Native American
Natural Resources Law
Carolina Academic Press
Law Advisory Board

Gary J. Simson, Chairman
Dean, Mercer University School of Law

Raj Bhala
University of Kansas School of Law

Davison M. Douglas
Dean, William and Mary Law School

Paul Finkelman
Albany Law School

Robert M. Jarvis
Shepard Broad Law Center
Nova Southeastern University

Vincent R. Johnson
St. Mary's University School of Law

Peter Nicolas
University of Washington School of Law

Michael A. Olivas
University of Houston Law Center

Kenneth L. Port
William Mitchell College of Law

H. Jefferson Powell
Duke University School of Law

Michael P. Scharf
Case Western Reserve University School of Law

Peter M. Shane
Michael E. Moritz College of Law
The Ohio State University
Native American Natural Resources Law

Cases and Materials

THIRD EDITION

Judith V. Royster
Professor of Law
Co-Director, Native American Law Center
University of Tulsa College of Law

Michael C. Blumm
Jeffrey Bain Faculty Scholar & Professor of Law
Lewis & Clark Law School

Elizabeth Ann Kronk
Associate Professor of Law
Director, Tribal Law & Government Center
University of Kansas School of Law

Carolina Academic Press
Durham, North Carolina
We dedicate this book to Indian Law students everywhere who are concerned about the wise use of the environment of Indian country.
# Contents

<table>
<thead>
<tr>
<th>Table of Cases</th>
<th>xv</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preface</td>
<td>xxiii</td>
</tr>
<tr>
<td>Introduction</td>
<td>xxv</td>
</tr>
</tbody>
</table>

## Chapter I • Land, Religion, and Culture

### A. Indians and the Land

- Frank Pommersheim, *The Reservation as Place: A South Dakota Essay*  
- Navajo Nation Code, Tit. I, § 205  
- Rebecca Tsosie, *Tribal Environmental Policy in an Era of Self-Determination: The Role of Ethics, Economics, and Traditional Ecological Knowledge*  
- Ezra Rosser, *A Historical Indians and Reservation Resources*  

### B. Legal Protection of Religion and Cultural Resources

- *Lyng v. Northwest Indian Cemetery Protective Association*  
- *Navajo Nation v. United States Forest Service*  
- *Bear Lodge Multiple Use Association v. Babbitt* [Bear Lodge II]  
- Executive Order 13007 — Indian Sacred Sites  
- Note on Federal Protection of Cultural Property  
- USDA Forest Service Lake Tahoe Basin Management Unit Record of Decision for Cave Rock Management Direction Final Environmental Impact Statement  

## Chapter II • Some Basics of Federal Indian Law

### A. History of Federal Indian Policy

### B. The Cherokee Cases

- *Cherokee Nation v. Georgia*  
- *Worcester v. Georgia*  

### C. Tribal Sovereignty

- Felix S. Cohen, *Handbook of Federal Indian Law*  

vii
CONTENTS

Cohen's *Handbook of Federal Indian Law* § 4.01[1][a] 68
Notes 69

D. The Federal Role in Indian Country 71
*Lone Wolf v. Hitchcock* 71
Notes 74
Note on Federal Power over Indians 75
Notes on the Trust Doctrine 76

E. Indian Country 78
1. Scope and Extent of Indian Country 78
Note on Indian Country 78
*Oklahoma Tax Comm’n v. Sac and Fox Nation* 79
Note on the Definition of Reservation 81
*Alaska v. Native Village of Venetie Tribal Government* 82
Notes 86
Note on Alaskan Subsistence 88
*Mustang Production Co. v. Harrison* 90
Note on Indian Country in Oklahoma 92

2. Expanding Indian Country 93
*Buzzard v. Oklahoma Tax Commission* 93
Notes 95

3. Contracting Indian Country: Reservation Diminishment 99
*Solem v. Bartlett* 99
Note on the Canons of Construction 106
*South Dakota v. Yankton Sioux Tribe* 107
Notes 113

Chapter III • Land: The Fundamental Resource 115
A. Aboriginal Title 115
*Johnson and Graham’s Lessee v. M’Intosh* 115
Notes 118
*City of Sherrill v. Oneida Indian Nation* 122
Notes 126
*United States ex rel. Hualpai Indians v. Santa Fe Pacific Railroad Co.* 127
Notes 132
*Tee-Hit-Ton Indians v. United States* 135
Notes 139

B. Recognized Title 141
*United States v. Shoshone Tribe of Indians* 142
Notes 144
*United States v. Sioux Nation of Indians* 145
Notes 156

C. Executive Order Reservations 159
*Sioux Tribe of Indians v. United States* 159
Notes 162

D. Submerged Lands 164
*Montana v. United States* 164
Notes 167
*United States v. Cherokee Nation of Oklahoma* 171
Note on Cherokee Claims to the Arkansas River 173

E. Allotted Lands 176
Northern Cheyenne Tribe v. Hollowbreast 176
Note on Fractionation 179
Babbitt v. Youpee 181
Notes 185

Chapter IV • Land Use and Environmental Protection 189
A. Authority to Control Land Use 189
Worcester v. Georgia 190
Notes 190
Montana v. United States 191
Notes 195
New Mexico v. Mescalero Apache Tribe 197
Notes 202
Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation 204
Notes 210
South Dakota v. Bourland 211
Notes 211
Strate v. A-1 Contractors 212
Notes 213
Nevada v. Hicks 214
Notes 216

B. Environmental Protection 218
1. Environmental Authority in Indian Country 218
Phillips Petroleum Co. v. U.S. Environmental Protection Agency 218
Notes 219
EPA Policy for the Administration of Environmental Programs on Indian Reservations 220
Notes 221
State of Washington, Department of Ecology v. United States Environmental Protection Agency 221
Notes 226
City of Albuquerque v. Browner 229
Notes 233
Montana v. U.S. Environmental Protection Agency 235
Notes 239
Arizona Public Service Co. v. Environmental Protection Agency 241
Notes 247
Backcountry against Dumps v. Environmental Protection Agency 248
Notes 251
Note on Tribal Environmental Law 253

2. Application of Environmental Laws to Tribes 254
Notes 254
Blue Legs v. United States Bureau of Indian Affairs 255
Notes 259

3. Environmental Impacts of Development 260
Davis v. Morton 260
CONTENTS

Notes 263
_Sangre De Cristo Development Co., Inc. v. United States_ 264
_Metcalf v. Daley_ 266
Notes 272
Note on Environmental Justice 274

Chapter V • Natural Resource Development 277

A. The Federal-Tribal Relationship in Resource Management 277
   Reid Peyton Chambers & Monroe E. Price, _Regulating Sovereignty: Discretion and the Leasing of Indian Lands_ 278
   Mary Christina Wood, _Protecting the Attributes of Native Sovereignty: A New Trust Paradigm for Federal Actions Affecting Tribal Lands and Resources_ 279
Notes 280
Note on Resource Development Statutes 281
Note on Renewable Energy Resources 286

B. The Breach of Trust Action for Federal Resource Mismanagement 286
   Nell Jessup Newton, _Enforcing the Federal-Indian Trust Relationship after Mitchell_ 286
   _United States v. Navajo Nation_ 288
   _United States v. White Mountain Apache Tribe_ 298
Notes 303
   _Jicarilla Apache Tribe v. Supron Energy Corp._ 306
Notes 307

C. The Tribal Role in Resource Management 309
   _Jicarilla Apache Tribe v. Andrus_ 310
Note on the Environmental Effects of Mining 314
   _United Nuclear Corp. v. United States_ 315
Notes 319
   _Quantum Exploration, Inc. v. Clark_ 321
Notes 324

Chapter VI • Taxation of Natural Resources 325

A. Federal Taxation 325
   _Squire v. Capoeman_ 325
Notes 327

B. Tribal Taxation 329
   _Merrion v. Jicarilla Apache Tribe_ 330
Notes 335
   _Kerr-McGee Corp. v. Navajo Tribe of Indians_ 336
Notes 338
   _Atkinson Trading Co., Inc. v. Shirley_ 339
Notes 341

C. State Taxation 343
Note on State Taxation of Tribal Interests 343
   _County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation_ 344
   _Cass County v. Leech Lake Band of Chippewa Indians_ 347
Notes 349
## Chapter VII • Water Rights

### A. Introduction to Reserved Rights

- United States v. Winans
- Winters v. United States
- Notes
- Note on State Water Law Systems

### B. Extending the Winters Doctrine

- Arizona v. California
- Notes

### C. Scope and Extent of Water Rights

#### 1. Reservation Purposes, Priority Dates, and Quantification

- Note on Reservation Purposes
- Note on Methods of Quantification
- United States v. Adair [Adair I]
- Notes

  - In re General Adjudication of All Rights to Use Water in the Big Horn River System [Big Horn I]
  - In re General Adjudication of All Rights to Use Water in the Gila River System and Source

- Notes

#### 2. Rights to Groundwater

- In re General Adjudication of All Rights to Use Water in the Big Horn River System [Big Horn I]
- In re the General Adjudication of All Rights to Use Water in the Gila River System and Source [Gila River-Groundwater]
- Notes

#### 3. Use of Water Rights

- In re General Adjudication of All Rights to Use Water in the Big Horn River System [Big Horn III]
- Notes
- Note on Water Marketing

#### 4. Rights of Allottees and Subsequent Purchasers

- Colville Confederated Tribes v. Walton
- Notes

#### 5. Right to Water Quality

- United States v. Gila Valley Irrigation District
- Notes

### D. Determination of Water Rights

- Notes
- Pyramid Lake Paiute Tribe of Indians v. Morton
- Nevada v. United States
- Notes
- Note on the McCarran Amendment and State Water Adjudications
- Arizona v. San Carlos Apache Tribe of Arizona
Notes 451
Oversight Hearing on Indian Water Rights: Promoting the Negotiation and Implementation of Water Settlements in Indian Country U.S. Senate Committee on Indian Affairs (March 15, 2012) 453
Statement of Judith V. Royster 453
Note on Water Settlements 455

Chapter VIII · Usufructuary Rights: Hunting, Fishing, and Gathering 459
A. Off-Reservation Rights 460
1. Modern Survival of the Rights
   Minnesota v. Mille Lacs Band of Chippewa Indians 460
   Notes 473
   Note on the Non-Indian Backlash 475
   Public Access Shoreline Hawaii (PASH) v. Hawai‘i County Planning Commission 477
   Notes 480
2. Defeasible Usufructuary Rights 482
   State of Washington v. Buchanan 482
   Notes 488
3. Regulation of the Rights
   Puyallup Tribe v. Department of Game of Washington [Puyallup I] 489
   Notes 492
   Department of Game of the State of Washington v. Puyallup Tribe [Puyallup II] 492
   Note on Limiting Treaty Rights on Public Safety Grounds 494
   Note on Tribal Hunting and Fishing Regulations 494
   Note on On-Reservation versus Off-Reservation Rights 495
4. Scope and Extent 496
   United States v. Winans 496
   Notes 497
   Washington v. Washington State Commercial Passenger Fishing Vessel Association 499
   Notes 507
   Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Wisconsin [LCO-Timber] 511
5. Habitat Protection 513
   Notes 513
   United States v. Washington 516
   Notes 518
   Nez Perce Tribe v. Idaho Power Company 520
   Notes 523
B. Loss and Diminishment of the Rights 525
   Menominee Tribe of Indians v. United States 525
   Oregon Dept. of Fish and Wildlife v. Klamath Indian Tribe 528
   Note on Restoration of Menominee and Klamath Tribes 535
   United States v. Dion 535
   Notes 540
   Anderson v. Evans 543
CONTENTS

Note on Abrogation versus Regulation 548

Chapter IX • International Approaches to Indigenous Lands and Resources 549
A. International Instruments for the Protection of Indigenous Rights 549
   Note: U.N. Declaration on the Rights of Indigenous Peoples 549
   U.N. Declaration on the Rights of Indigenous Peoples 550
   Note: ILO Convention No. 169 553
   The Convention Concerning Indigenous and Tribal Peoples in
   Independent Countries, 1989 553
   Note: Inter-American Draft Declaration 556
   Draft of the Inter-American Declaration on the Rights of
   Indigenous Peoples 556
B. Indian Claims before International Forums 559
   Inter-American Commission on Human Rights, Report No. 75/02,
   Case 11.140, Mary and Carrie Dann 560
   Note: The Inter-American Human Rights System 564
   Committee on the Elimination of Racial Discrimination: Early
   Warning and Urgent Action Procedure, Decision 1 (68):
   United States of America 565
   Notes 566

Index 569
Table of Cases

The principal cases are in bold type. Cases cited in principal cases and within other quoted materials are not included.

Access Fund v. United States Department of Agriculture, 46
Alabama-Coushatta Tribe v. United States, 120
Alaska v. Babbitt, 89
Alaska v. Native Village of Venetie Tribal Gov’t, 78, 82–86, 87–88, 93, 139
Alaska Wilderness League v. Kempthorn, 273
Alcea Band of Tillamooks v. United States, 163
Amoco Production Co. v. Southern Ute Tribe, 144
Amoco Production Co. v. Village of Gambell, 89
Anderson v. Evans, 273, 543–548
Arizona v. California, 163, 374, 375–378, 379–380, 440
Arizona v. California II, 411
Arizona v. California III, 440
Arizona v. San Carlos Apache Tribe, 444–451
Arizona Department of Revenue v. Blaze Construction Co., Inc., 366
Arviso v. Commissioner of Internal Revenue, 328
Ashley v. United Stated Department of the Interior, 304
Atiak Native Community v. Environmental Protection Agency, 90
Atkinson Trading Co. v. Shirley, 210, 216, 321, 339–341, 342
Atlantic States Legal Foundation v. Salt River Pima-Maricopa Indian Community, 259, 404
Attorney General v. Ngati Apa, 134
Babbitt v. Youpee, 181–185, 186
Backcountry Against Dumps v. Environmental Protection Agency, 226, 248–251, 251, 253
Bangor Hydro-Electric Co. v. United States Department of the Interior, 37
Bear Lodge Multiple Use Association v. Babbitt (Bear Lodge I), 34
Bear Lodge Multiple Use Association v. Babbitt (Bear Lodge II), 30–35, 36, 46
Big Eagle v. United States, 328
Big Horn County Electric Cooperative v. Adams, 213, 341–342
Black Hills Institute of Geological Research v. South Dakota School of Mines & Technology, 145
Blatchford v. Native Village of Noatak, 168
Blaze Construction Co. v. Taxation and Revenue Department, 365
Blue Legs v. United States Bureau of Indian Affairs, 255–259, 260
Boarhead Corp. v. Erickson, 40
Bobby v. Alaska, 89
Bonnichsen v. United States, 48–49
Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation, 203, 204–210, 211–212, 235, 239, 336, 341
Brewer-Elliott Oil & Gas Co. v. United States, 170
TABLE OF CASES

Burlington Northern Railroad Co. v. Blackfeet Tribe, 341
Burlington Northern Santa Fe Railroad Co. v. Assiniboine and Sioux Tribes of the Fort Peck Reservation, 342
Buzzard v. Oklahoma Tax Commission, 93–95
Cabazon Band of Mission Indians v. Wilson, 365
Calder v. Attorney General for British Columbia, 133
Cappaert v. United States, 403–404
Carceri v. Norton, 96, 98
Cardin v. De La Cruz, 203
Cass County v. Leech Lake Band of Chippewa Indians, 347–349
Cayuga Indian Nation of New York v. Pataki, 126
Cherokee Nation v. Georgia, 53, 58–61, 76, 119, 195
Cherokee Nation v. State of Oklahoma, 174
Cherokee Nation of Oklahoma v. United States (Claims Court), 175
Cherokee Nation of Oklahoma v. United States (Federal Circuit), 175
Cherokee Nation of Oklahoma v. United States (10th Circuit), 175
Cherokee Tobacco, The, 327
Cheyenne-Arapaho Tribes of Oklahoma v. Oklahoma, 93
Choctaw Nation v Oklahoma, 167, 170–171, 173
Cholla Ready Mix, Inc. v. Civish, 39
Churchill County v. Norton, 441
City of Albuquerque v. Browner, 229–233
City of Boerne v. Flores, 234, 542
City of Sherrill v. Oneida Indian Nation, 121, 122–125, 126
City of Roseville v. Norton, 98
Cobell v. Babbitt, 309
Cobell v. Norton, 309
Colorado River Water Conservation District v. United States, 443, 451–452
Colville Confederated Tribes v. Cavenham Forest Industries, 203
Colville Confederated Tribes v. Everybodytalksabout, 494
Colville Confederated Tribes v. Condon, 254
Colville Confederated Tribes v. Walton, 373, 387, 412, 413–418, 494, 514
Comanche Nation v. United States, 29
Confederated Salish and Kootenai Tribes v. Clinch, 401
Confederated Salish and Kootenai Tribes v. Namen, 203, 401, 404
Confederated Salish and Kootenai Tribes of the Flathead Reservation v. Stultz, 401, 404
Confederated Tribes v. Bonneville Power Administration, 561
Confederated Tribes of Siletz Indians of Oregon v. United States, 99
Confederated Tribes of the Colville Reservation v. Anderson, 494
Confederated Tribes of the Colville Reservation v. Hoover, 217
Cotton Petroleum Corp. v. New Mexico, 358–362, 362–366
County of Oneida v. Oneida Indian Nation, 122
County of Yakima v. Confederated Tribes and Bands of the Yakima Indian Nation, 344–347
Cree Tribe of the Rocky Boy’s Reservation v. United States, 304
Critzer v. United States, 327–328
Crow Creek Sioux Tribe v. Brownlee, 38
Crow Tribe of Indians v. Reipsis, 488
Cutter v. Wilkerson, 29
Davis v. Morton, 260–263, 264
Delgamuukw v. British Columbia, 133
Department of Game of the State of Washington v. Puyallup Tribe (Puyallup II), 492–494, 507
Department of the Interior v. Klamath Water Users Protective Association, 36, 442–443
Department of the Interior v. South Dakota, 96
Dillon v. United States, 327–328
Duro v. Reina, 196
Earl v. Commissioner, 328
Ellis v. Page, 92
TABLE OF CASES

Ellis v. State, 92
Ex Parte Crow Dog, 54
Ex Parte Young, 168–169
Flathead Joint Board of Control v. United States Department of the Interior, 443
Fort Mojave Indian Tribe v. United States, 440
Gila River Indian Community v. Waddell, 365, 380, 407
Gila River Pima-Maricopa Indian Community v. United States, 404
Gobin v. Snohomish County, 210
Governing Council of Pinoleville Indian Community v. Mendocino County, 203
Gros Ventre Tribe v. United States, 306
Guerin v. The Queen, 133
Hodel v. Irving, 180–181, 183, 185
Holt v. Commissioner, 328
Hoopa Valley Tribe v. Nevins, 363
Housing Authority v. Harjo, 93
Hydro Resources, Inc. v. United States Environmental Protection Agency
Idaho v. Coeur d’Alene Tribe, 168
Idaho v. United States, 170
In re General Adjudication of All Rights to Use Water in the Big Horn River System (Big Horn I), 380, 390–395, 401, 402–403, 404–405, 412, 418–419, 481
In re General Adjudication of All Rights to Use Water in the Big Horn River System (Big Horn III), 405–411, 412, 420
In re General Adjudication of All Rights to Use Water in the Big Horn River System (Big Horn IV), 419
In re General Adjudication of All Rights to Use Water in the Gila River System, 395–400, 401
In re General Adjudication of All Rights to Use Water in the Gila River System (Gila River–Groundwater), 403–404, 440–441
In re SRBA, 389–390
In the Matter of Water Use Permit Applications, 481
In the Matter of the Application of Beneficial Water Use Permit Nos. 66459–76L, Ciotti, 401
In re Ninety Mile Beach, 134
Iowa Mutual Insurance Co. v. LaPlante, 255
Jango v. Northern Territory, 134
Jicarilla Apache Tribe v. Andrus, 310–314
Joint Board of Control of the Flathead, Mission, and Jocko Irrigation Districts v. United States, 387
Ka Pa’Akai O Ka’Aina v. Land Use Comm’n, 481
Kansas Indians, The, 343
Karuk Tribe of California v. Ammon, 163
Kenaitez Indian Tribe v. Alaska, 89
Kerr-McGee Corp. v. Navajo Tribe of Indians, 336–338
Keweenaw Bay Indian Community v. Natl., 349
Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc., 78, 254
Kittitas Reclamation District v. Sunnyside Valley Irrigation District, 387, 452, 515
Klamath Tribes v. United States Forest Service, 519
Knight v. Shoshone & Arapaho Indian Tribes, 203
Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Voigt, 474, 482
Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Wisconsin (LCO II), 489
Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Wisconsin (LCO III), 509
Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Wisconsin (LCO IV), 494–495
Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Wisconsin (LCO V), 509
Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Wisconsin (LCO VII), 509
Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Wisconsin (LCO–Timber), 511–512
<table>
<thead>
<tr>
<th>CASE NAME</th>
<th>PAGE NUMBERS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lac du Flambeau Band of Lake Superior Chippewa Indians v. Stop Treaty Abuse-Wisconsin (District Court)</td>
<td>475–476</td>
</tr>
<tr>
<td>Lac du Flambeau Band of Lake Superior Chippewa Indians v. Stop Treaty Abuse-Wisconsin (7th Circuit)</td>
<td>475–476</td>
</tr>
<tr>
<td>Lone Wolf v. Hitchcock</td>
<td>55, 71–74, 77, 186</td>
</tr>
<tr>
<td>Lone Wolf v. Hitchcock</td>
<td>481</td>
</tr>
<tr>
<td>Lummi Indian Tribe v. Hallauer</td>
<td>203, 387</td>
</tr>
<tr>
<td>Lyng v. Northwest Indian Cemetery Protective Ass’n</td>
<td>10–18, 19–20, 36, 39</td>
</tr>
<tr>
<td>Mabo v. Queensland</td>
<td>133–134</td>
</tr>
<tr>
<td>Madison v. Alaska Department of Fish and Game</td>
<td>88–89</td>
</tr>
<tr>
<td>Match-E-Be-Nash-She-Wish Band v. Patchak</td>
<td>97</td>
</tr>
<tr>
<td>McClanahan v. State Tax Commission of Arizona</td>
<td>343</td>
</tr>
<tr>
<td>McDonald v. Means</td>
<td>213</td>
</tr>
<tr>
<td>McDowell v. Alaska</td>
<td>89</td>
</tr>
<tr>
<td>Menominee Tribe of Indians v. United States</td>
<td>523, 525–528, 535</td>
</tr>
<tr>
<td>Mervyn v. Western Australia</td>
<td>134</td>
</tr>
<tr>
<td>Mescalero Apache Tribe v. Jones</td>
<td>78, 81–82, 96, 489</td>
</tr>
<tr>
<td>Metcalf v. Daley</td>
<td>266–272, 548</td>
</tr>
<tr>
<td>Michigan v. Environmental Protection Agency</td>
<td>240, 247</td>
</tr>
<tr>
<td>Michigan Gambling Opposition v. Kemphorne</td>
<td>98</td>
</tr>
<tr>
<td>Mid States Coalition for Progress v. Surface Transportation Board</td>
<td>157</td>
</tr>
<tr>
<td>Milirrpum v. Nabalco</td>
<td>133</td>
</tr>
<tr>
<td>Minnesota v. Mille Lacs Band of Chippewa Indians</td>
<td>460–473, 474, 480, 482, 541</td>
</tr>
<tr>
<td>Montana v. Crow Tribe of Indians</td>
<td>363</td>
</tr>
<tr>
<td>Montana v. United States Environmental Protection Agency</td>
<td>235–239</td>
</tr>
<tr>
<td>Muckleshoot v. Hall</td>
<td>515</td>
</tr>
<tr>
<td>Muckleshoot Indian Tribe v. Lummi Indian Nation</td>
<td>510</td>
</tr>
<tr>
<td>Murphy v. Sirmons</td>
<td>93</td>
</tr>
<tr>
<td>Mustang Production Co. v. Harrison</td>
<td>90–92, 210, 338</td>
</tr>
<tr>
<td>Nance v. Environmental Protection Agency</td>
<td>226</td>
</tr>
<tr>
<td>Narragansett Indian Tribe v. Warwick Sewer Authority</td>
<td>40</td>
</tr>
<tr>
<td>National Farmers Union Insurance Cos. v. Crow Tribe</td>
<td>255</td>
</tr>
<tr>
<td>National Mining Association v. Slater</td>
<td>40</td>
</tr>
<tr>
<td>Navajo Nation v. Peabody Holding Co.</td>
<td>304</td>
</tr>
<tr>
<td>Navajo Nation v. United States</td>
<td>303</td>
</tr>
<tr>
<td>Navajo Nation v. United States Forest Service</td>
<td>19–29, 542</td>
</tr>
<tr>
<td>Nevada v. United States</td>
<td>431–439, 519</td>
</tr>
<tr>
<td>New Mexico v. Mescalero Apache Tribe</td>
<td>197–202, 210, 495–496</td>
</tr>
<tr>
<td>New Mexico ex rel. Reynolds v. Aamodt</td>
<td>404</td>
</tr>
<tr>
<td>New York Indians, The</td>
<td>343</td>
</tr>
<tr>
<td>Nez Perce Tribe v. Idaho Power Company</td>
<td>520–523, 524</td>
</tr>
<tr>
<td>Ninilchik Traditional Council v. United States</td>
<td>89</td>
</tr>
<tr>
<td>No Oilport! v. Carter</td>
<td>515</td>
</tr>
<tr>
<td>Northern Cheyenne Tribe v. Hollowbreast</td>
<td>176–179</td>
</tr>
<tr>
<td>Northern Cheyenne Tribe v. United States Bureau of Land Management</td>
<td>40</td>
</tr>
<tr>
<td>Northwest Indian Cemetery Protective Association v. Peterson</td>
<td>19</td>
</tr>
<tr>
<td>Northwest Sea Farms v. United States Army Corps of Engineers</td>
<td>515</td>
</tr>
<tr>
<td>Oglala Sioux Tribe of Oklahoma v. United States</td>
<td>157</td>
</tr>
<tr>
<td>Oglala Sioux Tribe of Pine Ridge Indian Reservation v. United States Army Corps of Engineers</td>
<td>39</td>
</tr>
<tr>
<td>Oklahoma Tax Commission v. Chicksaw Nation</td>
<td>343–344</td>
</tr>
<tr>
<td>Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma</td>
<td>81, 228</td>
</tr>
<tr>
<td>Oklahoma Tax Commission v. Sac and Fox Nation</td>
<td>79–81, 86, 343–344</td>
</tr>
<tr>
<td>TABLE OF CASES</td>
<td>xix</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>-----------------------------------------</td>
</tr>
<tr>
<td>Oliphant v. Suquamish Indian Tribe, 57,</td>
<td></td>
</tr>
<tr>
<td>Oneida Indian Nation v. County of Oneida,</td>
<td></td>
</tr>
<tr>
<td>Oneida Indian Nation v. State of New York,</td>
<td></td>
</tr>
<tr>
<td>Oneida Nation v. Madison County, 126</td>
<td></td>
</tr>
<tr>
<td>Oregon Department of Fish and Wildlife v.</td>
<td></td>
</tr>
<tr>
<td>Klamath Indian Tribe, 466, 528–535</td>
<td></td>
</tr>
<tr>
<td>Osage Nation v. Irby, 93, 113</td>
<td></td>
</tr>
<tr>
<td>Osage Tribal Council v. Department of Labor,</td>
<td></td>
</tr>
<tr>
<td>260, 304</td>
<td></td>
</tr>
<tr>
<td>Osage Tribe of Indians of Oklahoma v. United</td>
<td></td>
</tr>
<tr>
<td>States, 304</td>
<td></td>
</tr>
<tr>
<td>Ottawa Tribe of Oklahoma v. Logan, 119</td>
<td></td>
</tr>
<tr>
<td>Pakootas v. Teck Cominco Metals Ltd., 260</td>
<td></td>
</tr>
<tr>
<td>Parravano v. Babbitt, 163</td>
<td></td>
</tr>
<tr>
<td>Phillips Petroleum Co. v. United States</td>
<td></td>
</tr>
<tr>
<td>Environmental Protection Agency, 218–219</td>
<td></td>
</tr>
<tr>
<td>Pittsburg &amp; Midway Coal Mining Co. v. Watch-</td>
<td></td>
</tr>
<tr>
<td>man, 91, 338</td>
<td></td>
</tr>
<tr>
<td>Plains Commerce Bank v. Long Family Land</td>
<td></td>
</tr>
<tr>
<td>and Cattle Co., 216</td>
<td></td>
</tr>
<tr>
<td>Public Access Shoreline Hawaii v. Hawai’i</td>
<td></td>
</tr>
<tr>
<td>County Planning Commission, 477–480, 519</td>
<td></td>
</tr>
<tr>
<td>Public Service Co. v. Shoshone–Bannock Tribes</td>
<td></td>
</tr>
<tr>
<td>260</td>
<td></td>
</tr>
<tr>
<td>Pueblo of Sandia v. United States, 37, 39</td>
<td></td>
</tr>
<tr>
<td>Puget Sound Gillnetters v. United States</td>
<td></td>
</tr>
<tr>
<td>District Court, 499</td>
<td></td>
</tr>
<tr>
<td>Puget Sound Gillnetters Association v. Moos,</td>
<td></td>
</tr>
<tr>
<td>499</td>
<td></td>
</tr>
<tr>
<td>Purse Seine Vessel Owners Association v.</td>
<td></td>
</tr>
<tr>
<td>Tollefson, 499</td>
<td></td>
</tr>
<tr>
<td>Puyallup Indian Tribe v. Port of Tacoma, 168,</td>
<td></td>
</tr>
<tr>
<td>488</td>
<td></td>
</tr>
<tr>
<td>Puyallup Tribe v. Department of Game of</td>
<td></td>
</tr>
<tr>
<td>Washington (Puyallup I), 488, 489–492, 497–498, 507</td>
<td></td>
</tr>
<tr>
<td>Puyallup Tribe v. Department of Game of</td>
<td></td>
</tr>
<tr>
<td>State of Washington (Puyallup III), 488,</td>
<td></td>
</tr>
<tr>
<td>495–496, 498</td>
<td></td>
</tr>
<tr>
<td>Pyramid Lake Paiute Tribe of Indians v.</td>
<td></td>
</tr>
<tr>
<td>Morton, 426, 427–431, 441–442, 481, 519</td>
<td></td>
</tr>
<tr>
<td>Quantum Exploration, Inc. v. Clark, 321–324</td>
<td></td>
</tr>
<tr>
<td>Quapaw Tribe of Oklahoma v. Blue Tee Corp.,</td>
<td></td>
</tr>
<tr>
<td>253</td>
<td></td>
</tr>
<tr>
<td>Quechan Tribe of the Fort Yuma Reservation</td>
<td></td>
</tr>
<tr>
<td>v. United States Department of the Interior,</td>
<td></td>
</tr>
<tr>
<td>40</td>
<td></td>
</tr>
<tr>
<td>Quinault Indian Nation v. Grays Harbor</td>
<td></td>
</tr>
<tr>
<td>County, 350, 364</td>
<td></td>
</tr>
<tr>
<td>R. v. Marshall, 11, 133</td>
<td></td>
</tr>
<tr>
<td>Red Lake Band of Chippewa Indians v. United</td>
<td></td>
</tr>
<tr>
<td>States, 328</td>
<td></td>
</tr>
<tr>
<td>Reppun v. Board of Water Supply, 481</td>
<td></td>
</tr>
<tr>
<td>Rice v. Rehner, 197</td>
<td></td>
</tr>
<tr>
<td>Roy v. Bowen, 18</td>
<td></td>
</tr>
<tr>
<td>San Carlos Apache Tribe v. United States</td>
<td></td>
</tr>
<tr>
<td>(9th Cir.), 40</td>
<td></td>
</tr>
<tr>
<td>Sangre de Cristo Development Co., Inc. v.</td>
<td></td>
</tr>
<tr>
<td>United States, 264–266</td>
<td></td>
</tr>
<tr>
<td>Santa Clara Pueblo v. Martinez, 255</td>
<td></td>
</tr>
<tr>
<td>Santa Rosa Band of Indians v. Kings County,</td>
<td></td>
</tr>
<tr>
<td>95</td>
<td></td>
</tr>
<tr>
<td>Satiacum, 328</td>
<td></td>
</tr>
<tr>
<td>Seufert Bros. v. United States, 488, 497, 507</td>
<td></td>
</tr>
<tr>
<td>Settler v. Lameer, 495</td>
<td></td>
</tr>
<tr>
<td>Shivwits Band of Paiute Indians v. Utah, 203</td>
<td></td>
</tr>
<tr>
<td>Shoshone Indian Tribe of the Wind River</td>
<td></td>
</tr>
<tr>
<td>Reservation v. United States, 305</td>
<td></td>
</tr>
<tr>
<td>Simon v. The Queen, 133</td>
<td></td>
</tr>
<tr>
<td>Sioux Tribe of Indians v. United States,</td>
<td></td>
</tr>
<tr>
<td>159–162</td>
<td></td>
</tr>
<tr>
<td>Skeem v. United States, 413</td>
<td></td>
</tr>
<tr>
<td>Skokomish Indian Tribe v. Mosbarger, 218</td>
<td></td>
</tr>
<tr>
<td>Skokomish Indian Tribe v. United States, 387,</td>
<td></td>
</tr>
<tr>
<td>523</td>
<td></td>
</tr>
<tr>
<td>Snoqualmie Indian Tribe v. Federal Energy</td>
<td></td>
</tr>
<tr>
<td>Regulatory Commission, 40</td>
<td></td>
</tr>
<tr>
<td>Sohappy v. Smith, 498</td>
<td></td>
</tr>
<tr>
<td>South Dakota v. Bourland, 211, 212, 336,</td>
<td></td>
</tr>
<tr>
<td>495</td>
<td></td>
</tr>
<tr>
<td>South Dakota v. United States Department of</td>
<td></td>
</tr>
<tr>
<td>the Interior, 96–97</td>
<td></td>
</tr>
<tr>
<td>South Dakota v. Yankton Sioux Tribe, 95,</td>
<td></td>
</tr>
<tr>
<td>107–113, 114, 343, 474</td>
<td></td>
</tr>
<tr>
<td>Sparrow v. R., 133</td>
<td></td>
</tr>
<tr>
<td>Squire v. Capoeman, 325–327, 328</td>
<td></td>
</tr>
<tr>
<td>State v. Elliott, 127</td>
<td></td>
</tr>
<tr>
<td>State v. Hanapi, 480</td>
<td></td>
</tr>
<tr>
<td>State v. Klindt, 93</td>
<td></td>
</tr>
</tbody>
</table>
State v. Littlechief, 93
State Department of Ecology v. Acquavella (flushing flows), 389
State Department of Ecology v. Acquavella (tributary flows), 389
State Engineer v. South Fork Bank of the Te Moak Tribe, 452
State ex. rel Greely v. Confederated Salish & Kootenai Tribes, 419
State ex rel. Martinez v. Kerr-McGee, 389
State ex rel. May v. Seneca-Cayuga Tribe, 93, 126
State of Washington v. Buchanan, 482–488
Strate v. A–1 Contractors, 212–213, 255, 341
Strom v. Commissioner of Internal Revenue, 328
Superintendent of Five Civilized Tribes v. Commissioner of Internal Revenue, 328
Tee–Hit–Ton Indians v. United States, 135–138, 139, 141
Thompson v. County of Franklin, 349
Tooigah v. United States, 92
Tulee v. Washington, 497, 507
Tweedy v. Texas Co., 404
United Nuclear Corp. v. United States, 315–319
United States v. 43 Gallons of Whiskey, 327
United States v. Abousleman, 373
United States v. Adair (Adair II), 388
United States v. Alaska, 170
United States v. Anderson (taxation), 329
United States v. Anderson (water rights–district court), 387, 514
United States v. Anderson (water rights–9th Cir.), 419–420
United States v. Antoine, 542
United States v. Billie, 540
United States v. Bresette, 540–541
United States v. Cherokee Nation of Oklahoma, 171–173
United States v. Clapox, 53
United States v. Daney, 328
United States v. Dann, 127, 559–567
United States v. Dion, 77, 163, 389, 535–540, 541, 548
United States v. District Court in and for Eagle County, 443
United States v. Friday, 542
United States v. Gerber, 38
United States v. Gila Valley Irrigation District, 420–426
United States v. Hardman, 542
United States v. Hicks, 488
United States v. Holt State Bank, 168
United States v. Hugs, 542
United States v. Idaho, 390
United States v. Jicarilla Apache Nation, 305
United States v. John, 82
United States v. Kagama, 54, 76–77
United States v. Lara, 196
United States v. Lummi Tribe, 510
United States v. Mazurie, 332
United States v. McBratney, 190
United States v. Midwest Oil Co., 162
United States v. Mitchell (Mitchell I), 304
United States v. Mitchell (Mitchell II), 304
United States v. Muckleshoot Tribe, 510, 515
United States v. Navajo Nation, 288–298, 303
United States v. New Mexico, 379
United States v. Newmont USA Ltd., 259
United States v. Oklahoma Gas & Electric Co., 92
United States v. Oliver, 542
United States v. Oregon, 451
United States v. Orr Water Ditch Company, 412, 442
United States v. Ramsey, 93
United States v. Roberts, 96
United States v. Sandoval, 86
United States v. Shoshone Tribe of Indians, 142–144, 145
United States v. Sioux Nation of Indians, 145–156
United States v. Tawahongue, 542
United States v. Tohono O’Odham Nation, 308
United States v. Vasquez–Ramos, 543
United States v. Washington (Boldt Decision) (district court), 499, 511
United States v. Washington (Boldt Decision) (9th Circuit), 499, 511
<table>
<thead>
<tr>
<th>Case</th>
<th>Page(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States v. Washington (Chehalis Tribe)</td>
<td>510</td>
</tr>
<tr>
<td>United States v. Washington (disestablishment of Puyallup reservation)</td>
<td>507</td>
</tr>
<tr>
<td>United States v. Washington (fishing rights)</td>
<td>495</td>
</tr>
<tr>
<td><strong>United States v. Washington</strong> (habitat protection)</td>
<td>516–18</td>
</tr>
<tr>
<td><strong>United States v. Washington</strong> (habitat protection), 516–18, 524, earlier decisions, 508, 514</td>
<td></td>
</tr>
<tr>
<td>United States v. Washington (hatchery fish)</td>
<td>507, 509</td>
</tr>
<tr>
<td>United States v. Washington Department of Ecology</td>
<td>387, 405, 412</td>
</tr>
<tr>
<td>United States v. Webb</td>
<td>114</td>
</tr>
<tr>
<td><strong>United States v. White Mountain Apache Tribe</strong></td>
<td>298–303, 304</td>
</tr>
<tr>
<td><strong>United States ex rel. Hualpai Indians v. Sante Fe Pacific Railroad Co.</strong></td>
<td>127–132, 474</td>
</tr>
<tr>
<td>Ute Mountain Ute Tribe v. Rodriguez</td>
<td>363</td>
</tr>
<tr>
<td>Vieux Carre Prop. Owners, Residents &amp; Assoc., Inc. v. Brown</td>
<td>40</td>
</tr>
<tr>
<td>Wagnon v. Prairie Band of Potawatomi Nation</td>
<td>365</td>
</tr>
<tr>
<td>Ward v. Race Horse</td>
<td>473</td>
</tr>
<tr>
<td>Washington v. Confederated Tribes of the Colville Indian Reservation</td>
<td>159, 202, 328–329</td>
</tr>
<tr>
<td>Washington Department of Ecology v. Yakima Reservation Irrigation District</td>
<td>389</td>
</tr>
<tr>
<td>Wheeler v. United States</td>
<td>196</td>
</tr>
<tr>
<td>Wik Peoples v. Queensland</td>
<td>134</td>
</tr>
<tr>
<td>Williams v. City of Chicago</td>
<td>474</td>
</tr>
<tr>
<td>Williams v. Lee</td>
<td>190–191, 196</td>
</tr>
<tr>
<td>Wisconsin v. Environmental Protection Agency</td>
<td>234</td>
</tr>
<tr>
<td>Wisconsin v. Yoder</td>
<td>19</td>
</tr>
<tr>
<td>Wyoming v. United States</td>
<td>380, 390, 401, 452</td>
</tr>
<tr>
<td>Yankton Sioux Tribe v. Gaffey</td>
<td>114</td>
</tr>
<tr>
<td>Yankton Sioux Tribe v. Podhradsky</td>
<td>95, 114</td>
</tr>
<tr>
<td>Youngbull v. United States</td>
<td>141</td>
</tr>
</tbody>
</table>
Preface to the Third Edition

We have been quite pleased with the reception the first two editions of Native American Natural Resources Law received. It has been especially gratifying to see our efforts encourage the establishment of a new course in the law school curriculum, one which bridges Indian law and natural resources and environmental law. Some of our colleagues have been uncommonly enthusiastic about both the casebook and the subject matter. See, e.g., Debra Donahue, A Call For Native American Natural Resources in the Law School Curriculum, 24 Journal of Land, Resources, and Environmental Law 211 (2004). We are especially pleased that one of the new generation of Indian law scholars has joined us as an author on this third edition.

In the five years since the second edition, the field of Native American natural resources law has continued to expand, and this edition reflects those developments: in legislatures, in the courts, and in the legal commentary. Recent legislation has been particularly important in the energy field. On the federal judicial level, the tension between Congress and the Supreme Court continues: while the Supreme Court has continued its apparent hostility toward tribal sovereignty, tribal governments continue to gain important regulatory roles under federal statutes. And although some state courts have read tribal water rights extremely narrowly, for the most part tribal property rights continue to gain judicial recognition and protection.

We continue to believe that this book is adaptable to either an advanced course in Indian law for students whose principal interest is Indian law, or an advanced natural resources law course for students whose principal interest is in natural resources law, or for students whose interest lies in the intersection between the two fields. We have tried to design this book so that students need not have taken either the basic Indian law course or the basic natural resources law course to take this course.

A word about editing in this edition: in order to increase the book’s readability, we have generally eliminated ellipses in our edits of cases and commentary, retaining ellipses only to indicate material that has been edited out within a paragraph.

We look forward to continuing to follow developments in this dynamic field for years to come. Professor Blumm thanks the Rocky Mountain Mineral Law Institute for research assistant help at an early stage of the development of this casebook. He also wishes to thank Kate Shumway, 2L, Lewis and Clark Law School, for superb editorial work on this edition.

JVR
MCB
EAK