

NAVAJO-HOPI LITTLE COLORADO RIVER WATER RIGHTS SETTLEMENT



**REPORT TO THE
NAVAJO PEOPLE
APRIL 2012**



Presentation Roadmap

- Overview
- History/How Did We Get Here?
- Defining a Water Settlement and Other Definitions
- What are the Navajo Nation's Rights to the Little Colorado River (LCR)
- What is the LCR Settlement?
- The Senate Bill (SB 2109) VS The Settlement Agreement
- The Settlement Process
- What is Next?

OVERVIEW

The Navajo Nation's Water Rights must be settled to do this we have 2 options:

- Through a settlement agreement on our terms

OR

- This will be settled in **STATE COURT** in accordance with Federal Law

In this presentation we will cover both scenarios

33-Year LCR Litigation / Settlement History

1979 - LCR Adjudication begins

1985 - Statements of Claimant filed

1991-94 - Silver Creek Litigation

1994-99 - Settlement Negotiations

1999 - *NN v. SRP, PWCC, & SCE*

2002 - NN Water Rights Commission Established

2003 - *NN v. Department of Interior*

2004 - Colorado River / LCR Negotiations begin

2010 - NNC approves NAIWRSA, many community public meetings

2011 (March 23) - Sen. Kyl: NAIWRSA with WNP “too expensive”

2012 (February 14) - Sens. Kyl & McCain introduce S. 2109

2012 (March 8) - Attorneys’ Letter: LCR Negotiations complete



Introduction to **Water Rights**



Definitions

1 acre-foot = 325,851 gallons



= 1000 loads of a
326 gallon tank

160 gallons per person per day = estimated future per person water use for municipal water planning

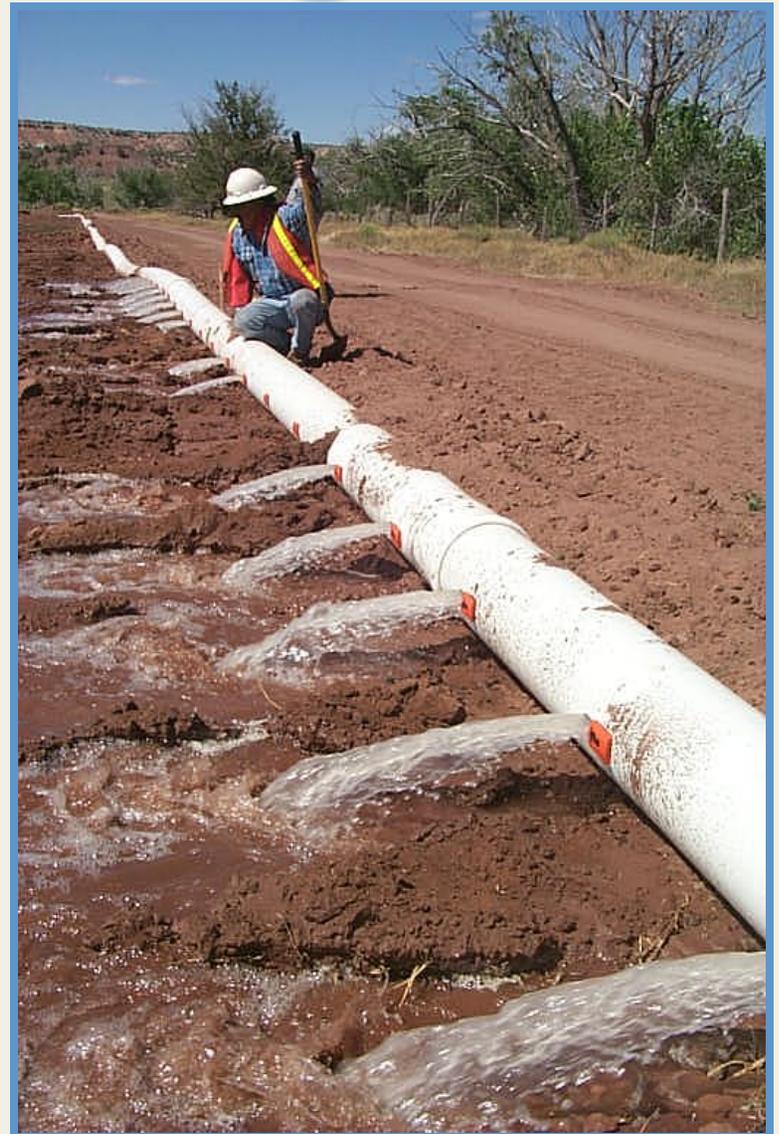
Municipal Use: includes household use, but also the needs of a community for schools, hospitals and other commercial development

1 acre-foot per year (afy) = approximate municipal and domestic needs for 6 people for one year

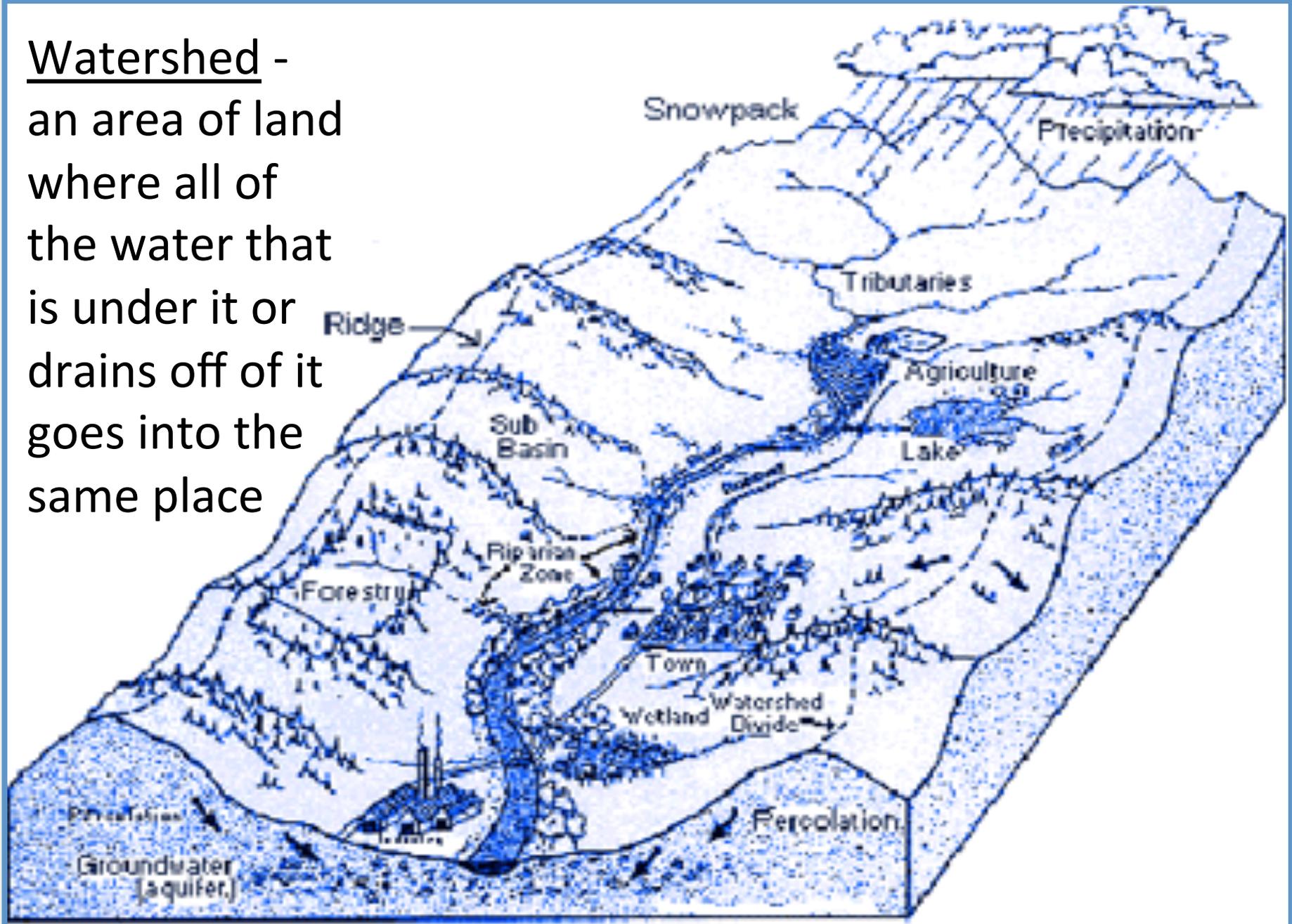
What is a Water Right?

The simple answer is the legal right to put water to use.

Water rights on Indian Reservations are determined according to federal, not state, law



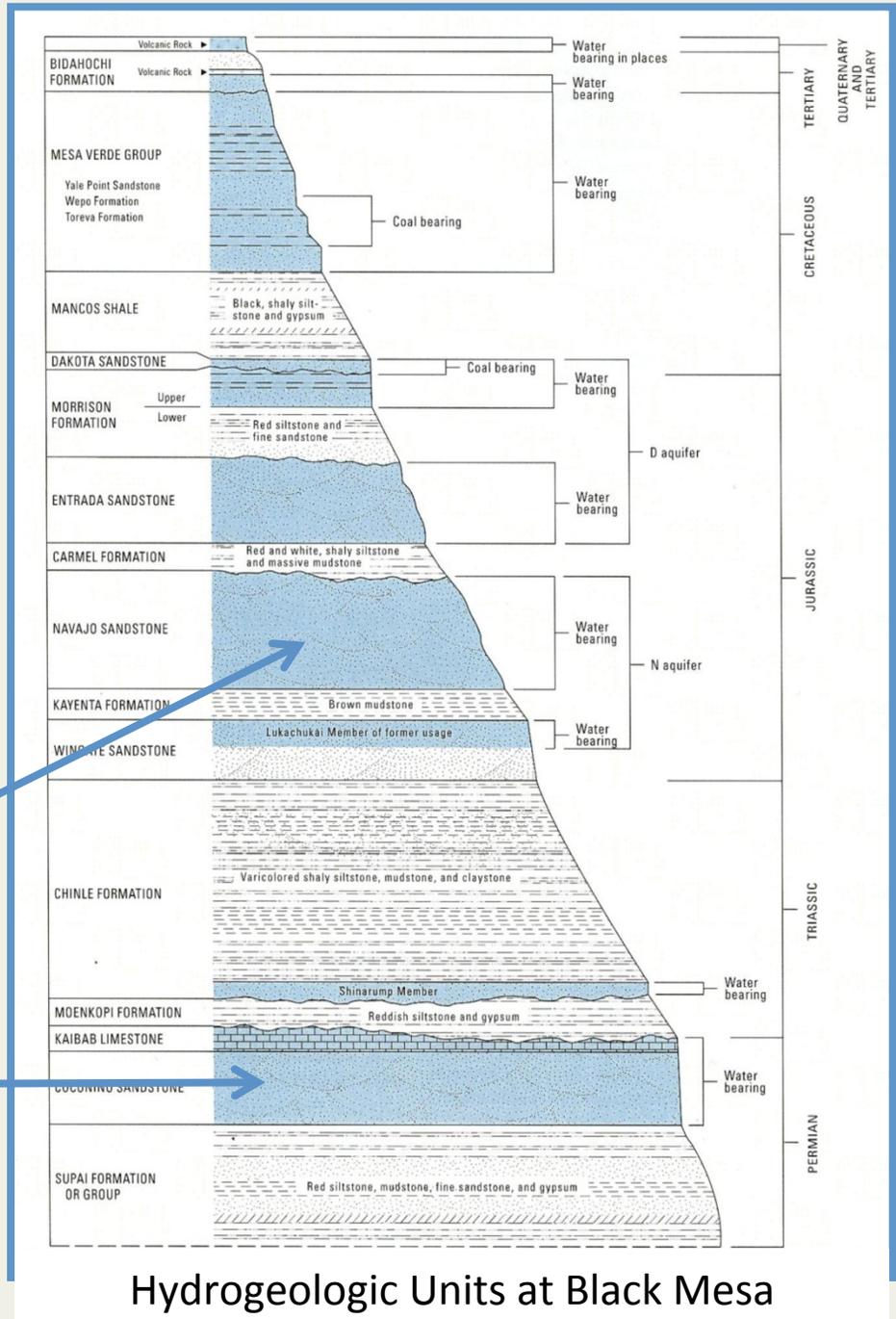
Watershed -
an area of land
where all of
the water that
is under it or
drains off of it
goes into the
same place



Aquifer – water that occurs naturally underground in layers of porous material like sandstone

N Aquifer
(depth approx. 1,000 feet)

C Aquifer
(depth approx. 1,800 feet)



Hydrogeologic Units at Black Mesa

Water Rights Adjudication – a lawsuit involving all of the persons claiming the right to use water in a watershed



The Settlement

Waives Claims

NOT

Water Rights

The Settlement Waives Claims

NOT Water Rights

What does this mean?

- The Settlement Agreement recognizes the water rights of the Navajo Nation
- The settlement resolves any claims that the Navajo Nation and Hopi Tribe may have to the LCR Basin
- For the settlement to be permanent, all parties must waive any claims for additional water
- The waivers do not take effect until Congress has appropriated all of the funds necessary to build the water delivery projects that are part of the settlement

What are the Navajo Nation's Rights to the LCR?

Navajo Nation Water Rights Claims



Navajo Claims in the LCR Adjudication based on:

- **Federal Reserved Water Rights**
- **Historic Uses**
- **Aboriginal Rights**

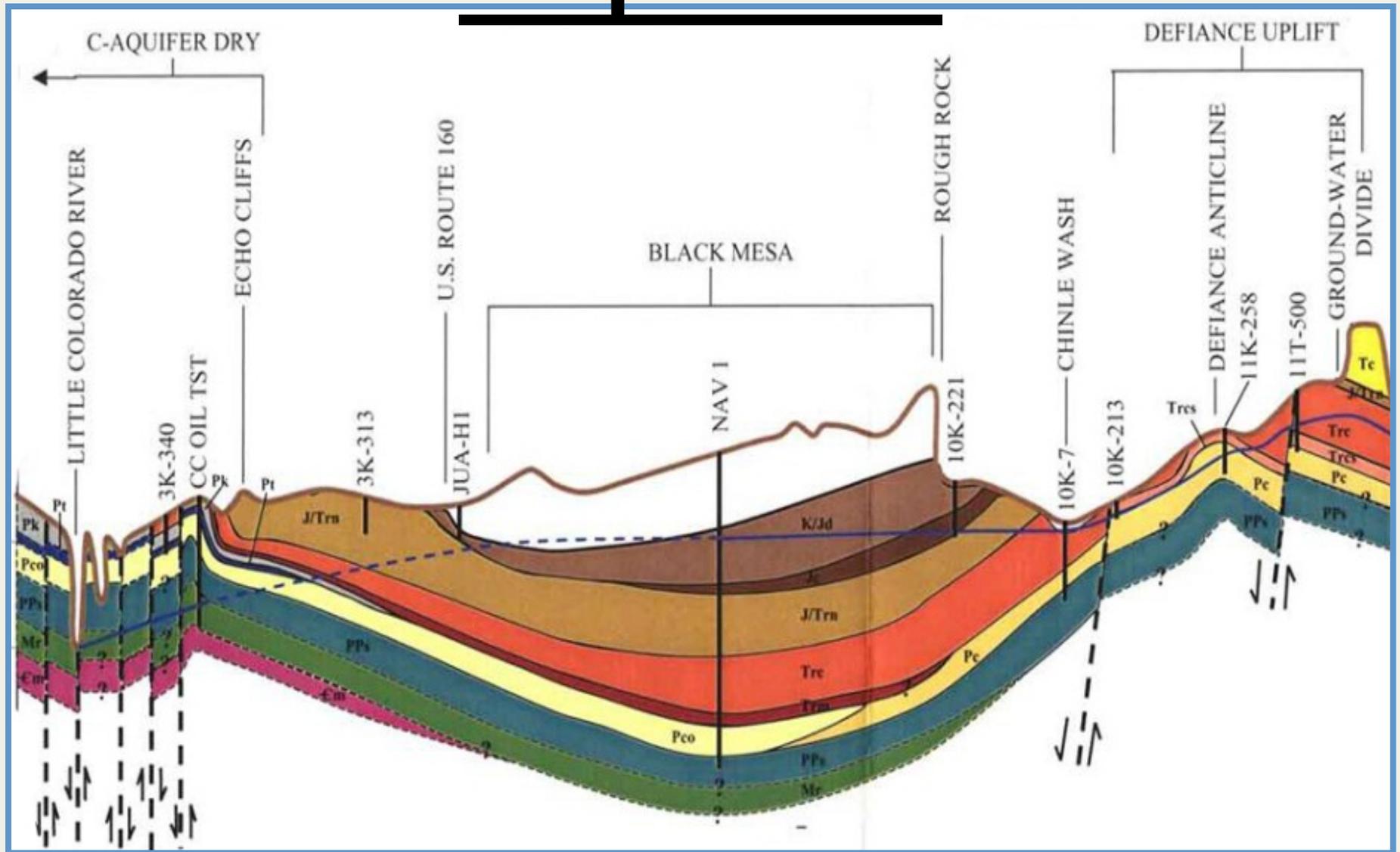
Measure of the Winters Right



**Permanent
Homeland**



Aquifer



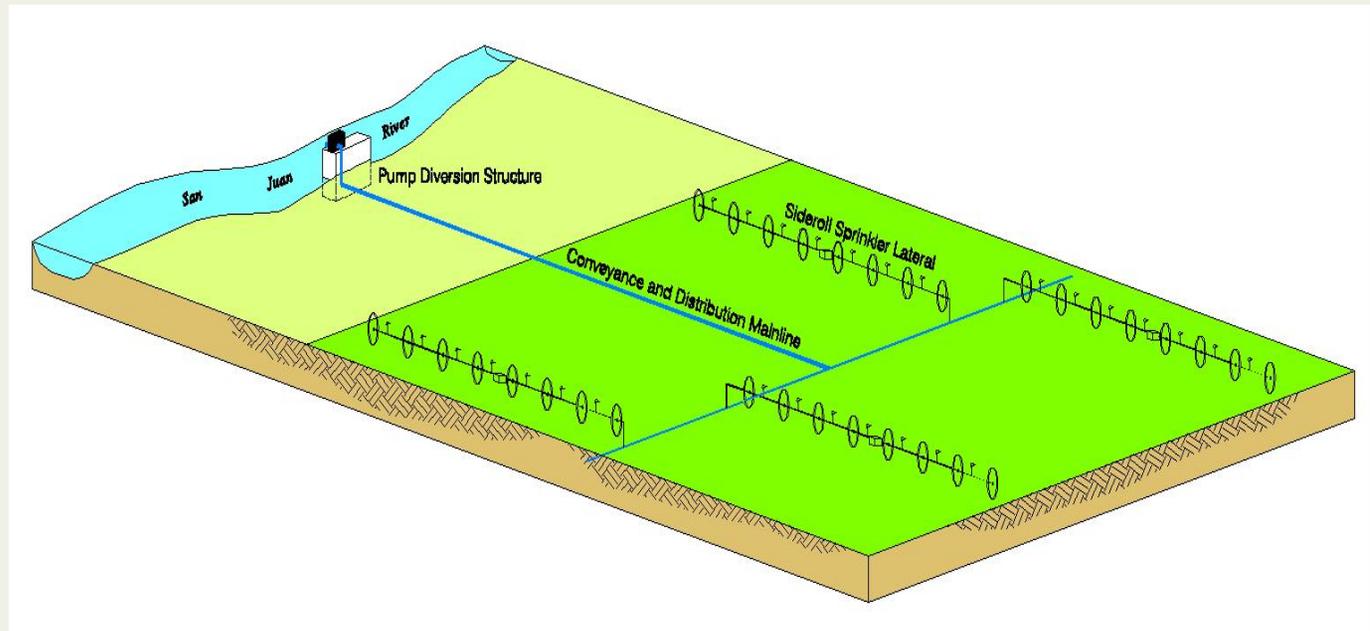
Practicably Irrigable Acreage (PIA)

No longer the only measure of reserved water rights

FACTORS:

- Suitable Lands
- Available Water Supply
- Climate
- Engineering
- Economic Analysis

Arizona v. California (1963)



Bottom line: Will farming be profitable.

LCR Claims must be decided in Arizona State Court



Cannot be decided in the Navajo courts



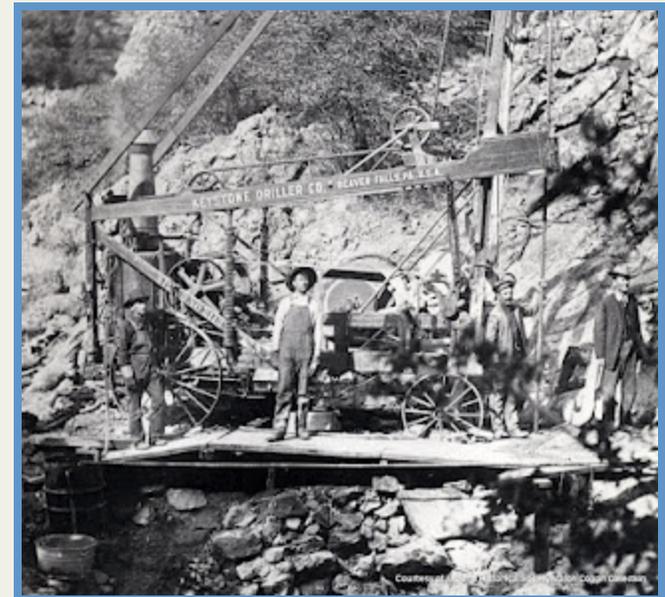
McCarran Amendment – federal law giving state courts jurisdiction over Indian water rights claims (43 U.S.C. 666)

Arizona Law – the doctrine of prior appropriation

“First in time, first in right”

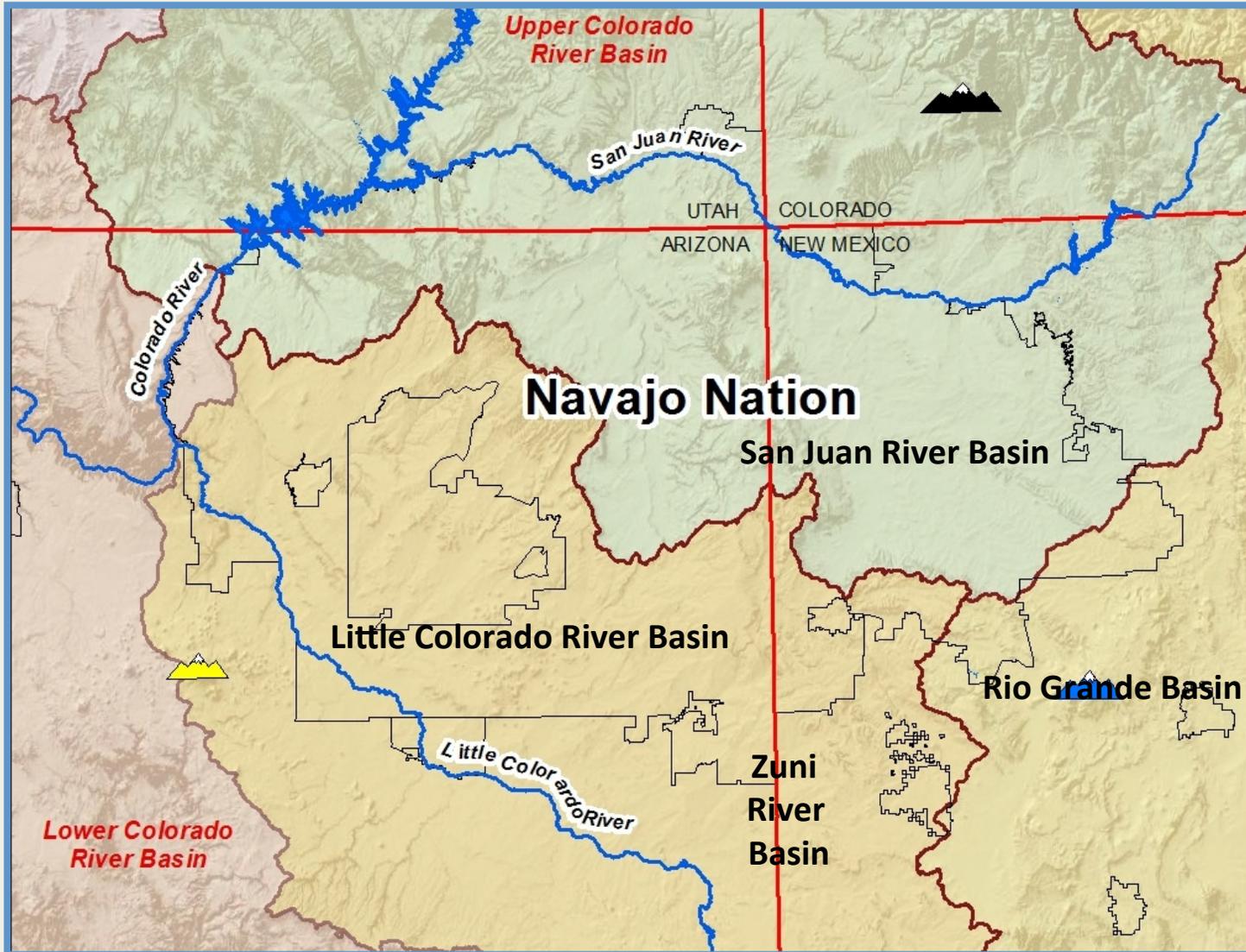
“Use it or Lose it”

- The person who first puts water to use has the senior right
- Water can be moved and used away from the water source
- Failure to continue the use may result in loss of the right
- Applies only to surface water



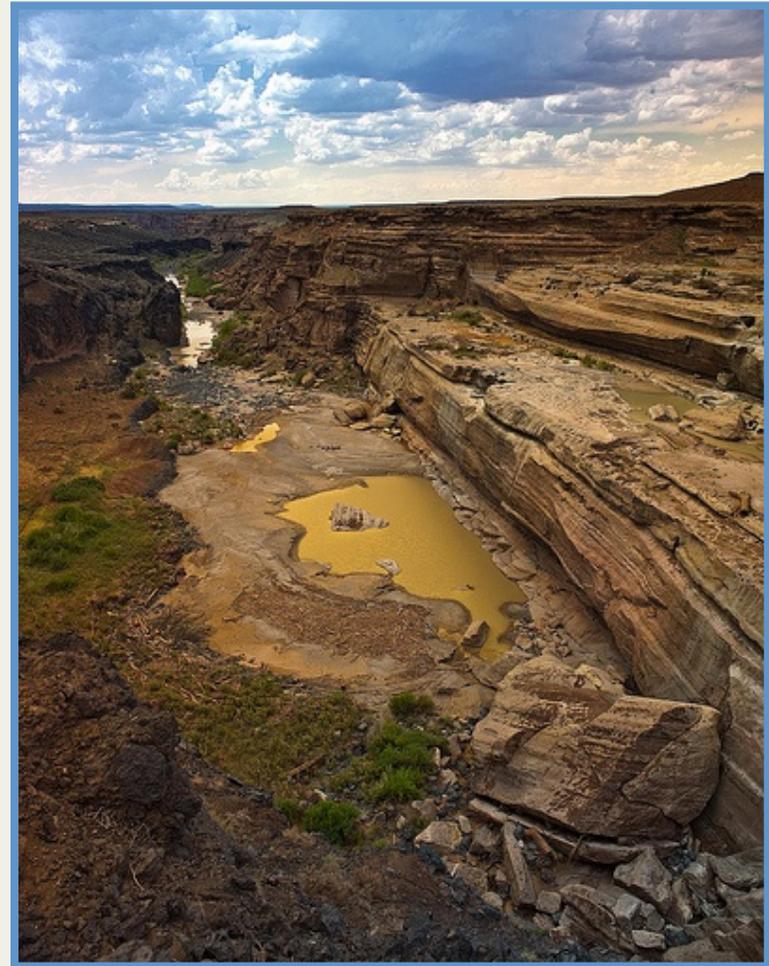
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Navajo Nation Water Basins



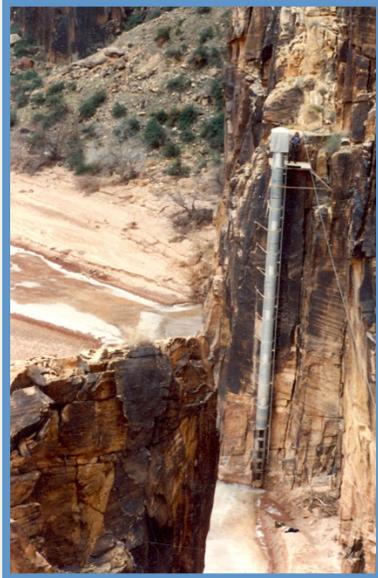
One Step at a Time

Little Colorado River



Natural flows estimated to be 220,000 afy (ADWR)

Surface Water (Little Colorado River)



- Navajo historic uses recognized by the court (37,780 afy)
- Navajo Nation right to use all of the unappropriated flows – estimated to be 160,000 afy at Leupp out of the total 220,000 estimated natural flow
- Existing non-Navajo uses protected (approximately 60,000 afy)
- Future non-Navajo water uses restricted

Surface Water (LCR Washes)

The Navajo Nation has the right to use all water in the LCR tributaries (washes) that cross the Navajo Reservation



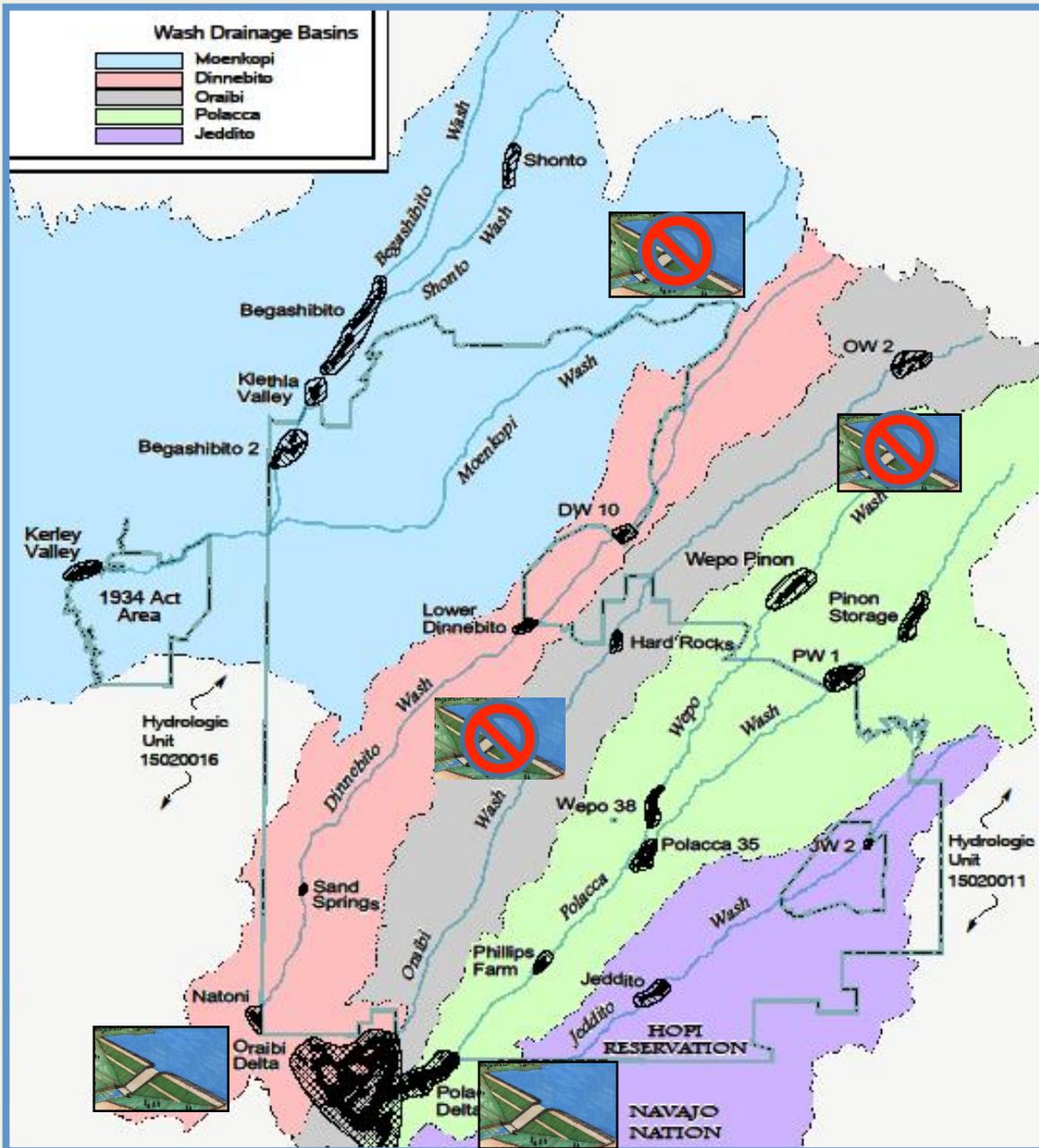
(litigation can only result in limits on uses)

Tribal Wash Management Plan

Five washes shared with the Hopi Tribe are subject to a joint management plan

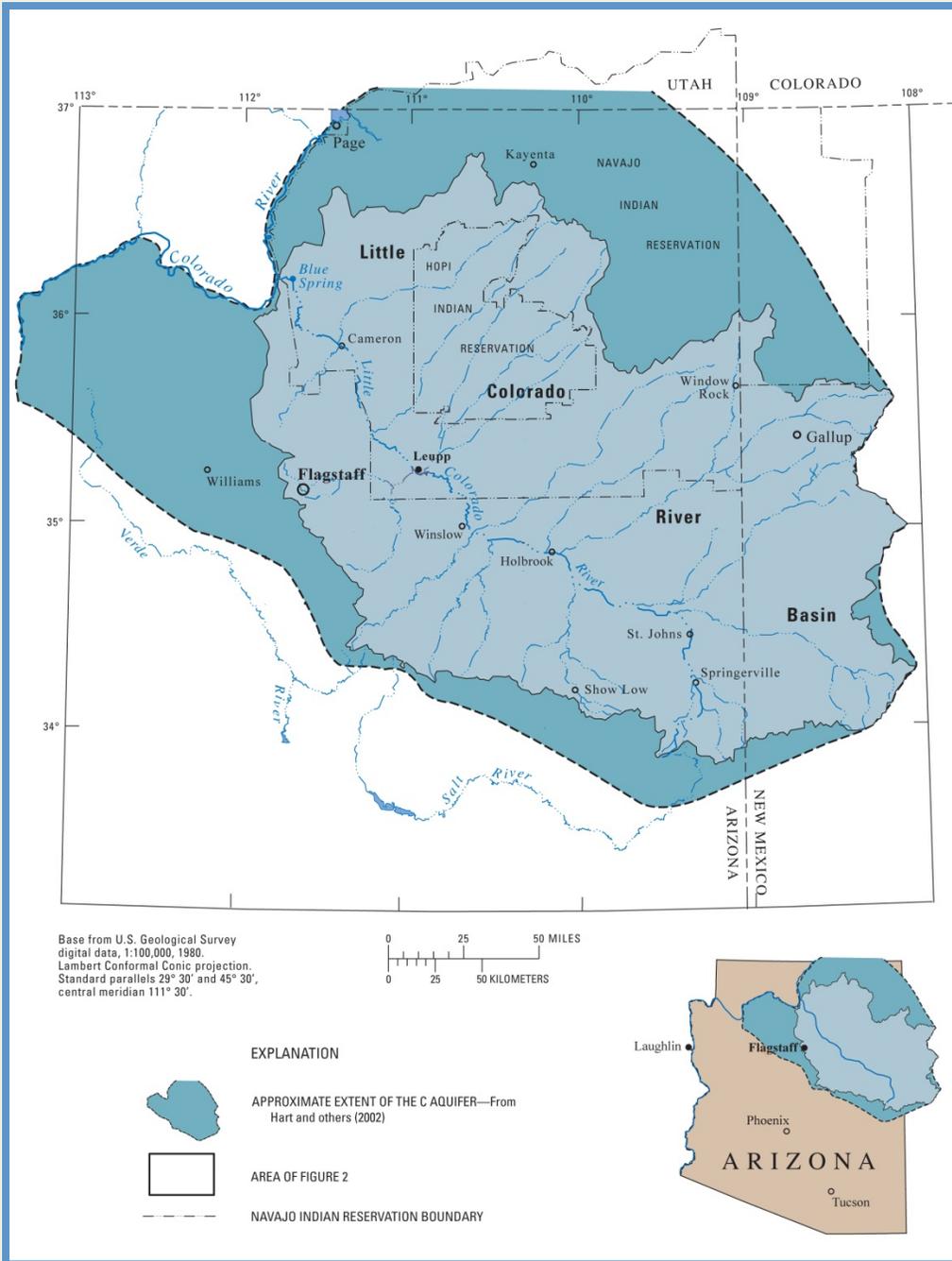
 Dams allowed on Navajo after wash leaves Hopi

 No large dams permitted upstream of other Tribe



C-Aquifer underlies the LCR basin

Estimated Water
In Storage
418 million af
(ADWR)



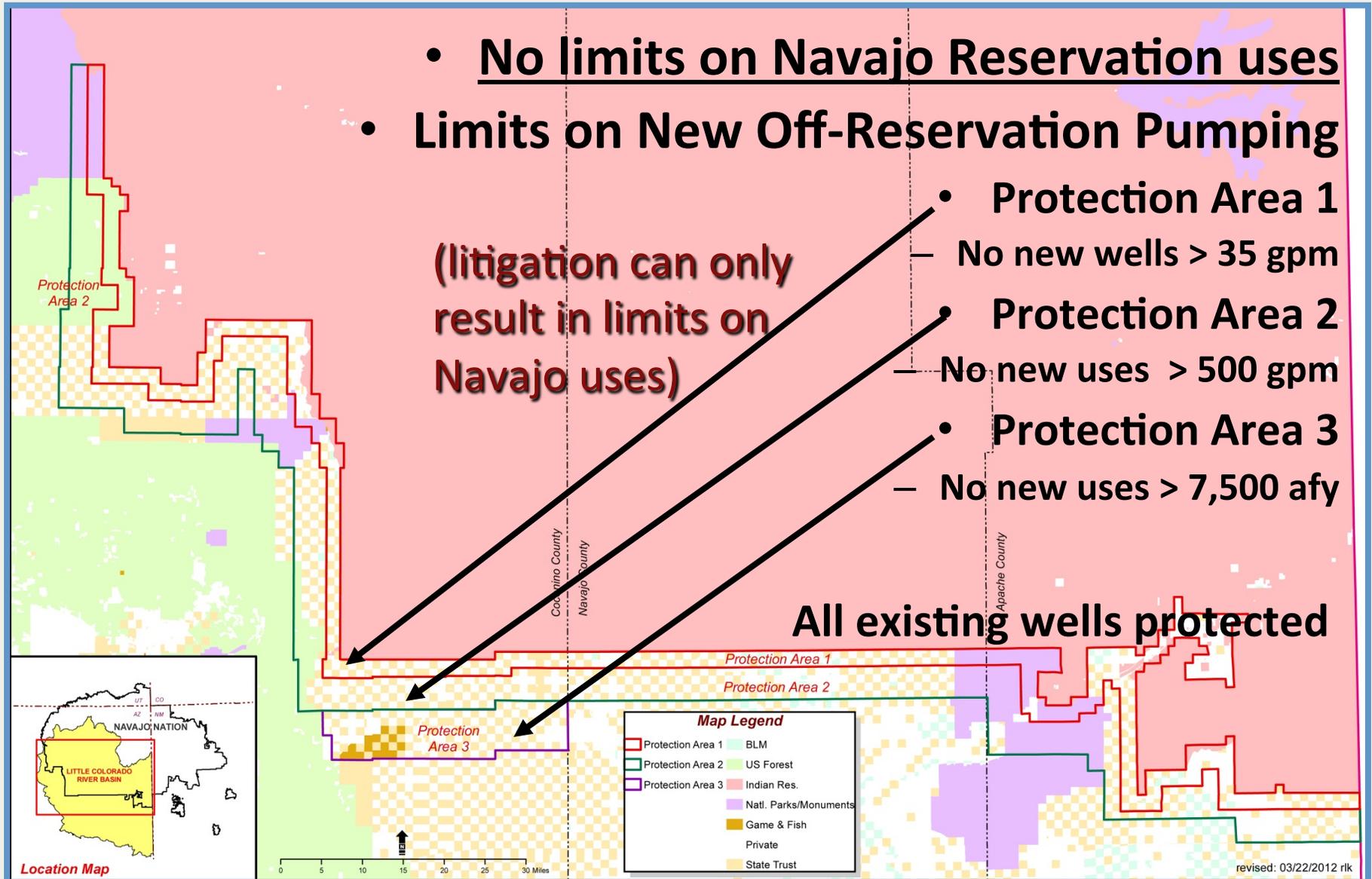
Groundwater (C-aquifer)

- No limits on Navajo Reservation uses
- Limits on New Off-Reservation Pumping

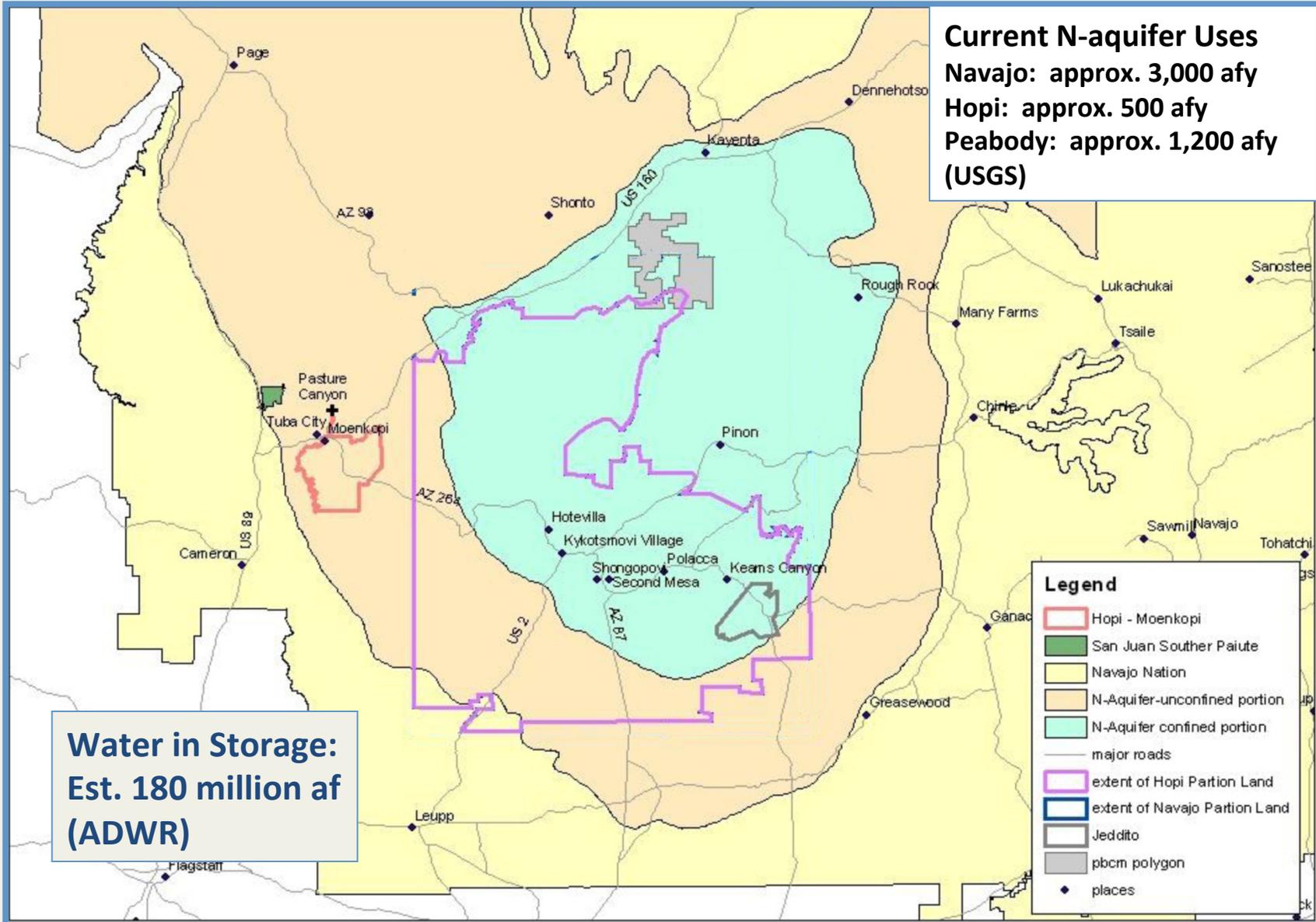
(litigation can only result in limits on Navajo uses)

- Protection Area 1
 - No new wells > 35 gpm
- Protection Area 2
 - No new uses > 500 gpm
- Protection Area 3
 - No new uses > 7,500 afy

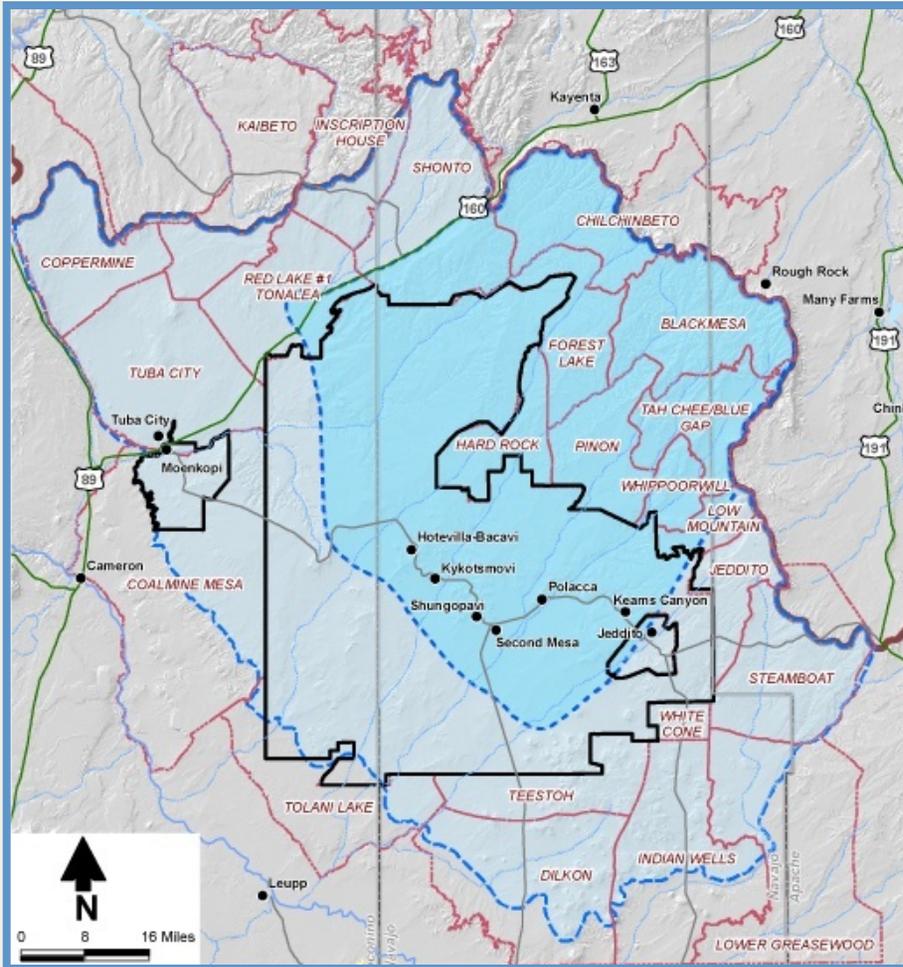
All existing wells protected



N-Aquifer underlies Navajo & Hopi



Groundwater (N-aquifer) Management Plan with Hopi Tribe



- **Confined Portion**

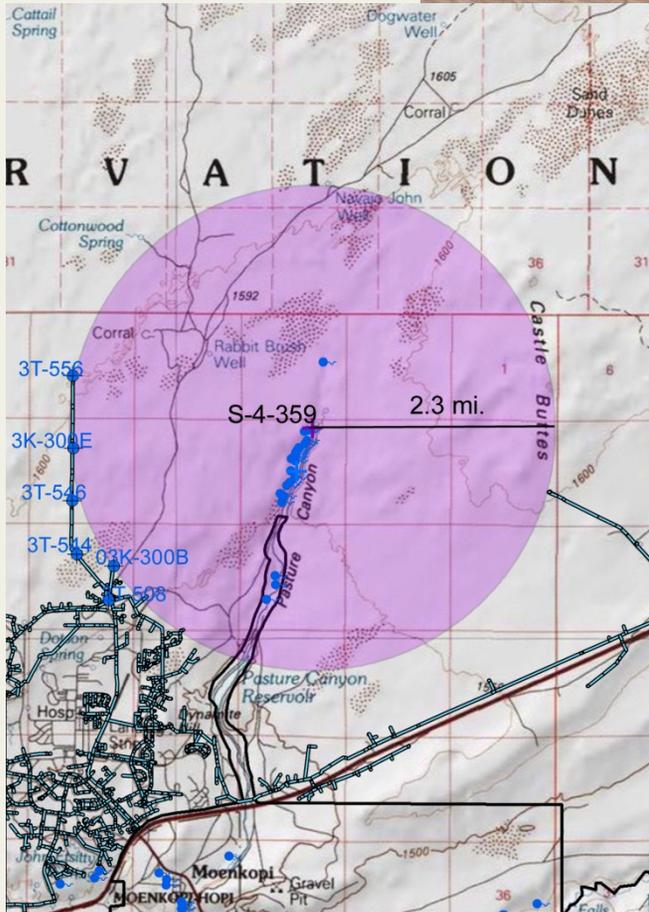
- Industrial uses of each tribe limited to 2,000 afy
- Municipal & Domestic uses unlimited

- **Unconfined Portion**

- No limits except to protect springs
- Increased monitoring and modeling
- Tribes to mutually agree on additional protections

(litigation can only result in limits on uses)

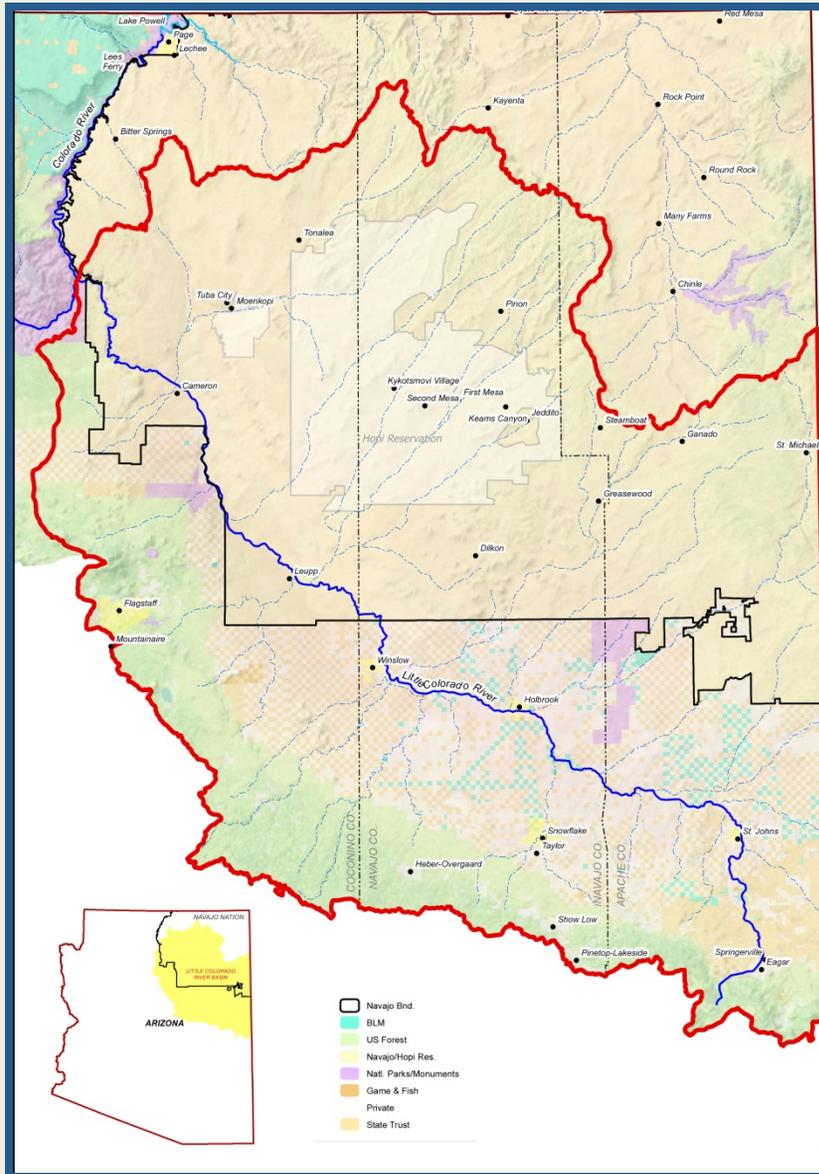
Special Provisions for Pasture Canyon



Protection Zone for Springs

No new wells within this Protection Area

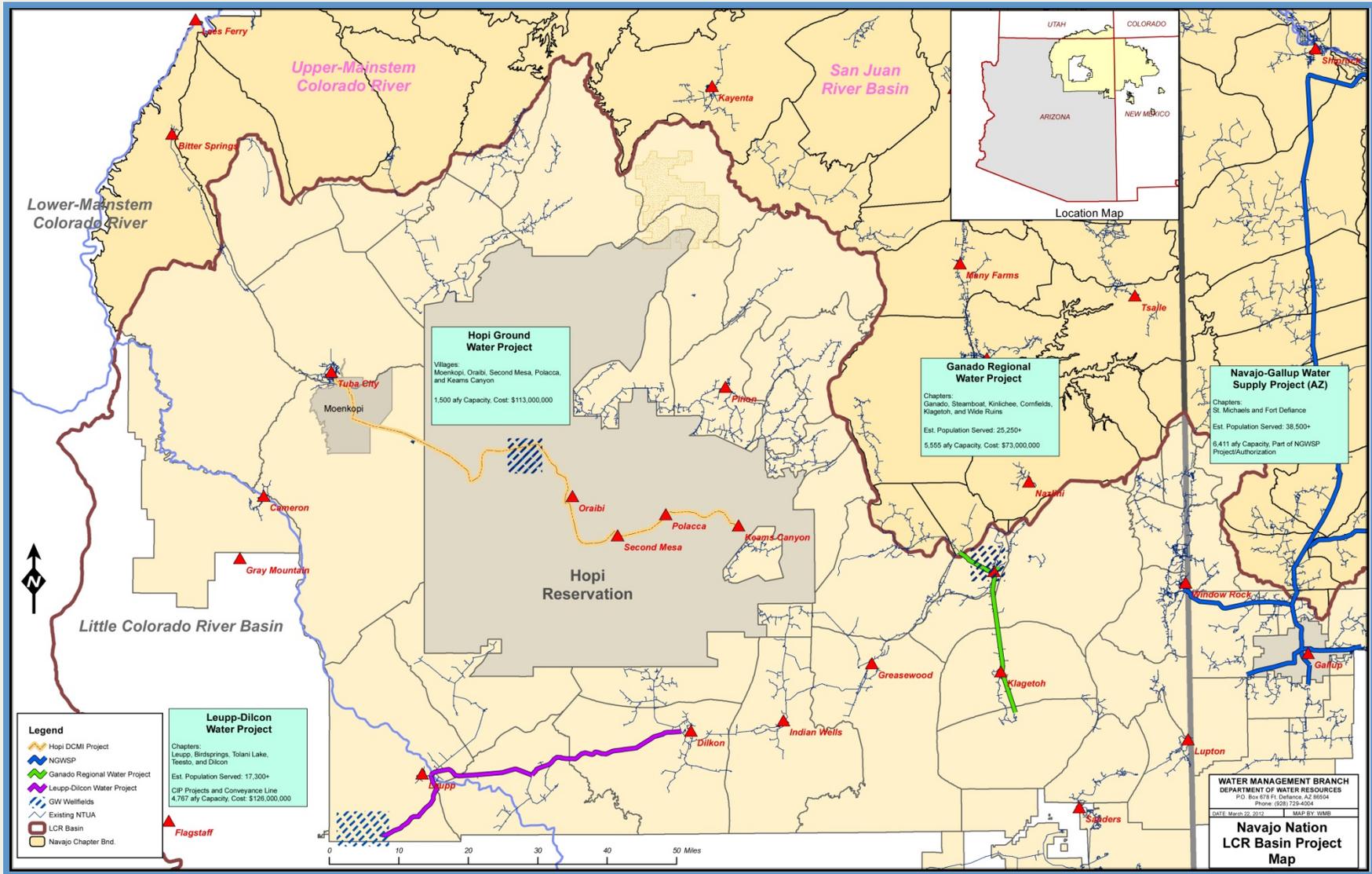
Little Colorado River System & Source



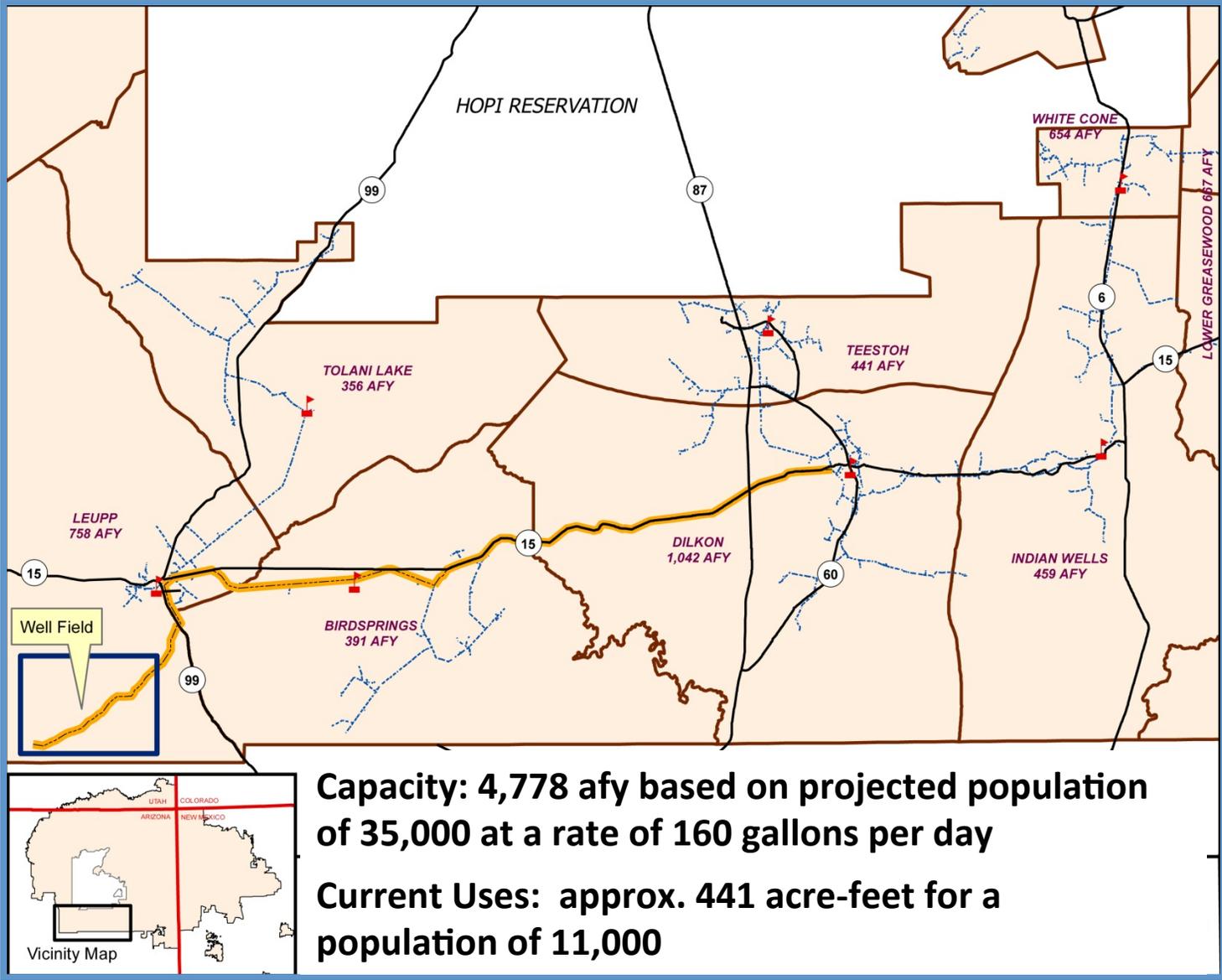
- Includes all surface water
 - Little Colorado River
 - Tributaries & Washes
- Includes all ground water
 - C-aquifer
 - N-aquifer
 - Other aquifers
- Does not settle the Nation's claims to the mainstem Colorado River

Water Infrastructure Projects

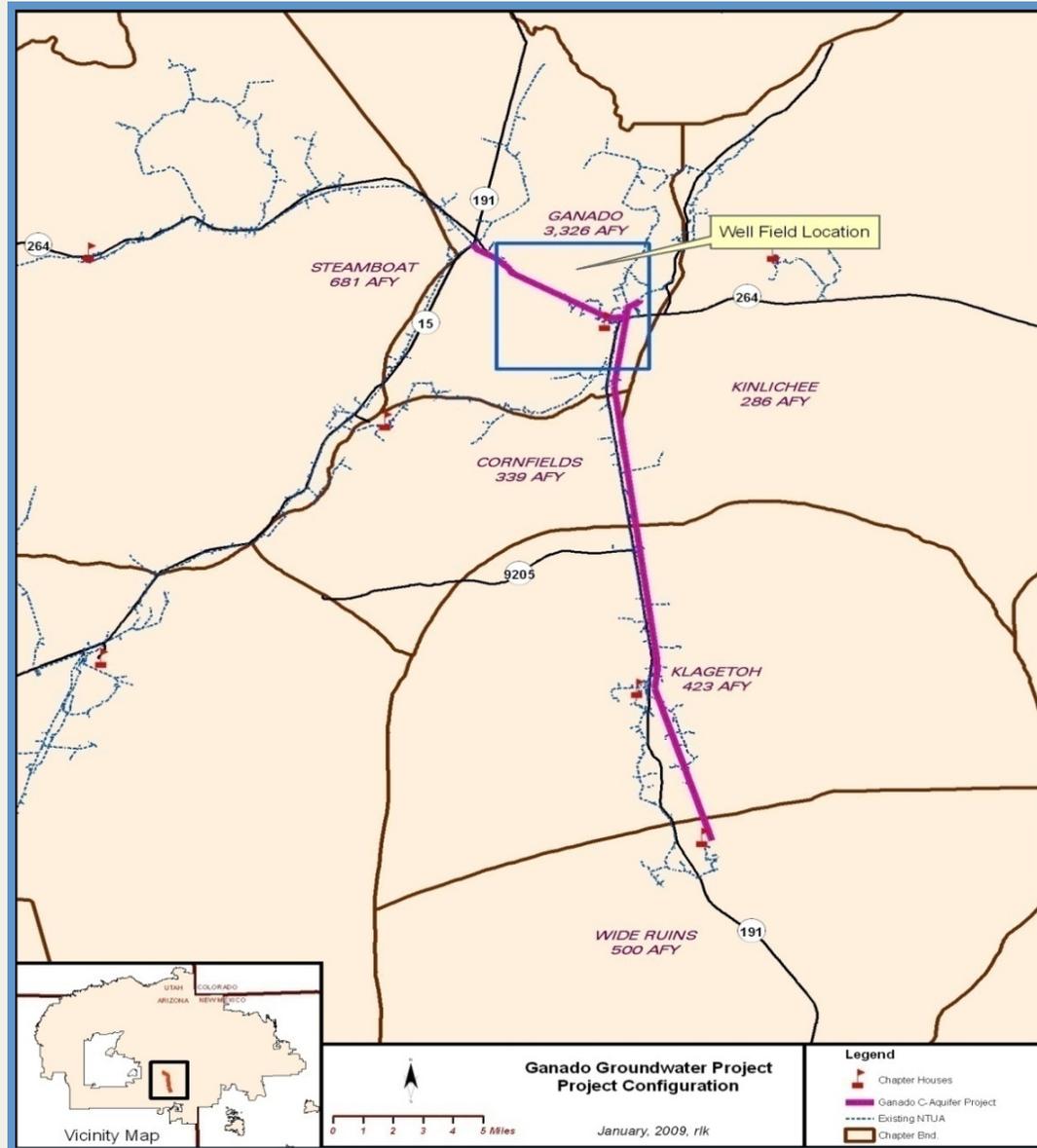
(not available through litigation)



Leupp-Dilkon Groundwater Project



Ganado Groundwater Project



Capacity:
5,555 acre-feet/year
based on projected
population demands
for 35,000 people at
160 gallons per day

Current Uses:
approx. 381 acre-feet
for an approximate
population of 11,000

The Settlement Agreement VS The Bill

FINAL DRAFT-March 8, 2012

NAVAJO-HOPI LITTLE COLORADO RIVER WATER RIGHTS SETTLEMENT AGREEMENT

13098967.16

II

112TH CONGRESS
2D SESSION **S. 2109**

To approve the settlement of water rights claims of the Navajo Nation, the Hopi Tribe, and the allottees of the Navajo Nation and Hopi Tribe in the State of Arizona, to authorize construction of municipal water projects relating to the water rights claims, to resolve litigation against the United States concerning Colorado River operations affecting the States of California, Arizona, and Nevada, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 14, 2012

Mr. KYL (for himself and Mr. McCADDS) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

A BILL

To approve the settlement of water rights claims of the Navajo Nation, the Hopi Tribe, and the allottees of the Navajo Nation and Hopi Tribe in the State of Arizona, to authorize construction of municipal water projects relating to the water rights claims, to resolve litigation against the United States concerning Colorado River operations affecting the States of California, Arizona, and Nevada, and for other purposes.

1 *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

The Settlement Agreement & The Federal Legislation

Navajo-Hopi Little Colorado Water Rights Settlement Agreement

- An agreement between the parties, including Arizona, cities, irrigation districts and other major water users
- Recognizes the surface and groundwater rights of the Navajo Nation and Hopi Tribe that will be part of the court's order
- Provides protections for Navajo water rights to be enacted into State law
- Describes the projects that will be built to deliver groundwater to Navajo communities
- Includes waivers of claims for additional water in the LCR Basin

Navajo-Hopi Little Colorado Water Rights Settlement Act of 2012 (S. 2109 / H.R. 4067)

- Federal legislation is required to ratify the settlement agreement and authorize the United States to sign the agreement
- Authorizes the water delivery projects and appropriations of funds to build the projects
- Reserves Colorado River water for a possible future Navajo settlement
- Provides an option for delivery of CAP water through the Navajo-Gallup Water Supply Project to Navajo communities in Arizona
- Includes waivers of claims for additional water in the LCR Basin

Proposed Navajo-Hopi LCR Settlement

Compared with

NAIWRSA Approved by NNC in 2010

- ~~Mainstem Colorado River Water Settlement~~
 - ~~31,000 afy Colorado River/Central Arizona Project (“CAP”) Water;~~
~~13,000 afy Firmed for 100 Years~~
- LCR Surface Water
 - All Unappropriated Mainstem LCR Water
 - All Water in LCR Washes except Washes Shared with Hopi Tribe
- LCR Groundwater
 - N-aquifer – Agreement with Hopi
 - C-aquifer - Navajo Uses **Largely** Unlimited; Protection Areas limit non-Navajo pumping near Navajo Reservation
- Municipal Infrastructure Projects
 - ~~Western Navajo Pipeline~~
 - Leupp-Dilkon Groundwater Project
 - Ganado Groundwater Project
 - ~~6,411 afy in NGWSP for Navajo Arizona communities~~
(the Settlement legislation includes an option for the delivery of 6,411 afy through the NGWSP conditioned on the continued operation of NGS; if this option is not exercised, the 6,411 will not be available)

Settlement Funding Authorization

Total = \$358.7 million

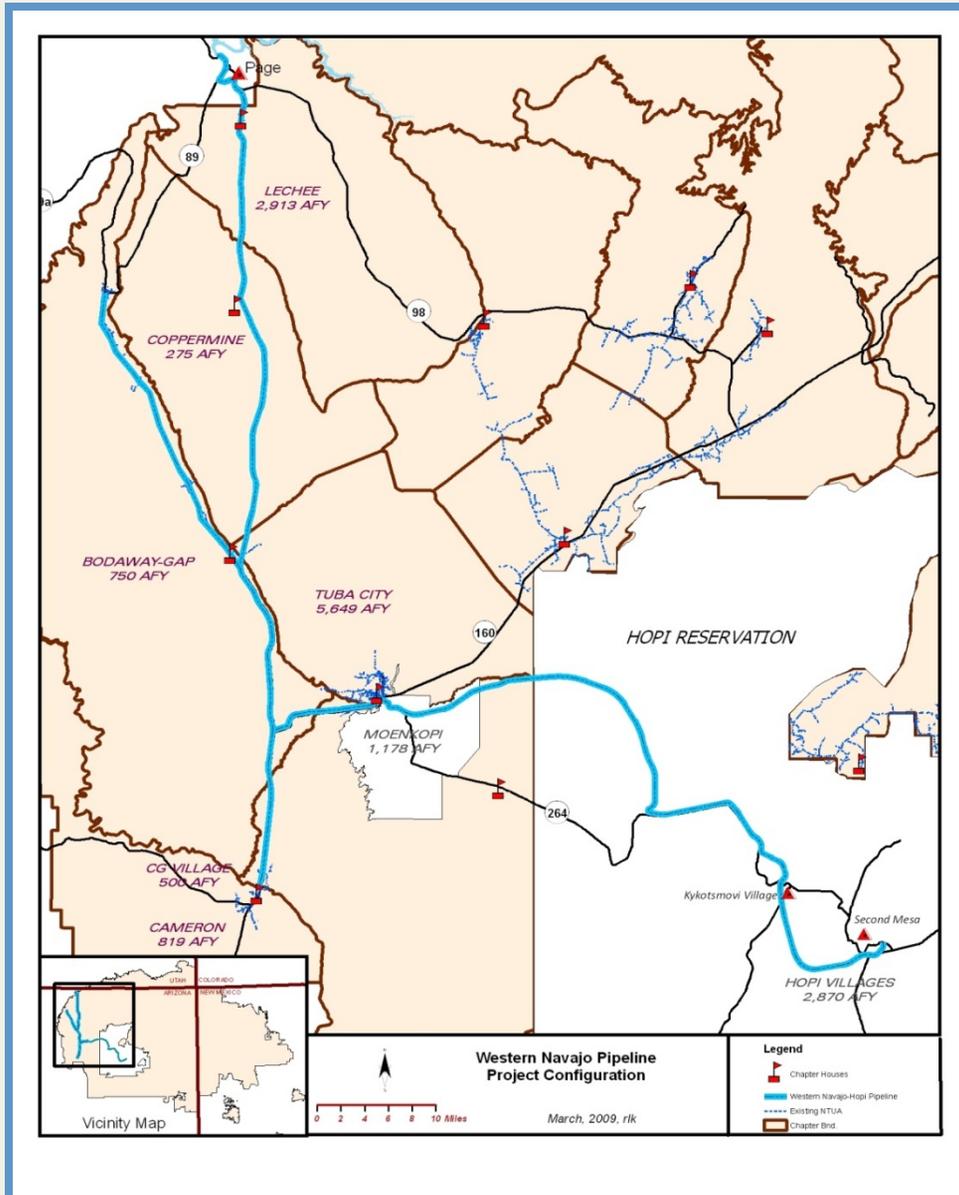
- **\$199 million** to plan, design and construct the Navajo Groundwater Projects
- **\$113 million** to plan, design and construct the Hopi Groundwater Project
- **\$23 million** for Navajo OM&R
- **\$5 million** for Hopi OM&R
- **\$5 million** to develop a management plan for the N Aquifer
- **\$10.4 million** to develop a Pasture Canyon springs protection program
- **\$3.3 million** for WNP Feasibility Study



Colorado River Water

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

Foundation for Future Colorado River Settlement



- Federal legislation reserves 24,589 afy for a possible future Navajo Colorado River settlement
- Authorizes \$3.3 million for a Feasibility Study for the Western Navajo Pipeline Project to deliver CAP water to western Navajo communities

Major Components

Proposed Navajo-Hopi LCR Water Rights Settlement

- Settles the water rights claims of the Tribes in the Little Colorado River Adjudication
- Authorizes the construction of three groundwater projects for the Tribes
- Reserves Colorado River water for a future Navajo Colorado River settlement

The proposed settlement does not settle Navajo claims to the Upper or Lower Basin of the Colorado River

LCR Settlement Process

- **CONDITIONS OF ENFORCEABILITY**
 - Settlement Agreement approved by the Tribes and others
 - Federal Legislation enacted
 - State Implementing Legislation enacted by January 1, 2016
 - LCR Decree approved by Adjudication Court
 - Congress appropriates all money needed to build the Groundwater Projects
- **OCCURRENCE OF THE ENFORCEABILITY DATE**
 - Deadline of October 31, 2022
 - LCR Waivers effective
 - Project construction can begin

**IF CONGRESS FAILS TO FUND THE PROJECTS –
NAVAJO GIVES NO WAIVERS AND THERE IS NO DEAL**

Settlement is an exercise of tribal sovereignty



- Establishes the Navajo right to use water from LCR without limits
- Protects Navajo uses of the C-aquifer without limits
- Tribes to manage N-aquifer and the washes without interference by the State
- No State administration of on-reservation uses

Options

1) Settle Navajo claims to LCR

- Allows Navajo water projects to be built and funded
- Ensures UNLIMITED use of water
- Settles agreement with all parties

- OR -

2) If no settlement agreement

- Continued litigation in state court
- Allow state court to determine Navajo water allocation
- Unknown timeline and outcome

Question and Answer