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### SLIDES: Water Management on Public Lands: Chapter 8 of the PLLRC Report

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# Water Management on Public Lands -- Chapter 8 of the PLLRC Report

Natural Resources Law Center  
Martz Summer Conference 2010

# “Limitation of Reservation Doctrine”

## PLLRC Recommendation 56

- “The implied reservation doctrine of water rights for federally reserved lands should be clarified and limited by Congress in at least four ways:
  - Amounts of water claimed, both surface and underground, should be formally established;
  - Procedures for contesting each claim should be provided;
  - Water requirements for future reservations should be expressly reserved; and
  - Compensation should be awarded where interference results with claims valid under state law before the decision in *Arizona v. California*.”

# Limitation of Reservation Doctrine

- *“We recommend that Congress take the following legislative actions:*
  - *Provide a reasonable period of time within which Federal land agencies must ascertain and give public notice of their projected water requirements for the next 40 years for reserved areas, and forbid the assertion of a reservation claim for any quantity or use not included within such public notice;*
  - *Establish a procedure for administrative or judicial determination of the reasonableness of the quantity claimed, or the validity of the proposed use under present law;*

# Limitation of Reservation Doctrine

- Legislative recommendations (cont'd):
  - *“Provide that procedures for creation of future withdrawals and reservations require, as a condition to claims of reserved water rights, a statement of prospective water requirements and an express reservation of such quantity of unappropriated water; and*
  - *Require compensation to be paid where the utilization of the implied reservation doctrine interferes with uses under water rights vested under state law prior to the 1963 decision in Arizona v. California.”*



# “Watershed Protection”

- Congress should require the public land management agencies to submit a comprehensive report describing:
  - The objectives of current watershed protection and management programs
  - The actual practices carried out under these programs
  - The demonstrated effect of such practices on the program objectives
- Based on such information, Congress should establish specific goals for watershed protection and management, provide for preference among them, and commit adequate funds to achieve them

# “Retention and Acquisition” Recommendation 58

- “‘Watershed protection’ should in specified, limited cases be:
  - A reason for retaining lands in Federal ownership;  
and
  - Justification for land acquisition.”

# Retention and Acquisition

- *Critical watershed lands, designated or classified as such, must be retained in Federal ownership. Since watershed management practices are generally of equal quality on Federal and non-Federal lands, it is unnecessary to retain public land solely for watershed purposes, if it is not critical watershed land and if the land is chiefly valuable for a purpose for which we recommend disposal elsewhere in this report.*



# Retention and Acquisition

- *“Federal land acquisition as a dominant control technique is not necessary. Accordingly, we recommend that the authority conferred on the Secretary of Agriculture to acquire lands for watershed protection ... should be restricted to critical watershed lands within the exterior boundaries of existing national forests.”*

# “Recognition of Public Land Values”

## Recommendation 59

- Congress should require federally authorized water development projects on public lands to be planned and managed to give due regard to other values of the public lands

# Recognition of Public Land Values

- *“We recommend that Congress expressly provide that public land impacts be considered by the Bureau of Reclamation and the Corps of Engineers in planning and carrying out their programs, and require that project justification reports submitted to Congress by those agencies clearly identify all potential project impacts on other public land values and contain express findings and recommendations with respect to such impacts.”*

# Recognition of Public Land Values

- *“The Federal Power Act should be amended to:*
  - *Make it clear that public land values are to be considered in determining whether a project ‘will be best adapted to a comprehensive plan’ for river basin development, and*
  - *Require findings by the Commission and the inclusion of conditions designed to protect all important public land values, not just those on reserved lands.”*

# PLLRC Water Recommendations

- Legislatively clarify and limit *federal reserved water rights* doctrine
- Study and take limited action on *watershed protection*:
  - Prepare comprehensive multi-agency report
  - Establish goals, preferences and funding legislatively
  - Pursue limited retention and acquisition of critical watershed lands
- Plan and manage *federal water projects* to give due regard to public land values