

108TH CONGRESS
1ST SESSION

S. RES. 183

Commemorating 50 years of adjudication under the McCarran Amendment
of rights to the use of water.

IN THE SENATE OF THE UNITED STATES

JUNE 25, 2003

Mr. ENSIGN (for Mr. CAMPBELL) (for himself, Mr. ENSIGN, Mr. KYL, Mr. BURNS, Mr. ALLARD, Mr. CRAPO, and Mr. CRAIG) submitted the following resolution; which was referred to the Committee on Energy and Natural Resources

RESOLUTION

Commemorating 50 years of adjudication under the
McCarran Amendment of rights to the use of water.

Whereas section 208 of the Department of Justice Appropriation Act, 1953 (commonly known as the McCarran Amendment) (43 U.S.C. 666) waived the sovereign immunity of the United States so that it could be joined in comprehensive State general adjudications of the rights to use water;

Whereas in *United States v. District Court for Eagle County*, 401 U.S. 520, 524 (1971), the Supreme Court confirmed that the McCarran Amendment was “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”;

Whereas in *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 819 (1976), the Supreme Court concluded that the concern over “avoiding the generation of additional litigation through permitting inconsistent dispositions of property . . . is heightened with respect to water rights, the relationships among which are highly interdependent” and that the “consent to jurisdiction given by the McCarran Amendment bespeaks a policy that recognizes the availability of comprehensive state systems for adjudication of water rights as the means of achieving these goals”;

Whereas since the passage of the McCarran Amendment, Federal and non-Federal users, along with numerous Western States, have invested millions of dollars in water right adjudications in those States to establish rights to the use of water that will determine priority of use during times of scarcity;

Whereas State water laws in the West have evolved to accommodate instream values such as recreation and environmental needs, while continuing to recognize and protect traditional consumptive uses for the West’s cities and farms;

Whereas Federal claims for water have been recognized under both Federal and State laws within State general adjudications, thus enhancing the protection of Federal interests, as well as the certainty and reliability of non-Federal interests, in water in the West;

Whereas the significance of the McCarran Amendment, in providing States with the ability to determine the extent

of Federal claims to water resources, has become increasingly apparent as many of the Western States are experiencing a severe and sustained drought, where water supplies for all purposes are severely restricted; and

Whereas now more than ever there is a pressing need to recognize and support the availability of comprehensive systems for quantification of rights to use water in those Western States for all beneficial purposes: Now, therefore, be it

1 *Resolved*, that the Senate—

2 (1) reaffirms the policies and principles of the
3 McCarran Amendment that have been recognized by
4 Supreme Court decisions and recognizes that, as a
5 matter of practice, the United States should adhere
6 and defer to State water law; and

7 (2) commends Western States that maintain
8 comprehensive systems for the quantification of
9 rights to use water for all beneficial purposes, in-
10 cluding environmental protection and enhancement.

○