

Line	<p>In <i>Winters v. United States</i> (1908), the Supreme Court held that the right to use waters flowing through or adjacent to the Fort Belknap Indian Reservation was reserved to American Indians by the treaty establishing the reservation. Although this treaty did not mention water rights, the Court ruled that the federal government, when it created the reservation, intended to deal fairly with American Indians by reserving for them the waters without which their lands would have been useless. Later decisions, citing <i>Winters</i>, established that courts can find federal rights to reserve water for particular purposes if (1) the land in question lies within an enclave under exclusive federal jurisdiction, (2) the land has been formally withdrawn from federal public lands-i.e., withdrawn from the stock of federal lands available for private use under federal land use laws-and set aside or reserved, and (3) the circumstances reveal the government intended to reserve water as well as land when establishing the reservation.</p> <p>Some American Indian tribes have also established water rights through the courts based on their traditional diversion and use of certain waters prior to the United States' acquisition of sovereignty. For example, the Rio Grande pueblos already existed when the United States acquired sovereignty over New Mexico in 1848. Although they at that time became part of the United States, the pueblo lands never formally constituted a part of federal public lands; in any event, no treaty, statute, or executive order has ever designated or withdrawn the pueblos from public lands as American Indian reservations. This fact, however, has not barred application of the <i>Winters</i> doctrine. What constitutes an American Indian reservation is a question of practice, not of legal definition, and the pueblos have always been treated as reservations by the United States. This pragmatic approach is buttressed by <i>Arizona v. California</i> (1963), wherein the Supreme Court indicated that the manner in which any type of federal reservation is created does not affect the application to it of the <i>Winters</i> doctrine. Therefore, the reserved water rights of Pueblo Indians have priority over other citizens' water rights as of 1848, the year in which pueblos must be considered to have become reservations.</p>	<p>(1). According to the passage, which of the following was true of the treaty establishing the Fort Berthold Indian Reservation?</p> <p>(A) It was challenged in the Supreme Court a number of times.</p> <p>(B) It was rescinded by the federal government, an action that gave rise to the <i>Winters</i> case.</p> <p>(C) It cited American Indians' traditional use of the land's resources.</p> <p>(D) It failed to mention water rights to be enjoyed by the reservation's inhabitants.</p> <p>(E) It was modified by the Supreme Court in <i>Arizona v. California</i>.</p> <p>(2). The passage suggests that, if the criteria discussed in lines 10–20 were the only criteria for establishing a reservation's water rights, which of the following would be true?</p> <p>(A) The water rights of the inhabitants of the Fort Berthold Indian Reservation would not take precedence over those of other citizens.</p> <p>(B) Reservations established before 1848 would be judged to have no water rights.</p> <p>(C) There would be no legal basis for the water rights of the Rio Grande pueblos.</p> <p>(D) Reservations other than American Indian reservations could not be created with reserved water rights.</p> <p>(E) Treaties establishing reservations would have to mention water rights explicitly in order to reserve water for a particular purpose.</p>
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