

Indian Water Rights

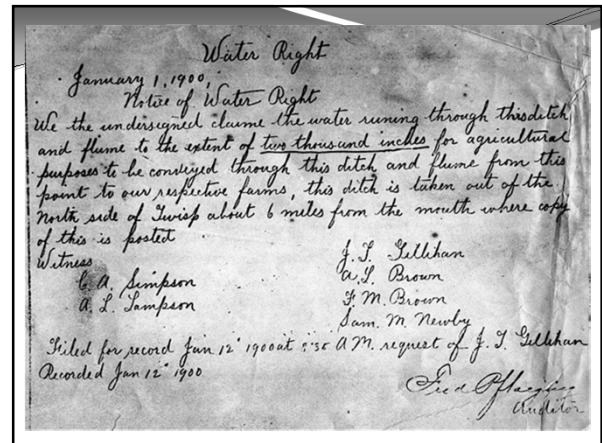
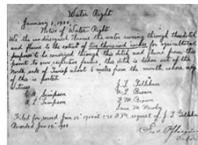
Professor Robert T. Anderson
University of Washington School of Law
Seattle, WA
2016

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

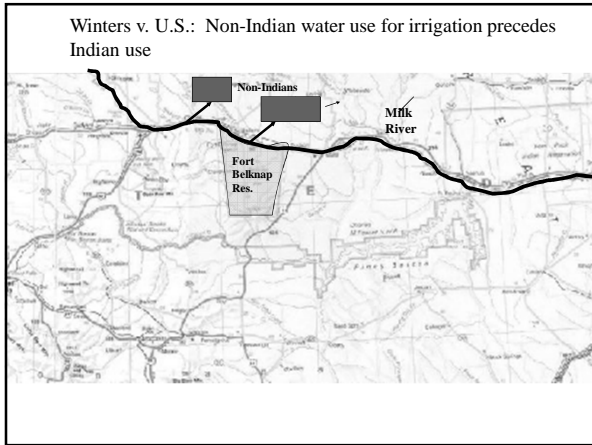
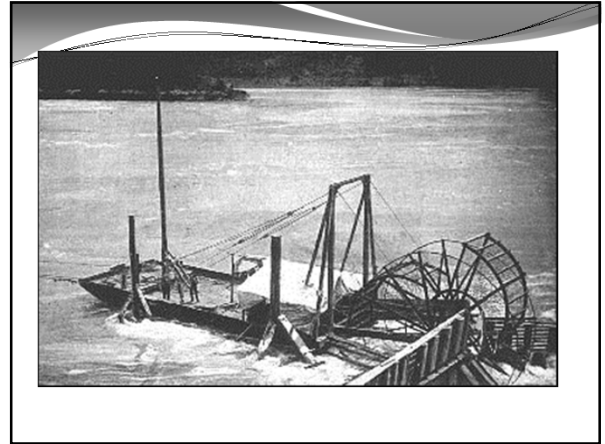


Water to Fulfill Indian Treaties

- 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)

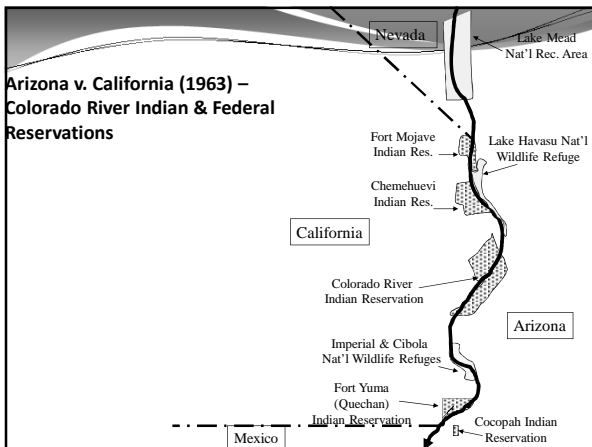
United States v. Winans (1905)





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!