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Do Basin-Wide Adjudications Work, for Tribes or Anyone Else?

Reid Peyton Chambers

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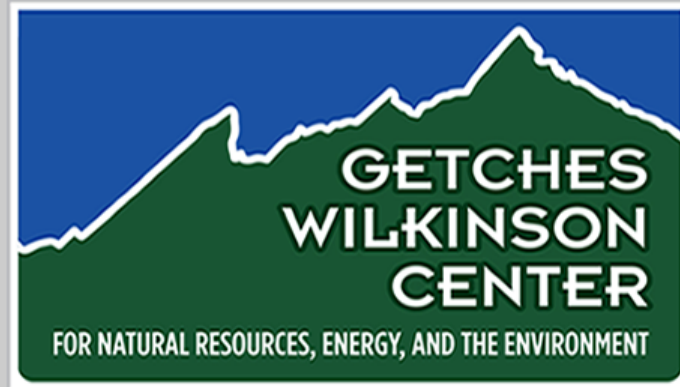
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**DO BASIN-WIDE ADJUDICATIONS WORK,
FOR TRIBES OR ANYONE ELSE?**

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Strategies in Western Water Law and Policy:
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NATURAL RESOURCES LAW CENTER
University of Colorado
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DO BASIN-WIDE ADJUDICATIONS WORK, FOR TRIBES OR ANYONE ELSE?

By Reid Peyton Chambers

- I. My perspective has been formed as an attorney representing tribes over the past three decades, participating in water adjudications and water rights disputes in several (but not all) western states, principally --
 - A. trial and attempted settlement of Big Horn adjudication in Wyoming (1978-84).
 - B. litigation and settlement for Fort Peck Tribes in Montana (1979-1985).
 - C. litigation and settlement negotiations in Little Colorado adjudication in Arizona (1991-present).
- II. Whether the system of basin-wide adjudications has worked depends on what purposes they are intended to serve.
 - A. My perspective is of one dominant purpose -- to determine and quantify open-ended Indian and other federally reserved water rights in a state court forum that would be (presumably) hospitable to state users.
 1. What does two-to-three decades of actual experience tell us?
 - a. states did succeed in having cases tried primarily in state courts -- in my experience state courts have not been generally biased against Indians or especially hospitable to state water users, although sometimes state water agencies and legislatures do seem highly favorable to non-Indian interests.
 - b. only one major case has been litigated determining Indian water rights -- in Wyoming. No other adjudication has been completed.
 - c. most (but not all) western states have enacted adjudication statutes, and these states are generally in the middle of very protracted and costly adjudications.

2. Were the exceptions, such as North and South Dakota, the wisest? i.e., are these adjudications generally hopeless quagmires?
 - a. even if so, do they provide a desirable foundation for productive settlements that satisfactorily integrate Indian tribal water rights into a more general framework in a satisfactory manner? (Compare the experiences of tribes and states generally from 1988 to 1992 with those post-1992.)
- B. Are there other purposes that might justify the large expenditure of time and resources that a general stream adjudication entails, such as:
 1. achieve certainty as to both federal reserved water rights and water rights acquired pursuant to state law, so as to --
 - a. facilitate administration and management of water rights, and/or
 - b. facilitate transfers of water rights from agrarian, rural or mining purposes to municipal or recreational ones?
 2. establish rights in-state to protect against unfavorable outcomes in interstate apportionments?
 3. Others?
- C. To what extent have any of the above purposes actually been achieved?
Do the benefits outweigh the costs?

III. Concluding Thoughts and Questions

- A. Is finality an illusory objective?
- B. Does this process produce a rational allocation of water resources to facilitate economic growth in a fair and equitable manner?
- C. Are there plausible alternatives that limit the costs and length of time?