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Negotiating Tribal Water Rights: Fulfilling Promises in the Arid West. By Bonnie G. Colby, John E. Thorson, and Sarah Britton.

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In assuming that his reader is familiar with this relatively obscure trial, Oberly misses the opportunity to end with what could have been an elegant epilogue addressing how the tribe may or may not still need to be “a nation of statesmen.” Compounding this reader’s frustration, Oberly explicitly—some might say pedantically, with phrases such as “the first task of the historian is to organize the past into discrete periods”—introduces seven historical periods of the tribe’s history (11). In arguing that the last of these ended in the early 1970s, while also noting that battles over land have continued into at least the 1990s, Oberly leaves the nature of the most recent period(s) in Stockbridge-Munsee Mohican history shrouded in mystery.

The book’s shortcomings, however, must be taken in broad context. They are not inherent to tribal histories. Oberly should be commended for proving the viability of the genre and for making a convincing argument. Hopefully, someone will build upon it.

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**Negotiating Tribal Water Rights: Fulfilling Promises in the Arid West.** By Bonnie G. Colby, John E. Thorson, and Sarah Britton. Tucson: University of Arizona Press, 2005. 192 pages. \$35.00 paper.

Although tribal water rights predate others in the western states, tribal water was used as an incentive for non-Indian settlers to move to the West. Settlers were promised vast amounts of irrigable land with access to water. The US government promoted this westward expansion with federally funded water projects that often diverted water away from tribal lands to lands occupied by non-Indian settlers.

In the meantime, the tribal land base was withered down by federal action until only a fraction of the aboriginal land base was still in tribal control. Precious water was diverted away from the remaining tribal reserved lands with expensive water projects and diversion dams. Unfortunately, it would take years for funding to flow to tribal water projects that could protect the tribes’ ancestral claims to appurtenant water and groundwater supplies.

The federal and state courts have struggled for decades over how to allocate the increasingly scarce supply of water in the western United States. In order to allocate, the system recognizes “first in time, first in right,” a seniority system. The first step in addressing Indian water rights was taken in 1908 in the *Winters* case, where tribal rights were deemed established at the date of the establishment of the particular reservation. The so-called date of priority would seem to be enough to protect tribal water rights. However, to protect tribal water one needs not only the priority date, but also the quantity of water that is assigned to that date.

Nature’s uncertainty, combined with the prior appropriation system, requires that in time of shortage, the impact falls on those with the most junior rights. If the tribal water right is not both established and quantified,

the allocation of water in a time of shortage may leave tribal needs unmet. It was not until 1963 that the Supreme Court adopted a standard for quantification of tribal water rights, the practicable irrigable acreage (PIA) standard. The standard for quantifying the amount of water allocated to tribal reserved land was established as the amount of water needed to irrigate all PIA within the reservation's boundaries.

While the rule has been established, figuring out how to determine the actual amount of water for a particular reservation requires complex computations that are subject to interpretation. The uncertainty of litigating tribal water settlements has resulted in some tribes opting to negotiate settlements, in hopes that by bringing all interested parties to the table, a system of water entitlements and methods for transfer can be developed. Water leasing is a relatively new aspect of water right settlements. The ability to lease a tribal water entitlement can provide a tribe with the certainty of its allocation, but also encourage water conservation because surplus tribal water can be leased to non-Indian users as a form of economic development.

Today the tribes face a complicated process that is costly, time-consuming, and unpredictable, but necessary if they are to protect water rights. *Negotiating Tribal Water Rights: Fulfilling Promises in the Arid West* is an introduction to all of the variables that must be considered in maneuvering through this maze of tribal, local, state, and federal jurisdictions. For possibly the first time, the complex nature of tribal water rights is presented with a detailed background that acknowledges the unique multidimensional fabric that forms the foundation for these rights.

The authors clearly know their stuff, and it makes for interesting reading. However, a note to the wary; this is not a book for the casual reader. The book gets increasingly more complex with each chapter, until you reach chapter 8, where the authors delve into the intricacies of water supply and demand management approaches. This is a good strategy because each chapter builds upon the previous chapter, creating a foundation that grows until you get to chapter 9, which ties together all of the information gleaned from the previous chapters with an excellent and detailed overview of existing water settlement agreements.

To get there, the authors take the reader through a basic course in Indian law, water law, and a discussion of the various state law regimes that have impacted the allocation of water in the West. This complex system has incorporated federal common law and state law rules regarding prior appropriation. The result is a system that is fact and region specific. The fact-specific nature of Indian water law is representative of Indian law in general. Each region of the United States has its unique situation in the law because of the particular history of the area.

The early chapters set forth the legal background of tribal water rights, including a brief overview of Indian law and history that is the core of tribal water rights. The overview of shifting federal Indian policies is concise, but comprehensive enough to give any reader the basics. This history is supplemented with a thorough review of the federal context for Indian water rights. The current federal context includes discussion of issues such as

global warming, competing interests for water entitlements, and an excellent description of the current water uses and the federal agencies that oversee the allocation of water across the country. The discussion on climate variability highlights the precarious nature of water entitlements, and even our very existence, as water is needed for life but is increasingly scarce.

In addition to the very important inclusion of climate change in our modern world, the book provides a very informative presentation of the congressional approval process. Because tribal water settlements require congressional approval, all of the parties to a negotiated water settlement need to understand the legislative and appropriations process. The authors provide the reader with a comprehensive overview of the congressional authorization process in a very understandable way, which is not easy considering the complexities of the approval and appropriation phases of final legislative ratification.

The way that the legislative process discussion is presented in the context of a tribal water-rights negotiation is one reason why it is so understandable. It is important to understand that the complex negotiations are not conducted in a vacuum. The end result has real-life impact on tribal and private users. A chapter on perspectives of tribal legal practitioners and tribal leaders helps identify such users, giving them real voices to articulate their varying interests in the outcome of a negotiated water settlement. The choice of the individuals highlighted combined with the interviewer's questions results in an insider's view of the tribal water-right settlement process that really pulls it all together and shows the importance of inclusion not only to negotiate a settlement agreement, but to get congressional approval and, most importantly, funding.

*Negotiating Tribal Water Rights* is a well-researched and well-written guide to understanding Indian water rights. Many of the ideas presented to assist in the process of negotiating water settlements could very easily be applied to any kind of tribal negotiation or government-to-government consultation. A representative at the table must be open to seeing the opposing points of view and try to understand the reasons for them. If a negotiating party truly seeks results, they will include all interested parties and strive to include them in the end result. Tribes, in particular, face the daunting task of being inclusive, while at the same time educating the other parties about the tribal point of view. This book will provide a tribal representative with tools to be successful in such an endeavor.

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**No One Ever Asked Me: The World War II Memoirs of an Omaha Indian Soldier.** By Hollis D. Stabler. Edited by Victoria Smith. Lincoln: University of Nebraska Press, 2005. 183 pages. \$24.95 cloth.

This work is a fine example of a collaborative biography in which Hollis Stabler, an Omaha Indian, recounts his experiences as a soldier in World War