The Future of Reserved Water Rights

The *Winters* Centennial:
Will Its Commitment to Justice Endure?

June 9-12, 2008

One hundred years after the landmark U.S. Supreme Court decision in *Winters* v. United States established a right to water to support Native American—and federal—reservations, is there enough water to fulfill the promise of *Winters*? Many cases that would define Indian and federal water rights have not been settled and others have not yet been filed. Further, the federal funds that have been an important part of past successful settlements are not being made available even for pending cases. This symposium will provide a history of the *Winters* case, take a hard look at the current state of the doctrine, and foster a dialogue on fair and equitable resolution of pending and future claims.

Presented by

The University of New Mexico School of Law
Utton Transboundary Resources Center

and

The American Indian Law Center, Inc.

at

Hyatt Regency Tamaya Resort
Santa Ana Pueblo, on the Rio Grande north of Albuquerque

We are grateful for support from The Healy Foundation, The McCune Charitable Foundation, and The State Bar of New Mexico, Section on Natural Resources, Energy and Environmental Law.
Program

Monday, June 9, 2008

Evening: Registration and Opening Reception – 7:00 pm – 9:30 pm

Tuesday, June 10, 2008
Registration continues – 8:00 am

Morning:

Invocation – 8:15 am
Ulysses Leon, Governor of Santa Ana Pueblo (invited)
Introduction: Myron Armijo, Tribal Liaison, NM Office of State Engineer

Welcome – 8:30 am
Sanford E. Gaines, Director, Utton Center
Helen Padilla, Director, American Indian Law Center
Marilyn C. O’Leary, former Director, Utton Center

WINTERS IN HISTORICAL FOCUS

♦ Oral Arguments Reenactments – 9:00 am – 10:45 am
Robert T. Anderson, Associate Professor, Director, Native American Law Center,
University of Washington School of Law – narrator

Winters v. U.S.
Thomas W. Fredericks, Esq., Fredericks, Peebles, & Morgan, Louisville, CO –
moderator
Edwin S. Kneedler, Deputy Solicitor General of the United States
Joseph P. Mazurek, Esq., Crowley Law Firm, Helena, MT

Arizona v. California
Susan M. Williams, Esq., Williams & Works, PA, Corrales, NM – moderator
Jeanne S. Whiteing, Esq., Whiteing & Smith, Boulder, CO
Jerome C. Muys, Esq., Muys & Associates, Washington, DC
Edwin S. Kneedler

U.S. v. New Mexico
A. Dan Tarlock, Professor, Chicago-Kent School of Law – moderator
G. Emlen Hall, Professor Emeritus, University of New Mexico School of Law
Edwin S. Kneedler

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♦ Winters in Historical Context – 11:00 am – 12 noon
  Robert T. Anderson – moderator
  Patty Limerick, Director, Center of the American West, University of Colorado.
  Audience discussion

Lunch:
♦ Winters in American History – 12 noon – 1:15 pm
  Speaker: John Shurts, General Counsel, NW Power and Conservation Council, and
  author, INDIAN RESERVED WATER RIGHTS: THE WINTERS DOCTRINE IN ITS SOCIAL AND
  LEGAL CONTEXT, 1880s-1930s.
  Introduction: Barbara Cosens, Professor, University of Idaho College of Law

Afternoon:

WINTERS AND THE CONTEMPORARY LANDSCAPE

John E. Thorson, Administrative Law Judge, California Public Utilities Commission
  – introduction and moderator

♦ Concrete Consequences of Winters:

Case Study #1 Off-Reservation Instream Flows: Nez Perce Settlement (Columbia
  River Basin) – 1:30 pm – 2:45 pm
  Duane T. Mecham, Office of the Solicitor, U.S. Department of the Interior
  Steven Moore, Esq., Native American Rights Fund
  Rebecca Miles, Vice Chair, Nez Perce Tribal Council
  Michael Bogert, Counselor to the Secretary, U.S. Department of the Interior

Case Study #2 Litigation vs. Settlement: Non-Indian Federal Reserved Rights
  2:45 pm – 4:00 pm
  John Leshy, Professor, University of California Hastings College of Law – moderator
  Susan Cottingham, Program Manager, Montana Reserved Water Rights Compact
  Commission
  James DuBois, Esq., U.S. Department of Justice (invited)

Break – 4:00 pm – 4:15 pm

Case Study #3 Actual Results Following Litigation: Wind River/Big Horn
  4:15 pm – 5:30 pm
    Cheyenne, WY – moderator
  Susan M. Williams
  Craig Alexander, Esq., Section Chief, Indian Resources, U.S. Department of Justice
Reception – 6:30 pm

Dinner – 7:30 pm

♦ Film: Rough cut of ‘The American Southwest: Are We Running Dry?’
Jim Thebaut, director, writer and producer, will lead a discussion and elicit audience comments and suggestions on the film, which is an hour-long special to be shown on PBS stations in September, 2008.

Wednesday, June 11, 2008

Morning:

♦ Concurrent field trip options: 8:00 am – 12 noon
  – Santa Ana Pueblo – Ecological restoration of Rio Grande bosque
  – Cochiti Pueblo – Cochiti Dam – history and future implications
  – Zia Pueblo – Land purchases and water use, including gypsum mining
  – Santo Domingo Pueblo – Agricultural irrigation project planning

Afternoon:

IMPLICATIONS OF WINTERS

♦ Perspectives on the History of Winters – 1:00 pm – 2:30 pm
  Charles Wilkinson, Professor, University of Colorado Law School, moderator
  Joe Ely, Stetson Engineers, Inc. and Pyramid Lake Paiute Tribe

The Winters Locale: The Fort Belknap Settlement
  Chris D. Tweeten – Chairman, Montana Reserved Water Rights Compact Commission
  Woldezion Mesghinna, President, Natural Resources Consulting Engineers, Inc.
  Julia Doney, President, Fort Belknap Community Council (invited)

♦ Breakout Sessions – 2:45 pm – 5:30 pm

(A) By Basins – 2:45 pm– 4:00 pm
  Concurrent sessions:

Columbia
  Discussion leaders:
  Rachael Paschal Osborn, Esq., Executive Director, Center for Environmental Law & Policy, Spokane, WA
  Lois Trevino, Water Administrator, Colville Confederated Tribes, Environmental Trust Department
  John M. Volkman, Esq., Energy Trust of Oregon
Missouri
Discussion leaders:
A. Dan Tarlock
David L. Pope, Executive Director, Missouri River Association of States & Tribes
Tony Provost, President, Mni Sose Intertribal Water Rights Coalition, Macy, NE

Colorado
Discussion leaders:
Scott McElroy, Esq. Greene, Meyer & McElroy, PC, Boulder, CO
Jerome C. Muys
Rodney B. Lewis, Esq., Member, Pima and Gila River Indian Community, Sr. Policy Counsel, Akin, Gump, Straus, Hauer & Feld, Washington, DC

Rio Grande
Discussion leaders:
Peter Chestnut, Esq., Albuquerque, NM
G. Emlen Hall
Ernest Coriz, Tribal Planner/Engineer, Pueblo of Santo Domingo

Break – 4:00 pm – 4:15 pm

(B) By Theme – 4:15 pm – 5:30 pm
Concurrent sessions:

Water infrastructure
Discussion leaders:
Ray Benally, Manager, Navajo Nation Department of Water Resources
Robert J. Quint, Deputy Commissioner, Bureau of Reclamation
Daniel McCool, Professor, American West Center, University of Utah

Endangered species and Indian rights
Discussion leaders:
Scott McElroy
Jennifer M. Parody, Middle Rio Grande ESA Coordinator, U.S. Fish and Wildlife Service
John Lesky

Trust responsibility – will the Government continue to assert Indian water rights?
Discussion leaders:
Judith V. Royster, Professor, University of Tulsa College of Law
Tim Vollman, Esq., Albuquerque, NM
Joe Ely
Dinner – 7:00 pm

♦ Keynote Speaker: Secretary of the Interior Dirk Kempthorne, (invited)
   Introduction: Joe A. Garcia, President, National Congress of American Indians, and
   Chair, All Indian Pueblo Council

Thursday, June 12, 2008

Morning:

A POST-WINTERS WORLD

♦ Concluding Plenary Session – 8:30 am – 12 noon
   David H. Getches, Dean, University of Colorado Law School – moderator

Commentary: An American Indian Perspective
   Regis Pecos, Chief of Staff, Office of the Speaker, NM House of Representatives, and
   former Governor, Pueblo de Cochiti

Panel Discussion
   – Have changed circumstances since Winters affected implementation?
   – What processes and institutions will ensure Winters rights for the future?

Panel:
   Michael Bogert
   Barbara Cosens
   Sam Deloria, Director, American Indian Graduate Center Scholars
   John E. Echohawk, Esq., Director, Native American Rights Fund
   John Leshy
   Robert Rosebrough, Esq., Jordan & Rosebrough, PC and former mayor, Gallup, NM
   Jeanne S. Whiteing

Adjourn – 12 noon
THE WINTERS CENTENNIAL: Will Its Commitment to Justice Endure?
June 9 – June 12, 2008
Hyatt Regency Tamaya Resort and Spa
Santa Ana Pueblo, New Mexico

Name: ____________________________________________  email: ________________________________
Mailing address: ________________________________________________  Zip: ________________________
Phone No(s): ______________________________________________________

Representing:  please check one or more of the following
☐ tribal  ☐ state agency  ☐ municipal  ☐ law  ☐ acequias  ☐ environmental organization
☐ farmer  ☐ irrigation  ☐ federal agency  ☐ other

Hotel reservations: The Hyatt Tamaya Resort is holding a block of rooms at $199 plus resort fee and tax.
The cut off date for this rate is May 12, 2008. Call 505-867-1234 or 1-800-233-1234 and mention Winters Centennial to make reservations at this rate.

| Registration Fee – includes all meal functions (not field trip) | $ 495.00 |
| Government, academic and non-profit | $ 395.00 |
| Full-time students call Utton Center for registration |

Tuesday, June 10
Extra guests: lunch with John Shurts  __ X $50  $
Extra guests: dinner with Jim Thebaut  __ X $75

Wednesday, June 11
Field trip - choose one  __ X $55  $
☐ Santa Ana  ☐ Cochiti  ☐ Zia  ☐ Santo Domingo
Extra guests: dinner with Secretary Kempthorne  __ X $75  $

Grand Total  $

PAYMENT INFORMATION
☐ Check drawn on a U.S. bank (payable to the UNM Utton Center)
☐ Visa  ☐ Master Card
Credit Card # ____________________________ Exp. Date_______________________
Name on Card: __________________________ Cardholder Signature: _________________________

Please print and return this completed registration by April 25, 2008 — by fax
if paying with a credit card, or by mail to the Utton Center.