

Federal Reserved Water Rights and Environmental Analysis A Field Level Overview

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Introduction

- What are Federal Reserved Water Rights?
- Important Cases
- Extensions
- McCarran Amendment

- NEPA for Geothermal at the Field Office Level

Federal Reserved Rights Doctrine

- Legal doctrine that provides that when the federal government reserves land from the public domain, it impliedly reserves sufficient water to achieve the purposes of the reservation. Traditionally applied in the western United States.
- Judicial Decisions Only- No Legislative

Historical Perspective of the Origin of Water Rights

- **Miners Law**
- **Prior Appropriations
Act of 1866**
- **1870 Homesteads added**
- **1877 Desert Land Act**
- **Reclamation Act 1902**

Federal Reserved Water Rights

- **Winters 1908 defining case**
- **Indian Reservations**
- **Date of Reservation as Appropriation date**
- **Outside of State Law**

Extensions of Winters

- **US v Parkins 1926- Wind River Act**
- **Pueblo Land Act 1928**
- **Arizona 1973 PIA**
- **Cappert 1976 groundwater**
- **New Mexico 1978- only primary purpose**

Arizona 1973

- PIA- Potential Irrigated Acres
- Allocates water based on Agricultural Uses
- Minimum to meet designation
- Other Uses not included

Cappert 1976 groundwater

- First Application of FRWR to Groundwater
- If surface water is not available then groundwater can be secured

Acts with Federal Reserve Waters

- Wild and Scenic Rivers Act of 1968
- Wilderness Lands
- National Parks and Monuments
- Military
- Indian Reservations

McCarran Amendment

Federal Water Reserved Water Rights holders

MUST

Participate in the Adjudication Process

Court held that it would be *impossible* to adjudicate without full participation

Steps required to use Federal Reserved Water Rights

Establishment of Legal Entitlement

Quantification of flow amounts necessary to meet the statutory purposes

Ways of Defining the Elements of Federal Reserved Water Rights

Litigation

Negotiated Settlements

Environmental Analysis

A Field Level Overview

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NEPA, FLPMA and DOR

- Intent of NEPA is to DISCLOSE
- Intent of FLPMA is to protect
- ONLY a Decision of Record is a legally binding document.
- DOR will contain COA- Conditions of Approval

NEPA

- **EIS-Environmental Impact Statement**
- **EA- Environmental Assessment**
- **CX- Categorical Exclusion**
- **DNA- Determination of NEPA Adequacy**
- **FONIS- Finding of No Significant Impact**

NEPA Analysis

- Leasing Stage- Programmatic EIS
- Exploration Stage
- Development Stage

ID Team Review

Baselines and Mitigation

Measures the BLM May Apply

- Unnecessary and Undue Degradation
- Monitoring
- Mitigation
- Timing Restrictions
- Limitations on Resources

Questions

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