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Introduction to Reserved Water Rights

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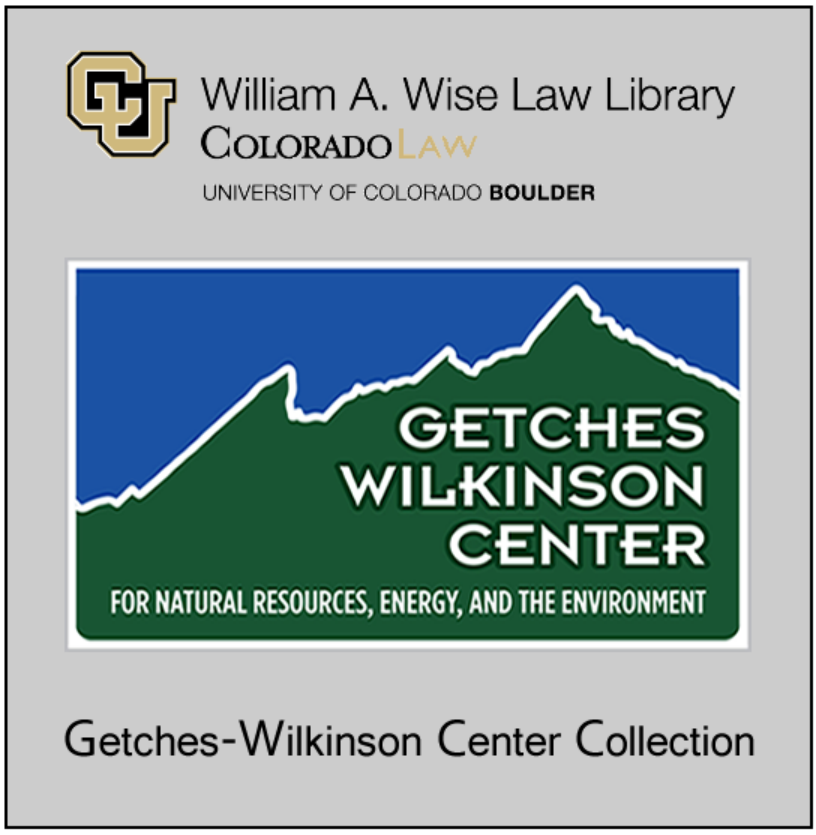

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INTRODUCTION.
This paper will discuss the origin and development of the reservation doctrine, describe the various legislative attempts to limit or abolish the doctrine, and discuss its current status and implementation. The paper will concentrate on the NonIndian aspects of the doctrine.

The reservation doctrine inspires anger, fear, disdain, and occasionally eloquence:

Corker.

> It is the product of a fabricated legislative history. It is a perversion and a fabrication." Corker, A REAL LIVE PROBLEM OR TWO FOR THE WANING ENERGIES OF FRANK J. TRELEASE, 54 Den. L. J. 499, 500 (1977).

Trelease.

> "Cyprinodon diabolis, The Devil's Hole pupfish is alive and well and living in a striated marble palace in Nevada, located within a small addition to the Death Valley National Monument created for his benefit in 1952.", The reserved rights doctrine "is very like the Devil's Hole pupfish in many ways. It too is an evolutionary sport. It too lives in Devil's hole. It too has friends in high places within the federal bureaucracy and judicial system." Trelease, FEDERAL RESERVED WATER RIGHTS SINCE PLLRC, 54 Den. L. J. 473 (1977).

Goldberg.

> Described the relationship between western water law, including the reservation doctrine, and federalism as a "concoction of Byzantine politics and legalistic archaeology." Goldberg, INTERPOSITION--WILD WEST WATER STYLE, 17 Stan. L. Rev. 1, 36 (1964).
>
> Commenting on westerner's criticism of the doctrine, and of federal bureaucracy generally, he said: "This sort of fulmination is well within the tradition that permits the

Westerner to "blast at an all-consuming federal encroachment in words more blistering than all the winds that blow from Spokane to San Antonio" in unconcerned disregard of the historical fact "that from start to finish he was [federally] subsidized from his brogans to his sombrero. . . ". Goldberg, id. at 1.

Ely.

The reservation doctrine is a "first mortgage of undetermined and indeterminable magnitude," is a "sword of damocles" hanging over private water rights. Ely. Address to National Water Commission, Nov. 6, 1969. Reported in 54 Den. L. J. at 475 (1977).

Hanks.

The impact of the reservation doctrine could be "staggering indeed": "In 16 western states, the BIA administers 52,307,036 acres; a total of 138,595,360 are included in national forests, which are reserved areas, in the reclamation states. Approximately 85% of the entire state of Nevada is owned by the US. Of the 60 million acres of federal land in Nevada, 12 million acres are reserved lands. In Arizona, approximately 73 percent of all land is owned by the federal government." Hanks, PEACE WEST OF THE 98TH MERIDIAN--A SOLUTION TO FEDERAL-STATE CONFLICTS OVER WESTRN WATERS, 23 Rutgers L. Rev. 33,43 (1968).

Johnson.

Commenting on US v. New Mexico: "If you think that you can think about a thing (that thing being the purposes for which water was reserved under the Forest Service Organic Act in 1897) and that thing is inextricably attached to something else (the something else being the Reserved Rights Doctrine) without thinking of the thing to which it is attached to (which, of course, is the Reserved Rights Doctrine, which you can't think about because it didn't exist in 1897) then you have a legal mind. Or at least you may be qualified to sit on the Supreme Court!" Inst. for Nat. Res. Law Teachers, Boulder Colo., May 28, 1981. Adapted from saying by Thomas Reed Powell.

THE ORIGIN OF THE RESERVATION DOCTRINE

Disagreement on the date of origin of the doctrine.

The earliest cited case on the doctrine is United States v. Rio Grande Irrigation Co. 174 US 690 (1899), where the court said, per dicta, "[A] state cannot by its legislation destroy the

right of the United States, as owner of the land bordering on a stream, to the continued flow of its waters, so far at least as may be necessary for the beneficial uses of the government property." Id. at 703.

In Winters v. United States, 207 US 564 (1908) the Court recognized reserved rights in an Indian Tribe even though nothing had been said in the Agreement with the Indians about water. The Court relied on Rio Grande for the proposition that "The power of the Government to reserve the waters and exempt them from appropriation under the state laws is not denied, and could not be."

Samuel Weil, in his treatise WATER RIGHTS IN THE WESTERN STATES (Bancroft-Whitney, 1911), says there are "divergent theories regarding the law of waters . . . on military and Indian reservations. . . .

But the general tendency of the Federal courts in dealing with water on or used by military or Indian reservations is to . . . tacitly assume that the creation of the reservation impliedly repealed the act of 1866 as to waters thereon; and to restore the proprietary rights of the Unites States, . . . not limited to the amount of water in actual use at any specific time."

"Military and Indian reservations are in exclusive government occupancy, wherein they may possibly differ from the forest and other reserved areas, which are intended to be open to the people." (Sec. 207).

The state's rights argument. This position argues that three acts, the Act of 1866, 1870, and 1877, constituted waivers of federal reserved rights claims . This argument seemed to be confirmed in California Oregon Power Co. v. Portland Beaver Cement Co., 295 US 142 (1935) where the court said:

> [The Desert Land Act] effected a severance of all water on the public domain, not theretofore appropriated, from the land itself. . . Congress intended to establish the rule that for the future the land should be patented separately; and that all nonnavigable waters thereon should be reserved for the use of the public under the laws of the states and territories. . . " 295 US at 162.

FPC v. Oregon, 349 US 435 (1955), alerted western lawyers to the possibility that the reserved rights doctrine might apply to NonIndian reserves, although no actual allocation of water was made in the case. The Court denied Oregon's claim of ownership of a nonnavigable stream, saying that the three above acts did not constitute a severance of waters as to federally "withdrawn" lands, and then held that a federally licensed project could go forward over state objections.

Arizona v. California, 373 US 546 (1963), firmly held that the reservation doctrine applied to NonIndian, reserved public lands, and the court allocated water to such reserved lands, 41,839 acre-feet per year for the Havasu Lake National Wildlife Refuge, and 28,000 acre-feet per year for the Imperial National Wildlife Refuge, both with 1941 priorities.

EXPECTATIONS DASHED

The western water establishment cried "unfair" after FPC v. Oregon and Arizona v. California, arguing that these cases destroyed legitimate expectations of prior appropriators. Trelease, debunking the claim that the doctrine originated with Rio Grande in 1899, and Winters in 1908, argued:

> "I was there. I took a course in water law in 1938 and got an A in it. I then went to work for L. Ward Bannister, one of the negotiators of the Colorado River Compact and lecturer in water law at Denver University and Harvard University. I helped to bring his notes up to date. I listened in on discourses he had with Ralph Carr, Jean Breitenstein, John Reed, and other "irrigation lawyers" of the old school. I started to teach water law in 1946, and I was General Counsel for the Missouri River Basin Survey Commission in 1952. At no time prior to 1955 did I ever hear a suggestion that the reserved rights doctrine was anything but a special quirk of Indian water law." Trelease, FEDERAL RESERVED WATER RIGHTS SINCE PLLRC, 54 Den. L. J. 473 (1977).

WESTERN WATER RIGHTS SETTLEMENT BILLS

Starting in 1955 and for the next 15 years, over 50 bills were introduced in Congress to reverse the effects of the reservation doctrine.

Four principal objections were raised to the doctrine.

(1) The federal government, rather than the states, decides how the water is to be used.

(2) The federal government does not follow state filing procedures, impairing the completeness of the state's water records. No centralized federal record system exists for reserved water rights.

(3) Reserved rights are unquantified, creating uncertainty and making long range planning impossible.

(4) Prior appropriators under state law can lose their rights to preexisting, unquantified, unrecorded,

undiscoverable federal reserved rights.

THE FIRST BILLS

The first bills were introduced by Senator Barrett. Their central theme was that "All unnappropriated water in the 17 western states is declared to be free for appropriation under state law" (See Corker, WATER RIGHTS AND FEDERALISM, 45 Cal. L. Rev. 604,606 (1957)) and to require the United States to comply with state appropriation laws rather than claiming waters under the reservation doctrine.

LATER BILLS

Most of the bills introduced over the ensuing years dealt not only with the reserved rights issue, but also with the compensation question under the navigation servitude. In general they proposed that compensation be required for the loss of private property rights under the reservation doctrine and the navigation servitude, that the federal government be required to comply with state water law when it buildsprojects under the Reclamation Act of 1902, and that FPC licensees be required to comply with state law when they build projects under the Federal Power Act of 1920.

Various compromises were developed, under Senator Kuchel of California and others. None of these bills ultimately passed. See, Hanks, PEACE WEST OF THE 98TH MERIDIAN--A SOLUTION TO FEDERAL-STATE CONFLICTS OVER WESTERN WATERS" 23 Rutgers L. Rev. 33 (1968).

REPORT OF THE PUBLIC LAND LAW REVIEW COMMISSION. (One Third of the Nation's Land, 1970) 147-149. For commentary, see Trelease, WATER RESOURCES ON THE PUBLIC LANDS: PLLRC's SOLUTION TO THE RESERVATION DOCTRINE, 6 Land and Water Law Review 89 (1970); Muys, COMMENTS ON "FEDERAL RESERVED WATER RIGHTS", 54 Den. L. J. 493 (1977).

The Commission recommended:

(1) Require federal agencies to give notice of their projected water requirements for the next 40 years;

(2) Establish administrative or judicial review of the reasonableness of the quantities claimed by the federal agencies;

(3) For reservations created in the future, require express statement of intent to reserve water, and the quantity reserved;

(4) Require compensation for the taking of water rights vested prior to the 1963 decision in Arizona v. California.

NATIONAL WATER COMMISSION REPORT (Water Policies for the Future, 1973) pp. 467-468.

The Commission took a different approach from the PLLRC. It recommended:

(1) Require federal agencies to give notice of their projected water requirements for the next 40 years.

As to existing uses by federal agencies, the agencies would be entitled to priority as of the date of the original reservation of the federal lands.

Future uses would receive a priority date as of the date of initiation of actual use.

Compensation would be required where existing private water uses were displaced by new federal agency uses.

REASONS FOR THE FAILURE OF PROPOSED SETTLEMENT LEGISLATION

(1) Eastern suspicion of western avarice.

> "The Wild West water version of interposition . . .: not only should the [western] states have the right to do as they please, but they should be able to do it with federal property, and at federal expense." Goldberg, 17 Stan. L. Rev. 1, 3 (1964).

(2) Rising influence of the environmental movement. Reserved rights tend to protect instream flows, forests, wildlife, and environmental interests.

(3) Splits in western water politics in the 1960s, e.g., over the proposed diversion of Columbia River water to the Southwest, and over the continuation of the 160 acre limitation.

(4) Enactment of Sec. 111 Rivers and Harbors Act, 1970, 33 USC Sec. 595a, reversing United States v. Rands, 389 US 121 (1967), and United States v. Twin City Power Co., 350 US 222 (1956) and providing that when condemnation occurs, compensation must be paid to riparians on navigable waters for the "highest and best use" of their uplands, unburdened by the navigation servitude. This excised one of the major problems addressed by proposed settlement legislation.

(5) The Supreme Court's interpretation of the McCarran Amendment, 66 Stat. 560, 43 USC Sec. 666 to constitute waiver of sovereign immunity for suits in federal or state courts to adjudicate, and quantify, federal reserved water rights. Colorado River Water Conservation Dist. v. United States, 424 US 800 (1976), United States v. District Court for Eagle County, 401 US 520 (1971).

(6) The fact that no one could be found whose vested water right had been destroyed by the exercise of a federal reserved right.

The PLLRC reported that "The federal lands are the source of most of the water in the 11 coterminous western states, providing approximately 61% of the total natural runoff occurring in the region. Most of this runoff comes from land withdrawn or reserved for specific purposes. Forest Service and National Park Service reservations contribute about 88 % and 8 %, respectively, of the runoff from public lands and more than 59 % of the total yield from all lands of those states." ONE THIRD OF THE NATION'S LAND, Final Report of the PLLRC, p. 141, 1970.

The PLLRC reported, however, that "Although most of the current concern relates to the doctrine's potential future impact, such potential impacts could be major". Id. at 144.

In 1964 Nicolas B. Katzenbach, Deputy Attorney General for the US said that

"for all the outcry. . . not one state, not one county, not one municipality, not one irrigation district, not one corporation, not one individual has come forward to plead and prove that the United States. . . has destroyed any private right." Hearings on S. 1275 Before the Subcommittee on Irrigation and Reclamation of the Senate Comm. on Interior and Insular Affairs, 88th Cong. 2nd. Sess. (1964). Trelease reported that "Twenty-two years after Pelton Dam this is still true." Trelease, 54 Den. L. J. at p. 492 (1977).

Corker, commenting on the "de minimus" quantity of reserved rights as to NonIndian lands, noted that

"It is the quantity beneath the accuracy of a stream guage. It is what a bird, a butterfly, a deer, or a backpacker drinks from a stream without need of permission. [This statement was made prior to US v. New Mexico; not even these minimal drinkers would now be protected]. The rest of the water flows from the National Forests and the National Parks subject to the law of gravity." Corker, 54 Den. L. J. 499 (1977).

Professor Corker, after extensive research on a report for the

PLLRC, finally found an "injured" person. Mrs. Glenn sued under the Tort Claims Act for loss of a 1930 irrigation appropriation to a recreation area in a National Forest established in 1897. Her suit was dismissed on stipulated facts. Apparently sufficient water was made available for both Mrs. Glenn and the Forest Service. See Glenn v. United States, Civil No. C-153-61 (D. Utah March 16, 1963) discussed in DEVELOPMENT, MANAGEMENT AND USE OF WATER RESOURCES ON THE PUBLIC LANDS, by Wheatley, Corker, Stetson, and Reed. Clearinghouse for Federal Scientific and Technical Information of the Dept. of Com., PB 188 065 & 188 066. See also, Corker, LET THERE NO NAGGING DOUBTS: NOR SHALL PRIVATE PROPERTY, INCLUDING WATER RIGHTS, BE TAKEN FOR PUBLIC USE WITHOUT JUST COMPENSATION, 6 Land & Water L. R. 109 (1970)

THE DEVIL'S HOLE PUPFISH

While this case is cited for the implied reservation doctrine, it really belongs in the express reservation category. In Cappaert v. United States, 426 US 128 (1976) the court enjoined an irrigator's groundwater pumping which was lowering the level of water in Devil's Hole, and endangering the spawning grounds of the tiny pupfish. A 1952 Presidential Proclamation had expressly reserved this water for the pupfish. The court adopted a rule of "minimal need" to effectuate the reservation's purposes, saying it applied to both express and implied reservations.

The use of this reserved water did not interfere with an "existing" private appropriation right. The creation of the federal reservation clearly pre-dated the planned private use, and the water-related purpose of the reservation was clearly expressed.

THE GILA NATIONAL FOREST

In United States v. New Mexico, 238 US 696 (1978), the Court upheld federal reserved rights for National Forest lands. The United States claimed reserved rights for minimum instream flows, and for recreational, stockwatering, and fish purposes. But the Court said it would recognize only "primary" purposes under the National Forest Organic Act of 1897, 16 USC Secs. 473-478, 479-82, 551 (1976). These purposes did not include recreation, aesthetics, wildlife-preservation, or cattle grazing which the court called secondary purposes. They only include securing favorable conditions of water flows, and furnishing a continuous supply of timber for the people.

A second issue in New Mexico was whether the Multiple Use Sustained Yield Act of 1960, P.L. 86-517, 74 Stat. 215,

codified as amended at 16 USC Secs 528-531 (1976), reserved additional waters. The Court held not, saying that although Congress intended the forests to be administered for broader purposes after 1960, Congress did not intend to reserve water for secondary, MUSYA purposes.

Some 16 or 17 Articles and Notes appeared on the New Mexico case. See, e.g. "Water Rights and National Forests--Narrowing the Implied Reservation Doctrine: United States v. New Mexico, 40 Ohio State Law Journal 728 (1979); Boles, Jr. and Elliott, "United States v. New Mexico and the Course of Federal Reserved Water Rights, 51 Colo. L. Rev. 209 (1980); Fairfax & Tarlock, No Water for the Woods: A Critical Analysis Of United States v. New Mexico, 15 Ida. L. Rev. 509 (1979).

UNITED STATES v. CITY AND COUNTY OF DENVER, 656 P. 2d 1 (Colo. 1982). (Not appealed) This case is the most extensive implementation of the reservation doctrine to date and deserves careful attention.

In this complex state-court adjudication the United States submitted claims for reserved water rights covering seven national forests, three national monuments, one national park, over 1500 public waterholes and springs, two mineral hot springs, and the public domain administered by the Bureau of Land Management. The case involved thousands of claims for state law appropriation rights. 169 parties objected to the US claims, represented by at least 70 different attorneys. A Water Court decree was appealed to the Colorado Supreme Court. That court held:

NATIONAL FORESTS

Instream flows for recreational, scenic, and wildlife purposes. The United States claimed instream flow rights for watershed and timber protection, and wanted to use this water for recreational, scenic, and wildlife protection.

HELD: Instream flow claim rejected. The US failed to demonstrate that this water was needed for national forest purposes of watershed protection and timber production.

Does MUSYA expand reservation purposes? The United States claimed that MUSYA (1960) expanded the purposes for which water could be reserved under the 1897 Act.

HELD: MUSYA did not expand these purposes. While conceding the Supreme Court's statement in New Mexico was dicta, the Colorado Court said that the dicta was controlling. Congress was aware of the Reserved Rights Doctrine when it passed MUSYA, but did not choose to reserve additional water explicitly.

DINOSAUR NATIONAL MONUMENT

Reservations for Monuments. The US claimed reserved instream flows in the Yampa River for recreational boating (river rafting) within the Monument. This have seriously impaired junior appropriators upstream on the Yampa. This National Monument was created under 16 USC Sec. 431 (1976) by presidential proclamation to preserve public lands of outstanding historic and scientific interest. President Wilson created it in 1915 to preserve an "extraordinary deposit of Dinosaurian and other gigantic reptilian remains".

HELD: Recreational boating is not one of the purposes for

which water can be reserved under the National Monument Act.

Monument transferred to Park. This Monument was placed under the supervision of the National Park Service in 1938 and the US argued that its "purposes" were thus expanded to include National Park purposes.

HELD: The transfer was done for administrative convenience and did not change the purposes for which water could be reserved. The area is still a Monument, being administered by the National Park Service.

Instream flows for scientifically important species. The US claimed instream flows might be necessary for fish habitats of endangered species of historic and scientific interest.

HELD: Claim upheld. REMANDED for determination of quantity needed for these purposes. The US must quantify its claim within 6 months.

ROCKY MOUNTAIN NATIONAL PARK

National Forest transferred to Park status. This Park was created from a national forest. The land was transferred to the Park in 1915, and again in 1930.

HELD: For reservation purposes that are common to both national forests and national parks (watershed protection and timber production), the priority date is the initial national forest reservation.

National Parks also have broader purposes, inter alia, conserving scenery, historic and scientific objects, and wildlife. See National park Service Act of 1916, 16 USC Sec. 1 (1976). The priority date for the reserved rights for these broader purposes is the date the land was made into a Park. Decrees were awarded for minimum flows and lake levels for conservation of scenic, natural and historic objects and for recreational and aesthetic purposes.

PUBLIC SPRINGS AND WATERHOLES

Reservation by Interior Dept. regulation. The federal government claimed reserved water rights for the entire yield of numerous waterholes and springs, whether tributary or nontributary, located on lands withdrawn by a 1926 executive order titled "Public Water Reserve No. 107".

HELD: The Executive Order was issued under authority of

the Stock Raising Homestead Act of 1916, 43 USC Sec. 300 (1976). While the Exec. Order did not state an intention to reserve water and withdraw it from appropriation under state law, Department of Interior regulations did state such intention, and that is adequate to create a reserved right.

Anti-monopolization purpose for reservation. The Dept. of Interior REGULATIONS reserved water to "prevent the monopolization of vast land areas in the arid states by providing a source of drinking water for animal and human consumption".

HELD: These regulations reserved only sufficient water to carry out this anti-monopolization purpose, and no more. The springs and water holes contain more water than is minimally essential for this purpose. The government has 4 years to quantify its minimal needs to effectuate this purpose.

Tributary springs. The reservation applies to both tributary and nontributary springs; the reservation documents made no distinction between these two types of sources.

MINERAL HOT SPRINGS

Reservation for leasing purposes. The federal government claimed reserved water rights to hot springs for leasing purposes pursuant to the Pickett Act (43 USC Sec. 141 (1976).

HELD: Reserved rights upheld.

Reservation for geothermal power production. The federal government claimed reserved water rights to hot springs for geothermal power production, under the Pickett Act, and under the Geothermal Steam Act of 1970, 30 USC Sec. 1001, et seq. (1976).

HELD: No reserved rights. The Geothermal Act is principally a leasing Act. No express or implied intent can be found in either Act to reserve water for power generation.

Federal licensees and contractors exercising reserved right. The federal government claimed that permittees, licensees, and concessionaires could exercise the federal reserved right, and that it was not necessary for the federal government to itself exercise these rights.

HELD: Licensees etc. can exercise the federal reserved right.

TWO OTHER ISSUES were expressly not decided by the court:

(1) whether reserved rights are limited to waters on, under, or touching the reserved lands;

(2) Whether the reserved right can be transferred to a use not within the original purposes of the reservation. These issues were not properly before the court.

RESERVED WATERS ON BLM LANDS

In Sierra Club v. Watt, 659 F.2d 203 (D.C.Cir.1981) the Court denied the Sierra Club's claim that FLPMA had reserved waters on BLM lands for "scenic, scientific, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values", ruling that FLPMA merely set forth "purposes, goals and authority for uses of the public domain," and did not reserve any water.

THEORETICAL BASIS FOR THE RESERVATION DOCTRINE

This topic is considered last in this outline, or almost so, because it is a peculiar concern of academics, rather than the courts. The Courts have been concerned with results, letting theoretical bases take the hindmost. Nonetheless two theories hold some sway. Supporters of each theory claim judicial support:

(1) The federal government owns waters on lands that have been withdrawn, and therefore can do with those waters as it pleases, without regard to state law. See Hanks, FEDERAL-STATE RIGHTS AND RELATIONS, in 2 WATERS AND WATER RIGHTS Sec. 102.1, at 38-40 (R. Clark ed. Supp 1978).

(2) The reservation doctrine is explained by the supremacy clause, coupled with some incidental constitutional power (e.g. commerce power) exercised on the reserved land. See F. Trelease, FEDERAL-STATE RELATIONS IN WATER LAW 138-47 (National Water Commission Legal Study No. 5, 1971).

FEDERAL NON-RESERVED WATER RIGHTS

The argument about the existence of these oddities, and what they look like, has preoccupied a number of federal lawyers and academics. To date the courts have not been concerned with them.

If one cuts through the extensive verbiage on the subject, one thing seems clear. If Congress wants to claim waters for some federal government use, then it has the power to do so, assuming it acts under the Supremacy clause in conjunction with some other empowering clause, e.g., commerce or property. Of course if the federal use damages or destroys vested private water rights, the the owners of those rights, must be compensated. In view of past congressional history (e.g., the Acts of 1866, 1877), and Supreme Court cases (e.g., US v. New Mexico) the Congressional intention to claim such waters will have to be clearly expressed. But, that the power exists is not really be debatable.

Debate can, of course, occur about whether the Congressional intent is clear enough to pass judicial muster. That debate, especially as it concerns the Federal Land Policy and Management Act of 1976, 43 USC Sec. 1701 et seq. (FLPMA) has waxed extensively in the federal legal establishment since 1979. See:

Krulitz view: Such rights probably exist under FLPMA, and other statutes, and, indeed, are not all that hard to find. FEDERAL WATER RIGHTS OF THE NATIONAL PARK SERVICE, FISH AND WILDLIFE SERVICE, BUREAU OF RECLAMATION, AND BUREAU OF LAND MANAGEMENT, 88 Interior Dec. 553 (1979).

Martz view: Such rights probably don't exist, and certainly not unless clearly mandated by Congress; FLPMA is too fuzzy to be the basis of such rights. MEMORANDUM OF THE SOLICITOR OF THE DEPARTMENT OF THE INTERIOR, 88 Interior Dec. 253 (1981).

Coldiron view: "There is no 'federal non-reserved water right.'" NON-RESERVED WATER RIGHTS--UNITED STATES COMPLIANCE WITH STATE LAW, 88 Interior Dec. 1055 (1981).

Olson view (Office of Legal Counsel): Such rights might well exist, but only where congress explicitly or clearly provides for them! U.S. Dept. of Justice, Office of Leg. Counsel, "Federal Non-Reserved" Water Rights (June 16, 1982).

WHAT IS THE DIFFERENCE BETWEEN RESERVED RIGHTS AND NON-RESERVED RIGHTS?

Coggins and Wilkinson suggest that non-reserved rights arise when Congress delegates to a federal agency authority to administratively claim the waters of a particular stream or lake, for a particular location and purpose, e.g., a campsite. These rights have a priority from the date "the public was given notice, probably through rulemaking." G.C. Coggins, C. F. Wilkinson, FEDERAL PUBLIC LAND AND RESOURCES LAW, 1983 Supp. p. 70.

FINIS