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Book Review of *Native Peoples and Water Rights: Irrigation, Dams, and the Law in Western Canada* by Kenichi Matsui

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Native Peoples and Water Rights constitutes a valuable collection of historical case studies that shed light on a category of rights frequently overlooked. These detailed examinations identify the political, economic, and social factors of the late 19th and early 20th centuries that influenced legislative and judicial developments regarding the water rights of North America’s First Peoples.

Beginning with the adoption of John Locke’s property theory in the proagrarian policies of the Jefferson administration, Matsui documents the formative period of water rights in western North America. This analysis skillfully contextualizes Chief Justice McKenna’s seminal decision in Winters v. United States 207 U.S. 564 (1908), which affirmed federal supremacy on Indian reservations, and confirmed the grant of sufficient water to ensure that the reasonable needs of reservation inhabitants were met. An analysis of the protracted dispute over jurisdiction to Native water rights between the Dominion of Canada and the provincial government of British Columbia follows. While the Dominion’s position corresponded to the Winters doctrine, Matsui notes how a strong provincial opposition and the Dominion’s reluctance to expend resources resolving Indigenous conflicts permitted the province to perpetuate the validity of its position. Here the reader would benefit from further investigation regarding the manner in which the province has preserved this position in light of the Privy Council decision of Burrard Power Company v. The King [1911] A.C. 87 finding provincial water legislation inapplicable to federal lands in Canada.

Alongside these imperial notions, Matsui argues that a conception of Native water rights requires an awareness of the regional entanglements that characterize Native-newcomer relations. Accordingly, chapter 4 details the experience of the Secwepemc people of British Columbia, whose desire to develop their irrigated agriculture was frustrated by the Dominion’s failure to litigate on their behalf in the midst of a jurisdictional battle with the province. Similarly, chapter 5 documents the struggles of two southern Alberta tribes, the Tsuu T’inas and the Siksikas, in the face of irrigation legislation that failed to consider Native water rights. Again, the arbitrary and parsimonious support of the Dominion was a chief component exacerbating these struggles.

Finally, chapter 6 examines the development of hydroelectric dams on the reserve lands of the Stoney Nakoda Nation, and the de facto recognition of the water rights of this Alberta tribe arising from corresponding land surrender agreements. Notably absent is any reference to the 1945 amendment to the Natural Resources Transfer Agreement which clarified Canada’s jurisdiction to the waters flowing through the Stoney reserve. This amendment, wholly inapplicable with the province’s assertion of ownership of all waters in Alberta, provides explicit recognition of the rights detailed in this book, and would serve as a natural conclusion. While Matsui is clear his goal is to establish the historical contexts of these conflicts, these legal particularities are undoubtedly a necessary element of the discussion. Oliver W. Maclaren, Lawyer, Rae and Company, Calgary, Alberta, Canada.