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## Review of American Indian Water Rights and the Limits of Law

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in *Arizona v. California*. Since those initial landmark cases, Indian water rights have been eroding, and it is Lloyd Burton's thesis in this fine volume that the Rehnquist Court, in its rush to turn over water regulation to the states, has dealt a catastrophic blow to Indian water rights.

*American Indian Water Rights and the Limits of Law* tells how Indian water rights began and what has happened to them. In a cogent, tightly written work, Burton covers the history of Indian water rights in six chapters. The first two trace the evolution of water rights up to the mid-1970s. It is a time of minimal concern and minimal water usage by Indians. Assaults on tribal sovereignty and tribal lands occurred, but water rights seemed secure.

Burton next gives us Chapter 3, "Legal Issues and Dispute-Managing Methods in Contemporary Water-Rights Conflicts." This is the most important chapter of the book. Here Burton documents the greedy assault by the Reagan Court on Indian water rights. Indians lost rights to water quantity, water quality, and groundwater. They lost their right to use water for economic development. They lost their ability to take their concerns before federal courts. In a classic instance of placing the hen house under the control of the fox, the Supreme Court allowed states to assume jurisdiction over Indian water rights. Numerous, long-standing court opinions were constructively overruled. Indeed, the Rehnquist Court is the most activist, law-making tribunal in the history of Indian water law.

What were tribes to do? Fortunately, Congress was listening, and the 1980s has seen the federal legislature pass laws endorsing water agreements between Indian tribes and municipalities. In Burton's fourth chapter, he discusses how huge water projects have been negotiated and how in the process Indians have secured some, but certainly not all, rights to water. Without this legislation and federal appropriations, Indian water rights would have been lost. The last two chapters offer a case study on Indian groundwater rights and development in Arizona and observations on further settlement negotiations.

*American Indian Water Rights and the Limits of Law*. By Lloyd Burton. Lawrence: University Press of Kansas, 1991. Notes, index, xiii + 174 pp. \$22.50.

Do Indians have a right to water on their reservations? An answer to such a question seems obvious. Water is a part of land, and if you have sovereignty or ownership over the land, even limited sovereignty, rights to the water should follow.

The United States Supreme Court agreed with this logic in 1908 in *Winters v. United States* and helped quantify Indian water rights in 1963

Persons interested in Native Plains peoples will not find a great deal in this book. Water rights on the Plains have not been contested by many tribes, although some important cases have come out of Great Plains water disputes. Montana and Wyoming tribes have been active. Of note is the Wyoming Supreme Court, which seems hell bent on destroying Indian water rights in that state. Burton explains the complexities of the Wyoming litigation nicely. A future update on the Plains will need to concentrate on Indian water rights to the Missouri River basin and the Ogallala Aquifer.

This is one of few publications devoted to the history of the complex issue of Indian water rights. It is timely. It is understandable. And it is foreboding.

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