

PART VI

FOREST SERVICE LEGAL AUTHORITY

The United States Supreme Court has held the general regulatory authority granted to the Secretary of Agriculture in the 1897 Organic Act authorized the national forest system principally as a means of enhancing the quantity of water that would be available to the settlers of the arid west.

<https://www.fs.usda.gov/land/water/bypass8.html>

If Congress intended...to reserve water for federal purposes, then the federal government has a right vested on the date of the reservation and superior to the rights of future appropriators to that amount of water "necessary to fulfill the purpose of the reservation, no more."

City and County of Denver v. US, 1982

-All waters within the boundaries of national forests may be used for domestic, mining, milling, or irrigation purposes, under the laws of the State wherein such national forests are situated, or under the laws of the United States and the rules and regulations established thereunder. 16 U.S. Code 481

- June 4, 1897, ch. 2, §1, 30 Stat. 36

A "Purpose Of" and the Extent of USFS Authority CONCERNING WATER

A USFS Purpose

...as a means of enhancing the quantity of water that would be available to the settlers of the arid west.

USFS Authority

A vested right "necessary to fulfill the purpose of the reservation, no more."

As Defined by
City and County of Denver v.
US, 1982

EXECUTIVE SUMMARY

The Task Force was created by Section 389(d)(3) of P.L. 104-127 in response to a controversy in Colorado regarding the attempt by the Forest Service to use its permitting authority to require that urban and agricultural water users relinquish a part of their water supply in order to provide water for the secondary purposes of the National Forest.

<https://www.fs.usda.gov/land/water/bypass2.html>

PART II

Frustrated by the fact that federal water rights must be exercised in priority, and therefore do not allow the Forest Service to control the use of water belonging to senior water rights used for non-federal purposes.

the Forest Service has turned to its regulatory authority in an attempt to control the diversion and use of water owned by others.

<https://www.fs.usda.gov/land/water/bypass4.html>

BACKGROUND

Beginning with the 1866 Mining Law, as amended by the Act of July 9, 1870, and followed by the 1877 Desert Land Act (irrigation), Congress severed water from the public lands and allowed third parties to obtain vested rights to the use of that water. These rights vest as against all other claimants, including the United States

Even Solicitor of the Interior Krulitz interpreted the 1866 and 1870 Acts to mean that "Congress in effect waived its proprietary and riparian rights to water on the public domain to the extent that water is appropriated by members of the public under state law in conformance with the grant of authority found in these two Act[s].

Thus, these two Acts confine assertion of inchoate federal water rights to unappropriated waters that exist at any point in time."

<https://www.fs.usda.gov/land/water/bypass8.html>