WHO CONTROLS WATER RESOURCES?

PRESENTATION

TO

WAGLAC

2017

1877 DESERT LAND ACT

" [A]ll surplus water over and above such actual appropriation and use, together with the water of all lakes, rivers and other sources of water supply upon the public lands and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining and manufacturing purposes subject to existing rights."

CALIFORNIA OREGON POWER COMPANY V. BEAVER PORTLAND CEMENT CO. (1935).

"What we hold is that following the Act of 1877, if not before, all non-navigable waters then a part of the public domain became *publici juris*, subject to the plenary control of the designated states, including those since created out of the territories named, with the right in each to determine for itself to what the rule of appropriation or the common-law rule in respect to riparian rights should obtain. . . . [T]he full power of choice must remain with the state."

SECTION 8 1902 RECLAMATION ACT

"[N]othing in this Act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired there under, and the Secretary of the Interior, in carrying out the provisions of this Act, shall proceed in conformity with such laws, and nothing herein shall in any way affect or any right of any State or of the Federal Government or of any landowner, appropriators, or user of water in, to, or from any interstate stream or the water thereof . . .."

CALIFORNIA V. UNITED STATES (1978)

"The history of the relationship between the Federal Government and the States in the reclamation of the arid lands of the Western States in both long and involved, but through it runs the consistent thread of purposeful and continued deference to state water law by Congress."

MCCARRAN AMENDMENT SENATE REPORT 755 (1951)

"In the arid Western States, for more than 80 years, the law has been the water above and beneath the surface of the ground belongs to the public, and the right to the use thereof is to be acquired from the State in which it is found, which state is vested with the primary control thereof."

UNITED STATES V. RIO GRANDE DAM AND IRRIGATION CO. (1899)

"First, that, in the absence of specific authority from Congress, a state cannot, by its legislation, destroy the right of the United States, as the owner of lands bordering on a stream, to the continued flow of its waters; so far, at least, as may be necessary for the beneficial uses of the government property; second, that it is limited by the superior power of the general government to secure the uninterrupted navigability of all navigable streams within the limits of the United States."

United States v. New Mexico (1978).

* "Where Congress has expressly addressed the question of whether federal entities must abide by state water law, it has almost invariably deferred to the state law."
* "Where water is only valuable for a secondary use of the reservation, there arises the contrary inference that Congress intended, consistent with its other views, that the United States would acquire water in the same manner as any other public or private appropriator."

CONCLUSION