



United States Department of the Interior

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To: Secretary
From: Solicitor — *Ralph W. Tarn*
Subject: Filing of Claims for Water Rights in General Stream Adjudications

We have been requested to address the question of what obligations, if any, the United States has to file water right claims on behalf of reclamation project water users in state court general stream adjudications. Several such adjudications have been initiated in various western states to adjudicate the water rights of water users on both major and minor river systems. The United States has been joined as a party to these adjudications pursuant to the provisions of the McCarran Amendment, 43 U.S.C. § 666 (1982). In virtually all of these adjudications, the United States holds title to water rights obtained under state law pursuant to the Reclamation Act of 1902, as amended, 43 U.S.C. §§ 372, 383.

We conclude that while the United States is obligated and certainly entitled to make filings in general stream adjudications on behalf of project water rights to which the United States holds legal title, we find no mandate in the statutes or case law that would require the United States to make filings or present evidence of beneficial use on behalf of individual water users.

We begin our discussion with an overview of water rights generally and specifically with respect to reclamation projects. We then outline the nature of project water rights and finish with a discussion of what obligations rest upon the United States with respect to these rights.

I. Water Rights in General

The right of western states to regulate the allocation and use of non-navigable waters flowing within their boundaries has been recognized by the Supreme Court. See e.g., California Oregon Power Co. v. Beaver Portland Cement Co., 295 U.S. 142 (1935);

California v. United States, 438 U.S. 645 (1978). Because most of the western lands acquired by the United States through purchase and treaty were arid, there developed a system for allocating rights to the use of water which is known as the prior appropriation doctrine.^{1/} Although procedural differences exist, there are basic elements common to all appropriation systems employed in the western states. First, water traditionally had to be diverted from the natural flow and applied to a beneficial use, such as irrigation.^{2/} States use the concept of beneficial use to measure the extent of the right acquired under the prior appropriation doctrine; one is entitled to receive only that amount of water that is actually put to a use that is recognized as "beneficial" by the state.

Second, the first person using the water has the better right to it, i.e., first in time, first in right. Because the amount of water actually available for beneficial use will naturally vary from year to year, the priority principle dictates that when there is not enough water to satisfy all rights, cutbacks must be made starting with the most junior (recent) rights and proceeding in inverse chronological order through those with earlier priorities toward those which are most senior (oldest). Under this system, the full extent of any prior right must be satisfied before any water may be used by those holding junior rights.

Appropriative water rights can also be associated with the right to store water. With the development of water distribution systems, discussed below, came also the advent of reservoir storage capacity. By using upstream reservoirs, spring run-offs could be captured and stored for late-season use when unregulated flows were low, and carried over from years of high run-off to mitigate deficiencies of years with low rainfall.

Three methods have developed in the West to integrate into the prior appropriation system rights to store water.^{3/} In a majority of states, a unitary permitting procedure exists whereby one obtains a water right; no distinction is made between water rights granted to divert direct flow and those that incorporate the right to store water for later delivery. In these states, when a distributor seeks to develop facilities to store water for delivery, the application will describe the location and capacity of the proposed storage facilities, periods of impounding and release from storage and the beneficial uses to which the water

^{1/} For a complete description of the appropriative water rights system, see 1 Clark, Waters and Water Rights 74-175 (1967), and 1 Hutchins, Water Rights Laws in the Nineteen Western States (1971) (hereinafter "Hutchins").

^{2/} Some states recognize in-stream beneficial uses not requiring a diversion.

^{3/} For an extensive discussion of storage rights, see Hutchins at 348-65.

will be put. As approved, this information is then incorporated into the final permit, which is issued by the state in the name of the distributor.

An important aspect of this type of storage right is the fact that, unlike the dual permitting systems described below, there is generally no separate formal record of ownership issued by the state to the water users putting the water received from the storage facilities to beneficial use. Rather, the single "paper" right issued by the state is exclusively with the distributor. Because it is these water users and not the distributor who actually put the water to a beneficial use as required by state law, various court cases and in some instances state legislative actions have recognized that the water users are entitled to a perpetual right to receive the amount put to beneficial use; this right is in addition to any contractual rights the water users have with the distributor who holds legal title to the state water right. In states employing this system, the federal government holds several such water rights which were issued in the name of the United States and do not separately indicate any interest in the water right in the individual water users.

A smaller group of states provide for separate but complimentary procedures. To obtain storage rights, the distributor receives what is called a "primary permit" which is subject to the general requirements for appropriation except that it is exempted from specifically stating to what beneficial use the water will be put. One who wishes to apply to receive and put to beneficial use the water so stored files an application for a "secondary permit." This application presents evidence that an agreement has been entered into with the reservoir owner for a permanent interest in receiving water stored in the reservoir. Once water has actually been put to a beneficial use, the holder of the secondary permit submits evidence to that effect. The final certificate of appropriation refers to both the conveyance of water to the lands described in the secondary permit and the reservoir described in the primary permit. See, e.g., Wyo. Stat. § 41-3-303; Wyo. State Engineer Reg. Part I, Ch. 3, Sec. 3 (1974).

Finally, Colorado water law has recognized appropriations of two classes: (1) one for diversion of water for immediate application to a particular beneficial use, and (2) the other for storage of water to be used subsequently. Colorado courts have held that an appropriation of water for one of these functions was not an appropriation for the other. City and County of Denver v. Northern Colorado Water Cons. Dist., 130 Colo. 375, 276 P.2d 992 (1954).

II. Water Right Granted Under State Law to the United States pursuant to Section 8 of the Reclamation Act

A. History of the Water Rights Obtained by Water Distributors

Using rudimentary diversion systems, the earliest settlers in the West appropriated water to irrigate the lowlands immediately adjacent to rivers and streams. However, it soon became apparent that while sufficient water existed to put more lands under cultivation, significant capital expenditures would be necessary to bring water to irrigable nonriparian land. To the extent it was able, private enterprise in the late 19th century became involved in the form of land and water companies or canal companies, whereby private developers would purchase arid lands and construct the diversion, storage and transportation facilities necessary to irrigate them. Once water was ready for delivery, the company would divide the land and sell to farmers who would then contract with the company to have water delivered for irrigation.

States initially recognized the company as the appropriator of the water and the owner of the water right, "since the appropriation of water for sale or rental was recognized [as a beneficial use] by the laws of the time." Trelease, Reclamation Water Rights, 32 Rocky Mountain Law Review 464, 475 (1960). Under this arrangement, the farmer was seen as having only a contractual right to receive water, and the water delivery company often had complete control over water delivery. Id.

To alleviate abuses which arose under the water delivery company scheme, such as when a company would threaten cut-off of water supply to obtain higher payments, corrective legislation and court decisions in the various western states gave to the water user "[a] form of a state water right, a property right independent of and superior to the contract right he had from the company." Id. at 476. States continued, however, to recognize in the company the right to protect rights to the water it delivered against outside interests. Accordingly, once the States undertook to protect the water user's interest, "[t]he upshot . . . was that in most states, in external relationships between the project and other claimants to the water, the distributor was regarded as 'the proprietor of the appropriation,' but internally, between the distributor and the consumer, the consumer had property rights that the courts would protect from arbitrary action by the distributor." Id.

B. Obtaining Reclamation Project Water Rights

Although private capital and to some extent state-sponsored water delivery projects partially met the demand for irrigation, it became apparent that there was a role for the federal government in this effort. "[W]ith the passage of the Reclamation Act of 1902, 32 Stat. 388, the Federal Government was designated to play

a more prominent role in the development of the West. That Act directed the Secretary of the Interior to withdraw from public entry arid lands in specified Western States, reclaim the lands through irrigation projects, and then to restore the lands to entry pursuant to the homestead laws and certain conditions imposed by the Act itself." Nevada v. United States, 463 U.S. 110, 115 (1983).

In Nevada v. United States, the Supreme Court observed that "Congress in its wisdom, when it enacted the Reclamation Act of 1902, required the Secretary of the Interior to assume substantial obligations with respect to the reclamation of arid lands in the western part of the United States," 463 U.S. at 128, and specifically noted that Congress had imposed "upon the United States . . . a duty to obtain water rights for reclamation projects. . . ." 463 U.S. at 142. Such rights are obtained pursuant to state law, as required by section 8 of the 1902 Reclamation Act. See California v. United States, 438 U.S. 664 (1978). Section 8 provides:

Nothing 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 thereunder, 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 any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to or from any interstate stream or the waters thereof: Provided, That the right to the use of water acquired under the provisions of this act shall be appurtenant to the land irrigated and beneficial use shall be the basis, the measure, and the limit of the right.

43 U.S.C. §§ 372, 383.

Pursuant to the mandate of section 8, the Bureau has customarily obtained water rights for reclamation projects by making application to the appropriate state agency which in turn would generally grant a single water right for the entire project in the name of the United States.^{4/} The Bureau, upon completion of the project works, would then deliver water to users for beneficial use within the project boundaries.

^{4/} The Bureau also obtained water rights from those who had appropriated water for use on lands that ultimately were included within project boundaries prior to authorization of the project. In some instances, project water rights are not held in the name of the United States.

C. Water Users's Interest in the Project Water Right

The Supreme Court has determined that for water rights obtained by the Bureau in the name of the United States, the water user who puts the project water to beneficial use obtains a vested property interest in the water right. In the initial Supreme Court case to address the nature of the water rights obtained by water users in connection with reclamation projects, Ickes v. Fox, 300 U.S. 82 (1936), the Court had before it a dispute between the federal government and a water users' association supplied by the Yakima Project in Washington. These two parties had initially agreed that the Bureau would deliver 4.84 acre feet per irrigable acre in exchange for repayment of specified project construction, operation and maintenance costs, with the United States holding liens on the water users' land and water rights to the extent of those repayment obligations. 300 U.S. at 89-91. The agreed upon amount of water had been delivered to the water users for more than two decades when the Secretary of the Interior unilaterally issued an order limiting the water users' rights to three acre-feet per acre with a rental charge for any additional water.

Arguing that they had historically put to beneficial use the 4.84 acre-feet of water they had initially contracted to receive, the water users claimed they owned vested water rights in that amount of water and brought suit to restrain enforcement of the Secretarial order. 300 U.S. at 91-92. The United States argued that it had, in compliance with section 8, properly appropriated the project water rights pursuant to Washington law and therefore owned the water it diverted, stored, and distributed for the project. The water users, the United States asserted, had "no property rights in the water from its use, but merely their contract rights against the distributor." 300 U.S. at 84.

Therefore
could reduce it.

In oft-quoted language, the Supreme Court rejected the government's arguments:

Although the government diverted, stored and distributed the water, the contention of petitioner that thereby ownership of the water or water-rights became vested in the United States is not well founded. Appropriation was made not for the use of the government, but, under the Reclamation Act, for the use of the land owners; and by the terms of the law and of the contract already referred to, the water-rights became the property of the land owners, wholly distinct from the property right of the government in the irrigation works. The government was and remained simply a carrier and distributor of the water with the right to receive the sums stipulated in the contracts as reimbursement for the cost of construction and annual charges for operation and maintenance of the works. As security therefor, it was provided that the government should have a lien thereto--a provision

which in itself imports that the water-rights belong to another than the lienor, that is to say, to the landowner.

300 U.S. at 94-95 (citations omitted).

Since Ickes v. Fox, the principle that the proprietary interest in the project water right is in the project water users who put the water to beneficial use has been reaffirmed by the Supreme Court on two occasions. In Nebraska v. Wyoming, 325 U.S. 589 (1945), the Court, after quoting the passage from Ickes v. Fox quoted above, found that individual landowners who had put the project water to beneficial use, thereby "perfecting" the water right obtained by the United States, had "become the appropriators of the water rights, the United States being the storer and the carrier." 325 U.S. at 615.

Finally, in Nevada v. United States, supra, the Supreme Court addressed government arguments that water decreed to the United States for the Newlands reclamation project in Nevada could be reallocated to an Indian reservation. The Court, after quoting from Ickes v. Fox and Nebraska v. Wyoming, stated:

In the light of these cases, we conclude that the Government is completely mistaken if it believes that the water rights confirmed to it by the Orr Ditch decree in 1944 for use in irrigating lands within the Newlands Reclamation Project were like so many bushels of wheat, to be bartered, sold, or shifted about as the Government might see fit. Once these lands were acquired by settlers in the Project, the Government's "ownership" of the water rights was at most nominal; the beneficial interest in the rights confirmed to the Government resided in the owners of the land within the Project to which these water rights became appurtenant upon the application of Project water to the land.

463 U.S. at 126.

With the issuance of Nevada v. United States, the Supreme Court conclusively reaffirmed the concept that beneficial ownership of a reclamation project water right is in the water users who put the water to beneficial use.

D. Government's Interest in Project Water Rights

At first glance, the pronouncements of the Supreme Court in Ickes and Nebraska would appear to indicate that upon application by water users of project waters to beneficial uses, all interests

5/ However, none of the cases discussed herein should be read to restrict the right of the Secretary to enforce federal reclamation or other applicable law with respect to project water users.

incident to the water right flow to the project water users. However, as pointed out in Nevada v. United States, these cases "discuss[] the beneficial ownership of water rights in irrigation projects built pursuant to the Reclamation Act." 463 U.S. at 123. Nevada likewise clarifies that where project water rights are obtained by and remain in the name of the United States, the federal government retains legal title. Id. at 128. This point is important because the Court in Nevada speaks of "obligations that necessarily devolve upon [the United States] from having mere title to water rights. . . ." Id. at 127. We next address some of the implications of holding legal title to project water rights.

III. Obligations of the United States with respect to Project Water Rights

A. Obligation to Obtain and Protect Project Water

In Nevada v. United States, supra, the Supreme Court emphasized that "Congress in its wisdom, when it enacted the Reclamation Act of 1902, required the Secretary of the Interior to assume substantial obligations with respect to the reclamation of arid lands in the western part of the United States." Id. at 128. We have been asked to determine whether the obligations alluded to by the Supreme Court in the above statement extend to filing of water rights claims on behalf of project water users in state general stream adjudications.

First, it appears clear that the Court in Nevada was referring to the obligation of this Department to obtain necessary water rights for authorized projects pursuant to section 8. The Court, in reviewing the dual responsibilities that Congress placed upon the Secretary to represent Indian interests and also obtain project water rights, stated: ". . . Congress has imposed upon the United States in addition to its duty to represent Indian tribes, a duty to obtain water rights for Reclamation projects. . . ." Id. at 143. See also id. at 128 ("The Government does not 'compromise' its obligation to one interest that Congress obliges it to represent by the mere fact that it simultaneously performs another task for another interest that Congress has obligated it by statute to do.").

Beyond the obligation to obtain water, we also find support in Nevada for the proposition that the United States is obligated at least to do what is necessary to preserve, maintain, protect or have confirmed project water rights that are held in the name of the United States. While less explicit than the obligation to obtain initially the water right, we believe the Court's further discussion of the United States' general obligations to deliver water to the beneficial owners of project water rights indicates this result. In Nevada, the Court specifically held that the government could not reallocate project water in a manner that would impair its obligation as legal title holder to deliver project water to project beneficiaries; it did not have occasion

Small "r"
Tribes will tee this up in next IFR suit this Winter-2014

They have to win on distinguishing BPA
Project from BOR to overcome USSC
rejection of this argument.

to also address the question of whether there is an affirmative duty to act to protect the right to that water. We believe, however, that the filing of project water rights by the United States in a general-stream adjudication is the necessary means by which the United States must protect the ability of the project to deliver or store water, and thereby meet the mandatory obligation as enunciated by the Supreme Court to maintain appropriate deliveries of water to beneficial owners.

The federal government opened its brief in Nevada by stating: "The court of appeals has simply permitted a reallocation of the water decreed in Orr Ditch to a single party--the United States --from reclamation uses to a Reservation use with an earlier priority." Brief for United States at 21, as quoted in Nevada v. United States, supra at 121. In rejecting the government's position, the Court pointed out that the argument that water decreed to the United States in the Orr Ditch decree for project purposes could be reallocated away from those purposes "seems wholly to ignore . . . the obligations that necessarily devolve upon [the United States] from having mere title to water rights for the Newlands Project, when the beneficial ownership of these water rights resides elsewhere." 463 U.S. at 127. Thus, in attempting to reallocate water away from the project, the federal government was ignoring and failing to meet its obligation, as title holder of the project water right, to maintain the project water supply in the amount which had previously been decreed to the project and to which the water users had acquired the beneficial ownership.

*Nevada
Holding*

Commencing with the Court's holding that the United States as legal title holder has a responsibility to maintain project water supplies, we believe it follows that the United States would further be obligated to take any steps necessary to protect its ability to meet that responsibility. Turning to the issue of what filings should be made in general stream adjudications, the question then becomes, in those cases where the United States is legal title holder to a project water right, what actions is the United States obligated to take in the adjudication to protect its ability to deliver water to the beneficial owners. Given that the purpose of a general stream adjudication is to determine and correlate all existing water rights within the adjudicated drainage basin, we note that there is perhaps no other context in which it is more important that the United States take those steps necessary to protect the full scope of the project's water right, including the filing of claims held in the name of the United States.

We also point out that in cases decided before and after Ickes v. Fox, supra, courts have recognized that the United States, as distributor and as holder of legal title, has an interest in protecting project water rights for the benefit of the project as a whole. Thus, regardless of whether an obligation to file on project water rights can be found to exist, the government clearly is entitled to make such filings.

Addressing the right to protect project water interests, the Supreme Court in Id. v. United States, 263 U.S. 497 (1924), reviewed arguments of non-project landowners that they, and not the Bureau, were entitled to project runoff. The Court found for the government, stating:

In disposing of the lands in small parcels, the [United States] invests each purchaser with a right to have enough water supplied from the project canals to irrigate his land, but it does not give up all control over the water or do more than pass to the purchaser a right to use the water so far as may be necessary in properly cultivating his land. Beyond this, all rights incident to the appropriation are retained by the [United States].

*i.e.
beneficial use
is the measure.*

Id. at 506 (emphasis added).

Other instances in which the right to protect project water interests has been asserted include United States v. Humboldt Lovelock Irrigation Light and Power Co., 97 F.2d 38 (9th Cir 1938), where the Ninth Circuit found that the United States could sue to enjoin upstream nonproject irrigators from diverting water to which the Bureau had obtained a prior right from the State of Nevada, and Hudspeth County Conservation & Reclamation Dist. v. Robbins, 213 F.2d 425 (5th Cir. 1954), where the Fifth Circuit Court of Appeals held that because of its responsibilities to project water users, the United States was a necessary party to a suit brought against Bureau officials by non-project landowners who received project water under "Warren Act" contracts.

In United States v. Tilley, 124 F.2d 850 (8th Cir. 1942), the Eighth Circuit Court of Appeals spoke generally of the right of the distributor to protect project water interests. It concluded that this right "has never rested upon the premise that the United States was the actual owner of the waters appropriated and diverted" since in Nebraska as elsewhere the landowner who puts the water to beneficial use holds the vested right to receive the water. 124 F.2d at 861. Rather, the court, in language summarizing the nature of the United States' interest in project water rights, observed:

[T]he owner of the irrigation project or canal . . . has an interest in such appropriative rights, by virtue of the fact that the statute permits him to make the appropriation and diversion, that the maintenance of such appropriative rights is necessary in accomplishing the purpose of the project or canal, and that the law imposes certain duties and obligations upon him in the carriage, distribution, and conservation of the diverted waters. This interest clearly is such as to entitle him to take any necessary steps to protect the scope of the right conferred by the state appropriation statutes, not merely in representatively securing and

protecting the full measure of beneficial use for the land owners under the project or canal, but also in effectuating the object of the project or canal as an enterprise.

Id. (Emphasis added.)

None of the cases discussed above held that the rights of the United States to protect project water rights stemmed from any beneficial interest in the water rights. Rather, they clearly recognized in the United States as distributor and legal title holder of the appropriative right an interest in protecting project water rights for the benefit of the project.

In some situations, the United States is also entitled as a lien holder to assert claims for project water rights in general stream adjudications. The United States is considered as having a lien upon the water rights within a reclamation project to insure repayment of the project's construction, operation and maintenance costs. In Ickes v. Fox, supra, the Supreme Court made express reference to the lien interest: "The government . . . [has] the right to receive the sums stipulated in the contracts as reimbursement for the cost of construction and annual charges for operation and maintenance of the works. As security therefor, it was provided that the government should have a lien upon the lands and the water rights appurtenant thereto. . . ." 300 U.S. at 95.

Finally, the United States may have certain contractual obligations to defend a reclamation project's water supply. Each contract may vary as to the extent of the obligation. Often at a minimum the contract will provide the United States with discretion to take action either independently or in cooperation with the contracting district as deemed necessary to protect the water supply. See e.g., Repayment Contract between the United States and the A&B Irrigation District, Idaho, dated February 9, 1962.

B. Obligation to File on behalf of Water Users

We now turn to the question of whether the United States is obligated to file in a general stream adjudication claims on behalf of the individual project water users who, as the Supreme Court has held, have the equitable ownership interest in the water right. We distinguish here between protecting the project water as a block and protecting individual rights to water.

In all general stream adjudications, the state has the option and generally will require that evidence be produced which shows that the water received by the water user is being put to a beneficial use within the definitions of state law. Therefore, given that the Supreme Court has clearly stated that it is the water user who has beneficial ownership of the water, we believe that it would therefore be incumbent upon the water user to meet the

necessary evidentiary requirements imposed by the state, as this aspect of the appropriative water right rests exclusively with the water user. We find nothing in the statutes or case law which would obligate the United States to meet these evidentiary requirements.

Thus, when the United States does file in the adjudication for the full project water right held in the name of the United States and that right is confirmed, and when the water users meet the state's evidentiary obligations, the water users' beneficial rights to project water will be protected. Exactly how this will occur in a particular adjudication will depend on the type of storage rights system used in the state initiating the adjudication. For example, in a state such as Wyoming which uses the primary/secondary storage permit system, it would be incumbent upon the United States to file on the primary (storage) permit it holds in its name. This filing will permit the storage right previously decreed to the United States to be reaffirmed in the adjudication, thereby protecting the government's ability to maintain delivery of project water. In turn, those holding secondary permits would be responsible to file on the secondary permit and to provide the evidence necessary to show water received is put to beneficial use.^{6/}

In other states where no distinction is made in the appropriative permit between rights to storage and rights to receive water, and where the United States was the original applicant and received in its name the project water right, the project water user has no formal record of ownership. Conceivably, then, the only project water right which can be filed in this situation is the one enumerated in the appropriative permits, licenses or decrees issued by the state and held in the name of the United States.^{7/}

When the United States files in a general stream adjudication in states that do not distinguish between storage rights and rights to receive water, it has no evidentiary burden to carry for the individual water users. However, by making the filings, the United States protects its interest in the project water rights, and the project water users -- who have a beneficial interest in the water -- will be afforded the opportunity to protect their rights, based on their ability to establish beneficial use of water. Generally, there will be a long history of water delivery

^{6/} In those situations in which the United States also holds the secondary permit in its name, the United States should file on the secondary permit and those entitled to receive the water would meet the evidentiary obligations.

^{7/} Some project water rights held in the name of the federal government may be legally recognized "notice" water rights obtained by meeting appropriative requirements in states before implementation of a permitting or licencing procedure. In these cases it would be the record of notice or commencement of use that would be filed in the adjudication.

Montana
in 1910.

based on contracts with the water user to which the water user can point as his entitlement. Thus, when he produces evidence to show that the full extent of the water received from the project is put to beneficial use, he will be able to preserve his beneficial interest in the project water right held and asserted by the United States.^{8/} In other words, while the United States is not obligated to "file on behalf of" project water users, by filing to protect the federal reclamation project water rights, the same objective is achieved on behalf of the individual water users. Finally, our conclusions with regard to obligations to water users should not be read to mean that the Bureau cannot work with the State, the districts and the actual water users to develop methods to present such evidence that best meets the respective needs of all parties.

IV. Conclusion

In the recent Nevada v. United States decision, the Supreme Court reaffirmed that the beneficial ownership of reclamation project water rights is in the water user who puts the water to beneficial use, and that, when the United States retains legal title to project water rights, the government is obligated to protect project water supplies. We therefore conclude from this and other court decisions that when it is necessary to protect the supply, the United States is obligated and entitled to make filings in general stream adjudications on behalf of project water rights to which the United States holds legal title. We have also concluded that the United States is not obligated to make filings or present evidence of beneficial use on behalf of individual water users.


Ralph W. Tarr

^{8/} We further point out that, while not obligated to meet evidentiary requirements to show beneficial use, the United States, just as it is entitled to file on behalf of project water rights to protect project interests, is entitled to meet those requirements, if it finds that such action is in the best interest of the project's water rights that it do so. As noted in United States v. Tilley, supra, the distributor is entitled to take "any necessary steps to protect the scope of the right conferred by the state appropriation statutes. . . ." 124 F.2d at 861.