

RESUME

SCOTT BOWNE McELROY

Attorney at Law

McElroy, Meyer, Walker & Condon, P.C.
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LEGAL EXPERIENCE:

I am an experienced trial lawyer who has had responsibility for the conduct of complex litigation, primarily in the areas of natural resources, tribal jurisdiction, and administrative law. My duties have included the preparation and presentation of my clients' position in the trial court and at the appellate level with an emphasis on lengthy and complicated bench trials. For example, while with the Department of Justice, I was the lead attorney for the United States in an eight-week trial before the Master of the Supreme Court in *Arizona v. California*, 460 U.S. 605 (1983). I am a fellow in the American College of Trial Lawyers and am included in recent editions of *The Best Lawyers in America* in the specialty of Native American law.

I have also had extensive experience representing clients in the negotiation of complicated disputes involving multiple parties with competing claims to scarce natural resources. For example, I represented the Southern Ute Indian Tribe in negotiations to resolve tribal claims to water in five rivers crossing the Tribe's reservation. Those negotiations resulted in the enactment of the Colorado Ute Indian Water Rights Settlement Act of 1988, 102 Stat. 2973, and the Colorado Ute Settlement Act Amendments of 2000, Pub. L. No. 106-5444 (Conference Report 106-1033 at Div. B, Ch. 14, Title 3) (2000). I also represented the Pueblo of Nambe in connection with the settlement of its water rights through federal legislation entitled Indian Water Rights Settlement Act, Pub. L. No. 11-291, tit. VI, §§ 601-626, 124 Stat. 3064, 3134-56 (2010).

EMPLOYMENT HISTORY:

McElroy, Meyer, Walker & Condon, P.C.
(formerly Greene, Meyer & McElroy, P.C.)
1987- Present

Native American Rights Fund,
1506 Broadway, Boulder, Colorado 80302
January 1985 - October 1987
April 1982 - April 1983

Fredericks and Pelcyger
1075 S. Boulder, Road, Suite 305
Louisville, Colorado 80027
April 1983 - April 1984

Cogswell & Wehrle
1700 Lincoln Street, Suite 3500
Denver, Colorado 80203
May 1984 - January 1985

Department of Justice
Land and Natural Resources Division
Washington, D.C. 20530
February 1978 - March 1982

Office of the Solicitor
Department of the Interior
Washington, D.C. 20240
September 1974 - January 1978

EDUCATION:

University of Toledo, College of Law
Degree: Juris Doctor, *cum laude*
Graduation: June 1974

Graduate Assistant and Teaching Fellow
University of Toledo
College of Law 1973-1974

Research Editor
University of Toledo Law Review

Washington and Lee University
Lexington, Virginia
Degree: B.A.
Graduation: 1970

PUBLICATIONS:

Stanley M. Pollack & Scott B. McElroy, *A-LP Lite: A Compromise Project that Fulfills the United States' Trust Responsibility in an Environmentally Responsible Manner*, NAT. RESOURCES J. (Summer 2001).

Scott B. McElroy, *History Repeats Itself -- A Response to the Opponents of the Colorado Ute Indian Water Rights Settlement Act of 1988*, 2 UNIV. DENVER WATER L.REV. 244 (Spring 1999).

Scott B. McElroy & Jeff B. Davis, *Revisiting Colorado River Water Conservation District v. United States - There Must Be a Better Way*, 27 ARIZ. STATE L.J. 597 (1995)

**REPRESENTATIVE
CONFERENCE
PRESENTATIONS**

August 23-25, 2011 - *Symposium on the Settlement of Indian Reserved Water Rights Claims*, Billings, Montana

October 21-11, 2010 - *Colorado Ute Indian Water Rights, A Comprehensive Conference on New Developments in Tribal Water Law*, Las Vegas, Nevada

June 6-12, 2008 - *The Winters Centennial: Will its Commitment to Justice Endure?*, University of New Mexico School of Law, Santa Ana Pueblo, New Mexico

Feb. 22-23, 2007 - *The Arizona Adjudications - 99 Years after the Winters Decision, Will its Promises be Fulfilled?*, ABA, 25th Annual Water Law Conference, Coronado, California

Nov. 10-11, 2005 - *Water Development in Indian Country*, Natural Resources Development in Indian Country, Albuquerque, New Mexico

Apr. 30, 2004 - *Tribal Reserved Water Rights, Interstate Compacts and Treaties: Then and Now*, Arvada, Colorado

Oct. 3, 2003 - *Implementation of the Colorado Ute Indian Water Rights Settlement*, Symposium on the Settlement of Indian Reserved Water Rights Claims, Durango, Colorado

Aug. 16-17, 2001 - CLE International - Natural Resources and Environmental Law on the Reservation Conference, Scottsdale, Arizona

May 4-5, 2000 - CLE International - The Law of the Colorado River Conference Tucson, Arizona

May 20, 1999 - *Indian Reserved Rights*, Natural Resources in Indian Country, Rocky Mountain Mineral Law Foundation, Denver, Colorado

March 7, 1996 - *Indian Water Marketing*, Western Water Law, CLE International, Denver, Colorado

September 9, 1994 - *Implementing Settlements: A Case Study of the Colorado Ute Water Rights Settlement*, Indian Water Rights Conference, Stanford Law School and NARF, Stanford, California

Scott B. McElroy - List of Significant Cases

United States v. Alpine Land & Reservoir Co., 503 F. Supp. 877 (D. Nev. 1980), *aff'd*, 697 F.2d 851 (9th Cir.), *cert. denied sub nom. Pyramid Lake Paiute Tribe of Indians v. Truckee- Carson Irrigation Dist.*, 464 U.S. 863 (1983). Mr. McElroy represented the United States in a two-week trial which brought to a close over 50 years of litigation regarding the water rights of the Carson River in Nevada.

Arizona v. California, 460 U.S. 605 (1983). Mr. McElroy was lead counsel for the United States in a eight-week trial in the fall of 1980 (four weeks) and Spring of 1981 (two two-week periods), before the United States Supreme Court's Special Master, Elbert Tuttle. Judge Tuttle was then a senior judge on the Fifth Circuit Court of Appeals. The litigation concerned whether the five tribes along the lower the Colorado River could claim additional water rights beyond those recognized in the Supreme Court's 1963 decree.

Arizona v. California, 121 S.Ct. 292 (Oct. 10, 2000). Mr. McElroy represented the Colorado River Indian Tribes in a three-day trial in March 1993 before the Honorable Frank McGarr, Special Master for the United States Supreme Court. The trial involved the location of the western boundary of the Colorado River Indian Reservation. Following trial and prior to review by the Supreme Court, the matter was settled.

Truckee-Carson Irrigation Dist. v. United States, (D. Nev. 1983), *aff'd*, 742 F.2d 527 (9th Cir. 1984). Mr. McElroy represented the United States as lead counsel in a one-week trial before Judge Thompson of the United States District Court for the District of Nevada. The case, which was filed in the early 1970s, involved the right of the Department of the Interior to cancel its contract with the Truckee-Carson Irrigation District for the failure to abide by departmental regulations. Mr. McElroy also successfully argued the case on appeal to the Ninth Circuit.

Carson Truckee Water Conservancy Dist. v. Watt, 537 F. Supp. 106 (D. Nev. 1982), *aff'd in part, vacated in part*, 741 F.2d 257 (9th Cir. 1984), *cert. denied sub nom. Nevada v. Hodel*, 470 U.S. 1083 (1985). Mr. McElroy was lead counsel for the United States in a trial involving the right of the Secretary of the Interior to use water from Stampede Reservoir for the benefit of endangered fish at Pyramid Lake.

South Dakota v. Bourland, 949 F. 2d 984 (8th Cir. 1991), *rev'd*, 508 U.S. 813 (1993), was filed in the fall of 1988. Mr. McElroy, as lead counsel, represented the Cheyenne River Sioux Tribe in a six-day trial, in the fall of 1989, before Judge Donald Porter, United States District Court for the District of South Dakota, involving the right of the Tribe to regulate non-Indian hunters and fishermen on reservation land taken by the United States for use in connection with Oahe Reservoir. Mr. McElroy successfully handled the appeal to the United States Court of Appeals for the Eighth Circuit.

New Mexico v. Aamodt, No. 6639-M Civil, 618 F. Supp. 993 (D.N.M. 1985). Since 1996, Mr. McElroy has represented the Pueblo of Nambe in this ongoing case, initially filed in 1966, which is a general stream adjudication of the Pojoaque stream system. A trial lasting three and a half weeks took place in the summer of 1998 involving the extent of the Pueblo's reserved water rights for its 1902 Reservation. Mr. McElroy was the lead counsel for the Pueblo. Currently, the parties are engaged in extensive settlement discussions under the supervision of a settlement judge appointed by the federal court. The

governmental parties have now executed a settlement agreement which requires approval by the federal court and the enactment of federal legislation.

National Farmers Union Ins. Co. v. Crow Tribe of Indians, 736 F.2d 1320 (9th Cir. 1984), *aff'd*, 471 U.S. 845 (1985). Mr. McElroy successfully represented the Crow Tribe in the appeal of the this case to the United States Court of Appeals for the Ninth Circuit.

San Carlos Apache Tribe v. Superior Ct. ex rel. County of Maricopa, 972 P.2d 179 (Ariz. 1999). Mr. McElroy represented the Navajo Nation, and served as lead counsel for the Little Colorado River tribes, in this special action before the Arizona Supreme Court, filed on April 17, 1995, concerning a successful constitutional challenge to the 1995 revisions to the Arizona water adjudication statutes.

Southern Ute Indian Tribe v. Amoco Prod. Co., 874 F. Supp. 1142 (D. Colo. 1995), *rev'd*, 119 F.3d 816 (10th Cir. 1997), *aff'd on reh'g in part*, 151 F.3d 1251 (10th Cir. 1998), *rev'd*, 526 U.S. 865 (1999). Mr. McElroy assisted in the representation of the Southern Ute Indian Tribe in this case, which was initially filed in December 1991, concerning the ownership of coalbed methane in lands where the Tribe owns the coal but others own the remainder of the estate. Mr. McElroy served as lead counsel in the successful interlocutory appeal to the United States Court of Appeals for the Tenth Circuit of certain cost issues associated with providing notice to the defendant class. *Southern Ute Indian Tribe v. Amoco Prod. Co.*, 2 F.3d 1023 (10th Cir. 1993).

Rosebud Sioux Tribe v. South Dakota, 709 F. Supp. 1502 (D.S.D. 1989), *judgment vacated*, 900 F.2d 1164 (8th Cir. 1990), *cert. denied*, 500 U.S. 915 (1991). Mr. McElroy represented the Cheyenne River Sioux Tribe as lead counsel in this case which involved the extent of state jurisdiction over tribal members on highways on the Reservations in the state of South Dakota. The case was resolved against the Tribe by summary judgment in the United States District Court for the District of South Dakota but successfully appealed to the Eighth Circuit Court of Appeals.

Chester County Dep't of Social Servs. v. Coleman, 372 S.E.2d 912 (S.C. App. 1988), *rev'd*, 399 S.E.2d 773 (S.C. 1990), *cert. denied*, 500 U.S. 918 (1991). Mr. McElroy represented the Cheyenne River Sioux Tribe in this case before the South Carolina courts involving the application of the Indian Child Welfare Act, 25 U.S.C. §§ 1901-1963, to four children in South Carolina. The Chester County Department of Social Services commenced an action in November 1983 seeking to remove the children from their parents' home and place them in the Department's custody. In October 1986, Mr. McElroy successfully argued before the Family Court that jurisdiction over the children should be transferred to the Cheyenne River Sioux Tribal Court pursuant to the Indian Child Welfare Act, 25 U.S.C. § 1911. *Coleman*, 399 S.E.2d at 774. On September 26, 1988, the Court of Appeals reversed and remanded to the Family Court to determine whether good cause to the contrary prevented the transfer of jurisdiction to the Tribe. *Id.* at 915. Mr. McElroy successfully argued before the Family Court on April 5, 1989, that good cause did not exist so as to require retention of jurisdiction in the South Carolina courts, and the Family Court affirmed its order transferring jurisdiction to the Tribal Court. *Id.* at 775. On September 25, 1990, Mr. McElroy argued before the South Carolina Supreme Court that the Family Court's order should be upheld. However, the Supreme Court ruled that good cause existed to retain the cause in the South Carolina courts, and reversed the Family Court's order. *Id.* at 777.

Cheyenne River Sioux Tribe Tel. Auth. v. South Dakota Public Util. Comm'n, No. 95-288 (S.D. Cir. Ct. Feb. 11, 1998), *aff'd*, (S.D. 1999). Mr. McElroy represented the Cheyenne River Sioux Tribe Telephone Authority as lead counsel in an action challenging the denial of approval for its purchase of three telephone exchanges from U S West Communications. The South Dakota Circuit Court affirmed the denials, and the South Dakota Supreme Court affirmed. Mr. McElroy argued the case before the South Dakota Supreme Court on behalf of the Tribe. Mr. McElroy represented the Telephone Authority in a joint petition filed with U S West Communications for preemption of the manner in which the South Dakota Public Utilities Commission applied South Dakota law to deny the telephone exchange sales to the Telephone Authority. *In the Matter of the Cheyenne River Sioux Tribe Telephone Authority's and U S WEST COMMUNICATIONS, INC.'s Joint Petition for Expedited Ruling Preempting South Dakota Law*, CC Dkt. No. 98-6 (Jan. 22, 1998).

In re the General Adjudication of the Little Colorado River, No. 6417 (Apache County Super. Ct., Ariz.). Mr. McElroy represents the Navajo Nation as lead counsel for litigation in this ongoing adjudication over the water rights of the Little Colorado River. The case was filed in the late 1970s.

Navajo Nation v. Department of the Interior, CV-03-0507-PCT-PGR (D. Ariz). Mr. McElroy is lead counsel for the Navajo Nation in this lawsuit against the Secretary of the Interior for the failure to account for the Department's trust responsibility to the Navajo Nation in the management of the lower basin of the Colorado River. The case is presently stayed for settlement discussions among the United States, Arizona and the various state agencies using water from the Colorado River.

United States v. Fallbrook Public Utility District, Case No. 3:51-cv-1247-GT-RBB. Mr. McElroy is lead counsel for the Cahuilla Band of Indians in this adjudication of the Santa Margarita River.