In Winters v. United States (1908), the Supreme Court held that the right to use waters flowing through or adjacent to the Fort Berthold 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 preserving for them the waters without which their lands would have been useless. Later decisions, citing Winters, 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if (1) the land in question lies within an enclave under exclusive federal jurisdiction, (2) the land has been formally withdrawn from federal public lands — i.e., withdrawn from the stock of federal lands available for private use under federal land use laws — and set aside or reserved, and (3) the circumstances reveal the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.

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constituted a part of federal public lands; in any event, no treaty, statute, or executive order has ever designated or withdrawn the pueblos from public lands as American Indian reservations.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 Winters 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 Arizona v. California (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 Winters 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.

1. The author cites the fact that the Rio Grande pueblos were never formally withdrawn from public lands primarily in order to do which of the following?

(A) Suggest why it might have been argued that the Winters doctrine ought not to apply to pueblo lands

(B) Imply that the United States never really acquired sovereignty over pueblo lands

(C) Argue that the pueblo lands ought still to be considered part of federal public lands

(D) Support the argument that the water rights of citizens other than American Indians are limited by the Winters doctrine

(E) Suggest that federal courts cannot claim jurisdiction over cases disputing the traditional diversion and use of water by Pueblo Indians

2. The passage suggests that, if the criteria discussed in lines 10–20 [Later decisions, citing Winters, 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.] were the only criteria for establishing a reservation’s water rights, which of the following would be true?

(A) The water rights of the inhabitants of the Fort Belknap Indian Reservation would not take precedence over those of other citizens.

(B) Reservations established before 1848 would be judged to have no water rights.

(C) There would be no legal basis for the water rights of the Rio Grande pueblos.

(D) Reservations other than American Indian reservations could not be created with reserved water rights.

(E) Treaties establishing reservations would have to mention water rights explicitly in order to reserve water for a particular purpose.

Question 3

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Spoiler: ::

3. According to the passage, which of the following was true of the treaty establishing the Fort Berthold Indian Reservation?

(A) It was challenged in the Supreme Court a number of times.

(B) It was rescinded by the federal government, an action that gave rise to the Winters case.

(C) It cited American Indians’ traditional use of the land’s resources.

(D) It failed to mention water rights to be enjoyed by the reservation’s inhabitants.

(E) It was modified by the Supreme Court in Arizona v. California.

4. The primary purpose of the passage is to

(A) trace the development of laws establishing American Indian reservations

(B) explain the legal basis for the water rights of American Indian tribes

(C) question the legal criteria often used to determine the water rights of American Indian tribes

(D) discuss evidence establishing the earliest date at which the federal government recognized the water rights of American Indians

(E) point out a legal distinction between different types of American Indian reservations

5. Which of the following most accurately summarizes the relationship between Arizona v. California in lines 38–42 [This pragmatic approach is buttressed by Arizona v. California (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 Winters doctrine.], and the criteria citing the Winters doctrine in lines 10–20 [Later decisions, citing Winters, established that courts can find federal rights to reserve water for particular purposes]?

(A) Arizona v. California abolishes these criteria and establishes a competing set of criteria for applying the Winters doctrine.

(B) Arizona v. California establishes that the Winters doctrine applies to a broader range of situations than those defined by these criteria.

(C) Arizona v. California represents the sole example of an exception to the criteria as they were set forth in the Winters doctrine.

(D) Arizona v. California does not refer to the Winters doctrine to justify water rights, whereas these criteria do rely on the Winters doctrine.

(E) Arizona v. California applies the criteria derived from the Winters doctrine only to federal lands other than American Indian reservations.

6. The "pragmatic approach" mentioned in hightlight text of the passage is best defined as one that

(A) grants recognition to reservations that were never formally established but that have traditionally been treated as such

(B) determines the water rights of all citizens in a particular region by examining the actual history of water usage in that region

(C) gives federal courts the right to reserve water along with land even when it is clear that the government originally intended to reserve only the land

(D) bases the decision to recognize the legal rights of a group on the practical effect such a recognition is likely to have on other citizens

(E) dictates that courts ignore precedents set by such cases as Winters v. United States in deciding what water rights belong to reserved land

7. The passage suggests that the legal rights of citizens other than American Indians to the use of water flowing into the Rio Grande pueblos are

(A) guaranteed by the precedent set in Arizona v. California

(B) abolished by the Winters doctrine

(C) deferred to the Pueblo Indians whenever treaties explicitly require this

(D) guaranteed by federal land-use laws

(E) limited by the prior claims of the Pueblo Indians