

1-1-2008

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Kate William-Shuck, Book Note, John E. Thorson, Sarah Britton, and Bonnie G. Colby eds., Tribal Water Rights: Essays in Contemporary Law, Policy, and Economics , 11 U. Denv. Water L. Rev. 424 (2008).

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John E. Thorson, Sarah Britton, and Bonnie G. Colby eds., **Tribal Water Rights: Essays in Contemporary Law, Policy, and Economics**

China Water Law 2002), but rather put them the "General Provisions" so that all subsequent chapters would reflect such rights.

Chapter 7 presents the author's conclusions. Hu states that with the development of Chinese society, there is a clear trend towards many different water needs. This development has increased the complexity and difficulty of the management of water. Only a proper water rights system can balance these competing needs and address these problems. Such a water rights system must first define what is the scope or definition of a water resource. It also must balance many competing water demands, keeping in mind the three aspects of water rights discussed above. And it must balance rights and duties to its people while acting in accordance with international law. China must improve its water law to deal with its current water rights issues. Following these principles may effectively address the issues that impair sustainable development in China.

In summary, *Water Rights* presents a fairly comprehensive examination of China's current water dilemma and provides useful suggestions for improvement of China's water rights system. Though at times the language is perhaps stilted and somewhat disjunctive, the author clearly presented and supported his main points. Those with an interest in the Chinese legal system as it pertains to water law should find *Water Rights* illuminating.

Patrick Greenleaf

John E. Thorson, Sarah Britton, and Bonnie G. Colby eds., *Tribal Water Rights: Essays in Contemporary Law, Policy, and Economics*, The University of Arizona Press, Tucson, AZ (2006); 291 pp; \$50.00; ISBN 0-8165-2482-3, hard cover.

Tribal Water Rights is a collection of essays by practitioners and academics working in various areas of Indian water law. This collection expands on the editors' previous work, *Negotiation Tribal Water Rights*, by analyzing settlements and cases to give advice for future negotiations. The four major parts of this book, *State-Tribal-Federal Relations*, *Quantification*, *Settlement*, and *Management* fulfill the purpose of giving practitioners the history behind tribal rights and ideas for today's negotiations.

Chapter 1, *Tribal Sovereignty and Intergovernmental Cooperation*, by Rebecca Tsosie, lays the foundation for the entire book by reviewing the history of tribal sovereignty in relation to the federal government. This chapter reviews the effects of treaties, sovereignty, and agreements with state and federal governments on tribal water rights. It also introduces the audience to the influential *Winters v. United States* decision, where the Supreme Court held that the federal government reserved sufficient water rights for the tribes when it established reservations.

Chapter 2, *Tribal Jurisdiction over Water Quality*, by Beth Wolfson, briefly discusses the Supreme Court decision in *Montana v. United States* in relation to the Clean Water Act. Section 518(e) of the Clean Water Act allows the Environmental Protection Agency to treat tribes as states for the purpose of regulating and enforcing water-quality standards. The author notes that this may create regulatory conflicts between states and tribes because of the trans-boundary nature of water. However, these potential conflicts present an opportunity for advice and examples about the co-management of water quality.

Chapter 3, *The Arizona Homeland Standard Measure of Indian Water Rights*, by Barbara A. Cosens, discusses the Supreme Court case of *Arizona v. California* that established the Practicably Irrigable Acreage (“PIA”) methodology for quantifying tribal rights. Tribes receive the amount of water necessary to irrigate the land feasibly and economically. In comparison, in the Gila River adjudication, the Arizona Supreme Court adopted the Homeland Standard, which considers reservation needs, cultural background, and geographic setting, among other factors, as opposed to agriculture alone for allocating water rights. The author discusses advantages and disadvantages of this new standard on federal support for funding settlements of tribal water rights.

Chapter 4, *The Special Case of Pueblos*, by Sarah Britton, gives an in-depth examination of the unique case of the Pueblo Indians. The Pueblos were under Spanish and Mexican Rule before entering into a trust relationship with the United States under the Treaty of Guadalupe Hidalgo in 1846. Because of this entry into U.S. jurisdiction, the Pueblos distinctively hold fee simple title to their lands. Britton, an editor of this book, examines the cases of “Aamodt I” and “Aamodt II” (*United States v. Aamodt*) that began the attempt to settle the water rights of the Pueblos. The Aamodt II court found the Pueblos have water rights to their lands and they have the highest priority of surface water rights perfected at the time of the 1924 Pueblo Land Acts. However, the Pueblos and the state of New Mexico, along with other interested parties, are still negotiating.

Chapter 5, *Groundwater, Tribal Rights, and Settlements*, by Sarah Britton, first profiles the groundwater-management regime of Montana, Idaho, New Mexico, and Arizona. Next, Britton describes the concept of federal-reserved rights to surface water and groundwater and gives specific examples in Wyoming, Arizona, and Montana. Finally, Britton describes several settlements of tribal rights involving groundwater.

Chapter 6, *Allotment Water Rights*, by Ramsey Kropf, begins by giving a brief overview of the misguided government policy of the General Allotment Act. Allotment continues to have fractional effects on land ownership and can produce different outcomes for water rights between a tribal member-owner and a non-Indian successor-owner. Kropf discusses the Big Horn adjudication, to which Kropf serves as special master, as well as settlement issues and specific examples re-

lated to allotment's effects on water rights. Kropf lists several matters to stay cognizant of when settling or litigating water rights cases involving allotment.

Chapter 7, *The Effects of Non-Indian Development on Indian Water Rights*, by Jerilyn DeCoteau, describes how non-Indian development of water resources and non-Indian policy has "inhibited" and "prohibited" tribal development of water rights. The author states that the policy of the Endangered Species Act ("ESA"), interstate compacts, PIA, and the sensitivity doctrine have moved Indian interests to the back of the line despite their legal priority to water rights. This chapter contains in-depth coverage of the federal agency preference to conserve water resources for endangered species that results in a disproportionately negative effect on tribal interests.

Chapter 8, *Negotiating Indian Water Rights Settlements*, by Michael C. Nelson, explores the Little Colorado River adjudication and the Gila River adjudication. Nelson uses these adjudications as examples for examining the components of a settlement. Nelson breaks down the pro and cons of having a settlement judge, factors that can help or hinder progress, federal and state governments as parties, mediation structure, and relations with the trial judge. Nelson concludes that settlements are superior to adjudication because the outcome often results in actual rights instead of simply paper rights.

Chapter 9, *Reassessing Klamath*, by Lucy Moore and Steve Snyder, examines the failed attempts at alternative dispute resolution ("ADR") involving the Klamath basin. This is a summary of perspectives from eighteen members involved in the ADR brought together in a workshop in Boulder, Colorado. This workshop looked at the ADR and federal court mediation goals, interstate aspects, differing views on science and water supply, the ADR and mediation process, the government's lack of a unified position, multiple processes, leadership, and the foundation for cooperation. The workshop also suggested a process for conflict resolution that may succeed in the future.

Chapter 10, *Filling the Gap in Western and Federal Water Law*, by Barbara A. Cosens, first reviews appropriation and reserved rights, which are often in conflict with each other. Next, the author discusses negotiations for water rights compacts in the interdisciplinary Montana system. The Montana Reserved Water Rights Compact Commission, which the author was once an attorney for, negotiates with tribes on a "government-to-government" level. In these negotiations, the state has a unified position instead of representing the interests of a few water users. The author discusses the specific process involved in the compact-negotiation system and gives examples of its success with multiple tribal water right settlements.

Chapter 11, *What Makes Water Settlements Successful?* by Bonnie G. Colby, describes thirteen criteria that are important when drafting and analyzing water settlement agreements. These criteria include envi-

ronmental sustainability, financial feasibility, and positive net benefits, among others. Colby suggests using the thirteen criteria to inspire settlement ideas and aid negotiation. Colby finally looks at the economic factors of these settlements and suggests that an economist may facilitate negotiations.

Chapter 12, *Tribal Water Codes*, by Cabell Breckenridge, examines tribal water codes. The author first briefly compares tribal water code with state water laws. Next, the author describes the process of creating tribal water code and some limits on tribal authority to do so. The author closes by comparing and contrasting the specific water codes of five tribes.

Chapter 13, *Tribal Management of Hydropower Facilities*, by Clayton Matt, explores the cultural aspect to tribal water law through the Kerr Dam example. The Kerr Dam is on a site of cultural significance to the Salish and Kootenai people. This chapter traces the history of the Salish and Kootenai people, of the Flathead Reservation, with regard to development of the Kerr Dam. The chapter concludes by discussing the economic and cultural benefit to the tribal people when they have the opportunity to own the Kerr Dam in 2015.

Chapter 14, *The Significance of the Indian Water Rights Settlement Movement*, by the editors, John E. Thorson, Sarah Britton, and Bonnie G. Colby, reviews settlements as the current mode of handling water right disputes. They look at tribal empowerment and capacity building, environmental justice and stewardship, economics, regional water management, and the dispute-resolution processes. The editors conclude with a look towards the future of tribal water law settlements.

Each essay in this collection contains a good background to Indian Law that even the neophyte to the complex world of Federal Indian Law can comprehend. The quotes at the beginning of each chapter set the tone for its contents. Additionally, the "Sidebars" contained in select chapters supply additional detail to cases and concepts discussed by the chapter's author. The book lays out practical ways in which those practicing Indian and water law may better serve tribal interests.

Kate Williams-Shuck

Jack L. August, Jr., *Dividing Western Waters: Mark Wilmer and Arizona v. California*, TCU Press, Fort Worth, Texas (2007); 172 pp; \$32.95; ISBN 978-0-87565-354-9, hard cover.

In *Dividing Western Waters: Mark Wilmer and Arizona v. California*, Jack L. August, Jr. chronicles the epic Supreme Court case of *Arizona v. California*. He approaches this seminal legal battle of the twentieth century, highlighting the underlying events, the influential legal and political figures, and the aftermath. In particular, he focuses on the life and career of one key player, Mark Wilmer, lead trial counsel. Far beyond a mere biographical account, this book pays tribute to Wilmer