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Supreme Court of the United States  
UNITED STATES, Petitioner,

v.

DISTRICT COURT IN AND FOR the  
COUNTY OF EAGLE and State of COLO-  
RADO, et al.

**No. 87.**

Argued March 2, 1971.  
Decided March 24, 1971.

Proceeding was brought originally in the Supreme Court of Colorado by the United States for a writ prohibiting the District Court for Eagle County, Colorado, from asserting jurisdiction over the United States in a supplemental water adjudication. The Colorado Supreme Court discharged the rule, 458 P.2d 760, and the United States petitioned for certiorari. The Supreme Court, Mr. Justice Douglas, held that the federal statutory provision giving consent to join the United States as defendant in a suit for administration of rights to use of water of a river system or other source applies to rights including appropriated rights, riparian rights and reserved rights. The Court also held that the supplemental water adjudication, involving the whole community of claims, was not a private suit to determine whether named claimants had priority over the United States but was 'general' and was thus within the purview of the statute.

Affirmed.

For separate concurring opinion of Mr. Jus-

tice Harlan, see 91 S.Ct. 1005.

West Headnotes

**[1] Waters and Water Courses 405 ↪2**

405 Waters and Water Courses

405I Appropriation of Rights in Public Lands

405k2 k. Title to Waters and Water Rights in Lands of United States. Most Cited Cases

Federal government had authority both before and after state was admitted into union to reserve waters for use and benefit of federally reserved lands, which included any federal enclave.

**[2] Waters and Water Courses 405 ↪2**

405 Waters and Water Courses

405I Appropriation of Rights in Public Lands

405k2 k. Title to Waters and Water Rights in Lands of United States. Most Cited Cases

Reservation of waters by United States for use and benefit of federally reserved lands, including any federal enclave, may be only implied, and amount will reflect nature of federal enclave.

**[3] United States 393 ↪125(22)**

393 United States

393IX Actions

393k125 Liability and Consent of United States to Be Sued

**Exhibit 2**

393k125(22) k. Property, Actions Relating to in General. Most Cited Cases Eagle River and its tributaries in Colorado are "river system" within statute giving consent to join United States as defendant in suit for adjudication of rights to use of water of river system or other source or for administration of such rights. 43 U.S.C.A. § 666(a) (1, 2).

**[4] United States 393 ↪125(22)**

393 United States  
393IX Actions  
393k125 Liability and Consent of United States to Be Sued  
393k125(22) k. Property, Actions Relating to in General. Most Cited Cases "River system" within statute giving consent to join United States as defendant in suit for adjudication of rights to use of water of river system or other source or for administration of such rights must be read as embracing one within particular state's jurisdiction. 43 U.S.C.A. § 666(a) (1, 2).

**[5] United States 393 ↪125(22)**

393 United States  
393IX Actions  
393k125 Liability and Consent of United States to Be Sued  
393k125(22) k. Property, Actions Relating to in General. Most Cited Cases Statutory provision giving consent to join United States as defendant in suit for administration of rights to use of water of river system or other source does not qualify prior portion of same statute giving such consent in suit for adjudication of such rights. 43 U.S.C.A. § 666(a) (1, 2).

**[6] United States 393 ↪125(22)**

393 United States  
393IX Actions  
393k125 Liability and Consent of United States to Be Sued  
393k125(22) k. Property, Actions Relating to in General. Most Cited Cases Statutory provision giving consent to join United States as defendant in any suit for administration of rights to use of water of river system or other source includes water rights previously acquired by United States through appropriation or presently in process of being so acquired, but is not restricted to appropriated rights acquired under state law. 43 U.S.C.A. § 666(a) (1, 2).

**[7] United States 393 ↪125(22)**

393 United States  
393IX Actions  
393k125 Liability and Consent of United States to Be Sued  
393k125(22) k. Property, Actions Relating to in General. Most Cited Cases Statute giving consent to join United States as defendant in suit for adjudication of rights to use of water of river system or other source or for administration of such rights is all-inclusive provision concerning adjudication of rights including appropriated rights, riparian rights and reserved rights. 43 U.S.C.A. § 666(a) (1, 2).

**[8] United States 393 ↪125(22)**

393 United States  
393IX Actions  
393k125 Liability and Consent of

United States to Be Sued

393k125(22) k. Property, Actions Relating to in General. Most Cited Cases Supplemental water adjudication in Colorado courts, involving whole community of claims, was not private suit to determine whether named claimants had priority over United States but was "general" and thus within purview of statute giving consent to join United States as defendant in any suit for adjudication of rights to use of water of river system or other source or for administration of such rights. 43 U.S.C.A. §§ 666, 666(a); C.R.S. '63, 148-9-7.

**[9] United States 393 ↪125(22)**

393 United States

393IX Actions

393k125 Liability and Consent of United States to Be Sued

393k125(22) k. Property, Actions Relating to in General. Most Cited Cases That proceeding in Colorado courts was supplemental water adjudication in which, assertedly, only those claiming water rights acquired since last previous adjudication of such water district were before court and that, accordingly, the United States assertedly would not be barred by previous decrees and owners of previously decreed rights were not before court did not place proceeding outside purview of statute giving consent to join United States as defendant in suit for adjudication of rights to use of water of river system or other source or for administration of such rights. 43 U.S.C.A. § 666(a); C.R.S. '63, 148-9-7, 148-9-13.

**[10] Federal Courts 170B ↪504.1**

170B Federal Courts

170BVII Supreme Court

170BVII(E) Review of Decisions of State Courts

170Bk504 Nature of Decisions or Questions Involved

170Bk504.1 k. In General. Most Cited Cases

(Formerly 170Bk504, 106k397)

Questions on merits, in supplemental water adjudication in Colorado state court, including questions concerning volume and scope of particular reserved rights were federal questions which, if preserved, could be reviewed by United States Supreme Court after final judgment by Colorado court and would not be determined on certiorari to Colorado Supreme Court in prohibition proceeding. 43 U.S.C.A. §§ 666, 666(a); C.R.S. '63, 148-9-7, 148-9-13.

**\*\*1000 \*520** Syllabus<sup>FN\*</sup>

FN\* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

This case arises from the attempted joinder pursuant to 43 U.S.C. s 666 of the United States as a defendant in a proceeding in state court for the adjudication of water rights covering the Eagle River system in Colorado. Under s 666(a)'(c) consent is 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 (owns) or is in the process of acquiring water rights by appropriation under State law, by purchase, by exchange, or otherwise. \* \* \* The United States contended that s 666 applies only to water rights that it had acquired under state law and does not constitute consent to have adjudicated in a state court the Government's reserved water rights arising from withdrawals of land from the public domain. Its objection was overruled by the trial court and the Colorado Supreme Court denied the Government's motion for a writ of prohibition. Held: Section 666(a) is an allinclusive statutory provision that subjects to general adjudication in state proceedings all rights of the United States to water within a particular State's jurisdiction regardless of how they were acquired. Any conflict between adjudicated rights and reserved rights of the United States, if preserved in the state proceeding, can ultimately be reviewed in this Court. Pp. 1001-1003.

Colo., 458 P.2d 760, affirmed.  
Walter Kiechel, Jr., Washington, D.C., for petitioner.

\*521 Kenneth Balcomb, Glenwood Springs, Colo., for respondents.

Mr. Justice DOUGLAS delivered the opinion for a unanimous Court.

Eagle River is a tributary of the Colorado River; and Water District 37 is a Colorado entity encompassing all Colorado lands irrigated by water of the Eagle and its tributaries. The present case started in the Colorado

courts and is called a supplemental water adjudication under Colo.Rev.Stat. Ann. 148-9-7 (1963). The Colorado court issued a notice which, inter alia, asked all \*522 owners and claimants of water rights in those streams 'to file a statement of claim and to appear \* \* \* in regard to all water rights owned or claimed by them.' The United States was served with this \*\*1001 notice pursuant to 43 U.S.C. s 666.<sup>FN1</sup> The United States moved to be dismissed as a party, asserting that 43 U.S.C. s 666 does not constitute consent to have adjudicated in a state court the reserved water rights of the United States.

<sup>FN1.</sup> 66 Stat. 560, 43 U.S.C. s 666(a), provides:

'Consent is 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 objections of the United States were overruled by the state District Court and on a motion for a writ of prohibition the Colorado Supreme Court took the same view. 169 Colo. 555, 458 P.2d 760. The case is here on a petition for certiorari, which we granted. 397 U.S. 1005, 90 S.Ct. 1238, 25 L.Ed.2d 419.

We affirm the Colorado decree.

[1][2] It is clear from our cases that the United States often has reserved water rights based on withdrawals from the public domain. As we said in Arizona v. California, 373 U.S. 546, 83 S.Ct. 1468, 10 L.Ed.2d 542, the Federal Government had the authority both before and after a State is admitted into the Union 'to reserve waters for the use and benefit of \*523 federally reserved lands.' Id., at 597, 83 S.Ct. at 1496. The federally reserved lands include any federal enclave. In Arizona v. California we were primarily concerned with Indian reservations. Id., at 598-601, 83 S.Ct. 1496-1498. The reservation of waters may be only implied and the amount will reflect the nature of the federal enclave. Id., at 600-601, 83 S.Ct., at 1497-1498. Here the United States is primarily concerned with reserved waters for the White River National Forest, withdrawn in 1905, Colorado having been admitted into the Union in 1876.

The United States points out that Colorado

water rights are based on the appropriation system which requires the permanent fixing of rights to the use of water at the time of the adjudication, with no provision for the future needs, as is often required in case of reserved water rights.<sup>FN2</sup>Ibid. Since those rights may potentially be at war with appropriative rights, it is earnestly urged that 43 U.S.C. s 666 gave consent urged that 43 U.S.C. s 666 gave consent to join the United States only for the adjudication of water rights which the United States acquired pursuant to state law.

FN2. See Coffin v. Left Hand Ditch Co., 6 Colo. 443, 446; Mason v. Hills Land & Cattle Co., 119 Colo. 404, 204 P.2d 153.

[3][4] The consent to join the United States 'in any suit (1) for the adjudication of rights to the use of water of a river system or other source' would seem to be all-inclusive. We deem almost frivolous the suggestion that the Eagle and its tributaries are not a 'river system' within the meaning of the Act. No suit by any State could possibly encompass all of the water rights in the entire Colorado River which runs through or touches many States. The 'river system' must be read as embracing one within the particular State's jurisdiction. With that to one side, the first clause of s 666(a)(1), read literally, would seem to cover this case for 'rights to the use of water of a river system' is broad enough to embrace 'reserved' waters.

**\*\*1002 \*524** The main reliance of the United States appears to be on Clause 2 of s 666(a) which reads:

‘\* \* \* 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.’

[5][6][7] This provision does not qualify s 666(a)(1), for (1) and (2) are separated by an ‘or.’ Yet even if ‘or’ be read as ‘and’, we see no difficulty with Colorado's position. Section 666(a)(2) obviously includes water rights previously acquired by the United States through appropriation or presently in the process of being so acquired. But we do not read s 666(a)(2) as being restricted to appropriative rights acquired under state law. In the first place ‘the administration of such rights’ in s 666(a)(2) must refer to the rights described in (1) for they are the only ones which in this context ‘such’ could mean; and as we have seen they are all-inclusive, in terms at least. Moreover, (2) covers rights acquired by appropriation under state law and rights acquired ‘by purchase’ or ‘by exchange,’ which we assume would normally be appropriative rights. But it also includes water rights which the United States has ‘otherwise’ acquired. The doctrine of ejusdem generis is invoked to maintain that ‘or otherwise’ does not encompass the adjudication of reserved water rights, which are in no way dependent for their creation or existence on state law.<sup>FN3</sup> We reject that conclusion for we deal with an all-inclusive statute concerning ‘the adjudication of rights to the use of water of a river system’ which in s 666(a)(1) has no exceptions and which, as we read it, includes appropriate rights, riparian rights, and reserved rights.

<sup>FN3</sup>. See Comment, 48 Calif.L.Rev. 94, 111 (1960).

\*525 [8] It is said that this adjudication is not a ‘general’ one as required by Dugan v. Rank, 372 U.S. 609, 618, 83 S.Ct. 999, 1005, 10 L.Ed.2d 15. This proceeding, unlike the one in Dugan, is not a private one to determine whether named claimants have priority over the United States. The whole community of claims is involved and as Senator McCarran, Chairman of the Committee reporting on the bill, said in reply to Senator Magnuson:<sup>FN4</sup> ‘S. 18 is not intended \* \* \* to be used for any other purpose than to allow the United States to be joined in a suit wherein it is necessary to adjudicate all of the rights of various owners on a given stream. This is so because unless all of the parties owning or in the process of acquiring water rights on a particular stream can be joined as parties defendant, any subsequent decree would be of little value.’

<sup>FN4</sup>.S.Rep.No. 755, 82d Cong., 1st Sess., 9. And see Pacific Live Stock Co. v. Lewis (Oregon Water Bd.) 241 U.S. 440, 448, 36 S.Ct. 637, 641, 60 L.Ed. 1084.

[9][10] It is said, however, that since this is a supplemental adjudication only those who claim water rights acquired since the last adjudication of that water district are before the court.<sup>FN5</sup> It is also said that the earliest priority date decreed in such an adjudication must be later than the last priority date decreed in the preceding adjudication.<sup>FN6</sup> The last water adjudication in this water district was entered on February 21, 1966, and the

United States was not a party to that or to any prior proceeding in this water district. The United States accordingly says that since the United States cannot be barred by the previous decrees and since the owners of previously decreed rights are not before the court, the consent envisaged by 43 U.S.C. s 666 is not present.

FN5. Colo.Rev.Stat. Ann. s 148-9-7.

FN6. Id., s 148-9-13.

We think that argument is extremely technical; and we decline to confine **\*\*100343** U.S.C. s 666 so narrowly. The absence of owners of previously decreed rights may present **\*526** problems going to the merits, in case there develops a collision between them and any reserved rights of the United States.<sup>EN7</sup> All such questions, including the volume and scope of particular reserved rights, are federal questions which, if preserved, can be reviewed here after final judgment by the Colorado court.

FN7. The Colorado court stated:

'We are not determining whether the United States has reserved water rights in connection with lands withdrawn subsequent to August 1, 1876, the date of Colorado's admission to the Union; nor, if so, whether these rights have priority over previously adjudicated rights. These questions properly should be decided after the United States presents its specific claims for adjudication and the issues of fact and law are clearly drawn.' 169 Colo., at 577, 458 P.2d,

at 770.

Affirmed.

U.S. Colo. 1971.

U.S. v. District Court In and For Eagle County, Colo.

401 U.S. 520, 91 S.Ct. 998, 2 ERC 1338, 28 L.Ed.2d 278, 1 Env'tl. L. Rep. 20,189

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