

Indian Water Law, the short version

UNDERNEATH THE SURFACE



bordering reservation

Flathead Allotment Act (1904): Allotments and homesteads, and Flathead Indian Irrigation Project (FIIP), a BIA project.

Nevada v US (1983): The US, as a trustee, can quantify Indian water rights without tribal consent

United States v Anderson (1984): water rights on homesteads

State ex rel Greely v Confederated Salish Kootenai Tribes (1985): Water Use Act adequate on its face; did not rule on question of whether the act is “adequate as applied.”

Treaties: The supreme law of the land, subject to the power of Congress and federal courts

Marshall Trilogy: (1830s): Indian Nations are semi-dependent domestic nations. US is trustee

Hellgate Treaty (July 16, 1855): Rights on and off the Reservation. Tribes retain exclusive right to take fish in all streams running through and

Winters v US (1908): US impliedly reserved water to satisfy the purposes of Indian Reservations

McCarran Amendment (1952): federal government water rights subject to state court jurisdiction. Case law finds McCarran may subject Indian rights to state court.

Colville Confederated Tribes v Walton (1982): water rights on allotments

Montana Water Use Act: A McCarran general water rights adjudication under State Law; claims and permits; Ciotti litigations.

JBC v US and Salish Kootenai Tribes (1986): Tribes have a right to protect aboriginal rights for pre-treaty purposes. US as a trustee must protect treaty fishery.



Indian tribes have unique property and sovereignty rights in the water on and off their reservations.