

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
)  
Federal-State Joint Board on ) CC Docket No. 96-45  
Universal Service )  
)  
Western Wireless Corporation )  
Petition For Designation as an )  
Eligible Telecommunications Carrier )  
And For Related Waivers To )  
Provide Universal Service To )  
The Crow Reservation in Montana )

JURISDICTIONAL SUPPLEMENT

Western Wireless Corporation ("Western Wireless") submits this Jurisdictional Supplement, in response to the Commission's directive in the *Twelfth Report and Order*, 1/ to demonstrate that the FCC has jurisdiction to designate Western Wireless under 47 U.S.C. § 214(e)(6) to provide universal service to the Crow Reservation in Montana as an eligible telecommunications carrier ("ETC"). 2/ In support of its jurisdictional showing, Western Wireless has obtained the expert opinion of Professor Richard B. Collins of the University of Colorado School of Law.

1/ *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 00-208, ¶ 140 (released June 30, 2000) ("*Twelfth Report and Order*").

2/ 47 U.S.C. § 214(e)(6) ("In the case of a common carrier . . . not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an [ETC].").

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For over 30 years, Professor Collins has conducted academic work and practiced in the field of federal Indian law, serving as author and editor of one of the principal federal Indian law treatises, and acting as counsel in numerous Indian law cases, including several before the U.S. Supreme Court. <sup>3/</sup> As Professor Collins' Opinion Letter clearly establishes, there is ample jurisdictional support for the Commission to designate Western Wireless as an ETC for the Crow Reservation.

## I. BACKGROUND

Western Wireless filed a petition with the FCC for designation as an ETC for the Crow Reservation as part of the company's effort to help improve basic telephone service in Indian country by bringing a new universal service offering to the Reservation. <sup>4/</sup> In the Crow ETC Petition, Western Wireless averred that it satisfies the ETC criteria in Section 214(e)(1) of the Act, and that the company's proposed universal service offering directed to the Crow Reservation is not subject to the jurisdiction of the Montana Public Service Commission ("PSC"). <sup>5/</sup> After the comment and reply period for the Crow ETC Petition, the FCC issued the *Twelfth Report and Order*, in which it adopted new universal service support rules

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<sup>3/</sup> An Opinion Letter from Professor Collins to Gene DeJordy, Vice President of Regulatory Affairs for Western Wireless, along with Professor Collins' *curriculum vitae* is attached as an Appendix to this Jurisdictional Statement (the "Opinion Letter").

<sup>4/</sup> See *Western Wireless Corporation Petitions for Designation as an Eligible Telecommunications Carrier and for Related Waivers to Provide Services Eligible for Universal Service Support to Crow Reservation, Montana*, CC Docket No. 96-45, Public Notice, DA 99-1847 (released Sept. 10, 1999) ("Crow ETC Petition").

<sup>5/</sup> Crow ETC Petition at 2-13.

especially intended to help improve telephone penetration on tribal lands, and a jurisdictional framework for ETC petitions filed pursuant to Section 214(e)(6). 6/ In the *Twelfth Report and Order*, the Commission acknowledged its responsibility under the federal trust relationship with the nation's Indian Tribes, 7/ and established itself as the initial arbiter of whether federal or state jurisdiction applies to an ETC petition for Indian reservations. 8/ At the same time, the FCC invited Western Wireless to supplement the record in this proceeding, consistent with the jurisdictional framework adopted in the *Twelfth Report and Order*, to demonstrate the Commission's jurisdiction to designate Western Wireless as an ETC on the Crow Reservation. 9/

## II. DISCUSSION

Western Wireless submits that the factual circumstances surrounding its proposed service to the Crow Reservation, as well as governing principles of Indian law, make it clear that the FCC has jurisdiction (and the Montana PSC lacks

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6/ See *supra* note 1.

7/ *Id.*, ¶¶ 22-23.

8/ *Id.*, ¶¶ 127.

9/ *Id.* ¶¶ 138-140. In the *Twelfth Report and Order*, the Commission commits to resolving the merits of Western Wireless' Crow ETC Petition within six months of determining that it has jurisdiction to do so. *Id.*, ¶ 121. Western Wireless notes that the Crow Tribe has already submitted an initial jurisdictional analysis of this matter. See *Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings*, CC Docket No. 96-45, Report No. 2439 (released Sept. 11, 2000), published in 65 Fed. Reg. 55979 (Sept. 15, 2000) (reflecting submission of petitions for reconsideration of the *Twelfth Report and Order*, including a petition filed by the Crow Tribal Council) ("Crow Tribe Petition for Reconsideration").

jurisdiction) over the Crow ETC Petition. First, the facts of the matter are clear. Western Wireless proposes a universal service offering that is targeted to the Crow Reservation. The population of that reservation is 74% Native American, and the land on the reservation is 70% owned by or dedicated to the use of members of the Crow Tribe. 10/ Moreover, the company voluntarily entered into an arrangement with the tribe that demonstrates Western Wireless' consent to the tribe's authority.

It is also significant that there is no treaty or other legal document in which the Crow Tribe consented to state jurisdiction. 11/ Indeed, the State of Montana's admission to the union in 1889 – subsequent to the 1868 Treaty of Fort Laramie establishing the Crow Reservation – was explicitly made subject to the preexisting arrangements with the Crow and other tribes. 12/ Consistently,

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10/ See Opinion Letter at 2 (citing *Montana v. United States*, 450 U.S. 544, 548 (1981)). The land figure in the text includes federal land with Indian trust land because it is used for federal Indian agency purposes. Population is based on 1990 Census data, available at [http://factfinder.census.gov/java\\_prod/dads.ui.fac.CommunityFactsPage](http://factfinder.census.gov/java_prod/dads.ui.fac.CommunityFactsPage) and the relevant table is attached to the Opinion Letter.

11/ See *Twelfth Report and Order*, ¶ 108 (“whether a carrier providing service on tribal lands is subject to the jurisdiction of a state commission . . . usually consider[s] whether state regulation is preempted by federal regulation, whether state regulation is consistent with tribal sovereignty and self-determination, and *whether the tribe has consented to state jurisdiction, either in treaties or otherwise*”) (emphasis added).

12/ Act of February 22, 1889, chap. 180, 25 Stat. 676 (1889) (admitting North Dakota, South Dakota, Montana and Washington into the Union and allowing them to form constitutions and State governments, provided that, *inter alia*, “the people inhabiting the proposed States do agree and declare that they shall forever disclaim all right and title to . . . [lands] owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and all Indian lands shall remain *under the absolute jurisdiction and control of the Congress*”).

Article I of the Montana Constitution specifically provides that, “all lands owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the congress of the United States.” 13/

These facts, viewed through the prism of governing principles of federal Indian law, lead clearly to a conclusion that Western Wireless’ proposed universal service offering would be subject to federal and/or tribal, rather than state, authority, and that the FCC therefore has jurisdiction to grant the Crow ETC Petition. As Professor Collins explains in his Opinion Letter, determining jurisdiction for individual reservations – such as the Crow Reservation in Montana – is a relatively straightforward task guided by well-settled statutory and Supreme Court law. 14/ Professor Collins shows that tribal authorities generally have jurisdiction over Indians on reservations – including transactions between non-Indian parties such as Western Wireless that voluntarily subject themselves to tribal authority to sell services to Indians – but that states generally have jurisdiction over transactions among non-Indians. 15/ The difficulty of applying this framework in the context of Section 214(e) is that carriers designated as ETCs are required to serve

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*of the United States*”) (emphasis added); Indian Affairs. Laws and Treaties. 1008-11, Government Printing Office (Charles J. Kappler, LL.M., ed., 1904).

13/ Mont. Const. art. 1

14/ Opinion Letter at 1.

15/ *Id.* at 2 (citing *McClanahan v. Arizona Tax Comm’n*, 411 U.S. 164 (1973); *Montana v. United States*, 450 U.S. 544, 557-67 (1981)).

everyone in a designated service area, including both Indians and non-Indians. 16/ Accordingly, as Professor Collins' Opinion Letter shows, a balancing test is used to weigh the respective interests of the tribal, federal, and state governments. 17/

Applying that balancing test here, the interests of the Crow Tribe and the FCC far outweigh those of the state of Montana. First, the fact that a high proportion of the residents of the Crow Reservation, and thus of Western Wireless' prospective universal service customers, are Native Americans is a major factor weighing toward federal and tribal interests and against state interests. Moreover, the Crow Tribe has informed the Commission that it "intends to enter into a consensual relationship with Western Wireless to provide much needed wireless telephone services," and that "telephone service is absolutely essential for the social well being, health and economic stability of the members of the Crow Tribe." 18/ It is also well established that the Crow Tribe has an interest in sovereign independence from state authority over its own contracts, 19/ including its prospective contract with Western Wireless. These factors, together with the Tribe's important interest

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16/ Once designated, Western Wireless will be required to provide universal service to all individuals on the Reservation regardless of their identity. See 47 U.S.C. § 214(e)(1) (requiring that "a common carrier designated as an [ETC] . . . offer the services that are supported by Federal universal service support mechanisms" throughout its service area).

17/ Opinion Letter at 2 (citing *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980)).

18/ Crow Tribe Petition for Reconsideration, *supra* note 9, at 6-7.

19/ See *id.* 3 (citing *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 511 (1991)).

in improving telephone service to its members, 20/ and federal policy generally supporting tribal sovereignty over reservation Indians, 21/ shift the balance heavily in favor of the Crow Tribe and federal jurisdiction. Moreover, as Professor Collins notes, Section 332(c)(3) of the Communications Act largely preempts state regulation of wireless carriers, 22/ and while the FCC has indicated that this factor standing alone is not determinative, the state's limited interest in regulating wireless carriers is a significant factor shifting the balance of interests toward tribal and FCC jurisdiction. 23/

At the end of the day, because the Act requires that either the FCC or a state commission – but not both – designate a carrier as an ETC when it seeks to serve a particular geographic area (*i.e.*, an Indian reservation), it is clear that the Commission has jurisdiction over the Crow ETC Petition under Section 214(e)(6). The Crow Tribe has jurisdiction over a high percentage of the residents of the Reservation, and the balance of interests weighs heavily in the Tribe's favor. The analysis herein, with the support of the Opinion Letter and the Tribe, 24/ meets the

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20/ See *Twelfth Report and Order*, ¶ 2.

21/ See Opinion Letter at 3 (citing *White Mountain Apache, supra*). Indeed, the FCC has already issued a Policy Statement declaring adherence to its federal trust responsibility to help Indians acquire and obtain sufficient telecommunications connectivity. See *Twelfth Report and Order*, ¶ 119 (citing *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, FCC 00-207 (rel. June 23, 2000)).

22/ See *id.* at 3-4 (citing 47 U.S.C. § 332(c)(3)).

23/ *Id.* at 2 (citing *Twelfth Report and Order*, ¶¶ 109-10).

24/ See, *e.g.*, *supra* note 9.

burden imposed upon carriers seeking ETC designations from the Commission under Section 214(e)(6). 25/ Western Wireless has demonstrated that the FCC should expeditiously accept jurisdiction over the Crow ETC Petition and move on to consider, and grant, Western Wireless' designation request on its merits.

### III. CONCLUSION

Western Wireless hereby respectfully submits that the analysis set forth in Professor Collins' expert opinion letter fully satisfies the jurisdictional showing required of Western Wireless under Section 214(e)(6) of the Act and by the *Twelfth Report and Order*, and Western Wireless therefore respectfully requests that the Commission move on to consider the merits of the Crow ETC Petition.

Respectfully submitted,

**WESTERN WIRELESS  
CORPORATION**

By: 

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25/ See *Twelfth Report and Order*, ¶ 122.

**APPENDIX:**

**Opinion Letter from  
Professor Richard B. Collins  
University of Colorado School of Law**

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29 September 2000

Mr. Gene DeJordy  
Vice President of Regulatory Affairs  
Western Wireless Corporation  
3650 131st Avenue SE  
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Re: Application of 47 U.S.C. § 214(e)(6) to the Crow Indian Reservation

Dear Mr. DeJordy:

You have asked for my opinion on application of the cited statute to Western Wireless's application to be an eligible telecommunications carrier (ETC) for the Crow Reservation. My opinion is based on practice and academic work in the field of federal Indian law since 1967, as detailed in the attached resume.

My opinion takes account of and refers to the FCC's Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, adopted June 8, 2000. It is abbreviated below as 12<sup>th</sup> Report, Western Wireless as WW.

### **Indian Reservation Jurisdiction**

§ 214(e)(6) provides that for provision of telephone service and access "that is not subject to the jurisdiction of a State commission," the FCC shall upon request designate an ETC. Thus WW's application depends on Montana's jurisdiction over telephone service and access on the Crow Indian Reservation.

The 12<sup>th</sup> Report states that Indian country jurisdiction is factually and legally complex, and as a general matter I agree. But most of the complexities arise from differences among rules applicable to different places or tribes. Jurisdictional rules for Indian reservations like Crow are reasonably well settled by statute, particularly 18 U.S.C. § 1151, and Supreme Court authority. Most rules are the same for all reservations, whether created by treaty, statute, or executive order of the President.<sup>1</sup> By contrast, rules for Indian lands outside reservations, such as lands in Oklahoma and Alaska, public domain allotments, and others, involve substantial uncertainties.

As the 12<sup>th</sup> Report states, factual distinctions also affect Indian jurisdiction. But the variables within Indian reservations mostly involve settled rules. The 12<sup>th</sup> Report recognizes that rules differ depending on whether affected persons are Indians and whether the locus in quo is Indian

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<sup>1</sup> See Felix S. Cohen's Handbook of Federal Indian Law (1982 ed.) at 27-46, 286-308, 332-46, 349-61. The most important exception is the statute known as Public Law 280, but it does not apply to the Crow Reservation. See *id.* at 362-72.

trust land. For most issues, these are the most important variables. Relevant numbers for the Crow Reservation are 74% Indian population and 70% Indian trust land.<sup>2</sup>

Analysis of jurisdictional issues within Indian reservations should start by determining whether there are “governing Acts of Congress.”<sup>3</sup> If a valid federal statute controls, the inquiry is at an end because on most issues Congress can bind states, tribes, and individuals.<sup>4</sup> However, no statute appears to provide a definitive answer to application of § 214(e)(6) in Indian country. The section itself creates the jurisdictional question at issue but does not determine it. The 12<sup>th</sup> Report concludes (at 52-54) that when Congress added § 214(e)(6) in 1997, it did not intend to determine the issue.

Another pertinent statute is 47 U.S.C. § 332(c)(3), which preempts state authority over many aspects of wireless telephone service. The 12<sup>th</sup> Report concludes (at 54-55) that the section does not govern the jurisdictional issue posed by § 214(e)(6), and I can see no basis to disagree. Although not controlling, the section is relevant to my analysis below.

The 12<sup>th</sup> Report recognizes the basic rules for Indian reservation jurisdiction that apply absent a governing federal statute. States lack, and tribes have, jurisdiction over Indians and tribes.<sup>5</sup> States have, and tribes lack, jurisdiction over non-Indians in matters having no significant effect on Indians or tribes.<sup>6</sup> When issues affect Indians and non-Indians, the Supreme Court applies a balancing test that considers tribal, state, and federal interests.<sup>7</sup> Many jurisdictional rules can be modified by consent of an affected party.<sup>8</sup>

### **Relating Indian Jurisdiction to Western Wireless’s Application**

Applying these rules to WW’s application to serve the Crow Reservation yields reasonably firm conclusions about jurisdiction but continuing uncertainty about § 214(e)(6). Because Indian jurisdiction depends on identity of the parties to a transaction, I begin by examining relations between WW and each class of customers separately. This does not agree with the geographic orientation of the Telecommunications Act, but this lack of correspondence is a chief reason for the present difficulty.

WW’s service to Indian customers involves contracts between a non-Indian company and Indian and tribal customers. These are voluntary undertakings by WW and thus subject it to tribal jurisdiction over the undertakings.<sup>9</sup> The Supreme Court’s balancing test applies to determine whether tribal jurisdiction is exclusive of the State’s, the crucial question under § 214(e)(6). Factors under the test favoring tribal jurisdiction exclusive of the state are significant federal

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<sup>2</sup> Population figure from 1990 U. S. Census. See [http://factfinder.census.gov/java\\_prod/dads.ui.fac.CommunityFactsPage](http://factfinder.census.gov/java_prod/dads.ui.fac.CommunityFactsPage). Land figure from *Montana v. United States*, 450 U.S. 544, 548 (1981). The latter includes federal land with Indian trust land because it is used for federal Indian agency purposes.

<sup>3</sup> See *Williams v. Lee*, 358 U.S. 217, 220 (1959).

<sup>4</sup> See *Kennerly v. District Court of Montana*, 400 U.S. 423 (1971).

<sup>5</sup> *McClanahan v. Arizona Tax Comm’n*, 411 U.S. 164 (1973).

<sup>6</sup> *Montana v. United States*, 450 U.S. 544, 557-67 (1981).

<sup>7</sup> *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980).

<sup>8</sup> See *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 137-44 (1982); *Montana v. United States*, 450 U.S. at 565.

<sup>9</sup> *Id.*

statutory control (short of a statute resolving the issue itself), the interest of a tribe in protecting and governing its members, and the tribe's sovereign interest in its own immunity from state control.<sup>10</sup> Factors favoring state jurisdiction are a tribal government imposing on unconsenting non-Indians who seek the state's protection, the state's interest in its own operations on the reservation, and the state's interest in off-reservation effects on important state interests.<sup>11</sup>

On these facts, the case to find tribal jurisdiction exclusive of the State's is quite strong. Under 47 U.S.C. § 332(c)(3), regulation of wireless ETCs is heavily preempted; state authority appears limited to dispute resolution and regulation of quality of service. When customers are reservation Indians or a tribe, these interests are of minimal importance.<sup>12</sup> The Crow Tribe is not asserting authority over unconsenting non-Indians who seek the State's protection, nor will there be off-reservation impacts on important state interests.

The Crow Tribe's interest in sovereign independence from state control over the Tribe's own contracts is manifest and traditionally respected.<sup>13</sup> The Tribe also has an important interest in service to its members; federal policy generally supports tribal sovereignty over reservation Indians.<sup>14</sup> Hence the situation much more closely resembles decisions that have precluded state jurisdiction than those that have sustained concurrent state authority.<sup>15</sup>

Continuing to look at classes of customers separately, WW's service to non-Indians on the Crow Reservation is subject to state jurisdiction unless it significantly affects Indians or the Crow Tribe. Viewed apart from service to Indian customers, the only likely effect would be use of Indian trust land, and that is not a necessary aspect of service.<sup>16</sup> By its agreement with the Crow Tribe and application to be an ETC, WW can be said to have consented to tribal jurisdiction.<sup>17</sup> If so the Tribe has an interest, but that would create concurrent state and tribal authority, it would not oust state authority over contracts between WW and non-Indian customers.<sup>18</sup> Thus Montana would have jurisdiction over WW's service to non-Indian customers within the Crow Reservation.

If the Act or FCC policy does not allow customers to be considered separately, the Supreme Court's balancing test should be applied to determine jurisdiction over WW's service to all customers collectively. The Crow Tribe's strong interest in governing itself and its members would

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<sup>10</sup> See *White Mountain Apache Tribe, supra*; *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 214-22 (1986); *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 511 (1991).

<sup>11</sup> See *Montana v. United States, supra*; *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163 (1989); *Washington v. Confederated Colville Tribes*, 447 U.S. 134 (1980).

<sup>12</sup> See *Central Machinery Co. v. Arizona Tax Comm'n*, 448 U.S. 160 (1980).

<sup>13</sup> See *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe, supra*.

<sup>14</sup> *White Mountain Apache Tribe, supra*.

<sup>15</sup> Compare *Ramah Navajo School Bd. v. Bureau of Revenue*, 458 U.S. 832 (1982) (state had insufficient interest in construction of tribal school to tax contractor); *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980) (state tax not providing relevant services on reservation), with *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163 (1989) (state tax providing significant reservation services); *Washington v. Confederated Colville Tribes*, 447 U.S. 134 (1980) (state interest in deterring tax evasion by its citizens).

<sup>16</sup> WW's activities do not appear to involve the spillover effects that complicated *Brendale v. Confederated Yakima Tribes*, 492 U.S. 408 (1989).

<sup>17</sup> See WW's Petition dated Aug. 4, 1999 and its Exh. A.

<sup>18</sup> See *Washington v. Confederated Colville Tribes*, 447 U.S. 134, 154-57 (1980).

be balanced against the State's interest in governing non-Indian customers. This question is somewhat closer, but the high percentage of Indian customers and the broad preemptive effect of § 332 point again to the conclusion that tribal and federal interests predominate, and the State lacks jurisdiction.

### **Accommodating § 214(e)(6) to Crow Reservation Jurisdiction**

The problem, then, is to apply § 214(e)(6) when the State lacks jurisdiction over WW's service to the Crow Tribe and to the 74% of Crow Reservation residents who are Indian but, viewed discretely, has jurisdiction over service to the 26% who are not. In the abstract, one might apply the section accordingly, to allow a federal application to serve only the Tribe and Indian customers and require a state application to serve non-Indians. But the Act does not appear to entertain this possibility—indeed, § 214(e)(1) requires an ETC to serve all residents of its service area—and it seems likely to be inefficient in a place that already suffers the barrier to service of high cost. One might require aspiring ETCs to file both state and federal applications, but that would increase expense and the risk of inconsistent decisions. One might insist that either the State consent to federal authority or the Tribe consent to state, but that could delay or block service if both refused, a realistic possibility.

The most direct solution is to read § 214(e)(6) to allow federal designation of an ETC for the Crow Reservation because the State lacks jurisdiction over a high percentage of its residents. The statute can be read this way, the reading is consistent with the 12<sup>th</sup> Report's interpretation of congressional intent, and it provides the most efficient and pragmatic solution to the problem.

Very truly yours,



Richard B. Collins  
Professor

## RESUME

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**Courses taught** Property, Constitutional Law, American Indian Law, First Amendment, Intellectual Origins of the Constitution, Constitutional Law Seminars, Trial Advocacy, Criminal Law, Wills and Trusts

#### **Publications**

Felix S. Cohen's Handbook of Federal Indian Law (1982 ed., Michie Bobbs-Merrill) (with others)

Chapter 57, Indian Land, in 7 Thompson on Real Property (Thomas ed. Michie Co. 1994)

Nineteenth-Century Orthodoxy, 70 U. Colo. L. Rev. 1157 (1999)

Biography of Justice Wilbur Fisk Stone, 20 American National Biography 870 (Oxford University Press 1999)

Race and Criminal Justice, 68 U. Colo. L. Rev. 933 (1997)

Alienation of Conservation Easements, 73 Denv.U. L. Rev. 1103 (1996)

Constitutional Law, in 1995/96 Annual Survey of Colorado Law (1996)

Structuring the Ballot Initiative: Procedures That Do and Don't Work, 66 U. Colo. L. Rev. 47 (1995) (with Oesterle)

Initiative Enigmas, 65 U. Colo. L. Rev. 807 (1994)

Justice Scalia and the Elusive Idea of Discrimination Against Interstate Commerce, 20 N. Mex. L. Rev. 555 (1990)

Indian Consent to American Government, 31 Ariz. L. Rev. 365 (1989)

Economic Union as a Constitutional Value, 63 N.Y.U. L. Rev. 43 (1988)

Indian Allotment Water Rights, 20 Land & Water L. Rev. 421 (1985)

The Future Course of the Winters Doctrine, 56 U. Colo. L. Rev. 481 (1985)

Implied Limitations on the Jurisdiction of Indian Tribes, 54 Wash. L. Rev. 479 (1979)

American Indians and the Bicentennial, 16 Colo. Law. 1579 (1987)

Indian Reservation Water Rights, 78 Amer. Water Works Ass'n J. no. 10 p. 48 (Oct 1986)  
Arizona Legal Services Practice Manual, chapter on Indian Law (1982)  
American Indian Courts and Tribal Self-Government, 63 Amer. Bar Ass'n J. 808 (1977)  
Book Review, Cases Versus Theory, 21 Seattle L. Rev. 853 (1998)  
Book Review, 2 Great Plains Research 118 (1992)  
Book Review, 7 Const'l Commentary 424 (1990)  
Book Review, 3 West. Leg. Hist. 152 (1990)  
Book Review, 36 J. Leg. Ed. 438 (1986)

### **Awards**

Smith Kline Beckman Award in Legal Education, and grant, from Institute for Educational Affairs, for new course in constitutional history (1988)

Teaching Excellence Award and grant for 1999-2000 and 1992-93 (by University of Colorado law students)

### **Lectures**

Propriety of Suing the Tribal Sovereign, Federal Bar Association's annual Indian Law Conference, Albuquerque, 6 April 2000; published with conference papers

Sacred Sites on Public Lands, sponsored by Native American Law Student Association, CU Boulder, 9 March 2000

Sacred Sites and Religious Freedom on Government Land, faculty colloquia at University of Wollongong, Wollongong, Australia, 22 July 1999, and at University of Auckland, Auckland, New Zealand, 30 March 1999.

Taught six single classes in five subjects on constitutional law topics at University of Auckland, March-May 1999.

Relation of the Religion Clauses of the Constitution to Indian Tribes and National Parks, to National Park Service superintendents, Page, Arizona, November 1999; Grand Canyon, Arizona, September 1999; Shepherdstown, West Virginia, December 1998; Atlanta, May 1998; Seattle, February 1998; Omaha, September 1997; San Francisco, June 1997; Denver, February 1997.

Interview on Free Press Law for Metrovision, taped 14 June 1996, broadcast 3 July 1996.

Environmental Regulation of Energy Resources Development on Indian Lands, at NRLC Hot Topics, Denver, 1 November 1995

Professor Ralph Johnson's Contribution to the Constitutional Law of Indian Country, at University of Washington, 30 May 1995.

Native American Tribal Sovereignty, for New Zealand Legal Research Foundation, Auckland, New Zealand, 13 July 1994

Initiated Legislation That Invades Minority Rights, at University of Auckland, Auckland, New Zealand, 13 July 1994; at University of Otago, Dunedin, New Zealand, 19 July 1994; at University of Sydney, Sydney, Australia, 11 Aug. 1994.

The Japanese Internment Cases, program in honor of Gordon Hirabayashi sponsored by Center for the Study of Ethnicity and Race in America, Boulder, 27 Jan. 1993

A Comparative History of Individual Rights in Canada and the United States, at Soc. Sci. Educ. Consortium conf. on Bill of Rights, Boulder, 9 Mar. 1991

Origins and Dimensions of the Trust Relationship Between the Indian Nations and the United States, at Amer. Bar Ass'n conf. on Natural Resources Development on Indian Lands, Albuquerque, 22 Feb. 1991

Comparing American Indian Treaty Rights Under U. S. Law with Native Treaty Rights in Canada and New Zealand, at Inst. of Advanced Leg. Stud., London, 8 May 1990

Economic Development and Tribal Constitutions, at Indian Law Support Cntr conf. on Indian Econ. Dev., Boulder, 10 June 1989

Indian Country Sovereignty, at Native American Rights Fund conf. on Indian Law, Boulder, 8 Aug. 1988

Taxation in Indian Country, at Natural Res. L. Cntr conf. on Nat. Res. Dev. in Indian Country, Boulder, 8 June 1988

Putting Indian Water Rights to Use, at Nat. Res. L. Cntr conf. on Western Water Law in Transition, Boulder, 5 June 1985

The Transfer and Use of Reserved Water Rights of Indian Allotments, at Nat. Res. L. Cntr conf. on Federal Impact on State Water Rights, Boulder, 11 June 1984

Federal Reserved Rights Claims for Uses on Out-of-Basin Lands, at Nat. Res. L. Cntr conf. on New Sources of Water for Energy Development and Growth: Interbasin Transfers, Boulder, 8 June 1982

#### **Other professional activities 1994-2000**

Colorado Bar Association Committee on Legal Education and Admission to the Bar (member 1997-99, chair fall 1998)

Pro bono consultant to Native American Rights Fund and Southern Ute Indian Tribe (all years) and Passamaquoddy Tribe (1997)

Secretary and board member, September School (private high school)

President (1994-95), Secretary (1997-98) and board member (1994-98), Colorado Music Festival (professional symphony orchestra)

### **Other professional data**

Associate Dean, University of Colorado Law School, 1996-98  
Education: B.A. (chemistry) Yale 1960, LL.B. Harvard 1966  
Languages studied: Spanish, German, Navajo  
Military service: U. S. Navy 1960-63; final rank Lieutenant  
Admitted to practice law: California 1966, Arizona 1972, New Mexico 1973, Colorado 1976

### **Past legal employment**

1975-82 Staff Attorney, Native American Rights Fund, Boulder, Colorado  
1971-75 Director of Litigation, Dinebeina Nahiilna Be Agaditahe (legal services),  
Window Rock, Arizona  
1967-71 Staff Attorney and Deputy Director, California Rural Legal Assistance and  
California Indian Legal Services  
1966-67 law clerk to Hon. Charles M. Merrill, U. S. Court of Appeals, San Francisco

### **Litigation experience** Extensive civil practice, trial and appellate; some criminal defense.

Major role in these published decisions

Montana v. Blackfeet Tribe, 471 U.S. 759 (1985)  
Solem v. Bartlett, 465 U.S. 463 (1984)  
Central Mach. Co. v. Arizona Tax Comm'n, 448 U.S. 634 (1980)  
United States v. John, 437 U.S. 634 (1978)  
Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978)  
McClanahan v. Arizona Tax Comm'n, 411 U.S. 164 (1973)  
United States v. Adair, 723 F.2d 1394 (9th Cir 1983), cert. denied, 467 U.S. 1252  
Joe v. Marcum, 621 F.2d 358 (10th Cir. 1980)  
Scholder v. United States, 428 F.2d 1123 (9th Cir. 1970), cert. denied, 400 U.S. 942  
City of Sault Ste. Marie v. Andrus, 532 F.Supp. 157 (D.D.C. 1980), aff'd, 672 F.2d 893  
(D.C.Cir. 1981), cert. denied, 459 U.S. 825  
Goodluck v. Apache County, 417 F.Supp. 13 (D.Ariz. 1975), aff'd, 429 U.S. 876  
Natonabah v. Board of Educ, 355 F.Supp. 716 (D.N.M. 1973)  
Kelly v. U. S. Dept of Interior, 339 F.Supp. 1095 (E.D. Calif. 1972)  
Jim v. CIT Financial Svcs Corp., 533 P.2d 751 (N.M. 1975)  
Topash v. Comm'r of Revenue, 291 N.W.2d 679 (Minn. 1980)  
Fox v. Bureau of Revenue, 531 P.2d 1234 (N.M. App. 1974), cert. denied, 424 U.S. 933  
Wauneka v. Campbell, 526 P.2d 1085 (Ariz. App. 1974)

**Personal:** Married to Judith Reid, three daughters

**D-1. General Population and Housing Characteristics: 1990**

**Geographic Area: Crow Reservation and Trust Lands, MT**

Subject	Number
<b>Total population</b>	<b>6,370</b>
<b>SEX</b>	
Male	3,196
Female	3,174
<b>AGE</b>	
Under 5 years	708
5 to 17 years	1,794
18 to 20 years	280
21 to 24 years	339
25 to 44 years	1,884
45 to 54 years	613
55 to 59 years	225
60 to 64 years	168
65 to 74 years	231
75 to 84 years	113
85 years and over	15
Under 18 years	2,502
65 years and over	359
<b>HOUSEHOLDS BY TYPE</b>	
<b>Total households</b>	<b>1,675</b>
Family households (families)	1,442
Married-couple families	1,053
Other family, male householder	92
Other family, female householder	297
Nonfamily households	233
Householder living alone	210
Householder 65 years and over	65
Persons living in households	6,330
Persons per household	3.78
<b>GROUP QUARTERS</b>	
Persons living in group quarters	40
Institutionalized persons	11
Other persons in group quarters	29
<b>RACE AND HISPANIC ORIGIN</b>	
White	1,607
Black	12
American Indian, Eskimo, or Aleut	4,724
Asian or Pacific Islander	8
Other race	19
Hispanic origin (of any race)	93
<b>Total housing units</b>	<b>2,091</b>
<b>OCCUPANCY AND TENURE</b>	
Occupied housing units	1,675
Owner occupied	1,060
Renter occupied	615
Vacant housing units	416
For seasonal, recreational, or occasional use	113

Homeowner vacancy rate	1.9
Rental vacancy rate	3.8
Persons per owner-occupied unit	3.72
Persons per renter-occupied unit	3.89
Units with over 1 person per room	358
<b>UNITS IN STRUCTURE</b>	
1-unit detached	1,535
1-unit attached	32
2 to 4 units	36
5 to 9 units	7
10 or more units	7
Mobile home, trailer, or other	474
<b>VALUE</b>	
<b>Specified owner-occupied housing units</b>	<b>447</b>
Less than \$50,000	304
\$50,000 to \$99,999	129
\$100,000 to \$149,999	8
\$150,000 to \$199,999	2
\$200,000 to \$299,999	3
\$300,000 or more	1
Median (dollars)	34,100
<b>CONTRACT RENT</b>	
<b>Specified renter-occupied housing units paying cash rent</b>	<b>363</b>
Less than \$250	306
\$250 to \$499	55
\$500 to \$749	2
\$750 to \$999	0
\$1,000 or more	0
Median (dollars)	101
<b>RACE AND HISPANIC ORIGIN OF HOUSEHOLDER</b>	
<b>Occupied housing units</b>	<b>1,675</b>
White	584
Black	4
American Indian, Eskimo, or Aleut	1,077
Asian or Pacific Islander	3
Other race	7
Hispanic origin (of any race)	20

(X) Not applicable

Source: U.S. Bureau of the Census, 1990 Census of Population and Housing, Summary Tape File 1 (100% Data) Matrices P1, P3, P5, P6, P8, P11, P15, P16, P23, H1, H2, H3, H5, H8, H10, H18A, H21, H23, H23B, H32, H32B, H41.

**NOTE TO ALL DATA USERS:** All survey and census results contain measurement error and may contain sampling error. Information about these potential errors is provided or referenced with the data or the source of the data. The Census Bureau recommends that data users incorporate this information into their analyses as these errors could impact inferences. Researchers analyzing data to create their own estimates are responsible for the validity of those estimates and should not cite the Census Bureau as the source of the estimates but only as the source of the core data.

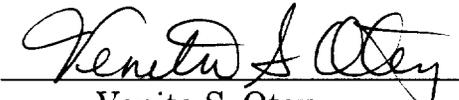
We have modified some data to protect individuals' privacy, but in a way that preserves the usefulness of the data.

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We have modified some data to protect individuals' privacy, but in a way that preserves the usefulness of the data. (external system)

## CERTIFICATE OF SERVICE

I, Venita Otey, hereby certify that on this 2<sup>nd</sup> of October, 2000, in addition to the courtesy copies sent to the individuals on the attached Service List, the foregoing Jurisdictional Statement was served on the following by mail.

  
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