

Can the Federal Government Change State Water Rights?

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Overview

Water disputes in the arid West have always involved more than competing farmers and ranchers. Increasingly, they involve the federal government, federal land-management agencies, and the tension between state water law and federal interests.

A recent decision from the U.S. Court of Appeals for the Ninth Circuit, *Baker Ranches, Inc. v. Burgum*,¹ addresses that tension directly. In a divided 2–1 decision, the court held that the federal government could not invoke sovereign immunity to prevent downstream ranchers from seeking enforcement of water rights established decades earlier through a comprehensive state adjudication.

The decision does not finally determine whether the federal government actually violated the ranchers' water rights. Instead, it answers an important threshold question: Can the federal government use sovereign immunity as a shield against a suit seeking administration of state-adjudicated water rights? The Ninth Circuit majority said no.

The Baker-Lehman Water Rights

The dispute arose in White Pine County, Nevada, near Great Basin National Park. Baker Ranches and other ranchers hold senior surface-water rights on Baker and Lehman Creeks. Those rights were established in a 1934 Nevada state-court decree. The adjudication had begun in 1925 under Nevada's 1913 water law and was intended to comprehensively determine the relative rights of water users on the creek system. The United States received notice of the proceeding but did not participate or assert a claim.

Decades later, the National Park Service undertook activities upstream, including water-diversion projects, vegetation planting, and other activities affecting the creek channels. The ranchers alleged that those activities reduced streamflow and impaired their ability to receive water to which they were entitled under the 1934 decree. The ranchers went to court seeking enforcement of their existing rights. The federal government removed the case to federal court and argued that sovereign immunity barred the suit. The government emphasized that it had not participated in the 1934 adjudication. The federal district court accepted that argument and dismissed the case. The Ninth Circuit reversed and remanded.

¹ No. 24-5713, 2026 U.S. App. LEXIS 29933 (9th Cir. Sept. 30, 2026).

The McCarran Amendment

The legal issue turned on the McCarran Amendment,² Congress enacted the provision in 1952 as a limited waiver of federal sovereign immunity in water-right litigation. The McCarran Amendment waives the United States' sovereign immunity in a suit for the adjudication of rights to the use of water of a river system or other source, or for the administration of such rights, where the United States is the owner of or is in the process of acquiring water rights.³ It does not create a general waiver of federal sovereign immunity for every dispute involving federal land or water. The proceeding must fall within the statutory framework concerning the adjudication or administration of water rights.

The government argued that the 1934 Baker-Lehman proceeding could not qualify because the United States was not a participant. In the government's view, the proceeding was therefore not sufficiently comprehensive to permit the ranchers to invoke the “administration” provision of the McCarran Amendment against the federal government. The Ninth Circuit disagreed.

Three Reasons the Ranchers Could Proceed

There are three reasons the Ninth Circuit determined that the ranchers could proceed:

- **The 1934 adjudication was sufficiently comprehensive.** The appellate court looked to Nevada's statutory adjudication system and concluded that the proceeding was designed to establish the relative water rights on the entire Baker-Lehman Creek system. The fact that the United States did not participate did not prevent the proceeding from being comprehensive among the state-law water-right claimants.
- **Second, the McCarran Amendment applied even though the decree predated 1952.** The Ninth Circuit relied upon precedent recognizing that the Amendment applies to the administration of water rights acquired before Congress enacted the statute. Thus, the 1934 date of the decree did not place it outside the Amendment's reach.
- **Third, the ranchers were seeking administration - not a new adjudication.** This distinction is critical. The ranchers were not asking a court to create new water rights or redistribute the creek's water from scratch. They were seeking to enforce and administer rights that had already been established by the 1934 decree. The Ninth Circuit concluded that this type of enforcement fell within the “administration” language of the McCarran Amendment.

² 43 U.S.C. §666(a).

³ Id.

The majority's conclusion is consistent with the Ninth Circuit's earlier recognition that the Amendment applies retroactively to the administration of previously acquired water rights.⁴ The Supreme Court also has recognized the Amendment's application in cases involving federal water rights predating the statute.⁵

What Does This Mean for Farmers and Ranchers?

The practical significance of *Baker Ranches* extends beyond Nevada. Western water rights are generally built around concepts of priority, adjudication, and administration. A comprehensive adjudication is supposed to provide certainty concerning who has the right to use water, in what quantity, and with what priority.

But what happens when the land upstream later becomes federal land? *Baker Ranches* suggests that a state water right does not necessarily become less enforceable merely because federal land is later placed upstream or because federal agencies undertake activities that allegedly affect the water supply. The Ninth Circuit's decision recognizes that a comprehensive state adjudication may continue to have legal significance long after the original decree was entered.

The distinction between adjudication and administration may prove particularly important. A water user who already possesses an adjudicated right may have a substantially different legal position from someone attempting to establish a new right against the federal government.

For agricultural water users, the questions to ask when federal activities affect a state water right are therefore fairly straightforward:

- Was the water right established through a comprehensive state adjudication?
- What exactly did the adjudication determine?
- Is the current dispute about administration or enforcement of that existing right?
- What federal interest or federal land is involved?
- Does the United States own or claim a water right that brings the dispute within the McCarran Amendment?
- Is the federal government asserting a reserved water right or merely relying upon sovereign immunity?

⁴ See *State Engineer v. South Fork Band of the Te-Moak Tribe of Western Shoshone Indians of Nevada*, 339 F.3d 804, (9th Cir. 2003).

⁵ See *United States v. District Court in and for Eagle County*, 401 U.S. 520 (1971). In *Baker Ranches*, the dissent emphasized the traditional rule that waivers of federal sovereign immunity must be strictly construed. Because the federal government had not participated in the 1934 adjudication, the dissent questioned whether Congress intended the McCarran Amendment to expose federal land and federal management decisions to enforcement proceedings based upon an old state decree.

Those questions could become increasingly important as federal agencies undertake conservation, habitat, forestry, and other water-management activities.

A Particularly Important Case for Kansas (and Elsewhere)?

Although *Baker Ranches* arises from Nevada, its reasoning deserves attention in other states where water rights are administered under prior-appropriation principles. The decision raises a broader question: How much authority does the federal government have to affect a state-established water right simply because the federal government controls land upstream? The answer will depend upon the particular state's water law, the nature of the federal interest, the scope of the original adjudication, and the relief being sought. *Baker Ranches* does not establish a general rule governing all federal-state water disputes. But it does make one point clear: federal ownership of land does not automatically end the inquiry.

The Ninth Circuit has opened the courthouse door. The remaining question is whether the ranchers can prove that federal activities actually impaired their adjudicated rights and, if so, what remedy is appropriate.

A potential Kansas connection: The Rattlesnake Creek dispute. The *Baker Ranches* decision also deserves attention in Kansas because of the continuing dispute over water in the Rattlesnake Creek Basin and the Quivira National Wildlife Refuge. The Kansas situation is not identical to Baker Ranches. In the Quivira matter, the federal government holds a Kansas water right rather than simply being an upstream federal land manager. Nevertheless, *Baker Ranches* provides an interesting Ninth Circuit perspective on an important Kansas issue: the involvement of the federal government does not necessarily displace the state's role in administering established water rights.

That principle could become relevant as Kansas considers how to balance the Refuge's senior water right with the rights of agricultural irrigators in the Rattlesnake Creek Basin.

Note: *Baker Ranches* does not hold that the federal government cannot affect state water rights, nor does it control Kansas courts or the Tenth Circuit. Its significance for Kansas is therefore persuasive rather than controlling.

An important question for Kansas will be whether proposed federal action is consistent with the rights, priorities, and administration established under Kansas water law. In that respect, *Baker Ranches* provides an interesting Ninth Circuit perspective on a very Kansas problem.

The Larger Lesson

Baker Ranches is ultimately a jurisdictional decision, not a final ruling on the merits of the ranchers' claims. But jurisdiction matters. If a federal agency could simply invoke sovereign immunity whenever its activities allegedly



interfere with an established state water right, a state adjudication could provide considerably less certainty than water users have historically assumed. The Ninth Circuit majority rejected that approach.

For farmers and ranchers holding established water rights, the decision reinforces an important principle: a comprehensive state water adjudication does not necessarily become meaningless when federal land or federal agencies later enter the picture. The McCarran Amendment may provide the mechanism for bringing the federal government into court to administer those rights when the statutory requirements are satisfied. And in the West, where water is often the difference between productive agricultural land and dry ground, that is a significant development.

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