ENERGY-WATER NEXUS

The Navajo Experience
OVERVIEW

• The Role of Energy in the **Quantification** of Indian Water Rights

• The Role of Energy in the **Implementation** of Indian Water Rights

• The Navajo Experience
The Role of Energy in the Quantification of Indian Water Rights

- Water is impliedly reserved to tribes in order to carry out the purpose of their reservations. *Winters v. U.S.*, 207 U.S. 564 (1908)

- “When an Indian reservation is created, the government impliedly reserves water to carry out its purpose as a permanent homeland.” *Gila River V*, 35 P.3d 68, 71 (Ariz. 2001)
“... the only feasible and fair way by which reserved water for the reservations can be measured is irrigable acreage.” Arizona v. California, 373 U.S. 546 (1963)
“When an Indian reservation is created, the government impliedly reserves water to carry out its purpose as a permanent homeland.”

*Gila River V, 35 P.3d 68, 71 (Ariz. 2001)*
Quantification Criteria

- Practically Irrigable Acreage
  But, not all lands susceptible to irrigation

- Municipal & Domestic Uses

- Industrial Uses; *e.g.* Energy
• Mineral resources should be considered a surrogate for irrigable acreage.

• Practicable energy development is akin to practicably irrigable acreage.
The Role of Energy in the Implementation of Indian Water Rights

• Energy development can be a valuable means for tribes to monetize their water rights.

• Water can be beneficially used for energy development while tribes grow into their full water supply for other purposes.
Unused tribal water will be used by entities that will continue to rely on water supplies claimed by, reserved for, needed by, and potentially belonging to tribes.
Navajo Generating Station

- Historic use of about 28,000 afy of water
- Water can be claimed as historic use in water rights quantification
- State of Arizona seeks to use this water for other purposes
Peabody Coal Mine
• Supplied coal to the Navajo Generating Station and the Mohave Generating Station
• Water used for mining and slurry operations
The Navajo Experience – Desert Rock

Desert Rock Energy Project
• Proposed power plant using state of the art pollution abatement technology
• Could have benefited municipal water use in the Navajo Gallup Water Supply Project
• Project never developed
Opposition to Coal Mining

- Kill the Bill
- Dóó'da SB2109
- This land is our land, this is not your land, so leave our water the hell alone man!