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GOVERNMENT REPORTS

TODD OLINGER, INDIAN WATER LAW—1997 TRENDS AND DIRECTIONS IN FEDERAL WATER POLICY; A SUMMARY OF THE CONFERENCE PROCEEDINGS, REPORT TO THE WESTERN WATER POLICY REVIEW ADVISORY COMMISSION, THE COMMISSION, Springfield, VA (1997); National Technical Information Service; 109pp; Govt. Doc # Y 3.W 52/2:2 IN, softcover.

The Western Water Policy Review Act of 1992 created the Western Water Policy Review Advisory Commission ("Commission") to conduct a comprehensive review of federal activities in nineteen Western states concerning the synchronization of federal and local water policy objectives. In this legislation, Congress noted that the federal government recognizes its "trust responsibilities to protect Indian water rights and to assist tribes in the wise use of water resources." The Commission held meetings to categorize tendencies in the federal government's method of protecting tribal water resources and to propose recommendations for improvements in federal policies. This report summarizes the Commission's meeting in Phoenix, Arizona on March 17-18, 1997. Olinger divided this summary into five sections—four specific sessions and the letters of testimony from tribes.

The first session, entitled "Western Water Trends and Directions," provided general accounts from scholars, water law practitioners, and tribal members of the history and future of tribal water resources. Professor David H. Getches emphasized the importance of tribal participation in the Western water policy revolution for tribal survival, and the need for tribes to also lead the change in Western water policy trends. Attorney Susan M. Williams focused her discussion on general stream adjudications and whether they adequately resolve Indian water right quantifications. Tribes hold vast water rights, but many are not quantified. Tribes face the difficult task of balancing the advantages and disadvantages of quantification; often when they decide to quantify their rights, the process fails. Chelsea Congdon, a Water Resource Analyst at the Environmental Defense Fund, discussed the effects of environmental water issues on tribal water management. She focused on the importance of cooperation between conservationists and tribes—they face similar challenges and share a lack of political power. Other issues explored in this session included the necessity for stronger leadership focused on Indian water rights, the sacredness of water to many Indian peoples, and the failure to apply Western water law to Indian water rights.

Session II focused on "Watershed Governance and the

Management of Indian Water Resources." In this section, Olinger printed a summary of each speaker's remarks and recommendations. The speakers, with perspectives from different tribes and reservations, expressed similar concerns. Each highlighted the necessity for the federal government to actualize its federal trust obligations by providing adequate funding and legal support. The speakers also expressed problems with the multiplicity and overlap of water resources management responsibilities among federal, state, local, and tribal authorities. Specific tribal worries included the flooding of 350,000 acres of tribal land by federal dams on the Missouri River without tribal compensation, and the settlement agreement between Colorado and the Ute Mountain Ute Reservation that has never been fulfilled.

The third session, "The Water Settlement Process and Resolution of West-Wide Water Issues," presented the perspectives of various parties involved in Indian water law. The book included summaries of remarks made by practitioners, members of Congress, members of the Clinton administration, and members of the Indian communities. Practitioners urged tribes to have a clear vision of their goals before entering the settlement process and to use non-financial forms of leverage and power to their advantage. A minority professional staff member of the Indian Affairs Committee recognized that the federal government's refusal to provide funding for settlements encouraged water rights litigation. The representative from the Department of the Interior stressed the Clinton Administration's commitment to working with tribes to resolve settlement issues. Tribal representatives focused on the necessity of federal commitment and support in settlement negotiations, emphasizing that barriers to the process, such as time and cost, tend to make it unsuccessful.

Session IV, "Enhancing the Role of Tribal Leadership and Participation in Shaping Federal Water Policy—Outlining a Water Resources Action Agenda for Indian Country," discussed ways to repair current problems with the settlement process. This section declared that despite settlement process flaws, settlements remain the best solution for tribal water rights quantification. The Deputy Commissioner of the Bureau of Indian Affairs discussed its budgetary constraints and the need for tribes to recognize that a ranking process prioritizes fund requests.

The last section of Olinger's summary included testimonial letters from various tribes to the Commission. These letters expressed feelings of exclusion from the public participation process, and doubt that the federal government and the Bureau of Indian Affairs will follow their trust obligations. These letters demonstrated the federal government's preferential treatment of hydroelectric interests and subsequent exploitation of tribes by the government's failure to consult or, if proper, compensate affected tribes. The letters also addressed the tribes' inability to market their water, the lack of federal funding to conduct major repairs and upgrades on tribal irrigation systems, and the ensuing tribal crop losses.

Olinger concluded his report with comments made by Secretary of the Interior Bruce Babbitt on the last day of the Commission's meeting. As he began, Babbitt promised "to see if [he] can point towards some directions that can take us out of this season of obvious discontent, or frustrated expectations and, indeed, of uncertainty about where we go in the future." First, he discussed some history of Indian water settlements. He correlated this history to the current lack of tribal leverage in the settlement process. He also focused on monetary concerns (addressed on multiple occasions at the meeting) concluding that "we are all locked into a budget-reduction dance" and little can be done aside from seeking alternative funding sources. Lastly, he advised the Commission to use "imagination" in its final report because the Commission has the potential for great impact.

Melinda B. Barton

D. CRAIG BELL, WATER IN THE WEST TODAY: A STATES' PERSPECTIVE: REPORT TO THE WESTERN WATER POLICY REVIEW ADVISORY COMMISSION, Western States Water Council, National Technical Information Service, Springfield, VA (1997); 58pp; Shipping List Number 97-0359-P, softcover.

Water in the West Today is a general description of the Western states' approach to water issues. Author D. Craig Bell, Executive Director of the Western States Water Council ("WSWC"), makes clear from the beginning that the book is an illustrative examination of Western water. WSWC posed five questions, at the request of the Western Water Policy Review Advisory Commission, to individual Western states via questionnaire and telephone interviews. The five questions were asked in order to identify states' water concerns and programs adopted to address those concerns in the past decade. *Water in the West Today* is a culmination of the states' responses to those questions.

The report begins with an introduction to Western water management. Bell describes federal, state, and tribal roles in protecting water resources. The book also discusses the administrative process by which water is allocated among the states. Bell describes the past few decades as an "era of change," exemplified by the rise of public interest in water resources and the desire to preserve instream flows.

The first question asked the states to identify and describe current and anticipated significant water problems, and received the most uniform responses. As the most urbanized region in the country, the West faces serious problems with adequate water supply and distribution. Practically all of the states noted "growing and changing water supply demands for both offstream and instream needs." Areas