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Review of *The Future of Indian and Federal Reserved
Water Rights: The Winters Centennial* edited by
Barbara Cosens and Judith V. Royster.

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The Future of Indian and Federal Reserved Water Rights: The Winters Centennial. Edited by Barbara Cosens and Judith V. Royster. Albuquerque: University of New Mexico Press, 2012. xiv + 372 pp. Notes, appendices, bibliography, index. \$75.00 cloth.

As one who took an early interest in the water rights of American Indian tribes (*American Indian Water Rights and the Limits of Law*, 1991), I found this book a welcome opportunity to get current on an enduring yet ever-changing area of western water law. In reading it, I was impressed both by what it is and what it is not.

What It Is. This is primarily a report on the proceedings of a conference that the American Indian Law Center and the University of New Mexico's Utton Transboundary Resources Center convened on the centennial anniversary of the U.S. Supreme Court's history-making decision in *Winters v. United States*. In a stunning example of judge-made western federal natural resource management law, a century ago the high court reasoned that whenever the federal government set aside (reserved) lands in the public domain for some specific purpose (in this case, an American Indian reservation), it also by implication laid claim to however much unappropriated water was needed to fulfill the purposes for which the lands were reserved.

The decision and the federal reserved water rights doctrine (a.k.a. the *Winters* Doctrine) it spawned essentially lay dormant for half a century, while the surface waters of the West were

allocated under state law. But in *Arizona v. California* in 1963, the Supreme Court reinfused the doctrine with fresh legal and moral authority, by empowering tribes and federal agencies to sue for reallocation to reservations of waters that the Court deemed rightfully theirs, even if those resources had already been given to others.

From that time forward, state and federal courts throughout the West (and the Supreme Court as well) have hosted a steady stream (and at times a seeming flood) of lawsuits brought by tribal governments, associated advocacy groups, and the federal agencies seeking to affirm their water rights under the precedents set by *Winters* and *Arizona v. California*. Dedicated young legal advocates, both Indigenous and non-Native, strove to convert the potential latent in the *Winters* Doctrine into the practice of reserved waters being turned onto the lands for which the federal courts ruled they were intended.

To a remarkable extent, those very same history-makers were the ones who, a generation later, gathered in conference at Santa Ana Pueblo, New Mexico, in 2008. In the intervening time, they had become leaders in state and federal government agencies managing water resources, founders and directors of legal defense funds, and law professors and deans carrying on the scholarly development of the living entity that is the *Winters* Doctrine.

So this is in large part what this book *is*: a record of reflections, opinions, and recommendations from those who participated in changing the course of the history of western water law. As is the case with such conference proceedings, however, the content tends to be somewhat uneven, partly depending on how much effort the participants put into the preparation of their remarks and written contributions.

Happily, the inevitable gaps are filled in with scholarly research from other contributors. They provide additional historical context and develop a handful of case studies looking at what happens after the courts have issued their decrees (or the parties have reached settlement in the shadow of the court's authority) and stakeholders have to go about converting "paper water" into "wet water" (i.e., reallocation management regimes).

The result is an edited potpourri of conferee comments, contributions of mixed depth and erudition, and contemporary scholarship on the history and current implementation of the federal reserved water rights doctrine. Historians will like it for the same reasons they like the memoirs and insights of veterans of wars fought a generation earlier.

What It Is Not. Paradoxically, what *The Future of Indian and Federal Reserved Water Rights* is *not* is a book about the future of Indian and federal reserved water rights. Less than 10% of the content of the book is devoted to the subject of its title. Granted, some of the most poignant (and perhaps prescient) writing is to be found here, such as some parting words of wisdom from David Getches, then dean of the University of Colorado School of Law and a legend in both the scholarly literature and the admin-

istration of western water law. Fittingly, the book is dedicated to his memory. But the book is simply not what the title promises.

It does a great job of both providing rich historical context and well-developed case studies of the current status of *Winters* Doctrine implementation. Nonetheless, thoughtful consideration of its future appears almost as an afterthought in the book's last section. A far better title would have been something like "American Indian and Federal Reserved Water Rights: The First Hundred Years," or "American Indian and Federal Reserved Water Rights in the Twenty-first Century."

This is a worthy contribution to scholarship on one of the most important doctrines in western water law. Would that its title better conveyed this virtue.

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