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Indian Reserved Water Rights Under The Winters Doctrine: An Overview



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Cynthia Brougher
Legislative Attorney

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Synopsis

Although the federal government has authority to regulate water, it typically defers to the states to allocate water resources within the state. The federal government maintains certain federal water rights, though, which exist separate from state law. In particular, federal reserved water rights often arise in questions of water allocation related to federal lands, including Indian reservations. Indian reserved water rights were first recognized by the U.S. Supreme Court in *Winters v. United States* in 1908. Under the *Winters* doctrine, when Congress reserves land (i.e., for an Indian reservation), Congress also reserves water sufficient to fulfill the purpose of the reservation. As the need for water grows with the development of new industries and growing populations, the tension arising from the allocation of scarce water resources highlights the difficulties that often surround reserved water rights, particularly in the western states. Western states generally follow some form of the prior appropriation system of water allocation. The prior appropriation system allocates water to users based on the order in which water rights were properly acquired. Because Indian reserved water rights date back to the government's reservation of the land for the Indians, these water rights often pre-date other water users' claims. Although the prior appropriation system's reliance on seniority provides a degree of certainty to water allocation, Indian reserved water rights may not have been quantified at the time of reservation. Because *Winters* did not dictate a formula to determine the quantity of water reserved, courts apply different standards to quantify tribal reserved water rights. As a result, other water users may not know whether, or the extent to which, Indian reserved water rights have priority. Because of these uncertainties, Indian reserved water rights are often litigated or negotiated in settlements and related legislation. This report will examine the creation of Indian reserved water rights under the *Winters* doctrine. It will analyze the scope of the doctrine, including the purposes for which the water right may be claimed and the sources from which the water may be drawn. It will also discuss various quantification standards that courts have used in attempting to clarify Indian reserved water rights. Finally, it will examine the effect of the McCarran Amendment, through which Congress extended jurisdiction to state courts to hear disputes involving Indian reserved water rights.

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