Indian Water Rights
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Overview
- Indian water rights rooted in federal law, including aboriginal title as recognized in U.S.
- Deep conflicts between Indian and non-Indian rights
- Indian treaties, agreements, statutes and Executive Orders at foundation of tribal water rights
- Expensive and lengthy litigation; settlements

State Water Law – Western States
- Water allocated according to “prior appropriation”
- Water availability determination (theoretical)
- First in time is first in right
- Beneficial use
  - Productive purpose
  - Use it or lose it
  - Reasonable efficiency
- Public interest
- Little enforcement

Water to Fulfill Indian Treaties
- Indian reserved water rights are based on federal law
- Winters doctrine: associated with establishment of Indian reservations for agricultural purposes
- Aboriginal water claims for instream flows, sometimes called Winans rights
- Spanish law (to 1821) or Mexican law (to 1846) (Pueblos)

United States v. Winans (1905)
Indian use

Winters v. U.S.: Non-Indian water use for irrigation precedes Indian use

Winters v. United States (1908)
- Indian reservation in 1888 established for agricultural purposes
- State appropriators precede Indian use, but after 1888
- Court implies reserved Indian rights as of the date of the reservation – 1888 --- to fulfill agricultural purposes of the reservation

The End
- Thank you!