

## THE MCCARRAN AMENDMENT



### NRS | Federal Lands | Water Rights Reclamation

The modern era of western water rights litigation began with the enactment of the McCarran Amendment in 1952. See 66 Stat. 560 (1952), codified at 43 U.S.C. § 666. Prior to enactment of this legislation, federal water rights could only be adjudicated in actions filed (or not opposed) by the United States because there was otherwise no waiver of sovereign immunity providing for the involuntary joinder of the United States to water rights adjudications.

Although the United States had voluntarily sought the adjudication of its water rights in a limited number of early cases – for instance, the Orr Ditch litigation initiated by the United States in federal court in 1913 to adjudicate water rights to the Truckee River in California for the Newlands Reclamation Project and the Pyramid Lake Indian Reservation – such cases were the exception. As early as 1910, shortly after the establishment of the Public Lands Division, the Attorney General, reported that, without its voluntary appearance, the United States could not be bound by a water rights adjudication in Idaho in which a private corporation sought to join sixteen hundred settlers under the Minidoka Project, certain engineers of the Reclamation Service, and the Secretary of the Interior as parties defendant.

By 1926, federal participation in such suits had become somewhat more widespread, with the United States filing or consenting to joinder in approximately thirty adjudications scattered throughout the West – often for the purpose of seeking a determination of the water rights held under state law for large irrigation or Indian reclamation projects, such as the Gila River Project in Arizona and the Grand Valley Project in western Colorado. However, there remained an untold number of stream systems in which claimants were unable to obtain a determination of the status of their claimed water rights relative to the often sizable, potential federal claims, including particularly federal reserved rights claims.

This situation changed with the enactment of the McCarran Amendment in 1952, which waived federal sovereign immunity for the joinder of the United States as a defendant in general stream adjudications. Over the next several decades, the United States Supreme Court issued a series of opinions that clarified the scope of the waiver and the procedural requirements that apply to such proceedings. For instance, the Supreme Court in such cases as *Dugan v. Rank*, 372 U.S. 609, 618-19 (1963), and *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800

(1976), ruled that the McCarran Amendment only provides a limited waiver of sovereign immunity for purposes of joinder to comprehensive, general stream adjudications in which the rights of all competing claimants are adjudicated. The waiver does not subject the United States to private suits to decide priorities between the United States and a particular claimant.

The Court in *Colorado River District* also recognized that, although state and federal courts have concurrent jurisdiction over the comprehensive adjudication of water rights, the federal courts may, in appropriate circumstances, abstain from exercising their jurisdiction where comprehensive state proceedings addressing the same claims are already underway.

Finally, the Court in *United States v. District Court in and for Eagle County*, 401 U.S. 520 (1971), ruled that the waiver of sovereign immunity under McCarran includes a waiver for the adjudication of federal reserved water rights. This ruling opened the door to much litigation over the existence and quantity of federal reserved water rights held for national parks, national forests, national wildlife refuges, and other federally reserved lands.

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