



RESOLUTION
on the
FEDERAL GOVERNMENT'S ROLE IN EXPEDITING
STATE GENERAL STREAM ADJUDICATIONS
Fall No Host – Virtual Meeting
October 15, 2020

WHEREAS, the western states use general stream adjudications to determine and document relative water rights within basins, including rights to waters claimed by the United States under either state or federal law; and

WHEREAS, general stream adjudications give certainty to water rights, provide the basis for water right administration, reduce conflict over water allocation and water usage, and incidentally facilitate important market transactions for western water rights; and

WHEREAS, Congress recognized the benefits of state general stream adjudication systems when it adopted the McCarran Amendment (43 U.S.C. §666), which requires the federal government to submit to state court jurisdiction for the adjudication of its water right claims; and

WHEREAS, adjudications typically involve hundreds or even tens of thousands of claimants, and federal water right claims are typically the largest, most complex, and costly to resolve; and

WHEREAS, the United States Supreme Court held in *United States v. Idaho*, 508 U.S. 1 (1992), that the McCarran Amendment does not require the United States to pay the filing fees and costs that many states use to help fund and reimburse the expenses associated with adjudications; and

WHEREAS, the Court's holding shifted much of the costs and expenses of adjudicating federal claims in many states to private water users and state taxpayers, draining state resources and significantly inhibiting the ability of both state and federal agencies to conduct adjudications in a timely manner, threatening private and public property interests; and

WHEREAS, requiring federal agencies to pay filing and other fees and costs and follow the same procedures as all other water right claimants would help ensure that their claims are legitimate, in conformity with state law, and made in good faith;

NOW THEREFORE BE IT RESOLVED that the Western States Water Council recommends policy changes at the federal level as follows:

1. As a matter of policy, federal agencies should pay a fair share of the fees and costs associated with adjudicating their claims in state court adjudications. The federal government has discretion to adopt such a policy as a matter of fairness, even though not presently required to do so by law. Federal payment of filing fees was a common practice prior to the Court's *United States v. Idaho* decision.
2. General stream adjudications pursuant to the McCarran Amendment should be brought in state and not in federal court. Actions brought in federal court divert substantial resources from state adjudications and are contrary to the intent of the McCarran Amendment.

3. There must be high-level federal involvement in negotiations and mediation that often occur with regard to federal claims within the context of ongoing adjudications in order for them to be effective. Experience has shown that without the involvement of federal participants who have the authority to make decisions, achieving agreements can be illusory and delay mutually beneficial outcomes. Policy direction must be provided by the relevant federal agencies.
4. Federal agencies should be given policy direction to ensure that federal claims filed in state court adjudications have a sound basis in fact and law. States continue to encounter questionable claims that can be very costly to evaluate, thus diverting limited state resources from completing general stream adjudications, and which are ultimately of no benefit to the United States.
5. Federal agencies should place a higher priority on educating their leaders and applicable staff regarding western water rights. Where federal agency leadership and staff have an incomplete understanding of the nature of their claims, the processes needed to resolve them, and state water law, this can result in federal actions and policies that hinder or delay the adjudication process or infringe on state authority and water management. Educating federal leaders and staff regarding western water rights will improve federal participation in the adjudication process, thereby improving the process as a whole.
6. Federal agencies should consult with states before asserting water rights claims. Federal water rights claims, particularly reserved water rights claims, can be contentious, time-consuming, costly, and counterproductive, often resulting in outcomes that do not adequately provide for federal needs or are divisive to community needs and interests. States and federal agencies have worked together to craft mutually acceptable and innovative solutions to address federal water needs that are often more capable of accommodating federal interests. At a minimum, federal agencies should consult with states to consider alternatives before filing reserved water rights and other claims in adjudications.
7. Requiring the federal government to provide whatever evidence it may have to substantiate its claims at the time of filing would ensure that federal claims have a sound basis in fact, and also would facilitate timely review of those claims. Given the complexity and the contentiousness involving such claims, states are justified in asking the federal government to take this step. Doing so will expedite the process by: (1) minimizing the filing of questionable or non-compliant claims; and (2) providing a basis for states to ascertain early on the level of resources that states need to commit to the investigation of such claims.

*Originally adopted October 9, 2002
Reaffirmed Oct 21, 2005, Oct 17, 2008, Oct 7, 2011, Oct 10, 2014, and Oct 20, 2017
(See also Positions #247, #272(a-b), #308, #335, #375, and 416)*