

**Facts:**

The Setting: The Milk River Basin in Montana

In 1888, the Fort Belknap was established. The land along the Milk River was then opened to homestead.

Winters and other homesteaders in the suit, began diverting water to irrigate their land as early as 1895. The Fort Belknap agency began diverting water on July 5, 1898.

Low summer flow would not serve both. The diversions of the upstream settlers thus prevented water from flowing downstream to the reservation headgates. The United States sought an injunction against upstream diversions on behalf of the Reservation.

**Issue:** What is the legal basis for a water right for an Indian reservation?

**Analysis:**

Treaty Rights: the main argument and the one most closely following on Supreme Court precedent involving:

- The understanding of the Indians: One of the canons of construction of Indian treaties is that the treaty, having been memorialized in the language of the dominant culture, will be interpreted as the Indians would have interpreted it.
  - Thus Justice McKenna, writing for the majority in 1905 in *Winans* held that a treaty right to hunt and fish at the usual and accustomed places off the reservation implied a right of continued access to those places even when the access points became private land.
  - The authority of Congress/Executive to enter a treaty reserving water
- Quote from Winters: -- The understanding of the Indians: In interpreting the treaty to have been an agreement that reserved water, the Court states:

"[t]he 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?"
- Quote from Winters: -- The power of the government to enter the treaty

“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.”

**Holding:** Injunction against Winters et al upheld