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Quantification of Federal and Indian Reserved Rights Through Negotiation

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Quantification of federal and Indian reserved rights through negotiation.

I. Introduction. It is intriguing to contemplate the savings in time, money, and effort which could be achieved if federal and Indian reserved rights were quantified through negotiation rather than litigation. Negotiation, moreover, would enable parties to tailor a solution which fit the needs of water users in individual watersheds rather than subject all parties to the much rougher cut demanded by legal rules of general applicability. The advantages of negotiation seem clear, but where are the agreements?

II. Obstacles to negotiation

- A. Cost
- B. Uncertainty in the law
- C. Inability of states to bind private users
- D. Political inability to compromise

III. Federal reserved rights distinguished from Indian reserved rights

IV. Promising circumstances for negotiated settlements

- A. Water surplus areas
- B. Where federal financial assistance is available
 - (1) federal water project
 - (2) federal buy out
- C. Where negotiations are designed to narrow, rather than finally resolve, controversies.
- D. Limited time deferral agreements

V. Actions required to facilitate negotiations

- A. Federal government
- B. States
- C. Tribes