

EXECUTIVE SUMMARY

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

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

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

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>

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>