



National Park Service - Department of the Interior
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Fact Sheet

U.S. Department of the Interior National Park Service Natural Resource Information Division



Water Rights in the National Park System

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Water is critical for preserving and interpreting natural and cultural resources in National Park System units¹ and for meeting the needs of visitors and administrators. In the western and increasingly in the eastern United States, the right to use water is administered under state law. To use water, a user must not only establish the physical facilities but also the legal right. The latter may require a permit from the state or even a court determination or adjudication. Many water-dependent resources in parks are associated with natural streams, lakes, and springs. Although no physical facility is usually necessary, the protection of these resources often requires establishing the legal rights to maintain the flows or levels of water to prevent their injury by upstream water diversions. In this sense, the National Park Service becomes a water user similar to a water diverter.

Monitoring and Enforcement

Especially in the arid areas of the nation, growing populations and commerce have increased the demand for water and the conflicts over a limited supply of water. Conflicts among water users are resolved

¹National parks and other entities of the National Park Service such as national monuments, national rivers, wild and scenic riverways, national scenic trails, and others are called *units* and collectively constitute the *National Park System*.

by administrative means or litigation according to state and federal laws. The National Park Service is participating in state administrative proceedings to resolve conflicts with water development by other entities that may harm water-dependent resources in parks or injure water rights of parks. The administrative proceedings begin when public notices of proposed water diversions are published in local newspapers or issued by state agencies.

When the National Park Service is notified of the filing of an application for a permit to divert water, an assessment of potential injury to park resources and water rights must be made and, if necessary, asserted by filing protests within established time schedules. The administrative process includes an opportunity for presentation of data and conclusions at hearings before the finder of fact, which is usually a state administrator or rarely a state or federal judge.

The National Park Service established a Water Rights Branch in its Natural Resources Program Center to assist park management with the monitoring and enforcement of water rights. The national focus applied by the branch provides consistent responses to water right issues throughout the country. The Office of the Solicitor of the Department of the Interior provides legal assistance and, if necessary, the service is

represented in court by the Department of Justice.

General Adjudications

To settle conflicts over the determination of water rights for federal water users such as the National Park Service, states are initiating and advancing water rights adjudications through the courts. In the McCarran Amendment (43 U.S.C. Sec. 666.), the Congress consented the joining of the United States in lawsuits for the general adjudication of rights to the use of water of a river system or other source. As a result, the United States is participating in many such adjudications for about 50 National Park System units in western states. The service must participate in these adjudications if it wishes to avoid either the possible loss of water rights and water-dependent resources or the need to purchase expensive water rights.

The Water Rights Branch assists park management with developing technical evidence to support adjudication claims. The Department of Justice and the National Park Service developed and submitted reasonable water right claims as required by the courts for many of these adjudications. In the claims, the National Park Service asserts consumptive use (e.g., for visitor and administrative uses) and in situ (e.g., to maintain stream flow) water rights

appropriately tailored for each park unit included in the adjudication.

Many claims are opposed by other water users in the adjudication. The Water Rights Branch initiates scientific studies to support the claims. As the adjudications proceed, the National Park Service seeks the opportunity to negotiate a resolution of the opposition to its water right claims and thereby avoids costly litigation while maintaining protection of its interests. For example, settlements have been reached with the major opposing parties in adjudications in Colorado, Idaho, Montana, and Utah. Negotiations are continuing for other adjudications in these and other states.

Eastern United States Issues

In addition to conflicts surrounding parks in the arid western states, the National Park Service is concerned that

increased water development may injure fragile ecological communities in park units in the eastern United States. For example, proposed expansion of groundwater withdrawals near some eastern parks prompted the service to initiate a series of studies of the effects of water withdrawal on wetlands and maritime forests.

Use of Water from Inside Parks

The National Park Service is faced with an increasing number of requests for the use of water from inside parks by entities outside of parks. The sale or lease of such water is guided by law and policy that allow the service to provide water to an outside entity only if (1) the entity provides essential visitor services, (2) a reasonable alternative water supply is not available, (3) there are no adverse environmental consequences for park resources or administration, (4) charges are established for recovery of the full

cost to the government of providing the water, and (5) the permitted use is for a short term period (1 year or less). Even when the conditions are met, approval by the appropriate congressional committees is required.

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