



403 FW 3, Acquisition and Protection

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3.1 Acquisition of Water Rights. The Service acquires water rights in the Western States in several different ways. If the lands were withdrawn from the public domain, the associated Federal reserved water rights must be quantified and asserted when the watershed or basin is included in a general stream (McCarran Amendment) adjudication. (See [403 FW 2.1A\(a5\)](#).) Water rights for acquired lands are usually obtained under State law. In Eastern States, regulation of water use, except for water quality purposes, has not been common or extensive, although a number of these States have implemented permit systems.

A. Other Entities and Private Lands Programs. The Service also works with other entities to acquire water rights and protect water supplies for wildlife habitat purposes. Under Partners for Wildlife and other private lands programs, Federal funds are used to develop, enhance and restore wetlands on private lands, and the Service assists landowners in acquiring State water rights for the projects.

B. Water Rights Appurtenant to Acquired Lands. When the Service acquires land, it also acquires appurtenant water rights unless those rights are reserved by the grantor, or are outstanding in third parties. Diversion and use of water under those rights is limited to the historic practices; in other words, those rights should be utilized to divert the same quantities of water for the same purposes, during the same periods of use, and at the same points of diversion and places of use. If a change in some element of an existing water right (such as purpose or place of use) is necessary to carry out Service management programs, a change application must be submitted to and approved by the State before the change is implemented. A change in the purpose, place of use, or point of diversion of an acquired right may be denied or conditioned to prevent injury to another appropriator using water from the same source.

C. Acquisition of New Water Rights. In most Western States, a State agency, commonly designated as the State Water or Natural Resources Department or State Engineer, has responsibility for allocating and administering the waters of the State. That office reviews and approves or disapproves applications for new water uses, appoints river commissioners or water masters to supervise the distribution of water in accordance with water rights of record, and

maintains water rights and use records. If the Service does not have water rights sufficient for an existing or proposed project, it will seek to acquire the necessary rights. An approved permit to appropriate water must be received before any construction is begun or water actually used.

D. Instream Flow. Increasing demands for water have been accompanied by greater concern for maintaining streamflows for fish and wildlife, water quality, and recreational purposes, as well as for aesthetic reasons. These flows are being protected through a variety of mechanisms, such as granting water permits for an identified flow rate, imposing minimum streamflow conditions on new permits, and closing stream systems to new appropriations. Many Western States now provide mechanisms by which existing consumptive water rights may be changed, either temporarily or permanently, to instream water rights.

E. Fish and Wildlife Coordination Act and Endangered Species Act. In some States, the Service, under its Fish and Wildlife Coordination Act and Endangered Species Act responsibilities, is working with other parties to identify and maintain streamflows needed for wildlife purposes. Through the consultation process, the Service may request or require project sponsors to ensure passage of minimum streamflows for spawning, rearing, and maintaining fishery resources, including endangered and threatened fish species, and for maintaining riparian habitats; the identified water flows can sometimes be protected through State water rights systems.

3.2 Water Rights Protection. Because they are valuable property rights, and critical to meeting resource management objectives, Service water rights shall be managed to ensure that they are not diminished in quantity or quality, or lost.

A. Identification of Water Rights. The Service will maintain a systematic program to identify all water rights associated with each Service facility.

(1) Historic water use records, warranty deeds, aerial photos, and other documents will be reviewed in order to establish an accurate inventory of all vested, riparian, appropriative, and Federal reserved water rights. A water rights map may also be prepared for each facility.

(2) Water rights associated with proposed acquisition projects will be identified early in the planning process. An analysis of the rights, and of their utility for fulfilling management objectives, will be completed prior to acquisition.

B. Use of Water Rights. To a great extent, the protection and preservation of Service water rights is accomplished at the place of use.

(1) Facility managers must comply with the terms and conditions of their water rights if the rights are to remain in good standing. Water must be utilized for the correct purpose at the designated place of use as indicated on the water permit or license, and it must be used efficiently, so as to avoid waste. All water diverted and impounded should be properly measured and a record of water use maintained to document the beneficial use under each water right.

(2) The facility manager must also be alert to the activities of other water users, such as illegal or unauthorized diversions of water, dumping of sewage or toxic wastes, flood control hazards, and drainage which might have adverse impacts upon the quantity and/or quality of existing or future facility water supplies.

(3) Public notices in local newspapers must be reviewed by facility managers to determine if new applications for water rights would conflict with facility water use and/or rights. If an application may do so, the Regional Water Rights Manager should be promptly notified so that an objection or protest to granting a water permit for that application can be filed with the appropriate State agency.

(4) All water rights permits for uses of water on Service lands will be filed in the name of the United States, Fish and Wildlife Service. Permittees may be issued special use permits allowing them to use water under those rights.

C. Adjudication of Water Rights. When the United States is properly joined in a general stream adjudication, pursuant to the McCarran Amendment, all Federal agencies, including the Service, must file statements of claim for Federal reserved, State appropriative, vested, and riparian rights. Facility water use records are valuable tools for documenting Service water rights. Technical engineering and hydrological data, including computer models, and biological information to support the beneficial nature of the Service's water use, are also important in preparing water rights claims. The Service works closely with the Solicitor's Office and the Department of Justice in asserting and defending its water rights.

For additional information regarding this Web page, contact [Krista Bibb](#), in the Division of Policy and Directives Management, at Krista_Bibb@fws.gov

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