Attachment F

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LEGAL MEMORANDUM

TO: Senator Gail Schwartz

FROM: Office of Legislative Legal Services

DATE: February 4, 2013

SUBJECT: HB 13-1013 and U.S. Forest Service Ski Area Permit Terms[1]

Question

A United States Forest Service ski area permit directive limits the alienability of certain ski area water rights and requires the transfer of those water rights to the United States without compensation upon termination of the permit. HB 13-1013 prevents, as a condition of granting a special use permit, a landowner from requiring that the owner of a water right assign to the landowner ownership of the water right or limit the alienability of the water right. Does state law or federal law determine whether the federal permit condition is lawful?

Short Answer

Whether the Forest Service may take the actions prohibited by HB 13-1013 is determined solely by federal, not state, law. There is no exception applicable in this situation from the general rules of federal preemption. If federal law allows what HB 13-1013 purports to prohibit, federal law preempts HB 13-1013. If federal law prohibits the Forest Service from taking the actions specified in HB 13-1013, the fact that HB 13-1013 also prohibits the actions is, legally, immaterial to whether the federal permit condition is lawful.

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[1] This legal memorandum results from a request made to the Office of Legislative Legal Services (OLLS), a staff agency of the General Assembly, in the course of its performance of bill drafting functions for the General Assembly. OLLS legal memoranda do not represent an official legal position of the General Assembly or the state of Colorado and do not bind the members of the General Assembly. They are intended for use in the legislative process and as information to assist the members in the performance of their legislative duties. Consistent with the OLLS' position as a staff agency of the General Assembly, OLLS legal memoranda generally resolve doubts about whether the General Assembly has authority to enact a particular piece of legislation in favor of the General Assembly's plenary power.

Discussion

I. Background.

During the 2012 interim, the National Ski Areas Association (NSAA) brought an issue to the attention of the General Assembly's Water Resources Review Committee (WRRC): the United States Forest Service (USFS) had recently changed the terms of its special use permits for ski areas by issuing Interim Directive 2709.11-2012-2 (the 2012 Directive).

A. The 2012 Directive imposes restrictions on ski areas' water rights.

The 2012 Directive (**Attachment A**) applies only when a ski area permit is issued, reissued, or modified. (Directive p. 1) Among the requirements and restrictions imposed by the 2012 Directive are the following:

- Section F.2.a applies to water rights diverted from and used on USFS-permitted ski area property. Subsection (1) of F.2.a specifies that new water rights must be held jointly "in the name of the United States and the holder [of the permit]"; subsection (3) states that a ski area operator "shall not take any action intended to divide or transfer the holder's ownership interest in" these water rights without seeking USFS permission.
- Section F.2.b applies to water rights diverted from USFS property outside the ski area and used within the permitted ski area. Subsection (1) of F.2.b specifies that new water rights of this type must be held "solely in the name of the United States". Subsection (2) states that a ski area operator "shall not take any action intended to divide or transfer the holder's ownership interest in" these water rights without seeking USFS permission.
- Section F.2.d states that, upon termination of the permit, the ski area must transfer the water rights under sections F.2.a and F.2.b to the United States. Finally, section F.2.f requires the ski area operator to waive any rights to compensation for the 2012 Directive's requirements and limitations on the water rights subject to section F.2.a and F.2.b.

B. Federal litigation invalidated the 2012 Directive on procedural grounds.

The NSAA, on behalf of its ski area members, including 22 ski areas on USFS lands in Colorado, sued the USFS in federal district court in Denver, alleging that the 2012 Directive violated both procedural and substantive aspects of federal law. In December 2012, the federal district court entered an injunction that prohibits the USFS from enforcing the 2012 Directive. The injunction was based on federal procedural laws that the USFS violated in adopting the 2012 Directive; the court made no findings regarding the NSAA's substantive federal law claims. It is therefore not clear whether the substantive provisions of the 2012 Directive are authorized by federal law. The court remanded the issue to the USFS, which potentially could essentially readopt the 2012 Directive, but this time in compliance with applicable procedural requirements.

C. The WRRC sponsored legislation to oppose and invalidate the 2012 Directive on substantive, state law grounds.

In response to the NSAA's concerns, the WRRC sponsored the introduction of HB 13-1013 and HJR 13-1004, the latter of which states, in part:

> (1) That the General Assembly encourages the Forest Service to immediately rescind the 2012 Directive and settle the pending litigation over the 2012 Directive;
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> (2) That, for the benefit of the range resource and our economy, the General Assembly urges the Forest Service to immediately reevaluate and discard its policy and actions whereby water rights are demanded in exchange for permitted uses; and
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> (3) That the General Assembly urges the Forest Service to utilize state laws and procedures to appropriate water rights if it wishes to ensure that water is available for fish and aquatic habitat protection purposes on the national forests rather than impose exactions in special use permits.

HB 13-1013 amends two portions of the state's water laws by adding the following provision:

> A landowner shall not demand as a condition of granting a right-of-way or special use permit, and a court shall not order as a condition of an eminent domain proceeding authorized pursuant to section 37-86-104 (1), that the owner of a water right or conditional water right assign to the landowner partial or joint ownership of the water right or limit the alienability of the water right. Any such condition is void and unenforceable as against public policy.

As amended in the House of Representatives' committee on agriculture, livestock and natural resources on January 28, 2013, the unofficial preamended version of HB 13-1013 (**Attachment B**) now states that:

> The United States shall not demand as a condition of granting a right-of-way or special use permit that the owner of a water right or conditional water right assign to the United States partial or joint ownership of the water right or limit the alienability of the water right. Any such condition is void and unenforceable as against public policy.

This memorandum does not address the issue of whether the 2012 Directive is authorized by federal law, nor does it focus on whether HB 13-1013 is preempted by federal law. Rather, the question answered is whether the source of law that determines the validity of the 2012 Directive is federal or state law. If state law affects that determination, then HB 13-1013 would invalidate the 2012 Directive. But if it is only federal law that would be considered in reaching that determination, HB 13-1013 is irrelevant to the determination of the validity of the 2012 Directive, and the bill may be preempted depending upon whether HB 13-1013 conflicts with applicable federal law.

II. Federal law preempts conflicting state law.

Pursuant to the federal constitution's supremacy clause (U.S. Const. article VI, clause 2), a state law that conflicts with federal law is preempted. If state law is preempted with regard to a particular issue, the issue is governed by federal, not state, law. Preemption of state law can occur in three ways: (1) if Congress expressly preempts state law; (2) if federal regulation in a field is so pervasive that the entire field is preempted ("field preemption"); and (3) if a state law directly conflicts with federal law.[2] It does not appear that there is any federal law that expressly prohibits states from legislating regarding the issues addressed in HB 13-1013; therefore, item (1), express preemption, is not present here. That leaves items (2) and (3) to consider.

A. Although Congress has pervasively legislated in this field, it is not clear that field preemption applies.

Field preemption might apply here because Congress has enacted many comprehensive laws that regulate the USFS's issuance of special use permits. As noted in the order that granted the NSAA's injunction against enforcement of the 2012 Directive, the USFS's

> authority to manage lands under its jurisdiction derives from the Property Clause of the United States Constitution. The Property Clause empowers Congress to "make all needful Rules and Regulations respecting the . . . Property belonging to the United States." U.S. Const. art. IV, § 3, cl. 2.

(Order, p. 8) Pursuant to the Property Clause, Congress has enacted a very comprehensive series of laws governing the USFS, including specifically the issuance of special use permits and ski area permits in particular.[3] Most specifically and importantly, the National Forest Ski Area Permit Act of 1986, 16 U.S.C. sec. 497b (b) (7), specifies that ski area permits are to be issued "subject to such reasonable terms and conditions as the Secretary [of agriculture] deems appropriate". The phrase "reasonable terms and conditions" in this statute has apparently never been construed by case law.

Given the breadth and comprehensive nature of these laws and their voluminous implementing regulations (chapter II of title 36, C.F.R.), it is possible that a court could hold

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[2] *Pacific Gas and Electric Company v. State Energy Resources Cons. & Dev. Comm'n*, 461 U.S. 190, 203-204 (1983); *Silkwood v. Kerr-McGee Corporation*, 464 U.S. 238 (1984).

[3] *See* the USFS's organic act, 16 U.S.C. sec. 551, (superceded with regard to the issuance of rights-of-way by the Federal Land Policy and Management Act, 43 U.S.C. sec. 1765); the Term Permit Act of 1915, 16 U.S.C. sec. 497 (authorizing the secretary of agriculture to permit the use and occupancy of USFS lands "upon such terms and conditions as he may deem proper"); and the Multiple Use-Sustained Yield Act, 16 U.S.C. sec. 528 *et seq.* (authorizing the secretary of agriculture to develop and administer the surface resources of the national forests to provide for multiple uses).

that state laws regarding the conditions contained in USFS special use permits are preempted due to Congress having fully occupied this field of law. No such case having apparently been reported, it is therefore unclear whether field preemption applies.

B. HB 13-1013 may conflict with federal law and thus be preempted.

That leaves direct conflict as a source of preemption. Based on the language of HB 13-1013 and the 2012 Directive, it is clear that the bill (particularly as preamended) prohibits that which the directive allows. As noted above, the federal district court's injunction was based on the USFS's procedural rather than substantive violations; we therefore do not conclusively know whether the 2012 Directive is itself authorized by federal law. If it is not authorized by federal law, HB 13-1013 prohibits what is not authorized by federal law, so there would be no conflict and therefore no preemption. If we assume that the 2012 Directive is authorized by federal law, absent some sort of exception, HB 13-1013 directly conflicts with federal law and would be preempted.

As noted above, however, the ultimate question posed is not whether HB 13-1013 is preempted but whether the source of law that determines the validity of the 2012 Directive is federal or state law. If an exception in federal law allows state law to apply, HB 13-1013 could affect the determination of whether the 2012 Directive is lawful.

III. Nothing in federal law allows conflicting state law to determine the validity of a USFS special use permit term.

The primary, if not exclusive, exception in federal law that allows some aspects of state water law to apply to the United States is the so-called McCarran Amendment, 43 U.S.C. sec. 666 (a), which states:

> **§ 666. Suits for adjudication of water rights**
> **(a) Joinder of United States as defendant; costs.** Consent is hereby given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner of or is in the process of acquiring water rights by appropriation under State law, by purchase, by exchange, or otherwise, and the United States is a necessary party to such suit. The United States, when a party to any such suit, shall (1) be deemed to have waived any right to plead that the State laws are inapplicable or that the United States is not amenable thereto by reason of its sovereignty, and (2) shall be subject to the judgments, orders, and decrees of the court having jurisdiction, and may obtain review thereof, in the same manner and to the same extent as a private individual under like circumstances: Provided, That no judgment for costs shall be entered against the United States in any such suit.

The waiver effected by the McCarran Amendment "must be strictly construed in favor of the United States". *United States v. Idaho*, 508 U.S. 1, 7 (1993). The amendment was

adopted to further the general federal policy that water rights are determined by state law. That policy is based on the fact that, with some limited exceptions such as federal reserved rights,[4] there is no federal law regarding the adjudication and administration of water rights.[5]

Under the McCarran Amendment, the United States waives its sovereign immunity from being joined as a defendant in, and agrees to be bound by state law with regard to, a particular class of legal actions: those that relate to the "adjudication" or "administration" of water rights. This waiver and agreement applies regardless of whether the United States acquires the water rights "by appropriation . . . , by purchase, by exchange, or otherwise". *Id.*

A. "Adjudication" of federal water rights can occur under state law.

If the USFS were to acquire a water right by appropriation, to protect the priority of that right it would generally adjudicate the claim in a state water court applying state law under article 92 of title 37, C.R.S.[6]

Although the acquisition of a ski area's existing water right pursuant to a special use permit condition is not the "adjudication" of a water right,[7] the appropriation of a new water right by a ski area–which, under the 2012 Directive, must be either jointly or singly in the name of the United States–would generally require an adjudication and therefore, under the McCarran Amendment, would be subject to state water law.

B. "Administration" of federal water rights can occur under state law.

If the USFS were to acquire a water right pursuant to a special use permit condition, the "administration" of that right would also occur, as per the McCarran Amendment, pursuant to generally applicable state law. But how broad is the term "administration"? Does it include matters addressed by HB 13-1013?

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[4] Federal reserved rights are water rights that arise by implication when the United States withdraws land from the public domain for a specific purpose, such as Native American reservations, national forests, national parks, etc. *See Winters v. United States*, 207 U.S. 564 (U.S. 1908).

[5] *See California Oregon Power Co. v. Beaver Portland Cement Co.*, 295 U.S. 142, 162 (U.S. 1935) ("[A]ll non-navigable waters [on the public lands] should be reserved for the use of the public under the laws of the states" in which the public land is located).

[6] *See Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 810 (1976) (while federal district courts have concurrent jurisdiction to adjudicate federal water rights, those courts should stay their proceedings in deference to state court water adjudications).

[7] *See* section 37-92-203 (1), C.R.S.: "Water matters shall include only those matters which this article and any other law shall specify to be heard by the water judge of the district courts."; *Crystal Lakes Water & Sewer Ass'n v. Backlund*, 908 P.2d 534, 540 (Colo. 1996) ("[A]n action to determine ownership of a water right falls within the general jurisdiction of the district courts of this state").

In Colorado, the "administration" of water rights is commonly understood to refer to the state engineer's and the water judges' enforcement of the limitations and requirements contained in water right decrees, interstate compacts,[8] and applicable requirements of title 37, C.R.S.[9] Under that understanding, the USFS's imposition of a special use permit condition on a ski area would not involve the "administration" of a water right.

However, the Colorado supreme court gave a broader reading to the term "administration" in *Federal Youth Center v. District Court*, 575 P.2d 395 (Colo. 1978). That case held that a quiet title action concerning the ownership of water rights is within the term "administration" as used in the McCarran Amendment. An individual filed a quiet title action to water in a particular ditch; the United States owned shares in the ditch company and argued that the state court had no jurisdiction over it. The court noted that "[n]early every case which has discussed [the McCarran Amendment] has concentrated on the meaning and scope" of the "adjudication" portion of the law, not the "administration" portion. *Id.* at 398. Nevertheless, it found that "administration" includes a quiet title action, writing:

> [T]he intent of the McCarran Amendment was to ensure that the United States would be subject to suits seeking initial declaration or adjudication of water rights, as well as to subsequent proceedings further affecting or disposing of those rights. To provide only the former consent, without the latter, would be to allow the United States to take advantage of each state's water law system and acquire adjudicated water rights, without being limited by subsequent state actions attempting to assure the orderly use of those rights.
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> In this case, if the United States were not susceptible to joinder, the McCarran Amendment's objective would be thwarted. Even though the ownership of only one decreed water right -- priority number four on Bear Creek -- is at issue, failure to settle that question will affect the numerous stockholders of the Warrior Ditch Company as well as the claimants in this quiet title action. The fact that only one water right is at issue does not make this any less a situation where complete administration of the right is essential to the ability of its owners or claimants to put it to beneficial use or to buy, sell, or otherwise transfer all or part of the right.

Id. at 399.

By its very nature, a quiet title action vests a court with *in rem* jurisdiction, meaning jurisdiction "over the thing", as opposed to *in personam* jurisdiction (jurisdiction over the person).[10] Thus, a quiet title action must bind every potential owner of the property at issue

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[8] *See* articles 61 through 69 of title 37, C.R.S.

[9] *See SL Group, LLC v. Go West Industries, Inc.*, 42 P.3d 637, 640 (Colo. 2002) (Article 92 of title 37 "provides state officials with a means by which to administer competing water rights; absent an adjudication under the Act, water rights are generally incapable of being enforced").

[10] *See Burlington Ditch Reservoir & Land Co. v. Metro Wastewater Reclamation Dist.*, 256 P.3d 645 (Colo. 2011) (In adjudicating a water right, the water courts exercise *in rem* jurisdiction over the water right rather than *in personam* jurisdiction over water right owners).

or the decree yields an incomplete result. The *Federal Youth Center* court therefore had reasonable grounds in construing "administration" to include a quiet title action.

The *Federal Youth Center* opinion broadly states that "administration" includes "proceedings further affecting or disposing of those rights"; that could include a disposition mandated by the 2012 Directive. However, unlike the situation in *Federal Youth Center*, a transfer of or the imposition of limitations on the ownership of a ski area's rights to the USFS would not affect any other water right or water right owner. That is because unless a new owner adjudicates a change of water right, the water must continue to be withdrawn and returned to the same places, in the same amounts, and used in the same places and for the same time periods and purposes as was the case with the previous owner.[11] The court's rationale in *Federal Youth Center* for a broad application of the term "administration" under the McCarran Amendment therefore does not apply to a state law purporting to affect the validity of USFS special use conditions such as the 2012 Directive.

C. Neither the adjudication nor the administration of federal water claims under the McCarran Amendment allow state law to override conflicting federal law.

Colorado state and federal courts have held that the McCarran Amendment does not preempt or displace otherwise-applicable federal law, even if the federal law relates to the adjudication or administration of a water right. For instance, Colorado's water laws specify that the priority of a water right is determined by the year in which the right was adjudicated.[12] However, federal reserved rights[13] directly conflict with Colorado's water laws by awarding a priority as of the date of the reservation of the federal land rather than the date of the adjudication. *See High Country Citizens' Alliance v. Norton*, 448 F. Supp. 2d 1235, 1239 (D. Colo. 2006): "Under the Winters doctrine, when the federal government . . . acquires a reserved right . . . [the priority] vests on the date of the reservation and is superior to the rights of future appropriators". That is the case even if the reservation (as in the *Norton* case, for the Black Canyon of the Gunnison) occurred in 1933 and the federal water right had still not been adjudicated in 2006.

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[11] *See* section 37-92-103 (5), C.R.S.: "Change of water right" means a change in the type, place, or time of use, a change in the point of diversion, a change from a fixed point of diversion to alternate or supplemental points of diversion, a change from alternate or supplemental points of diversion to a fixed point of diversion, a change in the means of diversion, a change in the place of storage, a change from direct application to storage and subsequent application, a change from storage and subsequent application to direct application, a change from a fixed place of storage to alternate places of storage, a change from alternate places of storage to a fixed place of storage, or any combination of such changes. . . ."; section 37-92-305 (1), C.R.S.: "Any person who desires . . . a determination with respect to a change of a water right . . . shall file with the water clerk a verified application . . ."

[12] Section 37-92-306, C.R.S.: "water rights . . . shall be junior to all water rights . . . awarded on such applications filed in any previous calendar year . . . ."

[13] *See* footnote 4 above regarding federal reserved rights and the *Winters* case.

Similarly, in *United States v. Colorado State Engineer*, 101 P.3d 1072 (Colo. 2004), the United States filed reserved water rights applications in Colorado's water court (including for the Black Canyon of the Gunnison as litigated in the *Norton* case), which the water court conditionally granted, but for an unquantified amount. The water court directed the United States to quantify the amount of water needed to meet the primary purposes of the reservation. Twenty-three years later, the United States made its filing; during settlement negotiations with parties who opposed the filing, the United States agreed to relinquish portions of its claimed amounts. Environmental groups sued the United States over the relinquishment in federal court (which resulted in the *Norton* decision), alleging violations of federal law. They then moved for a stay of the state water court proceedings pending outcome of the federal action. Other parties challenged the stay, citing the McCarran Amendment. The Colorado supreme court upheld the stay, writing:

> The question presented by this case is whether the McCarran Amendment's waiver of sovereign immunity is so broad that it allows state courts to evaluate and adjudicate federal agencies' decision making processes related to the quantification application. Based on our review of the McCarran Amendment's text and legislative history, as well as the text and legislative history of the judicial review provisions of the federal Administrative Procedure Act, we conclude that the scope of the sovereign immunity waiver under the McCarran Amendment is not so broad.
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> [T]he federal court has exclusive jurisdiction over the federal claims . . . .

Id. at 1075.

Finally, the issue of bypass flows demonstrates that the McCarran Amendment does not prevent the enforcement of federal laws regarding water from being applied in the administration of water rights. The USFS issued a special use permit for a reservoir in Colorado without a requirement that water that would otherwise be diverted or stored in priority must instead be "bypassed" from the diversion or storage and left in the stream to provide minimum stream flows during the winter to benefit endangered species. Trout Unlimited sued in federal district court, alleging that, to comply with a variety of federal laws governing the USFS's issuance of special use permits, including the Organic Act and the Federal Land Policy and Management Act,[14] the permit should have included such a bypass flow requirement. Certain intervenors defended the permit on the grounds of the McCarran Amendment. Citing *County of Okanogan v. Nat'l Marine Fisheries Serv.*, 347 F.3d 1081, 1085 (9th Cir. 2003),[15] the district court held that:

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[14] *See* footnote 3, above.

[15] "These statutes [the Federal Land Policy and Management Act, 43 U.S.C. sec. 1761(a)(1) and 1765(a), the National Forest Management Act, 16 U.S.C. sec. 1604 (g) (3) (A) and (B), the Organic Administration Act, 16 U.S.C. sec. 475, and the Multiple Use Sustained-Yield Act of 1960, 16 U.S.C. sec. 528], in our view, give the Forest Service authority to maintain certain levels of flow in the rivers and streams within the boundaries of the Okanogan National Forest to protect endangered fish species."

> The argument that imposition of bypass flows implicates or conflicts with state water rights has been rejected by the Supreme Court in *PUD No. 1 v. Washington Dept. of Ecology,* 511 U.S. 700, 114 S.Ct. 1900, 128 L.Ed.2d 716 (1994). In that case, PUD No. 1 argued that a minimum instream flow requirement imposed pursuant to the federal Clean Water Act ran afoul of disclaimers provided in that act which preserved the state's authority to allocate water rights. *Id.* at 720, 114 S.Ct. 1900. The Court rejected that argument, holding that the disclaimers "preserve the authority of each State to allocate water quantity as between users," but did not limit the scope of federal regulation (in that case pollution controls) that may be imposed on users with water rights obtained under state law. In doing so, the Court recognized that the regulatory action under federal law (minimum stream flow requirements) did not interfere with the state allocation because it neither "reflected nor established" a water right. *Id.* at 720-21, 114 S.Ct. 1900.
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> Like the CWA certification required in *PUD No. 1*, the authorization for the use of federal land required in this case represents a federal action that is a prerequisite to the use of a water right obtained under state law. A review of the foregoing authorities convinces this Court that, on the rare occasions when bypass flows are required as a condition to the use of federal lands, they neither reflect nor establish a water right; rather, they merely address the nature of the use to which a water right might be put once the right is obtained from the State. *Id.* at 721, 114 S.Ct. 1900. Thus, pursuant to its regulatory authority [under the Federal Land Policy and Management Act], the Forest Service could have imposed bypass flows as a condition to the renewal of WSSC's authorization for Long Draw Reservoir.

Trout Unlimited v. U.S. Dep't of Agric., 320 F.Supp.2d 1090, 1105, 1106 (D. Colo. 2004), *appeal dismissed at* 441 F.3d 1214 (10th Cir. 2006).

There is no basis in state law for this type of administration of a water right. Indeed, bypass flows may constitute "material injury" to a water right and, to the extent that they are functionally equivalent to minimum stream flows[16], which state law provides that only the Colorado water conservation board may appropriate or own, appear to violate state statute.

The fact that the McCarran Amendment allows the federal water right to be adjudicated in state court under state law does not mean that state law preempts more specific applicable federal law, even law that relates to the adjudication of water rights. In other words, the McCarran Amendment is a waiver of the United States' sovereign immunity to suit in state court, not an implied repeal of otherwise-applicable federal law or the Supremacy Clause. The McCarran Amendment serves to fill in a gap in federal law regarding the adjudication and administration of water rights; if there is no gap (such as is the case with federal reserved water rights and USFS special use permit terms), federal law continues to apply notwithstanding conflicting state law.

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[16] Section 37-92-102 (3), C.R.S.: "[T]he Colorado water conservation board is hereby vested with the exclusive authority . . . to appropriate . . . such waters of natural streams and lakes as the board determines may be required for minimum stream flows . . . to preserve the natural environment to a reasonable degree. In the adjudication of water rights pursuant to this article and other applicable law, no other person or entity shall be granted a decree adjudicating a right to water or interests in water for instream flows in a stream channel between specific points, or for natural surface water levels or volumes for natural lakes, for any purpose whatsoever."

Given these authorities, it is highly likely that both state[17] and federal courts would conclude that, despite the McCarran Amendment, whether the 2012 Directive (or other USFS special use permit condition that affects water rights) is authorized is an issue of federal, rather than state, law.

IV. Conclusion

HB 13-1013 is clearly inconsistent with the 2012 Directive. Regardless of whether the 2012 Directive is authorized under federal law, it cannot be invalidated by state law because there is no exemption applicable in this situation from the general federal preemption of inconsistent state law. Whether the 2012 Directive is authorized is therefore exclusively a matter of federal law, and HB 13-1013 does not affect that determination.

[17] State courts are bound to apply federal rules in determining the effect of federal-court decisions on issues of federal law. *Heck v. Humphrey*, 512 U.S. 477, 488 (U.S. 1994).