



# Working Effectively with American Indian Populations: Indian Water Rights

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This is an overview of Indian water rights as they have evolved on reservation lands. Water rights issues on reservation lands can be complex. This fact sheet discusses American Indian water rights and explains agricultural irrigation on reservation lands.

## Water Rights in the West

A water right defines who has the right to use water, what it is used for and where it is used (Emm, 2003). Water rights and western land settlement are tied together by the Prior Appropriation Doctrine, a legal concept that evolved to regulate scarce water resources. The Prior Appropriation Doctrine allocated water rights based on seniority, "first in time, first in right." Those who were first to arrive and stake

claims to mines or land also staked a claim to the water resources. As long as they could prove a beneficial use for the water, they acquired and maintained the "prior" or "senior" right to water resources.

During the 1800s, beneficial uses were considered primarily gold and silver mining, food production and lumber production. Water right holders had to make continuous beneficial use of their water right in order not to lose it.

## Indian Water Rights

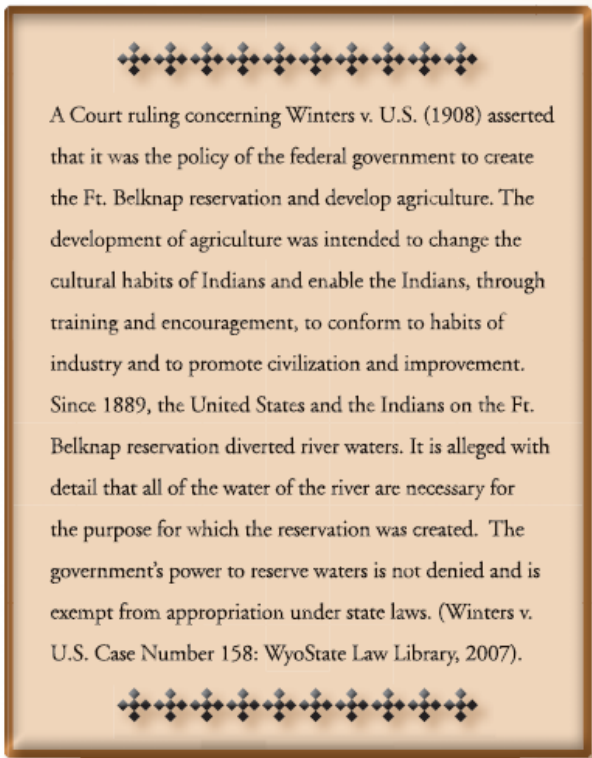
The **Winters Doctrine**, also referred to as the **Reserved Water Rights Doctrine**, was the result of a Supreme Court ruling in the case of

*Winters v. U.S.* (1908). The court case arose from a situation in Montana's Milk River Valley involving the Fort Belknap Reservation. Diversion of water by upstream off-reservation irrigators had hampered the development of agriculture on the reservation. The federal government filed claims for water rights specifically for agricultural irrigation on behalf of the Fort Belknap Reservation. Put simply Winters Doctrine reserved federal water rights to fulfill the underlying purpose for the establishment of the Fort Belknap Reservation.

The Winters Doctrine set a precedent for how water rights on Indian reservations would be determined and defined. It represented a pivotal landmark in western water law because it reserved Indian water rights based upon the date a reservation was established. Thus, these reserved rights established a senior priority date for the subject reservation.



*Below Weber Dam on the Walker River Reservation in Nevada.*



A later court case, *Arizona v. California* (1963), reaffirmed Indian reserved water rights. This court decision conflicted with the Prior Appropriation Doctrine, which had established state authority over adjudicated water rights (Kipp, no date). It reallocated water rights from non-Indian irrigation uses to reservation lands and other federally owned properties.

**Adjudication**, when it refers to water rights, is the quantification and distribution of water resources through a judicial decision or Congressional action. Indian reserved water rights, through the Winters Doctrine, does not necessarily guarantee that water rights have been allocated or distributed on a given reservation. Indian water rights that have not been allocated or distributed complicate increasing demands for water. Litigation and legislation continue to serve as primary methods for addressing conflict surrounding Indian water rights (Shurts, 2000).

### **Indian Agricultural Irrigation Projects**

During the early 1900s, to promote agricultural entrepreneurship on reservations, the federal government built **Indian irrigation works** on

reservations which received low amounts of natural precipitation. Currently there are more than 100 irrigation works on reservation lands, primarily in the western U.S. The Bureau of Indian Affairs (BIA) refers to these irrigation works as either “**irrigation projects**” or “**irrigation systems**” (U.S. General Accounting Office, 2006). Irrigation systems are operated collaboratively by the BIA, tribes and various water users. The BIA does not collect operation and maintenance fees for irrigation systems. However, this is not the case with irrigation projects, which are operated by the BIA.

During the period of investment in Indian irrigation projects, the federal government did not determine a method for the reimbursement of construction costs. Funding for the construction of Indian irrigation projects was often tied to other earmarked appropriations. Oftentimes, construction was not fully completed and resulted in structural deficiencies (U.S. General Accounting Office, 2006). The lack of a long-term, cost-recovery plan caused the federal government to legislate, in a piecemeal fashion, efforts to recover this investment.

In 1920, the federal government implemented legislation that required Indians on reservations with irrigation projects to repay operation and maintenance costs on an established fee-based structure. The fee structure recognized that each Indian irrigation project differed in size and costs. It also considered the economic status of farmers on reservation lands on a case-by-case basis. Table 1 illustrates, for seven projects, irrigation fees charged to Indian and non-Indian water users through 2006. Looking at the Walker River Reservation in northwest Nevada, for example, Indian water users paid an average irrigation fee of \$7.32 per acre. In contrast, non-Indian water users farming within the same irrigation project paid an average fee of \$15.29 per acre through the 2006 irrigation season. The lower fee charged to Indian water users was based on the ability to pay.

Table 1. Indian Irrigation Projects Fee Schedules Per Acre (up to 2006).

Reservation	Total Acres in Project	Average Acres Irrigated	Indian	Non-Indian
Chiu Chu, AZ**	3,445	290	\$26.00	\$250
Duck Valley, ID/NV	12,000	9,396	\$5.30	\$22.73
Fort Belknap, MT	13,320	10,427	\$6.25	\$12.50
Pyramid Lake, NV	6,437	1,179	\$3.60	\$16.56
San Carlos, AZ	2,326	527	\$5.00	\$17.81
San Xavier, AZ**	2,026	296	\$60	\$100
Walker River, NV	4,980	1,846	\$7.32	\$15.29

Source: National Irrigation Committee, 1988

\*\*Denotes area not irrigated since 1982 due to the lack of water.

Historically, the BIA absorbed the operation and maintenance costs for specific Indian irrigation projects receiving limited funding but has lacked adequate funds to do this effectively. Over time, operation and maintenance costs have steadily increased. The BIA no longer has discretionary funding available to subsidize and maintain these projects and many projects are in poor condition (U.S. Federal Register, 2007). Thus, effective Jan. 1, 2007, the BIA increased fees for both Indian and non-Indian water users so that fees are nearly equal (see Table 2).

Table 2. Rate Adjustments for Indian Irrigation Projects Per Acre

Reservation	Final 2006 rate per acre	Final 2007 rate per acre	Final 2008 rate per acre
Duck Valley	5.30	5.30	5.30
Fort Belknap	Trust Land - 8.50 Fee Simple - 17.00	Trust Land - 13.88 Fee Simple - 18.50	Trust Land - 20.00 Fee Simple - 20.00
San Carlos (Joint Works)	30.00	30.00	21.00
San Carlos (Indian Works)	77.00	70.00	To be determined
Uintah	12.00	12.00	12.50
Walker River	Indian - 7.32 Non-Indian - 15.29	Minimum bill 25.00 Indian - 10.00 Non-Indian - 16.00 <i>Deferred for 2007</i>	Minimum bill 25.00 Indian - 13.00 Non-Indian - 16.00

Source: U. S. Federal Register, 2007; 2008.

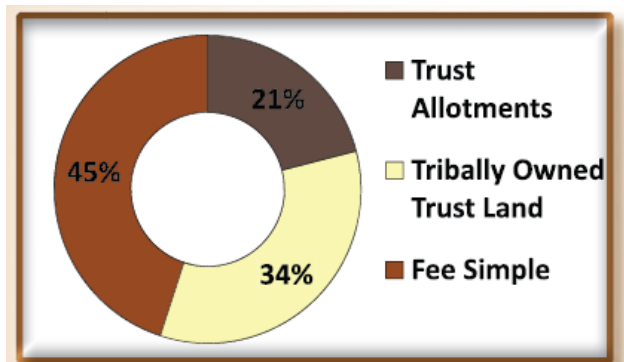
### Who Farms Irrigated Indian Lands?

As land tenure on Indian reservations remains complex, due to highly fractionated interests and checkerboard issues (Refer to People of the Land, Emm & Singletary, 2009), the question many Indian leaders ask is, “who benefits from Indian irrigation works?” Today, Indian irrigation water serves all land tenure categories on reservations, including fee-simple parcels owned by non-Indians. Indian irrigation works originally built to encourage Indian

agriculture on reservations is one BIA program that provides significant benefits to non-Indian agriculture due to the evolving complexity of reservation land tenure.

Figure 1 illustrates land tenure status (See *Indian Land Tenure Terms* fact sheet,) served by Indian irrigation infrastructure. In some cases, the operation and maintenance of these works are funded by the water users, the majority of whom are non-Indian. This situation presents additional issues to address when considering the fate of irrigated agriculture on Indian lands.

Figure 1. Land Tenure Status Served by Indian Irrigation Infrastructure.



Source: National Irrigation Committee, 1988.

### Water Right Pose Obstacle for Expansion of Indian Agriculture

Most Indian irrigation works have contributed substantially to reservation economies, in some instances generating millions of dollars in crop value annually (U.S. Federal Register, 2007). Indian tribes successful in pursuing an agricultural-based economy have understandably attempted to expand their farming operations. The obvious issue involves increases in demands for water among diverse water users, including Indian farmers, tribal farming operations, non-Indian farmers, municipal developers, wildlife agencies and natural resource agencies.

During the past four decades, a number of Indian tribes have filed legal claims in an effort to have water rights either restored to a reservation or protected for Indian use. Indian

water claims involve substantial water resources with the potential to exceed 45 million acre-feet of water per year. In 1989, nearly 75 percent of these claims were in litigation while about 13 percent were in negotiations. In 1992, the market value of this water was estimated to be somewhere between \$20 billion and \$50 billion (Smith, 1992).

Increasingly, tribal governments and individual tribal members work at the local, state and national levels to protect water resources on reservation lands. Negotiated settlements continue to play an important role in efforts to mitigate water rights claims for Indian reservations. Conflict is likely to increase concerning the competition among diverse water users for water rights that have been over-adjudicated over time.

## Summary

The federal government introduced irrigated agriculture to Indians living on reservations in the West in an attempt to assimilate them into an agrarian-based economy. Indians who have made progress adapting to an agricultural-based economy have, understandably, attempted to expand their farming operations. Increasingly, Indian tribes are taking legal actions to protect their water rights for agriculture use, fish and wildlife, and the management of natural resources on reservation lands.



*A view of agriculture and water resource on the Coeur d'Alene Reservation in Idaho.*

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