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Citation Information

Fredericks, Thomas W., "The Sale, Lease or Exchange of Indian Water Rights for Energy Development" (1982). *New Sources of Water for Energy Development and Growth: Interbasin Transfers: A Short Course (Summer Conference, June 7-10)*.

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Thomas W. Fredericks, *The Sale, Lease or Exchange of Indian Water Rights for Energy Development*, in *NEW SOURCES OF WATER FOR ENERGY DEVELOPMENT AND GROWTH: INTERBASIN TRANSFERS* (Natural Res. Law Ctr., Univ. of Colo. Sch. of Law 1982).

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THE SALE, LEASE OR EXCHANGE OF
INDIAN WATER RIGHTS FOR ENERGY DEVELOPMENT

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New Sources of Water for Energy
Development and Growth: Interbasin Transfers

a short course sponsored by the
Natural Resources Law Center
University of Colorado School of Law
June 7-10, 1982



THE SALE, LEASE OR EXCHANGE OF INDIAN
WATER RIGHTS FOR ENERGY DEVELOPMENT

1. Introduction: Why Indian water rights
are important in the development of
energy resources.

A. The fact that water is a scarce commodity in the western portion of the United States becomes a more critical problem as the West progresses with increased development of its vast energy resources.

B. The existence of paramount water rights appurtenant to Indian reservations make Indian water rights a prime source for the firm water supply so desperately needed in the development of western energy resources.

C. Before moving to the specific subject of the sale, lease or exchange of Indian water for energy development, it seems appropriate to review the law relating to Indian water rights and the right of Indian tribal government to regulate and control their water rights.

D. With this formulation, it is thus logical to consider the manner in which organizations contemplating energy development may enter into agreements with

Indian tribes to acquire authority through sale, lease or exchange, to use Indian water to meet their need for a firm water supply for energy development in the West.

II. A historical review of the federal law establishing the paramount rights of Indians to the use of water.

A. General attributes of Indian water rights.

1. An Indian water right arises under Federal law. In nearly all cases it comes into being with a reservation is created, whether the act of creation is a treaty, an act of Congress, or an executive order, and it pertains to lands within the reservation.

2. No diversion of water and application to beneficial use is necessary for the creation of an Indian water right: The right arises no later than the date the reservation is established, although the first use of water is much later in time. Moreover, no application for a permit to appropriate water need be made to a State official in order to create an Indian water right because the right stems from federal law. State regulation on initiation of use, purpose, place and manner of use, and forfeiture of the right are inapplicable to Indian water rights.

3. The priority rules of appropriation law do not apply to Indian water rights. Ordinary appropriation rights date their priority from the time of use or from the date of permit; Indian water rights have priority at least from the date the reservation was established.

a. An Indian reservation established in 1868 which commences its first use of water in 1982 has, in times of shortage, a right to receive water ahead of any non-Indian water right with a priority date after 1868.

B. The legal principles governing Indian water rights and the reasons behind them were established by the United States Supreme Court and refined by the lower Federal courts.

1. The U.S. Supreme Court case of Winters v. United States, 207 U.S. 564 (1903), is the foundation on which the law of Indian water rights rests.

a. Significant facts of the case-- The United States sued on behalf of the Indians of the Fort Belknap Reservation to enjoin upstream diversions that interfered with the flow of 120 cubic feet per second of water necessary for

irrigating pasture and farm land on the Reservation. The defense was that the defendants has acquired a water right under State law by diverting and applying water to beneficial use prior to any use of water on the Reservation. The defense was that the defendants had acquired a water right under State law by diverting and applying water to beneficial use prior to any use of water on the Reservation. The defendants claimed that under Montana law and Western water law generally, they were prior appropriators with the superior right.

b. The Supreme Court decided two significant issues in Winters which has since become the doctrinal bases for Indian water rights--The first issue was whether the Federal Government had the power to create a water right for an Indian Reservation. The second issue arose after the Court answered the first issue in the affirmative and involved whether the Federal Government exercised their power when they established the Fort Belknap Indian Reservation.

(i) The Court in deciding the issue of power stated:

The power of the government to reserve the waters and exempt them from appropriation under the state laws is not denied, and could not be. [Citations omitted.] That the government did reserve them we have decided, and for a use which would be necessarily continued through the years. This was done May 1, 1888 [the Reservation was established by an agreement with the Indians.***]

(ii) In deciding the issue of the exercise of power the court laid the foundation for Indian water rights: The case, as we view it, turns on the agreement of May, 1888, resulting in the creation of Fort Belknap Reservation. In the construction of this agreement there are certain elements to be considered that are prominent and significant. The reservation was a part of a very much larger tract which the Indians had the right to occupy and use and which was adequate for the habits and wants of a nomadic and uncivilized people. It was the policy of the

Government, it was the desire of of the Indians, to change those habits and to become a pastoral and civilized people. If they should become such the original tract was too extensive, but a smaller tract would be inadequate without a change of conditions. The lands were arid and, without irrigation, were practically valueless. The Indians had command of the lands and the waters--command of all their beneficial use, whether kept for hunting, 'and grazing roving herds of stock,' or turned to agriculture and the arts of civilization. Did they give up all this? Did they reduce the area of their occupation and give up the waters which made it valuable or adequate *** If it were possible to believe affirmative answers, we might also believe that the Indians were awed by the power of the Government or deceived by its negotiators. Neither view is possible. The Government is asserting the right of the Indians. But extremes need not be taken into

account. By a rule of interpretation of agreements and treaties with the Indians, ambiguities occurring will be resolved from the standpoint of the Indians. And the rule should certainly be applied to determine between two inferences, one of which would support the purpose of the agreement and the other impair or defeat it. On account of their relations to the Government, it cannot be supposed that the Indians were alert to exclude by formal words every inference which might militate against or defeat the declared purpose of themselves and the Government, even if it could be supposed that they had the intelligence to foresee the 'double sense' which might some time be urged against them.' 207 U.S. 564, 575-77 (1908).

(iii) Following Winters, the Supreme Court did not discuss significant aspects of Indian water rights for more than 50 years. The only Supreme Court opinion during the period was United States v. Powers, 305 U.S. 527 (1939), holding that allotted lands sold to non-Indians

shared in the water supply reserved for the Reservation. The Court did not consider the nature and extent of Indian water rights, noting, "The present proceeding is not properly framed to that end." 305 U.S. at 533. However, the lower Federal courts did begin to refine the concepts underlying Indian water rights and struggled with the difficult question of admeasurement of the quantity of the entitlement. It is unnecessary to review all the cases for our purposes. See United States v. Ahtanum Irr. D., 236 F.2d 321 (9th Cir. 1956), on second appeal 330 F.2d 897 (9th Cir. 1964); United States v. Walker River Irr. D., 104 F.2d 334 (9th Cir. 1939); United States v. McIntire, 101 F.2d 650 (9th Cir. 1939) Skeem v. United States, 273 Fed. 93 (9th cir. 1921); Conrad Investment Co. v. United States, 161 Fed. 829 (9th Cir. 1908); United States v. Hibner, 27 F.2d 909 (D. Ida. 1928).

2. In 1963, the Supreme Court of the United States addressed for the second time the question of the nature and extent of Indian water rights. In

reaffirming the Winters doctrine in Arizona v. California, 373 U.S. 546 (1963) decree, 376 U.S. 340 (1964), the Supreme Court clarified substantially the question of quantification of Indian water rights.

a. The Special Master had rejected both an open ended decree, which would have the vices of uncertainty and lack of finality, and final quantification based on projected water requirements on the Reservations, which would have the vice of all projections in granting too much or too little depending on the actuality of the future. Instead, the Master adopted as the full and final measure of water rights for the Reservations the amount of water necessary to irrigate the practicably irrigable acreage on the Reservations.

b. The Supreme Court affirmed this formula, stating:

We also agree with the Master's conclusion as to the quantity of water intended to be reserved. He found that the water was intended to satisfy the future as well as the present needs of the Indian

reservations and ruled that enough water was reserved to irrigate all the practicably irrigable acreage on the reservations. Arizona, on the other hand, contends that the quantity of water reserved should be measured by the Indians' "reasonably foreseeable needs," which, in fact, means by the number of Indians. How many Indians there will be can only be guessed. We have concluded, as did the Master, that the only feasible and fair way by which their future uses will be can only be guessed. We have concluded, as did the Master, that the only feasible and fair way by which reserved water for the reservations can be measured is irrigable acreage. The various acreages of irrigable land which the Master found to be on the different reservations we find to be reasonable. 373 U.S. at 600-01.

c. Although Arizona v. California indicates that "practicably irrigable acreage" is the appropriate formula for measuring the quantity of Indian water rights for Reservations on which farming and ranching were

expected to take place, other Indian Reservations created for other types of occupations may have water rights measured by different formulas.

The general principle seems to be that stated in Winters, that the rule of interpretation of agreements with Indian Nations is that "which would support the purpose of the agreement." Thus, the United States now seeks a decree on behalf of the Pyramid Lake Indians of sufficient water to maintain the Lake and its fisheries. United States and Pyramid Lake Paiute Tribe v. Truckee-Carson Irrigation District, 649 F.2d 1286 (1981).

3. More recent Supreme Court cases have reaffirmed the Federal Reserved water rights found to exist in Winters and Arizona v. California.

a. Congress has the power to reserve unappropriated water for use on appurtenant lands withdrawn from the public domain for specific federal purposes. United States v. New Mexico, 438 U.S. 696, 57 L.Ed.2d 1052 (1978).

b. Where water is needed to accomplish those purposes, a reservation of appurtenant

water is implied. Id at 700; Cappaert v. United States, 426 U.S. 128, 139, 48 L. Ed.2d 523 (1976).

c. The Supreme Court in New Mexico, held:

Where water is necessary to fulfill the very purposes for which a federal reservation was created, it is reasonable to conclude, even in the face of Congress' express deference to state water law in other areas, that the United States intended to reserve the necessary water. Where water is only valuable for a secondary use of the reservation, however, there arises the contrary inference that Congress intended, consistent with its other views, that the United States would acquire water in the same manner as any other public or private appropriator.

United States v. New Mexico, 438 U.S. at 702.

Under this holding, the Supreme Court has limited the reservation of water to the primary purposes for which a federal reservation was created.

d. Indian reserved water rights

may be used for purposes other than which they were originally quantified.

(i) The Special Master in Arizona v. California determined that the purposes for which the reservation was created governed the quantification of reserved water, but not the use of such water:

This [method of quantifying water rights] does not necessarily mean, however, that water reserved for Indian Reservations may not be used for purposes other than agricultural and related uses The measurement used in defining the magnitude of the water rights is the amount of water necessary for agriculture and related purposes because this was the initial purpose of the reservation, but the decree establishes a property right which the United States may utilize or dispose of for the benefit of the Indians as the relevant law may allow.

Report from Simon H. Rifkind, Special Master, to the Supreme Court 265-66 (December 5, 1960) (emphasis added).

(ii) The Department of Interior has

taken the position that a change of use is permissible. See Memorandum from Solicitor of the Department of the Interior to the Secretary of the Interior, February 1, 1964 (use of reserved water for recreation and housing development).

III. The right of Indian Tribal Governments to regulate and control Indian water rights.

A. The concept of Indian Tribal sovereignty is deeply rooted in federal law, having been first pronounced by Chief Justice Marshall in Worcester v. Georgia, 31 U.S. 515 (1832), where the Cherokee Nation was held to have retained authority over its lands and all persons within its boundaries to the exclusion of the laws of the State of Georgia.

1. The Supreme Court, in 1973, in McClanahan v. Arizona State Tax Comm., cast aside an argument that tribal sovereignty no longer exists. 411 U.S. 164, 170-72 (1973).

2. In the case of United States v. Mazurie, 419 U.S. 544 (1975), the Supreme Court explained more fully tribal authority.

a. The central question there was

whether two tribes, co-owners of a reservation, had authority, by express delegation from Congress or by virtue of their sovereignty, to regulate the activities of non-Indians on fee patented land within the Indian reservation.

(i) The Court held:

It is an important aspect of this case that Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory [citing Worcester]; they are 'a separate people' possessing 'the power of regulating their internal and social relations. . . .'"

419 U.S. 544, 557 (1973)

3. The sovereignty that the Indian tribes retain is of a unique and limited character. It exists only at the sufferance of Congress and is subject to complete defeasance. But until Congress acts, the tribes retain their existing sovereign powers. In sum, Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication

as a necessary result of their dependent status.

United States v. Wheeler, 435 U.S. 313, 323, 98 S.Ct. 1079, 1086, 55 L.Ed. 2d 303 (1978) (citations omitted).

4. A tribe's inherent power to regulate generally the conduct of non-members on land no longer owned by, or held in trust for the tribe was impliedly withdrawn as a necessary result of its dependent status. Montana v. United States, 450 U.S. 544 (1981), 101 S.Ct. 1245, 1257, 67 L.Ed.2d 493 (1981). Exceptions to this implied withdrawal exist. A tribe retains the inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the health and welfare of the tribe. Id. This includes conduct that involves the tribe's water rights. See id. at n. 15.

5. Regulatory authority over reservation Indians resides exclusively with the federal government and the Indian tribes.

a. Tribal powers are based on inherent sovereignty. United States

v. Wheeler, 345 U.S. 313 (1978).

b. Federal authority to regulate the use of water based on 25 U.S.C §381.

(i) The extent of the Secretary's authority under this statute has not been addressed by the courts.

6. In the case of Colville Confederated Tribes v. Walton, 647 F.2d 42 (1981) the 9th Circuit Court of Appeals addressed the issue of whether the States had jurisdiction over non-Indian water users within the boundaries of a reservation.

a. The Walton case arose from a dispute as to the rights to water to a creek and basin which is located entirely within the boundaries of the Colville Indian Reservation in the state of Washington. Walton, a non-Indian was irrigating, by pumping, from the creek. He had purchased three allotments and claimed a reserved right as well as a state right to irrigate his land.

b. In deciding the issue of state jurisdiction the Court stated:

We hold that state regulation of water in the No Name system was preempted by the creation of the

Colville Reservation. The geographic facts of this case make resolution of this issue somewhat easier than it otherwise might be. The No Name system is non-navigable and is entirely within the boundaries of the reservation. Although some of the water passes through lands now in non-Indian ownership, all of those lands are also entirely within the reservation boundaries.

(i) The Supreme Court has held that water use on a federal reservation is not subject to state regulation absent explicit federal recognition of state authority. Federal Power Commission v. Oregon, 349 U.S. 435, 75 S.Ct. 832, 99 L.Ed. 1215 (1955). The Supreme Court stated:

It is familiar principle of public land law that statutes providing generally for disposal of the public domain are inapplicable to lands which are not unqualifiedly subject to sale and disposition because they have been appropriated

for some other purpose. . . . [I]t is enough for the instant case, to recognize that these Acts do not apply to this license, which relates only to the use of waters on reservations of the United States. 349 U.S. at 448, 75 S.Ct. at 840 (citations omitted).

(ii) In United States v. McIntire, 101 F.2d 650, 654 (9th Cir. 1934), the Court held that state water laws are not controlling on an Indian reservation:

[T]he Montana statutes regarding water rights are not applicable, because Congress at no time has made such statutes controlling in the reservation. In fact, the Montana enabling act specifically provided that Indian lands within the limits of the state, 'shall remain under the absolute jurisdiction and control of the Congress of the United States.' Identical language appears in the Washington Enabling Act, Ch. 180, 25 Stat. 676, 677 (1889).

(iii) The Court adhered to its holding in McIntire because it found no indication Congress intended the state to have the

power.

(iv) Where land is set aside for an Indian reservation, Congress has reserved it for federal, as opposed to state needs. Because the No Name System is located entirely within the reservation, state regulation of some portion of its waters would create the jurisdictional confusion Congress has sought to avoid.

(v) Public Law 280, Act of August 15, 1953, 67 Stat. 588, did not delegate this regulatory power to the state. Nor did this court perceive the McCarran Amendment, 43 U.S.C. §666, as expanding the state's regulatory powers over water on a federal reservation.

(vi) The Court noted that the state's interest in extending its water law to the reservation is limited in this case. Tribal or federal control of No Name waters will have no impact on state water rights off the reservation.

(vii) The Court concluded that Walton's state permits were of no force and effect.

B. The question of tribal regulatory powers over water uses within reservations has only recently been decided by the

courts. See Colville Confederated Tribes v. Walton, 647 F.2d 42, at 52 (1981). In holding that the tribe's regulatory authority over water was governed by the principles governing tribal powers generally, the 9th Circuit Court of Appeals stated:

Regulation of water on a reservation is critical to the lifestyle of its residents and the development of its resources. Especially in arid and semi-arid regions of the West, water is the lifeblood of the community. Its regulation is an important sovereign power.

Although we need not decide whether this power resides exclusively in the tribe or the federal government or whether it may be exercised by them jointly, its importance forms the backdrop for our consideration of the pre-emption issue. Id. at 52.

1. Tribes may be able to attach conditions to the use of reserved waters and to establish procedures for obtaining the right to use such waters.

IV. The authority of Indian Tribes to enter into agreements for the sale,

lease, or exchange of their water rights.

A. The authority of an Indian tribe to sell its Indian water right is dependent upon a federal statute authorizing such sale.

1. There are no general federal statutes that authorize the sale of Indian water rights separate and apart from the land. Congress was urged to do so by the National Water Commission. Nat'l Water Comm'n, Water Policies for the Future - Final Report to the President, 481 (Washington Government Printing Office, 1973).

2. The Nonintercourse Act prohibits any conveyance of Indian land without federal consent. See Act of June 30, 1834, 4 Stat. 729, 25 U.S.C. §177. Oneida Indian Nation v. County of Oneida, 414 U.S. 661, 667-70 (1974).

a. As a general proposition the word "land" in statutes of this type has been construed to include appurtenant waters. Holmes v. Unites States, 53 F.2d 960 (10th Cir. 1931).

3. The Supreme Court has not directly addressed the issue. In United States v. Ahtanum Irrig. Dist., 236 F.2d 321 (9th Cir. 1965), cert. denied, 352 U.S. 988 (1957) (Ahtanum I), and United States

v. Antanum Irrig. Dist., 330 F.2d 897 (9th Cir. 1964), cert. denied, 381 U.S. 924 (1965) (Ahtanum II), the Court of Appeals for the Ninth Circuit considered the validity of an agreement entered into by the Secretary of the Interior that left the Indians with 25% of the flow of Ahtanum Creek and gave 75% to the non-Indian landowners on the other side. The agreement was analogized to a boundary line adjustment in Ahtanum I and found to be within the Secretary's general powers of supervision and management over Indian affairs delegated in 25 U.S.C. §§2, 9. See 236 F.2d at 335-36; 330 F.2d at 902-03. In Ahtanum II, the Court of Appeals expressly disclaimed having held that the Secretary was authorized to convey Indian water rights and indicated that if that had been the issue it would have concluded that the Secretary lacked the power. Id. at 903. Subsequent decisions narrowly construing the Secretary's powers under 25 U.S.C. §§2, 9, and strictly enforcing the Nonintercourse Act, 25 U.S.C. §177, have undercut the limited extent to which the Secretary's general management powers were upheld in the Ahtanum decisions.

Rincon Band of Mission Indians v.
Escondido Mutual Water Co., No.69-217-S
(S.D. Cal. Jan. 9, 1980). See
Organized Village of Kake v. Egan,
369 U.S. 60, 63 (1962); United States v.
Southern Pac. Transp. Co., 543 F.2d
676, 697-99 (9th Cir. 1976).

5. Although the case law is not conclusive, it is my advise, based on 3 and 4 supra, that potential water users who plan to use "conveyed" Indian water should obtain congressional authorization.

B. The authority of Indian allottees to sell the reserved water rights's appurtenant to their allotments.

1. The General Allotment Act of 1887 provided that land on reservations could be allotted for the exclusive use of individual Indians. Remaining land was to be made available for homesteading by non-Indians. After holding allotted lands in trust for individual Indians for a 25-year period, the federal government could convey the land to the allottee in fee, "discharged of said trust and free of all charge or incumbrance whatsoever." 25 U.S.C. §348.

a. Because the use of reserved water is not limited to fulfilling the original purposes of the reservation, Congress had the power to allot reserved water rights to individual Indians, and to allow for the transfer of such rights to non-Indians. Whether it did so is a question of congressional intent.

b. The only reference to water rights in the Act is found in section 7:

In cases where the use of water for irrigation is necessary to render the lands within any Indian reservation available for agricultural purposes, the Secretary of the Interior is authorized to prescribe such rules and regulations to prescribe such rules and regulations as he may deem necessary to secure a just and equal distribution thereof among the Indians residing upon any such reservation; and no other appropriation or grant of water by an riparian proprietor shall be authorized or permitted to the damage of any other riparian proprietor.
25 U.S.C. §381.

c. There is nothing in the legislative history of the Allotment Act suggesting that Congress gave any consideration to the transferability of reserved water rights.

2. Indian allottees' right to use reserved waters was determined in United States v. Powers, 305 U.S. 527.

a. "When allotments were made for exclusive use and thereafter conveyed in fee, the right to use some portion of tribal waters essential for cultivation passed to the owners." Id. at 532.

3. The general rule is that termination or diminution of Indian rights requires express legislation or a clear inference of Congressional intent gleaned from the surrounding circumstances and legislative history. See Bryan v. Itasca County, 426 U.S. 373, 392-93 (1975); Mattz v. Arnett, 412 U.S. 481, 504-05 (1972).

4. In Walton, supra, at 50, the Ninth Circuit Court of Appeals held that an Indian allottee may sell his right to reserved water. In so holding, the Court stated:

a. By placing allotted lands in trust for 25 years, Congress evinced

an intent to protect Indians by preventing transfer of those lands. But there is no basis for an inference that some restrictions survived beyond the trust period. Congress provided for extensions of the trust period, but directed that fee title be conveyed to the allottee when the period expired. We think the fee included the appurtenant right to share in reserved waters, and see no basis for limiting the transferability of that right.

b. The full quantity of water available to the Indian allottee thus may be conveyed to the non-Indian purchaser. There is no diminution in the right the Indian may convey. We think Congress would have intended, however, that the non-Indian purchaser, under no competitive disability vis-a-vis other water users, may not retain the right to that quantity of water despite non-use. See United States v. Adair, 478 F.Supp. at 348-49; United States v. Hibner, 27 F.2d at 912. Id. at 51.

c. Under the general leasing statute, Indian tribes and individual Indians may lease their land and appurtenant water rights. Skeem v. United States, 273 F. 93 (9th Cir. 1921).

1. Congress has authorized the leasing of "any restricted Indian lands, whether tribally or individually owned, . . . with the approval of the Secretary of the Interior." 25 U.S.C. §415(a).

a. Section 415(a) provides:

Any restricted Indian lands. . . may be leased by the Indian owners, with the approval of the Secretary of the Interior, for public, religious, educational, recreational, residential, or business purposes, including the development or utilization of natural resources in connection with operations under such leases. . . ."

(emphasis added).

(i) This language permits a water right appurtenant to the land to be included in the lease.

2. There is no general federal statute authorizing the leasing of Indian water rights separate from the land.

a. Again, all of the conveyance

problems surrounding the transferring of an interest to use Indian water rights are applicable to the leasing situation.

3. Under 25 U.S.C. 415(a), there exists ample authority to lease appurtenant reserved water rights for energy development on Indian lands.

a. Any such lease of Indian water would have to comply with the law concerning change of use. See generally Ranquist, The Effect of Changes in Place and Nature of Use of Indian Water Rights to Water Reserved Under the "Winters Doctrine." 5 Nat. Resources Law 34 (1972).

D. The right of Indian tribes to exchange their right to the use of water with third parties.

1. In Walton, supra, at 49, the Ninth Circuit Court of Appeals stated:

Finally, we note that permitting the Indians to determine how to use reserved water is consistent with the general purpose for the creation of an Indian reservation--providing a homeland for the survival and growth of the Indians and their way of life.

a. Just how much discretion Indian tribes will have in determining how to utilize their water rights will be left to the Courts to decide on a case by case basis unless Congress enacts a law authorizing the sale, lease or exchange of Indian water rights.

b. In any exchange agreement, Indian tribes will have to overcome the same problems of conveyance and third party rights discussed supra.

2. Exchange agreements have been discussed in the context of deferral agreements. These so called "deferral agreements" also present difficult problems. Under such arrangements, Indian tribes receive consideration for agreeing not to utilize their water rights by, for example, not irrigating portions of their reservations for a period of time, thereby making water available for uses by non-Indians. See Clyde, Special Considerations Involving Indian Rights, 8 Nat. Resources Law. 237, 250-51 (1975) (describing the Ute Indian Tribe's deferral agreement).

a. One critical question is whether this kind of undertaking would be

considered a "conveyance" within the meaning of the Nonintercourse Act. 25 U.S.C. §177. See United States v. Southern Pac. Transp. Co., 543 F.2d 676, 697-99 (9th Cir. 1976). If it is a conveyance, federal consent would be necessary and there is no statute authorizing approval of such an agreement.

b. Another issue is whether tribal constitutions or other governing documents empower the tribal council or other tribal authority to negotiate and execute this type of agreement. This agreement might also have to satisfy the procedural requirements of 25 U.S.C. §81, which concerns contracts with Indian tribes. Pueblo of Santa Rosa v. Fall, 273 U.S. 315, 320-21 (1927); Green v. Menominee Tribe, 233 U.S. 558, 569-71 (1914); United States v. Southern Pac. Transp. Co., 543 F.2d 676, 697 (9th Cir. 1976); Rincon Band of Mission Indians v. Escondido Mutual Water Co., No. 69-217-S (S.D. Cal. Jan. 9, 1980).

3. It is my opinion that exchange agreements will be utilized more and more as people in water short areas attempt to obtain a firm water supply for energy

development.

V. Conclusion.

a. Although there are no statutes specifically authorizing Indian tribes to sell, lease or exchange Indian water rights, there exists sufficient authority to make agreements within the limits of existing law.