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BLM MS-7250 – WATER RIGHTS MANUAL

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2. Reports Required: None.

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CHAPTER 1 OVERVIEW

1.1 Purpose

The purpose of this manual is to establish policy and guidance for the Bureau of Land Management (BLM) in locating, perfecting, documenting, and protecting BLM-administered water rights, which are considered property rights, necessary to manage and conserve the economic and resource values of the public lands. The purpose of this manual is also to define the roles and responsibilities of BLM programs in managing water rights, including the Soil, Water, Air (SWA) Program, the Lands, Realty and Cadastral Survey Program (Lands), and BLM state offices. Descriptions of various types of water rights and general water rights procedures will be provided in a handbook (reserved). In addition, a number of BLM resource program manuals (such as the Fish, Wildlife, Range, Forestry, and National Landscape Conservation System) and BLM state offices maintain water rights guidance and while mentioned below, will not be covered indepth. State office guidance provides an overview of water law for the particular state and provides policy and guidance for participating in water rights procedures unique to that state.

1.2 Objectives

The objectives of the BLM water rights program are to:

A. <u>Acquire and Perfect Water Rights</u>. Acquire and perfect Federal reserved water rights necessary to carry out public land management purposes. If a Federal reserved water right is not available, then acquire and perfect water rights through state law.

B. <u>Protect and Manage Water Rights</u>. Protect Federal reserved water rights and water rights obtained through state-based administrative and judicial systems. Ensure full compliance with applicable state laws, Federal laws and executive orders.

C. <u>Ensure Water Availability to Protect Public Resources</u>. Ensure availability of water for public land management purposes by acquiring and protecting BLM-administered water rights, as part of an overall strategy that may include other cooperative techniques for insuring water availability. Water rights that result in sole title of said water to the U.S. for uses on Federal land should be the primary objective, if possible. In certain circumstances, an opportunity to acquire water from private lands to be used on Federal lands and Federal resources without sole title to the water may be considered.

D. <u>Locate, Describe, and Record Water Rights</u>. Document BLM-administered water rights in accordance with the file and records maintenance protocols described in section

1.3 Authority.

A. Basic Authority. Federal Land Policy and Management Act of 1976, 43 U.S.C. §§1701-1785 (FLPMA). FLPMA states that the public lands shall be managed "in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values" (Section 102 (8)). The Act outlines the BLM's role as a multiple-use land management agency and generally provides for management of the public lands under principles of multiple-use and sustained yield.

B. Federal Reserved Water Rights. Where Congress, or the Executive Branch, has withdrawn lands from the public domain for a specific Federal purpose, such reservation may create a Federal reserved water right to unappropriated water in the amount necessary to fulfill the primary purpose of the reservation (*U.S. v. New Mexico*). The U.S. Supreme Court established Federal reserved water rights in the 1908 case of *Winters v. United States*, 207 U.S. 568. Key provisions of the decision, known as the Winters Doctrine, and subsequent modifying rulings are:

1. The U.S. Government implicitly reserves the amount of water needed for reservation purposes, unless the reserving legislation specifies otherwise.

2. Water can only be reserved for the primary purpose(s) of the reservation.

3. "The implied-reservation-of-water-rights doctrine … reserves only that amount of water necessary to fulfill the purpose(s) of the reservation, no more." *Cappert v. United States*, 426 U.S. at 141 (1976) (citing *Arizona v. California*, 373 U.S. 546, 600-01 (1963)).

4. Groundwater as well as surface water is reserved, if needed, to fulfill or protect the purposes of the reservation.

5. Federal reserved water rights, unlike state water rights, are not lost by nonuse and may provide for future needs.

6. The priority date of the Federal reserved water right is the date of the withdrawal of the lands within the reservation by legislation or Executive Order.

Examples of reservations that create Federal reserved water rights on BLM-administered lands include:

1. Stock driveways, canals and ditches reserved pursuant to Section 10 of the Stock Raising Homestead Act of December 29, 1916. Although the Stock Raising Homestead Act was repealed by Section 704(a) of the FLPMA, withdrawals made prior to October 21, 1976, remain in effect until modified or revoked.

2. Important public springs and waterholes reserved pursuant to Public Water Reserve (PWR 107) No. 107, 51 L.D. 457, Executive Order of April 17, 1926, under the

authority of Section 10 of the Stock Raising Homestead Act of December 29, 1916 (see 43 U.S.C. §300 repealed Pub.L. 94-579, Title VII, § 704(a), October 21, 1976), and the Pickett Act of June 25, 1910 (see 43 U.S.C. S 141, repealed Pub.L. 94-579, Title VII, § 704(a), October 21, 1976). Although the Pickett Act and Section 10 of the Stock Raising Homestead Act were repealed by Section 704(a) of FLPMA, withdrawals made prior to October 21, 1976, remain in effect until modified or revoked. Existing PWR 107 withdrawals should be construed by reference to Solicitor Opinion M-36914, dated June 25, 1979, as modified by Solicitor Opinion M-36914, Supplement II, dated February 16, 1983, and again by Solicitor Opinion M-36914, Supplement III, 96 I.D. 211 (July 6, 1988).

3. Mineral hot springs reserved pursuant to Executive Order 5389 of July 7, 1930, and Public Land Order No. 399 of August 20, 1947, under the authority of the Pickett Act. Although the Pickett Act was repealed by Section 704(a) of the FLPMA, withdrawals made prior to October 21, 1976, remain in effect until modified or revoked.

4. Converted oil and gas wells equipped for water pumping pursuant to the Oil and Gas Well Conversion Act of June 16, 1934 (see 30 U.S.C. § 229a).

5. Wild and Scenic Rivers (WSR) set aside pursuant to the Wild and Scenic Rivers Act (see 16 U.S.C. § 1271, *et seq*. and BLM Manual Section 6400, Wild and Scenic Rivers - Policy and Program Direction for Identification, Evaluation, Planning, and Management).

6. National Conservation Areas, National Monuments, and Special Management Areas designated by Congress.

Examples of reservations that may create Federal reserved water rights, depending upon case law and the language used in the legislation or executive order, include:

1. Wilderness areas set aside pursuant to the Wilderness Act (see 16 U.S.C. § 1131, *et seq*.)

2. National Conservation Areas and Special Management Areas designated by Congress.

3. Withdrawals/reservations made under the authority of Section 204 of FLPMA.

C. <u>Appropriative Water Rights</u>. The BLM's authority to apply for appropriative water rights under state water law provisions arises from both statute and case law:

The FLPMA provides broad authority for the BLM to take actions necessary to implement its multiple-use mandate, which includes applications for water rights within state administrative systems. The FLPMA authorizes the BLM to apply to the relevant state authority to appropriate water for beneficial uses on public lands envisioned by the act,

including, but not limited to, irrigation, maintaining healthy/functioning riparian and upland systems, livestock watering, wildlife watering, wildlife habitat, recreation, wild horses and burros, fire suppression, and instream flows where a Federal reserved water right is not otherwise available.

1. The Supreme Court has recognized that the U.S. may acquire water in the same manner as any other public or private appropriator under state law (see *United States v. New Mexico*, 438 U.S. 696, 1978).

D. Riparian Water Rights. Water rights under the riparian doctrine are linked to the ownership of land which abuts a stream, lake, or pond. A riparian landowner has no right to a fixed quantity of water as against other riparian landowners, but rather has a right to the use of the stream in common with the equal and correlative rights of other riparian landowners on the water course. Riparian rights occur infrequently on public lands. The BLM shall comply with applicable state law in regard to riparian water rights, except as otherwise specifically mandated by Congress.

1.4 Responsibility

A. Director. The Director is responsible for the acquisition, perfection, and protection of water rights on public lands. Responsibilities include:

1. Developing necessary directives and guidelines to implement Department water policy.

2. Providing technical guidance and implementation procedures for BLM field personnel through BLM manual sections and directives.

3. Providing training on policy, technical guidance, and, in coordination with the Solicitor's Office, related Federal and state water rights laws and regulations affecting the BLM programs and projects.

B. State Directors. (State offices delegate different responsibilities for water rights to the district or field office levels. Other states find it more efficient to have a team at the state office conduct some or most of them. This Manual does not describe how water rights are delegated within states, thus all responsibilities are listed under the State Director. Consult a state's water rights manual or handbook for information concerning a particular state.) The State Directors are responsible for:

1. Developing and implementing state office specific policy and procedures to carry out programs and projects in a manner consistent with the BLM water rights policy. Coordinating with the Solicitor and the Department of Justice, as applicable, to protect and acquire water rights necessary for management of the public lands.

2. Ensuring statewide participation and consistency in McCarran Amendment stream adjudications (see Manual Section 1.5 A.5) and in administrative processes used by

state government to grant water rights. (In Oregon and Nevada, the McCarran Amendment proceeding may be initially in an administrative rather than judicial forum.)

3. Participating in Federal and state water rights coordination committees, if any. The BLM should be involved in water rights proceedings and discussions when the state is negotiating or looking for common understanding. Since 2000, more water rights issues are being handled through negotiations.

4. In coordination with the Solicitor's Office, providing training to personnel in both the substantive and procedural aspects of state and Federal water laws and regulations.

5. Creating and maintaining state-level supplements to the BLM water rights manual, as necessary to implement state-specific provisions of water law.

6. Maintaining and periodically updating all records of public water reservations and all BLM water projects that operate upon a right-of-way grant or easement through lands owned or managed by other parties.

7. Documenting BLM administrative water rights by location, land description, and recordation in the BLM Master Title Plats and Historical Indexes, and in appropriative local and state systems of record for property rights.

8. Defining water rights needs and looking for opportunies to acquire unappropriated rights through the BLM's planning process, in particular, collaborating with state agencies and multiple BLM programs, such as fisheries, wildlife, riparian, NLCS, and recreation to protect instream flows.

10. Providing documentation to the Solicitor's Office for participation in general stream adjudications, including assertion of Federal reserved water rights and water rights under provisions of state law.

11. Monitoring the state water engineer's website and providing documentary evidence necessary to protest new water permit applications or adjudication of existing rights from other entities that are considered to be detrimental to the water rights or interests of the U.S.

12. Maintaining up-to-date flow data, water use inventory data, and water rights records (quantification is unnecessary for purposes of managing subsistence in Alaska). State appropriated water right data should be stored in state data systems and federally-reserved water rights in state specific BLM data systems (in both cases to include geospatial data.

13. Maintaining up-to-date geospatial data compatible with BLM corporate data standards such as those for the Geographic Coordinate Database (GCDB), National Hydrologic Dataset (NHD, Watershed Boundary Dataset (WBD), Range

Improvement Project System (RIPS), Land Status System (LR2000 etc.), NLCS Database (reserved), the Recreation Management Information System, etc. (see 1.6 File and Records Maintenance for additional requirements).

14. Ensuring that water rights are appropriately identified and transferred in land tenure actions, such as exchanges, acquisitions, and disposals, and that such documents are submitted for recordation in the BLM land status system and appropriate local and state record system(s) (see 1.6 File and Records Maintenance for additional requirements).

15. Ensuring that land use authorization granted to third parties contain appropriate terms and conditions to protect water rights administered by the BLM and water uses implemented by the BLM.

16. Ensuring that the BLM utilizes existing state water rights in a manner to avoid forfeiture or abandonment for nonuse under state law.

17. If evidence is observed of a potential conflicting water uses that impact BLM management objectives, take necessary action, such as, but not limited to, filing a protest or submitting a formal request to state government for administration of priorities, to protect BLM- administered water rights and water uses.

1.5 Policy

A. <u>General Water Rights Policy</u>. The water rights policy of the BLM is to:

1. Review and secure water rights for BLM programs and projects by affirmation of a Federal reserved water right, if one is available and the water is necessary to preserve the primary purpose of the reservation. Assertions of Federal reserved water rights may include, but are not limited to water for the sustainability of a resource such as fish populations or riparian habitat, for wild and scenic river values, for recreational use, for interpretation of cultural and archaeological values, for livestock watering, or for BLM facilities located on a reservation, such as campgrounds and visitor facilities. Federal courts can also adjudicate both state and Federal water rights.

2. Secure necessary water rights pursuant to state law if the water is required for a secondary purpose of the reservation or if the language creating the reservation specifically excluded the creation of a Federal reserved water right. Secure water rights pursuant to state law for multiple-use programs and projects on non-reserved public lands. Claim possessory interests in water rights in the name of the U.S. for water uses on public lands when the water right is needed to implement and preserve options for multiple use management.

3. Purchase or lease essential water rights when needed to meet management objectives and water is not otherwise available.

4. Cooperate with other entities, including state, local, and tribal governments, to establish water rights held in the name of other parties to support BLM missions and programs. Such circumstances are limited to situations in which a water right to support BLM missions or programs is not otherwise available under Federal or state law and the BLM makes a determination that reliance upon a water right held by another party is in the best interests of the U.S.; however, the BLM authorization must include conditions that indemnify the U.S. should future decisions bring an end to the cooperative project or reduce access to the project.

5. Cooperate with state governments and comply with applicable state law to the extent consistent with Federal law to protect water uses identified for public land management purposes. The McCarran Amendment (43 U.S.C 666) waives the Sovereign Immunity of the U.S. so that it can be joined in a general stream adjudication. The McCarran Amendment also allows the relevant state government to administer state law based water rights owned by the U.S. within the water allocation and priority systems used by the various state governments.

6. Ensure that third-party uses of appropriated water on BLM administered lands that operate under BLM permitting authority shall comply with applicable state water right laws.

7. Ensure that the use of water associated with Federal reserved water rights shall comply with all applicable Federal laws, In addition, the BLM shall implement actions to protect its Federal reserved water rights in the period before a claim for a Federal reserved water right is adjudicated.

    a. Water Rights on Acquired Lands within Reserved or Withdrawn Areas. Lands acquired by the BLM within the boundaries of existing reservations or withdrawals do not have Federal reserved water rights unless the language creating the area specifically authorized land acquisitions for the same purpose. If Federal reserved rights were not created for acquired lands, the BLM should seek state appropriative rights to support management of those lands.

    b. Reserved Water Rights on Lands Leaving Federal Ownership. Before public lands leave Federal ownership, any land withdrawals must be revoked (including Public Water Reserves) and the associated federally based water rights relinquished (as a non-federal entity cannot hold title to a Federal reserved water right). When lands are transferred to another Federal agency for the same management purposes, the Federal reserved right remains in effect, provided the reserve is applicable to the lands managed by the receiving agency.

    c. Use of Federal Reserved Water Rights by Individuals. The purposes for which Federal reserved water rights are asserted may include use by third

parties. Third-party users shall obtain proper authorization through a formal use authorization, such as a lease. Third-party use must be consistent with the original purpose of the reservation.

d. Protection of Federal Reserved Water Rights. In many instances, Federal reserved water rights are created long before or after a comprehensive McCarran Amendment adjudication is completed within the basin where the Federal reserved water right is located. In those instances, the BLM shall collect hydrologic and water use data to determine if the Federal reserved water right is being injured. If evidence suggests a Federal reserved water right is being injured by water uses by other parties, the BLM shall consult with the state water engineer, Office of the Solicitor and Department of Justice to determine how the Federal reserved water right claim can be asserted and protected.

8. Protect instream flows needs by (a) asserting claims to water rights under Federal law insofar as applicable (see 1.3 B.) and (b) filing for instream flow water rights under state law where allowed (see 1.3 C.2). In those states that recognize instream flow water rights, but require that such water rights be held in the name of the state (or state agency), work with the appropriate agency to obtain and protect the needed water rights.

B. Implement Water Rights Policy. To implement the BLM water rights policy, BLM personnel within a state must:

1. Collect site-specific information to submit claims and applications for water rights within adjudication and administrative processes. Information collected will include spatially referenced inventories of BLM water uses at point water sources, such as springs, wells, and reservoirs, the diversion point, the distribution system, the application locality, and studies to quantify the rate, timing, and location of water needed to support water-dependent values on rivers and streams.

2. Initiate requests to Cadastral Survey to prepare appropriate Standards for Boundary Evidence Certificate(s) (per IM 2011-122) in adjudications, water rights applications in state-based administrative processes, inventory data base, in support of claims and applications, and as necessary to respond to protests filed by other parties against BLM claims and applications.

3. Initiate requests to the Office of the Solicitor and Department of Justice to submit water use claims in adjudications and to submit water rights applications in state-based administrative processes. Provide water use, inventory, and quantification information to the Office of the Solicitor and Department of Justice to support claims and applications. Provide information as necessary to the Office of the Solicitor and Department of Justice to respond to protests filed by other parties against BLM claims and applications.

4. Identify water use claims and applications filed by other parties that could injure BLM-administered water rights or water uses. Initiate requests to the Office of the Solicitor and Department of Justice to file protests to these claims and applications. Cooperate with the Office of the Solicitor and Department of Justice to resolve protests filed by the BLM.

5. Identify opportunities to cooperate with state, local, and tribal governments, water users, and other stakeholders on water rights and water use issues when such cooperation can serve to maintain and enhance water-dependent values and uses managed by the BLM, for example, protecting instream flows.

6. Implement administrative procedures necessary to maintain and protect BLM-administered water rights, which are considered property rights:

    a. In all land tenure adjustments (exchanges, acquisitions, disposals, direct sales, donations, and conservation easements), the BLM shall identify all of the water rights associated with the properties that will enter or leave Federal ownership. The BLM will acquire or retain ownership of water rights that are needed to fulfill the purposes of acquired lands, and transfer ownership of water rights not needed for BLM purposes to other parties.

    b. In all land use authorizations, the BLM shall include appropriate terms and conditions to protect water rights and water uses on public lands. Clearly inform the permittee that the authorization does not confer any legal right to the use of the water, nor does it provide a basis for acquiring such a right against the U.S.. Include terms and conditions which state that access to water and water rights is limited to the degree and extent authorized by BLM and indemnify the U.S. from effect of current and future decisions which may reduce or preclude water use. The establishment of a water right on public lands does not limit the authorized officer's authority to regulate land use and occupancy, nor to prevent injury to property of the U.S. The authorized officer retains authority to determine management actions needed to comply with plans, rules, and regulations for land use and occupancy, including decisions to deny proposed water uses on public lands.

    c. The BLM may enter into agreements to accomplish BLM management objectives and to protect existing BLM water rights. Examples of this include instream flow leases to state agencies and nonprofit organizations or contracts with the Bureau of Reclamation to store and release water, and exchanges of water.

    d. The BLM shall protest all third party water rights claims and water rights applications which represent an unauthorized use of water on public lands.

    e. Verify that each BLM-administered water right is used in accordance with provisions of the law of the state in which the use occurs. Make on-the-

ground inspections when necessary where a diversion, well, impoundment, or other facility is required to exercise the water right.

f. Ensure that each BLM-administered water right is compatible with the BLM corporate data standards.

7. Consider partial revocations of Public Water Reserves pursuant to 43 CFR 2370.0-3(d). The BLM and GSA need to determine that the withdrawn lands are not suitable for the public domain for disposition under the general public-land laws, because such lands are substantially changed in character by improvements or otherwise. The revocation request would go through the Branch of Lands and Realty in the state office for necessary documentation. Ultimately, the Secretary of Interior has the responsibility to sign off on the revocation, unless the lands are not suitable for return to the public domain. In this instance the BLM should follow the regulations at 43 CFR 2374. The BLM will need to officially relinquish any federally-reserved water rights that may exist within the revocation area, as water rights are appurtenant to the land and will go to the new owner pursuant to general appurtenance clauses in conveyance documents; however, a non-federal entity cannot acquire a federally-reserved water right.

8. Address availability of water on public lands to support BLM's mission and programs in all Resource Management Plans (RMPs). All RMPs should address existing surface and groundwater uses, the BLM's current and future water needs.

9. If a lessee on public lands is required to establish new water rights with diversion points on public lands to support development, include terms and conditions in the lease providing that the water rights on public lands will be abandoned, transferred to the U.S. upon termination of the lease, or otherwise made available to other lease holders on public lands.

10. Protest or object to the water right applications of others, where the subsurface (or mineral estate) is owned by the U.S., and the water contains geothermal properties (considered to be a mineral, and therefore is the property of the U.S. and not the State, as well as being subject to authorization pursuant to the Geothermal Steam Act of 1970). Any application for or use of water containing geothermal properties without a lease pursuant to the Geothermal Steam Act where the mineral estate is federally-owned would be considered a trespass upon the U.S.

1.6 File and Records Maintenance

A. <u>Retention and Maintenance</u>. Water rights are considered property rights, and as such, records pertaining to them must be permanently retained and are not subject to the BLM/Combined Records schedule. The BLM's water rights records are considered active historical records that must be maintained to support acquisition, maintenance, and protection of water rights. The BLM state office Records Manager must consult with the designated water rights lead for the state office to determine the appropriate

disposition of the records. Water rights data standards will be compatible with BLM corporate data standards such as those for the Cadastral National Spatial Data Infrastructure (NSDI), Land Status System (LR2000 etc.), and the Recreation Management Information System, Range Improvement Project System, National Hydrologic Database, and Watershed Boundary Database with filing in appropriate local and state systems of record for property rights.

B. <u>Inventory Records</u>. Inventory records shall be maintained regarding all water rights and water uses implemented by the BLM on public lands, including the type of water right (reserved, appropriative, acquired, etc.), priority, amount, land description, authorized uses, and recorded usage of the water right, geospatial location of (a) diversion point, (b) distribution system, and (c) application location Importantly, (1) correctly locate the water feature with XY coordinates and also legal description aliquot part at least to the ¼¼ section, and (2) agree on the exact name for the feature. All databases (such as the BLM's and the state's) must reflect the correct location and name exactly (e.g., spelling and capitalization, etc., exact to the character).

1.7 Program Structure, Function, and Priorities

Overall direction for water rights for the BLM is administered by the Soil, Water, and Air (SWA) Program within the Washington Office Division of Environmental Quality and Protection (WO-280) with assistance from the Lands, Realty, Cadastral Survey, and Engineering Programs. The Division of Lands, Realty, and Cadastral Survey (WO-350) play a key role because water rights are property rights that must be located, described, tracked and maintained. The Division of Environmental Quality and Protection plays a key role because water rights require technical expertise in hydrology, watershed management, and legal/administrative provisions of water law. Implementation of the BLM water rights program is through state office, district office, and field office SWA leads, Lands staff, water right specialists, and other resource program staff (such as the Fish, Wildlife, Range, Forestry, and National Landscape Conservation System). Elements of the BLM's water rights program include:

A. <u>Policy and Guidance</u>. The SWA Program staff, with support from Lands Program staff, recommends and implements overall water rights policy, guidance, and procedures for BLM activities, programs, and projects and for authorized activities on the National System of Public Lands. Programs such as Wildlife, Rangeland, and Minerals Management Programs can also develop program specific policies that agree with overall national water rights

policy and provide flexibility for options that work best for the functioning of the program. The BLM uses a cooperative, science-based approach for the protection, acquisition, and perfection of the water rights.

B. Technical Assistance. The SWA program staff, together with other resource staff, particularly the Rangeland, Riparian, Planning and NEPA, Forests, Fish, Wildlife, Engineering, and Minerals Programs, provides technical assistance in applying water resource and water right information, when proposed activities have the potential to impact water resources and/or BLM-administered water rights. Technical assistance is provided on how to adequately address water rights and potential water resource impacts in NEPA documents, in land use plans and other planning documents, in land use authorizations, and in land tenure adjustments. Technical assistance is also provided in administering water rights and water facilities, in terms of water quantity data collection, analysis, and management.

The Lands Program staff provides technical assistance in how to convey ownership of water rights between the BLM and other parties, how to identify title, ownership, and location of water rights, and how to maintain electronic and paper files related to BLM's property ownership in water rights. The Cadastral Survey staff provides services in those BLM offices where the state government requires that all water rights applications and proofs be signed by a certified water rights examiner, registered surveyor or engineer.

C. Data Collection, Management, and Utilization. The SWA program staff, together with other resource staff in other programs, collect, model, and apply surface and groundwater quantity data and information as necessary to determine, evaluate, and analyze water resource conditions and trends on the public lands in order to apply for and protect water rights. The program provides the information necessary to track BLM performance in meeting Government Performance and Results Act (GPRA) goals as stated in the DOI Strategic Plan and the BLM Operating Plan. The Lands Program staff, together with other resource staff, collects and record geospatial data and legal documents of each BLM-administered water right.

D. External Coordination and Cooperation. The SWA Program staff cooperates with other Federal agencies, States, tribes, local governments, and private landowners to address water resource issues for watersheds at the national, state, and field office level. Types of cooperation and coordination undertaken by the SWA staff include: developing formal agreements to enable watershed-based approaches for preventing or reducing impacts from water uses within the watershed; seeking participation by interested stakeholders in watershed planning and management decisions; maintaining good working relationships with state agencies that grant water rights; coordinating surface and groundwater monitoring; sharing information and technical expertise; transferring technologies for watershed management; and developing consistent ways to organize and present water resource information to make it more accessible.

E. <u>Technical Skills</u>. The knowledge, skills, and competencies required to carry out the elements of the BLM's water rights program are varied. Generally, skills which should be maintained in field offices are knowledge of:

1. Hydrology–Surface water and groundwater.

2. Watershed management and best management practices.

3. Methods for water monitoring and quantification of water needs.

4. Surface and/or groundwater modeling.

5. Water rights laws, regulations, and policies, including state office-specific and Federal reserved water right regulations.

6. Realty aspects of a water right as property and application of withdrawals (reservations) of water rights for various purposes (e.g., DWR 107).

7. Negotiation and conflict management.

8. Writing the results of analyses for land use planning, NEPA, use authorizations, and other documents.

9. Interrelationships between water rights and other resources (wildlife, endangered species, recreation, range, grazing, agriculture, mining, etc.).

10. Supporting services needed to carry out a water rights program (such as personnel, records management, spatial location management, data management, and engineering and maintenance for the construction and maintenance of any required physical structures).

11. NLCS and Wild and Scenic Rivers laws, policies, and reserved water rights.

Glossary of Terms

The following terms and definitions are used for guidance. However, these terms and definitions may be used in other contexts in other manuals. Further, each state government may specifically define these terms by law.

-A-

Abandonment: Voluntarily Relinquish or Abandon a Water Right Certificate or Claim. A holder of a water right may voluntarily relinquish the water right if the water use has diminished or completely stopped. Relinquishment can also occur when the state agency responsible for water managing water rights notifies a water right holder (through an administrative order) that evidence shows the water right has not been put to full use.

Adjudication: In the water rights context, a judicial or administrative process whereby water rights are determined or decreed by a court of law.

Appropriative Water Rights/Appropriation Doctrine: An appropriative water right confers upon one who actually diverts and uses water, the right to do so for reasonable and beneficial uses. The date of initiation of the right, followed by application of the water to beneficial use in a reasonable period, determines the rights priority over other water users. The right to use groundwater is separate from the right given to use surface water. However, relationships (scientific and legal) can be developed to relate the two. (See also perfected water right below).

-B-

Beneficial Use: Use (or in some states the non-use) of water for the benefit of the appropriator as defined by state law. Beneficial use is the basis, measurement, and limit of a water right.

-D-

Diversion: A turning aside or alteration of the natural course of a flow of water, normally including a physical departure from the natural channel.

-F-

Forfeiture: The loss of a water right through non-use, based on statutory provisions found in state water law, for a prescribed time period (generally, five years) with no showing of actual intent of abandonment required.

-I-

Instream flow: A water use (aquatic habitat, recreation, wetlands, navigation, hydropower, riparian vegetation, water quality, waste assimilation) that requires no diversion from the natural water course and does not substantially reduce the water supply. In many states only the state or a state agency may hold the state instream water right.

-J-

Join: In the context of the BLM water rights program, a legal action that requires the BLM (and all other affected Federal agencies) to participate in a McCarran Amendment comprehensive stream adjudication in which the rights of all competing claimants are adjudicated. All claimants to a specific water body are joined in the suit.

-L-

Land Use Plan: A set of decisions that establish management direction for land within an administrative area, as prescribed under the planning provisions of the FLPMA. The term includes both Resource Management Plans and Management Framework Plans.

-M-

McCarran Amendment: Enacted in 1952 and codified at 43 U.S.C. Section 666(a), this amendment waived the U.S.' sovereign immunity and allowed states to sue the U.S. to determine water rights in state suits involving the comprehensive adjudication of all water rights for a river system or other source (i.e., general stream adjudications).

-P-

Perfected Water Right/Perfect a Water Right: A water right for which the proof of completion of the development and application of water to the beneficial use has been submitted to the state legal authority, and the state has acknowledged or accepted your proof by issuing a certificate or license; a perfected right is considered real property (see appropriative water right above).

Public Water Reserve: A tract of public land reserved under 43 U.S.C. Section 141 *et seq.* (Pickett Act of 1910) or 43 U.S.C. Section 300 (Stock Raising Homestead Act of 1916), containing a spring and/or waterhole, which by law or executive action was withdrawn to preserve the water for certain limited public purposes. Individual natural springs and waterholes were reserved by Executive Orders pursuant to these Acts. These reservations were enacted both before and after Public Water Reserve No. 107, described below. The individual executive orders define the priority date, amount, legal descriptions and purposes of the reservation.

PWR 107/General Public Water Reserves/Public Water Reserve No. 107: All natural springs and waterholes on unreserved public land were reserved by Executive Order on April 17, 1926, through Public Water Reserve No. 107 (PWR 107). The executive order and reserved right applies to all springs and waterholes on such public lands, regardless of the size or flow rate of the water source. The executive order applies only to naturally occurring springs and waterholes. The uses associated with the reserved right are restricted to domestic and livestock use. All waters from these sources in excess of the reserved right is available for appropriation under state law. Both reserved and state appropriative water rights (such as, wildlife or recreation uses sought under state law) may exist on the same water source.

-Q-

Quantification: The process of defining the amount and timing of water needed to support an intended beneficial use of water.

-R-

Reserved Water Rights: This class of water rights may be claimed where Congress has by statute withdrawn lands from the public domain for a particular Federal purpose or where the President has withdrawn lands from the public land for a particular Federal purpose, pursuant to congressional authorization.

Right-of-Way Grant: An instrument issued authorizing the use over, upon, under, or through public lands for (for example) construction, operation, maintenance, and termination of systems or facilities on public lands.

Riparian Doctrine/Riparian Water Rights: The system of water law historically recognized in the Eastern States and a few Western States such as California. The riparian doctrine protects landowners adjacent to lakes and streams from withdrawals or uses which unreasonably diminish water quantity or quality. Under the riparian doctrine, individuals have a right to make reasonable use of the stream waters flowing by lands they own, if use does not substantially diminish either the quantity or the quality of the water passing to riparian landowners downstream. Where diversions or uses have been unreasonable, they either have been enjoined or riparian owners adversely affected have been compensated for interference with their rights.

-S-

Spring: A discrete natural flow of groundwater which naturally emerges from the earth at a reasonably distinct location, whether or not such flow constitutes a source of water or is tributary to a watercourse, pond, or other body of water.

State: A state refers to one of the constituent units of the United States of America, such as Colorado or California. State government, state agency, state law, and state regulations refer to those of one of those units.

State Appropriative Water Right: The right to use water in accordance with the appropriation doctrine obtained under State law.

State Office: A specific management level in the Bureau of Land Management. Many BLM state offices (SO) manage the Federal public lands within a single state only, such as the Idaho SO. Others like the Oregon SO also manage Federal public lands in another state (Washington) or in many states, like the Eastern States Office (thirty-one states east of or bordering the Mississippi River).