

Federal Water Rights

Colorado River Water Conservation District Policy Statement:

The policy of the Colorado River Water Conservation District is that when the Congress or the President creates special federal land designations, such designation must clearly and explicitly specify and quantify the minimum amount, if any, of water necessary to fulfill the purpose of the land reservation. In accordance with the McCarran Amendment and Colorado law, the River District will advocate that the quantification of any reserved rights be the minimum amount essential to preserve the primary purpose of any Congressional or Executive action which creates any federal land designation.

Background & Discussion:

The “Winters Doctrine” arose from the Supreme Court’s 1908 decision finding an implicit reservation of water rights associated with historical federal designations of lands where water rights were not specified. The Winters Doctrine clearly established the judicial precedent of federal reserved water rights where such rights are necessary to fulfill the purpose of the federal reservation. The Winters Doctrine stands for the proposition that when the Federal Government makes a reservation of land, it necessarily and impliedly reserves (and exempts from appropriation under state law) sufficient water to meet the needs of the land reservation. The River District believes that today the McCarran Amendment, adopted by Congress in 1952, appropriately provides for adjudication of federal, reserved water rights in state Water Courts following the same manner and procedures as other water rights.

The dispute in the Winters case involved conflicts between claims to water by American Indian Tribes on the Fort Belknap Indian Reservation in Montana and appropriation claims made under state law by settlers in the Milk River basin. The U.S. Supreme Court held that the Indian treaty establishing the reservation impliedly reserved sufficient water of the Milk River for “use which would be necessarily continued through years.” The court found that without water the reservation would be worthless and the purpose of the reservation would be destroyed.

The Supreme Court later clarified that when the Federal Government makes any reservation of land (not just an Indian Reservation) it impliedly reserves only that amount of water sufficient to fulfill the purpose of the reservation, no more. *Cappaert v. United States*, 426 U.S. 128 (1978).

When Congress passed the McCarran Amendment, it waived its sovereignty with respect to state adjudication and administration of federal water rights claims. The U.S. Congress adopted the McCarran Amendment in 1952 providing for state adjudicatory jurisdiction over federal water claims. The McCarran Amendment (43 U.S.C. 666(a)) provides in relevant part:

“Consent is hereby given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner of or is in

the process of acquiring water rights by appropriation under State law, by purchase, by exchange, or otherwise, and the United States is a necessary party to such suit. The United States, when a party to any such suit, shall (1) be deemed to have waived any right to plead that the State laws are inapplicable or that the United States is not amendable thereto by reason of sovereignty, and (2) shall be subject to the judgments, orders, and decrees of the court having jurisdiction, and may obtain review thereof, in the same manner and to the same extent as a private individual under like circumstances”

Adopted July 18, 2006
Revised and readopted 4/21/09