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 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 Statment
- EA- Environmental Assesment
- 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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