

1-1-2017

**Transboundary Water Issues: Challenges and Opportunities,  
Presented by: Eric Benjaminson, Former United States  
Ambassador; Todd Jarvis, Oregon State University; Austen  
Parrish, Indiana University School of Law; Fatima Taha, Oregon  
State University.**

Matthew Kilby

Follow this and additional works at: <https://digitalcommons.du.edu/wlr>



Part of the [Law Commons](#)

---

## Custom Citation

Matthew Kilby, Conference Report, Transboundary Water Issues: Challenges and Opportunities, Presented by: Eric Benjaminson, Former United States Ambassador; Todd Jarvis, Oregon State University; Austen Parrish, Indiana University School of Law; Fatima Taha, Oregon State University., 20 U. Denv. Water L. Rev. 438 (2017).

This Conference Report is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Water Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact [jennifer.cox@du.edu](mailto:jennifer.cox@du.edu), [dig-commons@du.edu](mailto:dig-commons@du.edu).

---

Transboundary Water Issues: Challenges and Opportunities, Presented by: Eric Benjaminson, Former United States Ambassador; Todd Jarvis, Oregon State University; Austen Parrish, Indiana University School of Law; Fatima Taha, Oregon State University.

early beneficial use may help establish a substantial water right for the region's present Indian tribes. The film frames the exploration by discussing intervening historical injustices that prevented local tribes from conducting irrigation.

In order to establish a substantial water right, the local tribal members must first establish evidence proving the existence and the scope of historical water use. To this end, it has been relatively easy to show that pre-historic irrigation channels actually existed. Based on various historical sources, the film estimates that native people constructed over sixty distinct networks of ditch systems in the Owens Valley. But it is much more difficult to show the water quantity used. The more difficult task for people like Harry Williams, a Bishop Paiute tribal member, and others is to prove the quantity of water that flowed through these irrigation systems, but the film estimates tribes might be able show use of up to tens of thousands of acre-feet each year if they successfully applied for water rights.

History has not been kind to the tribes. The indigenous people of Owens Valley were forcibly removed in the 1860s. Even after being allowed to return home, Indians could not purchase land. As a result, the Bishop Paiute and other tribes experienced a "forced, sudden amnesia," and lost their irrigation practices. Then in response to rapid population growth in the early 1900s, the City of Los Angeles began building the Los Angeles Aqueduct and purchasing water rights and land in Owens Valley. Since then, the City of Los Angeles has pumped hundreds of thousands of acre-feet per year from Owens Valley, radically altering the valley.

Unlike many tribes, the Big Pine Paiute and others in the Owens Valley never received a federal Winters right to water, but if tribes can establish beneficial use predating the aqueduct, they could prevent the Los Angeles from diverting massive amounts from the Owens Valley. However, Los Angeles has long been militant in its Owens Valley litigation and owns vast quantities of the area's land. For local Indian tribes to establish a water right, they must create a compelling package of evidence that can accurately describe the prehistoric beneficial use of people in the area.

The film's director, Jenna Cavelle, and others spoke about the film saying it has created a movement within the local community to establish a water right, but tribal communities face an uphill battle because they lack the funding needed to hire experts and accumulate the necessary evidence.

TRANSBOUNDARY WATER ISSUES: CHALLENGES AND OPPORTUNITIES,  
PRESENTED BY: ERIC BENJAMINSON, FORMER UNITED STATES  
AMBASSADOR; TODD JARVIS, OREGON STATE UNIVERSITY; AUSTEN  
PARRISH, INDIANA UNIVERSITY SCHOOL OF LAW; FATIMA TAHA, OREGON  
STATE UNIVERSITY.

This panel consisted of four panelists who discussed separate challenges that attorneys and other professionals face when solving transboundary water issues.

Todd Jarvis, a hydrologist and professor at Oregon State University, began the discussion by outlining six issues anyone working in transboundary water agreements should be ready to face. Jarvis began by outlining the advantages and disadvantages of using conceptual models, which can be important—espe-

cially for groundwater. Second, Jarvis compared countries that allow local management with countries that use national legal framework. Third, a lack of data can prevent countries from wanting to agree to solutions. Fourth, boundaries can change, which can compound other issues associated with transboundary water agreements. Fifth, Jarvis discussed how “dueling experts” can hold back transboundary water agreements through cherry-picked and politicized data. Sixth, Jarvis stated that transboundary water agreements can be expensive to reach.

Next, Eric Benjaminson, a former United States Ambassador to Gabon and to São Tomé and Príncipe and former United States Economic Minister Counselor in Canada, discussed how international disputes over Devils Lake in North Dakota reflect the challenges that professionals working in transboundary water disputes must face. Canada is concerned a plan for a spillway on Devils Lake would have had a negative impact on Lake Winnipeg, the eleventh largest freshwater lake on Earth. One of the biggest problems is that the U.S. federal government largely lacks jurisdiction over the lake making it difficult to intervene.

Austen Parrish, dean of Indiana University’s Maurer School of Law, next presented, arguing that one way to solve transboundary water issues is to shy away from a model that encourages local authorities. He stated that small scale attempts to fix transboundary water issues invariably fail, and such challenges require large-scale and complex solutions. Local authorities can be hyper-political, and lose perspective of the end goal. To show how localized solutions are ineffective, Parrish discussed difficulties that the Confederated Tribes of the Colville Reservation faced when a Canadian mining company, Teck, polluted the tribe’s water supply. Without a transboundary agreement over actions such as Teck’s, it is much harder for United States citizens to seek justice. Parrish used this example to show how vital it is to have transboundary agreements that are respected at a high level of international policy. Without such an agreement, citizens are left to fight under domestic laws and uncertain precedents.

Fatima Taha, a graduate student at Oregon State University, concluded the presentation by discussing her research into resolving transboundary water issues using a live-action “serious game,” designed to simulate and encourage effective transboundary negotiations. In this game, players participate on teams of three. Each team represents a country and its three players participate as a head of state, an agriculturalist, and an environmentalist. Each country must work with other countries to coordinate the development of food grains, meat, dairy, and a healthy environment, but negotiations between teams can quickly fall apart through news of extreme drought or war. Overall, Taha’s game helps participants de-politicize issues and seek an equitable solutions that makes sense for all parties involved.

*Matthew Kilby*