



# Federal Reserved Water Rights

## Overview of Federal Reserved Water Rights

The Federal Reserved Water Rights Doctrine states that when the federal government sets aside lands for a particular purpose, it also reserves a sufficient amount of water to support that particular purpose. Federal reserved water rights often arise when the federal government sets aside land for federally recognized Indian Tribe reservations, National Parks, and other public land uses.

### Federal Reserved Water Rights Terminology

**Express Reserved Rights:** When the federal government reserves land, it may explicitly define and reserve water rights for a particular purpose.

**Implied Reserved Rights:** When the federal government reserves land for a particular purpose and is silent about the reserved water rights, a water right may be implied in order to carry out the purpose of the reservation.

**Primary Purposes:** A primary purpose is the principal use for the reserved water rights that the federal government had when reserving land. For example, a National Forest reservation may be made for the primary purpose of timber production and watershed protection.

**Secondary Purposes:** Water rights that are necessary for purposes not identified by the federal government when reserving land. For example, a National Forest reservation may have secondary purposes of fish or wildlife protection.

## Reserved Water Rights Cases

Federal reserved water rights have been shaped by court cases. The U.S. Supreme Court has weighed in several times to clarify the extent of reserved water rights.

***Winters v. United States*, 207 U.S. 564 (1908).**

Held that water rights existed by necessary implication at the time the reservation was reserved.

***Arizona v. California*, 373 U.S. 546 (1963).**

Extended reserved water rights for non-Indian purposes and held that Congress has the power to reserve water for particular purposes when it sets aside federal lands.

***Cappert v. United States*, 426 U.S. 128 (1976).**

Held that the federal government could reserve surface or groundwater rights in order to provide for the preservation of a primary purpose.

***United States v. New Mexico*, 438 U.S. 696 (1978).**

Held that the federal government could not reserve water rights for secondary purposes.

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### How are Water Rights Reserved?

Water rights can be reserved explicitly or implicitly by an act of Congress, a treaty, or by executive order. If the federal government does not explicitly reserve water rights, courts look to the intent of the federal land reservation and may determine that water rights are necessary to accomplish the reservation's purpose. The primary purpose of the reserved water rights can vary depending on the type of reservation.

The Property Clause of the U.S. Constitution grants Congress authority to reserve water for use on public lands.

### How Much Water is Reserved?

Reserved water rights can be established for any water that is unappropriated at the time of the federal reservation. The quantity of water reserved is limited to the amount necessary for the primary purposes of the federal reservation. Secondary purposes for the reservation receive water rights under state law. The quantity of reserved water can change over time as long as the use remains within the primary purposes of the reservation.

### When are Water Rights Established?

Federal reserved water rights receive a priority date based on the date of the reservation. For some Indian reservations, this date can be established at "time immemorial." This means that no water rights established after the date of reservation will receive priority over the federally reserved water rights.

*The federal government has authority to reserve water rights to carry out congressional purposes. This often arises when the federal government is directed to secure water rights for National Parks or National Monuments.*

*The federal government has general regulatory authority to manage public lands in a manner that protects environmental values and public uses.*

*Some federal statutes, such as the Clean Water Act or Endangered Species Act, direct the federal government to manage federal lands or waters. Water rights must be reserved in order to satisfy the water quality standards or protection of species mandated by these statutes.*

## Federal vs. State Water Rights

### Federal Reserved Water Rights

- Often preempt state water rights.
- **Cannot** be abandoned or forfeited for non-use.
- Receive priority at the date of reservation.

### State Water Rights

- Often utilize a riparian, prior appropriation, or hybrid approach. Additional fact sheets on these topics can be found on the NSGLC Water Resources webpage at: <https://nsglc.olemiss.edu/projects/waterresources>
- **Can** be abandoned or forfeited for non-use.
- **Can** be transferred or sold.