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[Director's Briefing Water Rights V3 \(8\).pptx](#)
[National Conservation Lands Water Rights \(1\).docx](#)
[States Water Rights Statistics 11 17 \(1\).docx](#)
[Tracking BLM Water Rights Claims \(2\).docx](#)
[Water Rights follow up briefing response \(1\).docx](#)

Hello,

Attached for the Water Rights Coordination meeting on Wed are two main docs including:

- 1) Briefing Material used during the Directors Briefing-ppt
- 2) Water Rights follow up briefing response

The other attachments are more detailed in nature but good references
A follow-up meeting with WO-220 is being scheduled.

Thanks,
Miyoshi

BLM States Water Rights Statistics

Date: November 9, 2017

Alaska

Working with Alaska DNR to establish water rights claims

Arizona

Aravaipa Canyon Wilderness Area – trial in Arizona Superior Court ended in December 2015. No decision.

Redfield Canyon Wilderness Area – trial scheduled in Arizona Superior Court to begin the week of May 6, 2017. Court has not made a decision.

San Pedro Riparian National Conservation Area – trial scheduled in Arizona Superior Court to begin in November 2017. The United States' testifying witnesses comprised of both governmental and non-governmental experts.

Gila Box Riparian National Conservation Area – not scheduled by the court but has a claim for an expressed federal reserved water right filed in the Gila Adjudication.

Needle's Eye Wilderness Area - not scheduled by the court but has a claim for an expressed federal reserved water right filed in the Gila Adjudication.

The remaining 24 NCS units in the Gila Watershed range from no quantification work to preliminary quantification work.

California

Reporting and Managing Water Rights

The biggest water rights issue in California is the State requirement for water rights reporting. Historically, State regulation required triennial reporting of use for most of BLM's roughly 2,500 State water rights. In 2016, as a response to California's continuing drought and the State's curtailment of certain water rights, the State developed new regulations requiring annual reporting for most of BLM's State water rights. This responsibility lies primarily with the FOs, with the highest workload in CenCal (e.g., Bakersfield ~800 water rights; Bishop ~300) and NorCal (~830 + in Applegate and Eagle Lake), and the lowest in CDD.

A review of the monitoring and reporting dilemma and the appropriateness of some of BLM's water rights by two former BLM CA SWA program leads led to the following conclusions:

1. The Water Board does not have the latitude to provide BLM a variance for the monitoring and reporting requirements. However, the consequences of non-reporting are more political and optical than practical. The state *does* audit water rights reporting by category and class of water user and while BLM has not previously been included in an audit, it could in the future. There are fines associated with non-reporting but the federal government is not subject to state fine. Water rights would not be revoked due to non-reporting.
2. The Water Board is experimenting with ways to accept reporting in spreadsheet form as opposed to the current method of a unique form for each water right. The Water Board also indicated that estimates would be sufficient as opposed actual measurements (i.e. water storage as an estimate of stock pond volume, etc.).
3. Stock ponds that have no associated defined channel do not require a water right.
4. There is a benefit to BLM to memorialize public water reserves (PWR) and historically this has been done through filing a statement of diversion and use (SDU). There usually is no diversion associated with PWRs. This also might not be the most appropriate type of water right.
5. In addition to the PWR SDUs, BLM has SDUs for in stream flows (or riparian rights) where there is no actual diversion. These SDUs are of little value since California does not recognize and in stream flow water right (there are limited exceptions but none that apply to BLM). Also under State case law, BLM cannot hold a riparian right on public domain land. The State has requirements to ensure sufficient water remains in stream to support the stream's biological and physical function.

A pilot project in NorCal to evaluate water rights and determine on-the-ground characteristics of each water right was developed to help tease out which water rights are no longer necessary to retain. This pilot project provided useful information and used field going staff from many different programs, however it was very labor intensive. This needs to be replicated throughout the state to ascertain the current status of the functionality of our water rights.

Groundwater and groundwater fed ecosystems

In general, CDD (and Bakersfield FO) has the most issues associated with managing groundwater related to support of the Amargosa Wild and Scenic River, renewable energy development, adjudicated ground water basins, and other uses that draw upon ground water reserves.

Several modeling efforts on the Amargosa River (groundwater fed) and the Chuckwalla Basin in support of renewable energy development. Work is being done

by Lawrence Berkely and Penn State. USGS will be assisting with implementation.

Riparian/Fish/Wildlife

In California the BLM can't get water rights for instream flow, only for appropriative rights for a beneficial use. This causes issues for riparian management and wildlife/fisheries species management including listed species.

Range Management

There are a number of stock water pond water rights in the Northern part of the state. Currently BLM doesn't do water development on public lands without a water right. This is not a significant issue in CA.

On Smoke Creek Reservoir on the NV/CA border the BLM has water rights, however, 100% of the water is being used by the land owner to water alfalfa.

Adjudications

Several adjudications are ongoing in the state. Walker River is the biggest one and has been ongoing since the 1930s. Nevada has the lead on this. Several groundwater adjudications happened in the CDD in the past.

Staffing

California currently has no hydrologists in the state. There are two vacant hydrologist positions on the Table of Organization. The state SWA program lead is vacant and has been for about one year. In order to address the technical expertise shortage, there is an Interagency Agreement in place with the Forest Service Regional Office to help with specific projects. This is a short term solution as the Forest Service is also short staffed with hydrologists.

California is in need of both surface hydrology expertise (primarily in the Northern part of the state) and ground water hydrology expertise (primarily in the Southern part of the state).

Colorado

BLM Colorado has achieved instream flow protection on some major rivers by working closely with Colorado Parks and Wildlife to conduct instream flow studies and to make joint flow protection recommendations to the Colorado Water Conservation Board. Within the last three years, instream flow water rights have been finalized for the San Miguel River and the lower Dolores River. BLM Colorado is assessing whether to proceed with instream flow recommendations on the Yampa River and Little Snake River in Little Snake Field Office.

BLM Colorado is exploring options with the State of Colorado to protect streams that support globally rare riparian species and communities. BLM Colorado has invested substantial resources in a pilot project that studied Cottonwood, Monitor, and Potter Creeks on the Uncompahgre Plateau (Uncompahgre Field Office). BLM Colorado submitted a draft instream flow protection recommendation in summer 2017.

BLM Colorado has obtained water rights to support two major wetland areas that support substantial acreage of shorebird and waterfowl habitat. BLM Colorado has obtained surface water rights, storage rights, and plans for well augmentation for the Blanca Wetlands Area in San Luis Valley Field Office and for the Hebron Waterfowl Management Area in Kremmling Field Office.

BLM Colorado has adopted the Upper Colorado River Wild and Scenic Rivers Stakeholder Plan for the Upper Colorado River between Kremmling and Glenwood Springs, as part of the RMPs for the Colorado River Valley Field Office and Kremmling Field Office. The stakeholder group is comprised of local governments, private landowners, environmental interest groups, recreational interest groups, and major water users who hold water rights along the river. The stakeholder group is assisting BLM with managing flows to support outstandingly remarkable values in three river segments that are eligible for Wild and Scenic River designation.

Idaho

Adjudication in Idaho

During the Snake River Basin Adjudication (1987-2014) BLM Idaho received decrees for 16,939 water claims across 11.8 million acres.

Currently adjudication efforts are underway in Idaho's panhandle region in the Coeur d'Alene-Spokane River Basin Adjudication. BLM Idaho has filed 96 claims based primarily on Public Water Reserve 107 with 91 of these claims receiving decrees to date.

Adjudication will be initiated by the State of Idaho in the Kootnenai River and the Bear River Basins in the next few years. BLM Idaho began conducting inventory of water sources in 2017 within the Bear River Basin, in anticipation of the adjudication being initiated in 2020.

State Legislation Regarding Stockwater Rights

The State of Idaho enacted Senate Bill 1111 (SB 1111) during the 2017 legislative session. This bill repeals existing statutes that allowed BLM to hold stock water rights under permit and license. As the law currently stands BLM is not allowed to acquire new stockwater rights.

The Idaho State Office is drafting an Instruction Memorandum identifying interim policy to address operational impacts of SB 1111. Field Offices will work with permittees to minimize the impacts of the legislation on maintenance of existing and development of new range improvements authorized through Cooperative Range Improvement Agreements.

Groundwater Recharge

Due to the shortage of groundwater in southern Idaho, the State has authorized a plan to recharge groundwater supplies. BLM Idaho cooperation and assistance has played an instrumental role in successful implementation of this plan (305,175 acre feet in 2017). A significant portion of these recharge efforts are occurring on BLM lands.

BLM Idaho is performing an inventory of approximately 1,600 water sources within the Bear River Basin during the FY 2017 field season. The Bear River Basin encompasses 376,000 acres of BLM land within the Pocatello Field Office (Idaho Falls District) involving 209 Allotments (108,013 AUMs) in four (4) hydrologic water basins (B11, B13, B15, B17) in SE Idaho that are tributary to the Bear River. The inventory is being performed in preparation for the State of Idaho commencing a general stream adjudication for the Bear River Basin.

When the State of Idaho commences the general stream adjudication for Bear River Basin, BLM will have only 6 to 8 months to file water right claims. The inventory must be completed prior to the filing of any claims in the State's adjudication proceedings, because the court has sanctioned the U.S. in the past for not investigating its claims sufficiently. Therefore, the Department of Justice (DOJ) requires that any claim filed by the U.S. must be investigated on the ground before it can be filed.

The court also will not give the U.S. years to investigate its claims once an adjudication is authorized by the legislature and will typically require claims be filed within 6 to 8 months of commencement, which means BLM must complete its investigations within the Bear River Basin prior to the Idaho Legislature authorizing an adjudication.

When the U.S. is enjoined in a general stream adjudication pursuant to the McCarran Amendment (43 U.S.C. 666), the U.S. is under a limited waiver of its

sovereign immunity to lawsuits, such that the U.S. must file any claim to a water right to which it is entitled under the law, or else be forever barred from asserting such claim in the future.

In 2008 the Idaho Department of Water Resources (IDWR) requested that the Idaho Legislature pass legislation to authorize three general stream adjudications in northern Idaho. The legislature funded the Coeur d'Alene -Spokane River Basin Adjudication in 2009 and every year since. In 2016 the Idaho Legislature funded the Palouse River Adjudication. IDWR has been bending the ear of the legislature since 2013 for authorizing an adjudication of the Bear River basins, therefore we expect it to be authorized sometime during the next few legislative sessions, as the northern Idaho adjudications are well under way.

Montana

MONTANA STATE-WIDE GENERAL ADJUDICATION

Montana has been conducting a state-wide general adjudication of pre-1973 water rights since legislation was passed in 1979. Because the United States was joined as a party under the McCarran Act, the BLM filed about 25,000 water rights claims-primarily to protect range improvement projects on BLM administered lands so that the water would be available for grazing permittees and wildlife to use. All claims filed by BLM are for sources located on BLM lands.

Montana Water Court adjudications began in 1985, with decrees of the first 20 basins (there are 89 basins in Montana). In the ensuing 32 years, the BLM has been actively involved in this. To date, the BLM has carried less than 10 cases (out of hundreds) forward to a hearing. All other cases have been successfully settled through negotiation.

BLM's participation in the adjudication falls into two primary roles:

1. BLM as claimant and defendant for water rights located on federal lands administered by BLM. BLM's primary mission under this role is to make sure that the water sources in which it has an investment are protected from drainage and kept available to the users of the federal lands. This activity mostly involves working with the Montana Department of Natural Resources and Conservation and the Montana Water Court to clear up information about the BLM claims. Typically, there are very few cases where BLM is the defendant to an objection by a private party to BLM claims.
2. BLM as an objector to other claimants. BLM files objections to water rights which seek to appropriate water on BLM lands for uses that are not authorized (e.g. water right claims for irrigation of public lands by persons who do not have a permit to do so; private claimants who seek to claim water on public lands-but who are not the grazing permittee for the lands where the water is located.). BLM also files objections to other claimants'

water rights when those water rights would harm BLM water rights or prevent them from being used.

Significant cases involving BLM water rights

40E-A Decision (2004): Re: Grazing Permittee stock water claims on public lands
In 2004, the Montana Water Court ruled (in the 40E-A decision), that BLM and USFWS grazing permittees were entitled to hold pre-1973 water rights on federal lands unless the United States had policies specifically preventing them from doing so. BLM had objected to the claims of grazing permittees for these reservoirs because they had been built mostly by BLM and the BLM had filed claims for them as well. The Court specifically did not rule against BLM ownership of grazing related water rights.

MT Supreme Court Cases Re: BLM ownership of water rights in reservoirs and lakes on federal grazing allotments

In this case, a group of grazing permittees had filed objections to the claims by BLM for stock water and wildlife rights in BLM range improvement projects and natural pothole lakes located on federal lands. The Montana Water Court ruled that BLM was the proper owner of the water rights and that the claims could not be forcibly transferred to the objectors. The case(s) were appealed to the Montana Supreme Court, which recently (2016), affirmed BLM's ownership of claimed water rights located on federal lands. One self-represented objector has indicated an intent to seek Supreme Court cert of her case.

Federal Reserved Water Rights in Montana

BLM has federal reserved water rights for The Bear Trap Canyon National Recreation Area, the Upper Missouri National Wild and Scenic River and the Upper Missouri River Breaks National Monument. The reserved water rights for the Bear Trap Canyon and Wild & Scenic River were "implied" by Congress when the withdrawals were made. The Upper Missouri River Breaks National Monument had reserved water rights specified as part of the withdrawal proclamation. The State of Montana has negotiations Compact Agreements to quantify all of the federal reserved water rights for these withdrawals. The Compact Agreements have been ratified by the Montana legislature and signed by the Secretary of Interior. These agreements involve a "subordination clause" that makes the federal reserved right junior to existing state-based water rights.

As a result of the subordination clause in the Upper Missouri River Breaks National Monument Compact, BLM has filed a number of objections in the Arrow Creek basin adjudication to attempt to bring inaccurately claimed water rights into line with the information verified by the Montana Department of Natural Resources and Conservation (DNRC) in their review of those claims. If inflated water rights claims are not corrected, there could be negative impacts to the necessary instream flows in the Judith River and Arrow Creek that support the protected values.

This area was heavily settled under the Desert Land Act. The Act required applicants for land patents to provide a showing of water right ownership to support irrigation in order to receive their land patents. This resulted in the filing of thousands of Water Right Appropriation Notices with the local counties. Many of these water right notices were used as the basis for water right claims in the Montana adjudication, but land uses have often changed drastically since those notices were filed (mostly during 1890s and early 1900s) and many of the lands that were described are no longer irrigated due to the lack of available water and the hilly nature of the lands. In nearly all cases, the BLM's objections have been resolved and withdrawn when water right claimants reach agreement with the DNRC to amend their water right claims to include only those lands and amount of water which can be verified as having been historically used. In a very few cases, claimants have strongly disagreed with the evidence upon which the DNRC relied in their review of the claims. At this point, four of those cases are proceeding toward a Montana Water Court hearing, although BLM has forwarded settlement proposals that protects the historically irrigated acres and amounts of water that are in use today.

In addition, there are some public water reserves (PWR 107s) on BLM lands in Montana. The State declined to negotiate a quantification for these claims because they are scattered throughout the state and mostly involve very small quantities of water from isolated water sources (natural springs and glacial pothole lakes). The BLM has filed statements of claim in the Montana adjudication for these sources and they are being incorporated into the Montana adjudication process. These water right claims have not been particularly controversial because they involve small water sources that generally do not flow off of federal lands onto private lands.

Upcoming Issues for BLM in Montana re: water rights

The Montana legislature, when establishing the statewide adjudication statute, specifically exempted instream livestock watering and small (less than 35 gallons per minute and 10 acre feet per year) stock water and domestic wells from the filing and forfeiture portions of the statute. These smaller water uses were deemed essential to their users and not likely to affect downstream or neighboring water users. Recently, attention has been redirected to these water uses and a new statute was passed in 2014 that allowed claims for these sources to be voluntarily filed, but did provide for the water rights to be lost if no filing was made. The 2017 Montana legislature has revisited the legislation and is proposing to amend it to require filings by July 1, 2019. There have been several hundred of these water right claims filed by private individuals on stream reaches that cross federal lands. So far, it is unclear how these claims will be quantified and what impact they may have on BLM land management.

If private water right owners are allowed to unrealistically quantify these claims (e.g. claiming a volume and flow rate sufficient to water all of the cattle they own at

every water source on the allotment) or to claims unrealistic priority dates (e.g. they claim priority back to very early (1860's era) dates without showing privity to the original graziers); the BLM could find itself in situations where the water right owner on the streams crossing public lands is not the authorized grazing permittee. These claims could also result in situations where the grazing permittee decides to move the water off of BLM lands by impounding it above the federal land boundary. Either case could result in reduced (or no) water availability to BLM grazing permittees for their livestock and negative impacts to wildlife and to riparian habitat along streams on BLM lands.

BLM is currently awaiting the final version of this legislation and will formulate its strategy, with guidance from BLM management, Solicitor's Office and Department of Justice. This strategy will likely include:

1. Should BLM file water right claims on streams and wells on public lands to protect them for use by the BLM grazing permittees? If so, how will the streams be identified and prioritized for which such water right claims are required?
2. Should BLM oppose these filings when BLM lands are claimed as the all, or part, of the place of use?
 - a. If the claimant is the grazing permittee or base property owner for the allotment where the stream is located – are the priority date, volume and flow rate reasonable?
 - b. If the claimant is not the authorized grazing permittee or base property owner for the allotment where the stream is located, it appears that BLM SHOULD oppose the filings.

North Dakota and South Dakota water rights issues

South Dakota and North Dakota have no ongoing water rights adjudications or litigation that involve BLM. Early attempts (1980s) to begin a statewide adjudication in South Dakota were abandoned when the State observed the costs incurred in the Wyoming and Idaho adjudications. There has been no indication that North Dakota intends to begin such an adjudication.

Nevada

Pending litigation - the only pending litigation we have in NV is the East Owyhee Adjudication, BLM appealed the decree, went to hearing and is currently waiting on a decision from State District Court. This adjudication originally started back in the 1980s, then it sat on a shelf until 2011 when it was reopened by the State. It was not opened for new claims, BLM just suddenly received a Preliminary Order of Determination from the State. In this preliminary order, all of BLMs 47 PWR107 claims were rejected because the State claimed that BLM didn't follow the Nevada

State Engineer's (NSE) criteria they had set under State Ruling 5729 regarding what the State believes a PWR is and is not***.

BLM decided to comply with Ruling 5729 and revisited all of the PWRs and submitted flow and water quality data, two criteria that the NSE specifically noted in the preliminary determination. BLM submitted the additional information to the NSE. In the final determination, out of the original 47 claims, 16 were completely rejected, 25 were approved for stock water only and rejected for human consumption because it is either too remote and/or there was no water quality information, and 6 were approved as claimed. BLM then appealed to State District court in Elko County, DOJ and the solicitors went to hearing in 2013 and gave oral arguments to the court in 2015.

*** Back in 2009 the NV State Engineer issued a ruling identifying criteria that a spring had to meet in order to be considered a PWR¹⁰⁷ per the State. At the time, BLM decided to not appeal the ruling, the State Director stated that he wanted to see if it really impacted the BLM or not. Jump forward 2 years and it really is impacting the BLM and now we missed the appeal period.

BLM has participated in several other adjudications since the East Owyhee, however, Nevada Division of Water Resources (NDWR) has not issued a preliminary determination in any of them. I am assuming that they could be waiting for a decision in State District Court on the East Owyhee before issuing any new ones with the same analysis/determinations.

Previous litigation - the most significant water rights related litigation that has come through the courts recently is related to the Hage cases; both the CFC case - Hage v US and the Trespass Case - US v Hage. In both cases, the government prevailed at the 9th circuit and the 9th circuit decision for the Trespass Case did a great job at outlining all of the arguments BLM often hears regarding grazing and water rights on public lands and dispels each myth with a regulation and or previous case law.

Future adjudication work - BLM-NV is anticipating a high adjudication workload over the next several years. In 2013, the Nevada State Legislature increased funding to the NDWR to add capacity within the Office's Adjudications Section. This new staff is assigned to work on a large backlog of adjudications that had been languishing for long periods of time; some for several years and others for several decades. As such, NDWR has reopened several old adjudications over the past 3 years and have indicated that more will be reopened into the future. Additionally, filing requirements for vested water right claims and BLM Federal

Reserved water right claims have changed since many of these older adjudications were first initiated. These new filing requirements are resulting in an increased workload for BLM staff at both the State and District/Field Office level, even on adjudications where BLM had previously filed its claims. BLM-NV is currently working on a strategy to tackle this workload.

Livestock Water Rights – Currently, BLM-NV cannot apply for a water right with livestock as a beneficial use. In 2003, the NV State Legislature passed legislation identifying the only entity that can hold livestock water rights are those that own the livestock (see NRS 533.503). This made it impossible for the BLM (and USFS) to apply for water rights for stock watering (livestock) use. As such, the BLM issued a water rights policy requiring that in order to expend public funds on a range improvement for a water development per 43 CFR 4120.3-9, the BLM had to hold its own water right for another use, such as wildlife, for the range improvement. There is an exemption within the policy that allows the State Director to allow for the expenditure of funds without the need for BLM to hold its own water right (See NV IM 2014-044).

Protests - BLM protests water right applications either on public land or ones that could impact resources on public land as needed. Success on these vary dependent on the individual application, what the water will be used for and overall potential impacts to resources and how solid BLMs argument is in the protest. Reviewing the monthly reports and going through the decision process for protesting is a large workload, the significance of which and reasons behind why BLM would protest applications can be lost by some managers.

For a while, the BLM-NV had a policy of protesting every water right where BLM claimed a PWR107. We were not successful in many of these protests since the NSE sees livestock water rights as compatible with PWR107s and our protests were often denied. BLM no longer protests these for the sole reason that a PWR107 exists, there needs to be another issue associated with the application.

Wild Horses and Burros - Currently, BLM-NV is having difficulty obtaining water rights for wild horse & burro use on public land. It is BLM policy to only apply for these types of water rights in Herd Management Areas when there is a need to develop a new source to either protect the surface water or develop new groundwater. When BLM files for a new appropriation for wild horse use, these water rights applications are typically protested and the NSE hasn't been moving forward on them for either a ruling or a hearing.

In 2011, there was State legislation to change the definition of wildlife under State law to exclude wild horses and burros. At the time, many permittees and other land owners were very upset that the WHB populations were on the rise and BLM wasn't doing enough to manage populations. There were also concerns regarding loss of livestock use on public lands to due lack of forage and limited water availability due to excessive WHB use. Some of the ranchers wanted to have a way to 'charge' the BLM for use of water by wild horses. The idea that if WHB are excluded, than no WHB could drink water in NV and they would all need to be removed and/or if caught using water, the BLM could be fined (\$10,000 per day per occurrence under existing water law).

The State law did not pass, however, it did bring the issue to the attention of the NSE and this is still a controversial topic among ranchers throughout the state to this day. If BLM applies for a water right for wildlife use and identifies horses on the application, it will most certainly be protested and the NSE has not issued any rulings on the matter. I believe that the NSE will want to go to hearing on the matter in the future, but that's just my opinion. There have been other 'conversations' about removing the ability for BLM to apply for water rights for wildlife use, the idea that BLM doesn't manage the wildlife therefore they shouldn't hold the right. Although BLM doesn't manage the wildlife, we do manage the habitat and holding a water right ensures that BLM can protect the habitat and have water available for wildlife use on public land.

Lands and Realty – Lands and realty related issues associated with water rights can include issuing Desert Land Entries, managing RS 2339 claims, managing water rights acquired through land acquisitions and analyzing impacts in the NEPA process due to permitted activities.

BLM-NV occasionally processes Desert Land Entry (DLE) claims, which can be a water rights workload. DLE applicants must show the SE office that they can put water to beneficial use on the new lands, while at the same time they must show the BLM that they have the water available to prove up their DLE claims. We have developed a work-around with the State Engineer's office, whereby BLM issues a conditional DLE approval that the SE office then uses as a basis for a water right permit which the applicant can then submit to BLM to obtain final approval of the DLE. This process is complex, confusing, and time-consuming.

BLM-NV has acquired water rights through land acquisitions. Workload associated with conveying these water rights, putting them to beneficial use and getting them certificated can be enormous for local staff. One example is the Winter's Ranch

property in the Carson City District. The BLM acquired 1,290 acres of land and 6,967 acre-feet annually of water rights in three separate acquisitions between 2002 and 2014. A management plan for the area was completed in 2011 and the office is still working on putting those waters to beneficial use. The complexity and feasibility is proving to be greater than originally anticipated when the sale was initially proposed and the needed tasks weren't well identified in the management plan. On the surface, it's something that seemed relatively easy to do, but once someone had to really think about the logistics of how to do it and start taking action, it ballooned into a massive project.

R.S. 2339 claims are pre-FLPMA rights-of-ways for canals and ditches with specific requirements that must be met, including have a vested water right claim (or a pre-FLPMA water right) associated with it. In NV, BLM is beginning to see more of these claims being made by permittees and others. Once an individual brings forth a claim, BLM has to record the claim on the Master Title Plat and the claim isn't a true right until it is verified by a Federal Court.

In 2012, a BLM permittee filed a complaint to quiet title to 46 ditch rights-of-ways; R.S. 2339 claims. The BLM and the Defendant, through mediation with a Magistrate Judge, came to a Settlement Agreement in the case in 2015 where the parties came to an agreement to the dismiss all of the claims except for 5 which the US filed disclaimers of interest. There were a lot of lessons learned through this process, particularly related to what the BLM needs to do to review the claims, specifics as to what makes a valid claim and working with other specialists, like historians and cadastral to do a complete analysis.

Land Use Plan – In all management plans, whether for a Congressionally Designated Area (National Monument) or District-Level Land Use Plan (LUP), identifying water rights needs for the resources and whether or not Federal Reserve rights can be claimed is a large workload for the local staff. For Congressionally Designated Areas, if Federal Reserve rights are identified within the designation, then the local hydrologist would need to file claims on those springs. If there are no Federal Reserve rights, then the hydrologist would need to determine if any appropriated rights need to be filed. For District LUPs, a similar process would need to take place to determine if any special designated areas (ACECs) need water rights to support the area or if there are other water rights that need to be filed to support specific resources.

Mining – Recent increases in the price of metals has resulted in a flurry of new mine plan submissions. Because much of the mining activity occurs in open pits

below the water table, mine dewatering wells are an integral part of the mining activities. These deep wells, operating over decades, would create extensive cones of depression that could influence a wide variety of water rights, water, and riparian resources. Lithium mining requires the pumping of large quantities of groundwater into evaporation ponds to increase the concentration of the minerals in solution. Once the concentration hits a certain amount, the water is pumped to a processing plant and the lithium is extracted from the brine solution. The State of Nevada passed a bill in 2017, which allows for the exploration and use of water up to 5 acre-feet without a water right. Any use beyond 5 acre-feet would require an appropriation through the State Division of Water Resources. Workload from mining activities will continue to increase over the foreseeable future.

There is one mining project in Nevada involving impacts to PWR107 claims, which has altered the way we look at claiming PWRs and impacts to water resources on public lands. In this case, we are having to redo our water resource analysis in a SEIS and determine if any of the springs that could have indirect impacts due to groundwater pumping could be PWRs. Generally, we only file claims when a basin goes into an adjudication. If we have projects in areas where no claims have been filed, do we now need to start looking at those potentially impacted springs and making a PWR determination or filing a claim? This is a new issue that we are currently working on.

Overall Workload – Workloads associated with maintaining water rights can include reviewing the monthly reports of water rights applications, protesting applications, responses to inquiries from NDWR, preparation and filing of water rights applications for wildlife (or other) uses and participating in adjudications.

Workloads associated with adjudications can be significant. Each spring within the adjudication area needs to be field verified and a determination made whether or not a Federal Reserve Right (PWR 107) can be claimed. Over the past decade, BLM-NV has participated in several adjudications, at varying stages of completion. The workload associated with participating in an adjudication, at any stage can be huge. One of the large adjudications that started a few years ago took over 50% of an office's hydrologist time for about 2 years as well as 100% of a dedicated water resources technician's time. When an office goes into an adjudication, there needs to be a clear discussion with management on what the workload entails and how involved local specialists need to be in the process. Prioritizing this workload and having the ability to dedicate a large amount of staff time to it is important and becoming more difficult as budgets decrease and staff begin taking on more duties.

Importance of Water Rights Workload – From NV Water Rights Policy- Water rights held by the BLM, whether appropriated or federally reserved, are considered federal property rights. Water rights are valuable resources to be used to manage public lands and should be treated as real property. Only the Secretary of the Interior can revoke the withdrawal of a federally reserved water right.

The BLM must comply with State water law and therefore are subject to any requirements or time limits as defined by the State. Failure to do so could result in loss of federally held water rights or impacts to federally managed lands.

Workload activities associated with water rights must be considered a high priority at the local level. These types of activities include adjudications, water right filings, reviewing applications filed for both on and off federal lands that could impact BLM resources, filing protests, proving for certification of rights, monitoring and measuring for proving of rights, court cases (both state and federal court) which have a water right component to the case, and filing for any necessary time extensions for proving water rights.

The BLM does not have purview to miss deadlines or requirements set forth by the State; if that occurs it puts BLMs property at risk. Additionally, some of the water rights workload is associated with state and federal court cases involving collaboration with the Solicitor's Office and the Department of Justice, which should be the highest priority at the local level.

New Mexico

The Las Cruces District Office currently has two active adjudications:

1. Animas Basin Adjudication

a. Out 22 wells only one well met the qualifications for making a claim for the water right on that well.

a. The State has filed a motion to the court to exclude domestic and livestock wells from this adjudication. According to our solicitor and DOJ, it is not uncommon for a State to exclude these wells. The State's focus is on irrigation wells in that basin. A private entity has filed an appeal to this motion to include domestic and livestock wells. The outcome of this motion is still undetermined.”

b. BLM regularly checks the New Mexico Office State Engineer (NMOSE) Animas Basin Adjudication website for other individual claims that could impact BLM's claim.

2. Lower Rio Grande adjudications

Grazing permittee claiming rights for a well located on BLM

(Clarification on Grazing permittee claiming rights for a well located on BLM)

a. I want to clarify that it isn't necessarily the grazing permittee that is filing for water rights on wells located on BLM. But rather, the NMOSE was/is sending the Offer of Judgement to the person on the grazing permit; seemingly without investigating any other data on that well, including their own records.

3. Precedent setting case for permit to change the place and purpose of use of a portion of Water Right to instream beneficial uses on the Black River. Case could be precedent setting because approval of the application may create a new beneficial use of instream flow.

4. There has been an increase in requests from private parties to file Application for Permits to Appropriate new water rights in the Capitan Basin on BLM public surface managed by the Carlsbad Field Office. The private parties reason to file these new water right appropriations is to sell the water that is pumped to the oil and gas industry for fracking purposes. The request is to drill a new well or use an existing water well located on BLM public surface to develop these new water rights and well for Commercial and Industrial Beneficial use for water sales. The BLM is allowed if it chooses to be co-applicant on these new water rights appropriations on applications for permit to appropriate.

Successful Cases

- ◆ Groundwater modeling through models such as Modflow that show if a BLM water right will be effected by a new application.
 - ◆ The NMOSE only recognizes private Groundwater Modeling firms as an expert witness to proceed to hearing. Causes unexpected annual budget expenditures.
 - ◆ Groundwater modeling results can be used to determine whether to file a protest or not. The key to a successful water rights protest is to have a contracted Groundwater Modeling Firm and their expert witness work with the BLM on each water rights protest.
- The Office of the Regional Solicitor has informed us that they will not represent the BLM without the expert witness services and the expert groundwater modeling results for exhibits to go to hearing.

Oregon

1. Could you possibly provide me a few examples of situations you are currently facing due to changes in state legislation about water rights related to water for wild horses and burros.

We are not aware of any problems with state legislation and water right for wild horse and burrows. Oregon allows the construction of reservoirs for the beneficial use of 'multiple use' so wild horses can use those reservoirs for water.

2. Are you able to utilize the Taylor Grazing Act to obtain water for your program requirements?

Yes

3. Do you utilize the Federal Public Water Reserve Number 107 (PWR 107) water rights for water holes and springs on public lands?

Yes, but we have to wait until water is available or until the state adjudicates water rights in a basin. (says who gets how much water - in Oregon it is first in time equals first in right). We do not have a water right on all BLM springs.

BLM does have the ability to use the Federal Public Water Reserve Number 107 (PWR 107). However, in Burns we go ahead and pay the fee and file for a water right on these. We do this just to protect ourselves and secure a water right on paper. In other states such as Utah, they do not file for a water right and just claim the PWR 107 exemption. Linus is right about being vulnerable, that is why Burns pays the fees and secures a water right on paper through the state of Oregon.

4. Have you had to apply for a water rights application through the state? If so, how long does it take to get approved?

Yes. A year or two. In certain instances it can take up to a decade.

There have been applications for many water rights on the Burns District where 88 Claims have been completed of Beneficial Use. They have also completed a few transfers which are the most timely and difficult.

Time frame to file for a water right:

1. File and Application: this costs on average \$1850. It could take 6 months to over a year to get a permit, you may not get a permit.
2. Once you receive a permit, you have 5 years to complete your water project following the terms and conditions of the permit.
3. File a Claim of Beneficial Use: you have 1 year after constructing the water project to file a claim of beneficial use or COBU, this consists of hiring a Certified Water Rights Examiner or CWRE to do a site survey and construct the final proof map. Cost on average for a CWRE is \$1900 per unit, each reservoir or water project is one unit. Then the filing fee to submit the completed paperwork is \$200.
4. Wait for your water right. The current backlog at the Oregon Water Resources Department is 16 years due to reduced funding and lack of personnel to complete the paperwork.

Basically one water right can cost around \$4,000 from start to finish. Not including project construction.

Yes, there is a lack of knowledgeable personnel to properly complete water rights actions here in Oregon and Washington. As far as I am aware I am the only one doing this job on a full time basis and I sit at a District Office. All other states have a S.O. Water Rights Specialist.

5. Are you involved in any adjudications with the state?

We have at least one adjudication that we'll be involved in.

6. Have you had to change your purpose for the use of water, eg., stock water to wildlife use?

We have made changes in water purpose; it was a smooth process.

I have had to change the type of use on a few water rights through the Transfer process. These were because BLM had acquired properties through lands trade with old irrigation rights. BLM in general does not irrigate so these were transferred to in stream fisheries and wetlands enhancement for watershed restoration projects.

7. Who do you contact at BLM to assist you with groundwater or surface water investigations?

We have a few Certified Water Rights Examiners working for the Oregon - Washington BLM but they are concentrated in the eastern part of the state. We also have a dedicated Water Right Specialist on the eastside of the state. They provide critical support in assisting with groundwater and surface water investigations. We are exploring options to build a similar structure of support on the west side of the state. If we are unable to get the answers that we need internally, we'll contact the Oregon Water Use Department or for legal matters, our solicitor with the Office of General Council.

When I need assistance I call Water Right Specialist Fred Price at the Boise S.O. or Water Right Specialist Roy Smith at the Colorado S.O. I also have many contacts at the Oregon Water Resources Department that I work very closely with on all types of water rights issues that involve BLM. In addition, I work in conjunction with the Oregon Department of Fish and Wildlife to ensure all projects are completed with their approval in situations where fish are present.

Utah

BLM has large reserved water rights that have not yet been adjudicated. BLM Utah has initiated negotiations with the Utah Division of Water Rights concerning reserved water rights for BLM's Wild and Scenic River segments adjacent to Zion National Park on tributaries to the Virgin River. Progress has been stalled in these negotiations because of other pressing workload obligations in the Solicitor's Office and within the State of Utah. In addition, it appears that Bears Ears National Monument may have reserved water rights for the entire monument. However, a legal opinion has not been developed on the potential existence of reserved water rights, which would be a necessary prerequisite for commencing reserved water right negotiations with the Utah Division of Water Rights.

In several watersheds, flow from BLM springs, including springs with federal reserved water rights, is being completely dried up or diminished by groundwater development. BLM has attempted to protect spring flows by: expanding monitoring of spring flows, working with USGS to conduct groundwater modeling and hydrogeologic studies, and by filing protests to individual applications. This approach - of developing good science and working within the state water rights system - has not been fully successful. As an alternative, BLM Utah may formally suggest that the State of Utah change its groundwater appropriation policy for certain basins where groundwater development does not appear to be sustainable.

BLM Utah has attempted to adapt to the Utah state laws that prohibit federal government agencies from filing applications for new livestock water rights. BLM Utah has developed an instruction memorandum that provides guidance to field offices on how to react to proposals for new livestock water developments. The policy is designed to ensure that BLM does not invest in or approve new developments that don't have some sort of water right held by the BLM, such as for wildlife. Water rights for most new water developments on BLM lands have been obtained by changing existing BLM water rights to new diversion locations, which is allowed under state law with the consent of the grazing permittees.

Wyoming

Under the Wyoming Constitution, all water belongs to the State of Wyoming.

The beneficial use of water is “attached” to the land on which the beneficial use occurs.

- The right to use water belongs to the owner of the land on which that use occurs, even if the source of the water is elsewhere.

Memorandum between the Wyoming State Engineer's Office (SEO) and the Bureau of Land Management (BLM) to document and strengthen their working relationship with respect to permits under state law for water rights and uses on or derived from BLM Administered Public lands in Wyoming.

Administration:

- The Wyoming State Engineer's Office (SEO) controls the administration of water rights. The SEO has three divisions, Ground Water, Surface Water, and the State Board of Control.
 1. Ground Water – Well standards, well permitting, production rules, along with investigation and monitoring where conflicts may occur.
 2. Surface Water and Engineering Division – Review of beneficial use and changes to permits prior to adjudication (except for “petitions”). Safety of Dams Program, safety and integrity of storage facilities, and on-site inspection of facilities are also addressed.
 3. State Board of Control – Quasi-judicial body with jurisdiction over Wyoming water rights Adjudication, Administration, and Amendments.
- SEO / BLM Memorandum Of Understanding (MOU) – Renewed in October 2017. The BLM and the SEO have a solid cooperative working relationship with designated points of contact.
 - Provides a recognition of applicable Wyoming State and Federal laws with associated responsibilities for each party.
 - A permit will be issued to the BLM when BLM is the sole applicant.
 - For *oil, gas, or mineral development*, a permit will be issued solely in the applicant's name with notification to the BLM (cc: permit) when on Federal lands.
 - For *non-oil, gas, or mineral development*, permits may be issued to the “applicant” with BLM listed as a “co-applicant” (cc: permit) when on Federal lands.
 - For time limited use on Federal lands, a permit will be issued solely to the “applicant” with notification to the BLM (cc: permit).
 - The BLM will be notified of all applications for water rights on Federally managed lands to insure that all appropriate authorizations are in place.
- The BLM Wyoming State Office Engineer and that position's counterparts in each of Wyoming's three Districts act as the principal program contacts. The Deputy State Director for Resources is the principal administrative contact. In some field offices, staff Hydrologists may assist with water rights efforts.

General:

- Approximately 140 actions over the last two years, have involved the SEO and the BLM. These have included water wells, reservoirs, water hauling permits, pipelines, and safety of dams inspection or verifications.

- Approximately 70% have provided water for domestic stock, wildlife, and wild horses through pipelines, wells, and stock reservoirs.
- Approximately 30% have involved large reservoirs, verification of permits, renewal of permits, and changes to adjudication from private “industrial” use to BLM use.
- As a headwater state, the SEO administers about 22 interstate compacts or court decrees regarding the many rivers flowing into the Missouri / Platte River Basin, the Snake / Columbia River Basin, the Great Salt Lake Basin, and the Colorado River Basin.

Water Issues / Concerns:

Water and Water Rights are a serious and often contentious issue in Wyoming. Currently, there are no major “water” flashpoints being discussed. Issues of concern and interest include (in no particular order):

- Accelerated erosion of riparian areas – decreasing functional habitat and groundwater storage. This can influence all wildlife, including native fish, brood rearing greater sage grouse, and migrating ungulates. Impacts can also be seen to roadways, agricultural lands, and other infrastructure.
- Increased salinity of perennial drainages – this is particularly important in the Green River Basin (Colorado River watershed) where an estimated 62% of the non-point source of TDS is coming from federally managed lands. Large areas of Wyoming contain erodible saline soils.
- Impacts of grazing or grazing management on riparian and wetland areas. This includes wild horse and burro use.
- Potential water quality effects from the industrial use of water – such as in oil and gas, or mining projects. This may be of particular interest in areas that have large volumes of produced water that may need disposal, or where newer drilling techniques are being employed - such as the Powder River or Wind River Basins.
- Riparian areas as vectors for invasive vegetation such as tamarisk or Russian olive.
- Water bodies and water sources are a significant destination for outdoor recreation. As such, their health and integrity are considered a valuable resource.
- Water diversions used during “fire” events for firefighting activities require special consideration. Accounting for water used and maintaining flows in downstream states can be complicated, for example – Endangered Species Act recovery implementation programs in the Platte River Watershed require a strict accounting.
- Harmful Algal Blooms are a concern for municipal water supplies and recreational water bodies.
- The potential impacts of drought are of concern for many reasons – availability of water for domestic stock, for wildlife, for human consumption, and an increase in wildfire potential are just a few.

- Clean Water Act Section 303(d), “impaired waters” or, streams listed as not meeting water quality standards. This may have human, or natural causes, but is a concern in a number of watersheds and communities in Wyoming.
- Orphaned or abandoned wells may create pathways for contamination of potable aquifers. This is a growing problem, partially due to the increase in bankruptcies in recent years.

Decrease in annual snowpack over time has created environmental changes such as the timing of spring runoff and the spring “green-up”.



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Water Rights and BLM Programs





Objective & Outline

Objective: Inform Managers of BLM Water Rights Current Issues

Briefing Overview

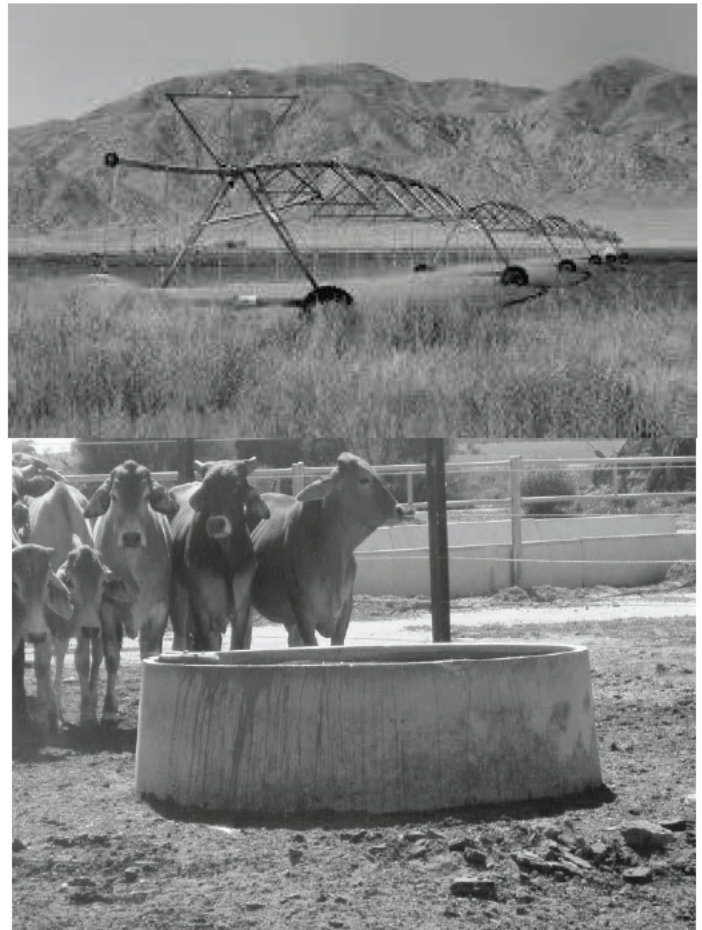
- 1) What is a Water Right
- 2) Types of Water Rights
- 3) Federal Reserved Water Rights
- 4) Water Rights and BLM Program Nexus
- 5) Adjudication of Reserved Water Rights
- 6) How to Protect Federal Reserved Water Rights
- 7) Needs and Challenges
- 8) Litigation and Adjudications
- 9) Water Rights Management



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What is a Water Right?

- ◆ The right of a user to divert and/or utilize water from a specific water source.
- ◆ New water rights generally require first obtaining an authorization from the state in the form of a water right permit.
- ◆ May be issued with respect to utilizing surface water and/or ground water.





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Types of Water Rights

- ◆ Riparian Water Right – Certain rights afforded to an owner with land abutting water of stream or river.
 - Reasonable Use – Only landowners whose property forms the banks of the water have a right to make reasonable use of the water as it flows through or over their property.
- ◆ Appropriative Rights – Allows water to be diverted and used at a separate point without regard to the relationship of land and water.
 - Prior Appropriation is the legal doctrine that the first person to take a quantity of water from its source has the right to continue using that water. First in time, first in right. Establishes a seniority system.
- ◆ Federal Reserved Water Rights



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What are Federal Reserved Water Rights?

A special class of water rights that are designed to fulfill and support the purposes of federal reservations of land.

The purposes of federal reservations of land are specified in authorizing legislation as well as the orders or other instruments creating Executive reservations.





Federal Reserved Water Rights - Origins

Reserved rights were created by U.S. Supreme Court rulings:

- ◆ Winters v. U.S. (1908) – Establishment of Indian reservation was accompanied by implicit reservation of sufficient surface water to effectuate the purpose of the reservation
- ◆ AZ v. CA (1963) – Extended the doctrine to all federal land reservations.
- ◆ Cappaert v. U.S. (1976) – Federal reserved surface rights can be protected from injurious groundwater depletion.
- ◆ U.S. v. NM (1978) – Reserved rights are limited to the primary purposes of reservation specified by Congress, and to the minimum amount necessary to satisfy its purposes.



Federal Reserved Water Rights - Origins

- ◆ Congress has generally delegated the allocation of water to state governments.
- ◆ The Supreme Court has ruled that federal reserved water rights are an exception.
- ◆ Congress has created these designated areas to fit this exception into state water allocation processes.
- ◆ Via the "McCarran Amendment," 43 USC 666 (1952), Congress allowed states to require the U.S. to participate in stream adjudications. Federal water rights not asserted in such adjudications may be permanently forfeited.



“Expressed” vs. “Implied” Federal Reserved Rights

Just because land is reserved, it doesn't always have reserved water rights attached:

- ◆ Congress or the President can expressly state their intent, and may say reserved rights are or are not created by their action.
- ◆ Reserved rights are implied when no explicit statement is made and the purpose of the reservation would be entirely defeated without water.





Examples of Federal Reserved Water Rights

- ◆ A 1926 **Executive Order**, created Public Water Reserves specifically for watering holes & springs on public lands that are reserved for stock watering (PWR 107)
- ◆ National Conservation Areas
- ◆ National Monuments
- ◆ Wild and Scenic Rivers
- ◆ Wilderness Areas



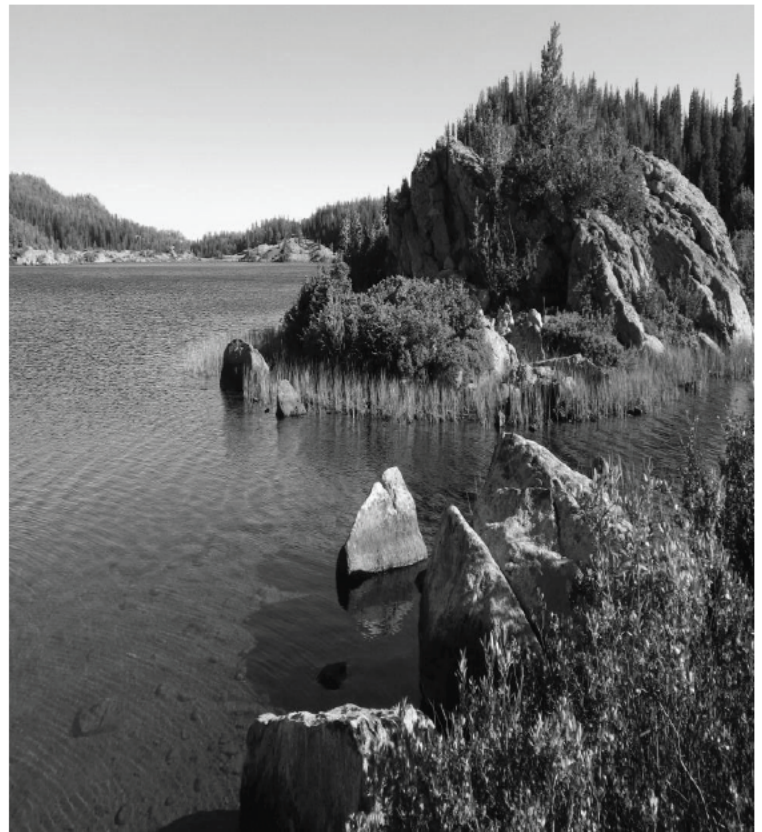
San Pedro Riparian National Conservation Area, AZ



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Water Rights & BLM Program Nexus

- ◆ Planning/NEPA –
Evaluate federal actions on water quality and quantity and identify the location of water sources.
- ◆ Fish & Wildlife – Source protection
- ◆ Recreation – Water quality and quantity
- ◆ Environmental – Cooperate with state water agencies for resource protection, and acquiring and maintaining water rights.
- ◆ Wild Horse and Burros – stock water

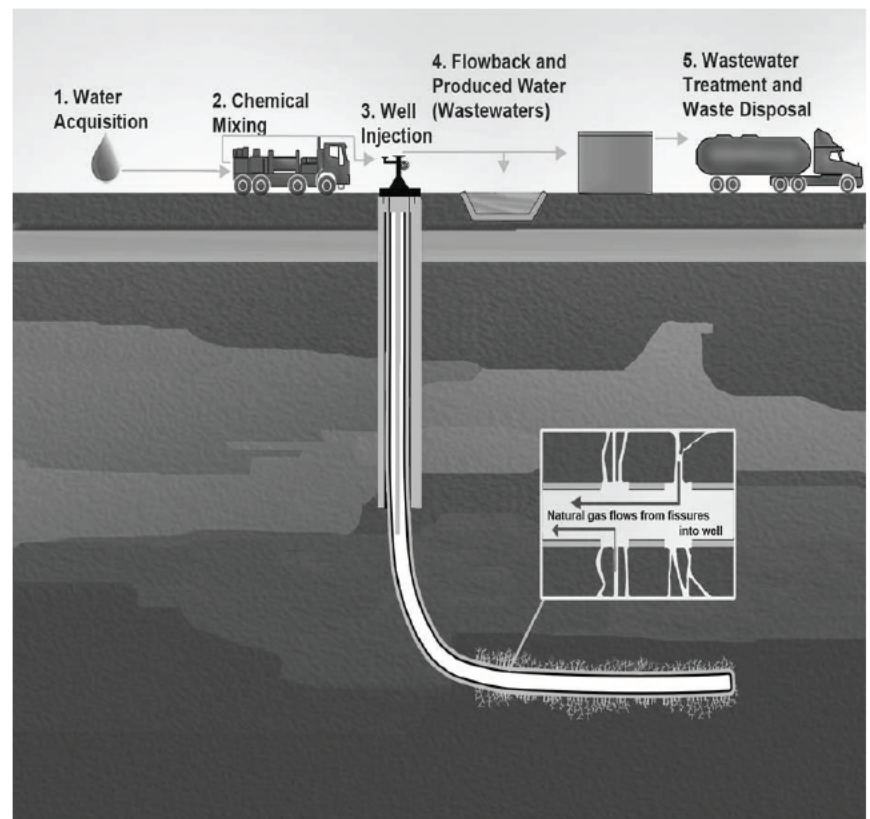




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Water Rights & BLM Program Nexus (cont)

- ◆ Oil and Gas – Drilling and related water consumption
- ◆ Solid Minerals
- ◆ Renewable Energy
- ◆ Lands and Realty - Location, status, and inventory
- ◆ Rangeland Management – stock water
- ◆ Beneficial Instream Flows – wildlife and fisheries
- ◆ Cultural and Historic Sites



Hydraulic Fracturing



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Ephemeral (Precipitation) Waters

Harvesting Precipitation

◆ Ephemeral runoff is regulated by western states and water rights are required to collect and use stormwater. There may be exceptions in state laws that water rights are not required for small dams under 10 feet in height that catch runoff in ephemeral stream systems if the water is used for livestock watering purposes (state specific), the dam is used for erosion control, or rain barrels or cisterns are used for domestic purposes.

◆ A Playa is a depression within a closed drainage basin that retains surface water runoff but allows no outflow. If the playa is located within federal reserved lands where reserved water rights were established (such as a national conservation area) the BLM could assert a reserved water right on the playa.





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Livestock and Water Rights

- ◆ The states (NV, UT, ID) are barring BLM from applying for a water right for livestock use claiming BLM doesn't own the livestock. Other states have not adopted this interpretation.
- ◆ NV is barring BLM from obtaining water rights for wild horses and burros with livestock as a beneficial use because they don't consider them as livestock. Other states have not adopted this interpretation.
- ◆ MT legislative changes could allow private water rights owners to unrealistically claim volume and flow rates and priority dates that would leave BLM grazing lands with reduced or no available water.
- ◆ To prevent a "Takings" (5th Amendment) BLM should grant previous grazing permittees access to stock water rights even though the Rancher, for example, no longer possesses a grazing permit.





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Adjudication of Water Rights

- ◆ An adjudication is a state judicial or administrative proceeding that determines a) who has a valid water right, b) how much water can be used, and c) who has priority during shortages on a specific water system.
- ◆ Adjudication requires a thorough accounting of water which is essential to the water resource use, protection and planning, as well as the transfer of water rights. It is key to resolving and reducing conflicts in areas facing increasing demands on water supplies.





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How are Federal Water Rights Protected before an Adjudication

- ◆ Conduct studies to determine the location, amount, and timing (Prior Appropriation) of the reserved right
- ◆ Regularly monitor public notices of water right applications in watersheds containing BLM public lands.
- ◆ File a comment or protest letter with the State if you believe an application would injure the reserved water right.
- ◆ Create, utilize, and maintain a relevant Data Repository for those rights.



Data and Information needed to Establish and Maintain Water Rights

- ◆ Hydrologic Information required to Establish and Protect Water Rights
- ◆ Information Requirements
 - Highly variable in nature and depend upon site conditions
 - Always some degree of uncertainty that can be challenged
- ◆ Protecting Water Rights is a Long-Term and Recurring Workload
 - Need Information to Assess Risk (prioritize when we protect others)
- ◆ Ground Water (GW) versus Surface Water (SW) Resources
 - GW- Very complex/highly uncertain; more expensive types of work with predictive models; scarce skill background for BLM hydrologists
 - SW- Generally more convenient to measure; typical professional background for BLM hydrologists; reliance on statistical analyses
- ◆ Permanency Issue - State Agency Backlog in Completing Some Adjudications Can Exceed 20 years



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Needs and Challenges

- ◆ Expert Witness to Support the Solicitor's Office and/or DOJ
 - BLM has to uphold/defend agency claims and protest actions
 - BLM has very limited in-house expertise
 - Heavy reliance on third-party sources
- ◆ Resource Specialist versus Administrative Process Workload
 - Administrative process focused on filing requirements, protest and hearing procedures, etc.
 - Attrition of BLM water rights administration specialists
 - Water rights administration gained by experience (not college)
- ◆ Training
 - State specific NTC course (capacity is 1 per year based on instructor availability)
 - Limited State water resource associations or DWRs provide courses
 - Need to "resurrect" course on providing expert witness testimony?
- ◆ Workload Conflicts for Specialists (limited time to collect field data)
- ◆ Regional Solicitor Office and/or DOJ capacity to support actions



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BLM Capacity to Support Water Rights Litigation

- ◆ For simple cases, routine tasks may suffice (e.g. a diversion from a small spring that can easily be measured)...For more complex cases, significant & sophisticated expertise may be required because we are being challenged in court by adversaries.
- ◆ Complex cases may include surface and groundwater modeling, statistical surface water analyses, estimating evapotranspiration of streamside vegetation, ground-water drawdown impacts, analyses of subsurface water flow patterns using isotopes, etc.
- ◆ Expert Consultants - BLM should discuss whether or not it would be wise to retain the services of a consultant who can be an expert witness as needed. Jim Fogg, retired BLM has been hired as a consulting expert for the Arizona, San Pedro Riparian National Conservation Area Water Rights litigation.



Issues and Challenges

State	Type of Water Right	Issue	Implication
Arizona	Federal Reserved	Court Adjudications	3 Wilderness Areas, 2 National Conservation Areas. BLM makes a claim based upon field work and studies to determine amount of water to be allocated (minimum required).
Arizona	Appropriative	Future Claims	24 NCL units need to determine amount of water to be allocated for beneficial uses
California	Federal Reserved Appropriative	Failure to Report State required Monitoring and Annual Use	Potential fines and loss of water right. Labor intensive.
California	Federal Reserved	Court Adjudications	No decisions for ongoing cases prevents final decree.
Colorado	Appropriative	Instream flow protection	Protect streams that support globally rare riparian species and communities
Nevada, Utah & Idaho	Appropriative	States do not allow BLM to hold stock water rights	Restrictions to expend public funds on a range improvement for a water development per 43 CFR 4120.3-9



Issues and Challenges

State	Type of Water Right	Issue	Implication
Idaho	Appropriative	General stream adjudication for Bear River Basin	BLM will have only 6 to 8 months to file water right claims
Montana	Appropriative	Changing Montana legislation for livestock water and domestic wells	BLM could find itself in situations where the water right owner on the streams crossing public lands is not the authorized grazing permittee
Nevada	Appropriative	Desert Land Entry Acquisitions	This process is complex, confusing, and time-consuming
Nevada	Federal Reserved & Appropriative	Future Adjudications	The large backlog of adjudications increases workload for BLM staff
New Mexico	Appropriative	Increased requests for Permits to appropriate new water rights in the Capitan Basin on BLM public surface	Sell the water that is pumped to the oil and gas industry for fracking purposes

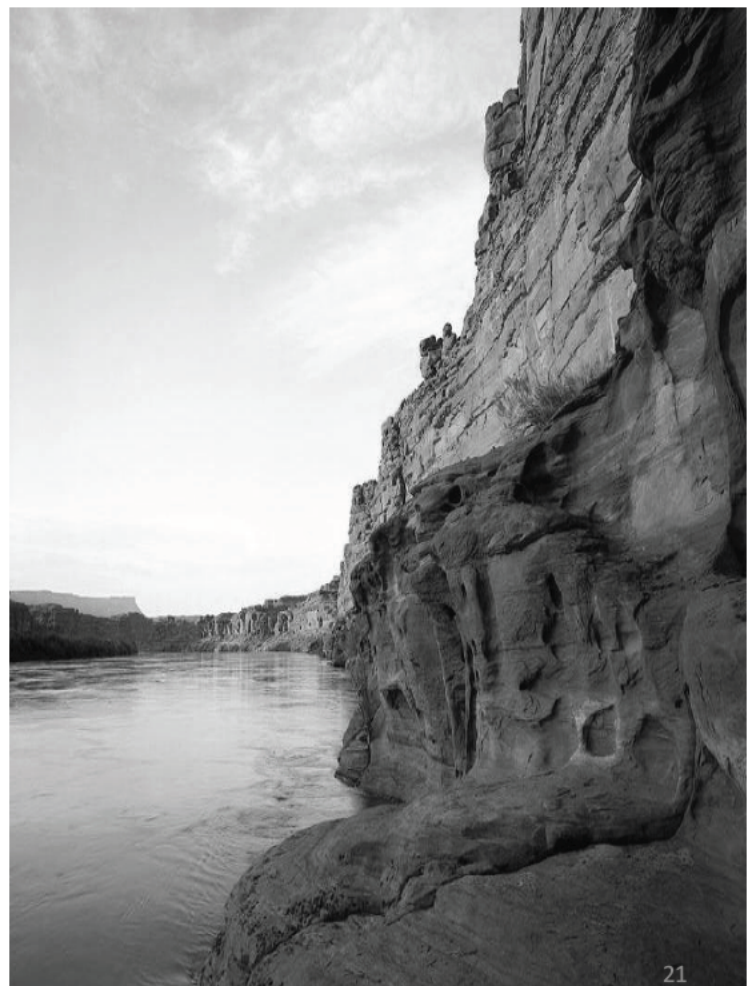
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Water Rights Management

- ◆ Water Rights related work needs to become a top priority as water resources become a scarce commodity
- ◆ BLM must comply with state water law and therefore is subject to any requirements or time limits. Failure to do so could result in loss of federally held water rights
- ◆ Water rights held by the BLM, are considered appurtenant federal property rights. These are valuable resources to be used to manage public lands and should be understood & treated as real property.
- ◆ Develop a national BLM water rights tracking system which becomes the authoritative repository for them.





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Water Rights : Looking Forward

State and federal policy do not prohibit federal agencies from participating in water right processes that can protect their water uses until an adjudication of federal reserved water rights occurs. These processes might include state-based instream flow reservations, requesting a state engineer to shut down unauthorized diversions, or reaching operational agreements with water rights owners.

Obtaining protection of federal water uses through processes, e.g. settlement agreements, other than adjudicating federal reserved rights may significantly reduce cost, time, and controversy.



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Notice: This presentation and attachments summarizes the current state of the law and does not necessarily reflect the legal views of BLM or the Department of Interior

Notes Summary:

Slide 3: 'Water sources: river, stream, pond and groundwater. Water rights are treated similarly to rights to real property, can be conveyed, mortgaged, and encumbered in the same manner, all independently of the land on which the water originates, or on which it is used.'

Slide 6: 'Abbreviated history'

Slide 8: 'Expressed Water Rights: Public Law 100-225- Dec 31, 1987. El Malpais National Monument and National Conservation Area. Congress expressly reserved the minimum amount of water to carry out the purposes of the designated areas.

Implied Water Rights: Public Law 103-364-Oct. 14, 1994. Saguaro National Park. Established by Congress due to threats that impede public enjoyment, education and safety. This implied the need for water.'

Slide 9: 'PWR 107. These reserves were established to manage livestock and prevent monopolization of scarce water resources on public grazing lands.'

Slide 11: 'Each of these program areas have a connection to the protection and use of water'

Slide 15: 'Many federal reserved water rights claims have not been adjudicated or quantified with the states.'

Notes Summary:

Slide 16: 'BLM lacks the expertise to model groundwater which creates a vulnerability to protect established water rights.'

Slide 18: 'This issue raises the staffing skillset we have in water resources, that is, a lack of groundwater expertise to handle any kind of litigation that involves groundwater.'

Slide 20: 'There are numerous outstanding water rights issues across the BLM states ranging from reporting and protesting claims to scheduled and unscheduled adjudications. What may not be apparent is the large backlog of cases yet to be adjudicated, the high number of National Conservation Areas that have not been considered for adjudication, and the increase in the workload this will entail.'

Slide 21: 'BLM has the responsibility to ensure water rights are not lost or forfeited due to negligence.'

National Conservation Lands/Water Rights

Background: John Ruhs is requesting a briefing about water rights-related issues throughout the BLM, including Federal Reserve water rights, appropriated water rights, programs (lands acquisition, rights-of-ways (ROW), Wild and Scenic Rivers (WSR), livestock grazing, Wild Horse and Burro (WHB) use, instream flows, groundwater impacts, etc.). WO-280 has requested our help to gather information. The following information responds to the initial request from WO-280, however, WO-400 can provide more detailed information, if needed.

Topics of Discussion:

- Most congressionally-designated wilderness areas are not adjudicated, but Arizona's Aravaipa Canyon Wilderness reserved right was adjudicated a couple years ago.
- Revised Statute 2339 allows for continued operations and maintenance if the user has a recognized vested water right in a Wilderness Study Area (WSA).
- The Cadiz Water Project in California could impact the National Conservation Lands of the California Desert, Mojave Trails National Monument, and possibly the Old Spanish Trail National Historic Trail. This issue illustrates some of the complexities relating to state laws, conservation, Rights-of-Way, NEPA, and water rights.
- There was a Federal Reserve Water Rights trial for the San Pedro Riparian National Conservation Area in Arizona that started on November 6th, 2017, was in session for about one hour, and then was delayed until April 2nd, 2018. The plaintiffs (Freeport McMoran, State of Arizona, City of Sierra Vista) complained that certain information provided by the Department of Justice came too late for them to fully examine as part of discovery, and the judge granted Plaintiffs' request for more time to prepare.
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has never established an instream flow reservation for recreation so that would set a precedence).

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- Drought has been an issue for maintaining enough instream flows to protect WSR values especially when there are senior water rights.
- Solar projects in Nevada have raised concerns about maintaining critical flows in the Amargosa WSR in California.
- The Federal Energy Relicensing Commission (FERC) hydro license or relicensing process is another avenue the BLM should use to procure instream flows. If BLM lands/waters are affected by a FERC licensed project, then the BLM should be at the negotiating table. The BLM Associate Field Manager in the Mother Lode Field Office has been able to negotiate for instream flows for fisheries and recreation on several rivers. In addition to the instream flows, the office receives several hundred thousand dollars annually (for 50 years) to cover operational work in these river corridors and for recreation facility developments. Very few BLM offices do this type of work or take advantage of this opportunity. At one time, the BLM was going to put a team together, based out of the National Operations Center to work on FERC relicensing projects. It never came to be, but it should be revisited.

Tracking BLM Water Rights Claims

Date: November 9, 2017

Arizona

Mark D'Aversa
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Arizona relies on an imaged record database that the Arizona Department of Water Resources manages to track the status of both state law-based and federal reserved water rights. We download results of specific searches, e.g. by District, Field Office, geographic area, and download into an Excel spreadsheet. ADWR has prescribed deadlines for any applications post-1995 and most of BLM's precede 1995 so the state is not in a hurry to process. Our applications for stock ponds were on hold for 20-years with the moratorium related to AZ Legislature considering the elimination of BLM's permission to appropriate for livestock uses. The legislature never passed the restrictive laws so ADWR began processing livestock use applications by BLM a little over 2-years ago.

Arizona also has an online database for the two adjudications underway - Gila River and Little Colorado River. Only the Gila Adjudication and specifically for federal reserved water rights claims in the San Pedro Watershed are being acted upon. All materials germane to the adjudications are publicly available so that is what we use to track the status of federal rights.

Colorado

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BLM Colorado has developed a statewide water rights database (using MS Access), and we use that database to track the status of all adjudication claims.

Nevada

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NV does not have a state database of claims or appropriated rights. The offices keep all of the files related to water rights within their boundaries, so each office probably has a different set-up - all paper copies vs GIS related data. We also rely very heavily on the State's database, which is pretty thorough and easy to use.

Oregon

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Hi Doug and Mike, unfortunately, there is no official way to track claims, at least not here in Oregon and Washington BLM. I personally keep a very extensive spread sheet called the "Water Project Tracking Spreadsheet" for the Burns District. However, it is very large, long, and cumbersome to manage. To find out your specific district or state water rights information for BLM, you can have the Oregon Water Resources Department do a query search to find out the information on how many permits and how many certificates BLM has. After you get this information, you will be able to sort out where you are in the process for each specific water right or permit. This will involve some work by actually going into each permit and reading it to determine what the permit terms and conditions are, and then to research what elements have been completed towards receiving a certificate (you will get BLM in general not information by district).

There are a lot of moving parts to complete a water right from the application to permit to the certificate stage and several years to complete the process. It is important to keep good records because dropping the ball and not meeting deadlines for "claims of beneficial use" can cause large fines and create the situation that we currently find ourselves in with this huge backlog of uncompleted claims all across the BLM. It was very common to get a permit, construct a project, and then there was no one with the knowledge to complete the process of actually receiving the water right. It used to be that whomever was doing the project was responsible to file for a permit. It could have been engineering or range or wildlife. Then after the project was constructed there was no one to follow up keeping time frames, permit

terms and conditions and completing the claim of beneficial use. Unfortunately, this is still the case on most districts. I have stayed on top of water projects for the past 7 years here and most are pretty good about getting me the information to file, but once in a while I still get someone who constructs a project before the actually receive a permit. Once you apply for a permit it can take a minimum of 6 months to get a permit or even more than a year. I have to remind them quite often that if they want to construct a water project they need to be planning way in advance so that I have time to file.

Yes, the lack of water rights training is an issue. For me I am 7 years beyond what basic training can provide me. I quite often deal with very complicated circumstances that require help from Roy Smith at the Colorado S.O. or Fred Price at the Idaho S.O. even though I am only a GS-11 I still have the same problems and convoluted situations to deal with that other S.O. Water Rights Specialists deal with.

In addition, I also have to solve Federal Reserve Water Rights issues. These are specific to BLM (not permitted by the state) and all of these water rights are designated by Congress and are only found in the legislation that created them. These are the tricky situations that always come into play when dealing with wilderness, wild and scenic rivers, tribal water rights, monuments ect... You have to know legislation in order to solve these problems and that is an extra workload.

I find myself dealing with what would normally be S.O. issues since there is no S.O. water rights specialist in Oregon and doing my own job as a hydrologist and water rights specialist for the Burns district. Sometimes I get pretty scattered because I also have water use reporting, field work and dam inspections on top of regular water rights duties.

I would love to sit down some time and be able to talk about what I feel are the true needs for water rights concerning BLM. Having had to teach myself with no official training I know first-hand the complications of the position.

Utah

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Here's the approach BLM Utah uses:

1. When BLM Utah submits a permit application for a state-based water right, we use the Utah Division of Water Rights database to track the status of our permit application and all other steps in that process, such as getting a certificate.
2. When BLM Utah has submitted a claim in a state run adjudication, we really depend heavily upon the Department of Justice files to track the status of claims. DOJ submits a "master statement of claims" when all United States claims are filed in an adjudication. After the state initially processes these claims, it issues a document called a "proposed determination of water rights." Once this determination is issued, the Utah Division of Water Rights enters all of these verified claims into its statewide database of water rights, noting that they are still going through the adjudication process. Once the claims are in the statewide database, BLM relies on that database to track their status. BLM relies upon DOJ to notify BLM of important steps and deadlines in the adjudication process after the proposed determination is issued, such as the opportunity to file objections or requirements to participate in hearings.

Wyoming

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I believe that the answer to your question was apparent from previous 2-pager - that the Engineering staff at the District and State levels in Wyoming handle tracking and processing of most actions, since they are the designated POCs within the MOU.

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[WATER RIGHTS BRIEFING FOLLOW UP]**Water Rights Briefing**

Water Rights Briefing Next Steps

Date: November 20, 2017

1. National Conservation Lands

What water rights beneficial uses, e.g. wildlife, recreation, riparian, etc. do we hold or assert on NCL units (National Monuments, National Conservation Areas, Wild and Scenic Rivers, Scenic and Historic Trails and Wilderness Areas)?

- Most congressionally designated wilderness areas are not adjudicated, but Arizona's Aravaipa Canyon Wilderness reserved right was adjudicated a couple years ago.
- Revised Statute 2339 allows for continued operations and maintenance if the user has a recognized vested water right in a Wilderness Study Area (WSA).
- The Cadiz Water Project in California could impact the National Conservation Lands of the California Desert, Mojave Trails National Monument, and possibly the Old Spanish Trail National Historic Trail. This issue illustrates some of the complexities relating to state laws, conservation, Rights of Way, NEPA, and water rights.
- There was a Federal Reserve Water Rights trial for the San Pedro Riparian National Conservation Area in Arizona that started on November 6th, 2017, was in session for about one hour, and then was delayed until April 2nd, 2018. The plaintiffs (Freeport McMoran, State of Arizona, City of Sierra Vista) complained that certain information provided by the Department of Justice came too late for them to fully examine as part of discovery, and the judge granted Plaintiffs' request for more time to prepare.
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[WATER RIGHTS BRIEFING FOLLOW UP]

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2. Rangelands Improvements

a. BLM must ensure policy is correct at the WO level and reflected at the State level

b. Can BLM fund range improvements if we don't have water rights?
Grazing regulations prohibit BLM from funding range improvements if BLM does not hold the water right.

c. Does the water rights permit travel with the grazing permit?
A Federal Reserve Water Right on public lands is stationary.

It cannot be removed or transferred from its location. A grazing allotment may or may not have a Federal Reserve Water Right located within its boundary. A grazing permittee may petition the state to obtain a water rights permit within a grazing allotment. Historically a state issued water right on public land would be titled at least in part under the Federal Agency responsible for the land management. Nevada, Utah and Idaho no longer issue water rights for stock water to the federal land agencies.

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[WATER RIGHTS BRIEFING FOLLOW UP]**3. Acquisition of Water Rights**

- a. Does BLM have to change the type of beneficial use after the acquisition of water rights?

When we purchase an existing right, if it's not in the beneficial use that we intend to use it for, then yes we need to change it. For example in Las Vegas we purchased a mining and milling water right from a stream and wanted to use it for instream flows, so we changed it to a wildlife beneficial use. We also had to change the point of diversion and place of use because we were using it within the stream channel.

In some of the western states (ex. Nevada, Utah) BLM can no longer apply for a water right for stock water purposes, except through a Public Water Reserve (PWR). If BLM acquires a water right that was originally for stock watering purposes, we should change the beneficial use to reflect the reason BLM acquired the water right. In the case where BLM acquires land that have water rights attached to it as part of the acquisition process that is for livestock watering, I would change the beneficial use to reflect a use appropriate for the location of the land. It could be for domestic and/or quasi municipal purposes at a fire station, camp grounds, work center, or detached field office or field station. Depending on each states' water laws, BLM can hold a water right for wild horses and burros in a Herd Management Area, to maintain in stream flow for recreation and habitat management, wildlife, or road maintenance. There may be other recognized uses where we can hold a water right based on each states water laws.

4. States Water Rights

- a. Can States hold a valid water right on public land?

Roy Smith, Colorado/Utah. There have been infrequent instances where state wildlife agencies apply for water rights for wildlife water developments constructed on federal lands when the state pays 100% of the construction costs, but most of the time BLM applies for rights for wildlife water developments because BLM has legal authority to provide wildlife habitat, including water. Some state government agencies apply for instream flow water rights or instream flow reservations for streams that cross BLM lands. However, instream flow water rights are not for third party uses of federal lands, and instream flow water rights are typically not used by state government to assert influence or control over how federal lands are managed.

Mark D'Aversa, Arizona. In AZ the State of Arizona can hold a water right on public land. There are rare situations where the AZ State Land Department still holds water rights for stock ponds on public land these are relics of past BLM grazing schemes where state land was part of a greater allotment. In the present, AZ can still potentially hold a water right for stockwatering but BLM as the surface owner would need to

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approve the action and typically the state is not the grazing permittee/lessee so there is no need for the state to hold a water right.

One situation where the state can still hold a valid water right is for wildlife water use. There are a few circumstances where the state and BLM installed guzzler like waterers on public land and usually BLM holds the WR but in some instances the AZ Game and Fish Department hold the water rights.

Pete Godfrey, Wyoming. In Wyoming: the water belongs to the state and the right to use that water, or permit for beneficial use, "belongs" to the owner of the land on which that beneficial use occurs, even if that water is "produced" from a well or spring on someone else's property. Permits are regulated by the State. The "right" to that beneficial use will always belong to the landowner, without regard to who's name is on the permit (per case law).

Fredric Price, Idaho. A water right cannot be established in trespass; and a State agency would not qualify for a grazing permit in order to become authorized, therefore the State can't hold title to a stock water right on federal land.

Frances Rieman, Montana. in MT (and I believe in ND and SD), the State does hold water rights for a number of various uses I don't see how they could administer water rights without being able to account for their own uses (hence a water right). I think that there are some very rare cases where they do own a water right on public lands generally something in the nature of a pipeline project with tanks on a shared allotment or a spring developed on public lands to serve adjacent State lands.

- b. We need to clarify or fix the "States do not allow BLM to hold stock water rights policy" issue. These were John Ruh's words.

Roy Smith, Colorado/Utah. In most western states, the feds are allowed to hold livestock water rights, so BLM shouldn't be suggesting a globally changed approach to address a problem that exists in only a few states. If we encourage a third approach that will further erode BLM control over public lands, it is likely that states where we don't have issues now may consider adopting that approach.

It would be an over reaction to a very limited problem. Even in states that don't allow BLM to apply for new livestock water rights, BLM already has thousands of livestock water rights that we can continue to rely upon. In some states that don't allow new BLM filings, such as Utah, BLM can usually change an existing BLM water right to cover a new livestock water development. In addition, BLM can also rely upon reserved water rights that exist for public water reserves when we want to build new developments on springs. Situations where we want to construct a new water development and can't get the necessary water rights are very limited.

State laws would have to be amended to allow the proposed approach. The states where BLM is not allowed to apply for new livestock water rights have provisions in their laws stating any new livestock water rights must be sought by the party who is actually

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grazing the livestock. The states are not grazing livestock on federal lands and therefore could not apply. I doubt that livestock grazing interests would allow such amendments to be signed into law, because they don't want state governments holding livestock water rights. State government is just another level of government getting involved in their grazing operations.

Before the State of Utah adopted laws saying the feds cannot apply for new livestock water rights, the law stated that the feds and the permittees could apply jointly for new water rights. This approach seemed to work better than the current approach, because it ensured that there was a federal water right that allowed continued diversions from the development even if the permittee who held the new water right with the BLM moved on.

Fredric Price, Idaho. It is unconstitutional for States to discriminate against the United States. Discriminating against the United States and treating it differently from all other persons/entities involved in livestock grazing is a violation of the Supremacy and Commerce Clauses of the United States Constitution.

The United States is "entitled to be treated as any other person applying for a water permit" (State v. State Engineer, 104 Nev. 709, 715, 766 P.2d 263, 267 (1988)).

In *Edgar v. MITE Corp.*, 457 U.S. 624 (1982), the U.S. Supreme Court ruled: "A state statute is void to the extent that it actually conflicts with a valid Federal statute". In effect, this means that a State law will be found to violate the Supremacy Clause when either of the following two conditions (or both) exist:

1. Compliance with both the Federal and State laws is impossible
2. "State law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

The United States Supreme Court held long ago that a state law violates the Supremacy Clause of the United States Constitution if it regulates the federal government directly or discriminates against it, or those with whom it deals. See *McCulloch v. Maryland*, 17 U.S. 316 (1819).

The BLM is required by Congress to develop the resources upon the public lands under its control. These resources are to be developed so as to maximize the use of the land while conserving it for future generations. Public Rangeland Improvement Act, 43 U.S.C. § 1901 (1994). Water is one of the resources discussed in the Act. If the BLM is effectively prohibited from filing an application for stockwater, then the decisions on how, when and where to develop water for livestock purposes would be shifted entirely into the hands of third parties. This would be a significant interference with the BLM's

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control and management of its rangelands. Such interference would constitute discriminatory regulation in violation of the Supremacy Clause. Also the attempts to directly regulate the United States by precluding the United States from pursuing ordinary business practices available to any other water user would be a violation of the Commerce Clause.

5. Public Water Reserve Number 107

a. Insure that all Public Water Reserve Number 107 sites have been claimed.

Roy Smith, Colorado and Utah. All PWRs in Colorado have been claimed and adjudicated, because Colorado has completed water rights adjudications in all of its basin. Colorado has never had a permitting system, so all requests for water rights must go straight to the water court. Colorado started adjudicating water rights in the early 1900s, and has adjudicated continuously since then, so that is why the state is caught up because of 100 years of work on it.

Utah is just the opposite. Very few PWRs have been claimed because Utah has completed very few comprehensive adjudications in basins where BLM has substantial land holdings. BLM can't file a claim unless an adjudication is called by the state. The only thing BLM can do is notify the state that we intend to exercise a reserved right on a spring, and wait until the adjudication to actually sort out the specific water.

BLM Utah does not have an estimate on the number of potential PWRs statewide. A very large amount of field work and records searching would be required to determine which springs would qualify for PWR claims.

Bob Boyd, National Operations Center. A Solicitor based answer is that the BLM is not required to make a formal claim for a source until a formal adjudication is initiated by a state government...since many state governments have not planned or completed adjudications for many areas, it is not possible to answer the question as to how many we hold and how many more we still need to work on....It probably is possible to provide numbers to estimate/define the scope of the issue.

Some BLM states have established formal PWR 107 claims through adjudications. Some BLM states also have notified state water resource agencies of our proposed filings (for awareness and planning purposes) in many areas not scheduled for adjudication.

It may be possible to report something along the lines of the number of PWR 107 rights established by completed adjudications along with the number of proposed PWR 107 claims BLM has provided notification to state water resource agencies.

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Completing an inventory of water sources (through remote sensing or other means such as the one Montana has) probably would not provide an answer to the management question as the PWR107 criteria need to be evaluated for each source (such as whether the source is isolated/remote, did the source exist prior to enactment of FLPMA in 1976, is the source an important source of water, etc) and the quantity of discharge needs to be quantified/estimated.

It may be of some value to try to also compile the number of water rights BLM holds or has applied for under state appropriative processes....I did this about ten years ago when I was in Nevada and the number of PWRs + other federal reserved rights was much less than the number of state appropriative rights and pending applications. This might document our long standing water rights policy to obtain water rights through state appropriative processes unless Congress or the President directs otherwise.

Mark D'Aversa, Arizona. I agree with Boyd's answer concerning PWRs. AZ has claimed thousands of PWR 107s over the years and a few actually have been considered in the adjudications under way in AZ. The problem has been the lack of solid, defensible data to back up the claims. Also, the state legislature passed a law saying all *de minimis* claims will be handled at the end of any adjudication which will likely last for decades beyond today. We can search BLM's claims in the statewide database and see how many and where the claims were filed.

Fredric Price, Idaho. Have all Public Water Reserve Number 107 sites have been claimed?

Most of Idaho BLM has been subject to a general stream adjudication (less than a million acres are left unadjudicated), therefore claims have been made on most water sources subject to public water reserves in Idaho.

What still needs to be filed on and what would it take for us to get this information?

Funding & personnel for performing comprehensive water inventories including the use of UAVs (drones).

BLM WO supplied funding to the field back in the mid 80s to perform water inventories. Some of our offices used the funding for water inventories and others used it for range monitoring, etc.

When the adjudications started in Idaho we did not rely solely on this old data from the 80s and instead used this data as representing location of previously known water sources and then re-investigated those points for the purpose of creating water right claims. The inventory from the 80s was just a paper form with no photographs in support of the forms. A comprehensive inventory (documentation, gps, and photos) can be used for planning purposes and for creating water claims in future adjudications.

Where there is no general stream adjudication, BLM could still do something about federal water reserves by posting those reserves to the state. We have posted ~700 out of ~6300 of these water sources so far. In anticipation of a future adjudication of 376,000 acres of BLM land in Idaho, we started a water inventory in 2017. We relied heavily on UAVs (drones) to identify individual water sources within large tracts of land.

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UAVs provided an immense time savings over traditional ground based inventory methods. We don't know if there will be any funding in 2018 to continue the effort.

6. States not allowing BLM to hold water rights for stock water use.

a. Is there a resolution for resolving this?

Addressed in 4 b
