



The Future of Reserved Water Rights
The *Winters* Centennial:
Will Its Commitment to Justice Endure?

June 9-12, 2008

One hundred years after the landmark U.S. Supreme Court decision in Winters v. United States established a right to water to support Native American—and federal—reservations, is there enough water to fulfill the promise of Winters? Many cases that would define Indian and federal water rights have not been settled and others have not yet been filed. Further, the federal funds that have been an important part of past successful settlements are not being made available even for pending cases. This symposium will provide a history of the Winters case, take a hard look at the current state of the doctrine, and foster a dialogue on fair and equitable resolution of pending and future claims.

Presented by

The University of New Mexico School of Law
Utton Transboundary Resources Center

and

The American Indian Law Center, Inc.

at

Hyatt Regency Tamaya Resort
Santa Ana Pueblo, on the Rio Grande north of Albuquerque

We are grateful for support from The Healy Foundation, The McCune Charitable Foundation, The State Bar of New Mexico, Section on Natural Resources, Energy and Environmental Law, and the Rocky Mountain Mineral Law Foundation.

The program has been approved for up to 13.70 CLE credits.



Program

Monday, June 9, 2008

Evening: Registration and Opening Reception – 7:00 pm – 9:30 pm

Tuesday, June 10, 2008

Registration continues – 8:00 am

Morning:

Invocation – 8:15 am

Ulysses Leon, Governor of Santa Ana Pueblo (invited)

Introduction: Myron Armijo, Tribal Liaison, NM Office of State Engineer

Welcome – 8:30 am

Sanford E. Gaines, Director, Utton Center

Helen Padilla, Director, American Indian Law Center

Marilyn C. O’Leary, former Director, Utton Center



WINTERS IN HISTORICAL FOCUS

◆ **Oral Arguments Reenactments** – 9:00 am – 10:45 am

Robert T. Anderson, Associate Professor, Director, Native American Law Center,
University of Washington School of Law – *narrator*

Winters v. U.S.

Thomas W. Fredericks, Esq., Fredericks, Peebles, & Morgan, Louisville, CO –
moderator

Edwin S. Kneedler, Deputy Solicitor General of the United States

Joseph P. Mazurek, Esq., Crowley Law Firm, Helena, MT

Arizona v. California

Susan M. Williams, Esq., Williams & Works, PA, Corrales, NM – *moderator*

Jeanne S. Whiteing, Esq., Whiteing & Smith, Boulder, CO

Jerome C. Muys, Esq., Muys & Associates, Washington, DC

Edwin S. Kneedler

U.S. v. New Mexico

A. Dan Tarlock, Professor, Chicago-Kent School of Law – *moderator*

G. Emlen Hall, Professor Emeritus, University of New Mexico School of Law

Edwin S. Kneedler

- ◆ **Winters in Historical Context** – 11:00 am – 12 noon
Robert T. Anderson – *moderator*
Patty Limerick, Director, Center of the American West, University of Colorado.
Audience discussion

Lunch:

- ◆ **Winters in American History** – 12 noon – 1:15 pm
Speaker: John Shurts, General Counsel, NW Power and Conservation Council, and author, INDIAN RESERVED WATER RIGHTS: THE *WINTERS* DOCTRINE IN ITS SOCIAL AND LEGAL CONTEXT, 1880S-1930S.
Introduction: Barbara Cosens, Professor, University of Idaho College of Law

Afternoon:



WINTERS AND THE CONTEMPORARY LANDSCAPE

John E. Thorson, Administrative Law Judge, California Public Utilities Commission
– introduction and *moderator*

- ◆ **Concrete Consequences of Winters:**

Case Study #1 Off-Reservation Instream Flows: Nez Perce Settlement (Columbia River Basin) – 1:30 pm – 2:45 pm

Duane T. Mecham, Office of the Solicitor, U.S. Department of the Interior
Steven Moore, Esq., Native American Rights Fund
Rebecca Miles, Vice Chair, Nez Perce Tribal Council
Michael Bogert, Counselor to the Secretary, U.S. Department of the Interior

Case Study #2 Litigation vs. Settlement: Non-Indian Federal Reserved Rights
2:45 pm – 4:00 pm

John Leshy, Professor, University of California Hastings College of Law – *moderator*
Susan Cottingham, Program Manager, Montana Reserved Water Rights Compact Commission
James DuBois, Esq., U.S. Department of Justice (invited)

Break – 4:00 pm – 4:15 pm

Case Study #3 Actual Results Following Litigation: Wind River/Big Horn
4:15 pm – 5:30 pm

Gordon W. ‘Jeff’ Fassett, Esq., National Director for Water Resources, HDR, Inc.
Cheyenne, WY – *moderator*
Susan M. Williams
Craig Alexander, Esq., Section Chief, Indian Resources, U.S. Department of Justice

Reception – 6:30 pm

Dinner – 7:30 pm

- ◆ **Film: Rough cut of ‘The American Southwest: Are We Running Dry?’**
Jim Thebaut, director, writer and producer, will lead a discussion and elicit audience comments and suggestions on the film, which is an hour-long special to be shown on PBS stations in September, 2008.

Wednesday, June 11, 2008

Morning:

- ◆ **Concurrent field trip options:** 8:00 am – 12 noon
 - **Santa Ana Pueblo** – Ecological restoration of Rio Grande bosque
 - **Cochiti Pueblo** – Cochiti Dam – history and future implications
 - **Santo Domingo Pueblo** – Agricultural irrigation project planning

Afternoon:



IMPLICATIONS OF WINTERS

- ◆ **Perspectives on the History of Winters** – 1:00 pm – 2:30 pm
Charles Wilkinson, Professor, University of Colorado Law School, *moderator*
Joe Ely, Stetson Engineers, Inc. and the Pyramid Lake Paiute Tribe

The Winters Locale: The Fort Belknap Settlement

Chris D. Tweeten – Chairman, Montana Reserved Water Rights Compact Commission
Woldezion Mesghinna, President, Natural Resources Consulting Engineers, Inc.
Julia Doney, President, Fort Belknap Community Council (invited)

- ◆ **Breakout Sessions** – 2:45 pm – 5:30 pm

(A) By Basins – 2:45 pm– 4:00 pm

Concurrent sessions:

Columbia

Discussion leaders:

Rachael Paschal Osborn, Esq., Executive Director, Center for Environmental Law & Policy, Spokane, WA

Lois Trevino, Water Administrator, Colville Confederated Tribes, Environmental Trust Department

John Shurts, General Counsel, NW Power and Conservation Council

Missouri

Discussion leaders:

A. Dan Tarlock

David L. Pope, Executive Director, Missouri River Association of States & Tribes
Tony Provost, President, Mni Sose Intertribal Water Rights Coalition, Macy, NE

Colorado

Discussion leaders:

Scott McElroy, Esq. Greene, Meyer & McElroy, PC, Boulder, CO

Jerome C. Muys

Rodney B. Lewis, Esq., Member, Pima and Gila River Indian Community, Sr. Policy
Counsel, Akin, Gump, Straus, Hauer & Feld, Washington, DC

Rio Grande

Discussion leaders:

Peter Chestnut, Esq., Albuquerque, NM

G. Emlen Hall

Ernest Coriz, Tribal Planner/Engineer, Pueblo of Santo Domingo

Break – 4:00 pm – 4:15 pm

(B) By Theme – 4:15 pm – 5:30 pm

Concurrent sessions:

Water infrastructure

Discussion leaders:

Ray Benally, Manager, Navajo Nation Department of Water Resources

Robert J. Quint, Deputy Commissioner, Bureau of Reclamation

Daniel McCool, Professor, American West Center, University of Utah

Endangered species and Indian rights

Discussion leaders:

Scott McElroy

Jennifer M. Parody, Middle Rio Grande ESA Coordinator, U.S. Fish and Wildlife
Service

John Leshy

Trust responsibility – will the Government continue to assert Indian water rights?

Discussion leaders:

Judith V. Royster, Professor, University of Tulsa College of Law

Tim Vollmann, Esq., Albuquerque, NM

Joe Ely

Dinner – 7:00 pm

- ◆ **Keynote Speaker:** Secretary of the Interior Dirk Kempthorne, (invited)
Introduction: Joe A. Garcia, President, National Congress of American Indians, and
Chair, All Indian Pueblo Council

Thursday, June 12, 2008

Morning:



A POST-WINTERS WORLD

- ◆ **Concluding Plenary Session** – 8:30 am – 12 noon
David H. Getches, Dean, University of Colorado Law School – *moderator*

Commentary: An American Indian Perspective

Regis Pecos, Chief of Staff, Office of the Speaker, NM House of Representatives, and
former Governor, Pueblo de Cochiti

Panel Discussion

- Have changed circumstances since *Winters* affected implementation?
- What processes and institutions will ensure *Winters* rights for the future?

Panel:

Michael Bogert

Barbara Cosens

Sam Deloria, Director, American Indian Graduate Center Scholars

John E. Echohawk, Esq., Director, Native American Rights Fund

John Leshy

Robert Rosebrough, Esq., Jordan & Rosebrough, PC and former mayor, Gallup, NM

Jeanne S. Whiteing

Adjourn – 12 noon



TRANSBOUNDARY RESOURCES

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