

Review: Tribal Water Rights: Essays in Contemporary Law, Policy and Economics

By John E. Thorson, Sarah Britton and Bonnie G. Colby (Eds.)

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John E. Thorson, Sarah Britton, and Bonnie G. Colby (Eds.) *Tribal Water Rights: Essays In Contemporary Law, Policy, and Economics*. Tucson: University of Arizona Press, 2006. 291pp. ISBN: 0-8165-2482-3 (trade cloth) Acid free paper. US\$50.00.

In these assembled essays, Thorson, Britton and Colby (who also edited *Negotiating Tribal Water Rights*) present the intricate and detailed field of American Indian tribal water laws in the last two centuries. They have included in this volume essays by practicing attorneys, and scholars in the fields of law, economics, public policy, and conflict resolution. The book is dense with legal precedents and legal decisions, and tells of the history of how Native Americans fared with the American expansion into the West. The examples of water claim contentions focus on the western United States, and present the historical legal framework that has developed since those early times in American history.

In the seminal 1908 case, *Winters v. United States*, "The Supreme Court established the legal basis for Indian water rights, holding that by setting aside lands for Indian reservations, the federal government had also reserved sufficient water to fulfill the purpose for which the reservation was created." (p. 22) Thus, Native Americans have established sovereign rights and also legal channels to defend their needs, but these unfortunately do not always work.

The case studies presented are complicated but understandable to the lay reader. The number of cases and concepts described, and concerns discussed, show how complicated such legal and regulatory proceedings can be. Factors involved are not solely legal, but also economic, social and historical. Environmental laws have also impacted tribal water decisions, with Native Americans needing to alter traditional practices to respect the Endangered Species Act when necessary. With sections covering state-tribal-federal relations, quantification, settlement, and management, this book argues for the rights and concerns of Native Americans and highlights some of America's failings in the treatment of Native American sovereign nations. The Native Americans are credited with understanding the need for sustainability before the term became widely used.

Some in the assembled essays argue that there are better ways to solve disputes than through litigation. Options such as alternative dispute resolution, arbitration, and mediation, are presented as ways to solve these contentious battles in a more inclusive-rather than win or lose-manner.

Problems will persist. As the centennial of the *Winters v. United States* precedent of 1908 approaches, the editors predict that "Over the short term, say the next ten to twenty years, we expect to see continuing (and sometimes problematic) steps to implement existing settlements, as well as continuing efforts to compete settlements for all major western tribes." (pp. 239-240).

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