

Transboundary Water Law and the Benefits of Collaboration

Spokane River Forum November 2017

Professor Barbara Cosens

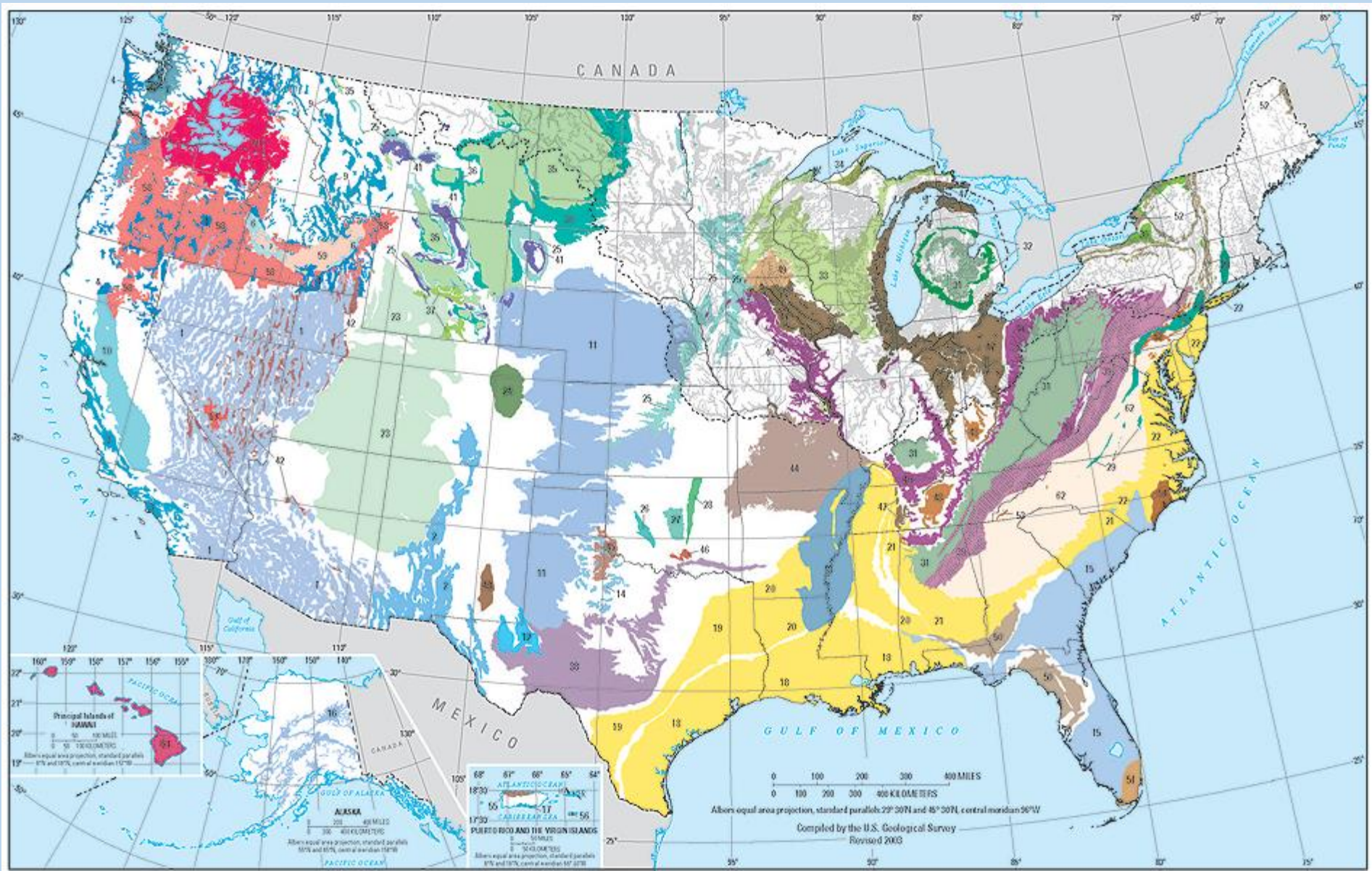
University of Idaho College of Law

Interstate Allocation



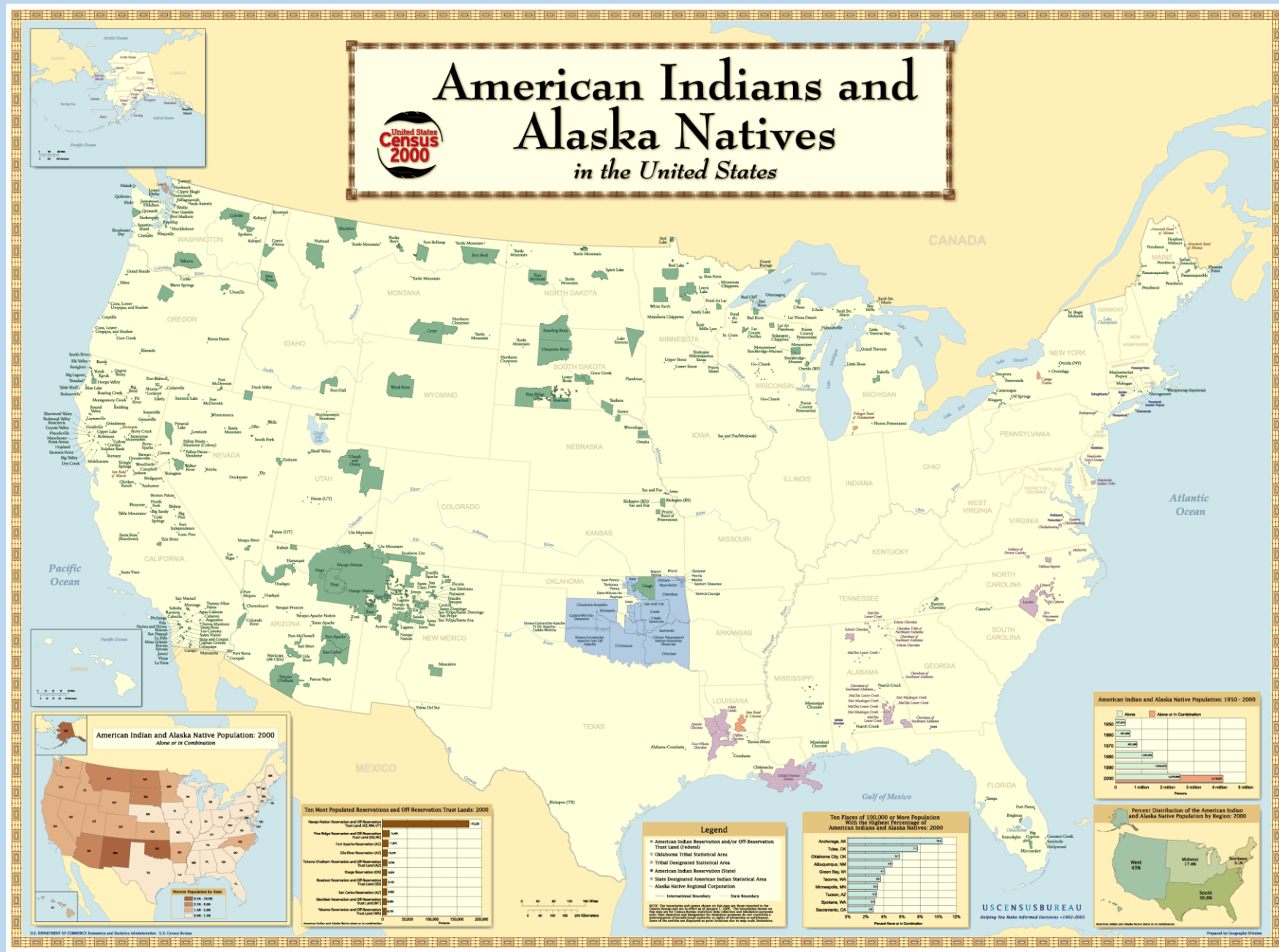
Interstate Allocation

1. Original jurisdiction of the US Supreme Court
2. Private suit across state line in federal district court
3. Interstate Compact
4. Congressional Apportionment
5. Cooperation plus parallel state legislation
6. Cooperation



USGS Groundwater Information: <https://water.usgs.gov/ogw/aquifer/map.html>

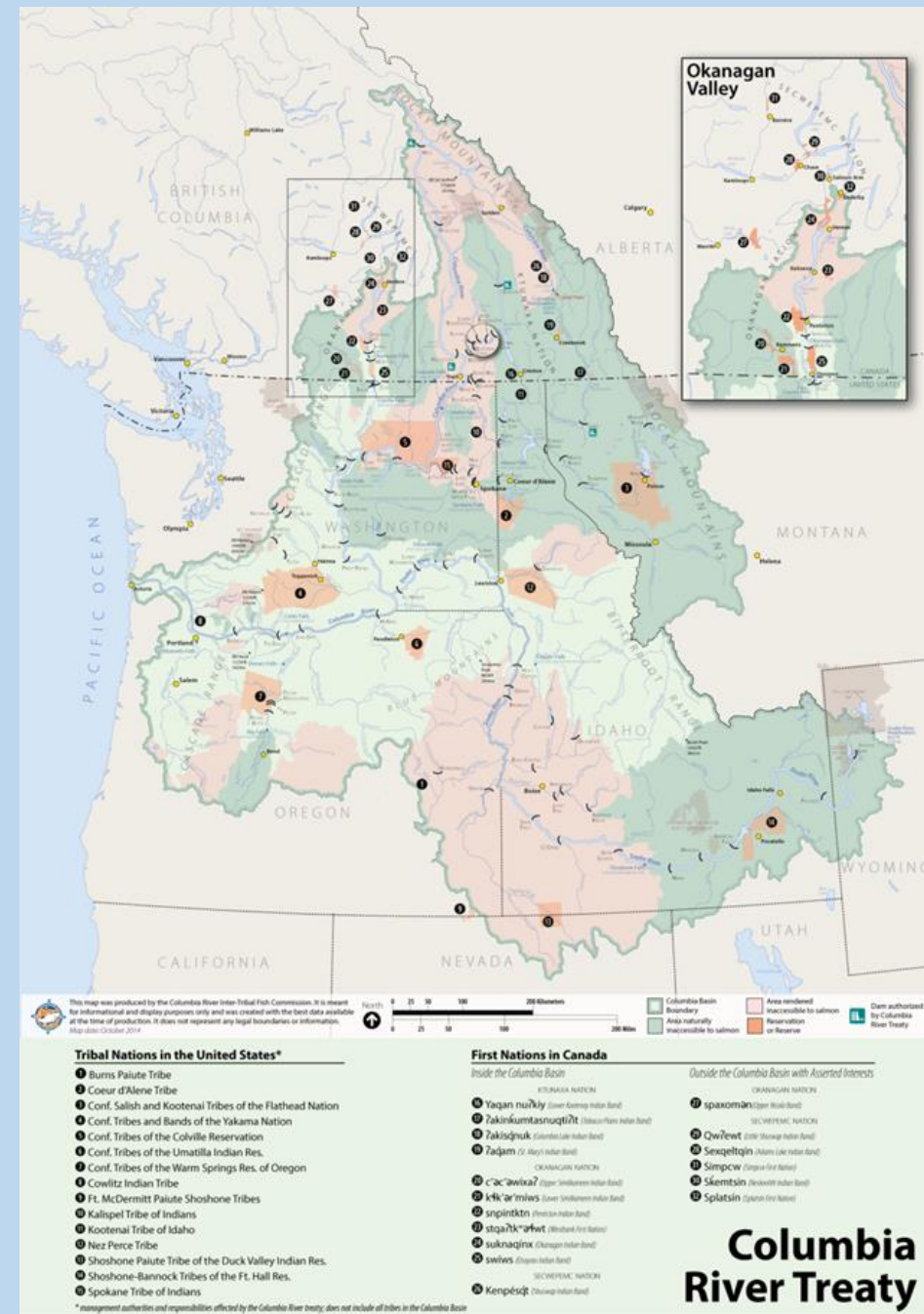
Tribal/State Allocation



http://www.oneofmanyfeathers.com/american_indian_reservations_map_us.html

Water Rights

- Reserved rights: implied if necessary for the reservation purpose
 - Priority: date of reservation
- Aboriginal rights: retained rights from historic use
 - Priority: time immemorial



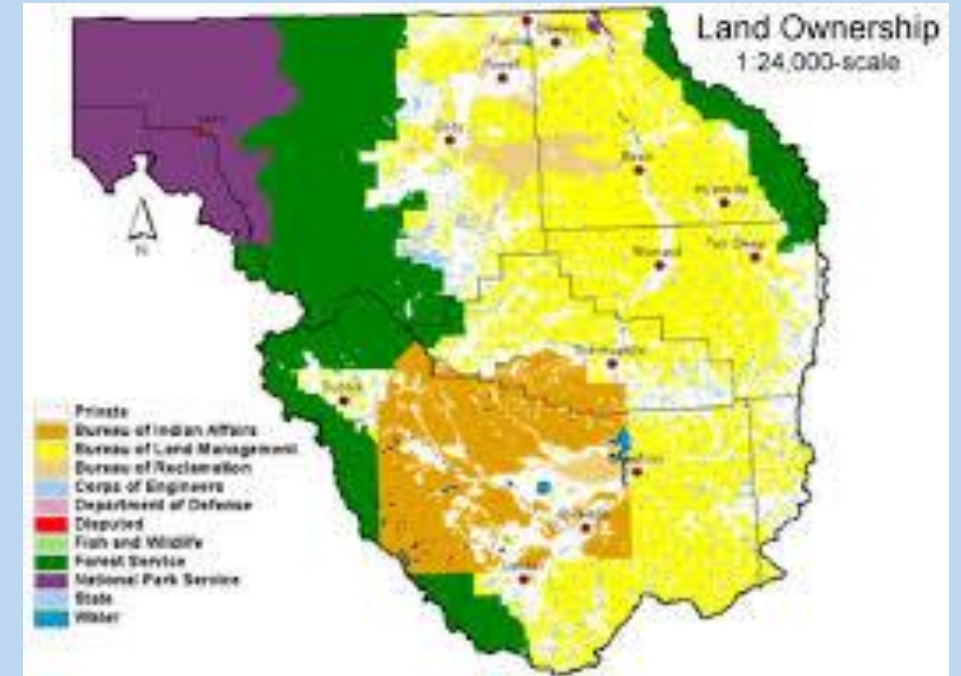


The Water Rights of Native American Tribes

To litigate or to settle?

Jeff Fassett, former Wyoming
State Engineer at the *Winters*
Centennial

*Wyoming has been used as a
poster child for how not to
quantify reserved water rights—
through pure, hard-fought
litigation. We got off on the
wrong foot and found it
impossible to stop the litigation
chain.*



- Quantity: 499,862 acre-feet
- Priority: July 3, 1868
- No protection for existing use
- No funding for BIA project infrastructure

Example of problems solved with Montana settlements

- Northern Cheyenne Reservation:
 - An unsafe state-owned dam
 - Repair
 - Expanded pool goes to the Tribe
 - Protection of existing use
- Chippewa Cree Tribe of the Rocky Boy Reservation
 - Reservoir expansion – mitigation release
 - Release coordination
 - Block allocation





<http://digitalrepository.unm.edu/nawrs/>