

Indian Water Rights and Reservation Economic Development

by

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Abstract

To the many federally-recognized Indian tribes in the West, water plays a critical role in future plans for development. Both the availability and subsequent use of water will serve to define and limit economic advancement on tribal reservations. Legally, the Indians' right to water finds a strong basis in the nation's judicial chronicles. Historically, socially, and economically, the Indians' water rights rest upon less firm ground. Can the nation's tribes more forcefully assert their water rights in the future? How best can a program of reservation economic development benefit from additional water supplies? What are the potentials of water resource development and what conflicts threaten to hinder the success of such programs?

Starting in the first decade of the twentieth century, the nation's tribes became the recipients of favorable judicial interpretations of their water rights. The legal history of tribal water rights, commencing with Winters v. United States, reveals that the courts have consistently granted the tribes generous supplies of water and have thus exempted them from the conflicts and problems associated with water use in the West. In practice, however, the tribal right to water reveals an insecure hold on valuable water resources and a history of intrusion by non-Indian users.

This paper will begin with an examination of the relationship between the federal government and the federally-recognized Indian tribes of the nation and will then turn to a discussion of Indian water law. After noting the main premises and precedents in Indian water law, I will then discuss the conflicts looming over actual water use by the tribes.

The second half of the work will show the ways in which the tribes can use their water supplies to further the economic development of their tribal properties. Included in the section will be an examination of potential conflicts, legal, social, and economic, that threaten the viability of such programs. While I feel that I am unqualified to make steadfast recommendations as to the best manner in which to proceed and while I feel it to be inappropriate for the scope of this work to make such recommendations, I will end with a discussion of possible ways in which Indians may best assert their tribal rights to water and plan for successful economic development.