



General Stream Adjudications

Understanding the Basics of Water Adjudications in the Western United States

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What is a General Stream Adjudication?

- A general stream adjudication (“GSA”) is a lawsuit that determines the parties’ water rights in a particular basin, including a Tribe’s and any allottee water rights.
 - [See NARF’s Tribal Water Rights 101.](#)
- To date, GSAs have arisen under prior appropriation systems.
- GSAs in some states adjudicate groundwater rights, such as Wyoming, but most don’t.

How Do Tribal Rights Fit Into a GSA?



- Tribal reserved water rights arise under federal law.
 - [See Tribal Water Rights 101.](#)
- Even so, Tribal water rights typically are litigated in state court pursuant to the McCarran Amendment, 43 U.S.C. § 666. See *Colorado River Water Conserv. Dist. v. United States* (1976).
 - The determination of Tribal water rights is not limited to state court. See, e.g., *United States v. Walker River Irrig. District*, [Order Modifying the Walker River Decree, 3:37-cv-00127-MMD-CSD \(D. Nev., Nov. 4, 2024\).](#)



McCarran Amendment

- The McCarran Amendment waives the United States' sovereign immunity, including for claims on behalf of Tribal Nations for GSAs in state court if:
 1. 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,
 2. the United States is a **necessary party** to such suit,
 3. and the scope is **comprehensive**. See *Arizona v. San Carlos Apache Tribe of Ariz.*, 463 U.S. 545 (1983).
- The McCarran Amendment applies to federally reserved water rights.

Tribal Participation in GSAs



- The U.S. has a trust obligation to represent Tribes in GSAs because water is a Tribal trust resource.
- However, the U.S. may have other interests in the same GSA, such as claims for water rights on federal lands and projects (national parks, military bases, conservation areas, storage, etc.).
- There may also be multiple Tribal interests in the same GSA (e.g., Little Colorado River Basin with Navajo Nation, Hopi Tribe and San Juan Southern Paiute Tribe).
- Because of the interests involved, Tribes typically have their own attorney representation in GSAs.
- Tribes participate in GSAs in two ways:
 - Pursuing Tribal claims in partnership with the United States.
 - Objecting to non-Tribal claims that compete with Tribal water rights.

Typical Process of a GSA*



- State water agency initiates the GSA.
- Claimants file notices of claims of water rights.
- State agency evaluates claims.
- Parties file contests to claims.
 - Uncontested claims are decreed.
- Litigation of contested claims.
- Final decree.
- Appeal.
- Enforcement.

** Specific process depends on the state's statutory framework (see next slide for more information).*



States' GSA Statutes

- ALASKA STAT. §§ 46.15.060, .065, .165-.169 (1995)
- ARIZ. REV. STAT. ANN. §§ 45-251 to -264 (1994 & Supp. 1996-97)
- CAL. WATER CODE §§ 2000-2900 (1971 & Supp. 1996)
- COLO. REV. STAT. ANN. §§ 37-92-101 to -602 (1990 & Supp. 1996)
- IDAHO CODE §§ 42-101 to -1428 (1996)
- KAN. STAT. ANN. §§ 82a-704 to -704c, -719 to -720, -724 to -725 (1989)
- MONT. CODE ANN. §§ 85-2-211 to -243, -701 to -705 (1995)
- NEB. REV. STAT. §§ 46-226 to -231 (1993 & Supp. 1995)
- NEV. REV. STAT. ANN. §§ 533.090-320, 534.100 (1995)
- N.M. STAT. ANN. §§ 72-4-13 to -19 (1985)
- N.D. CENT. CODE §§ 61-03-15 to -20 (1995)
- OKLA. STAT. ANN. TIT. 82, §§ 105.6-.8 (1991)
- OR. REV. STAT. §§ 539.005-.240, .300-.350, 541.3100-.320 (1995)
- S.D. CODIFIED LAWS §§ 46-10-1 to -13 (1987)
- TEX. WATER CODE ANN. §§ 11.301-.341 (1988)
- UTAH CODE ANN. §§ 73-4-1 to -24 (1989 & Supp. 1996)
- WASH. REV. CODE §§ 90.03.110-.245 (1994 & Supp. 1995)
- WYO. STAT. ANN. §§ 1-37-106, 41-4-301 to -331 (1988 & 1995)

Western State Agency Guidance

- [Alaska](#)
- [Arizona](#)
- [California](#)
- [Colorado](#)
- [Idaho](#)
- [Kansas](#)
- [Montana](#)
- [Nebraska](#)
- [Nevada](#)
- [New Mexico](#)
- [North Dakota](#)
- [Oklahoma](#)
- [Oregon](#)
- [South Dakota](#)
- [Texas](#)
- [Utah](#)
- [Washington](#)
- [Wyoming](#)



Example Claim Form

Form No.42-1409-1 (Internet 06/21)

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE BEAR RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 79576

Claim ID: _____
Date Received: _____
Receipt No: _____
Claim Fee: _____ By: _____

NOTICE OF CLAIM TO A WATER RIGHT ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of claimant(s) _____ Phone (____) _____
Mailing address _____ Zip _____
Street or Box City State
Email address (optional) _____
2. Date of priority: (Only one per claim) _____ (Explain priority date selected in Remarks)
Month/Day/Year (YYYY)
3. Source of water supply (Check one) Ground Water () or Other () (a) _____
which is tributary to (b) _____
4. a. Location of point of diversion is: Township _____, Range _____, Section _____,
_____ 1/4 of _____ 1/4, Govt. Lot _____, BM, County of _____
Parcel no. _____
Additional points of diversion, if any: _____
If available, GPS Coordinates _____
- b. If instream flow, beginning point of claimed instream flow is:
Township _____, Range _____, Section _____, _____ 1/4 of _____ 1/4,
Govt. Lot _____, BM, County of _____
Ending point is: Township _____, Range _____, Section _____, _____ 1/4 of _____ 1/4,
Govt. Lot _____, BM, County of _____



Claim Evaluation

- One of the first steps is the agency's initial evaluation of the filed claims.
- Fact development, which can include:
 - State water right permits and certificates,
 - Irrigation maps drawn by state engineers,
 - Allottee files from Indian Affairs Inspections,
 - Aerial photos of irrigation development,
 - Evidence of historic uses,
 - Expert analysis and testimony.
- Objections process in agency or water court.
- Once this is resolved and contests can be filed.



Litigation of Claims and Contests

- After the claim evaluation phase, other parties can file their **contests** to competing water users' claims, initiating litigation.
- Litigation can last decades.
 - Potentially thousands of claims and contests.
 - Many rounds of appeals.
- Examples
 - [Klamath Basin Adjudication](#) (1975-present)
 - [Big Horn River General Adjudication](#) (1977-2014)





Final Decree

- Generally, the final decision in the GSA is a decree that contains every water right holder's:
 - priority date,
 - quantity,
 - flow rates,
 - permitted use,
 - points of diversion and places of use.
- Example: Snake River Basin, [Final Unified Decree, In re SRWBA, No. 39576 \(Idaho Dist. Ct. 5th Dist. Aug. 26, 2014\)](#).
- After a court enters its decree, enforcement follows.



Enforcing the Decree

- Agency or court administers and enforces the decree.
 - Violations can lead to legal consequences including fines, injunctions, and potential lawsuits.
- Water rights holders make “calls,” a senior appropriator’s option to enforce per the priority system.
 - The process for making and fulfilling water calls depends on decree.
- Enforcement issues
 - Monitoring water use to catch violations.
 - Water availability varies year-to-year.
 - Data limitations to prevent over-appropriation.
 - Paper water rights v. wet water.

Making a “call”:

- A senior water rights holder can cut off a junior appropriator from consumptive water use to fulfill the senior appropriator’s right to use the water.

Pros & Cons of a GSA to Tribes

PROs

- Quantification of water rights
- Certainty and enforceability
- Protection of future needs

CONs

- Lengthy litigation process
- Costly
- Results in paper water rights, but not necessarily “wet” water*

*Paper water is the legal right to use water but does not guarantee the holder access to or delivery of actual “wet” water. For example, a decreed water right lacks conveyance infrastructure, rendering a right only on paper.





Alternatives to a GSA

- Congressionally Approved Water Right Settlements
 - See [NARF's About Tribal Water Settlements.](#)
- Court-Stipulated Water Rights Decree
 - Example: *United States v. Walker River Irrigation District*, [Order Modifying the Walker River Decree, 3:37-cv-00127-MMD-CSD \(D. Nev., Nov. 4, 2024\).](#)



Additional Resources

- National Indian Law Library's [Research Guide on Native American Water Rights](#).
- Thorson, John E., "[Clarifying State Water Rights and Adjudications](#)" (2001). *Two Decades of Water Law and Policy Reform: A Retrospective and Agenda for the Future*, (Summer Conference, June 13-15).
- Rhett B. Larson, [Quantifying Winters Rights](#), 48 Wm. & Mary Env't L. & Pol'y Rev. 659 (2024).
- Lawrence J. MacDonnell, [General Stream Adjudications, the McCarran Amendment, and Reserved Water Rights](#), 15 Wyo. L. Rev. (2015).
- Montague Stapleton, Ada and Carter, Sapphire, [Strange Bedfellows: States, Tribes, and Water Rights](#), 47 Pub. Land & Res. L. Rev. 77, (2024).