe Doctrine because now the only nation they were able to interact with on a nation-to-nation level was the United States, especially as the United States expanded westward (Dunbar-Ortiz, 2021). Through such territorial expansion, the nation-to-nation relationship between Native American tribes and the United States continued, but it steadily evolved (Fletcher, 2016; Deloria, 1985). During the years of the Revolutionary War and the early years of the United States as a nation, many treaties between the United States and tribes were peace treaties (Deloria, 1985; Fletcher, 2016; Canby, 2015). According to Vine Deloria, Jr., the nature of treaties between the United States and tribes changed in the 1800s because the United States wanted to expand its territory (Deloria, 1985). As such, the treaties changed from being peace treaties only to being treaties where the tribes exchanged large plots of territory in exchange for peace assurances and protection from Euro-American settlers (Deloria, 1985; Dunbar-Ortiz, 2014; Fletcher, 2016).

It was in this setting that the United States Supreme Court, led by Justice John Marshall, reviewed and adjudicated *Johnson v. McIntosh* (1823) (Canby, 2015; Fletcher, 2016; Newcomb, 2008). Through this ruling, the Supreme Court established the concept of Indian title to land and its limits in relation to the powers of the United States (Deloria, 1985; Newcomb, 2008; Fletcher, 2016; Canby, 2015). The dispute that led to *Johnson v. McIntosh* (1823) reaching the United States Supreme Court happened between two Euro-American settlers who laid claim to lands obtained in what is today the State of Illinois (*Johnson v. McIntosh*, 1823; Canby, 2015; Fletcher,

2016). At the core of the issue was the question of from whom the claimant had purchased the land (*Johnson v. McIntosh*, 1823; Fletcher, 2016).

The descendants of Johnson claimed that they had purchased the land from the Piankeshaw tribe, whereas McIntosh had obtained a land patent from the United States (*Johnson v. McIntosh*, 1823; Fletcher, 2016). The Supreme Court issued a decision in favor of McIntosh because he had obtained the land patent from the United States (*Johnson v. McIntosh*, 1823). Through this ruling, the Supreme Court affirmed that the only entity who could transfer land that was originally occupied by Native Americans was the United States and not the Native Americans themselves (*Johnson v. McIntosh*, 1823; Fletcher, 2016; Canby, 2015). The justification for this ruling was heavily based on the Doctrine of Discovery (*Johnson v. McIntosh*, 1823; Fletcher, 2016; Deloria, 1985; Newcomb, 2008).

The Doctrine of Discovery is legal theory based on 15th Century international law, when the Pope was the supreme authority over the western European empires (Newcomb, 2008; Fletcher, 2016; Deloria, 1985; Williams, 2012). According to history, when Christopher Columbus returned to Spain after making contact with the West Indies and what would later be known as the Americas, the Spaniard monarchs sent an express courier to the Pope (Newcomb, 2008; Deloria, 1985; Williams, 2012). In response, the Pope issued a Papal Bull, a law decree, through which he gave legal and moral justification to the European empires to explore and conquer the non-Christian nations of the world (Newcomb, 2008; Williams, 2012).

In *Savage Anxieties*, Professor Robert Williams explains the ancient roots behind the division between the civilized and the non-civilized in the eyes of European society in the 15th Century (Williams, 2012). To European society in the 15th Century, civilization was tantamount to being Christian (Newcomb, 2008; Williams, 2012). As a result, any non-Christian nation that

was encountered by a European nation at the time was subject to European conquest. The 1493 Papal Bull converted the non-Christian nations into mere occupants of the land as soon as the conquering Christian ships landed upon the shores of such lands (Newcomb, 2008; Williams, 2012; Fletcher, 2016). In the eyes of Medieval European law, non-Christian individuals were so uncivilized to the point of being non-existent, which also gave rise to the theory of *Terra Nullius*, meaning that the lands on which the Christianized European explorers landed were empty and free for the taking (Newcomb, 2008; Williams, 2012).

Another important aspect of the Doctrine of Discovery is explained by Franz Fanon's work regarding the Manichaeic nature of Christendom (Hilton, 2011; Williams, 2012). When the western Europeans arrived in the Americas in their quest for lands and resources, their actions were justified by a concept of light versus dark (Hilton, 2011; Newcomb, 2008; Williams, 2012). Through such a worldview, the European conquerors were easily able to justify any action taken against the Indigenous Peoples they encountered as not only legal, but righteous. In fact, the European arrivals considered Christian nations to be light and civilized, whereas non-Christian nations were considered to be dark and non-civilized (Newcomb, 2008; Williams, 2012). It was through this lens that the United States Supreme Court justified a superior legal claim on the part of the United States and relegated the Native Americans to mere occupants of their own land. Importantly, the legal systems and theories employed to justify the dispossession of Native American lands and resources were not Indigenous. Native Americans were not even a party in *Johnson v. McIntosh* (*Johnson v. McIntosh*, 1823; Fletcher, 2016).

When the Supreme Court ruled in *Johnson v. McIntosh*, it expressly justified its decision on the conquering nation having superior title to land over the original Indian title (*Johnson v. McIntosh*, 1823; Fletcher, 2016; Newcomb, 2008). "Conquest gives a title which the courts of

the conqueror cannot deny...The British government...whose rights have passed to the United States, asserted title to all the lands occupied by Indians within the chartered limits of the British colonies.” (*Johnson v. McIntosh*, 1823). A fundamental flaw of this decision is that it ignored the fact that Native American tribes had a nation-to-nation relationship with the British Crown (Deloria, 1985; Dunbar-Ortiz, 2014; Fletcher, 2016; Canby, 2015). As such, their territory was sovereign and not subject to British law. Ultimately, the Doctrine of Discovery provided a convenient excuse for the United States’ judiciary to develop law that would be binding to Native American tribes while simultaneously ignoring factual reality (Deloria, 1985; Mann, 2006; Dunbar-Ortiz, 2014).

While the United States Supreme Court’s adjudication of *Johnson v. McIntosh* (1823) does not directly apply to Native American water rights based on the facts of the case, water rights in general are indirectly tied to the ruling because such rights are attached to the land (*Johnson v. McIntosh*, 1823; Thompson et al., 2018; Craig et al., 2017). When the Supreme Court adjudicated *Johnson v. McIntosh* (1823), the United States had not yet expanded to what is now the western part of the country (Dunbar-Ortiz, 2014; Deloria, 1985). As such, it is likely that the riparian doctrine applied to the land rights contested through *Johnson v. McIntosh* (1823) (Thompson et al., 2018; Craig et al., 2017). The prior appropriation doctrine did not emerge until the latter part of the 19th Century and the reserved rights doctrine did not emerge until 1908 (Thompson et al., 2018; Craig et al., 2017; Royster et al., 2023). Additionally, *Johnson v. McIntosh* (1823) served as the foundation for the other two cases in the Marshall Trilogy, which established the federal trust doctrine and the concept of federal plenary power over Native American affairs (Deloria, 1985; Canby, 2015; Fletcher, 2016).

The federal trust doctrine would have greater effect on Native American water rights because it gave the United States legal permission to oversee such rights (*Cherokee Nation v. Georgia*, 1831; Fletcher, 2016). *Cherokee Nation v. Georgia* (1831) established the concept of Native American tribes as domestic dependent nations, which in turn established the concept of the federal trust doctrine (*Cherokee Nation v. Georgia*, 1831; Fletcher, 2016). The Cherokee Nation brought this case directly before the Court, relying on a law that allowed cases between a state and a foreign nation to be brought directly to the United States Supreme Court (*Cherokee Nation v. Georgia*, 1831; Fletcher, 2016). The Supreme Court was at a loss about what to do with the case because it was not entirely sure that the Cherokee Nation qualified as a foreign nation (*Cherokee Nation v. Georgia*, 1831; Fletcher, 2016). Ultimately, the Supreme Court decided to not accept the case because of the unique status of the Cherokee Nation (*Cherokee Nation v. Georgia*, 1831; Fletcher, 2016).

Instead, the Supreme Court issued an opinion through which it acknowledged that the Cherokee Nation was a sovereign nation, but not a full-fledged foreign nation (*Cherokee Nation v. Georgia*, 1831; Fletcher, 2016; Canby, 2015). The Supreme Court classified the Cherokee Nation as a domestic dependent nation in relation to the United States (*Cherokee Nation v. Georgia*, 1831; Canby, 2015; Fletcher, 2016). Through this opinion, the United States Supreme Court turned the relationship between the Cherokee Nation and the United States federal government to that between a ward and its trustee, thus shifting the balance of power between the two nations (*Cherokee Nation v. Georgia*, 1831; Fletcher, 2016; Deloria, 1985). Importantly, the Supreme Court's opinion in *Cherokee v. Georgia* continued the trend through which the Court prioritized the superiority of the United States over Native American tribes (*Cherokee Nation v. Georgia*, 1831; Deloria, 1985; Fletcher, 2016).

The third case of the Marshall Trilogy reached the Supreme Court of the United States in 1832. Importantly, both *Cherokee Nation v. Georgia* (1831) and *Worcester v. Georgia* (1832) were triggered by the same actions of the State of Georgia in its attempts to have legal jurisdiction within the territory of the Cherokee Nation (Fletcher, 2016; Deloria, 1985). In *Worcester v. Georgia* (1832), the State of Georgia had decreed that non-Indians needed a permit from the State of Georgia in order to participate in activities within the territory of the Cherokee Nation (*Worcester v. Georgia*, 1832; Fletcher, 2016; Canby, 2015). Samuel Worcester was a missionary working within the Cherokee Nation and had not obtained the necessary permit as required by Georgia (*Worcester v. Georgia*, 1832; Fletcher, 2016; Canby, 2015). As a result, Georgia took legal action against Mr. Worcester and the case wended its way to the United States Supreme Court (*Worcester v. Georgia*, 1832; Fletcher, 2016; Canby, 2015). Similarly to *Johnson v. McIntosh* in 1823, the Supreme Court reviewed a case where Native Americans were not directly implicated, yet the consequences of its ruling have had long lasting consequences for tribes (Deloria, 1985; Anderson, 2015; Anderson, 2010).

In its ruling of *Worcester v. Georgia* (1832), the Supreme Court confirmed that the Cherokee Nation was an independent sovereign nation and that the only other entity with power to affect its laws was the United States (*Worcester v. Georgia*, 1832; Fletcher, 2016; Canby, 2015). According to the Court, “[the] Cherokee nation...is a distinct community, occupying its own territory, with boundaries accurately described in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter” without permission from “the Cherokees themselves” (*Worcester v. Georgia*, 1832). The Court then asserted that an alternative to Cherokee permission was “conformity with treaties” or “acts of Congress” (*Worcester v. Georgia*, 1832; Fletcher, 2016; Canby, 2015). Unlike the Supreme Court’s actions in 1823 and

1831, the ruling of *Worcester v. Georgia* empowered Native American sovereignty, albeit in deference to the plenary power of Congress.

Furthermore, through its decision in *Worcester v. Georgia*, the United States Supreme Court established what is often seen by scholars of Native American Studies as the “triangle of relationships” (Wilkins & Lomawaima, 2001; Fletcher, 2016; Canby, 2015). The “triangle of relationships” refers to the fact that there are three sovereigns within the governing structure of the United States: the Federal government, Native American tribes, and States. Congress has plenary power over Native American tribes (*Worcester v. Georgia*, 1832; Fletcher, 2016; Canby, 2015). According to the Supreme Court ruling in *Worcester v. Georgia* (1832), states are separate from Native American tribes and do not have jurisdiction over Native American territories (*Worcester v. Georgia*, 1832; Fletcher, 2016; Canby, 2015). Over the years, however, the jurisdictional separation between states and Native American tribes has been eroding, especially in regard to water rights (Anderson, 2015; Anderson, 2010, Brienza, 1992; Getches, 1986).

Ultimately, the foundation of Native American law and policy lies with the Marshall Trilogy cases. The Marshall Trilogy established the dominance of the United States over Indian land title, the trust relationship between tribes and the federal government, and the concept of Congressional plenary power of tribal affairs (*Johnson v. McIntosh*, 1823; *Cherokee Nation v. Georgia*, 1831; *Worcester v. Georgia*, 1832; Wilkins & Lomawaima, 2001; Fletcher, 2016; Canby, 2015). Native American sovereignty was both diminished and bolstered by the Marshall Trilogy cases in the sense that tribes were no longer independent sovereigns, but they were also independent from the overreach of states.

Notably, the power imbalances between Native American tribes, the United States, and States that were propelled by the Marshall Trilogy cases were orchestrated without the input and

consent of Native American tribes. In fact, the two cases that were reviewed and adjudicated were *Johnson v. McIntosh* and *Worcester v. Georgia*, which did not involve Native Americans as plaintiffs or defendants (*Johnson v. McIntosh*, 1823; *Worcester v. Georgia* (1832)). *Cherokee Nation v. Georgia*, on the other hand, was not reviewed or adjudicated because the Supreme Court could not decide if the Cherokee Nation was a foreign nation or part of the United States (*Cherokee Nation v. Georgia*, 1831). Ultimately, the Court opined that the Cherokee Nation was a domestic dependent nation, which continues to have consequences on Native American affairs in the Spring of 2025 (*Cherokee Nation v. Georgia*, 1831).

Removal and the Rise of Reservations

While the United States Supreme Court was establishing the legal relationship between Native American tribes, the Federal government, and States, Congress was also taking action to secure the westward expansion of the United States (Deloria, 1985; Dunbar-Ortiz, 2014; Fletcher, 2016; Canby, 2015). In 1830, Congress passed the Indian Removal Act and President Andrew Jackson signed the bill into law (Deloria, 1985; Dunbar-Ortiz, 2014; Fletcher, 2016; Canby, 2015). The purpose of the Indian Removal Act of 1830 was to remove Native American tribes from the country east of the Mississippi River to “Indian Country”, located in what is now the State of Oklahoma (Dunbar-Ortiz, 2014; Fletcher, 2016; Canby, 2015).

Similarly to the cases within the Marshall Trilogy, the Indian Removal Act was created and passed without the consent or input of Native American tribes (Deloria, 1985; Dunbar-Ortiz, 2014; Fletcher, 2016; Canby, 2015). The Indian Removal Act of 1830 resulted in the forced removal of the Native American nations that had inhabited the lands and territories east of the Mississippi River for thousands of years (Deloria, 1985; Dunbar-Ortiz, 2014; Mann, 2006). The infamous Trail of Tears of 1838 is one of many such forced marches through which Native

Americans were forcibly removed from their homelands during this period of time in the country (Deloria, 1985; Dunbar-Ortiz, 2014).

While the Indian Removal Act was an act of law designed to remove the Native American tribes from the lands east of the Mississippi River, its purpose was to open up the area for Euro-American settlement (Immerwahr, 2019; Dunbar-Ortiz, 2014; Deloria, 1985). By the time the Indian Removal Act was passed and signed into law, the United States had already acquired the Ohio Valley from Britain, completed the Louisiana Purchase from France, and annexed Florida from Spain (Immerwahr, 2019; Dunbar-Ortiz, 2014). In accordance with its embrace of the Doctrine of Discovery and its belief that its actions were civilizing the Indigenous Peoples of the continent, the United States' period of Manifest Destiny was well underway during this period (Deloria, 1985; Newcomb, 2008; Dunbar-Ortiz, 2014). Nonetheless, the Indigenous Peoples that inhabited those areas did not willingly give up their homelands (Deloria, 1985; Newcomb, 2008; Dunbar-Ortiz, 2014).

Despite fierce resistance from the Native American tribes of the continent, the United States continued to find ways to expand its territory from sea to shining sea and fulfill the mandate of Manifest Destiny (Deloria, 1985; Newcomb, 2008; Dunbar-Ortiz, 2014). As the decades progressed after the Indian Removal Act, the United States declared war against Mexico to obtain what was then the vast northwestern part of the country (Immerwahr, 2019; Dunbar-Ortiz, 2014; Deloria, 1985). The war with Mexico culminated with the Treaty of Guadalupe Hidalgo in 1848 (Dunbar-Ortiz, 2014, Deloria, 1985). Through this treaty, Mexico ceded the northwestern part of its territory to the United States (Dunbar-Ortiz, 2014, Deloria, 1985). In 1853, the United States completed the Gadsden Purchase, which established the southern border of the United States to what it is today (USDOS, 2025).

As the United States expanded westward, it increasingly found itself in conflict with the numerous Native American nations who inhabited the lands and territories it now laid claim to (Deloria, 1985; Dunbar-Ortiz, 2014; Wilkins & Lomawaima, 2001; Fletcher, 2016). The United States engaged in a variety of tactics to manage various resistance movements that inevitably arose from among the Native American tribes (Deloria, 1985; Dunbar-Ortiz, 2014; Wilkins & Lomawaima, 2001; Fletcher, 2016). The main strategies employed by the United States to manage the presence of Native American tribes in the lands and territories it wanted to expand to, were its own laws and policies, which were created without the input or consent of Native Americans (Deloria, 1985; Dunbar-Ortiz, 2014; Wilkins & Lomawaima, 2001; Fletcher, 2016; Canby, 2015). Beyond laws and policies, the United States engaged in wars, treaty making, the creation of reservations, and the development of boarding schools to assimilate the Native Americans into Euro-American culture (Deloria, 1985; Dunbar-Ortiz, 2014; Wilkins & Lomawaima, 2001; Fletcher, 2016).

The 1850s and 1860s were a very prolific time for the signing of treaties between the United States and Native American tribes, as well as the creation of Native American reservations (Deloria, 1985; Fletcher, 2016; Wilkins & Lomawaima, 2001). Due to the Indian Removal Act of 1830 and the various forced removals that took place subsequently, most Native American reservations are located west of the Mississippi River (Deloria, 1985; Dunbar-Ortiz, 2014; Fletcher, 2016). An important feature of the lands located west of the Mississippi River is the lack of abundant sources of water (see Figure 1).

Treaties and Native American Reservations

An imperative behind the United States' expansion to the arid west has been the exploitation of the region's resources for the economic development of the country (Immerwahr,

2019; Dunbar-Ortiz, 2021). The United States employed various laws and policies to incentivize Euro-American settlers to settle in the region (DeJong, 2014; DeJong, 2007; Dunbar-Ortiz, 2021). Such policies included the Homestead Act of 1862 and the Desert Land Acts of 1877 (DeJong, 2014; Dunbar-Ortiz, 2021; Dunbar-Ortiz, 2014). Although these two acts of Congress were passed in different decades, their purpose was similar because they incentivized Euro-American settlers to settle in the west (DeJong, 2014; Dunbar-Ortiz, 2021; Dunbar-Ortiz, 2014; Homestead Act, 1862; Desert Land Act, 1877). A pivotal condition of this settlement process was that the Euro-American settlers had to use the land to benefit the economy of the United States (DeJong, 2014; Dunbar-Ortiz, 2021; Dunbar-Ortiz, 2014; Homestead Act, 1862; Desert Land Act, 1877). As a result, the initial waves of Euro-American settlers into the region were mining prospectors and people who wanted to have farms and ranches (DeJong, 2014; Dunbar-Ortiz, 2021; Dunbar-Ortiz, 2014; Homestead Act, 1862; Desert Land Act, 1877).

Such economic imperatives, along with water scarcity in the west, provided the necessity for a legal doctrine of water management and governance that was different than the riparian doctrine of the eastern part of the country (Thompson et al., 2018; Craig et al., 2017; Glennon, 2009; Glennon, 2002). The prior appropriation doctrine emerged as a way to legally manage the economic imperatives of the United States, as well as the limited water resources needed to achieve such economic success in more arid lands (Thompson et al., 2018; Craig et al., 2017; Glennon, 2009; Glennon, 2002). At its core, the prior appropriation doctrine creates a zero-sum environment where appropriators of water win, and non-appropriators of water lose (Thompson et al., 2018; Craig et al., 2017; Glennon, 2009; Glennon, 2002).

Pivotaly, neither the prior appropriation doctrine nor the riparian doctrine was developed by Native American worldviews and legal systems (Thompson et al., 2018; Craig et al., 2017;

Glennon, 2009; Glennon, 2002). Nevertheless, due to their contact with the increasing number of Euro-American settlers, Native Americans were negatively affected by the prior appropriation doctrine many years before Native American water rights were recognized by the United States Supreme Court (DeJong, 2014; DeJong, 2007; Dunbar-Ortiz, 2014; Homestead Act, 1862; Desert Land Act, 1877). Native American reservations were created to separate Native Americans from the Euro-American settlers who were settling in the region (Dunbar-Ortiz, 2014; Wilkins & Lomawaima, 2001; Fletcher, 2016). Nonetheless, the prior appropriation doctrine, along with the Homestead Act of 1862 and the Desert Land Act of 1877, required Euro-American settlers to divert waters from the very rivers that Native Americans depended on for their livelihoods (DeJong, 2014, DeJong, 2007; Dunbar-Ortiz, 2014; Homestead Act, 1862; Desert Land Act, 1877).

Significantly, the United States was confining Native American tribes into reservations during the same period when the prior appropriation doctrine was emerging (Thompson et al., 2018; Craig et al., 2017; Glennon, 2002; Fletcher, 2016). Hence, Native American tribes were confined to static reservations at a time when their water rights were being imperiled by the expansionist policies of the United States (Deloria, 1985; Dunbar-Ortiz, 2014; Fletcher, 2016). By that point, the United States was already exhibiting the deep conflict of interest it has historically had regarding its trust relationship with Native American tribes and its goals for territorial expansion (DeJong, 2014; Dunbar-Ortiz, 2014; Deloria, 1985).

In 1849, the United States moved its affairs with Native American tribes from the Department of War to the newly created Department of the Interior (USDOJ, 2021; Fletcher, 2016). Such a shift marked the point when the United States shifted from viewing Native American tribes as foreign entities to the domestic dependent nations declared by the *Cherokee*

Nation v. Georgia (1831) Supreme Court opinion (USDOJ, 2021; Fletcher, 2016; Dunbar-Ortiz, 2014). Nevertheless, the United States continued signing internationally binding treaties with Native American tribes until 1871, when treaty-making was ended by Congress (Fletcher, 2016; Canby, 2015; Wilkins & Lomawaima, 2001; Deloria, 1985).

The United States continued to enter into treaty-like relations with Native American tribes after 1871, but such deals were officially called “Agreements” (Fletcher, 2016; Wilkins & Lomawaima, 2001; Deloria, 1985). Native American reservations were created through treaties before 1871 and by agreements, presidential decrees, or acts of congress henceforth (Fletcher, 2016; Wilkins & Lomawaima, 2001). Generally, through such negotiated arrangements Native American tribes agreed to exchange large portions of their territories in exchange for protection from Euro-Settler encroachment and resources (Deloria, 1985; Dunbar-Ortiz, 2014; Wilkins & Lomawaima, 2001).

By the time treaty-making ended in 1871, the United States had already signed and ratified hundreds of treaties with Native American tribes (Fletcher, 2016; Deloria, 1985; Wilkins & Lomawaima, 2001). Due to the sheer number of tribes and their wide diversity, not all treaties were created with the same provisions (Fletcher, 2016; Deloria, 1985; Wilkins & Lomawaima, 2001). Nonetheless, the treaties between the United States and Native American tribes constituted an exchange through which the tribes gave rights to the United States and not vice-versa (Wilkins & Lomawaima, 2001; Deloria, 1985; *United States v. Winans*, 1905). Native American tribes entered into treaties with the United States because they expected that the United States would honor the terms of such treaties (Wilkins & Lomawaima, 2001; Deloria, 1985). Such expectations were not met because the United States began abrogating treaties

almost as soon as it signed them with tribes (Wilkins & Lomawaima, 2001; Deloria, 1985; Fletcher, 2016)

A notable example of the United States' abrogation of treaties with Native American tribes is the Treaty of Fort Laramie, which was signed between the United States and the Great Sioux Nation in 1868 (Akhtar, 2013; Dunbar-Ortiz, 2014; Deloria, 1985). The treaty specifically reserved the Black Hills as part of the Great Sioux Nation because of their sacred nature to the tribe (Akhtar, 2013; Dunbar-Ortiz, 2014; Deloria, 2003). Important provisions within the Treaty of Fort Laramie included that the Black Hills would be reserved exclusively for the Sioux nation and that no further changes to the treaty would be valid unless at least 75% of the adult male population of the tribe agreed to them (Akhtar, 2013; Dunbar-Ortiz, 2014; Treaty of Fort Laramie, 1868).

In the 1870s, gold was discovered in the Black Hills and the United States subsequently confiscated them from the Great Sioux reservation (Akhtar, 2013; Dunbar-Ortiz, 2014; Treaty of Fort Laramie, 1868). To this day, the Sioux nation continues to dispute the confiscation by the United States of the Black Hills and to this day, mining activities continue in the Black Hills (Akhtar, 2013; Dunbar-Ortiz, 2014; Treaty of Fort Laramie, 1868). The Sioux people have sought legal recourse for the violation of the Treaty of Fort Laramie with limited success (Akhtar, 2013; Dunbar-Ortiz, 2014; Treaty of Fort Laramie, 1868). In 1980, the United States Supreme Court agreed with the tribe that the Black Hills had been confiscated without proper compensation and awarded \$100 million to the tribe (Akhtar, 2013; Dunbar-Ortiz, 2014). The Sioux nation, however, has not claimed this award because they remain convinced that the Black Hills were never for sale (Akhtar, 2013; Dunbar-Ortiz, 2014).

The fact that the Sioux nation has not claimed the funds awarded to them by the United States Supreme Court in 1980 is remarkable; however, it is not farfetched when one understands the place-based nature of Native American worldviews (Deloria, 2003; Kimmerer, 2013; Whyte, 2016). In *God is Red*, Vine Deloria, Jr. explains the difference between Native American and western European worldviews about life and religion (Deloria, 2003). According to him, Native American religions are place-based, whereas Euro-American religions are space-based (Deloria, 2003). Such a difference is best illustrated through the context of the Black Hills dispute because to the Sioux nation, the Black Hills are their place of worship (Deloria, 2003; Dunbar-Ortiz, 2014). In contrast, for a Euro-American settler, a church (a building that can be built anywhere) is the place of worship. This fundamental ontological difference between Native American tribes and the United States has led to many misunderstandings and disputes, especially in regard to natural resource management (Deloria, 2003; Tatum & Kappus Shaw, 2014).

The General Allotment Act

As the 19th Century drew to a close, there were many more disputes between Native Americans and the United States that were fundamentally due to misunderstandings originating from ontological differences (Deloria, 2003; Tatum & Kappus Shaw, 2014; Kimmerer, 2013). By this point, the United States had grown to see Native American tribes as inferior wards and not as the peers that they were when the United States was a nascent nation (Wilkins & Lomawaima, 2001; Deloria, 1985; Dunbar-Ortiz, 2014). The ontological differences between the United States and Native American tribes complicated matters because, in alignment with the analyses of Steven Newcomb, Franz Fanon, and Rob Williams, Jr., it was convenient for the United States to view Native American tribes as uncivilized and inferior (Newcomb, 2008; Hilton, 2011; Williams, 2012). With such a mentality, the United States could justify its actions as benevolent,

whereas in reality, its actions were very destructive to Native American tribes (Newcomb, 2008; Hilton, 2011; Williams, 2012; Fletcher, 2016). Thus, the United States embarked in an aggressive campaign to civilize Native American tribes into the Euro-American culture of the United States (Newcomb, 2008; Hilton, 2011; Williams, 2012; Wilkins & Lomawaima, 2001; Dunbar-Ortiz, 2014).

Two destructive tactics employed by the United States to assimilate Native Americans into Euro-American culture are the boarding schools, which Native American children were forced to attend in the 19th and 20th Centuries, and the General Allotment Act of 1887 (Fletcher, 2016; Lomawaima, 1994; Dunbar-Ortiz, 2021; Dunbar-Ortiz, 2014; Wilkins & Lomawaima, 2001). The boarding schools were designed to assimilate the Native American children into Euro-American culture, whereas the General Allotment Act was designed to assimilate the adults and entire Peoples into Euro-American culture (Fletcher, 2016; Lomawaima, 1994; Dunbar-Ortiz, 2021; Dunbar-Ortiz, 2014; Wilkins & Lomawaima, 2001). For the purposes of this dissertation, the General Allotment Act will be reviewed as its enactment has had tremendous adverse consequences for Native American nations to this day, specifically in relation to water rights. Nevertheless, the boarding school era also merits mentioning because it began in earnest at around the time when the General Allotment Act was being engineered (Fletcher, 2016; Lomawaima, 1994; Dunbar-Ortiz, 2021; Dunbar-Ortiz, 2014; Wilkins & Lomawaima, 2001).

Moreover, the General Allotment Act had the additional purpose of securing additional land for Euro-American settlers (Canby, 2015; Fletcher, 2016; Dunbar-Ortiz, 2014; Greenwald, 2002; Bobroff, 2001). Generally, the General Allotment Act called for Native American reservations to be divided into plots of land, which would be distributed among the members of the tribe (Canby, 2015; Fletcher, 2016; Dunbar-Ortiz, 2014; Greenwald, 2002). Heads of

household received 160 acres of land, people over 18 years of age received 80 acres of land, and people younger than 18 years of age received 40 acres of land (Canby, 2015; Fletcher, 2016; Dunbar-Ortiz, 2014; Greenwald, 2002; Bobroff, 2001). The rest of the land that was not distributed to the members of the tribe was considered surplus and open for Euro-American settlement (Canby, 2015; Fletcher, 2016; Dunbar-Ortiz, 2014; Greenwald, 2002; Bobroff, 2001).

Additionally, the General Allotment Act provided that fee simple title of the plots of land would be issued to the tribal members after 25 years and that they would be considered to be individual landowners then (Canby, 2015; Fletcher, 2016; Dunbar-Ortiz, 2014; Greenwald, 2002). At that point, tribal members with fee simple title would have to pay taxes for the land, which required them to enter the formal economy of the United States (Canby, 2015; Fletcher, 2016; Dunbar-Ortiz, 2014; Greenwald, 2002). Retention of land allotments for 25 years gave United States citizenship to the titleholder (Canby, 2015; Fletcher, 2016; Dunbar-Ortiz, 2014; Greenwald, 2002).

There are several pernicious consequences of the General Allotment Act that persist to the present. One major consequence attributed to the General Allotment Act is the massive loss of land that the Native Americans suffered between 1877 and 1934, when the Act ended (Anderson, 2015; Dunbar-Ortiz, 2014; Greenwald, 2002). Over 90 million acres of land were lost due to this Act of Congress (Anderson, 2015; Dunbar-Ortiz, 2014; Greenwald, 2002). Many Native American reservations were decimated by this policy (Canby, 2015; Fletcher, 2016; Dunbar-Ortiz, 2014; Greenwald, 2002). Additionally, many reservations ended up being checkerboarded due to the surplus lands that were sold to Euro-American settlers, fee simple land sold by individual tribal members to Euro-American settlers, and fraud committed by Euro-American settlers (Canby, 2015; Fletcher, 2016; Dunbar-Ortiz, 2014; Greenwald, 2002).

Checkerboarding is very problematic for upholding Native American water rights because there are both tribal members and non-tribal members who have land holdings in a given reservation (Royster et al., 2023; DeJong, 2014; Canby, 2015; Fletcher, 2016; Dunbar-Ortiz, 2014; Greenwald, 2002). Yet another problem that emerged from the General Allotment Act is the fractionization of the individual plots of land that were allotted to individual tribal members (DeJong, 2014; Canby, 2015; Fletcher, 2016; Greenwald, 2002). Fractionization takes place when allotment holders pass away and surviving family members inherit incrementally smaller undivided interests in plots of land (DeJong, 2014; Canby, 2015; Fletcher, 2016; Greenwald, 2002). As a result, by the time the General Allotment Act was overturned in 1934, Native American tribes were at a severe disadvantage due to land loss, the checkerboarding of their reservations, and the fractionization of individual plots of land (DeJong, 2014; Dunbar-Ortiz, 2014; Greenwald, 2002).

Challenging Allotment

Prior to the passage of the General Allotment Act of 1887, Native American Tribes who signed treaties containing land cessions typically held the land that they retained in common for all citizens of the tribe (Fletcher, 2016; Canby, 2015; Deloria, 1985; Wilkins & Lomawaima, 2001). The allotment process not only changed that by assigning land to individual citizens, but it also opened any remaining lands to settlement by Euro-Americans who were not tribal citizens. Alleging that Allotment was a breach of the Medicine Lodge Treaty, signed in 1867 by the United States, and the Kiowa, Comanche, and Apache tribes, Lone Wolf, as chief of the Kiowas, filed a lawsuit on behalf of the signatory tribes (*Lone Wolf v. Hitchcock*, 1903; Wilkins & Lomawaima, 2001; Deloria, 1985). The Medicine Lodge Treaty created a reservation where the three tribes would live and it required 75% of the adult male population of each tribe to make

any amendments to the treaty (*Lone Wolf v. Hitchcock*, 1903; Wilkins & Lomawaima, 2001; Deloria, 1985). Between 1892 and 1900, Congress unilaterally amended the Medicine Lodge Treaty by opening up a significant portion of the reservation for Euro-American settlement (*Lone Wolf v. Hitchcock*, 1903; Wilkins & Lomawaima, 2001; Deloria, 1985).

The case went itself to the United States Supreme Court, where the Court ruled that the United States Congress could unilaterally abrogate treaties between the United States and Native American tribes (*Lone Wolf v. Hitchcock*, 1903; Wilkins & Lomawaima, 2001; Deloria, 1985). The legal justification in *Lone Wolf v. Hitchcock* was based on the United States' plenary power over Native American tribes created by the United States Supreme Court in *Worcester v. Georgia* (1832) (*Lone Wolf v. Hitchcock*, 1903; *Worcester v. Georgia*, 1832; Wilkins & Lomawaima, 2001; Deloria, 1985). The implications of the *Lone Wolf v. Hitchcock* decision are very problematic for Native American tribes because they signed treaties with the United States expecting that the terms of such treaties would be upheld (Deloria, 1985; Wilkins & Lomawaima, 2001; Fletcher, 2016). Nonetheless, by the time *Lone Wolf v. Hitchcock* was adjudicated, the United States had already been violating various treaties with Native American tribes for many decades; *Lone Wolf v. Hitchcock* merely justified such actions (Deloria, 1985; Wilkins & Lomawaima, 2001; Fletcher, 2016).

Conclusion

By the end of the 19th Century, Native American tribes had been co-opted and drawn into the fold of the United States (Dunbar-Ortiz, 2021; Dunbar-Ortiz, 2014; Greenwald, 2002; Deloria, 1985). Treaty-making had ended, and tribal landholdings were at a severe risk of being diminished by further allotment or outright encroachment by Euro-American settlers (Dunbar-

Ortiz, 2021; Dunbar-Ortiz, 2014; Deloria, 1985; Wilkins & Lomawaima, 2001). Pivotaly, many tribes had become dependent on the United States for sustenance because of failed assimilation policies and the deliberate destruction of Native American livelihoods, like forced displacement and the deliberate destruction of bison herds on the Great Plains (Dunbar-Ortiz, 2021; Dunbar-Ortiz, 2014; Deloria, 1985; Wilkins & Lomawaima, 2001; Glennon, 2009).

Confined to reservations and without the major sources of food and spiritual strength that tribes had historically depended on, many tribal communities were deeply impoverished by this point in history (Dunbar-Ortiz, 2021; Dunbar-Ortiz, 2014; Deloria, 1985; Deloria, 2003). Regarding water rights, very few treaties and agreements that created Native American reservations included provisions for water rights, which left tribes to compete with Euro-American settlers within the prior appropriation doctrine's legal system for the vital liquid (Anderson, 2015; Thompson et al., 2008; DeJong, 2014; DeJong, 2007). The next chapter explores efforts to use litigation as a path to securing Native American tribal water rights.

CHAPTER 3: WATER LITIGATION AND NATIVE AMERICAN WATER RIGHTS

Although the United States Supreme Court's decision in *Lone Wolf v. Hitchcock* recognized the power of Congress to unilaterally abrogate and/or change the terms of a treaty, that did not diminish the power of such treaties (Deloria, 1985; Wilkins & Lomawaima, 2001; *United States v. Winans*, 1905; *Winters v. United States*, 1908). Several years after its decision in *Lone Wolf v. Hitchcock* (1903), the Supreme Court of the United States strengthened the validity of treaties between Native American tribes and the United States in its adjudications of *United States v. Winans* (1905) and *Winters v. United States* (1908). The decisions in *Winans* and *Winters* would lay the foundations for Native American attempts to legally secure their water rights. This chapter thus begins with an examination of those two cases; it then proceeds to review the evolution of Native American water litigation in order to discern how Native American water rights evolved after 1908 through the Euro-American court system, especially regarding tribal sovereignty and self-determination.

United States v Winans

The dispute that led to the adjudication of *United States v. Winans* was about where Native Americans in the Pacific Northwest could fish (*United States v. Winans*, 1905; Royster et al., 2023; Thompson et al., 2018; Wilkins & Lomawaima, 2001). When the Yakima Indians signed their treaty with the United States in 1855, the text of the treaty honored the tribes'

cultural traditions of fishing (*United States v. Winans*, 1905; Royster et al., 2023; Thompson et al., 2018; Wilkins & Lomawaima, 2001). As a result, the treaty provided that the Yakima Indians would be able to fish at “all usual and accustomed places”, including fishing spots outside of the Yakima Indian reservation (*United States v. Winans*, 1905; Royster et al., 2023; Thompson et al., 2018; Wilkins & Lomawaima, 2001). Such a provision naturally caused a conflict with the Euro-American settlers of the Territory of Washington because they deemed the banks of the streams where the Yakima Indians would fish as private property (*United States v. Winans*, 1905; Royster et al., 2023; Thompson et al., 2018; Wilkins & Lomawaima, 2001). The Yakima Indians, on the other hand, saw the usual and accustomed places of fishing as common property and they had explicitly reserved such places in their treaty with the United States (*United States v. Winans*, 1905; Royster et al., 2023; Thompson et al., 2018; Wilkins & Lomawaima, 2001).

In *United States v. Winans*, the United States Supreme Court ruled in favor of the Yakima Indians because of the explicit language in their treaty with the United States (*United States v. Winans*, 1905; Royster et al., 2023; Thompson et al., 2018; Wilkins & Lomawaima, 2001). Another pivotal part of the decision in *United States v. Winans* decision is the assertion that when the Yakima Indians signed their treaty with the United States, the rights that the tribe kept were reserved by them and not issued to them by the United States (*United States v. Winans*, 1905; Royster et al., 2023). In essence, the rights were granted by the Native Americans to the United States and not vice versa. As a result, the Yakima Indians were in their right to continue fishing at all their “usual and accustomed places” (*United States v. Winans*, 1905; Royster et al., 2023; Wilkins & Lomawaima, 2001). Moreover, the Supreme Court asserted that when interpreting treaties made between the United States and Native American tribes, analysts had to “construe a

treaty with the Indians as they understood it and as justice would demand.” (*United States v. Winans*, 1905; Royster et al., 2023).

The implications of this ruling a mere two years after the *Lone Wolf v. Hitchcock* (1903) adjudication are pivotal. While the Supreme Court had acknowledged the plenary power of Congress to abrogate treaties with Native Americans in 1903, in 1905, it also acknowledged the power of such treaties (*Lone Wolf v. Hitchcock*, 1903; *United States v. Winans*, 1905; Deloria, 1985; Wilkins & Lomawaima, 2001). Hence, as long as the United States had not abrogated a treaty with the Native Americans through an Act of Congress, the treaty was powerful enough to diminish Euro-American private property laws (*Lone Wolf v. Hitchcock*, 1903; *United States v. Winans*, 1905; Royster et al., 2023).

Winters v. United States

In 1908, the United States Supreme Court further strengthened treaties signed between Native American tribes and the United States through its adjudication of *Winters v. United States* (1908) (*Winters v. United States*, 1908; Royster et al, 2023; Wilkins & Lomawaima, 2001; Anderson, 2015). The legal dispute that led to *Winters v. United States* (1908) was yet another conflict between a Native American reservation and Euro-American settlers close to the reservation (*Winters v. United States*, 1908; Royster et al, 2023; DeJong, 2014). Euro-American settlers upriver from the Fort Belknap Reservation were diverting too much water from a river they depended on (*Winters v. United States*, 1908; Royster et al, 2023; Wilkins & Lomawaima, 2001; Anderson, 2015). The Euro-American water diversions were threatening the survival of the tribe and, according to the United States Supreme Court, the purpose of the reservation (*Winters v. United States*, 1908; Royster et al, 2023).

The Fort Belknap Indian Reservation was established in 1888 with the purpose of providing a homeland for the Gros Ventre and Assiniboine Indians (Royster et al., 2023; Royster, 1994; Royster, 2011; Anderson, 2015). Like most Native American reservations created in the late 19th Century, the Fort Belknap Indian Reservation was created with the purpose of converting the Native Americans into yeomen farmers (Royster et al., 2023; Fletcher, 2016; Royster, 2011). As such, the Native Americans of the Fort Belknap reservation diverted water from the Milk River for irrigation purposes (Royster et al., 2023; Fletcher, 2016; Royster, 2011). Euro-American settlers upstream from the Fort Belknap Indian Reservation were also diverting water from the Milk River (Royster et al., 2023; Fletcher, 2016; Royster, 2011). Hence, the actions of the Euro-American settlers were imperiling the rights of the Native Americans to divert water from the river (Royster et al., 2023; Fletcher, 2016; Royster, 2011). The United States, as trustee for the tribes, filed a lawsuit against the upstream diverters (Royster et al., 2023; Fletcher, 2016; Royster, 2011).

In deciding the case of *Winters v. United States* (1908), the United States Supreme Court ruled that when interpreting treaties and agreements between the United States and Native American tribes, ambiguities must be construed in favor of the Native Americans (*Winters v. United States*, 1908; Royster et al., 2023; Fletcher, 2016; Royster, 2011; Wilkins & Lomawaima, 2011). Such an assertion is not much different from the one made in *United States v. Winans*, where the Supreme Court affirmed that treaties should be construed as the Native Americans would have construed them (*United States v. Winans*, 1905; *Winters v. United States*, 1908).

Additionally, the Supreme Court decreed that when the Native Americans entered into a treaty or agreement with the United States and accepted that their reservation would be in an arid land, logically, they would not have given up their water rights (*Winters v. United States*, 1908;

Royster et al., 2023; Fletcher, 2016; Royster, 2011; Wilkins & Lomawaima, 2001). As such, even when water rights are not mentioned in treaties or agreements between Native American tribes and the United States, such rights are implied as reserved (Royster et al., 2023; Anderson, 2015; Anderson, 2010).

Justice McKenna concluded that “in the interpretation of agreements and treaties with Indians, ambiguities should be resolved from the standpoint of the Indians.” (*Winters v. United States*, 1908). The careful language used in *Winters v. United States* to distinguish between treaties and agreements is key because the Fort Belknap Indian Reservation was created through an administrative agreement between the United States and the tribes of the reservation (*Winters v. United States*, 1908; Fort Belknap Indian Community, 2025). Had the reservation been created before the official end of treaty-making in 1871, the agreement would have been a treaty.

Native American Reserved Water Rights between 1908 to 1963

The 1908 United States Supreme Court ruling in *Winters v. United States* is well known for establishing the foundation for the reserved rights doctrine of water rights (Royster et al., 2023; Thompson et al., 2018; Anderson, 2015; Bark & Jacobs, 2009). What is less known about this ruling is that the Native American tribes had to struggle to have their water rights recognized in court despite the *Winters* ruling (Royster, 2011; Royster, 1994; Anderson, 2015; Brienza, 1992). Very few reserved water rights rulings took place between 1908 and 1963 (Royster et al., 2023; Anderson, 2015; Royster, 2011). Such a lapse did not happen by mistake as the Euro-American court system was initially reluctant to apply the reserved water rights doctrine to its rulings (Massie, 1987; Royster et al., 2023; Anderson, 2006b). The justification used by the courts to deny the application of the reserved rights doctrine to all Native American reservations was that the Fort Belknap Indian Reservation was established by Congressional Agreement

(Royster et al., 2023; Royster, 1994; Royster, 2011; Anderson, 2015). As a result, court administrators initially refused to apply the reserved water rights doctrine to cases filed by tribes with reservations created by treaty or presidential decree (Massie, 1987; Royster et al., 2023; Anderson, 2006b).

Court refusals to apply the reserved water rights doctrine to all Native American reservations were inappropriate because the ruling itself referred to reservations that were created by both “agreements and treaties” (*Winters v. United States*, 1908). Key to understanding the logic behind the ruling in *Winters v. United States* (1908) is the ruling in *United States v. Winans* (1905). Together, the two United States Supreme Court rulings established the canons of construction of how to interpret Native American treaties with the United States, especially regarding water rights (*United States v. Winans*, 1905; *Winters v. United States*, 1908). The *Winans* ruling affirmed that when tribes signed treaties with the United States, the transfer of rights occurred from the tribes to the United States and the rights not mentioned were implied as reserved by the tribe (*United States v. Winans*, 1905; Royster et al., 2023). Conversely, the *Winters* ruling affirmed that any ambiguities in Native American treaties and agreements with the United States were to be construed in favor of the tribes (*Winters v. United States*, 1908; Royster et al., 2023). Together, *United States v. Winans* (1905) and *Winters v. United States* (1908) were clear about how Native American reserved water rights should be interpreted.

A major obstacle blocking the full implementation of the reserved water rights doctrine was the prior appropriation doctrine which was created by the Euro-American legal system to manage water rights in the arid west (Massie, 1987; Craig et al., 2017; Glennon, 2009; Royster et al., 2023). The prior appropriation doctrine developed independently of Native American affairs with the United States (Thompson et al., 2018; Royster et al., 2023; Glennon, 2009; Craig et al.,

2017). By the time the reserved rights doctrine came into being, the prior appropriation doctrine had already been widely accepted in several states and territories of the western part of the United States (Massie, 1987; Craig et al., 2017; Thompson et al., 2018).

Moreover, while there are similarities between the prior appropriation doctrine and the reserved water rights doctrine, the differences are enough to threaten non-Native American water appropriators (Massie, 1987; Craig et al., 2017; Thompson et al., 2018). For example, under the prior appropriation doctrine, a water claim is established by making a public claim (usually a water diversion) on unappropriated waters that are appropriable, the priority date is set when the public claim takes place, and the rights are subject to loss or forfeiture (Craig et al., 2017; Thompson et al., 2018). Native American reserved water rights, on the other hand, exist by virtue of the federal establishment of a reservation, the priority date is when the reservation was established, and are not subject to loss or forfeiture (Craig et al., 2017; Royster et al., 2023; Thompson et al., 2018). Naturally, non-Native American water appropriators would have found it preposterous to have a Native American tribe suddenly have a very powerful water rights claim that thwarted their own hard-earned water claim. Nonetheless, the two demographics lived amongst each other, separated by the boundaries of the reservation, but water knows no boundaries.

By the early 20th Century, when the reserved water rights doctrine was founded, the United States had a conflict of interest between its trust responsibility to tribes and its goals to economically develop the arid west (Royster et al., 2023; Anderson, 2015; DeJong, 2014). The Department of the Interior was tasked to manage Native American affairs and the trust responsibility through the Bureau of Indian Affairs when the Bureau of Reclamation was created by the Reclamation Act of 1902 to facilitate the Euro-American settlement and development of

the west (DeJong, 2014; Thompson et al., 2018; Anderson, 2015). Thus, two agencies within the Department of the Interior had mandates that contradicted each other when the reserved water rights doctrine was recognized by the United States Supreme Court. Through the federal trust doctrine, which was created by *Cherokee Nation v. Georgia* (1831) and strengthened by the various subsequent treaties between the United States and tribes, the United States was bound to uphold the wellbeing of Native American tribes (*Cherokee Nation v. Georgia*, 1831; Fletcher, 2016; Anderson, 2006b).

Nonetheless, the United States failed to uphold its trust responsibility to Native American tribes on numerous occasions, especially regarding the reserved water rights doctrine (Royster et al., 2023; Fletcher, 2016; Anderson, 2006b; Glennon, 2009). Despite the lack of will by the courts of the United States to fully implement the reserved rights doctrine, Native American tribes were actively seeking ways to secure their water rights between 1908 and 1963 (Massie, 1987; Royster et al., 2023; Anderson, 2015; Cosens, 2002; Anderson, 2006b; DeJong, 2007). In fact, there were several water claims that did make it to federal district courts with successful results for Native American reservations during this period (DeJong, 2007; DeJong, 2024; Lewis & Hestand, 2006). The water decrees issued in such cases, however, did not attempt to set the standard for water quantification and did not reach the United States Supreme court (Royster et al., 2023; DeJong, 2007; DeJong, 2024; Lewis & Hestand, 2006).

Two examples of successful water decrees that only made it to federal district court between 1908 and 1963 are the Globe Equity Decree of 1935 in Arizona and the Orr Ditch Decree of 1944 in Nevada (Royster et al., 2023; DeJong, 2007; DeJong, 2024; *United States v. Gila Valley Irrigation District*, D.AZ 1935; *United States v. Orr Water Ditch Company*, D. NV 1944). Both cases succeeded in securing a water decree for the Native American tribes making

the water claims in their respective states, but such decrees were not conclusive (Royster et al., 2023; DeJong, 2007; DeJong, 2024; Thompson et al., 2018). A major problem with both water decrees was that they were not implemented as decreed, thus causing additional protracted litigation (DeJong, 2014; Royster et al., 2023; Thompson et al., 2018).

The Globe Equity Decree of 1935

United States v. Gila Valley Irrigation District (D. AZ 1935), also known as the Globe Equity Decree, was the culmination of years of attempts by Native American tribes in the Gila River Valley to legally secure their water rights (DeJong, 2014; DeJong, 2024; Royster et al., 2023; Bark & Jacobs, 2009). The Globe Equity Decree took place in 1935, was issued by the United States District Court of Arizona, and it was a smaller version of the much larger general stream adjudication of today (Royster et al., 2023; *United States v. Gila Valley Irrigation District*, D.AZ 1935; DeJong, 2014; DeJong, 2024). The decree itself decreed water rights for the Native American tribes of the Gila River Indian Reservation and the San Carlos Apache Reservation (*United States v. Gila Valley Irrigation District*, D.AZ 1935; DeJong, 2014; DeJong, 2024). For the Gila River Indian Reservation, the Globe Equity Decree issued 210,000 acre-feet of water from the Gila River for irrigation purposes and with priority date of time immemorial (*United States v. Gila Valley Irrigation District*, D.AZ 1935). The San Carlos Apache received a water decree of 6,000 acre-feet of water from the Gila River for irrigation purposes and with priority date of 1846 (*United States v. Gila Valley Irrigation District*, D.AZ 1935).

Priority dates are very important within the reserved water rights doctrine because they have the same weight as priority dates established by the prior appropriation doctrine (Royster et al., 2023; Thompson et a., 2018; Craig et al., 2017). With priority dates of time immemorial and 1846, the Gila River Indian Reservation and the San Carlos Apache Reservation, respectively,

had more seniority than many non-Native American water appropriators with stake in such waters (Royster et al., 2023; Thompson et al., 2018; Craig et al., 2017). The Globe Equity Decree also mandated the Native Americans and non-Native Americans of the area to “share equally in all of the stored and pumped water” in the San Carlos Reservoir (*United States v. Gila Valley Irrigation District*, D.AZ 1935). Ultimately, the provisions of the Globe Equity Decree were not met, which compelled the affected Native American tribes to continue litigating for their water rights well into the early 21st Century (Royster et al., 2023; DeJong, 2014; DeJong, 2024; McCool, 2002).

The Orr Ditch Decree of 1944

In 1859, the Pyramid Lake Reservation was created, which also included the lake itself and the lower parts of the Truckee River (Royster et al., 2023; Thompson et al., 2018). The Pyramid Lake is fed by the waters of the Truckee River (Royster et al., 2023; Kramer, 1988). In 1902, the United States passed the Reclamation Act, which allowed the Department of the Interior to reclaim public lands and irrigate them through the creation of irrigation districts (Royster et al., 2023; Thompson et al., 2018). The Newlands Reclamation Project was established by the Secretary of the Interior as a result of the Reclamation Act of 1902 (Royster et al., 2023; Thompson et al., 2018; Kramer, 1988). In 1905, the Derby Dam was built on the Truckee River, which diminished the amount of water that would otherwise have made it into Pyramid Lake (Royster et al., 2023; Thompson et al., 2018; Kramer, 1988). Hence, the Pyramid Lake began to recede significantly, which imperiled the livelihoods of the Pyramid Lake Paiute Tribe (Royster et al., 2023; Kramer, 1988).

In 1913, the tribe, with the United States, acting as trustee, initiated litigation to quantify the water rights of the Pyramid Lake Paiute Tribe and the Truckee River (Royster et al., 2023;

Kramer, 1988). In 1924, the tribe was awarded 12,412 acre-feet of water per year for irrigation purposes, with priority date of 1859 (Royster et al., 2023; Kramer, 1988; *United States v. Orr Water Ditch Company*, D. NV 1944). The Newlands Reclamation Project, on the other hand, received a much larger quantification of water to irrigate around 232,800 acres (Royster et al., 2023; Kramer, 1988; *United States v. Orr Water Ditch Company*, D. NV 1944). The 1924 decree culminated in the Orr Ditch Decree of 1944, which affirmed the water quantification for the Pyramid Lake Reservation and the Newlands Project (Royster et al., 2023; Kramer, 1988; *United States v. Orr Water Ditch Company*, D. NV 1944). Ultimately, the Orr Ditch Decree was a success for the Pyramid Lake Reservation because it quantified its water rights (Royster et al., 2023; Kramer, 1988). Nonetheless, the victory was hollow because the water quantification was skewed in favor of the Newlands Reclamation Project, which perpetuated water insecurity in the reservation and led to additional and protracted litigation (Royster et al., 2023; Kramer, 1988).

The McCarran Amendment

Another policy that would affect Native American reserved water rights, as well as their sovereignty and self-determination regarding such rights is the McCarran Amendment of 1952 (Royster et al., 2023; Fletcher, 2016; Wilkins & Lomawaima, 2001). In its original form, the McCarran Amendment did not refer to Native American reserved rights (Royster et al., 2023; Hedden-Nicely, 2016; Brienza, 1992). The initial purpose of the McCarran Amendment was to protect states from increasing overreach by the United States upon water sources that states deemed to be theirs (Hedden-Nicely, 2016; Royster et al., 2023). The original language of the McCarran Amendment compelled the United States to waive sovereign immunity and be joined in state court regarding water adjudications (Royster et al., 2023; Hedden-Nicely, 2016; Wilkins & Lomawaima, 2001). Generally, the McCarran Amendment compelled the United States to

litigate its water rights claims in state courts rather than federal courts (Royster et al., 2023; Hedden-Nicely, 2016; Wilkins & Lomawaima, 2001).

The United States Supreme Court made three rulings between 1971 and 1983 that ultimately asserted that the McCarran Amendment did apply to Native American reserved water rights (Royster et al., 2023; Hedden-Nicely, 2016; Candrian, 2011; Brienza, 1992). The first ruling was *United States v. District Court in and for Eagle County* (1971), through which the Court affirmed that the McCarran Amendment applied to federally reserved water rights (Royster et al., 2023; Hedden-Nicely, 2016; Candrian, 2011; Brienza, 1992). In 1976, the United States Supreme Court adjudicated *Colorado River Water Conservation District v. United States* in 1976 (Royster et al., 2023). Through this ruling, the Court asserted that the McCarran Amendment applied to Native American reserved rights (Royster et al., 2023; Hedden-Nicely, 2016; Candrian, 2011; Brienza, 1992). As a result, Native American reserved water rights were generally adjudicated in state courts after 1976.

Nevertheless, there were lingering questions about the full applicability of the McCarran Amendment to Native American reserved water rights, which the Supreme Court reviewed in *Arizona v. San Carlos Apache Tribe of Arizona* (1983) (Royster et al., 2023; Hedden-Nicely, 2016; Candrian, 2011; Brienza, 1992). Two main questions reviewed by the Court in *Arizona v. San Carlos Apache* were the following: 1) does the McCarran Amendment apply to states with enabling acts that reserved jurisdiction over Native American lands for Congress? And 2) if the courts in such States do have jurisdictions, can tribes file concurrent lawsuits along with the United States regarding their water claims? (Royster et al., 2023; Hedden-Nicely, 2016). After deliberations, the Supreme Court ruled that the McCarran Amendment removed any limitations set by enabling acts regarding state jurisdiction over tribal lands (Royster et al., 2023; Hedden-

Nicely, 2016). Thus, through *Arizona v. San Carlos Apache Tribe of Arizona* (1983), the United States Supreme Court further affirmed the applicability of the McCarran Amendment to Native American tribes (Royster et al., 2023; Hedden-Nicely, 2016; Candrian, 2011; Brienza, 1992).

Quantification of Native American Reserved Water Rights

In *Arizona v. California* (1963), the United States Supreme Court affirmed the water rights of five Native American tribes along the main stem of the Colorado River, as well as a quantification method for reserved water rights (Royster et al., 2023; *Arizona v. California*, 1963; Thompson et al., 2018). The Native American tribes for which the ruling quantified reserved water rights are the Chemehuevi Tribe, the Cocopah Tribe, the Yuma Tribe, the Colorado River Indian Tribes, and the Fort Mojave Tribe (Royster et al., 2023; *Arizona v. California*, 1963). The Supreme Court also determined that the most appropriate method to quantify reserved water rights is the practicable irrigable acreage (PIA) (Royster et al., 2023; *Arizona v. California*, 1963; Fletcher, 2016; Anderson, 2015). Through the PIA, tribes could now use a reliable method to quantify their water rights in court (Royster et al., 2023; *Arizona v. California*, 1963)

The rationale behind the PIA was that Native American reservations were created to assimilate Native Americans into Euro-American farming practices, as well as to be their permanent homelands (Royster et al., 2023; Fletcher, 2016; Dunbar-Ortiz, 2014; Deloria, 1985). As affirmed by Justice McKenna in *Winters v. United States* (1908), “[t]he Indians had command of the lands and the waters...Did they give up all this? Did they reduce the area of their occupation and give up the waters which made it valuable or adequate?” (*Winters v. United States*, 1908). Native American tribes would not have agreed to have their reservation in arid areas without access to water (*Winters v. United States*, 1908; Royster et al., 2023). From the

perspective of the United States, converting the Native American tribes into Euro-American farmers would have also required access to water for irrigation purposes (*Winters v. United States*, 1908; Royster et al., 2023). As a result, the PIA was established with the assumption that Native American reservations had valid water claims based on the purpose of their creation (*Arizona v. California*, 1963; *Winters v. United States*, 1908; Royster et al., 2023; Wilkins & Lomawaima, 2001).

Despite its ability to generate water quantifications that are acceptable to Euro-American courts, there are two main criticisms against the PIA, which are its high cost and its applicability to all Native American reservations (Royster et al., 2023; Thompson et al., 2018; Cosens, 2003). The PIA process is very expensive and technical because it requires the assessment of experts like soil and water scientists, economists, lawyers, and agronomists (Royster et al., 2023; Colby et al., 2005). Additionally, each Native American reservation is unique and has its own challenges. As a result, in addition to being expensive, employing the PIA to quantify Native American water rights can be risky to the integrity of a tribe's water rights claim (Royster et al., 2023; Thompson et al., 2018). Some reservations are located in canyons while others are located in alluvial plains (Royster et al., 2023; Thompson et al., 2018). Native American reservations in alluvial plains can receive greater water decrees, whereas Native American reservations in mountainous areas or canyonlands can receive less water (Royster et al., 2023; Thompson et al., 2018). Ultimately, the question of whether the PIA is the appropriate water quantification standard for Native American reserved rights is disputed.

Since 1963, there have been several attempts to redefine the method through which Native American reserved water rights are quantified. The only method that has been able to gain purchase against the PIA is the Homeland Standard set by the Arizona Supreme Court in 2001

(Royster et al., 2023; Cosens, 2003; *In Re General Adjudication of all Rights to use Water in the Gila River System and Source*, AZ 2001). By 2001, Arizona's jurisdiction over tribal water rights was widely accepted due to the McCarran Amendment (Royster et al., 2023; Hedden-Nicely, 2016; Thompson et al., 2018). Through its assertion of the homeland standard, the Arizona Supreme Court relied on the purpose of Native American reservations but took a more comprehensive approach to quantifying Native American water rights (Royster et al., 2023; Cosens, 2003; *In Re General Adjudication of all Rights to use Water in the Gila River System and Source*, AZ 2001). The Court affirmed that because Native American reservations were established to be a permanent homeland for the tribes inhabiting them, the water rights quantification method should reflect that (Royster et al., 2023; Cosens, 2003; *In Re General Adjudication of all Rights to use Water in the Gila River System and Source*, AZ 2001). Additionally, Through the Homeland Standard, courts should also consider factors such as topography, history, and the tribe's desire to undertake modern economic development practices (Royster et al., 2023; Cosens, 2003; *In Re General Adjudication of all Rights to use Water in the Gila River System and Source*, AZ 2001).

Furthermore, the Homeland Standard established by the Arizona Supreme Court appears to be more flexible than the PIA (Royster et al., 2023; Cosens, 2003; *In Re General Adjudication of all Rights to use Water in the Gila River System and Source*, AZ 2001). Unlike the PIA, the Homeland Standard allows tribes to use their water rights for more purposes than irrigation (Royster et al., 2023; Cosens, 2003; *In Re General Adjudication of all Rights to use Water in the Gila River System and Source*, AZ 2001). Nevertheless, the Homeland Standard can be just as problematic as the PIA because when a court issues a decision based on that standard, it will do so based on the preponderance of the facts presented to the court. In a lawsuit, the parties will

submit evidence to support their claims. Nonetheless, the judge presiding over the case will make the ultimate decision, which will be binding and precedent setting.

Tribal Jurisdiction v. State Jurisdiction

One of the major consequences of the General Allotment Act's role in checkerboarding Native American reservations is the fact that today there are non-Native American landowners within reservations (Royster et al., 2023; Greenwald, 2002; Deloria, 1985; DeJong, 2014). The question of how much jurisdiction, whether criminal or civil, Native American tribes have over non-Native Americans within their borders has created much debate in recent decades (Royster et al., 2023; Greenwald, 2002; Deloria, 1985; DeJong, 2014). While States have been enjoying increased sovereignty over Native American affairs, the same cannot be claimed about Native American jurisdiction over non-Native American affairs (Royster et al., 2023; Fletcher, 2016; Wilkins & Lomawaima, 2001; Getches, 2019; Hendry & Tatum, 2016). Such a trend began in 1976, when the United States Supreme Court first ruled that the McCarran Amendment applies to Native American reserved water rights (Royster et al., 2023; Hedden-Nicely, 2016; Brienza, 1992). Importantly, this trend of increasing State jurisdictional power over Native American reservations has been gradual and encompasses all facets of life in Native American reservations, especially regarding water rights (Royster et al., 2023; Fletcher, 2016; Wilkins & Lomawaima, 2001; Getches, 2019; Hendry & Tatum, 2016).

The 1970s and 1980s were not good decades for Native American sovereignty, especially in relation to jurisdiction over non-Native American actors (Wilkins & Lomawaima, 2001; Getches, 2019; Hendry & Tatum, 2016). The United States Supreme Court ensured that state courts had jurisdiction over Native American water rights through its ruling in *Colorado River Water Conservation District v. United States* (1976) (Royster et al., 2023; Hedden-Nicely, 2016;

Colorado River Water Conservation District v. United States, 1976). Within a few years, the United States Supreme Court also stripped criminal jurisdiction over non-Native Americans from tribal courts through its ruling in *Oliphant v. Suquamish Indian Tribe* (1978) (Fletcher, 2016; *Oliphant v. Suquamish Indian Tribe*, 1978; Hendry & Tatum, 2016). In 1981, federal courts also restricted civil jurisdiction of tribal courts over non-Native Americans through *Colville Confederated Tribes v. Walton* (9th Cir. 1981) and *Montana v. United States* (1981) (Fletcher, 2016, Anderson, 2010). While the United States Supreme Court is the highest court in the country, cases that do not make it to the Supreme Court of the United States also can create precedent, especially when certiorari is denied by the United States Supreme Court.

The trend of declining tribal jurisdiction over non-Native Americans and increased state jurisdiction over Native American reservations demonstrates that the courts of the United States, regardless of their level in the judicial hierarchy, can erode tribal sovereignty and self-determination (Getches, 2019; Hendry & Tatum, 2016; Wilkins & Lomawaima, 2001). The precedent setting nature of litigation in the United States is especially problematic for Native American sovereignty and self-determination. One Native American tribe may litigate a case to the highest level it is able to, but the result will have lasting consequences on all other tribes, even those who were not involved in the case.

An example of the detrimental effects that the precedent setting nature of litigation can have on tribal sovereignty and self-determination is *Nevada v. Hicks* (2001). *Nevada v. Hicks*, adjudicated by the United States Supreme Court in 2001, allows state law enforcement officers to enforce state court orders within Native American reservations without informing the affected tribe or obtaining permission from it (Fletcher, 2016; Hendry & Tatum, 2016; *Nevada v. Hicks*, 2001). After that ruling, all Native American tribes are subject to state jurisdiction for crimes

committed outside their reservation (Hendry & Tatum, 2016; Getches, 2019; *Nevada v. Hicks*, 2001). Ultimately, the *Nevada v. Hicks* (2001) ruling perpetuates a tremendous imbalance of power when tribes are not allowed to prosecute non-Native Americans who commit crimes in their reservations, but states are allowed to enforce their court orders within reservations (Hendry & Tatum, 2016; Getches, 2019; *Nevada v. Hicks*, 2001; *Oliphant v. Suquamish Indian Tribe*, 1978).

Furthermore, *Colville Confederated Tribes v. Walton*, which was adjudicated by the 9th Circuit Court of Appeals in 1981, was a water rights-related dispute regarding questions about the role that reserved water rights have on allottees (Royster et al., 2023; Anderson, 2016; Hawkins, 2012). By the time the case made it to the 9th Circuit Court of Appeals, the Colville Confederated Tribes had successfully litigated and quantified their water rights to a body of water within their reservation, the No Name Creek basin (Royster et al., 2023). Walton was an allottee who wanted to use the tribe's reserved water rights to irrigate his fields (Royster et al., 2023). The Court ultimately decided that non-Native American allottees do have the right to use the reserved water rights of a given reservation (Royster et al., 2023). Once the question of whether non-Native American allottees have rights to the reserved water rights of a reservation was resolved, the question turned into one about who has jurisdiction over allottee water rights.

In 1981, the United States Supreme Court ruled on *Montana v. United States* (Royster et al., 2023; *Montana v. United States*, 1981). *Montana v. United States* (1981) was the culmination of a legal dispute through which the Crow Tribe of Montana asserted its right to prohibit fishing and hunting by non-members even within fee simple lands in the reservation (Royster et al., 2023; *Montana v. United States*, 1981). The State of Montana challenged this assertion and affirmed its own authority to regulate hunting and fishing rights within the Crow Reservation in

lands held in fee simple by non-Native Americans (Royster et al., 2023; *Montana v. United States*, 1981). The United States filed a lawsuit on behalf of the Crow Tribe in order to resolve the dispute, especially in regard to the question of who owned the bed of the Big Horn River (Royster et al., 2023; *Montana v. United States*, 1981). The case made its way to the United States Supreme Court, who ruled against the tribe (Royster et al., 2023; *Montana v. United States*, 1981). In its ruling, the Supreme Court held that the ownership of the bed of the Big Horn River passed from the United States to Montana when Montana became a state (Royster et al., 2023; *Montana v. United States*, 1981).

The Supreme Court further affirmed that the Crow Tribe did not own the bed of the Big Horn River because it had not been reserved by the United States for the tribe through the treaties signed with the tribe in 1851 and 1868 (Royster et al., 2023; *Montana v. United States*, 1981). Through this assertion, the Supreme Court ignored the canons of construction established by *Winters v. United States* (1908) and *United States v. Winans* (1905) (Royster et al., 2023; *Montana v. United States*, 1981; *Winters v. United States*, 1908; *United States v. Winans*, 1905). According to such canons of construction, when treaties were signed between the United States and Native American tribes, it was a reservation of rights by the tribe and not a grant of rights from the United States (*United States v. Winans*, 1905; *Winters v. United States*, 1908). Additionally, when treaties are silent on rights, the rights should be implied in favor of the tribe (*Winters v. United States*, 1908). Moreover, when treaties are ambiguous about certain rights, the treaties should be construed in favor of the tribe (*Winters v. United States*, 1908). In all, based on the very laws of the United States, ownership of the bed of the Big Horn River was impliedly reserved by the tribe upon signing the 1868 treaty with the United States.

Knowing these foundational concepts of Native American law and policy, it is not surprising that the Crow Tribe was confident that it would win the case against the State of Montana. Nevertheless, it is clear that by the time the ruling of *Montana v. United States* took place, the highest court in the United States had ceased to respect such foundational concepts about the relationship between Native American tribes, the United States, and States (Hendry & Tatum, 2016; Getches, 2019; *Nevada v. Hicks*, 2001; *Oliphant v. Suquamish Indian Tribe*, 1978). The Supreme Court rulings in *Oliphant v. Suquamish Indian Tribe* (1978) and *Montana v. United States* (1981) confirmed that tribes have been losing their sovereign status over time through their relationship with the United States as domestic dependent nations (Hendry & Tatum, 2016; Getches, 2019; *Nevada v. Hicks*, 2001; *Oliphant v. Suquamish Indian Tribe*, 1978; *Montana v. United States*, 1981). Such rulings also contradict foundational tenets set by *Worcester v. Georgia* (1832), where the United States Supreme Court affirmed the sovereign status of Native American tribes, the nation-to-nation relationship between the United States and Native American tribes, and the fact that States have no jurisdiction over the affairs of Native American tribes unless Congress explicitly allows it (Hendry & Tatum, 2016; Getches, 2019; *Nevada v. Hicks*, 2001; *Oliphant v. Suquamish Indian Tribe*, 1978).

Another important part of the *Montana v. United States* (1981) ruling is the creation of the Montana Test (Royster et al., 2023; *Montana v. United States*, 1981). The Montana Test affirms that for a tribe to have jurisdiction over the actions of non-Native Americans in fee simple land within its reservation, the following conditions must be met: a) the non-Native American entities must have entered into agreements or dealings with the tribe; b) and the activities of the non-Native American entities must threaten the political and economic security of the tribe (Royster et al., 2023; *Montana v. United States*, 1981). In theory, Native American

tribes have civil jurisdiction over non-members once the exceptions in the Montana Test have been met; however, reality can be different. The reality is that the United States' legal system was designed to uphold the integrity of the United States (Hendry & Tatum, 2016; Getches, 2019). The Supreme Court of the United States created the Montana Test and has utilized it in several subsequent cases but has found ways to use it against Native American tribes, as evidenced by *Nevada v. Hicks* (2001) (Hendry & Tatum, 2018; Getches, 2019; *Nevada v. Hicks*, 2001).

One of the more recent cases to which the Montana Test has been applied is *Nevada v. Hicks*, which was adjudicated against Native American tribes by the United States Supreme Court in 2001 (Royster et al., 2023; Hendry & Tatum, 2016; Getches, 2019; *Nevada v. Hicks*, 2001). In *Nevada v. Hicks*, the United States Supreme Court reviewed a dispute caused by State of Nevada game wardens who executed search warrants issued by the state and the tribe against a member of the Fallon Paiute-Shoshone Tribes living on the reservation (Hendry & Tatum, 2018; *Nevada v. Hicks*, 2001; Fletcher, 2016). The alleged crime had taken place outside the reservation (*Nevada v. Hicks*, 2001; Hendry & Tatum, 2018).

Mr. Hicks filed a lawsuit against the state game wardens and the State of Nevada for trespassing on his property, abusing his property, and violating his constitutional rights (Hendry & Tatum, 2018; *Nevada v. Hicks*, 2001). The dispute ended in the United States Supreme Court, which issued a ruling against tribal jurisdiction over the actions of the non-member state officers within the reservation (Hendry & Tatum, 2018; *Nevada v. Hicks*, 2001). The Supreme Court concluded that tribal jurisdiction over the actions of the state game wardens regarding the off-reservation violation "is not essential to tribal self-government or internal relations", in reference to the Montana Test (*Nevada v. Hicks*, 2001). Additionally, the Supreme Court ruled that the non-

Indian officers did not need to exhaust remedies in tribal court before seeking remedy in federal district court (*Nevada v. Hicks*, 2001). Overall, the Supreme Court's ruling in *Nevada v. Hicks* was a powerful blow against Native American sovereignty over their own lands (Hendry & Tatum, 2018; *Nevada v. Hicks*, 2001).

Although the cases described in this section are mostly related to the criminal and civil jurisdiction that Native American tribes have over non-tribal members, the implications for Native American water sovereignty are far-reaching. Rather than relying on the canons of construction of American Indian law and policy, the courts of the United States now appear to be leaning on a new set of constructions to deny tribal sovereignty over activities that take place in Native American reservations (Hendry & Tatum, 2016; Getches, 2019; *Nevada v. Hicks*, 2001; *Oliphant v. Suquamish Indian Tribe*, 1978). Allotted lands are held in fee simple title, but they are still part of a reservation. Ultimately, the General Allotment Act allowed the incursion of Euro-American settler laws into Native American reservations because fee simple lands could be construed as being part of the states (Fletcher, 2016; Dunbar-Ortiz, 2014; Deloria, 1985).

The Big Horn Cases and Water Codes

As the era of Native American self-determination commenced after the Civil Rights movement in the United States, tribes were also seeking ways to assert their sovereignty over their water rights (Fletcher, 2016; Wilkins & Lomawaima, 2001; Royster et al., 2023). Moreover, as Native American tribes asserted their water claims through the courts, some sought to manage their water through the enactment of tribal water codes (Royster et al., 2023; Breckenridge, 2006). Water codes offer an effective way for tribes to control their water resources (Royster et al., 2023; Breckenridge, 2006). Nevertheless, states and the federal government have generally opposed the enactment of tribal water codes since the 1970s (USDOJ, 2022; Royster et al., 2023;

Breckenridge, 2006). In 1975, the Secretary of the Interior issued a moratorium on the approval of tribal water codes, which affected tribes that required Secretarial approval of their water codes (USDOJ, 2022; Getches, 1986). The Morton Moratorium lasted from 1975 to 2022, when former Secretary of the Interior Deb Haaland lifted it (USDOJ, 2022). Former Secretary of the Interior Morton justified his moratorium on the need to avoid confusion and the waste of resources while litigation over water rights was taking place in several courts (Getches, 1986; Royster et al., 2023).

The existence of the Morton Moratorium has been especially problematic for Native American tribes with governing bodies and constitutions that were established through the Indian Reorganization Act of 1934 (Getches, 1986; Breckenridge, 2006). Such tribes are required to obtain approval by the Secretary of the Interior before enacting laws, which include water codes (Breckenridge, 2006; Fletcher, 2016; Dunbar-Ortiz, 2014). Requiring Secretarial approval of water codes weakens Native American water sovereignty and self-determination because such an approval implies that tribes must tailor their water codes to meet the approval of the Secretary of the Interior (Breckenridge, 2006; Dunbar-Ortiz, 2014). The Secretary of the Interior is an agent of the United States and thus, the type of water code that the Secretary of the Interior would approve in such cases would necessarily have had to adhere to Euro-American standards of water management and not those of the tribe seeking to enact the water code (Breckenridge, 2006; Royster et al., 2023). Native American tribes with governing bodies that were not established through the Indian Reorganization Act were free to establish their own water codes without the approval of the Secretary of the Interior (Breckenridge, 2006; Royster et al., 2023).

In the 1980s, the Indians of the Wind River Indian Reservation were litigating their water rights claims through the general stream adjudications of the waters of the Big Horn River in

Wyoming (Royster et al., 2023; Anderson, 2015; Crass, 1997; Brienza, 1992). Such cases became known as the Big Horn cases, and they provide an excellent example of why the McCarran Amendment can be problematic for Native American water rights (Royster et al., 2023; Anderson, 2015; Crass, 1997; Brienza, 1992). Due to the McCarran Amendment, the Big Horn cases related to the Wind River Indian Reservation were adjudicated by State of Wyoming courts (Royster et al., 2023; Anderson, 2015; Crass, 1997; Brienza, 1992). In 1989, the Wyoming Supreme Court awarded the tribes of the Wind River Indian Reservation 500,000 acre-feet of water per year from the Big Horn River for irrigation purposes (Royster et al., 2023; Anderson, 2015; Crass, 1997; Brienza, 1992).

The Wyoming Supreme Court based its ruling on the PIA and justified the purpose of the water rights on the primary purpose of the reservation (Royster et al., 2023; Anderson, 2015; Crass, 1997; Brienza, 1992). In the Court's view, the Wind River Indian Reservation had been created with the purpose of converting the Native Americans to farming, so the water rights that were implied for the reservation had to be for farming purposes only (Royster et al., 2023; Anderson, 2015; Crass, 1997; Brienza, 1992). Importantly, the Wyoming Supreme Court rejected the Special Master's suggestion that the purpose of the water should also be to sustain instream flows for fisheries (Royster et al., 2023; Anderson, 2015; Crass, 1997; Brienza, 1992). The court made this decision based on *United States v. New Mexico* (1978), through which the United States Supreme Court ruled that federal reserved water rights had to adhere to the primary purpose of the reservation (Royster et al., 2023; Thompson et al., 2018; Anderson, 2015; Crass, 1997; Brienza, 1992). Any secondary purposes would have to be decided by the state where the federal reservation was established (Royster et al., 2023; Thompson et al., 2018). The Wyoming Supreme Court erred in its use of *United States v. New Mexico* when it awarded the water rights

to the Wind River Reservation because Native American reserved water rights are different than federal reserved water rights (Royster et al., 2023; Thompson et al., 2018; *In Re General Adjudication of all Rights to use Water in the Gila River System and Source*, AZ 2001).

While the reserved water rights award issued to the Wind River Indian Reservation by the Wyoming Supreme Court is substantial, the restrictions placed on the use of the water were problematic for the tribe (Royster et al., 2023; Anderson, 2015; Crass, 1997; Brienza, 1992). In response, the tribes of the Wind River Indian Reservation created their own water code, through which they appointed a tribal engineer to administer their water and allocated future water uses to instream flows (Royster et al., 2023; Thompson et al., 2018; Anderson, 2015; Crass, 1997; Brienza, 1992). A lawsuit challenging the tribal water code ensued and the case ended up in the Wyoming Supreme Court (Royster et al., 2023; Thompson et al., 2018; Anderson, 2015; Crass, 1997; Brienza, 1992).

In 1992, the Wyoming Supreme Court reviewed the case and ruled against the tribes of the Wind River Indian Reservation (Royster et al., 2023; Anderson, 2015; Crass, 1997; Brienza, 1992; *In Re General Adjudication of all Rights to use Water in Big Horn System*, WY 1992). In its ruling, the Court affirmed that tribes may not change the secondary purpose of their reserved water rights without regard to state law, relying on *United States v. New Mexico* (1978) (Royster et al., 2023; Anderson, 2015; Crass, 1997; Brienza, 1992; *In Re General Adjudication of all Rights to use Water in Big Horn System*, WY 1992). Additionally, the court affirmed that the State Engineer would have general supervision over the reserved water rights of the reservation (Royster et al., 2023; Anderson, 2015; Crass, 1997; Brienza, 1992; *In Re General Adjudication of all Rights to use Water in Big Horn System*, WY 1992).

In its adjudication of *In Re General Adjudication of all Rights to use Water in Big Horn System* (1992), the Wyoming Supreme Court justified its own bias for greater state jurisdiction over the water rights of the Wind River Reservation on a case that does not refer to Native American reserved water rights (*In Re General Adjudication of all Rights to use Water in Big Horn System*, WY 1992; *United States v. New Mexico*, 1978). In fact, even the State of Arizona rejects the use of *United States v. New Mexico* as a lodestone for the primary and secondary purposes of Native American reserved water rights (Royster et al., 2023; *In Re General Adjudication of all Rights to use Water in the Gila River System and Source*, 2001; Cosens, 2006). While the purposes of federal reservations are narrow, such as to provide water for an air force base or enough water for a national forest to thrive, the purposes of Native American reservations are broader (Royster et al., 2023; *In Re General Adjudication of all Rights to use Water in the Gila River System and Source*, AZ 2001). Native American reservations were created to establish a homeland for Native Americans (Fletcher, 2016; Royster et al., 2023; *In Re General Adjudication of all Rights to use Water in the Gila River System and Source*, AZ 2001).

Given the trends that were taking place throughout the latter half of the 20th Century in regard to diminished tribal sovereignty over their reserved water rights, water codes presented a strong opportunity to reinforce such sovereignty. The Morton moratorium, and the Big Horn cases are examples of how both the federal government and state governments can hinder this possibility. Despite such odds, however, Native American tribes are pragmatic and have continued to seek ways to develop and manage their water rights through their own water codes (Breckenridge, 2006; Royster et al., 2023).

Conclusion

The period between 1908 and the present has offered many glimpses into the evolving relationship between Native American tribes, States, and the Federal Government. Generally, tribal sovereignty and self-determination have been weakened through the court system of the United States during this period of time (Getches, 2019; Hendry & Tatum, 2016; Wilkins & Lomawaima, 2001). Two periods that offered some positivity in terms of the advancement of tribal sovereignty and self-determination are the Indian Reorganization Act (1934) period and the self-determination period that started in the 1970s with the Nixon Administration (Fletcher, 2016; Wilkins & Lomawaima, 2001; Deloria, 1985). Beyond these two periods of positivity for tribal sovereignty, the courts have proven to be detrimental for Native American tribes that attempt to uphold their rights, especially their water rights (Royster et al., 2023; Getches, 2019; Hendry & Tatum, 2016).

A study into how Native American tribes fare in the United States Supreme Court found that it is easier for convicted felons to achieve victory in the high court than it is for Native American tribes (Getches, 2019; Hendry & Tatum, 2016). Unsurprisingly, the two positive periods for tribal sovereignty have emerged from Congress and not from the courts of the United States. In such an environment, Native American tribes have been left with few choices about how they can assert their water rights within the legal system of the United States (Fletcher, 2016; Royster et al., 2023; Hendry & Tatum, 2016; Curley, 2021). In 1978, the United States began working with Native American tribes and states to develop Congressionally ratified water settlements (McCool, 2002; Curley, 2021; DeJong, 2014). As a result, water settlements have emerged as a preferred alternative to water litigation, especially after the Supreme Court of the United States ruled that the McCarran Amendment applied to Native American reserved rights in 1976 (Royster et al., 2023; Hedden-Nicely, 2016; Chambers & Echohawk, 1991; McCool, 2002).

CHAPTER 4: COLONIAL NARRATIVES AND NATIVE AMERICAN WATER SETTLEMENTS

The Indigenous Peoples of what is today the United States have had a government-to-government relationship with the United States for as long as the country has existed (Deloria, 1985; Wilkins & Lomawaima, 2001; Fletcher, 2016; Dunbar-Ortiz, 2014). In the early days of the United States, the border between the country and the numerous Indigenous Peoples of the continent was demarcated by the Appalachian Mountains and held in place by the British Proclamation of 1763 (Fletcher, 2016; Immerwahr, 2019; Dunbar-Ortiz, 2014; Deloria, 1985). As the United States expanded westward, the country engaged in a variety of tactics and strategies to ensure that the land beyond the Appalachian Mountains would be available for Euro-American settlement (Fletcher, 2016; Immerwahr, 2019; Deloria, 1985; Dunbar-Ortiz, 2014). Between 1776 and 1871, the United States engaged in treaty-making with the Native American tribes it encountered (Fletcher, 2016; Deloria, 1985; Wilkins & Lomawaima, 2001). The treaty-making period was interspersed by numerous laws and policies designed to establish the dominance of the United States over Native American tribes (Fletcher, 2016; Saito, 2020; Dunbar-Ortiz, 2021; Wilkins & Lomawaima, 2001). Native American tribes have been struggling to legally secure their water rights since at least 1908. This chapter will review the colonial narratives that have hindered the fulfillment of Native American water rights, as well as the emergence of the water settlement process as a possible alternative to water rights litigation.

Treaties and the Rise of United States Dominance

Overall, the United States signed and ratified hundreds of internationally binding treaties with the Native American tribes it encountered throughout its westward expansion (Fletcher, 2016; Deloria, Jr., 1985; Wilkins & Lomawaima, 2001). Many of these treaties were peace treaties designed to halt warfare in exchange for mutually beneficial concessions (Fletcher, 2016; Deloria, 1985; Wilkins & Lomawaima, 2001). Generally, the Native American tribes obtained a reservation that would be their permanent homeland without the encroachment of Euro-American settlers (Fletcher, 2016; Deloria, 1985; Wilkins & Lomawaima, 2001). In return, the United States obtained vast portions of land, along with the resources associated with such land (Fletcher, 2016; Dunbar-Ortiz, 2014). As the United States grew in power, however, the integrity of such treaties began to unravel, especially as the United States' body politic started to develop laws that undermined tribal sovereignty and self-determination (Fletcher, 2016; Canby, 2015; Deloria, 1985; Dunbar-Ortiz, 2014).

The Marshall Trilogy cases set the foundation for the subordinate legal relationship that Native American tribes currently have in relation to the United States (Fletcher, 2016). Conversely, *United States v. Winans* (1905) and *Winters v. United States* (1908) established the foundation for Native American water rights claims through the reserved rights doctrine (Royster et al., 2023). Over 200 years have passed since the inception of the Marshall Trilogy cases in 1823 (Fletcher, 2016; Deloria, 1985; Dunbar-Ortiz, 2014). Similarly, over 100 years have passed since the foundation of the reserved rights doctrine, which recognized Native American reserved water rights (Royster et al., 2023; Deloria, 1985; Anderson, 2006b). Despite the length of time between the occurrence of such powerful legal precedents and contemporary times, the concepts endure. The United States has been attempting to diminish the strength of its trust responsibility

to Native American tribes for just as long (Deloria, 1985; Wilkins & Lomawaima, 2001; Getches, 2019; Hendry & Tatum, 2016).

Historically, the United States has had a conflict of interest in regard to its relationship with Native American tribes (Wilkins & Lomawaima, 2001; Deloria, 1985; Royster et al., 2023; *United States v. Orr Water Ditch Company*, D. NV 1944). On the one hand, the country has historically had imperialist ambitions that led it to conduct warfare in faraway places, as well as control territories to this day (Immerwahr, 2019; Deloria, 1985; Dunbar-Ortiz, 2014). On the other hand, however, a trust responsibility to Native American tribes binds the United States to hold the best interest of Native American tribes in mind (*Cherokee Nation v. Georgia*, 1831; Wilkins & Lomawaima, 2001; Deloria, 1985). Thus, the United States has been able to legally hold Native American lands and resources in trust while also encouraging Euro-American settlers to settle the lands ceded by Native Americans (Fletcher, 2016; Wilkins & Lomawaima, 2001; DeJong, 2014; Dunbar-Ortiz, 2021).

The United States has also developed a narrative of superiority over Native American worldviews, as well as legal and political systems to justify its actions toward Native American tribes (Deloria, 1985; Saito, 2020; Dunbar-Ortiz, 2021). American Indian law and policy is rife with language asserting the inferior nature of Native American worldviews, legal systems, and political systems (Fletcher, 2016; Deloria, 1985; Dunbar-Ortiz, 2014). As products of Euro-American legal minds, American Indian law and policy naturally aims to uphold the interests of the United States over others (Getches, 2019; Wilkins & Lomawaima, 2001; Hendry & Tatum, 2016). Water litigation and settlements have historically occurred in relation to each other as unsuccessful litigation has often led to water settlement negotiations (Colby et al., 2005; DeJong, 2007). As such, when analyzing the merits of Native American water sovereignty and self-

determination in relation to Native American water settlements, it is important to discern how the numerous parties benefit from such a process.

Colonial Narratives and the Negotiation Process

Negotiation is a fundamental aspect of Native American water settlements (Stern, 2017; Cosens, 2003; Hawkins, 2012; Hays, 2006; Colby et al., 2005). Before the foundation of the United States and shortly thereafter, Native American tribes negotiated treaties with the United States that were more balanced than the treaties of the mid to late 19th Century (Deloria, 1985; Wilkins & Lomawaima, 2001; Dunbar-Ortiz, 2014; Fletcher, 2016). Such balance was due to more equal power dynamics between the parties at the time, which changed as the United States gained power and ambition to expand its territory westward (Dunbar-Ortiz, 2014; Deloria, 1985; Wilkins & Lomawaima, 2001). The United States developed a narrative of superiority over Native American worldviews, legal systems, and political systems to justify its actions against Native American tribes throughout the 18th Century (Fletcher, 2016; Deloria, 1985; Dunbar-Ortiz, 2014; Dunbar-Ortiz, 2021; Saito, 2020). This narrative was woven into American Indian law and policy, which governs the relationship between Native American tribes, the United States, and States (Fletcher, 2016; Deloria, 1985; Dunbar-Ortiz, 2014; Dunbar-Ortiz, 2021; Saito, 2020).

Recent examples of negotiations between the United States and Native American tribes show a high imbalance of power (McCool, 2002; Curley, 2021; Folk-Williams, 1988; McCool, 1993). For such negotiations to be truly successful and balanced, all parties involved must endeavor to understand and respect each other's legal systems (Hendry & Tatum, 2016; Hawkins, 2012; Klee & Mecham, 2005). In the world of Native American water rights, the concept of balanced negotiation offers alternatives to litigation and ways to improve water

settlements (Hendry & Tatum, 2016; Tatum & Kappus Shaw, 2014; Hawkins, 2012).

Nonetheless, in order for balanced negotiations to exist, the United States must acknowledge the validity of Native American legal and political systems. To do so, the legal and political systems of the United States will have to shed centuries of narratives that portray Native American tribes as incapable of having sophisticated legal and political systems (Wilkins & Lomawaima, 2001; Deloria, 1985; Fletcher, 2016).

For example, the United States Supreme Court employed the narrative of legal and political inferiority of Native American tribes to justify its assertion that Native American tribes were domestic dependent nations to the United States in *Cherokee Nation v. Georgia* (1831). Through the deliberations of the Opinion in *Cherokee Nation v. Georgia* (1831), the high court stated the following:

The argument is that... [Native American tribes] were States, and if not States of the union, must be foreign states. But I think it very clear that the Constitution neither speaks of them as States or foreign states, but as just what they were, Indian tribes, an anomaly unknown to the books that treat of States, and which the law of nations would regard as nothing more than wandering hordes, held together only by ties of blood and habit, and having neither laws or government beyond what is required in a savage state (*Cherokee Nation v. Georgia*, 1831).

The Supreme Court then proceeded to declare that Native American tribes were domestic dependent nations because of previous interactions between Native American tribes and the United States (*Cherokee Nation v. Georgia*, 1831; Deloria, 1985; Wilkins & Lomawaima, 2001). Another important factor used by the Supreme Court to justify its opinion was that the Cherokees, while a sovereign nation, “[occupied] a territory to which... [the United States asserted] ...title” (*Cherokee Nation v. Georgia*, 1831). Thus, through its opinion, the United States Supreme Court strengthened the legal precedent set by *Johnson v. McIntosh* in 1823 while also establishing the federal trust doctrine (*Cherokee Nation v. Georgia*, 1831; *Johnson v. McIntosh*, 1823; Deloria, 1985; Wilkins & Lomawaima, 2001).

In 1887, the United States Congress utilized the narrative of Native American legal and political inferiority to justify the passage and enactment of the General Allotment Act of 1887 (Fletcher, 2016; Deloria, 1985; Dunbar-Ortiz, 2014). By the time the General Allotment Act took place, the United States had negotiated hundreds of treaties with Native American tribes (Fletcher, 2016; Deloria, 1985; Wilkins & Lomawaima, 2001). Such treaties included the exchange of vast amounts of land for a secure tribal land base that would be protected from Euro-American settler encroachment (Fletcher, 2016; Deloria, 1985; Wilkins & Lomawaima, 2001). The General Allotment Act of 1887 was in direct violation of the numerous treaties the United States had signed with Native American tribes (Deloria, 1985; Wilkins & Lomawaima, 2001; Fletcher, 2016). The narrative used by the United States to justify the enactment of the General Allotment Act was that the legislation would civilize Native American tribes (Indian General Allotment Act, 1887; Deloria, 1985; Wilkins & Lomawaima, 2001).

The implication here is that Native American tribes were not civilized and needed the help of the United States to become civilized. In addition to seeking to diminish the land base of Native American reservations, the General Allotment Act also sought to break the bonds of tribal unity and identity, through the guise of civilization (Indian General Allotment Act, 1887; Deloria, 1985; Deloria, 1988). An important provision of the General Allotment Act states that:

every Indian born within the territorial limits of the United States to whom allotments shall have been made and who has received a patent in fee simple under the provisions of this Act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up within said limits his residence, separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States (Indian General Allotment Act, 1887).

A key component of this provision is the condition that any Native American person had to “[adopt] the habits of civilized life” to be a United States citizen (Indian General Allotment Act, 1887). The adoption of a “civilized life” meant that Native American people had to give up their

tribal bonds and traditions to adopt the lifestyle and habits of Euro-American settlers (Indian General Allotment Act, 1887). As a result, the United States continued to advance the narrative that Native American ways of life, including laws and policies, were inferior to those of the United States.

The General Allotment Act of 1887 was officially rescinded by the Indian Reorganization Act of 1934, which allowed Native American tribes to have their own governments once again (Fletcher, 2016; Deloria, 1985; Dunbar-Ortiz, 2014). Nevertheless, a major condition was that the governments that tribes adopted under the Indian Reorganization Act had to resemble those of Euro-American legal and political systems and were subject to the approval of the Secretary of the Interior (Fletcher, 2016; Deloria, 1985; Dunbar-Ortiz, 2014). The Indian Reorganization Act was not mandatory, and some tribes accepted it while others rejected the Act (Fletcher, 2016; Deloria, 1985). Nonetheless, tribes that accepted the Indian Reorganization Act have had subsequent legal decisions like the approval of water codes subject to Secretarial approval (Deloria, 1985; Dunbar-Ortiz, 2014; Breckenridge, 2006).

Importance of Negotiating Native American Water Rights

A significant ethos of the fabric of the United States has consistently and historically relied on the belief that Native American legal and political systems are inferior to those of the United States (Wilkins & Lomawaima, 2001; Deloria, 1985; Fletcher, 2016). Regarding water rights, the very nature of the reserved rights doctrine is alien to Native American legal systems because the reserved rights doctrine emerged from the reservation system, which was conceived by the United States (Deloria, 1985; Craig et al., 2017; Royster et al., 2023). Because the reserved rights doctrine was established by the Supreme Court of the United States, it was developed through the legal and political lens of Euro-American perspectives about water, not

Native American ones (Wilkins & Lomawaima, 2001; Royster et al., 2023; Deloria, 1985). Water is essential for any human activity, which makes Native American water rights essential for reservation life (*Winters v. United States*, 1908; Royster et al., 2023; Craig et al., 2017). As such, the reserved rights doctrine is attributed to the creation of Native American reservations and is based on the treaties signed between tribes and the United States (Royster et al., 2023; Wilkins & Lomawaima, 2001; Deloria, 1985).

Because the reserved rights doctrine was justified by the creation of Native American reservations and their purposes, a debate about who made the water reservation has prevailed since the recognition of the reserved rights doctrine in 1908 (Massie, 1987; *Winters v. United States*, 1908; Wilkins & Lomawaima, 2001). Advocates of Native American sovereignty argue that the water reservation was made by the tribe when it negotiated for reservation lands with the United States (Wilkins & Lomawaima, 2001; Deloria, 1985). Critics of such claims, argue that the water reservation was made by the United States at the time a Native American reservation was created (*Arizona v. California*, 1963; *Colorado River Water Conservation District v. United States*, 1976; *Arizona v. Navajo Nation*, 2023). A fundamental argument of this dissertation is that the water reservation was in fact made by the Native American tribe and not the United States, in alignment with the legal precedent established by *United States v. Winans* (1905) and *Winters v. United States* (1908).

Nonetheless, many within the legal and political system of the United States have been unwilling to accept that the water reservation was made by the Native American tribe and not the United States (Massie, 1987; *Arizona v. California*, 1963; *Colorado River Water Conservation District v. United States*, 1976; *Arizona v. Navajo Nation*, 2023). Such viewpoints align with the narrative that the legal and political system of the United States is superior to that of Native

American tribes. The accepted narrative by the proponents of the dominant legal system, which is that of the United States, is contradictory. First, they argue that tribes have historically lacked the sophisticated legal and political systems necessary to properly negotiate with the United States for their rights and sovereignty (*Arizona v. California*, 1963; *Oliphant v. Suquamish Indian Tribe*, 1978). Second, they argue that Native American tribes affirmatively gave away their sovereignty when they accepted protection from the United States through certain treaties, like the Treaty of Hopewell (*Oliphant v. Suquamish Indian Tribe*, 1978; Treaty of Hopewell, 1786).

Ever since the recognition of the reserved rights doctrine in 1908, Native American tribes have had to litigate for their water rights (Royster et al., 2023; Craig et al., 2017; Anderson, 2015; Fletcher, 2016). By the time the 20th Century emerged, the domestic dependent nation status of Native American tribes in reference to the United States was well established (Fletcher, 2016; Royster et al., 2023; Deloria, 1985; Wilkins & Lomawaima, 2001). As trustee, the United States, through the Department of the Interior, facilitated lawyers to represent tribes in court when they sought to claim their water rights (Fletcher, 2016). Moreover, such cases were mainly litigated in federal court until 1976 and 1983, when the United States Supreme Court ruled that the McCarran Amendment applied to Native American tribes (Royster et al., 2023; Hedden-Nicely, 2016; Wilkins & Lomawaima, 2001).

The United States Supreme Court rulings of *Colorado River Water Conservation District v. United States* (1976) and *Arizona v. San Carlos Apache Tribe* (1983) ruled that Native American water rights cases should be litigated in state courts (Royster et al., 2023; Hedden-Nicely, 2016; Brienza, 1992; Anderson, 2015). Nevertheless, even when Native American water rights cases were litigated in federal court, such cases were bound by what the legal system of

the United States deemed was the purpose of their reservation (Royster et al., 2023; Craig et al., 2017; Anderson, 2015). For example, *United States v. New Mexico* (1978) created the concept of primary and secondary purposes of federally reserved water rights (*United States v. New Mexico*, 1978; Royster et al., 2023; Anderson, 2010). The dispute that triggered the case did not relate directly to Native American reserved water rights (*United States v. New Mexico*, 1978; Royster et al., 2023; Anderson, 2010). Instead, the question reviewed was whether the water reservation established by the creation of a National Forest could be used for purposes beyond preserving such a forest (*United States v. New Mexico*, 1978; Royster et al., 2023; Anderson, 2010)

Federally reserved water rights are different than Native American reserved water rights because Native American reservations were designed to be the homelands of Native American tribes (Royster et al., 2023; *In Re General Adjudication of all Rights to use Water in the Gila River System and Source*, AZ 2001). Nonetheless, the ruling of *United States v. New Mexico* (1978) has been applied by some state courts to severely limit and restrict the purpose of water reserved for Native American reservations (Royster et al., 2023; *In Re General Adjudication of all Rights to use Water in Big Horn System*, WY 1992; Crass, 1997). Similarly to *United States v. New Mexico* (1978), the McCarran Amendment originated from a matter that did not relate directly to Native American water rights (Hedden-Nicely, 2016; Royster et al., 2023; Brienza, 1992; Anderson, 2015). Initially, the McCarran Amendment only applied to water rights disputes between the United States and states (Hedden-Nicely, 2016; Royster et al., 2023; Brienza, 1992; Anderson, 2015).

Significantly, a deep flaw within the application of the McCarran Amendment to Native American tribes is the lack of recognition of the fact that Native American reserved water rights do not belong to the United States (Hedden-Nicely, 2016; Royster et al., 2023; Brienza, 1992;

Deloria, 1985; Wilkins & Lomawaima, 2001). In fact, the United States Supreme Court ruling of *Colorado River Water Conservation District v. United States* (1976) states that, “viewing the Government’s trusteeship of Indian rights as ownership, the logic of those cases clearly extends to such rights.” (*Colorado River Water Conservation District v. United States*, 1976). Generally, being trustee to certain rights does not make an entity the owner of such rights. The United States Supreme Court ignored this legal fact in order to ensure that the McCarran Amendment would apply to Native American reserved water rights (Hedden-Nicely, 2016; Royster et al., 2023; Brienza, 1992; Anderson, 2015).

In this sense, the pattern followed by the Supreme Court conforms to the theories posited by legal scholars like Melissa Tatum, Jennifer Hendry, and David Getches (Getches, 2019; Hendry & Tatum, 2016). Such scholars claim posit that the United States Supreme Court of the last 50 years will often ignore its own precedents and common legal sense in order to ensure that Native American rights are thwarted (Getches, 2019; Hendry & Tatum, 2016; Wilkins & Lomawaima, 2001). Conversely, the Supreme Court has ruled in favor of increased state power over Native American rights during this period of time (Getches, 2019; Hendry & Tatum, 2016; Wilkins & Lomawaima, 2001).

In such an environment, Native American tribes are at a disadvantage when litigating their water rights. Generally, the litigation system of the United States leaves no room for negotiation (Porter, 1997; Henry & Tatum, 2016; Tatum and Kappus Shaw, 2014). As a result, the water settlement process may offer better solutions for tribes. Such a process may allow Native American tribes to apply their own legal systems regarding the management and governance of water while also adhering to the dominant legal system of the United States.

Caution is required, however, because Native American worldviews about water can be fundamentally different than those of the United States (Deloria, 2003; Kimmerer, 2013).

History of Native American Water Settlements

Since 1990, it has been the policy of the United States federal government to endorse the use of water settlements to resolve unclaimed Native American reserved water rights (Stern, 2017; USDOJ, 1990). By that point, Congress had been ratifying Native American water settlements for 12 years (McCool, 2002; Bark & Jacobs, 2009; Bark, 2009; Royster et al., 2023). The first Native American water settlement took place in 1978 in the State of Arizona with the Ak-Chin Indian Community (USDOJ, 2025; McCool, 2002; Bark & Jacobs, 2009; Bark, 2009). Over 30 additional Native American water settlements have taken place since then (USDOJ, 2025). While water settlements initially promised to take less time and less be less expensive than water litigation, they have proven to be very expensive and can also take many years between initial negotiations and implementation (DeJong, 2014; DeJong, 2007; McCool, 2002; Colby et al., 2005).

Nevertheless, their flexibility and the fact that are negotiated between states, the federal government, tribes, and other entities makes Native American water settlements enticing for all parties involved (Bertram, 2017; Colby & Young, 2018; Cosens, 2003; McCool, 1993; Getches, 1986). The prospect of Native American tribes resolving their unclaimed water rights can be frightening to water appropriators who have been benefitting from such waters for decades (Curley, 2021; Bark & Jacobs, 2009; Candrian, 2011; Brienza, 1992). From the Native American perspective, tribes have a long history of entering into treaties and agreements with the United States, only to have the United States either not meet their end of the bargain entirely or in part (Deloria Jr., 1985; Dunbar-Ortiz, 2014; Wilkins & Lomawaima, 2001; Fletcher, 2016). Thus,

accountability is key in regard to Native American water settlements because such agreements can effectively allay the fears of the negotiating parties (McCool, 2002; Cosens, 2003; Folk-Williams, 1988; Klee & Mecham, 2005; Hays, 2006).

Structurally, Native American water settlements are very similar to the original treaties and agreements that were negotiated between Native American tribes and the United States (Folk-Williams, 1988; McCool, 2002; Klee & Mecham, 2005). As such, it is important that Native American tribes exercise caution when negotiating them (McCool, 2002; McCool, 1993; Curley, 2021; Hawkins, 2012). Critics of Native American water settlements like Curley and McCool have even compared the water settlement era to the period of the General Allotment Act of 1887 and warn that tribes could lose a tremendous amount of water rights through settlements (Curley, 2021; McCool, 2002). Such critics make this comparison because the General Allotment Act of 1887 was a period through which United States policy disposed tribes from over 90 million acres of land (Fletcher, 2016; Deloria, 1985; Wilkins & Lomawaima, 2001); they warn that the Native American water settlement process is yet another resource grab by the United States (Curley, 2021; McCool, 2002). On the other hand, prominent scholars like Chambers and Echohawk (1991), Colby and Young (2018), and Lewis and Hestand (2006) extol the potential that Native American water settlements have for Native Americans and non-Native Americans.

Once ratified by Congress, Native American water settlements can facilitate funding through federal appropriations, as well as flexibility for tribes to use their water rights for more uses than a court decree would permit (McCool, 2002; Chambers & Echohawk, 1991; Colby & Young, 2018; Stern, 2017; Cosens, 2003; Colby et al., 2005). Water settlements also offer the flexibility for tribes to lease their water for use outside their reservations, which can offer an important source of income for the tribe (McCool, 2002; Colby & Young, 2018; see Table 1; see

Table 3). Thus, while Native American water settlements can appear to be, yet another colonial tool designed to dispossess tribes from their resources, such settlements offer the opportunity for tribes to regain some of the sovereignty and self-determination they may have lost in the past (McCool, 2002; Chambers & Echohawk, 1991; Colby & Young, 2018; Cosens, 2003; Colby et al., 2005). Conversely, Non-Native Americans within the states that negotiate such water settlements with tribes stand to gain greater water security in an era where climate change is making water availability more tenuous (Colby & Young, 2018; Chambers & Echohawk, 1991; Bark & Jacobs, 2009; Colby et al., 2005).

Table 1: Pros and Cons of Native American Water Litigation and Water Settlements

Process	Pros	Cons
Water Litigation	<ul style="list-style-type: none"> -Legal precedent is set. -Can develop a strategy for potential results. -No need to compromise on water priorities. -Can receive a larger water decree. 	<ul style="list-style-type: none"> -Legal precedent is set. -Water uses are generally set by the original purpose of the Native American reservation. -No funding for water infrastructure or other uses provided. -Biased judges or faulty data can yield detrimental results. -Water cannot be sold or leased outside the Native American reservation. -Water decrees may remain in paper only due to lack of funding for water infrastructure. -Very expensive process.
Water Settlement	<ul style="list-style-type: none"> -No legal precedent is set. -Increased flexibility regarding water uses. -Funding for the construction of water infrastructure and other uses. -Water can be sold or leased outside the Native American reservation. -Wet water rights become accessible for the tribe. -Can strengthen partnerships with the state, the federal government, and other stakeholders. 	<ul style="list-style-type: none"> -No legal precedent is set. -Funding can have limits or affect other federally funding projects within the reservation. -Must compromise on water values. -Risk of receiving a smaller water decree. -There is greater ambiguity about potential results of the negotiations. -Very expensive process.

Fundamentals of Native American Water Settlements

Since 1978, Native American tribes have sought to secure their reserved water rights through the process of Congressionally ratified water settlements (McCool, 2002; Royster et al., 2023; Curley, 2021; Brienza, 1992; USDOJ, 2025). In theory, the water settlement process is better than the litigation process because it is achieved through negotiations rather than contentious litigation that forces one party to lose and the other to win (Hendry & Tatum, 2016; Porter, 1997; Tatum & Kappus Shaw, 2014; see Table 1). Tribes have more room to negotiate for what they want and to compromise on items that are lower priority for them through the water settlement process (McCool, 2002; Lewis & Hestand, 2006; Cosens, 2003; McGovern, 1994). Nevertheless, the water settlement process is not perfect. While the tribe usually initiates the negotiation process to reach a settlement, the negotiation must be conducted with the state where the tribe is located (McCool, 2002; Stern, 2017; Cosens, 2003; Curley, 2021). Generally, states and tribes have had a contentious relationship due to the various conflicts of interest engendered by the United States, not least of which is the right to use water (Wilkins & Lomawaima, 2001; Deloria, 1985; Royster et al., 2023; Curley, 2021; McCool, 2002).

The United States Department of the Interior oversees the negotiation process and the settlement implementation once a settlement act is ratified by all parties (Stern, 2017; Klee & Mecham, 2005; USDOJ, 1990; Brienza, 1992; Colby et al., 2005). As such, the United States, through the Department of the Interior has much influence on the water settlement process (Stern, 2017; Royster et al., 2023; McCool, 2002; Cosens, 2003). Ultimately, negotiating for Native American water rights can be a delicate process because the reserved rights doctrine was created through the lens of United States legal systems (*Winters v. United States*, 1908; Royster et al., 2023; Wilkins & Lomawaima, 2001).

Nonetheless, the water settlement process is dissimilar to the litigation process in that it allows for negotiation (McCool, 2002; McCool, 1993; Cosens, 2003; Hawkins, 2012; see Table 1). In theory, tribes should be able to negotiate the purpose of their water rights (McCool, 2002; McCool, 1993; Cosens, 2003; Hawkins, 2012). Many of the earlier Native American water settlement acts, however, had provisions requiring the tribe to use their water for irrigation purposes (see Table 3). For example, the first Congressionally ratified Native American water settlement is the Ak-Chin Indian Community Act of 1978 (USDOJ, 2025; see Table 3). The initial iteration of the Act provided that the water rights of the Ak-Chin Indian Community were for irrigation purposes, thus adhering to the accepted primary purpose of Native American water rights, farming (see Table 3).

Later amendments to the Ak-Chin Indian Community Act of 1978, which took place in 1984, 1992, and 2000 expanded the uses of the Ak-Chin Indian Community's water rights to any use, as long as such uses took place within the Tucson, Pinal, and Phoenix Active Management Areas (see Table 3). Similarly, the Southern Arizona Water Rights Settlement Act of 1982, which involved the water rights of the San Xavier and Schuk Toak Districts of the Tohono O'odham Nation, also provided for water suited for irrigation purposes (see Table 3). Another important water settlement that provided for water for irrigation purposes was the Gila River Indian Community Water Rights Settlement Act of 2004 (see Table 3).

While it may appear that water settlement provisions for irrigation purposes are an imposition by United States water law over tribal sovereignty and self-determination, most Native American tribes in the Southwest have practiced farming since time immemorial (DeJong 2007; DeJong, 2014; Royster et al., 2023; *United States v. Gila Valley Irrigation District*, D.AZ 1935). It is possible that such tribes negotiated for water suitable for irrigation purposes with

Arizona, the United States, and other water stakeholders in the region in order to continue or reestablish their long farming traditions (DeJong 2007; DeJong, 2014; Royster et al., 2023; *United States v. Gila Valley Irrigation District*, D.AZ 1935).

Despite the potential drawbacks of water settlements to Native American water sovereignty and self-determination, they also offer many opportunities to strengthen tribal sovereignty and self-determination in their implementation (Cosens, 2003; Chambers & Echohawk, 1991; Colby & Young, 2018; Colby et al., 2005). The very fact that such water settlements emerge through intense negotiation processes indicates that tribes can leverage their interests to not only bolster their sovereignty and self-determination, but also do so in a way that benefits non-Indian communities (Cosens, 2003; Chambers & Echohawk, 1991; Colby & Young, 2018). As such, tribes can use the water settlement process to enact their own laws regarding water into the existing framework of Euro-American laws related to water (Cosens, 2003; Chambers & Echohawk, 1991; Colby & Young, 2018).

In theory, tribes may be able to negotiate to have greater control over the design of their water codes, the uses of their water rights, and the funds appropriated to implement such settlements (Cosens, 2003; Chambers & Echohawk, 1991; Colby & Young, 2018; Colby et al., 2005). Provisions that appear to require compliance with state water law may be problematic, but when viewed from the point of view of policymakers who want to reach sustainable solutions for the communities that they represent, such provisions make sense (Colby & Young, 2018; Bark & Jacobs, 2009; Bark, 2009; McGreal & Eden, 2021). Moreover, by agreeing to comply with such laws, which seek to conserve groundwater and to sustain the needs of the population of the state, tribes can cultivate their role of caring neighbors (DeJong, 2014; Colby & Young, 2018; Bark & Jacobs, 2009; Bark, 2009; McGreal & Eden, 2021). Historically, Native American tribes have

been viewed as obstacles to the economic development of the states and as competitors to existing water appropriators (Colby & Young, 2018; Bark & Jacobs, 2009; Bark, 2009; McGreal & Eden, 2021). Water settlements offer an opportunity for historically adverse parties to negotiate for water solutions that benefit all parties involved, regardless of the compromises made through the process.

Ultimately, water settlements are indeed better than the litigation process in regard to Native American water sovereignty and self-determination. Nonetheless, it is imperative that tribes consider the history of water settlements and how they emerged from the inclusion of tribal water claims in state forums (Royster et al., 2023; Hedden-Nicely, 2016; Brienza, 1992). Due to their nature, Native American water settlements can be structured to strengthen tribal sovereignty and self-determination but can also have the impact of restricting such sovereignty and self-determination. When tribes engage in water settlement negotiations and agree to their terms, they exercise their sovereignty and self-determination. What they agree to is within their prerogative; however, such steps must be taken carefully because the United States has a long history of abrogating its own agreements and treaties with Native American tribes.

Contemporary Overview of Native American Water Settlements

Table 2: 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)	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 (partial settlement)	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

Table 3: Native American Water Settlement Water Uses and Restrictions 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, and 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 with state law. Leases outside the reservation are allowed, but there are restrictions regarding the type of water that is being leased.

Table 4: Native American Water Settlements and Tribal Waivers in Arizona

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.
Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994; amended in 1996	-Waiver and release of all claims of water rights or injuries to water rights from or after this settlement. -The Tribe also agrees that its claims to water rights under federal and state laws from time immemorial and to all future claims are satisfied. -The United States and the Tribe waive sovereign immunity to be joined in a Court of Law regarding lawsuits due to the interpretation of this title.
Zuni Indian Tribe Water Rights Settlement Act of 2003	- Full and complete satisfaction of the Tribe's claims to water rights from federal, state, and other laws, including claims for surface water, groundwater, and effluent. -Additionally, full and complete satisfaction of claims for injuries to water rights under federal, state, and other laws. - Waiver of water rights claims against the United States, Arizona, its subdivisions, or any other

	<p>person, entity, or corporation to past, present, and future claims from time immemorial to the future, except for claims within the Zuni Protection Area.</p> <ul style="list-style-type: none"> - Waiver of claims for breach of the trust responsibility of the United States to the Zuni Tribe arising out of the negotiation of the Settlement Agreement or this Act. - Waiver of claims of interference with the trust responsibility. - Waiver of natural resource damage claims and water quality claims, with exceptions based on the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and the Oil and Pollution Act of 1990. -Waiver of sovereign immunity by the United States and the Tribe in regard to the interpretation of this Act. -The Tribe may also waive its sovereign immunity for the terms of the Intergovernmental Agreement.
<p>Gila River Indian Community Water Rights Settlement Act of 2004</p>	<ul style="list-style-type: none"> - Satisfaction of claims and no recognition of water rights. - Waiver of claims against the Arizona and others for past, present, and future injuries of rights. - Waiver of claims by the United States as trustee for allottees. -Waiver of claims regarding water quality. -The Community waives the right to adopt water quality standards that are more stringent than those of the State. -Waiver of sovereign immunity to be joined in court for certain provisions of this Act.
<p>White Mountain Apache Tribe Water Rights Quantification Act of 2010; amended in 2018, 2020, and 2023</p>	<ul style="list-style-type: none"> - Satisfaction of claims and no recognition of water rights. -Waivers and release of claims. -Limited waiver of sovereign immunity: The tribe waives sovereign immunity in regard to civil lawsuits pertaining to the interpretation of this Agreement. -Anti-deficiency: The United States shall not be liable for the failure to carry out any obligation or activity authorized to be carried out under this title if adequate appropriations are not provided by Congress expressly to carry out the purposes of this title.
<p>Bill Williams River Water Rights Settlement Act of 2014</p>	<ul style="list-style-type: none"> - The Tribe and the United States as trustee of the Tribe waive and release all claims against the Corporation for any water rights with respect to Parcel 3 in excess of 300 afy.

	<p>-Release and waiver of all claims for injury to water rights arising from the diversion of water by the Corporation from the Wikieup Wellfield or Freeport Groundwater Wells in a manner not in violation of the Big Sandy River-Planet Ranch Agreement or the Hualapai Tribe Agreement.</p> <p>-The United States as trustee for the Allottees waives and releases all claims against the Corporation for any water rights on Parcel 1 in excess of 82 afy and Parcel 2 in excess of 312 afy, as well as all past and present claims for injury to water rights arising before the enforceability date resulting from the diversion of water by the Corporation from the Wikieup Wellfield or the Freeport Groundwater Wells.</p> <p>-The Tribe is authorized to execute a waiver and release of all claims against the United States for past, present, and future claims to water rights for Parcel 3 in excess of 300 afy.</p>
<p>Hualapai Tribe Water Rights Settlement Act of 2022</p>	<p>-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.</p> <p>-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.</p> <p>-Waivers and releases of claims by the United States as trustee for allottees.</p> <p>-Waiver and release of claims by the United States against the Hualapai Tribe.</p> <p>-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.</p> <p>-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.</p>

Today, when Native American tribes assert their water rights, they may do so through either litigation or water settlements (Royster et al., 2023; Hedden-Nicely, 2016; Anderson, 2006b; Anderson, 2015; DeJong, 2014; Royster, 2011). Litigation is limited by the McCarran Amendment and often narrow adjudicatory rulings about what the purpose of a particular tribe's water rights is (Royster et al., 2023; Hedden-Nicely, 2016; Crass, 1997; Royster, 2011; see Table 1). Conversely, Native American water settlements are portrayed as a solution to a gnarly problem because all parties involved negotiate for a solution that works for everyone, in theory (Brienza, 1992; USDOJ, 1990; Cosens, 2006; Chambers & Echohawk, 1991). Critics of water settlements are more cautious about their purported benefits for Native American tribes (McCool, 2002; Curley, 2021; Hays, 2006; McGovern, 1994).

This dissertation reviewed all of the 11 Native American water settlements in the Arizona (see Table 2). The study revealed that Native American water settlements in Arizona have grown progressively more restrictive regarding waiver provisions and places where tribal water may be leased for use outside the reservation (see Table 3). The review of the 11 Native American water settlements in Arizona also confirmed that such settlements do offer greater flexibility for tribes to use their water for more purposes than irrigation and in some instances, allow for water leasing for use outside the reservation (see Table 3). Importantly, such flexibility often has conditions, which include requiring tribes to adhere to state law when entering into lease agreements outside their reservation (see Table 3). As such, Native American water settlements can also be problematic for Native American sovereignty and self-determination (Curley, 2021; McCool, 2002; McGovern, 1994; Hays, 2006; Folk-Williams, 1988).

While such settlements promise wet water rights to the negotiating tribes, the United States gains legal finality on an age-old issue that it did not foresee when expanding westward, the logical necessity for Native American water rights (see Table 4; DeJong, 2014; Royster et al., 2023; Folk-Williams, 1988). Today, there are 35 Native American water settlements that have been ratified by Congress (USDOJ, 2025). Each of the existing water settlements in Arizona contains a provision that waives the right of Native American tribes to make further claims to past, present, future, and sometimes, time immemorial water rights (see Table 4). One could infer from such finality that Native American water settlements effectively enclose and contain Native American reserved water rights (Curley, 2021; Folk-Williams, 1988; McCool, 2002). The water that tribes obtain through a Congressionally ratified water settlement is what they will get and nothing more, according to such settlement acts (see Table 4). In fact, an important provision of Native American water settlements is that tribes are only allowed to sue for damages regarding breach of that particular settlement (see Table 4).

States also gain much from Native American water settlements (Folk-Williams, 1988; Curley, 2021; see Table 3; see Table 4). The reality is that states have historically sought to have jurisdiction over Native American affairs, as evidenced by the Cherokee cases of the Marshall Trilogy (Fletcher, 2016; Canby, 2015; Deloria, 1985; Wilkins & Lomawaima, 2001). In recent decades, the McCarran Amendment and Public Law 280 have served as powerful tools to expand state jurisdiction over Native American tribes (Fletcher, 2016; Royster et al., 2023; Hedden-Nicely, 2016; Wilkins & Lomawaima, 2001; Deloria, 1985).

Regarding Native American reserved water rights, it is difficult to ascertain whether the litigation pathway or the water settlement process is better for tribal sovereignty and self-determination. On the surface, both pathways can appear detrimental for tribal sovereignty and

self-determination; however, increasingly, scholars like Professors Melissa Tatum, Jennifer Hendry, and Bonnie Colby advocate for negotiation as a viable tool for tribes to both protect and assert their sovereignty and self-determination (Hendry & Tatum; 2016; Lewis & Hestand, 2006; Colby & Young, 2018). By endorsing the negotiation process, these scholars seek to redefine the current panorama of Native American law and policy where historically, Native American tribes have been forced to engage in an adversarial system not of their making (Porter, 1997; Hendry & Tatum, 2016; Hendry & Tatum, 2018)

Conclusion

Native American water settlements facilitate a way for tribes to build and execute their own legal and political systems in a way that satisfies the requirements of the United States' legal system (see Table 3; see Table 4). Because the United States has historically created, accepted, and embraced the narrative that its legal and political systems are superior to those of Native American tribes, the negotiation process has often been skewed in favor of the United States (Deloria, 1985; Wilkins & Lomawaima, 2001; Curley, 2021; McCool, 2002). In the present, however, many tribes have learned the ways of the United States' legal system and have employed the counsel of skilled lawyers and advisors who can help them navigate the legal minefield that United States law and policy often present (Lewis & Hestand, 2006; DeJong, 2014; Fletcher, 2016; Colby et al., 2005). A just and balanced negotiation process is possible, but also requires the acceptance by the United States that Native American tribes have had, all along, sophisticated legal and political systems.

CHAPTER 5: NATIVE AMERICAN WATER RIGHTS LITIGATION AND SETTLEMENTS IN ARIZONA



Figure 3 - Native American Reservations in Arizona
<https://naair.arizona.edu/az-tribal-research-policies>

Arizona is home to 22 federally recognized Native American tribes (ASM, 2025; McGreal & Eden, 2021; Bark & Jacobs, 2009, see Figure 3). Thus far, 11 of the tribes in the state have either partially or fully resolved their reserved water rights claims through the settlement process (USDOJ, 2025; CAP, 2025b; see Table 2). The Northeastern Arizona Indian Water Rights Settlement Agreement (NAIWRSA) was pending Congressional ratification as of the Spring of 2025 (Mark Kelly, 2024; Tso, 2024; NAIWRSA, 2024). Native American tribes in Arizona have

used the water litigation process with mixed results (Royster et al., 2023; *Arizona v. California*, 1963; *Arizona v. Navajo Nation*, 2023). This chapter will review the development of Native American water litigation and water settlements in relation to Native American sovereignty and self-determination in Arizona.

Historical Context

Arizona is the product of powerful forces that propelled the United States to expand from the east coast all the way to the west coast in the 19th Century (Dunbar-Ortiz, 2014; Immerwahr, 2019; Wilkins & Lomawaima, 2001; Deloria, 1985). The area where Arizona is now located was part of northwestern Mexico before 1848 (Dunbar-Ortiz, 2014; Deloria, 1985). In 1848, Mexico signed the Treaty of Guadalupe Hidalgo with Mexico, which ceded the then northwestern part of Mexico to the United States (Dunbar-Ortiz, 2014; Deloria, 1985). In 1853, the United States made the Gadsden Purchase from Mexico, which completed the southern part of what is Arizona today (USDOS, 2025).

After the United States acquired the lands ceded by Mexico through the Treaty of Guadalupe Hidalgo, it passed legislation designed to incentivize Euro-American settlement in the region (DeJong, 2014; Dunbar-Ortiz, 2021; Dunbar-Ortiz, 2014; Homestead Act, 1862; Desert Land Act, 1877). In 1862, the United States passed the Homestead Act, which was followed by the Desert Land Act of 1877 (DeJong, 2014; Dunbar-Ortiz, 2021; Dunbar-Ortiz, 2014; Homestead Act, 1862; Desert Land Act, 1877). Such acts of Congress encouraged Euro-American settlers to settle in the area and use water for the economic development of the United States (DeJong, 2014; Dunbar-Ortiz, 2021; Dunbar-Ortiz, 2014; Homestead Act, 1862; Desert Land Act, 1877)

While the United States was actively expanding its territory westward, it was also engaged in confining Native American tribes to reservations (Dunbar-Ortiz, 2014; Deloria, 1985; Fletcher, 2016; Saito, 2020). Native American reservations were established through treaty, administrative process or executive order (Fletcher, 2016; Canby, 2015; Wilkins & Lomawaima, 2001; Deloria, 1985). Arizona was a territory between 1863 and 1912, when it gained statehood (AZL, 2025). Under the reserved water rights doctrine, which was established by the United States Supreme Court through *Winters v. United States* in 1908, the priority date of a reservation's reserved water rights is the date when the reservation was created (Royster et al., 2023; Craig et al., 2017; Thompson et al., 2018). As a result, the Native American reservations that were created within the then territory of Arizona generally have more senior water rights than many other water users in the state (Craig et al., 2017; Royster et al., 2023; Thompson et al., 2018). Nonetheless, the existence of senior Native American reserved water rights did not necessarily entitle tribes to tangible water rights as many courts were initially unwilling to apply the reserved rights doctrine to their rulings (Massie, 1987; Anderson, 2015; Royster, 2011).

Additionally, by the time the reserved rights doctrine was established, Arizona had already been using the prior appropriation doctrine to manage its water rights (Craig et al., 2017; Thompson et al., 2018; Chambers & Echohawk, 1991). In order to claim water rights under the prior appropriation doctrine, water appropriators had to divert the water or make a public claim, which contrasted with the reserved water rights doctrine (Craig et al., 2017; Thompson et al., 2018; Royster et al., 2023). Such a fundamental difference between the two water doctrines caused much strife between Native Americans and non-Native Americans in the region because the two demographics were competing for water rights under two distinct legal doctrines (Craig et al., 2017; Royster et al., 2023; Thompson et al., 2018; DeJong, 2024; DeJong, 2014).

Native American reservations were created to be the permanent homelands of Native American tribes (Fletcher, 2016; Dunbar-Ortiz, 2014; Deloria, 1985). Due to the westward expansion of the United States during the same period when it was creating Native American reservations, Native American tribes were competing with Euro-American settlers for water in the same areas by 1900 (DeJong, 2024; DeJong, 2014; Lewis, 1995). The issues with water rights disputes arose out of Euro-American settler water diversions that were taking place up-river from Native American reservations (DeJong, 2007; DeJong, 2014; Royster et al., 2023; Royster, 2011; Anderson, 2015). Such water diversions grew so large that they threatened the livelihoods of the Native American reservations downriver (DeJong, 2007; DeJong, 2014; Royster et al., 2023; Royster, 2011; Anderson, 2015).

A known consequence of the prior appropriation doctrine is that it can cause rivers to run dry in the more arid regions of the United States (Lewis, 1995; DeJong, 2024; DeJong, 2014; Royster, 2011; Thompson et al., 2018; Glennon, 2009). Such a phenomenon occurs because the prior appropriation doctrine encourages use of all the water an appropriator is entitled to (Glennon, 2009; Glennon, 2002; Craig et al., 2017; Thompson et al., 2018). Appropriators who do not use all of their water risk losing such rights (Glennon, 2009; Glennon, 2002; Craig et al., 2017; Thompson et al., 2018). Under the reserved water rights doctrine, Native American reservations do not lose their water rights due to non-use (*Winters v. United States*, 1908; Royster et al., 2023; Anderson, 2010; Thompson et al., 2018).

Native American Water Litigation in Arizona: 1908-1963

Many Native American tribes in Arizona have strong farming traditions (Dunbar-Ortiz, 2014; Deloria, 1985; DeJong, 2014; DeJong, 2007). When such tribes were confined to their reservations in the latter half of the 19th Century, they attempted to continue their farming

traditions; however, upstream diversions and dams driven by the prior appropriation doctrine caused the rivers that they relied on to run dry (DeJong, 2024; DeJong, 2014; Royster et al., 2023). Examples of Native American tribes in Arizona with farming traditions are the Navajo Nation, the Hopi Tribe, the Gila River Indian Community (Akimel O’odham and Pee Posh), and the Tohono O’odham Nation (DeJong, 2014; McCool, 2002; ASM, 2025; Lewis & Hestand, 2006; McGreal & Eden, 2021).

According to Dr. David DeJong, who is the director of the Pima-Maricopa Irrigation Project at the Gila River Indian Community, the tribes of the Community had to resort to cutting down the mesquite forests of their reservation and selling the wood to survive when the Gila River initially ran dry due to upriver diversions at the turn of the 19th Century (DeJong, 2014; DeJong, 2007). The Community’s leadership requested help from the United States so that the Community’s water supply would be restored (DeJong, 2007; DeJong, 2014; Lewis & Hestand, 2006). As trustee, the United States filed lawsuits on behalf of the Community to secure additional water sources for the needs of the reservation (DeJong, 2014; DeJong, 2024; *United States v. Gila Valley Irrigation District*, D.AZ 1935).

There was also Congressional intervention regarding the water issues that the Gila River Indian Community was facing (DeJong, 2024; DeJong, 2014; *United States v. Gila Valley Irrigation District*, D.AZ 1935). For example, “the San Carlos Act of 1924 authorized the construction of the Coolidge Dam” which guaranteed more water security for the Community (DeJong, 2014; DeJong, 2024; *United States v. Gila Valley Irrigation District*, D.AZ 1935). Ultimately, the Globe Equity Decree was issued by the federal district court in 1935 to settle water litigation that had begun in 1925 regarding the waters of the Gila River (DeJong, 2014; DeJong, 2024; *United States v. Gila Valley Irrigation District*, D.AZ 1935).

The Globe Equity Decree acknowledged the water rights of the Native Americans of the Gila River Indian Community, as well as those of the San Carlos Apache Tribe (DeJong, 2014; DeJong, 2007; *United States v. Gila Valley Irrigation District*, D.AZ 1935). Nonetheless, the water rights decreed through the Globe Equity Decree were not distributed to the tribes as ordered (DeJong, 2014; DeJong, 2007; Royster et al., 2023). Both the Gila River Indian Community and the San Carlos Apache Tribe continued litigating for the full amount of their water rights to the Gila River until modern times (DeJong, 2007; DeJong, 2014; Royster et al., 2023). Water rights are a contentious topic in the western part of the United States and certainly in Arizona. As the population of the states in the region grew in the early 1900s, states in the Colorado River basin sought ways of working with each other to ensure that the waters of the Colorado River would be properly allocated (Royster et al., 2023; Thompson et al., 2018; Lewis, 1995; Brienza, 1992).

The Law of the River and Native American Tribes

One of the largest and most important rivers in the western part of United States is the Colorado River (see Figure 4). Its watershed extends through the States of Wyoming, Colorado, New Mexico, Utah, Nevada, Arizona, and California (see Figure 4). The natural flow of the river then passes into Mexico and the Gulf of California (see Figure 4). In 1922, the federal government met with representatives of the seven basin states in Santa Fe, New Mexico to apportion the waters of the Colorado River among themselves (O'Neill et al., 2016; Adler, 2008; Lewis, 1995; Brienza, 1992). Notably, the Native American tribes located in the seven states that claim a stake to the waters of the Colorado River were not party to the negotiations (O'Neill et al., 2016; Adler, 2008; Lewis, 1995; Brienza, 1992). Thus, while the Native American tribes



Figure 4 - Colorado River Watershed
<https://www.usgs.gov/media/images/colorado-river-basin-map>

located in Arizona were fighting for their water rights in the state, the federal government and state officials were dividing the waters of the Colorado River amongst themselves (O'Neill et al., 2016; Lewis, 1995; Brienza, 1992).

By not including the Native American tribes of the Colorado River watershed in the Colorado River Compact negotiations, the United States ignored three main tenets of its relationship with tribes.

The United States ignored its fiduciary duty to tribes, the fact that Native American tribes are a co-equal party to the United States and states, and the valid water claims that tribes had to the waters of the Colorado River (Adler, 2008; Brienza, 1992; Candrian, 2011; Royster et al., 2023; Wilkins & Lomawaima, 2001). Such basic tenets of the relationship between Native American tribes and the United States are founded on treaties signed between the United States and tribes, as well as American Indian law and policy (Wilkins & Lomawaima, 2001; Deloria, 1985; Fletcher, 2016). The Colorado River Compact of 1922 did not lack Native American

participation due to ignorance of these basic tenets. In fact, Article VII of the Colorado River Compact affirms that “[n]othing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes.” (USBR, 1922). Thus, leaders of sovereign Native American nations were not invited and lacked representation during the negotiation process of the Colorado River Compact of 1922.

When Native American reservations were established, they were set in place to serve as a permanent homeland for Native Americans (Deloria, 1985; Fletcher, 2016; Dunbar-Ortiz, 2014). Water rights were not explicitly mentioned in many treaties and agreements between the United States and Native American tribes; Nevertheless, the very fact that land in the western part of the United States is considered to have no value without water, in addition to the purpose of such reservations, implied the necessity of water for the reservations (Anderson, 2010; Royster et al., 2023; *Winters v. United States*, 1908; Deloria, 1985; Wilkins & Lomawaima, 2001). Hence, just as each of the seven basin states had representation at the negotiation table of the Colorado River Compact, Native American tribes had and continue to have a valid stake in the waters of the Colorado River. By not including Native American tribes at the negotiating table, the United States, and to a lesser degree, the states, perpetuated an error they had been committing for many decades at that point (Deloria, 1985; Wilkins & Lomawaima, 2001; Fletcher, 2016; Anderson, 2010; Brienza, 1992).

The negotiators of the Colorado River Compact divided the Colorado River into two basins, the upper basin and the lower basin (Glennon, 2009; Adler, 2008; Brienza, 1992; Candrian, 2011). The upper basin states were designated to be Wyoming, Colorado, New Mexico, Utah, and the upper northeast corner of Arizona (Glennon, 2009; Adler, 2008; Brienza, 1992; Candrian, 2011). The point known as Lees Ferry was designated to be the division point

between the upper basin of the river and the lower basin (Glennon, 2009; Adler, 2008; Brienza, 1992; Candrian, 2011). The lower basin states were designated to be Nevada, Arizona, and California. Each basin was assigned 7.5 million acre-feet of water per year (Glennon, 2009; Adler, 2008; Brienza, 1992; Candrian, 2011).

The Boulder Canyon Project Act of 1928 approved the Colorado River Compact of 1922, but failed to settle water disputes between basin states like Arizona and California (Brienza, 1992; Candrian, 2011, O'Neill et al., 2016). In the early 1950s, California and Arizona were still in conflict regarding the apportionment of the lower basin waters (O'Neill et al., 2016; Candrian, 2011; Wheeler et al., 2022; Glennon, 2009). Arizona filed a lawsuit against California in 1952 (O'Neill et al., 2016; Candrian, 2011; Glennon, 2009; Wheeler et al., 2022). The United States Supreme Court reviewed the lawsuit and adjudicated it first iteration in 1963 through *Arizona v. California* (1963), also known as *Arizona v. California I* (Royster et al., 2023; *Arizona v. California*, 1963).

Arizona v. California (1963)

The *Arizona v. California* (1963) ruling was pivotal for many reasons, but there were several aspects of the ruling that would prove important to Native American water rights. First, the United States Supreme Court affirmed the apportionment of 2.8 million-acre feet of water per year to Arizona, 4.4 million acre-feet of water to California, and 300,000 acre-feet of water to Nevada (Royster et al., 2023; O'Neill et al., 2016; Brienza, 1992; Candrian, 2011; Wheeler et al., 2022). The Court also affirmed that the lower basin states would have to adhere to the direction of the Secretary of the Interior in case of a water shortage (*Arizona v. California*, 1963). States were given the prerogative to decide how they would manage the tributaries to the Colorado River in their own territories (*Arizona v. California*, 1963).

Additionally, the United States asserted the tribal water claims for five Native American reservations located in Nevada, Arizona, and California. The Native American reservations were the Chemehuevi Indian Reservation, Cocopah Indian Reservation, Fort Yuma Indian Reservation, Colorado River Indian Tribes Reservation, and Fort Mojave Reservation (*Arizona v. California, 1963*; Royster et al., 2023) The Special Master recommended that the reservations were not only entitled to their land, but also to enough water from the Colorado River to “irrigate the irrigable portions of the reserved lands” (*Arizona v. California, 1963*; Royster et al., 2023). Thus, the Practicable Irrigable Acreage (PIA) quantification was born.

The Supreme Court also acknowledged that Native American reserved water rights were vested by the time the Boulder Canyon Project Act came into effect in 1929 and therefore became “present perfected rights” (*Arizona v. California, 1963*). Arizona challenged the concept of reserved water rights during the *Arizona v. California* litigation (*Arizona v. California, 1963*). Arizona also argued that even if Native American water rights had been reserved, the water amount allocated by the Special Master was too much (*Arizona v. California, 1963*). The Supreme Court rejected both contentions submitted by Arizona (*Arizona v. California, 1963*).

It was in this environment that the age of Native American water settlements began. The first Congressionally ratified Native American water settlement emerged from negotiations between Arizona and the Ak-Chin Indian Community, as well as other water stakeholders in 1978 (USDOJ, 2025; McCool, 2002; Lewis & Hestand, 2006). Generally, Native American water settlement agreements are negotiated by the states, the federal government through the Department of the Interior, the tribes whose water rights are being settled, and other parties with a stake in the water negotiations (Stern, 2017; Bertram, 2017; Cosens, 2003; Hawkins, 2012). The product of these negotiations is a settlement agreement that is then sent to Congress for

consideration and ratification (Stern, 2017; Bertram, 2017; Cosens, 2003; Hawkins, 2012). Once the settlement agreement becomes a settlement act, it is sent back to the state where it originated for implementation (Stern, 2017; Bertram, 2017; Cosens, 2003; Hawkins, 2012).

Since 1978, 35 Native American settlement acts have taken place, 11 of which came from Native American tribes in Arizona (USDOJ, 2025; Stern, 2017; Bertram, 2017; Cosens, 2003; Hawkins, 2012). This dissertation reviewed the 11 Native American water settlement acts that emerged from negotiations between Arizona, Native American tribes in Arizona, and other stakeholders with water interests in the state (see Table 2). The purpose of the investigation was to analyze how the water settlement acts have evolved between 1978 and the Spring of 2025, with an emphasis on Native American water sovereignty and self-determination, as well as greater water security for Arizona.

Overview of Native American Water Settlements in Arizona

The relationship between Native American tribes and the State of Arizona has not always been easy or conducive for the kind of negotiating that water settlement agreements and acts require (DeJong, 2024; DeJong, 2014; DeJong, 2007; Brienza, 1992; *United States v. Gila Valley Irrigation District*, D.AZ 1935). Generally, Arizona and other states have had a contentious relationship with Native American tribes because tribes have historically been seen as adversaries or obstacles for the economic development of the states (Wilkins & Lomawaima, 2001; Deloria, 1985; Fletcher, 2016; Canby, 2015). The period between 1908, when the reserved water rights doctrine was recognized by the Supreme Court of the United States, and the self-determination era of the late 20th Century saw a shift in how Arizona related to tribes in regard to their water rights (Royster, et al., 2023; Fletcher, 2016; DeJong, 2024; DeJong, 2014; DeJong, 2007; Brienza, 1992; *United States v. Gila Valley Irrigation District*, D.AZ 1935).

By the time the self-determination era took place for Native American tribes, the United States Supreme Court had already established the Practicable Irrigable Acreage (PIA) standard to quantify tribal water rights (Royster et al., 2023; Anderson, 2015; *Arizona v. California*, 1963). At its core, the PIA standard focuses on how many acres a tribe can practicably irrigate within their reservation (Royster et al., 2023; *Arizona v. California*, 1963). Hence, tribes in Arizona could now, in theory, litigate to legally secure their water using the PIA standard as a powerful tool (Royster et al., 2023; Anderson, 2015; *Arizona v. California*, 1963).

Arizona is very diverse geographically and the Native American tribes in the state have their reservations in various locations throughout the state (see Figure 3). By employing the PIA standard to quantify their water rights, tribes with reservations in alluvial plains could legally secure more water rights than tribes with reservations in canyons (*Arizona v. California*, 1963; Royster et al., 2023; *In Re General Adjudication of all Rights to use Water in the Gila River System and Source*, AZ 2001). As such, it was risky for the state to have Native American tribes with large reservations in alluvial plains seeking to quantify their water rights in court because they could potentially secure large water rights decrees (DeJong, 2014; Bark & Jacobs, 2009; *In Re General Adjudication of all Rights to use Water in the Gila River System and Source*, AZ 2001). The rise of the McCarran Amendment and its power to compel tribes to litigate their water rights cases in state court may have alleviated such fears on the part of Arizona (Royster et al., 2023; Hedden-Nicely, 2016; Brienza, 1992). It was in this environment where Arizona began viewing water settlements as a possible alternative to litigation in regard to resolving the unclaimed water rights of Native American tribes in the state (McCool, 2002; Colby et al., 2005; USDOJ, 2025).

From the Native American perspective, while being able to initiate their own lawsuits to litigate their reserved water rights was a step in the right direction regarding tribal sovereignty and self-determination, not everything was as it seemed. Water litigation is a very expensive and protracted process (Royster et al., 2023; Thompson et al., 2018; DeJong, 2014; DeJong, 2007). Additionally, when the Supreme Court of the United States ruled that the McCarran Amendment applied to Native American reserved water rights, tribes were often compelled to litigate their water cases in state courts (Royster et al., 2023; Hedden-Nicely, 2016; Brienza, 1992). Hence, Native American tribes in Arizona were now compelled to litigate their water rights cases in Arizona state courts (Royster et al., 2023; Hedden-Nicely, 2016; Brienza, 1992). Such a prospect was not attractive to tribes because of the contentious relationship that tribes have historically had with states like Arizona and because state judges are generally not well versed in American Indian law and policy (Royster et al., 2023; Hedden-Nicely, 2016; Brienza, 1992; Crass, 1997; *In Re General Adjudication of all Rights to use Water in Big Horn System*, WY 1992). The rise of state led general stream adjudications driven by the McCarran Amendment also compelled tribes to seek alternative ways to resolve their water rights claims outside of court.

Native American water settlements have been taking place in Arizona since 1978 (USDOJ, 2025; Cosens, 2003; McCool, 2002). Today, Arizona is home to 11 Congressionally ratified Native American water settlement acts (USDOJ, 2025, see Table 5). Water settlement agreements and acts are not perfect, however, which has led many of them to be amended by Congress later (USDOJ, 2025; McCool, 2002; see Table 1). Nonetheless, water settlements afford a level of flexibility to reserved water rights that water litigation does not (Cosens, 2003; Folk-Williams, 1988; Chambers & Echohawk, 1991; Colby & Young, 2018; see Table 3). For example, reserved water rights awards secured through the litigation process have historically

been more restrictive toward the primary purpose of the water rights and where such waters may be used (Royster et al., 2023; Crass, 1997; Royster, 2011; Brienza, 1992; *In Re General Adjudication of all Rights to use Water in Big Horn System*, WY 1992). Hence, water settlements are an enticing alternative to litigation for Native American tribes.

Native American water settlements have been studied thoroughly (Cosens, 2003; Cosens, 2006; McCool, 2002; McCool, 1993; Bark & Jacobs, 2009; Colby & Young, 2018; Brienza, 1992; Curley, 2021); however, an aspect that has not been reviewed as thoroughly is their development and evolution between 1978 and the Spring of 2025. McCool (2002) and Colby et al., (2005) are two excellent examples of Native American water settlement literature. Nonetheless, their works were published at least 15 years ago. An underlying question related to this dissertation is the level of sovereignty and self-determination that water settlements could afford to Native American tribes that successfully negotiate and implement them. Discerning answers to this question is important because they could highlight ways through which settlement negotiations may improve in the future.

Native American Water Settlements and Arizona Water Law

Native American water settlement acts emerging from Arizona have evolved much since 1978 (see Table 3; see Table 4). Part of the evolution is due to the changing political and legal climate in the state, especially regarding to water law, while other developments have resulted from the need to be more specific within such legal documents (Ferris et al., 2015; Bark & Jacobs, 2009; Bark, 2009; Bark, 2006; Lewis & Hestand, 2006; McGreal & Eden, 2021). For example, the construction of the Central Arizona Project (CAP) canal was authorized in 1968,

and construction began in 1973 (Person, 2021; AZL, 2025; Ferris et al., 2015; see Figure 5). The CAP canal system was completed in 1993 (Person, 2021; see Figure 5).



Figure 5 - Central Arizona Project Canal
<https://www.cap-az.com/cap-system/planning-and-processes/#:~:text=The%20CAP%20system%20typically%20serves,and%20in,dustrial%2C%20agricultural%20and%20tribal>

Arizona passed the Arizona Groundwater Management Act in 1980 (McGreal & Eden, 2021; Thompson et al., 2018; Ferris et al., 2015). Arizona has a bifurcated system of water management and governance (Ferris et al., 2015). Surface waters are managed by the

prior appropriation doctrine while groundwater rights generally depend on the land overlaying the particular groundwater, as well as the Groundwater Management Act of 1980 (Bark & Jacobs, 2009; McGreal & Eden, 2021; Thompson et al., 2018; Ferris et al., 2015).

A major component of the Arizona Groundwater Management Act is that it created Active Management Areas over the more densely populated parts of Arizona (McGreal & Eden, 2021; Thompson et al., 2018; Ferris et al., 2015). Originally, the Act established four Active Management Areas, which were the Phoenix, Prescott, Pinal, and Tucson Active Management Areas (McGreal & Eden, 2021; Ferris et al., 2015). Such areas had more restrictions over groundwater pumping than other areas in the state (Ferris et al., 2015). The Santa Cruz, Douglas, and Willcox Active Management Areas were created subsequently (McGreal & Eden, 2021; Bark & Jacobs, 2009; Ferris et al., 2015; AZWater, 2025). The importance of the Active Management

Areas for Native American water settlements in Arizona is that after the enactment of the Arizona Groundwater Management Act, such water settlements had provisions that adhered to the Active Management Areas (see Table 3).

Additionally, many Native American water settlements in Arizona have been resolved by using CAP water (Ferris et al., 2015; USDOJ, 2025; see Table 3; see Figure 5). The CAP is managed by the Central Arizona Water Conservation District (CAWCD), which has developed a tiered system to determine the priority of the water delivered by the CAP (Bark, 2009; Person, 2021; Ferris et al., 2015; see Figure 6). The CAP water assigned to Native American water settlements in Arizona is subject to this priority system. A discrepancy between Native American reserved water rights and Colorado River waters delivered through the CAP is that the former are

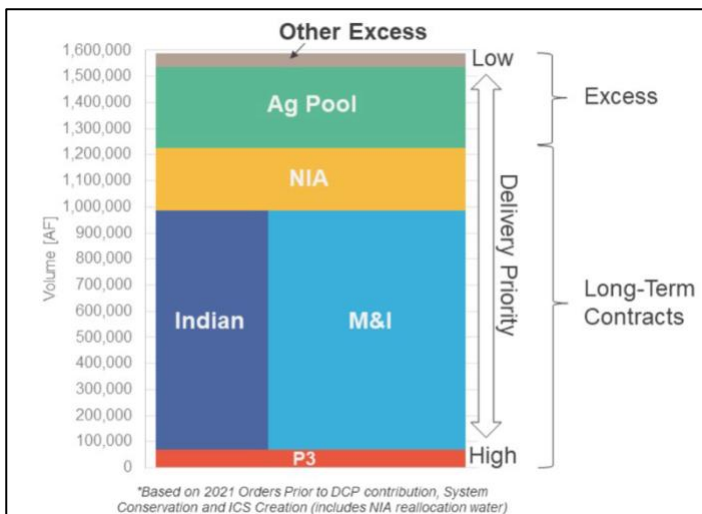


Figure 6 - Central Arizona Water Conservation District Priorities Chart
<https://www.cap-az.com/cap-system/planning-and-processes/#:~:text=The%20CAP%20system%20typically%20serves,and%20industrial%2C%20agricultural%20and%20trib al>

often very senior rights, whereas the latter has junior water rights (Craig et al., 2017; O’Neill et al., 2016; Ferris et al., 2015). As such, obtaining wet water rights through the water settlement process in Arizona poses a certain level of precarity to the long-term water security of Native American reservations in the state. The reason behind such precarity is that should a severe drought happen, the water supply of the CAP will be

restricted first (Ferris et al., 2015; Person, 2021; see Figure 6).

The Evolution of Native American Water Settlements in Arizona

In the age of Native American water settlements, there are some notable trends that can be observed based on the review of the 11 Native American water settlements in Arizona. First, Native American water settlement acts have become much more complex, lengthier, and restrictive since 1978 (see Table 4). For example, the first Congressionally ratified water settlement between a Native American tribe and the United States took place in 1978 for the Ak-Chin Indian Community and it had a total of three pages (USDOJ, 2025; Ak-Chin Indian Water Rights Settlement Act, 1978). In contrast, the latest settlement act in the state, which was the Hualapai Tribe Water Rights Settlement Act of 2022, had a total of 37 pages (Hualapai Tribe Water Rights Settlement Act, 2022). A possible reason behind this increase in length of the water settlement acts is the need to add more details and provisions, thus making them more complex. One could argue that the rising complexity of such settlement acts is due to a desire by the negotiators to ensure that they are not leaving any important provisions out.

Along with greater page length and complexity, Native American water settlements have become more expensive, in general. The Ak-Chin Indian Community's water settlement appropriated a total of around \$61.4 million dollars whereas the White Mountain Apache Tribe's water settlement amendment of 2023 amended the cost overrun account for the rural water delivery system from \$11 million to \$541 million (Ak-Chin Indian Water Rights Settlement Act, 1978; Public Law 98-530, 1984; Public Law 117-342, 2023). Beyond the rising costs of Native American water settlements, there have been positive developments for the environment. The San Carlos Apache Tribe's water settlement, for example, had a provision that allowed for conservation capacity behind the Coolidge Dam for the tribe to maintain a "pool of stored water for fish, wildlife, recreation, and other purposes" (San Carlos Apache Tribe Water Rights Settlement Act, 1992, p. 144). The Gila River Indian Community's settlement act provided that

the Secretary of the Interior “shall comply with all... ESA [Endangered Species Act] provisions (Gila River Indian Community Water Rights Settlement Act, 2004).

Moreover, what makes Native American water settlements complex, regardless of whether one is reviewing an older settlement or a more recent one, is that their provisions can be positive or negative depending on the perspective of the observer. The increase in length and detail of Arizona Native American water settlements could be an attempt to make such settlements more comprehensive; however, a negative aspect of such settlement acts is that they leave less room and flexibility for interpretation. An added layer of complexity to this analysis is that by the time a Native American water settlement becomes an act of Congress, it has already gone through an arduous negotiation process (Stern, 2017; Cosens, 2003; Bertram, 2017; McCool, 1993). In general, the negotiators include the tribe, the state the tribe is located in, the United States as trustee for the tribe, and other entities with stake in the water rights being negotiated (Stern, 2017; Cosens, 2003; Bertram, 2017; McCool, 1993; Bark & Jacobs, 2009). While it may appear that tribes give up certain rights through such settlement acts, the fact that water settlements are based on negotiations implies that the parties compromised on items that they would not have compromised on otherwise.

Despite the potential drawbacks and negative history of agreement abrogation on the part of the United States, Native American water settlements offer many opportunities for tribes to regain any lost sovereignty and self-determination (Chambers & Echohawk, 1991; Colby & Young, 2018; Cosens, 2003; DeJong, 2014). Certain provisions within Native American water settlements are not uniform across the board, indicating that tribes can negotiate around them through the negotiation process (DeJong, 2014; Chambers & Echohawk, 1991; Colby & Young, 2018; Cosens, 2003; Folk-Williams, 1988; Getches, 1986; Hays, 2006). For example, an

important evolution that took place in Native American water settlements in Arizona between 1978 and the present is the provision that allows tribes to sell or lease their water rights outside their reservation (see Table 3).

Ultimately, the age of water settlements has offered much opportunity for hope and cooperation between Native American tribes, states, the United States, and other water stakeholders. Water is very valuable in the western part of the United States and in some cases, even more so in Arizona. Old rivalries persist as tribes, Arizona, the United States, and other stakeholders attempt to mend the rift created by the settler colonial tactics of the United States, especially those of the late 19th Century and early 20th Century. In the age of water settlements, accountability is key (Cosens, 2003; Folk-Williams, 1988). In the past, the United States has been able to abrogate treaties with Native American tribes without consequence due to its plenary power over tribes and the lack of Congressional representation for Native Americans (Fletcher, 2016; Deloria, 1985; Wilkins & Lomawaima, 2001). Water settlements can prove to be a tool for not only solving the water problems of the state, but also for building trust between tribes, the state, the United States, and other stakeholders. In the end, only the honorable development and implementation of such settlement agreements will determine whether they offer an opportunity for tribes or just another colonial tactic to erode their sovereignty and self-determination.

Case in Point: *Arizona v. Navajo Nation* (2023) and NAIWRSA

The fact that the Navajo Nation's water rights to the Colorado River remain unresolved is a major source of water insecurity for the tribe (*Arizona v. Navajo Nation*, 2023; Curley, 2021; Candrian, 2011; Tanana et al., 2021). Water is essential for having a healthy livelihood, as well as robust socio-economic development. An example of the negative consequences of having such

levels of water insecurity at the Navajo Nation happened during the Covid-19 pandemic, when national health officials recommended that people wash their hands for at least 20 seconds with running water (Meiners, 2023; Fahys, 2021; Tanana et al., 2021). When people don't have access to running water, meeting recommended health standards is unfeasible. Hence, the lack of reliable access to running water contributed to increased healthcare insecurity at the Navajo Nation during the Covid-19 pandemic (Meiners, 2023; Fahys, 2021; Tanana et al., 2021).

The reality faced by the Navajo Nation during the Covid-19 pandemic and the lack of access to running water for thousands of households was not new (Meiners, 2023; Fahys, 2021; Royster et al., 2023; *Arizona v. California*, 1963; Tanana et al., 2021). The lawsuit that eventually led to *Arizona v. Navajo Nation* (2023) was filed by the Navajo Nation against the Department of the Interior for breach of the trust responsibility (*Arizona v. Navajo Nation*, 2023). The Navajo Nation alleged that the United States failed its trust responsibility to the Nation when it did not quantify the water rights of the Nation to the Colorado River in *Arizona v. California* in 1963 (*Arizona v. California*, 1963; *Arizona v. Navajo Nation*, 2023).

Due to the McCarran Amendment, the case was litigated within the State of Arizona's court system until the dispute made its way to the Supreme Court of the United States (Royster et al., 2023; Hedden-Nicely, 2016; *Arizona v. Navajo Nation*, 2023). The question reviewed by the United States Supreme Court was whether the United States was bound by the Treaty it signed with the Navajo Nation in 1868 to affirmatively secure water rights for the Navajo Nation (*Arizona v. Navajo Nation*, 2023). The Supreme Court ruled that the United States does not have an affirmative duty to secure water rights for the Navajo Nation because the 1868 Treaty did not explicitly say so (*Arizona v. Navajo Nation*, 2023).

On the surface, the United States Supreme Court's ruling in *Arizona v. Navajo Nation* appears to be a simple question of whether the United States has an affirmative trust responsibility to the Navajo Nation; however, the question also has deeper implications about the nature of the trust responsibility that the United States has to federally recognized Native American tribes (*Arizona v. Navajo Nation*, 2023). The federal trust responsibility is tied to Native American sovereignty and self-determination because it is a pillar of the government-to-government relationship that tribes have with the United States (*Cherokee Nation v. Georgia*, 1831; Deloria, 1985; Wilkins & Lomawaima, 2001). Questions abound about the true nature of the federal trust responsibility (Agee, 2011; Anderson, 2006b; Crass, 1997; *Arizona v. Navajo Nation*, 2023). Nonetheless, in *Cherokee Nation v. Georgia* (1831) and *Worcester v. Georgia* (1832), the Supreme Court acknowledged both the dependent domestic nation nature of Native American tribes and the sovereignty that tribes retain (*Cherokee Nation v. Georgia*, 1831; *Worcester v. Georgia*, 1832).

Regarding the reserved rights doctrine, the United States Supreme Court acknowledged in *United States v. Winans* (1905) that when tribes entered into agreements with the United States to establish a reservation, the exchange of rights was issued from the tribes to the United States (*United States v. Winans*, 1905; Frickey, 2019a). In *Winters v. United States* (1908), the United States Supreme Court affirmed that when tribes agreed to establish their reservations, water rights were impliedly reserved through the process and that any ambiguity in the text of the agreement had to be construed in favor of the tribe (*Winters v. United States*, 1908; Anderson, 2010). The United States Supreme Court ignored this precedent in its ruling of *Arizona v. Navajo Nation* (2023) by saying that for the trust responsibility to exist, the language of the treaty had to

explicitly say that the United States would be responsible for facilitating access to water for the Navajo Nation (*Arizona v. Navajo Nation*, 2023).

Moreover, the more troublesome aspects of the *Arizona v. Navajo Nation* (2023) ruling for Native American water sovereignty and self-determination, as well as the trust responsibility are its majority and concurring opinions (*Arizona v. Navajo Nation*, 2023). The majority opinion was authored by Justice Kavanaugh and the concurring opinion was authored by Justice Thomas (*Arizona v. Navajo Nation*, 2023). Their opinions are problematic for Native American sovereignty and self-determination, as well as the strength of the federal trust doctrine because they weaken the foundation of such principles (*Arizona v. Navajo Nation*, 2023; Hendry & Tatum, 2016; Agee, 2011; *United States v. Winans*, 1905; *Winters v. United States*, 1908; Anderson, 2006b). The concurring opinion by Justice Thomas went as far as affirming that the federal trust responsibility “could refer merely to the trust that Indians have placed in the Federal Government.” (*Arizona v. Navajo Nation*, 2023). Such arguments align with the general trend observed in previous chapters regarding the steady erosion of Native American sovereignty and self-determination in the courts of the United States (Wilkins & Lomawaima, 2001; Hendry & Tatum, 2016; Getches, 2019).

The majority opinion in *Arizona v. Navajo Nation* (2023) also presumed that the Navajo Nation does not need the United States to affirmatively secure the water rights of the Nation because the Nation already has such rights (*Arizona v. Navajo Nation*, 2023). Justice Kavanaugh affirmed that the people of the Navajo Nation have “the right to use needed water from various sources—such as groundwater, rivers, streams, lakes, and springs—that arise on, border, cross, underlie, or are encompassed within the reservation.” (*Arizona v. Navajo Nation*, 2023). The implication here is that the Navajo Nation does not need the United States to affirmatively secure

their water rights because they already have access to water sources within their reservation. Such a statement ignores the fact that the Navajo Nation's reservation borders states in the western part of the United States that adhere to the prior appropriation doctrine of water law (see Figure 3, *Arizona v. Navajo Nation*, 2023).

As trustee, it was the responsibility of the United States to ensure that such reservations had access to water, as affirmed by Justice Gorsuch in his Dissenting Opinion of the *Arizona v. Navajo Nation* (2023) ruling (*Arizona v. Navajo Nation*, 2023; *Cherokee Nation v. Georgia*, 1831). Nonetheless, no rights to the waters of the Colorado River were apportioned to the Navajo Nation in 1963 (*Arizona v. California*, 1963; *Arizona v. Navajo Nation*, 2023). The lawsuit that culminated in *Arizona v. Navajo Nation* (2023) was originally filed in 2003 lasted 20 years and did not have the desired results for the tribe (*Arizona v. Navajo Nation*, 2023). While the lawsuit meandered its way through the courts, the Navajo Nation also attempted to negotiate its water rights through water settlements (USDOJ, 2025; Candrian, 2011; Curley, 2021). Due to the nature of water rights in the western part of the United States and the Colorado River Compact of 1922, the Navajo Nation has not been able to fully secure its rights to the waters of the Colorado River through the settlement process either (USDOJ, 2025; Candrian, 2011; Curley, 2021; Meiners, 2023).

The Navajo Nation's reservation is located within New Mexico, Utah, and Arizona (see Figure 3). Although separate from the states themselves, the Navajo Nation's water claims are bound by the Colorado River Compact of 1922 and state water law (Royster et al., 2023; Thompson et al., 2018; Craig et al., 2017). As such, the Navajo Nation must have Congressionally ratified settlement acts from new Mexico, Utah, and Arizona in order to achieve full water security (Royster et al., 2023; Thompson et al., 2018; Craig et al., 2017). As of the

Spring of 2025, the Navajo Nation has been able to negotiate water settlement agreements with New Mexico, Utah, and Arizona (USDOJ, 2025; see Appendices A & B; Arizona Senator Mark Kelly, 2024). Nevertheless, only two of those water settlement agreements have been ratified by Congress (USDOJ, 2025; CAP, 2025b; Water and Tribes Initiative, 2021). The Congressionally ratified water settlement agreements are the Navajo Utah Water Rights Settlement Act of 2020 and the Northwestern New Mexico Rural Water Projects Act of 2009, which was amended in 2015 (USDOJ, 2025; Water and Tribes Initiative, 2021).

The water settlement agreement that has not been ratified by Congress is the Northeastern Arizona Indian Water Rights Settlement Agreement (Arizona Senator Mark Kelly, 2024; Tso, 2024; NAIWRSA, 2024). The agreement itself encompasses three tribes, which are the Navajo Nation, the Hopi Tribe, and the San Juan Paiute Tribe (Arizona Senator Mark Kelly, 2024; Tso, 2024; NAIWRSA, 2024). Other parties to the settlement agreement include the United States, the State of Arizona, the Central Arizona Water Conservation District, and the town of Show Low (Arizona Senator Mark Kelly, 2024; Tso, 2024; NAIWSA, 2024). The Northeastern Arizona Indian Water Rights Settlement Agreement promises to finally settle the unresolved water claims of the Navajo Nation (Arizona Senator Mark Kelly, 2024; Tso, 2024; NAIWRSA, 2024). Arizona and the people of the state also stand to gain much from the Northeastern Arizona Indian Water Rights Settlement Act (Arizona Senator Mark Kelly, 2024; Tso, 2024; NAIWRSA, 2024). According to the Kyl Center for Water Policy at Morrison Institute, Arizona State University, the Northeastern Arizona Indian Water Rights Settlement Agreement “would enhance water access for tens of thousands of people in Northeastern Arizona” (Tso, 2024).

Despite its promises to not only facilitate water security for the Navajo Nation and other parties, the Northeastern Arizona Indian Water Rights Settlement Agreement has not been

ratified by Congress as of the Spring of 2025 (Arizona Senator Mark Kelly, 2024; Tso, 2024; NAIWRSA, 2024; NNWRC, 2025). The reasons behind the lack of ratification for this settlement agreement may vary; however, the most obvious impediment to the Congressional ratification of the Northeastern Arizona Indian Water Rights Settlement Agreement is likely the steep cost of its implementation (NAIWRSA, 2024; NNWRC, 2025). In an era where the federal government of the United States is cutting costs across the board, it is unlikely that Congress will agree to appropriate \$5 billion for such a settlement agreement (NAIWRSA, 2024; NNWRC, 2025; McCool, 1993; Stern, 2017). There may also be additional points of contention regarding what was gained and what was waived by each party in the negotiation process for the Northeastern Arizona Indian Water Rights Settlement Agreement (NAIWRSA, 2024; NNWRC, 2025).

Conclusion

Native American tribes in Arizona, like other tribes in the United States have had to undergo both the litigation process and the settlement process to legally secure their water rights. The litigation process has yielded mixed results for Arizona tribes, but ultimately has not been successful, as evidenced by the Globe Equity Decree of 1935 and *Arizona v. Navajo Nation* (2023) (DeJong, 2024; DeJong, 2014; *Arizona v. Navajo Nation*, 2023). The settlement process has proven to be more successful for Arizona tribes, the United States, Arizona, and other stakeholders. When the parties negotiate for water rights in a region like the western part of the United States, the stakes are very high because land without water has no value in the desert (Royster et al., 2023; *Winters v. United States*, 1908; Thompson et al., 2018). Thus, water settlements have added an element of increased water security for tribes, the state, and other stakeholders.

CHAPTER 6: CONCLUSIONS AND RECOMMENDATIONS FOR GREATER NATIVE AMERICAN WATER SOVEREIGNTY AND SELF-DETERMINATION

Native American reserved water rights have made significant progress since *United States v. Winans* (1905) and *Winters v. United States* (1908). Robust case law has developed over the past 100 years and the world of Native American water rights has morphed into a reality where tribes that want to legally secure their water rights must either fight for them in court or negotiate water settlements (Royster et al., 2023; Thompson et al., 2018; Anderson 2006a; Folk-Williams, 1988). Both processes were created by the legal minds and worldviews of the United States. Generally, such systems do not take into account the legal systems and worldviews of Native American tribes. As such, both the litigation process and the water settlement process can be detrimental for Native American water sovereignty and self-determination (Brienza, 1992; McCool, 2002; Hays, 2006; McGovern, 1994).

The litigation process is especially detrimental for tribal water sovereignty and self-determination because the McCarran Amendment asserts that tribes should litigate their water rights in state courts (Hedden-Nicely, 2016, Royster et al., 2016; Brienza, 1992; Anderson, 2006b). The water settlement process can be just as negative for tribal sovereignty and self-determination in the sense that some of the rights given up through the negotiation phase may weaken existing Native American sovereignty and self-determination (Hays, 2006; McCool, 2002; Curley, 2021). Nonetheless, water settlements offer more flexibility and resources than litigation, as well as the opportunity to negotiate for provisions that the tribe wants to prioritize (Colby & Young, 2018; Cosens, 2003; DeJong, 2014; Colby et al., 2005). Ultimately, however, it

is the prerogative of tribes to decide which process is better for them to secure their water rights. Hence, this chapter will review how Native American tribes may move forward in their endeavors to protect their water rights.

Native American Water Litigation and the Way Forward

Native American water litigation has a long history of delivering mixed results for Native American tribes. While tribes were successful in litigating for their water rights in cases like *Winters v. United States* (1908), *United States v. Gila Valley Irrigation District* (D, AZ 1935), and *United States v. Orr Water Ditch Company* (D, NV 1944), their success was limited to what the courts decreed. This dissertation has argued that the litigation process can be detrimental for Native American water sovereignty and self-determination because once an adjudication takes place, it is binding and has legal precedent (Royster et al., 2023; Royster, 2011). Additionally, court decrees of Native American water rights have historically been restricted to the primary purpose of a Native American reservation, as well as for use only within that reservation (Royster et al., 2023). Court decrees of Native American water rights have also historically remained in paper only due to often prohibitive costs of building water infrastructure to capture the water (Royster et al., 2023). Nonetheless, water litigation can help tribes determine the full extent of their water rights without the ambiguity of having to negotiate for a potentially lesser water amount.

Native American Water Settlements and the Way Forward

Because Native American settlement agreements are based on negotiations, the parties involved can negotiate for what they want and can give up what is not a priority for them, thus diminishing the often-zero-sum nature of water rights in the western part of the United States

(McCool, 2002; McCool, 1993; Cosens, 2003; Chambers & Echohawk, 1991). According to experts in the negotiation process, no one wins through a settlement process because all parties have to compromise on items that they would otherwise not give up (Cosens, 2003; McCool, 1993; Anderson, 2006a; Hawkins, 2012); however, water settlement processes do offer more flexibility for Native American tribes to obtain the water security that has long been denied to them. Across the board, Native American water settlements have facilitated greater flexibility in the water uses for the water rights, funding for the water infrastructure, and greater rapport between tribes and non-Native American entities (see Appendices A & B; see Table 3; Chambers & Echohawk, 1991; Colby & Young, 2018; McCool, 2002; Colby et al., 2005). Similarly, the non-Native American entities gain greater water security when unresolved Native American water claims are resolved with legal finality (Curley, 2021; McCool, 2002; Bark & Jacobs, 2009; Bark, 2009; Bark, 2006).

Historically, Native American tribes have been viewed as competitors by Euro-American settlers because tribes depended on the same resources that the newly developed states and cities depended on, especially water (DeJong, 2024; DeJong, 2014; Dunbar-Ortiz, 2014; Deloria, 1985). Such competition has not abated over the years and has continued to the present day, to the point that it is a source of water insecurity for both Native American tribes and non-Native American entities (Arizona Senator Mark Kelly, 2024; Tso, 2024; Ferris, et al., 2015). As such, when states negotiate with Native American tribes and the United States to allocate wet water resources to Native American tribes, they also give up valuable resources that they themselves and their constituents depend on (Bark & Jacobs, 2009; Arizona Senator Mark Kelly, 2024; Tso, 2024; Ferris, et al., 2015). Thus, it is the job of state water authorities and politicians to justify the importance of Native American water settlements to their constituents, as seen through the

website of Arizona Senator Mark Kelly and the Arizona Department of Water Resources (Arizona Senator Mark Kelly, 2024; AZWater, 2024). Ultimately, while Native American water settlements can be controversial, the reality is that they offer the opportunity for parties that have been adversaries at various times throughout history to collaborate in favor of greater water security for the region (Bark & Jacobs, 2009; Arizona Senator Mark Kelly, 2024; Tso, 2024; Ferris, et al., 2015).

The Future of Native American Water Sovereignty and Self-Determination

In 2025, almost 250 years after the foundation of the United States, Native American tribes are still fighting to protect their rights from the legacy of settler colonialism, especially their right to water (Bark & Jacobs, 2009; Arizona Senator Mark Kelly, 2024; Tso, 2024; Ferris, et al., 2015; Royster et al., 2023; NAIWRSA, 2024; NNWRC, 2025). Additionally, their relationship with the United States and states continues to evolve over time. According to the doctrine of plenary power, the United States Congress has ultimate power over the relationship between Native American tribes and the United States (*Worcester v. Georgia*, 1832; *Lone Wolf v. Hitchcock*, 1903; Deloria, 1985; Wilkins & Lomawaima, 2001). Nevertheless, history has shown that American Indian law and policy has evolved in tandem between United States Supreme Court rulings and acts of Congress (Royster et al., 2023; Wilkins & Lomawaima, 2001; Dunbar-Ortiz, 2014). Scholars of American Indian law and policy have noticed that the United States Supreme Court and Congress work together to develop laws and policies that ultimately benefit the United States and states, not necessarily Native American tribes (Getches, 2019; Hendry & Tatum, 2016; Wilkins & Lomawaima, 2001).

Given that Native American law and policy is generally designed to uphold the interests of the United States and states, Native American water settlements offer an important alternative.

Once Native American water settlements are ratified by Congress, they become law and are essentially a policy of the United States (Stern, 2017; USDOJ, 2025; Cosens, 2003; McCool, 2002). Although Native American water settlement acts become part of American Indian law and policy once signed into law, there are two major differences that set them apart from general laws and policies of the United States. First, from the policy side, Native American tribes are significant parties in the negotiation process, thus breaking away from most acts of Congress that have historically affected tribes (Cosens, 2003; McCool, 2002; McCool, 1993; Colby & Young, 2018; Colby et al., 2005). Secondly, from the law side, Native American water settlements do not set a precedent for other tribes, meaning that if a tribe compromises on certain rights through their water settlement, other tribes will not be affected by that compromise (Anderson, 2010; see Appendix A).

Nonetheless, Native American water settlements are not without their problems. Such settlement agreements are generally designed to uphold the interests of the United States (Getches, 2019; Hendry & Tatum, 2016; Wilkins & Lomawaima, 2001). The intent behind such a goal is evident by the extensive waiver provisions in Native American water settlement acts (see Table 4). Such waiver provisions have been growing steadily over the years, which is very telling because there are only 35 Congressionally ratified Native American water settlement acts to date (USDOJ, 2025). Hence, while the water settlement process offers greater flexibility and funding for Native American tribes to legally secure their water rights, the language within such settlements has been steadily growing more restrictive in regard to what the parties give up (see Table 4). In theory, the more restrictive waiver sections will help to achieve finality for the Native American water claims in question. Reality, however, may turn out to follow the same pattern that Native American-United States relations have followed over the last 250 years. As a

result, it is imperative that Native American tribes have a very good idea of what their priorities are and send their best negotiators to the negotiating table.

The United States does not have a strong reputation for honoring its treaties and agreements with Native American tribes (Deloria, 1985; Fletcher, 2016; Canby, 2015; Dunbar-Ortiz, 2014). One possible difference between Native American water settlements and the treaties and agreements of the past is that the water settlements of today involve more non-Native American parties that can aid in holding the United States accountable (Arizona Senator Mark Kelly, 2024; Tso, 2024; Ferris, et al., 2015). A historic problem that tribes have had regarding their relations with the United States is that historically, they have not had direct representatives in Congress to advocate for their rights and interests.

Legally, it is the duty of the United States to uphold these rights and interests through the federal trust doctrine; however, the United States has historically had conflicts of interests regarding the federal trust doctrine and federally recognized Native American tribes (*Cherokee Nation v. Georgia*, 1831; Wilkins & Lomawaima, 2001; *Nevada v. United States*, 1983; Royster et al., 2023). Such a conflict of interest is so strong that American Indian law and policy has been steadily evolving to weaken the integrity of the federal trust doctrine, as evidenced by the concurring opinion of Justice Thomas in *Arizona v. Navajo Nation* (2023) (*Arizona v. Navajo Nation*, 2023; Getches, 2019; Hendry & Tatum, 2016). The conflict of interest that the United States has between upholding the interests of Native American tribes and its economic goals is moderated through Native American water settlements (Arizona Senator Mark Kelly, 2024; Tso, 2024; Ferris, et al., 2015; AZ Water, 2024). With more parties to the settlement process, the balance of power becomes more stable in the sense that it is no longer the historic steep imbalance between the United States and tribes. With stakeholders like states, irrigation districts,

cities, and mining companies, the balance of power within settlement agreements increases. As such, tribes have the opportunity to build strong partnerships with entities that might otherwise be adversaries.

From the Native American side, having extensive knowledge of Native American law and policy, history, and the rights that are owed to the tribe is imperative for the success of such settlement agreements and acts (Cosens, 2003; McCool, 2002; Clayton, 2024). Conversely, the non-Native American side must also have extensive knowledge of Native American law and policy, history, and the rights owed to each party (Cosens, 2003; McCool, 2002; Clayton, 2024; Bark & Jacobs, 2009). Another component that is imperative to the success of such settlement agreements and acts is integrity (Agee, 2011; Anderson, 2006b; Wilkins & Lomawaima, 2001; Deloria, 1985; Deloria, 1988). Native American tribes have lost much throughout the history of their relations with the United States because they trusted the integrity of the United States (Agee, 2011; Anderson, 2006b; Wilkins & Lomawaima, 2001; Deloria, 1985; Deloria, 1988; Dunbar-Ortiz, 2014). That history must be remembered and honored while new covenants are forged for the sake of greater water security in the region.

Moreover, the world is currently undergoing many changes, not least of which is climate change. In the western part of the United States, water is scarce and located sparsely throughout the region. The Colorado River and its tributaries is the largest source of water in the southwestern part of the region. No one can live without water, which makes the imperative for collaborating across sectors and nations even more important.

Native American water settlements are a work in progress and the criticisms aimed at them are not without merit; however, the fact that they are reached through negotiations is much better than the rigid rules of litigation. Scholars of water rights theorize that the wars of the

future will be fought over water (Barlow & Clarke, 2004; Shiva, 2016). To Indigenous minds, such an idea is preposterous because water is life and all living beings depend on it (Kimmerer, 2013; Whyte, 2016; Wildcat, 2023). Nonetheless, the commodification of water has the added threat that some entities may consider it for its economic value only, thus withholding it from those they deem unworthy (Barlow & Clarke, 2004; Shiva, 2016).

As a result, it is very important that Indigenous Peoples (in general) and Native American (in specific) worldviews are allowed into the negotiating table as equal partners. Indigenous worldviews, cultures, as well as legal and political systems have much to teach the world about how humanity can relate to water. In the words of Native American scholar and philosopher, Dr. Daniel Wildcat, “[w]hen we live among resources, all we do is argue about whose right it is to use them. When we live among relatives, we must ask ourselves: what is our responsibility to those different-than-human relatives?” (Wildcat, 2023, p. 113). It is time that the legal and political system of the United States acknowledges the validity of Native American worldviews, especially regarding water. The Native American water settlement process is a step in the right direction.

Conclusion

Native American sovereignty and self-determination can only be determined by the individual tribes themselves. This dissertation set out to review how Native American tribes can sustain greater water sovereignty and self-determination when engaging the legal frameworks of water litigation and water settlements. While this dissertation found that the water settlement process is better than the litigation process for Native American sovereignty and self-determination, neither process is without flaws. Conversely, each process also has its benefits. The ultimate decision of whether either of these two processes will benefit a given tribe lies with

that particular tribe. Thus, what this dissertation advocates for is increased Native American participation in water related decisions and policies within the region. Water litigation is too contentious and adversarial for such participatory relations to occur. The water settlement process allows for the development of cordial, if not necessarily friendly, relations to develop, which can ultimately lead to increased Native American participation in water related decisions in the region. Increased Native American water sovereignty and self-determination can also develop from the strengthening of diplomatic relations among water stakeholders in the region.

APPENDIX A

Detailed Review of Native American Water Settlements in Arizona

***Kindly note that the following are extracts of data from Native American water settlements themselves along with my notes. Any omission or error was done without malicious intent.**

1- Ak-Chin Indian Community Act of 1978; Amended in 1984, 1992, and 2000

Pub. L. No. 95-328, 92 Stat. 409, amended by Pub. L. No. 98-530, 98 Stat. 2698 (1984), amended by Pub. L. No. 102-497, § 10, 106 Stat. 3255, 3258 (1992), amended by Pub. L. No. 106-285, 114 Stat. 878 (2000).

Summary: The Ak-Chin Indian Community Act of 1978 settled their water rights against the United States. The Act quantified their water rights and set aside funding for the infrastructure to capture the water. In return, the tribe gave up its right to file future lawsuits against the United States based on its failure to meet its trust responsibility to the tribe.

What did the tribe gain? “[C]onstruction of a well field and water delivery system from nearby Federal lands”. The tribe also gained 85,000 acre-feet of groundwater per year “from nearby Federal lands.” A lesser amount of water may be delivered if the Secretary of the Interior determines that pumping 85,000 acre-feet of groundwater per year is not hydrologically feasible or “cause severe damage to other water users.” The water must be suitable for irrigation, implying that the purpose of the water rights is agricultural. Additionally, the tribe has the right to file a lawsuit against the United States for breach of this contract. The total sum of \$43,000,000 was authorized to be appropriated for the construction of the water infrastructure.

What did the tribe give up? “[R]elease of all claims...against the United States for failing to act consistently with its trust responsibility to protect and deliver the water resources of the community.” The Ak-Chin Indian Community waived “any and all claims of water rights or injuries to water rights...including both ground water and surface water from time immemorial to the present, which it might have against the United States, the State of Arizona or agency thereof, or any other person, corporation, or municipal corporation.”

What was gained and/or given up through any subsequent amendments?

- The first amendment to this Act took place in 1984. The agreement was made between the Ak-Chin Indian Community and the Department of the Interior. The parties agreed that “the Secretary shall deliver annually a permanent water supply from the main project works of the Central Arizona Project...of no less than 75,000 acre-feet of surface water suitable for agricultural use.” Should excess water be available in a given year, the Secretary shall deliver additional water, upon request, to the Community, provided that the quantity does not exceed 10,000 acre-feet of water. In times of water shortage, a lesser amount of water may be delivered, but no less than 72,000 acre-feet of water per year. The construction, operation, and maintenance of the project is under the responsibility of the Secretary of the Interior. If the Secretary fails to deliver the water per the stipulations of the Act, the Secretary will have to pay damages to the tribe.

Importantly, “[t]he Ak-Chin Indian Community shall have the right to devote the permanent water supply provided for by this Act to any use, including but not limited to agricultural, municipal, industrial, commercial, mining or recreational use.” The Community also received “\$1,400,000 in a lump sum grant for economic development.” Also, the Secretary of the Treasury paid to the Community \$15,000,000 for general purposes. An additional \$2,000,000 in grants for economic development was delivered by the Secretary. The Ak-Chin Indian Community had “complete discretion to use and expend the funds.” The Secretary would develop a water management plan, which would have “the same effect as any management plan developed under Arizona law.”

- The amendment to the 1978 and 1984 Ak-Chin water settlement acts took place in 1992 through Public Law 102-497. Section 10, titled “Ak-Chin Water Use Amendments Act of 1992,” added to the provision in the 1984 Act regarding the uses of the Community’s water rights. Such uses are authorized in the Pinal, Phoenix, and Tucson Active Management Areas, per the Arizona Groundwater Management Act of 1980. The Community is authorized to lease its water within the aforementioned AMAs, for beneficial use. The term of such leases “shall not exceed 100 years and the community may not permanently alienate any water right.”
- The third and final amendment to the Ak-Chin water settlement Acts took place through Public Law 106-285 in 2000. The provisions in this amendment expand on the flexibility of water uses of the tribe and leases that the tribe may enter into. Nevertheless, the emphasis on beneficial use is greater in this amendment. Additionally, the amendment specifies that the lease agreements “shall only be valid pursuant to a contract that has been accepted and ratified by a resolution of the Ak-Chin Indian Community Council and approved and executed by the Secretary.”

What did the federal government agree to fund and how did it agree to fund it? See prior sections.

2- Southern Arizona Water Rights Settlement Act of 1982; Amended in 1992, and 2004
Pub. L. No. 97-293, tit. III, 96 Stat. 1261, 1274, amended by Pub. L. No. 102-497, § 8, 106 Stat. 3255, 3256 (1992), amended by Pub L. No. 108-451, tit. III, 118 Stat. 3478, 3535 (2004)
(Tohono O’odham Nation of Arizona (formerly known as the Papago Tribe of Arizona))

Summary: Title III of the Act refers to the San Xavier District and the Schuk Toak District of the Tohono O’odham Nation. These districts were involved in expensive and protracted lawsuits at the time. The Tucson AMA would be affected by these lawsuits. Through this settlement Act, the intent was to ensure water conservation according to the requirements of Arizona and the Tribe. Through this settlement act, the San Xavier and Schuk Toak Districts of the Tohono O’odham received water security. In exchange, the Tohono O’odham Nation had to relinquish any water claims against Tucson and had to end the lawsuit against Tucson.

What did the tribe gain? The Bureau of Reclamation will deliver 27,000 afy of CAP irrigation water to the San Xavier District and improve the existing irrigation infrastructure. The Bureau of Reclamation will deliver 10,800 afy of CAP irrigation water to the Schuk Toak District and build the irrigation infrastructure. The Bureau of Reclamation shall develop a “water management plan” for both districts that will be the same or very similar to water management plans under

Arizona law. \$3,500,000 will be appropriated for the construction of the irrigation infrastructure. Importantly, the tribe will have groundwater rights to the water beneath the San Xavier and the Schuk Toak districts per the quantities allocated to each district. There are disclaimers in this settlement act that this settlement will not abrogate United States obligations for the tribe, nor will it be a precedent for groundwater rights. Should CAP water not be available in a given year, the following sources may be tapped: CAP agricultural water that “has been contracted for but has been released or will be unused by the contractor during the period”, CAP water that is available due to “augmentation of water supply”, water from the Tucson AMA and the “part of the Upper Santa Cruz Basin not within that area, private water rights owners, and purchased reclaimed water. The water deliveries for these alternatives are restricted to the Tucson AMA. Damages shall be paid for failure to deliver the water amounts stipulated in this act. Additional funds are authorized for the construction of phase B of the Tucson aqueduct of the CAP. 23,000 afy of reclaimed water for irrigation purposes shall be delivered to the San Xavier District and 5,200 afy of reclaimed water for irrigation purposes shall be delivered to the Schuk Toak District. Water exchanges are allowed. The Department of the Interior “shall not construct a separate delivery system” for reclaimed water. The tribe has the right to use the water for any purpose as long as it is in the Tucson AMA and the upper Santa Cruz basin. The tribe has the right to “sell, exchange, or temporarily dispose of water, but...not permanently alienate” it and any contract for such an activity must be ratified by the tribal council and approved by the Secretary of the Interior – the proceeds of such contracts “shall be used for social or economic programs or for tribal administrative purposes which benefit the tribe. The reclaimed water will come from the City of Tucson, at no cost. A Cooperative Fund shall be established and supported by the Secretary of the City of Tucson, the State of Arizona, Anamax Mining Company, Cyprus-Pima Mining Company, American Smelting and Refining Company, Duval Corporation, and the Farmer’s Investment Company. The tribe will file for voluntary dismissal of lawsuit against the City of Tucson (75-39 TUC). The Secretary of the Interior will conduct a study to determine which lands in the Gila Bend Reservation have been rendered unsuitable for agriculture by the Painted Rock Dam. Should such a study find that the activities of the Painted Rock Dam caused such damage and if the tribe consents, the Secretary may exchange the damaged lands for “an equivalent acreage of land under his jurisdiction...and...are of like quality.” The lands exchanged through this provision shall be held in trust and shall have the priority date of the lands that were damaged.

What did the tribe give up? The tribe agreed to limit groundwater pumping to 10,000 acre-feet per year at the San Xavier District and to the levels they were at on January 1, 1981 at the Schuk Toak District. The tribe may pump groundwater at San Xavier for domestic and livestock purposes, so long as the wells pump water at less than 35 gallons per minute, the same concept applies to the Schuk Toak District. Had to adhere to language of “subjugating” the land. The tribe also waived and released all claims to water rights or injuries to water rights within the Tucson AMA and the Upper Santa Cruz Basin not within said area from time immemorial to the date of agreement signing.

What was gained and/or given up through any subsequent amendments?

- The 1992 amendment made technical changes to the text of the original 1982 Act. There is discussion that the funds provided by the United States to the Cooperative Fund (see below) will be deposited into the General Fund at the Department of the Treasury in case

the lawsuit is not dismissed for all defendants. Section 304(e)(2) have been amended to not include “as long as such water is used for irrigation of Indian lands.” There is also an extension of the period after which the interest accruing to the Cooperative Fund to ten years and 9 months rather than ten years.

- The 2004 amendment is Title III of the Arizona Water Settlements Act. Through this amendment, the uses for exempt wells were expanded. Additionally, the amendment approved the extension of the existing irrigation system and the construction of a new farm within the San Xavier Reservation. In lieu of the construction of the new farm, give the San Xavier District \$18,300,000 (depending on choice by the tribe), which will be held in trust by the San Xavier district and invested. The payment shall be made from the Lower Colorado River Basin Development Fund. There are also provisions for the design and construction of an irrigation and delivery system for the farm constructed at the Schuk Toak District. Tribal laws are mentioned in Section 304(d)(1)(C). The funds may not be used for per capita payments. Section 305(e) contains a disclaimer that this Act will not affect the water rights of any Indian tribe. In addition to any other water quantities already described, the Secretary shall deliver 28,200 afy of NIA priority water to the Nation through the CAP. 23,000 afy shall be used by the San Xavier Reservation or be used by the Nation. 5,200 afy shall be used by the Schuk Toak District or by the Nation. Non-exempt well pumping will be limited to 10,000 afy at San Xavier and 3,200 afy at Schuk Toak. The San Xavier Cooperative Association shall assume responsibility for the operation, maintenance, and replacement of the irrigation systems upon construction and the delivery of water. The Nation is permitted to apply the water to any use including agricultural, municipal, domestic, industrial, commercial, mining, underground storage, instream flow, riparian habitat maintenance, or recreational use... water may be sold, leased, transferred, or used by the Nation outside of the Nation’s Reservation only in accordance with this title...within the State of Arizona (no restriction regarding AMAs)...“The Nation shall not permanently alienate any water right”. The Nation waives all past, present and future claims to water and claims for injuries against the State, municipal corporation, any individual or entity, and the United States. Waiver for each allottee class. Waiver for the United States as well. The Nation shall have jurisdiction to manage, control, permit, administer, and otherwise regulate the water resources granted or confirmed under this title and the Tohono O’odham settlement agreement. Section 316 contains disclaimers and restrictions: “(3) prohibits the Nation, any individual member of the Nation, an allottee, or a fee owner of allotted land in the San Xavier Reservation from lawfully acquiring water rights for use in the Tucson management area in addition to the water rights granted or confirmed under this title and the Tohono O’odham settlement agreement. The United States shall have no trust or other obligation to monitor, administer, or account for, in any manner, any of the funds paid to the Nation or the San Xavier District under this Act. The Nation shall indemnify the United States, and hold the United States harmless, with respect to any and all claims (including claims for takings or breach of trust) arising out of the receipt or expenditure of funds described here Additional appropriations are authorized for construction of irrigation systems ...not authorized...under any other provision of law..\$3,500,000; and...such additional amount as the Secretary determines to be necessary. \$18,300,000 in lieu of construction of the irrigation systems. “(3) \$891,200 to develop and initiate a water management plan for the San Xavier Reservation under section 308(d); “(4)

\$237,200 to develop and initiate a water management plan for the eastern Schuk Toak District under section 308(d); “(5) \$4,000,000 to complete the water resources study under section 311(d); “(6) \$215,000 to develop and initiate a groundwater monitoring program for the San Xavier Reservation under section 311(c)(1); “(7) \$175,000 to develop and implement a groundwater monitoring program for the eastern Schuk Toak District under section 311(c)(2); “(8) \$250,000 to complete the Asarco land exchange study under section 311(f);” implementation costs have been allocated from the Lower Colorado River Basin Development Fund (p. 96).

What did the federal government agree to fund and how did it agree to fund it? Section 309 of the 1982 Act: the Secretary of the Treasury shall pay the tribe \$15,000,000 “to be held in trust for the benefit of the Tribe and invested in interest bearing deposits and securities including deposits and securities of the United States.” The governing body is allowed to spend the interest and dividends accrued by the fund per year. The money may only be used for “subjugation of land, development of water resources, and the construction, operation, maintenance, and replacement of related facilities on the...Reservation which are not the obligation of the United States”. Arid land renewable resource assistance shall be made available to the tribe via price guarantees or purchase agreements, loans, and joint venture projects for the “successful cultivation of arid land crops. Section 313: A Cooperative Fund is established within the Treasury of the United States for the purposes of the Act. The Fund shall consist of the following: \$5,250,000 (\$2,750,000 by the State of Arizona; \$1,500,000 by the City of Tucson; \$1,000,000 by Anamax Mining Company, the Cyprus-Pine Mining Company, the Duval Corporation, and the Farmers Investment Company), and interests accruing to the Fund. The Cooperative Fund is authorized to appropriate the following: \$5,250,000 plus up to \$16,000,000 by notice to Congress. Only interest accruing to the fund may be expended and only 10 years after the enactment of the Act or the date of completion of CAP. The Cooperative Fund shall be held in trust by the Secretary of the Treasury and the Fund shall be terminated if the tribe does not meet the conditions of Sections 307(d) and 307(a)(1)(C) (waiver and dismissal of lawsuit) within three years of the enactment of the Act. The Cooperative Fund amount shall not exceed \$32,000,000. In addition to the contributions described in the original Act, revenues received from the sale or lease of effluent and the sale or lease of storage credits derived from the storage of that effluent will be added to the Fund. The Secretary of the Interior is in charge spending funds from the Cooperative Fund. When funds are not available from the Lower Colorado River Basin Development Fund to pay costs, the Secretary may tap into the Cooperative Fund. To assist in water firming, the State of Arizona shall contribute \$3,000,000 in the form of in-cash goods and services.

3- Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, Amended in 1991

Pub. L. No. 100-512, 102 Stat. 2549, amended by Pub. L. No. 102-238, § 7, 105 Stat. 1908, 1910 (1991)

Summary: The Salt River Pima-Maricopa Indian Community reservation was established in 1879. Reference to the Kent Decree of 1910 and the Barlett Dam Agreement of 1935. Litigation to determine the full extent of the Community’s water rights was taking place at the time of the settlement negotiations and drafting.

What did the tribe gain? The neighboring non-Indian communities agree to transfer rights to ~32,000 afy of surface water to the Community, help with the firming of existing water supplies, and make substantial additional contributions to meet the provisions of the agreement. The United States will participate in the implementation of the settlement and will contribute with funding for the rehabilitation and expansion of existing water infrastructure. **Kent Decree Regulation:** 7,000 af of additional conservation capacity at the Roosevelt Dam to be used for the Community's Kent Decree water entitlement are authorized by the Secretary, for seasonal reregulation only. The non-federal funding obligation associated with the Designated Space is forgiven. **Barlett Dam Agreement:** The Secretary will amend the Barlett Dam Agreement to provide that the SRVWUA shall increase the Community's total allotment of developed to 20,000 af by Dec 31 of any calendar year when the following three conditions are met: for at least 292 days of the year, the total water at the SRVWUA's reservoirs in the Verde River exceed the storage capacity of the Barlett Dam Reservoir (178,186 af); The Community allotment of developed water under the Barlett Dam Agreement is less than 7,000 af in the calendar year; The total Community allotment of developed water under the Barlett Dam Agreement at the end of the year is less than 20,000 af. **Colorado River Water Exchange:** On or before Dec 31, 1990, the Secretary shall acquire 22,000 afy of consumptive water from willing irrigation districts from the mainstream of the Colorado River in the State of Arizona with a priority predating Sept 30, 1968 and which was not included by the Secretary, the AWC, nor the ADWR as available CAP water for initial allocations to non-Indian entities. The water shall be delivered to the cities of Chandler, Glendale, Scottsdale, Tempe, Mesa, Phoenix, and the town of Gilbert in exchange for the water provided to the Community. The terms of the contracts in this section shall be perpetual. The cities and town shall deposit \$9,000,000 in an escrow account for the purposes of the acquisition of the water rights for the Community. **Water Delivery Contract Amendments; Water Lease:** The Secretary is authorized to amend and extend the CAP water delivery contract with the Community to Dec 31, 2098, to authorize the Community to lease its CAP water rights to the cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, and the town of Gilbert. The United States shall not charge the Community for the operation, maintenance, and replacement charges related to the CAP water delivery to the cities and town. The Community and the Secretary shall lease to the cities and town, between Jan 1, 2000 and Dec 30, 2098, up to 13,300 af of CAP water for the total consideration of \$16,000,000. The cities and town shall pay all operation, maintenance, and replacement costs of such water to the United States or, if directed by the Secretary, to the CAWCD.

What did the tribe give up? All allottee's claims against the United States and all other persons for damages through Dec 31, 1991 are extinguished. Also, all allottee rights to assert claims against the United States and all other persons for declaratory, injunctive or other relief for the determination or enforcement of water rights for allotted lands, including surface water, ground water, and effluent are extinguished. The Community waives all present and future water rights claims or injuries to water rights from time immemorial to the effective date of the settlement act, to which the Community may have claim against the United States, the State of Arizona or any agency or political subdivision, person or corporation. **Section 11:** The United States and the Community waive sovereign immunity and agree to be joined in Court for a lawsuit regarding the interpretation of the Act. The Colorado River Basin Act no longer applies to the Community.

No water received by the Community pursuant to the Agreement may be sold, leased, transferred, or in any way used off the Community's reservation.

What was gained and/or given up through any subsequent amendments?

- The 1991 amendment, Section 7 of Public Law 102-238, extended certain deadlines from Dec 31 1991 to Jun 30, 1992.

What did the federal government agree to fund and how did it agree to fund it? “The Secretary shall deposit into the Salt River Community Trust Fund \$17,000,000 for the rehabilitation and improvement of the Community's existing water infrastructure.” Also, “deposit into the Trust Fund \$30,470,000 for the design and construction of water infrastructure for the Community, plus \$3,000,000 from the State of Arizona. The principal and income may be used by the Community to fulfil the purpose of the Agreement, but no part of the fund may be used to make per capita payments.”

4- Fort McDowell Indian Community Water Rights Settlement Act of 1990; Amended in 2006.

Pub. L. No. 101-628, tit. IV, 104 Stat. 4469, 4480-92, amended by Pub. L. No. 109-373, 120 Stat. 2650 (2006) (Fort McDowell Yavapai Nation, Arizona)

Summary: The Fort McDowell Reservation was established in 1903 by the United States government. Water rights per the **Kent Decree** of 1910. There are proceedings pending for the water rights of the Community, including the general stream adjudication to the Gila River. The parties are now seeking settlement. The neighboring non-Indian Communities will transfer rights to 12,000 af of surface water to the Community and provide for the means of firming existing water supplies of the Community. The United States will contribute to the implementation of the Agreement and contribute funds to the rehabilitation and expansion of existing water infrastructure in the reservation.

What did the tribe gain? Agreement between the Fort McDowell Indian Community, the State of Arizona, the SRP Agricultural Improvement and Power District, the SRVWUA, the RWCD, the cities of Chandler, Glendale, Mesa, Phoenix, Scottsdale, and Tempe, and the town of Gilbert, and the CAWCD. Harquahala Valley Irrigation District. The Secretary will contract with SRP for a period of up to 25 years from the date of this Act for the utilization of up to 3,000 af of storage behind the Barlett and Horseshoe Dams on the Verde River for the reregulation of the Community's rights under the **Kent Decree**, which will be seasonal only. The Secretary is authorized to acquire 13,933 af of water for the Community from one of a combination of the following: CAP water permanently relinquished by the HVID; CAP municipal and industrial water and CAP Indian priority water permanently relinquished by the City of Prescott, the Yavapai-Prescott Tribe, the Yavapai-Apache Indian Community of the Camp Verde Reservation, the Cottonwood Water Company or the Camp Verde Water Company. Should the Secretary fail to obtain 13,933 af of water from these sources, the Secretary is authorized to obtain any water in the State of Arizona that is at the disposal of the United States. The HVID water can be CAP agricultural priority or CAP Indian priority, up to a maximum of 33,263 aft and up to 13,933 af of such water shall be made available to the Community by contract with the Secretary. The Secretary is authorized to purchase land and water rights in the Big Chino Valley in an amount

sufficient to replace all such water so acquired. If the Secretary acquires at least 7,000 af of CAP water from the City of Prescott, the Yavapai-Prescott Tribe, the Yavapai-Apache Indian Community of the Camp Verde Reservation, the Cottonwood Water Company or the Camp Verde Water Company, up to \$30,000,000 are authorized to be appropriated to pay the costs of acquiring the land and water resources, as well as building the associated water infrastructure. There are also funds authorized to be appropriated to conduct environmental protection studies. The Secretary is directed to authorize the Community to lease the CAP water they have a right to, to the City of Phoenix. Lease term effective from Jan 1, 2001 to Dec 2099. 4,300 af of CAP water. Water leasing is allowed with the authorization of the Secretary, but not outside Pima, Pinal or Maricopa counties. Disclaimer that nothing in this agreement shall affect the land and water rights of any other Arizona Indian tribe.

What did the tribe give up? 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.

What was gained and/or given up through any subsequent amendments?

- 2006 amendment through Public Law 109-373. Fort McDowell Yavapai Nation. The obligation of the Nation to repay the loan made by the Secretary under Section 408(e) is cancelled. In exchange, relieve the Secretary from the responsibility to obtain mitigation property or develop additional farm acreage for the fulfillment of this Act.

What did the federal government agree to fund and how did it agree to fund it? Fort McDowell Indian Community Development Fund: The Secretary shall deposit the aforementioned amounts, the State of Arizona shall deposit \$2,000,000, \$23,000,000 appropriated for the design and construction of water infrastructure. The community may use the funds (principal and income) in the Development Fund for the fulfillment of this Agreement, but at no time for per capita payments. The Secretary is authorized to lend \$13,000,000 to the Community from the Small Reclamation Projects Act, to be repaid over the period of 50 years and without interest for the purpose of infrastructure development...any requirements for qualifying for the loan are waived. Moneys are authorized to be appropriated for the NEPA process.

5- San Carlos Apache Tribe Water Rights Settlement Act of 1992; Amended in 1994 (2 times), 1996 (2 times), and 1997

Pub. L. No. 102-575, tit. XXXVII, 106 Stat. 4600, 4740-52 (1992), amended by Pub. L. No. 103-263, § 2, 108 Stat. 707, 708 (1994), amended by Pub. L. No. 103-435, § 13, 108 Stat. 4566, 4572 (1994), amended by Pub. L. No. 104-91, tit. II, § 202, 110 Stat. 7, 14-15 (1996), amended by Pub. L. No. 104-261, § 3, 110 Stat. 3176 (1996), amended by Pub. L. No. 105-18, § 5003, 111 Stat. 158, 181-87 (1997)

Summary: The San Carlos Apache Reservation was established in 1871. Treaty dated Jul 1, 1852 and Executive Orders dated 1871, 1873, and 1873. The United States obtained water rights for the tribe through the **Globe Equity Decree of 1935**. Proceedings to determine the full extent of the tribe's rights to water were ongoing at the time of the agreement. Through this settlement act, the tribe gained water security and greater flexibility to use their water rights. In exchange,

the tribe gave up its water claims and water injury claims from time immemorial to the present and to the future.

What did the tribe gain? The neighboring non-Indian communities will relinquish 58,735 af of surface water to the Tribe, provide the means of storing the water behind the Coolidge Dam, and make substantial additional contributions. The United States will participate in the implementation of the Agreement and contribute funds for the rehabilitation and expansion of existing water infrastructure. The Secretary shall reallocate all the water referred to in subsection (f)(2) of section 2 of the Act of October 19, 1984, which is not required to be delivered to the Ak Chin Indian Reservation under that Act. This water shall constitute partial satisfaction of claims should the authorizations contained in section 3708(b) not become effective and the general stream adjudication claim proceeds. The secretary shall reallocate 14,655 af of CAP water with municipal and industrial priority, which the Secretary previously allocated to the Phelps Dodge Corporation. The Tribe shall pay the United States or CAWCD all operation, maintenance and replacement costs associated with this water. The Secretary shall reallocate to the Tribe 3,480 af of CAP water with municipal and industrial priority, which was previously allocated to Globe, Arizona. The Tribe shall pay the United States or CAWD all operation, maintenance and replacement costs associated with such water. Conservation capacity behind the Coolidge Dam for the Tribe to maintain a pool of stored water for fish, wildlife, recreation, and other purposes; however, such water will be the first to spill as spill water from the Coolidge Dam. The water stored behind the dam shall be a combination of the water described in prior sections and its entitlement to 12,700 af of CAP water under the Tribal CAP delivery Contract dated December 11, 1981. The Tribe shall pay an equitable share of the operations and maintenance costs for the water stored there. The stored water shall not be subject to apportionments pursuant to the Globe Equity Decree. The Secretary shall notify the United States District Court for the District of Arizona for the Tribe's stored water balance. The Tribe has the right to the diversion and use of all ground water beneath their reservation and all the surface water rights to all the tributaries within the Tribe's reservation to the mainstreams of the Black River, the Salt River below the confluence with the Black River, the San Pedro River, and the Gila River, including the right to fully regulate and store such water on the tributaries. The lands within the reservation shall be free from all full cost pricing provisions under federal law. The Secretary shall, with the tribe's approval, extend the terms of the right of way permits to the Phelps Dodge Corporation. The Secretary shall amend the CAP water delivery contract with the Ak Chin Indian Community dated December 11, 1980 and October 2, 1985. The Secretary shall amend the CAP water delivery contract with the Tribe...the water reallocated pursuant to such subsections shall retain the priority date that the water had before reallocation. The Secretary authorizes the Tribe to lease water to Maricopa, Pinal, and Pima counties for terms no longer than 100 years. To authorize the Tribe to lease water to Chandler, Glendale, Goodyear, Mesa, Peoria, Phoenix, Scottsdale, Tempe, and the town of Gilbert. The lessee shall pay all operation, maintenance, and replacement costs. Except for as authorized here, the Tribe may not sell, lease, transfer or in any way use its water off reservation. All remaining payments related to the construction of the Elgo Dam are discharged on the date of this enactment. Disclaimer: nothing in this Act shall affect the water right or claims related to SCAT Allotments outside the exterior boundaries of the Reservation. NEPA provisions. 30,000 af of water less any evaporation and seepage loses to the Tribe from the Secretary, water at San Carlos Reservoir. This Act does not repeal, amend, change

or affect the Ak Chin water settlement act. Nothing in this Act shall affect the water rights of any other Arizona tribe.

What did the tribe give up? The Tribe is authorized to execute a 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, the State of 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.

What was gained and/or given up through any subsequent amendments?

- The 1994 (#1) amendment, Section II of Public Law 103-263, amends technical language in Section 3704(d) of the original Act, by substituting “reimbursable” with “non-reimbursable”.
- The 1994 (#2) amendment, Section XIII of Public Law 103-435, amends a deadline by extending it from Dec 31, 1994 to Dec 31, 1995 in Section 3711(b)(1).
- The 1996 (#1) amendment, Title II, section 202, extends the deadline from Dec 31, 1995 to Dec 31, 1996.
- The 1996 (#2) amendment, section 3 of Public Law 104-261, amends the deadline from Dec 31, 1996 to Jun 30, 1997.
- The 1997 amendment, section 5003 of Public Law 105-18, amends the deadline from Jun 30, 1997 to Mar 31, 1999. The deadline may also be extended to Dec 31, 1999 if needed. It adds the Gila Valley Irrigation District and the Franklin Irrigation District to the Agreement. The rest of the amendment is regarding the agreements made between the United States, the Tribe and the Phelps Dodge Corporation, which operates the Morenci Mine Complex. The Black River facilities are held in trust by the United States for the Tribe. Additionally, the Tribe and the United States will enter into an exchange agreement with the SRP to deliver CAP water to the SRP in return for diversion of the Black River for the Black River facilities. The Tribe shall lease 14,000 afy of CAP water to the Phelps Dodge Corporation to be used that the Morenci mine and the towns of Clifton and Morenci. The leased CAP water will have junior rights and use up to 7,300 afy from the Black and Salt Rivers by the SCA Tribe. The Tribe shall lease the water at a cost of \$1,200 per af and 4,166 af of CAP water shall be delivered. The remaining 9,834 water shall be \$65 per afy. Any moneys paid to the United States on behalf of the Tribe, except for OM&R costs shall be held in trust by the United States on behalf of the Tribe in the San Carlos Apache Tribe Lease Fund. The same terms mentioned in the Original Title regarding the use of such funds apply here. The Tribe agrees to dismiss the lawsuit against Phelps Dodge Corporation filed in tribal court.

What did the federal government agree to fund and how did it agree to fund it? In the Treasury of the United States, the San Carlos Apache Tribe Development Fund shall be

established. The Secretary shall deposit the Fund the funds authorized and \$3,000,000 provided by the State of Arizona. The proceeds from leases shall also be deposited into the Fund. Such sums shall be invested in interest-bearing deposits and securities. \$38,400,000 are authorized to be appropriated in fiscal year 1994. The principal of the fund, along with any accruing interests may be used by the Tribe for the beneficial use of their water, to defray the cost of the Tribe's CAP operation, maintenance, and replacement charges, and for economic and community development purposes. The income from the Fund shall be distributed by the Secretary upon presentation of a certified copy of a duly enacted Resolution of the Tribal Council and a written budget approved by the Tribal Council. Such income may only be expended according to said budget. The same rules apply to distribution of the principal of the Fund; however, the principal may only be used for long-term economic development projects. No part of the fund may be used to make per capita payments.

6- Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994; Amended in 1996

Pub. L. No. 103-434, tit. I, 108 Stat. 4526, amended by Pub. L. No. 104-91, tit. II, § 201, 110 Stat. 7, 14 (1996)

Summary: The Yavapai-Prescott Indian Reservation was established in 1935 (also 1956). Lawsuits for the water rights claims of the tribe were pending at the time of the Settlement Act. Water will be made available to the tribe by the City of Prescott and the Chino Valley Irrigation District in perpetuity for municipal and industrial, recreational and agricultural purposes. The United States will participate in the implementation of the agreement and assist in firming the long-term water supplies of Prescott and the Yavapai-Prescott Tribe. This settlement repealed section 406(k) of Public Law 101-628, which authorizes \$30,000,000 in appropriations for the acquisition of land and water resources in the Verde River Basin and for the development as an alternative source of water for the Fort McDowell Indian Community. Provision for environmental protection. The United States District Court for the District of Arizona shall have jurisdiction of all actions arising under this title. Nothing in this title shall affect the water rights or claims related to any trust allotment located outside the exterior boundaries of the reservation or any member of the Tribe. Payments made to Prescott shall be in full satisfaction for any claim that Prescott might have against the Secretary or the United States related to the allocation, reallocation, relinquishment or delivery of CAP water. The Tribe may enter into a Memorandum of Understanding with ADWR for consultation in the development of this Plan. Nothing in this Settlement Agreement or this title shall be construed in any way to quantify or otherwise adversely affect the land and water rights, claims or entitlements to water of any Arizona Indian tribe, band, community, other than the tribe.

What did the tribe gain? Wet water rights. Service Agreement between the City of Prescott and the Yavapai-Prescott Tribe, providing for water, sewer, and effluent service from the City of Prescott to the Yavapai-Prescott Indian Tribe.

What did the tribe give up? Waiver and release of all claims of water rights or injuries to water rights from or after this settlement. The Tribe also agrees that its claims to water rights under federal and state laws from time immemorial and to all future claims are satisfied. The United

States and the Tribe waive sovereign immunity to be joined in a Court of Law regarding lawsuits due to the interpretation of this title.

What was gained and/or given up through any subsequent amendments?

- 1996 amendment, Public Law 104-91 title II section 201, extends the deadline from Dec 31 1995 to Jun 30, 1996.

What did the federal government agree to fund and how did it agree to fund it? The Secretary shall establish the Verde River Basin Water Fund to provide replacement water for the CAP water relinquished by the Tribe and by Prescott. Moneys in the Fund shall be available without fiscal year limitations. The moneys paid to Prescott for relinquishing the CAP subcontract shall be used for the defraying of the costs associated with the investigation, acquisition or development of alternative sources of water to replace the CAP water relinquished; none of the moneys shall be used for the construction or renovation of water infrastructure. The moneys paid to the Tribe shall be used for the defraying of the water service costs and to develop and maintain facilities for on-reservation water or effluent use. The Tribe shall not make any per capita payments with the moneys from the Fund. There are authorized to be appropriated to the Fund: up to \$200,000 for the Tribe's costs associated with judicial confirmation of the settlement; Such sums as may be necessary to establish, maintain, and operate the gauging station. The State of Arizona shall contribute \$200,000 to the trust account established by the Tribe.

7- Zuni Indian Tribe Water Rights Settlement Act of 2003

Pub. L. No. 108-34, 117 Stat. 782

Summary: The Zuni Reservation was established in 1984. The rights of all water users in the Little Colorado River basin has been in litigation since 1979. The neighboring non-Indian entities will assist in the Tribe's acquisition of surface water rights and development of groundwater, store surface water supplies for the Tribe, and make substantial additional contributions. The United States will participate in the implementation of the Settlement Agreement and contribute funds for the rehabilitation of riparian areas and other purposes. Intergovernmental Agreement between the Zuni Indian Tribe, Apache County, and the State of Arizona. Pumping Protection Agreement: Agreement between the Zuni Tribe, the United States on behalf of the Tribe, and a local landowner through which the landowner agrees to limit pumping of groundwater on his lands in exchange for a waiver of certain claims by the Zuni tribe and the United States on behalf of the tribe. Use of Zuni language name for a place. Additional lands are added into trust through this Settlement Agreement. Provision for new reservation lands. The Zuni Tribe may seek to have the legal title to additional lands in Arizona. Lands taken into trust pursuant to this Act shall not have federal reserved rights to surface water or groundwater. State water rights apply to some of the lands taken into trust; however, such water rights shall not be subject to forfeiture or abandonment. Ad valorem taxes apply to some of these trust lands. The tribe is authorized to enter into the Intergovernmental Agreement described above and any other similar agreement. The Secretary shall not seek to abrogate, in any administrative or judicial action, the terms of any intergovernmental agreement entered into under this section. Nothing in this Act shall be construed to affect the application of the Act of

May 25, 1918 (No Indian Reservation shall be created, nor shall any additions be made...within the limits of the States of New Mexico and Arizona, except by Act of Congress). Nothing in this Act affects Public Law 98-408 nor its amendment, Public Law 101-486). Nothing in this Act recognizes or establishes any right of a member of the tribe to water on the Reservation. The water rights of the tribe in the Zuni Heaven Reservation shall be held in trust by the United States in perpetuity and shall not be subject to forfeiture or abandonment; also, the tribe may use such waters for any uses it deems fit. The tribe is not allowed to sell, lease, transfer or transport its water to any other place, unless it is to other Zuni lands in accordance with State laws. Once transferred to lands held in fee, such water shall be subject to State law. 1,500 afy of groundwater for the tribe. Disclaimer: nothing in this Act affects the water rights, claims, or entitlements of any Indian tribe, band, or community other than the Zuni Indian Tribe.

What did the tribe gain? Wet water rights.

What did the tribe give up? Full and complete satisfaction of the Tribe's claims to water rights from federal, state, and other laws, including claims for surface water, groundwater, and effluent. Additionally, full and complete satisfaction of claims for injuries to water rights under federal, state, and other laws. **WAIVERS:** Waiver of water rights claims against the State of Arizona, its subdivisions, or any other person, entity, or corporation to past, present, and future claims from time immemorial to the future, except for claims within the Zuni Protection Area. This waiver also applies to claims by the Tribe to the United States. Also waiver of claims for breach of the trust responsibility of the United States to the Zuni Tribe arising out of the negotiation of the Settlement Agreement or this Act. Waiver of claims of interference with the trust responsibility. Waiver of natural resource damage claims and water quality claims, with exceptions based on the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and the Oil and Pollution Act of 1990. The United States also waives water quality claims against the State of Arizona, any of its subdivisions, any person, entity, or corporation. Nothing in this Act affects any right of the United States or the State of Arizona to take any actions, including enforcement actions, under any laws relating to human health, safety, and the environment. Waiver of sovereign immunity by the United States and the Tribe in regard to the interpretation of this Act. The Tribe may also waive its sovereign immunity for the terms of the Intergovernmental Agreement.

What was gained and/or given up through any subsequent amendments? N/A

What did the federal government agree to fund and how did it agree to fund it? Zuni Indian Tribe Water Rights Development Fund. There is authorized to be appropriated to the Zuni Tribe Water Rights Development Fund \$19,250,000 to be allocated as follows: \$3,500,000 for fiscal year 2004 for the acquisition of water rights and associated lands, including the acquisition of at least 2,350 afy before the deadline; \$15,750,000 of which 5,250,000 shall be available for each of the fiscal years 2004, 2005, and 2006 to take actions to restore, rehabilitate, and maintain the Zuni Heaven Reservation, including Sacred Lake, wetlands, and riparian areas. The Fund shall be managed and invested by the Secretary. American Indian Trust Fund Act of 1994. In general, the Tribe may withdraw all or part of the Fund on approval by the Secretary of a tribal management plan. The funds must be used for expenses described in this Title. Expenditure plan

and annual report to report expenses from the Fund. No part of the Fund shall be used to make per capita payments.

8- Gila River Indian Community Water Rights Settlement Act of 2004
Pub. L. No. 108-451, tit. II, 118 Stat. 3478, 3499-535

Summary: The Secretary shall comply with all x and ESA provisions. The Bureau of Reclamation shall be the designated agency for environmental compliance. The Secretary shall be in charge of operating the Pichacho Dam and the Coolidge Dam and Reservoir. The water rights and resources described here shall be held in trust by the United States on behalf of the Community and the allottees as described here. Allottee water rights – before asserting a claim against the United States, allottees must exhaust remedies available under the Community’s water code and Community law. The Community is entitled to 18,600 afy of CAP agricultural priority water in accordance with the agreement among the Secretary, the Community, and the Roosevelt Water Conservation District dated August 7, 1992. An annual entitlement of 18,100 afy of CAP Indian Priority water which was permanently relinquished by the Harquahala Valley Irrigation District. 17,000 af of CAP municipal and industrial priority water due to Asarco contract. 102,000 af of CAP agricultural priority water acquired pursuant to the master agreement. The Community has the right to lease, distribute, exchange, or allocate CAP water described here, allottee exceptions apply. The Community shall not be responsible for water service capital charges for CAP water. With approval of the Secretary, the Community may lease or exchange CAP water within Maricopa, Pinal, Pima, La Paz, Yavapai, Gila, Graham, Greenlee, Santa Cruz, or Coconino Counties; the lease must not exceed 100 years. The United States shall not have any trust obligation or obligation to monitor, administer, or account for any funds received by the Community through such leases and exchanges, nor the expenditure of such funds. The Community may use CAP water on or off reservation for Community purposes. Community leases to Phelps Dodge and any of the cities are authorized, ratified, and confirmed. The Reclaimed Water Exchange Agreement between the Community, the United States, and the cities of Chandler and Mesa is hereby authorized. The Community may not lease or exchange its CAP water outside the State of Arizona. No water obtained through the Gila River Agreement, the Globe Equity Decree, the Haggard Decree or this title may be sold, leased, transferred, and used off reservation, other than exchange. The Community has the right to enter into agreements with the Arizona Water Banking Authority. The Gila River Indian Community Reservation was established in 1859 and expanded by Executive Orders in 1876, 1879, 1882, 1883, 1911, 1913, 1914, and 1915. Subsidence remediation program. Additional lands may be taken into trust by the United States. After-acquired trust lands do not include federally reserved water rights to surface water or groundwater. The water rights of such lands will be subject to Arizona law and state water management policy.

What did the tribe gain? Wet water rights. See Summary above.

What did the tribe give up? Satisfaction of claims and no recognition of water rights. Waiver of claims against the State and others for past, present, and future injuries of rights. Waiver of claims by the United States as trustee for allottees. Waiver of claims regarding water quality. The Community waives the right to adopt water quality standards that are more stringent than those

of the State. Waiver of sovereign immunity to be joined in court for certain provisions of this Act.

What was gained and/or given up through any subsequent amendments? N/A

What did the federal government agree to fund and how did it agree to fund it? The United States shall pay for the OM&R charges associated with the delivery of CAP water to the Community, except for CAP water leased to others, as long as there are funds in the Lower Colorado River Basin Development Fund. \$53,000,000 shall be identified and retained in the Lower Colorado River Basin Fund for the benefit of the Community. The SRP shall pay the Community \$500,000. Gila River Indian Community OM&R Trust Fund, established within the Treasury of the United States to be managed and invested by the Secretary, consisting of 53,000,000. American Indian Trust Fund Management Reform Act of 1994. The Community may withdraw all or part of the Water OM&R Fund on approval by the Secretary of a tribal management plan. The Community may only spend funds to assist in paying operation, maintenance, and replacement costs. Expenditure plan subject to the approval of the Secretary; annual report. No per capita payments.

9- White Mountain Apache Tribe Water Rights Quantification Act of 2010; Amended in 2018, 2020, and 2023

Pub. L. No. 111-291, tit. III, 124 Stat. 3064, 3073-97, amended by Pub. L. No. 115-227, 132 Stat. 1626 (2018), amended by Pub. L. No. 116-94, div. C, tit. II, § 206, 133 Stat. 2534, 2669 (2020), amended by Pub. L. No. 117-342, 136 Stat. 6182 (2023)

Summary: WMAT Reservation was established in 1871 by Executive Order (modified in 1897). Tribal water rights shall be held in trust by the United States and shall not be subject to abandonment or forfeiture. Reallocation to the tribe of an entitlement of 23,782 afy of CAP water that has non-Indian agricultural delivery priority, of which 3,750 afy shall be firm by the United States for the benefit of the tribe for 100 years with priority equivalent of CAP M&I priority AND 3,750 afy shall be firm by the State for the benefit of the Tribe for 100 years with priority of CAP M&I. Additionally, an entitlement of 1,218 afy obtained by the Secretary through the permanent relinquishment of the Harquahala Valley Irrigation District converted to CAP Indian Priority Water. Subject to the approval of the Secretary, the Tribe shall have the authority to lease, distribute, exchange, or allocate the tribal CAP water it is entitled to. The Tribe may enter into contracts or options to lease or exchange tribal CAP water in Maricopa, Pinal, Pima, and Yavapai counties. No portion of the CAP water may be permanently alienated. The United States has no trust or other obligation to monitor, administer, or account for any funds received by the tribe for leasing or exchanging CAP water and the expenditure of such funds. The tribe may use CAP water on or off reservation for any purpose. No Tribal water use outside Arizona. Agreements with the Arizona Water Banking Authority. WMAT Rural Water System consisting of a dam and storage reservoir, pumping plant, and treatment facilities; a distribution system to serve Whiteriver, Fort Apache, Canyon Day, Cedar Creek, Carrizo, and Cibecue; designed and constructed by the Secretary. Publication of Federal Register. Reservation of Rights and Retention of Claims – to assert any past, present, or future claim for trespass, use, and occupancy of the reservation or along the Black River against Freeport-McMoRan Copper & Gold, Inc., Phelps Dodge Corporation, or Phelps Dodge Morenci, including all subsidiaries and

affiliates and predecessors or successors. Reservation of Rights and Retention of Claims by the Tribe Against the United States. Disclaimer that this Title does not affect the water rights of any other tribe besides WMAT. The United States shall have no trust or other obligation to monitor, administer, or account for any amount paid to the Tribe by any party to the Agreement other than the United States or to review or approve the expenditure of those funds. After-acquired trust land only through an Act of Congress, unless such lands are restored through the resolution of any dispute between the tribe and the United States and off reservation trust land acquired prior to January 1, 2008. Such after acquired land that is outside the exterior boundaries of the reservation shall not include federally reserved rights to surface water or groundwater.

What did the tribe gain? Wet water rights and funding. See Summary above.

What did the tribe give up? Satisfaction of claims and no recognition of water rights. Waivers and release of claims. Limited waiver of sovereign immunity: The tribe waives sovereign immunity in regard to civil lawsuits pertaining to the interpretation of this Agreement. Anti-deficiency: The United States shall not be liable for the failure to carry out any obligation or activity authorized to be carried out under this title...if adequate appropriations are not provided by Congress expressly to carry out the purposes of this title.

What was gained and/or given up through any subsequent amendments?

- The 2018 amendment, through Public Law 115-227, amends technical language regarding the WMAT rural water system.
- The 2020 amendment, through Public Law 116-94, amends the date from 2021 to 2023 in sections 309(d) and 311(h) of the original Title.
- The 2023 amendment, through Public Law 117-342, amends the enforceability date from Apr 30, 2023 to Dec 30, 2027; May 1, 2023 to Dec 30, 2027. Cost indexing is amended. Funding for the WMAT cost overrun account amended from \$11,000,000 to \$541,000,000. Authorization of further appropriation of \$78,500,000 for the WMAT Settlement Fund. Determination of substantial completion of the WMAT Rural Water System: 1) the infrastructure is capable of storing, diverting, treating, transmitting, and distributing a supply of water, OR 2) the Secretary expended all the available funds provided to construct the system and despite DILIGENT EFFORTS, cannot complete construction as described in the final project design...due solely to the lack of additional funding. Prohibition: any amounts made available shall not be made available from the Infrastructure Investment and Jobs Act or the Reclamation Water Settlements Fund established through the Omnibus Public Land Management Act of 2009.

What did the federal government agree to fund and how did it agree to fund it? White Mountain Apache Tribe Water Rights Settlement Subaccount within the Lower Colorado River Basin Development Fund: The Secretary shall use the amounts in the subaccount for planning, design, and construction of the WMAT rural water system. Prohibition on per capita contributions. Mandatory appropriations for the Fund of \$126,193,000. Also, WMAT Settlement Fund: \$78,500,000. These funds shall be used for fish production, rehabilitation of recreational

lakes, water-related economic development projects, the protection, restoration, and economic development of forest and watershed health. WMAT Maintenance Fund. Also, out of any funds not already appropriated, the Secretary of the Treasury shall transfer to the Secretary \$50,000,000 for deposit into the WMAT Maintenance Fund. The tribe may submit to the Secretary an expenditure fund...annual report. No per capita payments. **Cost Indexing.** Out of any funds in the Treasury not otherwise appropriated, the Secretary of the Treasury shall transfer to the Secretary \$2,500,000 for the operation, maintenance, and replacement costs of the WMAT rural water system. WMAT Cost Overrun Subaccount, which shall consist of \$24,000,000 from the Secretary of the Treasury, \$11,000,000 from appropriations.

10- Bill Williams River Water Rights Settlement Act of 2014 (Hualapai Tribe)

Pub. L. No. 113-223, 128 Stat. 2096

Summary: Contribution of the Freeport Minerals Corporation to the economic development fund of the tribe may be used by the tribe for the limited purpose of settling its claims to Colorado River water and facilitate the use of such water on the Hualapai Reservation. Importantly, the contribution by the Corporation shall not be considered trust funds. The Colorado River water rights obtained by the tribe may be used off the Hualapai reservation only for irrigation of acquired appurtenant land or for storage in accordance with federal and state law in a permitted recharge facility in the State of Arizona with the condition that the tribe shall not seek to sell or exchange such long-term storage credits. The Tribe, members of the Tribe, the allottees, and the United States retain the right to assert past, present, and future claims to water rights and injury to water rights in the Bill Williams watershed. Retention of rights not expressly waived.

What did the tribe gain? See Summary above.

What did the tribe give up? The Tribe and the United States as trustee of the Tribe are authorized to waive and release all claims against the Corporation for any water rights with respect to Parcel 3 in excess of 300 afy. Also release and waiver of all claims for injury to water rights arising from the diversion of water by the Corporation from the Wikieup Wellfield or Freeport Groundwater Wells in a manner not in violation of the Big Sandy River-Planet Ranch Agreement or the Hualapai Tribe Agreement. The United States as trustee for the Allottees waives and releases all claims against the Corporation for any water rights on Parcel 1 in excess of 82 afy and Parcel 2 in excess of 312 afy, as well as all past and present claims for injury to water rights arising before the enforceability date resulting from the diversion of water by the Corporation from the Wikieup Wellfield or the Freeport Groundwater Wells. The Tribe is authorized to execute a waiver and release of all claims against the United States for past, present, and future claims to water rights for Parcel 3 in excess of 300 afy.

What was gained and/or given up through any subsequent amendments? N/A.

What did the federal government agree to fund and how did it agree to fund it? N/A.

11- Hualapai Tribe Water Rights Settlement Act of 2022

Pub. L. No. 117-349, 136 Stat. 6225

Summary: Purpose is to resolve fully and finally all claims to rights to water in the State, including the Verde River, the Bill Williams River, and the Colorado River of the Hualapai Tribe and the United States as trustee for the Hualapai Tribe, its members, and its allottees. Perfected rights. Hualapai Tribe CAP water is 4,000 afy of CAP NIA priority water that was previously allocated to non-Indian entities, was retained by the Secretary, and reallocated to the Hualapai Tribe. The United States shall hold in trust the water rights for the Hualapai Tribe. Any Colorado River water entitlement purchased by the Hualapai Tribe wholly or substantially with amounts in the Economic Development Fund cannot be permanently alienated. The Hualapai Tribe may assign any long-term storage credits in accordance with State law. Transfers and leases are allowed per the Hualapai Tribe agreement. No water rights, whether surface water or groundwater at the Hualapai Reservation or trust land may be sold, leased, transferred or used outside the boundaries of the Reservation or trust land, other than under an exchange. Groundwater may be transported in accordance with State law away from Hualapai fee land. Construction of the Hualapai Water Project shall not commence until the Secretary issues a record of decision after completion of an environmental impact statement.

Retention of rights and claims: breach of the settlement agreement or act, acting on behalf of any Indian tribe, assert rights over the Bill Williams Act. Retention of claims, same as before. Two-mile protection area around the exterior boundaries of the reservation regarding wells. Retention of claims by the United States as trustee of the allottee of the Hualapai Tribe. No precedential effect. Satisfaction of water claims and other benefits. Nothing in this Act or the agreement recognizes or establishes any right of a member of the Hualapai Tribe or an allottee to water on Hualapai land. Trust land: Land taken into trust under this section shall be part of the Hualapai Reservation and shall be subject to valid existing rights, including easements, rights of way, contracts, and management agreements.

After acquired lands by the Tribe may only be taken into trust by an act of Congress and shall not have federally reserved water rights, instead, such lands shall be subject to State water rights. For 100 years beginning on January 1, 2008, the Secretary shall firm 557.50 afy of the Hualapai Tribe CAP water to the equivalent of CAP M&I priority water; similarly, the State shall firm 557.50 afy of the Hualapai Tribe CAP water equivalent to CAP M&I Priority water. Leases and exchanges of Hualapai CAP water, under approval of the Secretary and only in the lower basin in the State and not in Navajo, Cochise, and Apache counties. No Hualapai CAP water may be permanently alienated. No firming of leased Hualapai CAP water.

The United States shall not have any trust obligation to monitor, administer, account for any funds received by the Hualapai Tribe for leases or exchanges of Hualapai CAP water except when the tribe deposits the funds into an account held in trust by the United States. The Hualapai Tribe may use CAP water on or off the Hualapai Reservation for any purpose, as long as it is used in the lower basin of the State. The Tribe may store CAP water that has been firming, in accordance with State law, at one or more underground storage facilities. The stored water may only be used by the Hualapai Tribe or exchanged by the Hualapai Tribe for water that will be used by the Tribe. Waiver of property tax equivalency payments for the Tribe. The costs associated with the delivery of Hualapai CAP water shall be reimbursable and excluded from the repayment obligation of the CAWCD.

What did the tribe gain? See Summary above.

What did the tribe give up? The Hualapai Tribe and the United States, except for Allottees, waive and release any claims against the State 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 (p. 24). 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.

What was gained and/or given up through any subsequent amendments? N/A.

What did the federal government agree to fund and how did it agree to fund it? Hualapai Water Trust Fund Account: \$312,000,000. Managed, invested, and distributed by the Secretary. The Hualapai Tribe may withdraw any portion of the funds on approval of the Secretary of a Tribal Management Plan in accordance with the American Indian Trust Fund Management Reform Act. Expenditure Plan. Hualapai water project. All OM&R costs of any project constructed from the funds of the Hualapai Water Trust Fund Account shall be the responsibility of the Hualapai Tribe. No per capita contributions. **Hualapai Water Settlement Implementation Fund Account:** \$5,000,000. Established as non-trust account within the Department of the Treasury to be managed and distributed by the Secretary, for use by the Secretary for this Act. Funds from the Reclamation Water Settlement Fund and the Omnibus Public Land Management Act of 2009 shall not be available for the purposes of this Act. The amounts for the Hualapai Water Trust Fund Account shall be adjusted according to fluctuating construction costs. The same adjustment process will be used for additional funds appropriated. Environmental compliance: any costs associated with the performance of environmental compliance activities shall be paid from the Hualapai Trust Fund Account. Construction costs between the date when the Secretary issues the record of decision and the Enforceability Date shall be paid by the Hualapai Tribe. Such costs shall be reimbursed from the Hualapai Water Project Account after the Enforceability Date. All CAP fixed OM&R charges associated with the delivery of Hualapai CAP water shall be paid by the Secretary, if funds in the Lower Colorado River Basin Development Fund become unavailable, the Tribe shall pay.

APPENDIX B

Native American Water Settlements in Arizona

***Note that the data for this table was retrieved from Appendix A, which in turn has data retrieved from the Water Settlement Acts themselves.**

Name of Water Settlement	Native American Tribe	Year of Settlement	What did the tribe gain?	Waivers and Disclaimers	Purpose of Water Rights	Compliance with State Law Requirement	Changes through Amendments
Ak-Chin Indian Community Act of 1978	Ak-Chin Indian Community	1978; amended in 1984, 1992, and 2000	Wet water and funds for a water delivery system, as well as an economic development project.	-Release of all water related claims against the US for failing to comply with the trust responsibility. -Waiver of all water related claims against the US, Arizona, any agency, any person, corporation, or municipal corporation from time immemorial to the present.	-Irrigation purposes for farming. -The purpose was expanded in the 1984 amendment.	-The 1984 amendment provided that the DOI would create a water management plan with “the same effect as any management plan developed under Arizona law.” -The water uses and leases are restricted to the AGMA.	1984 Amendment: Deliveries of 75,000 a-f main CAP surface water. Deliveries of additional 10,000 a-f of water if available. Amendment also declared that the water could be used for any purpose. \$16,600,000 additional funds were issued.
							1992 Amendment: Restriction to the water uses of the tribe to the Pinal, Phoenix, and Tucson AMAs. Also authorized water leases within these AMAs.
							2000 Amendment: Expanded language about water leases that the

							tribe may enter into. Ratification by tribal council and approval by the Secretary of the Interior are required.
Southern Arizona Water Rights Settlement Act of 1982	San Xavier and Schuk Toak Districts of the Tohono O’odham Nation	1982; Amended in 1992 and 2004	-Wet water and funds for the development of a water delivery system (extension of the CAP canal). -The settlement will not abrogate the obligations that the United States has for the tribe and the settlement will not serve as precedent for groundwater rights. -Water exchanges are allowed. -The tribe has the right to “sell, exchange, or temporarily dispose of the water”, but to not alienate it permanently.	-Release and waiver of all water claims and injuries within the Tucson AMA and the Upper Santa Cruz Basin not within the Tucson AMA from time immemorial to the date when the settlement agreement was signed.	The settlement calls for water suitable for irrigation purposes. The water may be used for any purpose, as long as it is used within the Tucson AMA.	-The provision that the Bureau of Reclamation would develop a water management plan in compliance with Arizona law. -The water deliveries will only take place within the Tucson AMA.	1992 Amendment: Technical changes were made. The time period for the accrual of interest for the Cooperative fund was extended by nine months. 2004 Amendment: This amendment was very extensive. Language was added that this Settlement Act will not affect the water rights of any other Native American tribe. 28,200 a-f of NIA priority water would be delivered through the CAP to the Nation. The uses of the water were expanded to any use as long as the water is used in Arizona. The waiver of claims was

							expanded to encompass “past, present and future” water claims against the United States, Arizona, corporations, and any “individual or entity.”
Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988	Salt River Pima-Maricopa Indian Community	1988; Amended in 1991	Wet water	<p>-None of the water received by the tribe may be “sold, leased, transferred, or...used off the Community’s reservation”.</p> <p>-All allottee water claims against the United States and other entities for damages through 12/31/1991 are extinguished.</p> <p>-The Community waives any time immemorial, present, and future water claims against the United States, Arizona, person or corporation.</p> <p>-The Community and the United States waive sovereign immunity and agree to be joined in</p>	-Not specified. Consumptive water is mentioned, so the purpose is inferred to be consumptive.	This water settlement is buttressed by water exchanges, so the water rights of the Community adhere to Arizona law by implication. The consumptive waters received by the tribe have in theory already been vetted by the Arizona Department of Water Resources.	The 1991 amendment extended certain deadlines by six months.

				court regarding the interpretation of this Act.			
Fort McDowell Indian Community Water Rights Act of 1990	Fort McDowell Yavapai Nation	1990; Amended in 2006	-Wet water. The Community is authorized to lease their water to Phoenix. Water leasing is allowed as long as it takes place within the Pima, Pinal, and Maricopa counties.	-Disclaimer that this agreement shall not affect the water and land rights of any other Native American tribe in Arizona. -Waiver of all past, present, and future water claims. -The United States and the Community waive their sovereign immunity to be joined in court for a dispute in the interpretation of this settlement agreement.	Not specified.	The water leases that the Community enters into must be within the Pinal, Pima, or Maricopa counties, in compliance with AGMA.	2006 Amendment: The Nation is no longer required to repay a loan provided for in the original settlement act. In exchange, the Nation relieves the Secretary of the Interior from acquiring “mitigation property” or from developing “additional farm acreage” in order to fulfil this settlement act.
San Carlos Apache Tribe Water Rights Settlement Act of 1992	San Carlos Apache Tribe	1992; Amended in 1994 twice, 1996 twice, and in 1997	-Wet water and the rehabilitation and expansion of existing water infrastructure. Note that some of the water reallocated to the tribe has municipal and industrial priority, which are priorities set by Arizona. -The tribe has the right to the diversion and pumping	-The tribe is not allowed to sell, lease, transfer, or use any of its water off reservation, except as provided for in this settlement act. -Nothing in this settlement act shall affect the water rights or claims of the tribe’s allotments	-The water rights have various purposes, but are not clearly defined in certain places. Municipal and industrial priority water is mentioned, as well as water for “fish, wildlife, recreation, and other purposes.”	-Some of the water reallocated to the tribe has municipal and industrial priority, which adheres to Arizona water law. -Provision that the Secretary of the Interior will develop a groundwater management plan for the reservation	1994 Amendments: Amended (1) technical language and (2) extended a deadline by 12 months. 1996 Amendments: Both amendments extended the deadline by 18 months in total.

			<p>of all groundwater and surface water within the reservation, including the right to regulate and store such water.</p> <p>-The tribe is authorized to lease water to Maricopa, Pinal, and Pima counties, as well as the cities of Chandler, Glendale, Goodyear, Mesa, Peoria, Phoenix, Scottsdale, Tempe and the town of Gilbert.</p>	<p>outside the reservation.</p> <p>-Nothing in this settlement act shall affect the water rights of any other Native American tribe in Arizona.</p> <p>-Waiver of all water claims from time immemorial to the enactment of this act and to all future ones against the United States, Arizona, any other person or corporation.</p> <p>-The tribe and the United States waive sovereign immunity to allow themselves to be joined in court in lawsuits related to the interpretation of this settlement act.</p>		<p>that complies with AGMA.</p>	<p>1997 Amendment: Extended the deadline from 06/30/1997 to 03/31/1999 and 12/31/1999 if needed. Additionally, this amendment added parties to the existing settlement act and authorized the tribe to lease water to the Phelps Dodge Corporation.</p>
<p>Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994</p>	<p>Yavapai Tribe</p>	<p>1994; Amended in 1996</p>	<p>Wet water through water exchanges.</p>	<p>-Nothing in this act shall affect the water rights of allottees outside the reservation.</p> <p>-Nothing in this settlement agreement shall affect the land and water rights</p>	<p>Municipal and industrial, recreational, and agricultural purposes.</p>	<p>-The water rights are tied to the water exchange, which ties the water to Arizona water law.</p> <p>-The tribe shall establish a groundwater management plan that is</p>	<p>1996 Amendment: this amendment extends a deadline by 6 months.</p>

				<p>of any other Arizona tribe.</p> <ul style="list-style-type: none"> -Waiver and release of all water rights claims from or after this settlement agreement. -Waiver of water claims from federal or state laws from time immemorial to the future. -The United States and the tribe waive sovereign immunity and agree to be joined in court regarding lawsuits related to the interpretation of this settlement agreement. 		<p>compatible with the groundwater management plan for the Prescott AMA and includes an annual information exchange with ADWR.</p>	
<p>Zuni Indian Tribe Water Rights Settlement Act of 2003</p>	Zuni Tribe	2003	<ul style="list-style-type: none"> -Acquisition of surface water rights and development of groundwater. -Additional lands will be added into trust for the tribe. -1,500 acre-feet of groundwater per year. 	<ul style="list-style-type: none"> -Waiver of water claims against the United States, Arizona, its subdivisions or any other person, entity or corporation for past, present, and future claims, from time immemorial to the future. -Waiver of claims for breach of duty against the United States regarding the negotiation for this 	The tribe may use the water rights for any uses it deems fit.	<ul style="list-style-type: none"> - Lands taken into trust pursuant to this Act shall not have federal reserved rights to surface water or groundwater. State water rights apply to some of the lands taken into trust; however, such water rights shall not be subject to forfeiture or abandonment. 	None

				<p>settlement act.</p> <ul style="list-style-type: none"> -Waiver of claims of interference with the trust responsibility. -Waiver of natural resources damage claims and water quality claims. -The United States also waives water quality claims against Arizona. - Waiver of sovereign immunity by the United States and the Tribe regarding the interpretation of this Act. 		<ul style="list-style-type: none"> -Water code provision requiring the tribe's water code to be reasonably equivalent to Arizona water law. 	
<p>Gila River Indian Community Water Rights Settlement Act of 2004</p>	<p>Akimel O'odham and the Pee-Posh tribes</p>	<p>2004</p>	<ul style="list-style-type: none"> -18,600 a-f-y of agricultural priority CAP water. -18,100 a-f-y of Indian priority CAP water. -17,000 a-f-y of municipal and industrial priority CAP water. -102,000 a-f-y of agricultural priority CAP water. - With Secretarial approval, the Community may lease or exchange CAP water within 	<ul style="list-style-type: none"> - Waiver of claims against the State and others for past, present, and future injuries of rights. - Waiver of claims by the United States as trustee for allottees. - Waiver of claims regarding water quality. - Waiver of sovereign immunity. 	<p>-Community purposes.</p>	<ul style="list-style-type: none"> -The CAP water received by the Community is subject to state water law priorities. -Water leases or exchanges may only happen within Maricopa, Pinal, Pima, La Paz, Yavapai, Gila, Graham, Greenlee, Santa Cruz, or Coconino Counties. 	<p>None.</p>

			<p>Maricopa, Pinal, Pima, La Paz, Yavapai, Gila, Graham, Greenlee, Santa Cruz, or Coconino Counties.</p> <ul style="list-style-type: none"> - The Community may use CAP water on or off reservation for Community purposes. - Community leases to Phelps Dodge and any of the cities are authorized, ratified, and confirmed. - The Reclaimed Water Exchange Agreement between the Community, the United States, and the cities of Chandler and Mesa is hereby authorized. 				
<p>White Mountain Apache Tribe Water Rights Quantification Act of 2010</p>	<p>White Mountain Apache Tribe</p>	<p>2010; Amended in 2018, 2020, and 2023.</p>	<p>-Reallocation of 23,782 a-f-y of non-Indian agricultural priority CAP water, of which 3,750 a-f-y shall be firm by the United States for 100 years with municipal</p>	<ul style="list-style-type: none"> - The tribe waives sovereign immunity in regard to civil lawsuits pertaining to the interpretation of this Agreement. - The United States shall not be liable 	<p>The tribe may use CAP water on or off reservation for any purpose, as long as it is only in Arizona.</p>	<p>-The CAP water reallocated to the Tribe is subject to Arizona water law priorities.</p>	<p>The 2018 amendment, through Public Law 115-227, amends technical language regarding the WMAT rural water system.</p>

			<p>and industrial CAP water priority and 3,750 a-f-y shall be firm by Arizona for 100 years with municipal and industrial CAP priority water.</p> <p>-1,218 a-f-y of CAP Indian priority water.</p> <p>- Subject to the approval of the Secretary, the Tribe shall have the authority to lease, distribute, exchange, or allocate the tribal CAP water it is entitled to.</p> <p>- The Tribe may enter into contracts or options to lease or exchange tribal CAP water in Maricopa, Pinal, Pima, and Yavapai counties.</p> <p>- WMAT Rural Water System consisting of a dam and storage reservoir, pumping plant, and treatment facilities; a distribution system to</p>	<p>for the failure to carry out any obligation or activity authorized to be carried out under this title...if adequate appropriations are not provided by Congress expressly to carry out the purposes of this title.</p> <p>- This Title does not affect the water rights of any other tribe besides WMAT.</p>			<p>The 2020 amendment, through Public Law 116-94, amends the date from 2021 to 2023 in sections 309(d) and 311(h) of the original Title.</p>
						<p>The 2023 amendment, through Public Law 117-342, amends the enforceability date from Apr 30, 2023 to Dec 30, 2027; May 1, 2023 to Dec 30, 2027. Cost indexing is amended. Funding for the WMAT cost overrun account amended from \$11,000,000 to \$541,000,000 .</p> <p>Authorization of further appropriation of \$78,500,000 for the WMAT Settlement Fund.</p>	

			serve Whiteriver, Fort Apache, Canyon Day, Cedar Creek, Carrizo, and Cibecue; designed and constructed by the Secretary.				
Bill Williams River Water Rights Settlement Act of 2014	Hualapai Tribe	2014	<ul style="list-style-type: none"> - Contribution of the Freeport Minerals Corporation to the economic development fund of the tribe may be used by the tribe for the limited purpose of settling its claims to Colorado River water and facilitate the use of such water on the Hualapai Reservation. - The Tribe, members of the Tribe, the allottees, and the United States retain the right to assert past, present, and future claims to water rights and injury to water rights in the Bill Williams watershed. 	<ul style="list-style-type: none"> - The Tribe and the United States as trustee of the Tribe are authorized to waive and release all claims against the Corporation for any water rights with respect to Parcel 3 in excess of 300 a-f-y. - Waiver of all claims for injury to water rights arising from the diversion of water by the Corporation from the Wikieup Wellfield or Freeport Groundwater Wells in a manner not in violation of the Big Sandy River-Planet Ranch Agreement or the Hualapai Tribe Agreement. 	The Colorado River water rights obtained by the tribe may be used off the Hualapai reservation only for irrigation of acquired appurtenant land or for storage in accordance with federal and state law in a permitted recharge facility in the State of Arizona with the condition that the tribe shall not seek to sell or exchange such long-term storage credits.	The water uses provided under this settlement Act require the tribe to adhere to federal and state law.	None.

				<p>- The United States as trustee for the Allottees waives and releases all claims against the Corporation for any water rights on Parcel 1 in excess of 82 a-f-y and Parcel 2 in excess of 312 a-f-y, as well as all past and present claims for injury to water rights arising before the enforceability date resulting from the diversion of water by the Corporation from the Wikieup Wellfield or the Freeport Groundwater Wells.</p> <p>- The Tribe is authorized to execute a waiver and release of all claims against the United States for past, present, and future claims to water rights for Parcel 3 in excess of 300 a-f-y.</p>			
Hualapai Tribe Water Rights	Hualapai Tribe	2022	-Water reallocation of 4,000 a-f-y CAP Non-	- The Hualapai Tribe and the United States,	- The Hualapai Tribe may use CAP	- The Hualapai Tribe may assign any	None

<p>Settlement Act of 2022</p>			<p>Indian Agricultural priority water. - For 100 years beginning on January 1, 2008, the Secretary shall firm 557.50 afy of the Hualapai Tribe CAP water to the equivalent of CAP M&I priority water; similarly, the State shall firm 557.50 afy of the Hualapai Tribe CAP water equivalent to CAP M&I Priority water.</p>	<p>except for Allottees, waive and release any claims against the State 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. - Waiver of 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.</p>	<p>water on or off the Hualapai Reservation for any purpose, as long as it is used in the lower basin of the State.</p>	<p>long-term storage credits in accordance with State law. - The Tribe may store CAP water that has been firmed, in accordance with State law, at one or more underground storage facilities.</p>	
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				<p>- Waiver and release of claims by the United States against the Hualapai Tribe.</p> <p>-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.</p>			
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