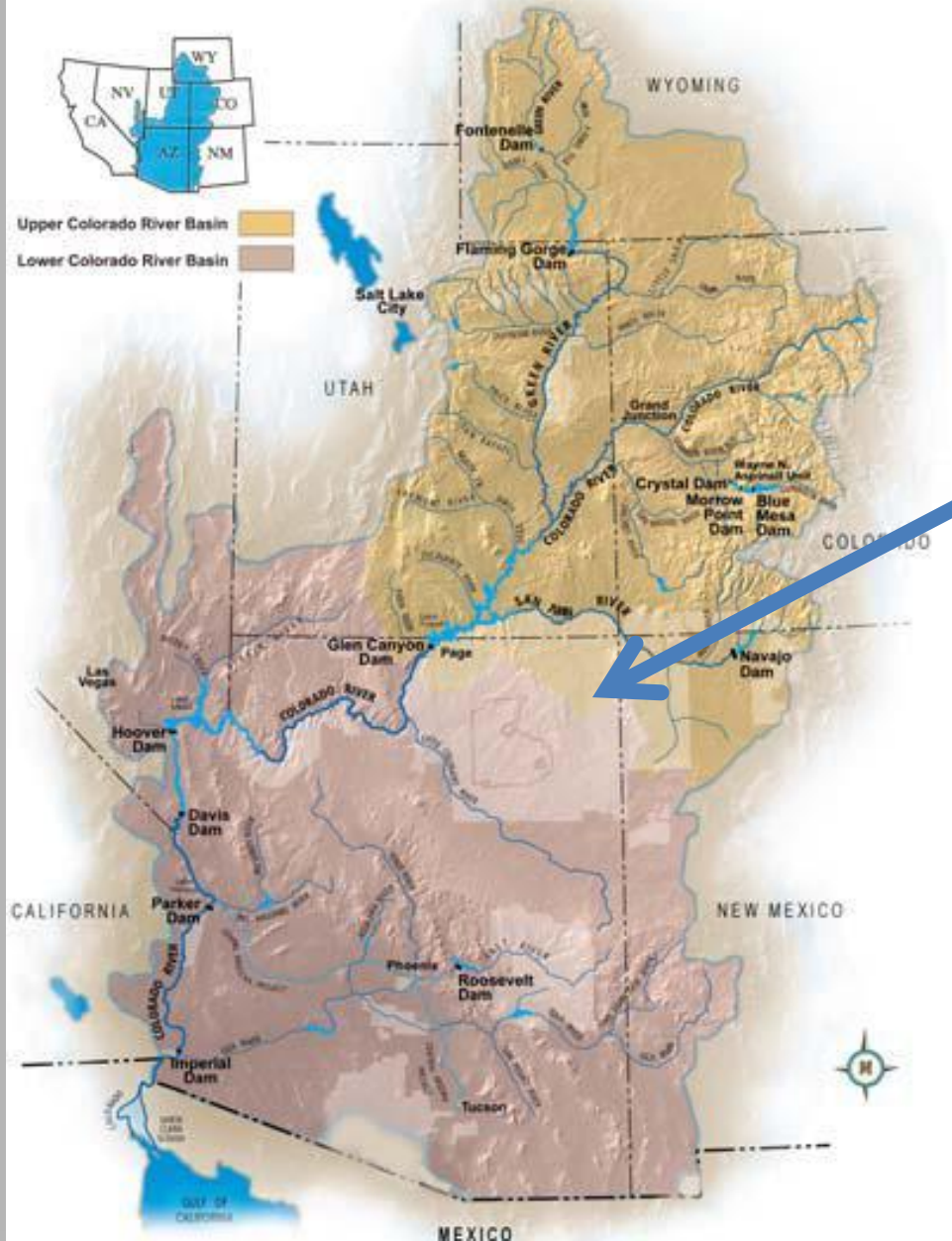


Navajo Nation v. Department of the Interior *and the Federal Government's Efforts to Diminish Its Trust Responsibility*



Colorado River Basin

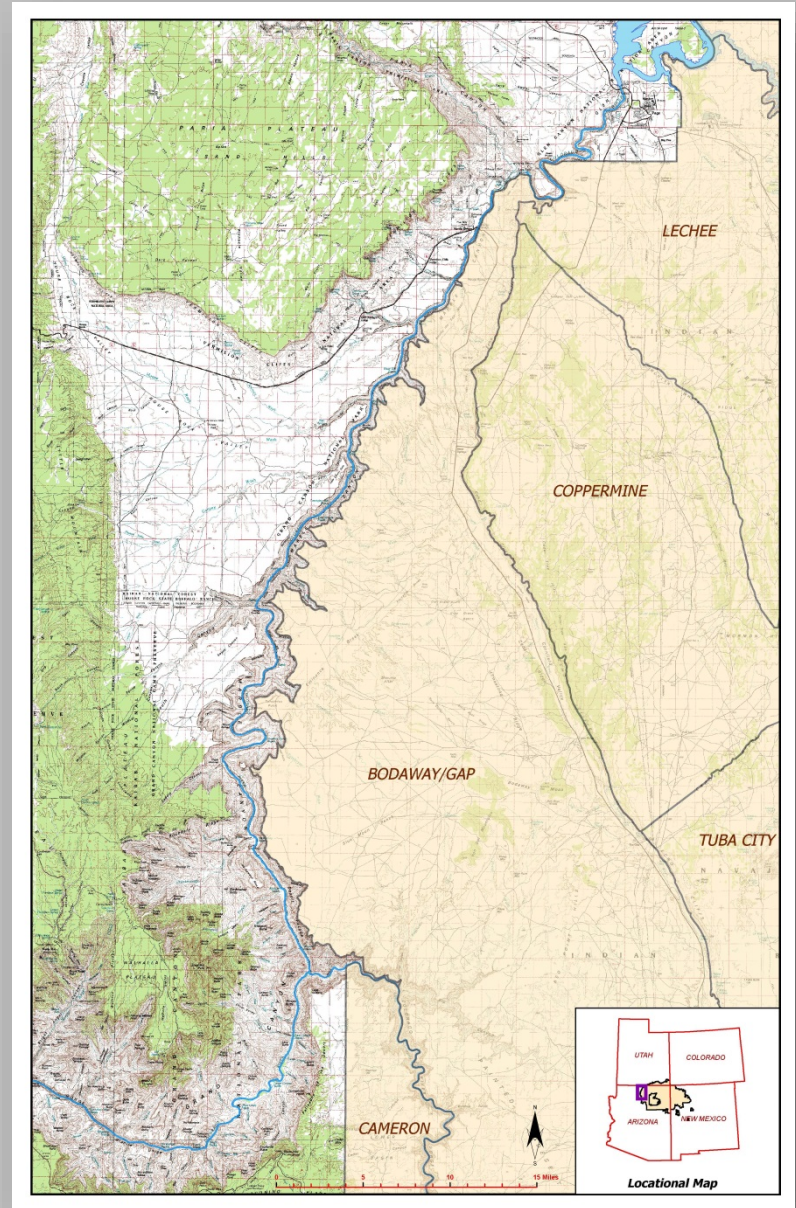


**Navajo Reservation
is almost entirely
within the Colorado
River Basin**

Basin Map courtesy of Bureau of Reclamation

**The Colorado River is its
western boundary**

***“... then down the south bank
of that stream ...”***
(48 Stat. 960-962)



RECLAMATION

Managing Water in the West

North Central Arizona Water Supply Study

Report of Findings



U.S. Department of the Interior
Bureau of Reclamation
Denver, Colorado

October 2006

**On reservation
groundwater is
inadequate to
meet the needs in
the study area.
(Western portion
of the Navajo
Nation)**



North Central Arizona Water Supply Study—Report of Findings

Table II.7-2 Households Without Access to Public Water Systems

Demand Area	Percentage of Households without Access
LeChee	22%
Coppermine	91%
Bodaway Gap	44%
Tuba City	14%
Cameron	53%

Source: LSR Innovations (2004)



- **The Special Master viewed mainstream water above Lake Mead the same as tributary water.**
- **No mainstream rights above Lake Mead were considered.**
- **The Navajo Nation was not awarded mainstream rights.**
- **Navajo efforts to object to the Report of the Special Master were opposed by the United States.**



1961 – Navajo Nation attempts to intervene to file objections to the report of the Special Master; U.S. opposes

“[I]f there is definitive evidence not yet brought to the attention of the Attorney General of substantial present or potential uses of Lower Basin water on the Navajo Indian Reservation additional to those with respect to which evidence has thus far been presented, we believe it will be incumbent upon the United States to bring such evidence before the Court if and when it is determined that the water rights pertaining to the Navajo Reservation are to be adjudicated in this case, and to make every reasonable argument in support of the inclusion of such uses within the reserved right.”

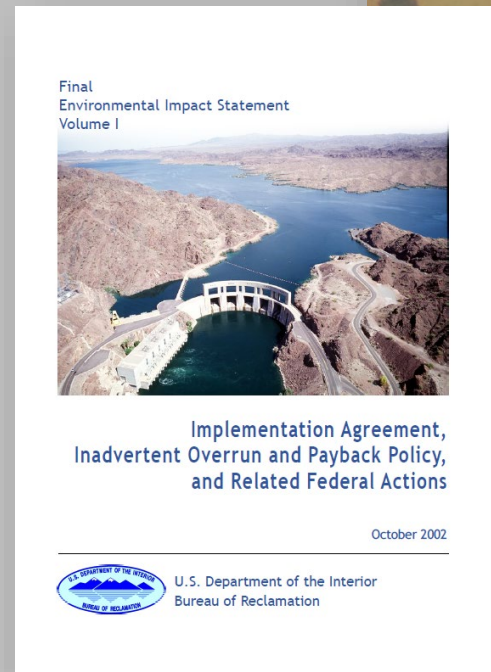
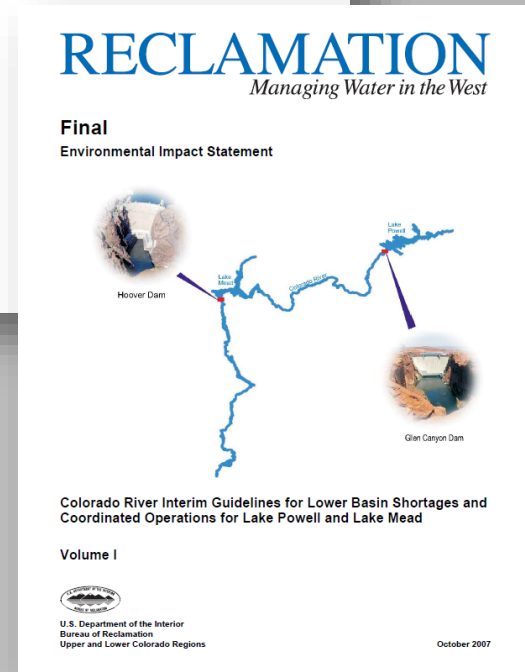
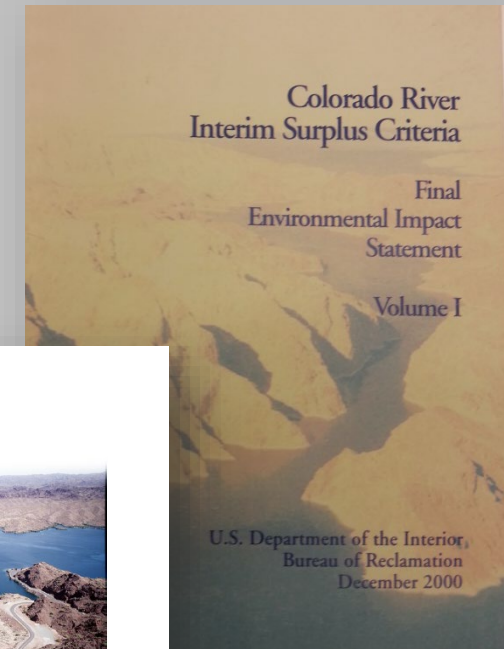
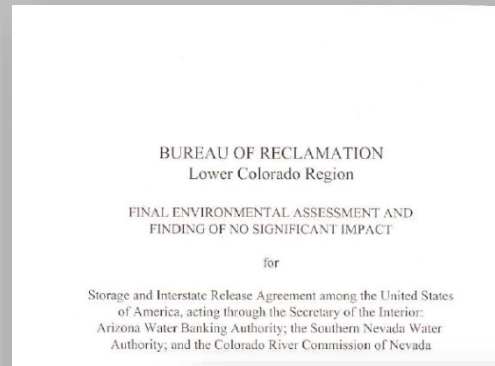
- Response of the United States to the Motion on Behalf of the Navajo Tribe of Indians for Leave to Intervene at 21

Navajo Nation v. U.S. Dept. of the Interior,
CIV 03 0507 GMS, U.S. Dist. Ct., AZ



“This action is brought by the Navajo Nation against the United States Department of the Interior . . . challenging the Defendants’ failure to consider the water rights of the Navajo Nation, or to otherwise protect the interests of the Navajo Nation.”

Challenges Programs Administered by the Secretary Concerning Colorado River Operations



The NEPA documents for the programs:

- do not account for the unquantified water rights or unmet needs of the Navajo Nation
- assume the water for the unquantified rights are available for use by others
- do not sufficiently evaluate Indian trust assets



“Reclamation will continue to manage the Colorado River in a manner that ensures that entities other than the Navajo Nation will continue to rely on water supplies claimed by, reserved for, needed by, and potentially belonging to the Navajo Nation, which reliance will operate to make allocation of Colorado River water to the Navajo Nation to satisfy its water rights or meet the needs of the Navajo Nation and its members increasingly difficult.”



Breach of Trust

The Department has failed to determine the extent and quantity of the water rights of the Navajo Nation to the waters of the Colorado River, or otherwise determine the amount of water which the Navajo Nation requires from the Lower Basin of the Colorado River to meet the needs of the Navajo Nation and its members, thereby breaching the United States' fiduciary obligation to the Navajo Nation.



United States' Position

“[W]here ‘[n]o statute has imposed duties on the government to manage or maintain the property’ for the Tribe’s benefit, a claim for breach of that duty is not actionable.”



Intervening Parties

- **State of Arizona**
- **Salt River Project**
- **Central Arizona Water Conservancy District**
- **Arizona Power Authority**
- **Imperial Irrigation District**
- **Coachella Valley Water District**
- **Metropolitan Water District of Southern California**
- **State of Nevada**
- **Colorado River Commission of Nevada**
- **Southern Nevada Water Authority**
- **State of Colorado**
- **The Hopi Tribe (intervention sought, not granted)**



Settlement Efforts Failed (2004 – 2012)



First District Court Dismissal (2014)

“Plaintiff fails to establish the injury in fact necessary to confer standing to bring its [NEPA and APA] claims One through Five and has voluntarily struck its Claim Six. In addition, Plaintiff fails to identify a waiver of sovereign immunity that permits it to bring Claim Seven [for Breach of Trust].”

Ninth Circuit (876 F.3d 1144) (2017)

- **Affirmed dismissal of the NEPA and APA claims based on lack of standing. (“We agree that the Nation failed to show it ‘reasonably probable’ that the new Guidelines threatened its interests in obtaining adequate water.”)**
- **Reversed dismissal based on sovereign immunity. (“The waiver of sovereign immunity in § 702 [of the APA] applies squarely to the Nation’s breach of trust claim.”)**

“We therefore remand to the district court to consider fully the Nation's breach of trust claim in the first instance, after entertaining any request to amend the claim more fully to flesh it out.”

*** * ***

The Navajo Nation attempts to file an amended complaint to flesh out the breach of trust claim, but the district court rejects those efforts.

Second District Court Dismissal (2019)

“Since none of these substantive sources of law create the trust duties the Nation seeks to enforce, and the Nation “cannot allege a common law cause of action for breach of trust that is wholly separate from any statutorily granted right . . . its breach of trust claim must fail, and amendment would be futile.”

Ninth Circuit (876 F.3d 1144) (2021)

We hold that the Nation has successfully identified specific treaty, statutory, and regulatory provisions that, taken together, anchor its breach of trust claim.



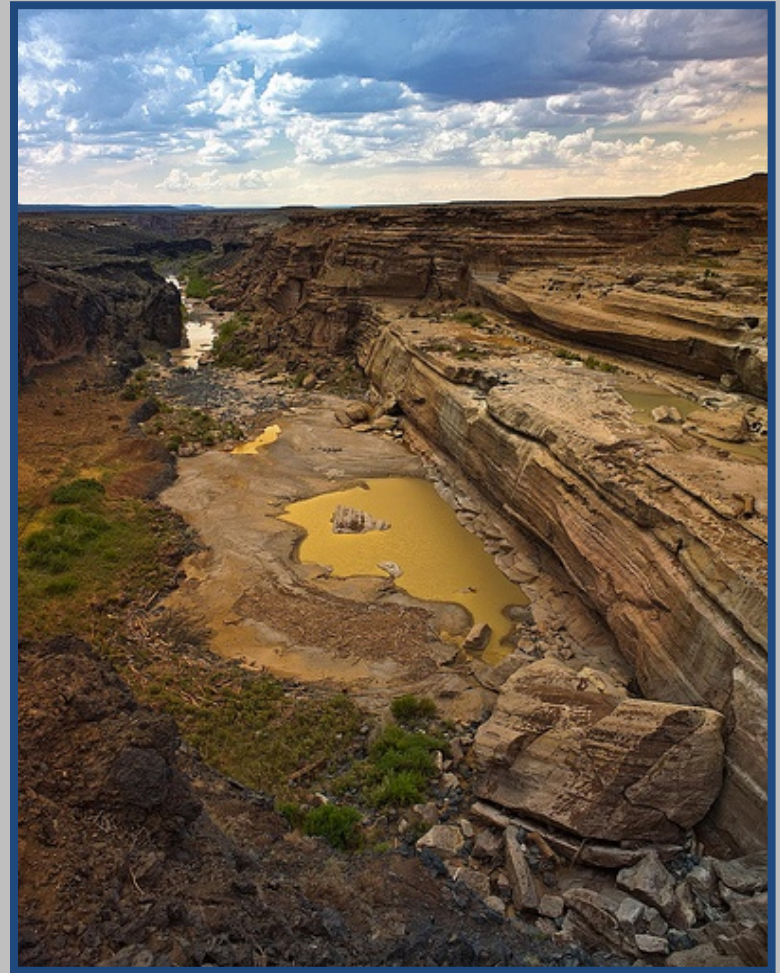
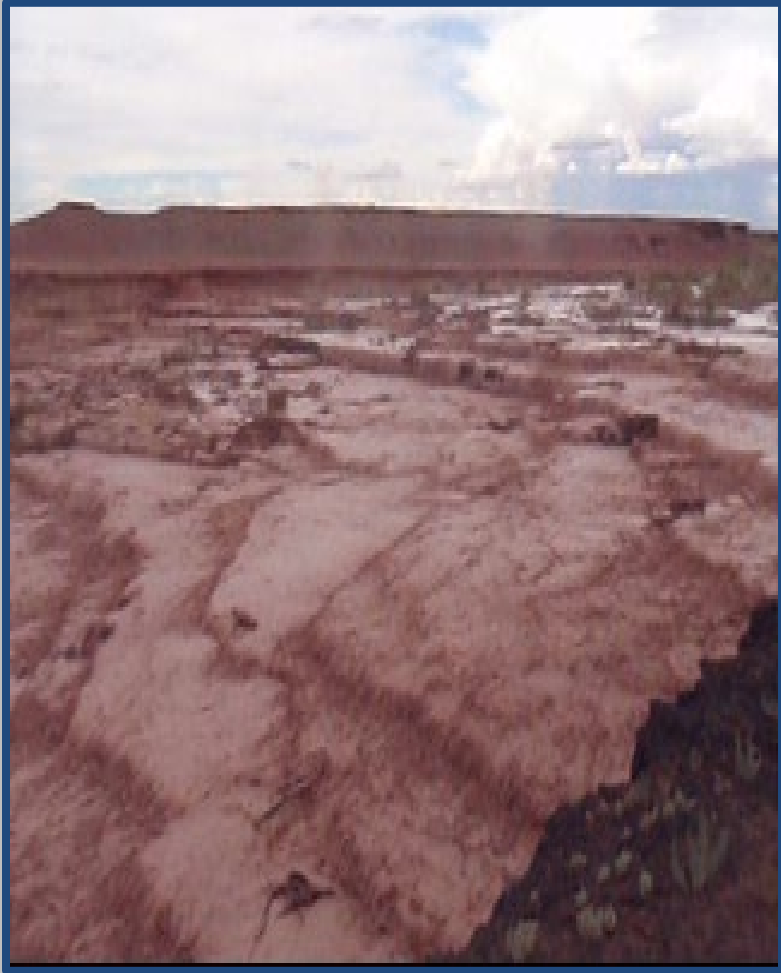
Motions for Rehearing (excerpts)

United States: “[T]he treaties, statutes, and executive orders establishing the Reservation contain no provisions requiring Interior to determine the Nation’s water rights or to develop the Nation’s water infrastructure.”

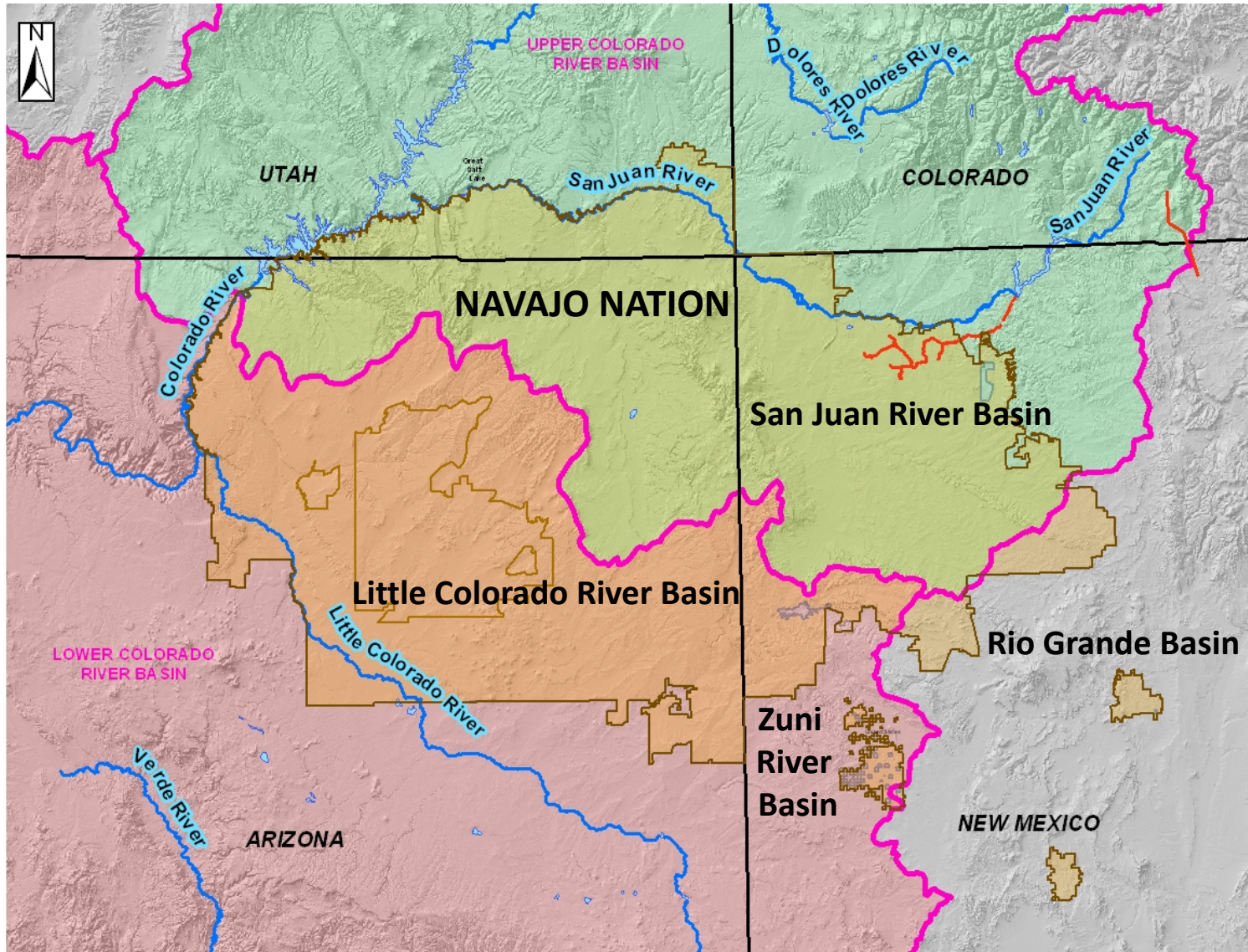
Intervenor States: “[T]he limited supply of mainstream water is already allocated to existing water contractors.”

Navajo Nation: “The Nation relies in addition [to the treaties] on statutes, regulations, executive orders, and other federal decisional documents in which the government undertook fiduciary obligations to the Nation.”

Little Colorado River



Navajo Nation Basins



Settlements

Our goal in these negotiations is to ensure that the Navajo Nation obtains all the water it needs for a permanent homeland. When the Navajo Nation thrives and prospers on its reservation, the State thrives and prospers.

-- Jerry Olds, Utah State Engineer, at the first negotiation meeting with the Navajo Nation

NEED

FRESH WATER

