

2023 WATER LAW SYMPOSIUM

McGeorge School of Law

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Attributes of Federal Indian Reserved Water Rights*

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Attributes of Federal Indian Reserved Water Rights

- Common law doctrine first established in *Winters v. US*, 207 U.S. 564 (1908)
 - The creation of an Indian reservation impliedly reserved sufficient water to fulfill the reservation purpose
 - United States holds title for the benefit of the Tribe
 - State law does not apply
- Priority date
 - Time immemorial or the date the reservation was established
- Quantification
 - Sufficient water to fulfill the purposes of the reservation
 - Practicably irrigable acreage
 - Homeland purposes
- Confirmed by court decree (adjudication) or congressionally approved settlement



Different from Water Rights Based on State Law

- Federal water rights
- State permits or registration are not required
- Quantity is based on the purpose of the reservation not on current beneficial use
- The right is for the present and future use by the Tribe
 - Not lost for non-use

*See, Colorado River Ten Tribes Partnership, Tribal Water Study, Ch. 2 available at: <https://www.usbr.gov/lc/region/programs/crbstudy/tws/finalreport.html>