

CRS Report for Congress

Express Language On Federal Water Rights In The 100th Congress

Pamela Baldwin
Legislative Attorney
American Law Division

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EXPRESS LANGUAGE ON FEDERAL WATER RIGHTS IN THE 100TH CONGRESS

SUMMARY

The relationship of federal and state water rights has always been a controversial and politically sensitive subject. In the past, Congress has seldom expressly addressed either the creation of federal water rights or the integration of federal water rights into state law systems, leaving it to the judicial branch to infer federal water rights from the purposes of various federal legislation, to articulate and quantify any federal rights, and to integrate federal water rights into related state law systems.

Recently, several circumstances have given impetus to an effort to address water rights expressly in federal legislation. Federal water rights were expressly addressed in numerous bills in the 100th Congress. This report sets out and analyzes various examples of water rights language enacted or proposed in the 100th Congress.

EXPRESS LANGUAGE ON FEDERAL WATER RIGHTS IN THE 100TH CONGRESS

Introduction

The relationship of federal and state water rights has always been a controversial and politically sensitive subject. In the past Congress has seldom expressly addressed either the creation of federal water rights or the integration of federal water rights into state law systems, leaving it to the judicial branch to infer federal water rights from the purposes of various federal legislation, to articulate and quantify any federal rights, and to integrate federal water rights with related state law systems.

Recently, several circumstances appear to have given impetus to an effort to address water rights expressly in federal legislation. Many opponents of federal water rights desire clear legislative language in order to negate creation of new federal water rights. Furthermore, there seems to be an increasing unwillingness on the part of both opponents and proponents of federal water rights to leave the determination of the existence and articulation of federal rights to judicial processes because typically such litigation has proven to be time consuming and expensive. There also is a discernible tendency in some of the more recent judicial opinions to adopt a narrower approach to federal water rights, so that more complete and precise enacted language now appears desirable to some of the proponents of federal water rights. Also, Congress recently has considered designating certain land areas for protection under various conservation statutes. Factual circumstances surrounding some of these areas may make it appear advisable to both sides that water rights issues be addressed expressly.

Federal water rights were expressly addressed in numerous bills in the 100th Congress. This report sets out and analyzes various examples of water rights language proposed or enacted in the 100th Congress. A total of 108 bill numbers were retrieved from the CRS/Scorpio data base for the 100th Congress under the headings "National Parks", "National Wildlife Refuges", and "Wilderness". These bills were examined for express language relating to water rights. In addition, an effort was made to catch water rights language that might have been added by amendment, but this latter process was not comprehensive since there is no computer access that retrieves amendments by specific subject content, and time constraints precluded looking separately at all amendments. A list of the bill numbers by type of conservation area is appended to this report.

Background

Before setting out and analyzing various examples, a brief review of the background of relevant water law might be helpful.

In the beginning, the federal government owned all of the western territories that became the western states. In a series of succinct statutes,¹ the federal government severed water rights from land titles obtained from the federal government, so that state law governs the water rights obtained by federal patentees and others. However, the Supreme Court held in the "Pelton dam" case that the federal government did not bind itself by these statutes.² Therefore, the Congress may create federal water rights independent of state law. Yet the Congress has repeatedly demonstrated a sensitivity to the need for stability in the states' regulation of their water supplies by frequently deferring to state law.³

At times the creation of federal water rights is vital to federal purposes, and when the federal government legislates, state law to the contrary must yield under the "supremacy clause" of Art. VI, Clause 2 of the Constitution. Whether state law is contrary to federal law and hence preempted, may not be a simple question. If Congress addresses the issue expressly, preemption analysis is facilitated. If Congress is silent, a reviewing court must analyze whether preemption is implied by the structure, purposes, policies, subject matter, and provisions of the act in question. State law must yield if it produces a result that is inconsistent with the objectives of the federal statute, conflicts with the federal statute, or stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.⁴

One of the most common circumstances in which the issue of creation of federal water rights has occurred is in connection with the management of certain federal lands. Congress has at times expressly created federal water rights in connection with certain federal land management purposes, and at other times, the intent to create federal water rights has been implied by federal land management purposes for which water is essential. The Supreme Court has said:

¹ See Act of July 26, 1866, ch. 262, 14 Stat. 253, Rev. Stat., § 2339, 43 U.S.C. 661; Act of July 9, 1870, ch. 235, 16 Stat. 218, Rev. Stat. § 2340, 43 U.S.C. 661; and Act of March 3, 1877, ch. 107, 19 Stat. 377, as amended, 43 U.S.C. 321, *et seq.*

² *California Oregon Power Co. v. Beaver Portland Cement Co.*, 295 U.S. 142, 155 (1935).

³ See *United States v. New Mexico*, 438 U.S. 696, n. 5 at 702 (1978) where the Court cites the Hearings on S. 1275 before the Subcommittee on Irrigation and Reclamation of the Senate Committee on Interior and Insular Affairs, 88th Cong., 2d Sess., 302-310 (1964), listing 37 statutes "in which Congress recognized the importance of deferring to state water law...."

⁴ *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941), and see generally *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 236 (1947) and additional cases cited there.

This Court has long held that when the Federal Government withdraws its land from the public domain and reserves it for a federal purpose, the government, by implication, reserves appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation. In so doing the United States acquires a reserved right in unappropriated water which vests on the date of the reservation and is superior to the rights of future appropriators. Reservation of water rights is empowered by the Commerce Clause, Art. I, §8, which permits federal regulation of navigable streams, and the Property Clause, Art. IV, §3, which permits federal regulation of federal lands. The doctrine applies to Indian reservations and other federal enclaves, encompassing water rights in navigable and nonnavigable streams. *Colorado River Water Cons. Dist. v. United States*, 424 U.S. 800, 805 (1976); *United States v. District Court for Eagle County*, 401 U.S. 520, 522-523 (1971); *Arizona v. California*, 373 U.S. 546, 601 (1963); *FPC v. Oregon*, 349 U.S. 435 (1955); *United States v. Powers*, 305 U.S. 527 (1939); *Winters v. United States*, 207 U.S. 564 (1908). (Emphasis added.)⁵

The cases inferred a federal reserved water right if water was necessary to carry out the purposes of the federal reservation. The cases also indicate various features of a federal water right: that it is for water that is *unappropriated* at the time of the federal reservation; the federal right generally has a priority as of the date of the federal reservation; the right is for a quantity sufficient to carry out the federal purposes; and the right is not lost if it is not put to immediate use. As to the last two features listed, and in other aspects as well, the federal water right may differ from a right acquired under state law.⁶

⁵ *Cappaert v. United States*, 426 U.S. 128, 138 (1976).

⁶ Federal water rights may differ from water rights under the laws of any particular state. State laws may emphasize either "riparian" or "appropriation" features. Under the riparian system, the right to use water usually is a right incident to the ownership of land that abuts a water source. The right is usually said to be to make "reasonable use" of the waters, although recognized uses may vary under state law. Each riparian owner has the same right, the right is not lost through disuse, and all right holders share in times of shortage. In contrast, in an appropriation state the right to use water is not dependent on ownership of adjacent land, the right is for a particular quantity and use, and may be lost through disuse. Holders of water rights are ranked as to their entitlement, with earliest users having "priority" over later users, such that the later users may not receive water in times of drought.

The federal government may, of course, apply for water rights under state law just as any other property owner in a state may. However, there may be instances when a right acquired under state law may not serve the federal purposes as well as a federal right. For example, the laws of some states require a diversion of water or other water improvement as a precondition to obtaining a recognized right and such facilities might not be desirable given the federal purposes, e.g. in a federal wildlife or wilderness area intended to be maintained in natural condition. Even states that do recognize an "instream" right (a right to a certain amount of water that is simply allowed to remain in the stream), may rank fish and wildlife purposes very low, behind many other preferred uses, with the result that the federal fish and game use would never receive water.

To date, the Supreme Court has held that federal water rights exist for national forests,⁷ a national monument (a type of unit within the National Park System),⁸ and national wildlife refuges.⁹ A federal district court recently held that areas designated by Congress for inclusion in the National Wilderness Preservation System also have federal water rights as a result of the wilderness designation.¹⁰ Others disagree with this conclusion.¹¹

Examples of language in the 100th Congress

Various bills in the 100th Congress presented a diversity of proposals regarding water rights. An attempt has been made to classify these proposals according to the apparent import of the language of each. As is always true of water rights language, there could be more than one interpretation of the provisions; the classifications made in this report are for discussion only.

I. Express creation of federal rights - full flows

1. Section 502 of S. 2165, the Washington Park Wilderness Bill of 1988 both expressly created federal water rights and specified that the right was to all then unappropriated water in the water source. Washington Park Wilderness legislation became Pub. L. 100-668, 102 Stat. 3961, but was

⁷ United States v. New Mexico, 438 U.S. 696 (1978).

⁸ Cappaert v. United States, 426 U.S. 128 (1976).

⁹ Arizona v. California, 373 U.S. 546 (1963).

¹⁰ Sierra Club v. Block, 622 F. Supp. 842 (D. Co. 1985); Sierra Club v. Lyng 661 F. Supp. 1490 (D. Co. 1987).

¹¹ See, the Opinion of the Solicitor, M-36914 (Supp. III) *Federal Reserved Water Rights in Wilderness Areas*, July 26, 1988.

enacted with modified language on water rights that does not reserve the full flows. The original language expressly reserved all the waters for the purpose of protecting the wilderness values of the designated areas. The right was to have a priority date of the date of enactment, and was to be in addition to any water rights previously appropriated or reserved by the United States for other purposes. In addition, one sentence also directed the United States to promptly claim the water rights in a proceeding "consistent with the McCarran Amendment". The McCarran amendment is a waiver of the sovereign immunity of the United States that allows the United States to be joined in general water adjudications, in which adjudications issues such as the priority and quantity of water rights are determined. Apparently, this provision was intended to direct the representatives of the United States to initiate appropriate action to quantify the federal rights and integrate them with the state system. Section 502 stated:

Within each of the areas designated as wilderness pursuant to this Act, the Congress expressly reserves a right to all the waters that arise upon or under or flow through such areas: Provided, That this reserved right shall be exercised only to protect wilderness values within the wilderness boundaries. The priority date of such reserved rights shall be the date of enactment of this Act. The Federal water rights reserved by this Act shall be subject to valid existing water rights and shall be in addition to any water rights previously appropriated or reserved by the United States for other than wilderness purposes. The United States shall promptly claim the water rights reserved by this Act in a proceeding consistent with the McCarran Amendment (43 U.S.C. 666).

This language was amended on the floor of the Senate to a version that did not expressly reserve all flows. The Senate passed H.R. 4146 in lieu of S. 2165, after amending the House bill to substitute the Senate bill language. The measure became Pub. L. 100-668, 102 Stat. 3961, with the water language stated in item 1. under heading II below.

II. Express creation of federal rights--not expressly the full flows

1. As noted above, S. 2165, the Washington Park Wilderness Act was amended on the floor of the Senate to change language expressly reserving the full flows to language that reserved water rights as necessary for the purposes for which areas were designated in the act. The amended section 502 that was enacted as Pub. Law 100-668, 102 Stat. 3961, 3968 reads:

Subject to valid existing rights, within the areas designated as wilderness by this Act, Congress hereby expressly reserves such water rights as necessary, for the purposes for which such areas are so designated. The priority date of such rights shall be the date of enactment of this Act.

2. In Pub. L. 100-225, 101 Stat. 1539, which established the El Malpais National Monument and the El Malpais National Conservation Area in New Mexico, Congress expressly created federal water rights for the national monument, the conservation area, and the wilderness areas designated in the act. The language was added to H.R. 403 on the Senate side when an amendment in the nature of a substitute added S. 56 to the House bill. The rights are for the minimum amount of water required to carry out the purposes of the areas, and have a priority date of the date of enactment. In addition, the act protects existing water rights and applications for water rights that were pending on the date of enactment and subsequently granted. The act also states that the water section is not a precedent and doesn't affect the interpretation of any other act. The language reads:

Sec. 509(a) Congress expressly reserves to the United States the minimum amount of water required to carry out the purposes for which the national monument, the conservation area, and the wilderness areas are designated under this Act. The priority date of such reserved rights shall be the date of enactment of this Act.

(b) Nothing in this section shall affect any existing valid or vested water right, or applications for water rights which are pending as of the date of enactment of this Act and which are subsequently granted: Provided, That nothing in this subsection shall be construed to require the National Park Service to allow drilling of ground water wells within the boundaries of the national monument.

(c) Nothing in this section shall be construed as establishing a precedent with regard to future designations, nor shall it affect the interpretation of any other Act or any designation made pursuant thereto.

3. Section 3(f) of S. 1335, the "City of Rocks National Reserve Act of 1987" (which did not pass in the form quoted below) expressly reserved water to carry out the primary purposes of the reserve. These rights were to be "perfected" pursuant to the procedural requirements of the laws of Idaho. The rights would have had a priority date of the enactment of the act, and no other rights could be implied under the act, but the United States could acquire additional rights in accordance with both the substantive and procedural requirements of the laws of Idaho. Existing reserved rights associated with lands transferred by the bill to the administrative jurisdiction of the Secretary of the Interior retained those rights, but only to the extent the rights are consistent with the purposes for which the lands would be administered under the new act. This limitation might have resulted in a reduction of the quantity of the federal right. Section 3(f) reads:

Sec. 3(f) Subject to valid existing rights, Congress expressly reserves to the United States such water rights as may be required to carry out the primary purposes, as expressed in section 2, of the reserve created by this Act with respect to all lands withdrawn from the public domain by this Act. Such rights shall be perfected by the United States pursuant to the procedural requirements of the laws of the State of Idaho. The priority of such rights shall be as of the date of enactment of this Act. The United States may acquire such additional water rights as it deems necessary to carry out its responsibilities under this Act. Such water rights shall be acquired pursuant to the substantive and procedural requirements of the laws of the State of Idaho. Nothing in this Act shall be construed to reserve any implied water right to the United States. The transfer of lands to the administrative jurisdiction of the Secretary pursuant to section 3 shall not affect any reserved water right which the United States may have acquired for the primary purposes for which such lands were originally withdrawn to the extent such rights are consistent with the purposes for which such lands are to be administered pursuant to this Act.

This language was not enacted. Rather, Title II of Pub. L. 100-696, 102 Stat. 4571, 4573, 4575 contained language stating that there were unique circumstances relating to the Reserve and that the State of Idaho had committed to providing the necessary water. Therefore, the act expressly provided that there was no express or implied reservation of water. See section captioned "Federal water rights expressly denied", below.

4. Section 102 of Pub. L. 100-696, 102 Stat. 4571 (derived from S. 2840) expressly reserves sufficient water to fulfill the purposes of the San Pedro Riparian National Conservation Area created by that title, and further provides that the priority date of the rights is the date of enactment and that the Secretary is to quantify the rights in an appropriate stream adjudication:

Sec. 102(d) Water Rights.--Congress reserves for the purposes of this reservation, a quantity of water sufficient to fulfill the purposes of the San Pedro Riparian National Conservation Area created by this title. The priority date of such reserve rights shall be the date of enactment of this title. The Secretary shall file a claim for the quantification of such rights in an appropriate stream adjudication.

Section 112 of H. R. 5277 also had created a San Pedro Riparian National Conservation Area, but did not contain the water language. Section 102(d) of S. 2840 originally contained language that was slightly different from that which was enacted:

(d) Water Rights.--Congress reserves for the purposes of this reservation, a quantity of water sufficient to fulfill the purposes of the San Pedro Riparian National Conservation Area created by this Act. The priority date of such reserve rights shall be the date of enactment of this Act. Such rights shall be perfected in the ongoing general stream adjudication now pending in the superior Court of the State of Arizona and to which the United States has been joined pursuant to the McCarran amendment (43 U.S.C. 466).

5. Although the legislation that ultimately was enacted on the Hagerman Fossil Beds National Monument expressly denied new federal water rights (see discussion of that legislation under heading III below), an earlier version of the Senate legislation had expressly created federal water rights for the Monument. S. 1675 as introduced read:

Sec. 4. Subject to valid existing rights, Congress expressly reserves to the United States such water rights as may be required to carry out the primary purposes of the monument created by this Act with respect to all lands withdrawn from the public domain by this Act. Such rights shall be perfected by the United States pursuant to the procedural requirements of the laws of the State of Idaho. The priority of such rights shall be as of the date of enactment of this Act. The United States may acquire such additional water rights as it deems necessary to carry out its responsibilities under this Act. Such water rights shall be acquired pursuant to the substantive and procedural requirements of the laws of the State of Idaho. Nothing in this Act shall be construed to reserve any implied water right to the United States. The transfer of lands to the administrative jurisdiction of the Secretary pursuant to section 2 shall not affect any reserved water right which the United States may have acquired for the primary purposes for which such lands were originally withdrawn to the extent such rights are consistent with the purposes for which such lands are to be administered pursuant to this Act.

III. Federal water rights expressly denied

1. The enacted Section 202(f) of Pub. L. 100-696 (derived from S. 2840) creating the City of Rocks National Reserve noted the exceptional circumstances that pertained to the creation of the Reserve and expressly denied new federal reserved water rights, while retaining rights associated with the national forest lands that were transferred into the Reserve. Section 202(f) reads:

Congress finds that there are unique circumstances with respect to the water and water related resources within the

Reserve designated by this title. The Congress recognizes that the management of this area may be transferred to the State of Idaho, that the State has committed to providing the water necessary to fulfill the purposes of this title, and that there is little or no water or water-related resources that require the protection of a Federal reserved water right. Nothing in this title, nor any action taken pursuant thereto, shall constitute either an express or implied reservation of water or water right for any purpose: *Provided*, That the United States shall retain that reserved water right which is associated with the initial establishment and withdrawal of the national forest lands which will be transferred to the Reserve under this title.

2. Section 304 of Pub. L. 100-696, 102 Stat. 4571, 4576, (derived from S. 2840) used very similar language to waive federal water rights for the Hagerman Fossil Beds National Monument:

Sec. 304. Congress finds that there are unique circumstances with respect to the water or water-related resources within the Monument designated by this title. The Congress recognizes that there is little or no water or water-related resources that require the protection of a federal reserve water right. Nothing in this title, nor any action taken pursuant thereto, shall constitute either an expressed or implied reservation of water or water right for any purpose.

Earlier language on the Hagerman Monument in S. 1675 read:

Sec. 304. Nothing in this Act, nor any action taken pursuant thereto, shall constitute or be construed to constitute either an express or implied reservation of water or water right for any purpose. The United States may acquire such water rights as it deems necessary to carry out its responsibilities under this Act pursuant to the substantive and procedural requirements of the laws of the State of Idaho. The transfer of lands to the administrative jurisdiction of the Secretary pursuant to section 302 shall not affect any reserved water right which the United States may have acquired for the primary purposes for which such lands were originally withdrawn to the extent such rights are consistent with the purposes for which such lands are to be administered pursuant to this Act.

3. S. 2055, the "Idaho Forest Management Act of 1988" (the Idaho wilderness bill, which did not pass), expressly preserved any existing federal water rights, but denied the creation of new federal water rights and required

the United States to acquire any new water rights for the designated areas pursuant to both the substantive and procedural requirements of the laws of Idaho:

Sec. 302(a) Within the State of Idaho, nothing in the Wilderness Act nor this Act nor any other legislation designating lands as wilderness or special management areas shall constitute or be construed to constitute either an express or implied reservation of water or water rights for any purpose. The United States may acquire such water rights as it deems necessary to carry out its responsibilities on any lands designated as wilderness or special management areas pursuant to the substantive and procedural requirements of the laws of the State of Idaho. This section shall not affect any reserved water right which the United States may have previously acquired within the State of Idaho with respect to any lands designated as wilderness or special management areas by this Act or any other Act for the primary purposes for which such lands had been originally withdrawn from the public domain.

4. This same language (modified for Nevada) was used in section 502(a) of S. 2659, the "Nevada Federal Wilderness Act of 1988" (which did not pass).

5. Section 402 of H.R. 708, the "Nevada Wilderness Act of 1987", (which did not pass) both expressly waived federal water rights and repeated the section 4 (d)(6) language from the Wilderness Act, which language has been interpreted either as preserving the status quo as to water law,¹² or as a waiver of federal water rights.¹³ Therefore, it is difficult to classify this section conclusively. The section reads:

Sec. 402. (a) As provided in section 4(d)(6) of the Wilderness Act, nothing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from Nevada water laws.

(b) Nothing in this Act shall be construed to limit the exercise of valid water rights as provided under Nevada State law, nor shall it constitute an express or implied reservation of water rights in favor of the Federal Government.

¹² *Sierra Club v. Lyng*, 661 F. Supp. 1490 (D.Co 1987).

¹³ *Opinion of the Solicitor, M-36914 (Supp. III) Federal Reserved Water Rights in Wilderness Areas*, July 26, 1988).

IV. Preservation of status quo as to determination of federal rights

1. Section 7 of S. 2751, the "Montana Natural Resources Protection and Utilization Act of 1988" (which passed but was pocket vetoed by the President), protects valid existing water rights under Montana law and probably preserves the status quo as to the determination of possible reserved water rights:

Sec. 7. Congress finds that the waters within the Wilderness Areas designated by this Act are headwaters. Therefore--

(a) there is no effect on downstream appropriation of waters;

(b) nothing in this Act shall be construed to affect valid existing water rights as provided under Montana State law; and

(c) nothing in this Act is intended to affect the determination of expressed or implied reserved water rights as determined under other laws.

2. Section 9 of S. 1138, the "Nevada Wilderness Protection Act of 1987" (which did not pass), simply restated section 4(d)(6) of the Wilderness Act, which language, as noted above, may constitute a waiver of new federal water rights, or may preserve the status quo as to water law principles by which federal and state rights are determined:

As provided in section 4(d)(6) of the Wilderness Act, nothing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from Nevada water laws.

3. As noted in the section on express waivers of federal water rights above, section 402 of H.R. 708 contained both an express waiver of federal rights and a repetition of the section 4(d)(6) language.

V. Water rights in land exchanges

Some bills proposed the exchange of lands between either more than one federal land management agency or between federal and nonfederal interests.

1. Section 8 of Pub. L. 100-550, 102 Stat. 2749, 2752, the National Forest and Public Lands of Nevada Enhancement Act of 1988" (derived from S. 59) transfers jurisdiction of certain lands from the Bureau of Land Management(BLM) to the Forest Service and vice versa. Transferred lands will continue to be managed in accordance with plans in effect on the date of enactment until new plans are developed by the agency with new jurisdiction over them. Lands managed by the Forest Service have associated federal water rights; those managed by BLM probably do not. In recognition of this fact, Congress expressly created new federal rights for the lands that were

becoming national forest lands. These rights would be for the minimum amount of water necessary to achieve the primary forest purposes, and would have a priority date as of the enactment of the act. The act also provides for the relinquishment of rights associated with those national forest lands going to BLM management, and also expressly states that the act does not create any implied reservation of water. The act also protects existing rights and recognizes the right of any person to seek water rights under state law. The language reads as follows:

Sec. 8. WATER RIGHTS.

(a) Congress hereby expressly reserves the minimum quantity of water necessary to achieve the primary purposes for which the lands transferred pursuant to section 4(a) are withdrawn. Those purposes are hereby declared to be solely and exclusively the primary purpose (sic) for which the National Forests within which the lands are to be included were established. The priority date for such reserved rights shall be the date of transfer pursuant to this Act.

(b) Congress hereby expressly relinquishes all Federal reserved water rights created by the initial withdrawal from the public domain in the lands transferred pursuant to section 4(c) effective on the date of such transfer.

(c) Nothing in this Act shall create an implied reservation of water.

(d) Nothing in this Act shall affect the right of the United States or of any person to acquire or dispose of water or water rights pursuant to the substantive and procedural requirements of the laws of the State of Nevada.

Sec. 9. VALID EXISTING RIGHTS.

(a) Nothing in this Act shall affect valid existing rights of any person under any authority of law.

2. In contrast, section 405 of S. 1472 and H.R. 2658, the "Federal Lands Administration Act of 1987" (which did not pass), contained identical language that expressly preserved existing federal rights, but precluded the creation of any additional reserved water rights in the United States for lands the management authority over which would have been transferred by the act:

Sec. 405. With regard to lands transferred by or under authority of this Act, any existing water rights of the United States under State or Federal law which the United States had or may be determined to have had by purchase, reservation, or otherwise prior to the date of enactment of this Act shall not be expanded or diminished: *Provided,*

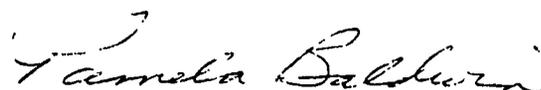
That the designation of newly established national forest lands under authority of this Act shall not create any additional reserved water rights in the United States as to those lands: *Provided further*, That nothing in this Act shall otherwise affect the right of the United States or of any person to acquire or dispose of water or water rights under applicable law.

3. Section 9 of H.R. 4005, the "Utah-Federal Land Exchange Act of 1988" (which did not pass), provided that water rights associated with lands exchanged by the state of Utah and the United States would be conveyed with the lands involved, but that the exchanges would not expand or diminish federal or state rights nor modify any interstate compact:

Sec. 9 Protection of Water Rights Associated With Property.

(a) **Water Rights Appurtenant to Lands Conveyed.**--In connection with water rights affected by this Act, water rights appurtenant to the lands conveyed pursuant to this Act, including existing water rights which have been acquired by the United States or the State, shall be conveyed with the land. Nothing contained in this section shall affect private water rights.

(b) **Other Water Rights and Responsibilities.**--Nothing in this Act shall expand or diminish Federal or State jurisdictions, responsibilities, interests, or rights in water resource development or control, or displace, supersede, limit, or modify any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more States or of two or more States and the United States.



Pamela Baldwin
Legislative Attorney
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APPENDIX

The following is a list of the bill numbers listed on the Scorpio data base for each of three index topics: National Parks, National Wildlife Refuges, and Wilderness. Bills shown with an asterisk contained express federal water rights language; bills without an asterisk did not. Where both an original and subsequent version of a bill were available in CRS files, both versions were reviewed.

National parks

H.R. 184	S.7
240	56
361	90
371	693
403*	695
899	1335*
900	1636
1100	1741
1495	1967
1983	2162
3237	2165*
3407	2352
3423	2420
3544	2492
3803	2575
4005*	2580
4146	2650
4182	2780
4457	2840*
4496	
4519	
4526	
4565	
4596	
4616	
4691	
4709	
4759	
4777	
4930	
5277	
5291	
5388	

National Wildlife Refuges

H.R. 1082	S. 854
1845	1193
2991	1217
3008	1493
3423	1755
3928	1758
4030	1979
4272	2214
4519	2352
4565	2710
4616	
4656	

Wilderness

H. R. 39	S. 7
148	56
184	90
361	693
362	695
371	854
403*	1036
708*	1138*
729	1460
1495	1472*
1512	1478
1845	1508
2044	2018
2090	2055*
2142	2165*
2486	2295
2596	2352
2658*	2571
2878	2659*
2988	2676
4027	2708
4146	2751*
4272	2838
4354	
4616	
4747	
5277	
5455	