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Federal Water Rights

Colorado River Water Conservation District Policy Statements:

The policy of the Colorado River Water Conservation District (Colorado River District) is that when the Congress or the President creates special federal land designations, such designations must clearly and explicitly specify and quantify the minimum amount, if any, of water necessary to fulfill the purpose of the land reservation. The Colorado River District will advocate that the quantification of any reserved rights be the minimum amount essential to preserve the primary purpose of the Congressional or Executive action that creates the federal land designation.

Background & Discussion:

The “Winters Doctrine” arose from the Supreme Court’s 1908 decision in *Winters v. United States*, 207 U.S. 564 (1908). The Winters Doctrine stands for the proposition that when the federal government makes a reservation of land, it necessarily and impliedly reserves (and exempts from appropriation under state law) sufficient water to meet the needs of the land reservation.

The dispute in the Winters’ case involved conflicts between claims to water by American Indian Tribes on the Fort Belknap Indian Reservation in Montana and appropriation claims made under state law by settlers in the Milk River basin. The U.S. Supreme Court held that the Indian treaty establishing the reservation impliedly reserved sufficient water of the Milk River for tribal use which would be necessarily continued indefinitely. The court found that without water the reservation would be worthless and the purpose of the reservation would be destroyed.

The Supreme Court later clarified that when the federal government makes any reservation of land (not just an Indian reservation) it impliedly reserves only that amount of water sufficient to fulfill the purpose of the reservation, no more. *Cappaert v. United States*, 426 U.S. 128 (1978)

The U.S. Congress adopted the McCarran Amendment in 1952 (43 U.S.C. 666) providing for state adjudicatory and administrative jurisdiction over federal water claims, both reserved rights and in-priority appropriations. The River District believes that the McCarran Amendment appropriately provides for adjudication of federal, reserved water rights in state water courts following the same manner and procedures as for other water rights.