

Committee on Resources

resources.committee@mail.house.gov

[Home](#) [Press Gallery](#) [Subcommittees](#) [Issues](#) [Legislation](#) [Hearing Archives](#)

Statement of Mark Limbaugh Deputy Commissioner of Reclamation U.S. Department of the Interior

on H.R. 2603
Before the House Resources Committee
Subcommittee on Water and Power
United States House of Representatives

September 22, 2004

Mr. Chairman, I am Mark Limbaugh, Deputy Commissioner of the Bureau of Reclamation, and I appreciate the opportunity to be here today to present the views of the Department of the Interior regarding H.R. 2603. While we cannot support the language in this bill as it is written, we look forward to working with this Committee to address the underlying concerns that have led to this legislative proposal.

We understand that the introduction of this legislation is in part driven by concern that federal laws should be implemented in a manner consistent with water rights established under state law. We also understand that the introduction of this legislation is a result of the desire to avoid confusion regarding whether the allocation and use of water is to be governed by state or federal law. From the perspective of the Department of the Interior, these issues have been addressed and resolved by Congress and the United States Supreme Court.

The history of the evolution of western water law is well known to the Committee. Since 1866, Congress has repeatedly recognized and protected the primary role of western States in the allocation and administration of the use of water. With the 1953 enactment of the McCarran Amendment, codified at 43 U.S.C. § 666, Congress also guaranteed that water rights that have been created under applicable law will be recognized under both state and federal law. Congress created this guarantee by waiving the sovereign immunity of the United States so that it could be joined in comprehensive general adjudications of the rights to use water in state courts. In *United States v. District Court for Eagle County*, the United States Supreme Court addressed and rejected the contention that the McCarran Amendment did not apply to any and all claims by the federal government to the use of water when it held that the McCarran Amendment is "an all-inclusive statute concerning 'the adjudication of rights to the use of water of a river system' which . . . has no exceptions and . . . includes appropriative rights, riparian rights, and reserved rights."

The Department of the Interior believes that it is possible to implement existing federal laws and attain national objectives for the management and protection of environmental and other resources in a manner fully consistent with the letter and spirit of the McCarran Amendment. One of the keys to success in this regard is the need to complete adjudications in a timely fashion. Secretary of the Interior Gale Norton has taken a direct interest in working with States to resolve issues in these adjudications in a cooperative manner that protects both state and federal interests.

Secretary Norton's Water 2025 Initiative has been viewed as a thoughtful but pragmatic approach to avoiding water crises in the west. The first principle of Water 2025 is that

Solutions must be based on and recognize interstate compacts and United States Supreme Court decrees that allocate water between states, water rights established under state and federal law, tribal water rights, and contracts for the use of water.

This first principle recognizes the role of states in water allocation issues, and confirms the validity and importance of the McCarran Amendment. It also reflects the reality that attempts to ignore and avoid existing water rights and contracts will simply increase the level of conflict and make potential crises real.

Again, we look forward to working with you on this important and complex issue.