

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

BAKER RANCHES, INC.; DAVID
JOHN ELDRIDGE; RUTH
ELDRIDGE, as Co-Trustees of the
David John Eldridge and Ruth
Eldridge Family Living Trust dated
January 31, 2007; ZANE JORDAN;
JUDEE SCHALEY,

Plaintiffs - Appellants,

v.

DOUG BURGUM, in his official
capacity as Secretary of the United
States Department of the Interior;
UNITED STATES DEPARTMENT
OF THE INTERIOR; SHAWN
BENGE, in his official capacity as
Acting Director of the National Park
Service; NATIONAL PARK
SERVICE; ASHLEY ADAMS, in
her official capacity as
Superintendent of the Great Basin
National Park,

Defendants - Appellees.

No. 24-5713

D.C. No.
3:21-cv-00150-
GMN-CSD

OPINION

Appeal from the United States District Court
for the District of Nevada
Gloria M. Navarro, District Judge, Presiding

Argued and Submitted March 24, 2026
Pasadena, California

Filed September 30, 2026

Before: Johnnie B. Rawlinson and John B. Owens, Circuit
Judges, and Sidney A. Fitzwater, District Judge.*

Opinion by Judge Owens;
Dissent by Judge Rawlinson

SUMMARY**

Sovereign Immunity / McCarran Amendment

The panel reversed the district court's dismissal of a suit against federal defendants ("the United States") for lack of subject matter jurisdiction based on sovereign immunity.

In 1934, a Nevada state court entered the Baker-Lehmann Decree, setting out the water rights for the Baker-Lehman Creeks, which flow through what is now the Great Basin National Park. Under the Baker-Lehmann Decree,

* The Honorable Sidney A. Fitzwater, United States District Judge for the Northern District of Texas, sitting by designation.

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Plaintiffs, including Baker Ranches, Inc., own downstream water rights. Plaintiffs alleged that the Park engaged in activities that reduced water flow and jeopardized their water rights. They sued the United States to enjoin such activities and enforce their rights under the Decree.

Plaintiffs argued that the United States' sovereign immunity was waived by the McCarran Amendment, which waives the sovereign immunity of the United States "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." 43 U.S.C. § 666(a). The McCarran Amendment was enacted in 1952 but retroactively applies to the administration of previously acquired water rights. The district court determined that sovereign immunity was not waived by the McCarran Amendment and dismissed Plaintiffs' case for lack of jurisdiction.

Reversing, the panel held that the McCarran Amendment waived the United States' sovereign immunity. First, the McCarran Amendment waives sovereign immunity for the administration of rights determined in a "comprehensive" adjudication, and the Baker-Lehmann Decree was comprehensive. The Baker-Lehman Adjudication was meant to serve as a final determination of all relative water rights upon the Baker-Lehman Creeks. Second, the McCarran Amendment controls in cases adjudicating or administering water rights, and Baker Ranches is suing for the administration of water rights they hold under the Baker-Lehmann Decree. Accordingly, the panel held that the McCarran Amendment waived the United States' sovereign immunity from this suit.

Dissenting, Judge Rawlinson would affirm the district court's determination that the sovereign immunity of the United States was not waived by the McCarran Amendment. Under the language of the McCarran Amendment, expressed legislative intent, Supreme Court authority, and this Court's precedent, the United States did not waive its sovereign immunity for the Baker-Lehman Creeks adjudication. Thus, the Baker Lehman Decree does not bind the United States.

COUNSEL

Benjamin J. Hogan (argued), Bryan Cave Leighton Paisner LLP, Denver, Colorado; Jean-Claude Andre, Bryan Cave Leighton Paisner LLP, Santa Monica, California; Seth M. Reid, Bryan Cave Leighton Paisner LLP, St. Louis, Missouri; Debbie Leonard, Leonard Law PC, Reno, Nevada; Kole W. Kelley and Ivan L. London, Mountain States Legal Foundation, Lakewood, Colorado; for Plaintiffs-Appellants.

Ezekiel Peterson (argued) and Katharine Laubach, Attorneys, Environment & Natural Resources Division; Adam R.F. Gustafson, Acting Assistant Attorney General; United States Department of Justice, Denver, Colorado; Karen Glasgow, Supervisory Attorney-Advisor, Office of the Solicitor, United States Department of Interior, Denver, Colorado; Andrew M. Bernie and Jason Lee, Trial Attorneys; United States Department of Justice, Washington, D.C.; Holly A. Vance, Assistant United States Attorney, Office of the United States Attorney, United States Department of Justice, Reno, Nevada; for Defendants-Appellees.

J. Gregory Cloward, Deputy Attorney General; Jeffrey M. Connor, Chief Deputy Solicitor General; Aaron M. Ford, Nevada Attorney General; Office of the Nevada Attorney General, Carson City, Nevada; for Amicus Curiae State of Nevada.

Laura A. Schroeder, Therese A. Ure Stix, and Caitlin R. Skulan, Schroeder Law Offices PC, Portland, Oregon, for Amici Curiae Central Nevada Regional Water Authority, Humboldt County, Humboldt River Basin Water Authority, Nevada Association of County Commissioners, Nevada Land Action Association, Nevada Grazing Board of District No. 4, Pershing County, Pershing County, Pershing County Water Conservation District, The Rose of Snowville LLC, Washoe County, and White Pine County.

David H. Rigdon, Taggart & Taggart LTD, Carson City, Nevada, for Amici Curiae Western State Farm Bureau Federations (Nevada Farm Bureau Federation, Idaho Farm Bureau Federation, and California Farm Bureau Federation).

Karen A. Peterson and Keith H. Ketola, Carson City, Nevada; Theodore Beutel, Eureka County District Attorney, Eureka, Nevada; for Amicus Curiae Eureka County.

OPINION

OWENS, Circuit Judge:

Baker Ranches, Inc., David John Eldridge, Ruth Eldridge, Zane Jordan, and Judee Schaley (collectively “Plaintiffs”) appeal from the district court’s dismissal of their suit against federal defendants (“the United States”) for lack of jurisdiction based on sovereign immunity. We have jurisdiction under 28 U.S.C. § 1291, and we reverse and remand.

I. BACKGROUND

In 1934, a Nevada state court entered a decree that set out the water rights for the Baker-Lehman Creeks, which flow through what is now Great Basin National Park (“the Park”), created in 1986. Under the so-called “Baker-Lehman Decree” (“Decree”), Plaintiffs own downstream water rights. Baker Ranches has long used the water to support its extensive ranch operations.

Plaintiffs allege that the Park has engaged in activities—ranging from water diversion to planting vegetation—that have reduced water flow and jeopardized their downstream water rights, threatening to put Baker Ranches out of business. Plaintiffs sued the United States to enjoin such activities and enforce their rights under the Decree.

After extensive litigation in multiple forums, the district court held that the United States enjoyed sovereign immunity, meaning the state and federal courts lack subject matter jurisdiction to enforce the Decree against the United States. Plaintiffs have contended throughout that sovereign immunity was waived by the McCarran Amendment, which was enacted in 1952 but retroactively applies to the

administration of previously acquired water rights. *See State Eng'r v. S. Fork Band of the Te-Moak Tribe of W. Shoshone Indians of Nev. (Te-Moak)*, 339 F.3d 804, 811–13 (9th Cir. 2003). We agree. To understand why, we begin with a brief history of the development of water rights in the West and the role of the McCarran Amendment.

A. Development of Federal and Nevada Water Law

Water rights—crucial to the development of the land-rich, water-poor American West—were initially adjudicated through individual private actions. *See* 1 Robert E. Beck, *Waters & Water Rights* § 15.01 (2026). A claimant would file a complaint asserting rights to a particular water source and alleging interference by defendants, who would file answers and cross-complaints asserting their own rights. But because the rights of all claimants to a particular water source are closely interrelated, “[e]ach claimant is therefore directly and vitally interested, not only in establishing the validity and extent of his own claim, but in having determined all of the other claims” to that water source. *Pac. Live Stock Co. v. Or. Water Bd.*, 241 U.S. 440, 449 (1916) (citation omitted). As settlement boomed in the West, conflicts over water rights increased, resulting in voluminous piecemeal litigation.

The rights of all claimants to a particular water source are “so closely related that the presence of all is essential” for a final determination of any rights to that water source. *Id.* But joinder of the “hundreds or thousands” of individual claims to a water source would have been “extremely cumbersome and inefficient.” *United States v. Oregon*, 44 F.3d 758, 763–64 (9th Cir. 1994). Several Western states, including Nevada, attempted to solve the problem by

establishing statutory procedures to adjudicate all water rights on entire stream systems at once.

In 1913, Nevada created its present statutory system for the mass adjudication of surface water rights. *See* Act of Mar. 22, 1913, ch. 140, 1913 Nev. Stat. 192 (codified as amended at Nev. Rev. Stat. ch. 533) (“1913 Nevada Water Law”). Under this system, adjudication would proceed as follows. The State Engineer initiates the process. Nev. Rev. Stat. Ann. § 533.090. He provides notice of the proceedings, gathers relevant stream flow data, collects proofs of appropriation, hears objections, and enters an order of determination “defining the several rights to the waters of the stream or stream system.” *Id.* §§ 533.090, 533.095, 533.100, 533.160. After further notice and hearings, the state district court affirms or modifies the Engineer’s order in a decree setting out a “final” and “conclusive” distribution of water rights. *Id.* §§ 533.185, 533.210. The rights set out in that decree may then be enforced and administered by the Engineer and state water commissioners acting as officers of the court. *Id.* § 533.220.

But one issue remained. “While these statutory adjudications seemed to promise an end to the confusing and conflicting adjudication of water rights in multiple cases, the system was impaired by the refusal of the federal government to participate.” *Oregon*, 44 F.3d at 765. The United States claimed extensive water rights in the West, yet—shielded by sovereign immunity—could refuse states’ attempts to adjudicate and administer those rights. States found themselves unable to secure a final and conclusive determination of rights whenever the United States appeared in a watershed. *See* S. Rep. No. 755, 82d Cong., 1st Sess. 4 (1951). And the United States’ refusal to submit to state

court adjudication and administration provoked significant political backlash.¹

In 1952, Congress took action. It passed the McCarran Amendment, which waives the sovereign immunity of the United States “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.” 43 U.S.C. § 666(a). The statute “applie[s] retroactively and thus waive[s] the United States’ immunity from suit for the administration of water rights acquired before the law came into effect.” *Am. Indian Law Deskbook* § 8:18 (2024) (citing *Te-Moak*, 339 F.3d at 813); *see also*

¹ One notable example was the federal government’s attempt to acquire water rights in the Santa Margarita River watershed to support the military establishment at Camp Pendleton. Locals who depended on the water felt “subversively exploited” by the federal government’s water grab. *A Bill to Authorize Suits Against the United States to Adjudicate & Administer Water Rights: Hearings on S.18 Before a Subcomm. of the S. Comm. on the Judiciary*, 82d Cong. 77 (1951) (letter of George F. Yackey, general manager of the Fallbrook Public Utility District). The matter resulted in public outcry, spawning multiple articles and even a short film produced and directed by Frank Capra. *See, e.g., Stanley High, Washington Tyranny: Another Case Study*, Reader’s Digest, Dec. 1951, reprinted in 98 Cong. Rec. 124 (1952); Frank Capra, *The Fallbrook Story* (1952).

The United States was also involved in highly contentious water controversies on the Quinn River in Nevada, and in several Colorado water districts. *See Hearings on S.18*, 82d Cong. 47 (1951) (statement of W.T. Mathews, Attorney General of the State of Nevada); *id.* at 26–27 (statement of Glenn G. Saunders, representing the National Reclamation Association). These controversies, caused by the United States’ use of its sovereign immunity to preclude the adjudication and administration of the water rights it claimed, formed the backdrop to Congress’ consideration of the McCarran Amendment.

United States v. Puerto Rico, 287 F.3d 212, 217 (1st Cir. 2002) (“[T]he McCarran Amendment applies to water rights acquired prior to 1952”); *United States v. Dist. Ct. in & for Eagle Cnty. (Eagle Cnty.)*, 401 U.S. 520, 522–23 (1971) (applying the McCarran Amendment when the United States claimed reserved rights acquired in 1905).

The McCarran Amendment was introduced to correct the “chaotic condition” caused by the United States’ refusal to participate in the statutory procedures designed to adjudicate and administer at once all the interlocked water rights on a stream system, which threatened “a throw-back to the conditions that brought about the enactment of the statutory water laws.” S. Rep. No. 755, 82d Cong., 1st Sess. 5 (1951). Being focused on the “evils growing out of [the United States’] immunity” from proceedings in which “all water users on a stream . . . are interested and necessary parties,” the bill was not intended to waive the United States’ immunity from private suits. *Id.*

For instance, in response to concerns that individuals might use the bill to block the construction of projects by the Bureau of Reclamation, Senator Pat McCarran—the bill’s Senate sponsor and namesake—assured that it was “not intended to be used for the purpose of obstructing or delaying Bureau of Reclamation projects.” *Id.* at 9. Indeed, he clarified that the Amendment’s waiver of immunity was “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.” *Id.* at 9. Adopting this intended limit, our courts have since held that the McCarran Amendment only allows the United States to be joined in suits involving a “comprehensive water right adjudication.” *Oregon*, 44 F.3d at 766 (quoting *United States v. Idaho*, 508 U.S. 1, 9 (1993)).

B. Water Rights on the Baker-Lehman Creeks

1. The Baker-Lehman Adjudication and Decree

More than two decades before the passage of the McCarran Amendment, the State Engineer of Nevada in 1925 initiated a determination of water rights on the Baker-Lehman Creeks (“Baker-Lehman Adjudication”). The adjudication took place according to the procedures laid out in the 1913 Nevada Water Law, Nevada’s statutory system for the mass adjudication of water rights. *See Nev. Rev. Stat. ch. 533.* The United States did not participate or assert any claims. After publishing notices and collecting claimants’ proofs of appropriation, the State Engineer issued his order of determination nearly eight years after the adjudication began. A copy of the order of determination was mailed to all claimants, and to the United States.

After the State Engineer filed the order of determination in the Seventh Judicial District Court of Nevada, the state court scheduled a hearing for interested parties to raise exceptions to the order of determination. Copies of the scheduling order were mailed to the claimants and to the United States, and published in a local newspaper. Again, the United States did not participate.

Finally, on October 16, 1934, the state court entered the Baker-Lehman Decree. Applications to modify the decree were to be submitted within three years of its entry. *See Nev. Rev. Stat. § 533.210.* Under Nevada law, this decree was to be a final determination of water rights on the Baker-Lehman Creeks. *Id.* Any future rights claimed on the Baker-Lehman Creeks could only be adjudicated in a “supplemental adjudication,” which under state law may not disturb any existing rights under the 1934 Baker-Lehman Decree. *See Mineral County v. Lyon County*, 473 P.3d 418,

429 (Nev. 2020) (observing that Nevada’s water law “expressly prohibits reallocating adjudicated water rights”).

The Baker-Lehman Decree provided, in part, that “each and every water user of the Baker and Lehman Creeks stream system . . . be perpetually enjoined and restrained” from “diverting or using or preventing or obstructing the flow . . . of any of the water” except in the manner provided for by the Decree. It further required every water user to “keep . . . the main stream channel through his land[] reasonably clean of weeds, vegetation, and deposits of silt” and “maintain” the channels to facilitate “minimum loss of conveyed water.”

2. The Parties’ Water Rights

Under the Baker-Lehman Decree, Baker Ranches holds adjudicated water rights with a priority date between 1872 and 1904; David John Eldridge and Ruth Eldridge hold rights with a priority date of 1872; and Zane Jordan and Judee Schaley hold water rights with a priority date of 1876.

The United States claims two types of water rights on the Baker-Lehman Creeks. First, it holds appropriative rights set out in the Baker-Lehman Decree, which it acquired from private appropriators. Second, the United States now claims reserved water rights, which it never asserted before the instant litigation and were not adjudicated or recognized in the Baker-Lehman Decree. These reserved water rights stem from various reservations of land made in the twentieth century.² The earliest of these reservations dates to 1909,

² When the United States withdraws land from the public domain and reserves it for a federal purpose, we understand it to reserve enough water to carry out the purpose of the reservation. See *Winters v. United States*, 207 U.S. 564, 577 (1908). Reserved water rights vest, or have a

when the federal government reserved approximately 556,000 acres to establish the Nevada National Forest. *See* Proclamation No. 839, 35 Stat. 2220 (Feb. 10, 1909). Additional reservations were made in 1922, for the Lehman Caves National Monument, and in 1986, to create Great Basin National Park. *See* Proclamation No. 1618, 42 Stat. 2260 (Jan. 24, 1922); Great Basin National Park Act of 1986, Pub. L. No. 99-565, § 2, 100 Stat. 3181 (Oct. 27, 1986).

3. The Instant Litigation

When Plaintiffs first began appropriating water from the Baker-Lehman Creeks, the streams flowed through land in the public domain. Now, the streams originate in and run through Great Basin National Park. Plaintiffs allege that the Park's activities—diverting water for campgrounds and dust suppression, felling logs that block creek channels, and planting vegetation—have reduced water flow, impairing the rights of downstream water users like themselves.

In 2021, Plaintiffs filed suit in Nevada state court to enjoin these activities and enforce the water rights they hold under the Baker-Lehman Decree. The United States removed the suit to federal district court and claimed sovereign immunity, and litigation commenced regarding the proper forum for the case. In an earlier unpublished disposition, we held that the state court had prior exclusive jurisdiction only if the United States had waived sovereign immunity, and directed the district court to consider whether sovereign immunity was waived under the McCarran Amendment. *See Baker Ranches, Inc. v. Haaland*, Nos. 22-

priority date, on the date of the federal reservation. *See Cappaert v. United States*, 426 U.S. 128, 138 (1976).

15765, 22-15846, 2023 WL 6784357 (9th Cir. Oct. 13, 2023).³

The district court determined that sovereign immunity was *not* waived by the McCarran Amendment and dismissed the case for lack of jurisdiction. It concluded that because the United States did not participate in the 1934 Baker-Lehman Adjudication, it was not a “comprehensive adjudication” for which the McCarran Amendment waives sovereign immunity. It did not reach the United States’ separate argument that the McCarran Amendment did not apply because Plaintiffs’ suit was not one for the “administration” of water rights. Plaintiffs timely appealed the district court’s dismissal. We take up the question of whether the McCarran Amendment waives the United States’ sovereign immunity in this case, and we hold that it does.

II. DISCUSSION

A. Standard of Review

“We review *de novo* the district court’s dismissal for lack of subject matter jurisdiction, including whether the United States has waived its sovereign immunity.” *Harger v. Dep’t*

³ Litigation has since proceeded concurrently in federal and state court. The state court found that the McCarran Amendment waived sovereign immunity and ultimately issued orders holding the United States in contempt of the Baker-Lehman Decree and granting Baker Ranches access to Park land to maintain the streams. The United States appealed these orders to the Nevada Supreme Court, which held that it lacked jurisdiction due to this court’s previous decision vacating the district court’s remand to state court. *See Haaland v. Baker Ranches Inc.*, 560 P.3d 664 (Nev. 2024) (unpublished table decision). It dismissed the appeal without prejudice, and the United States may move for reinstatement should the case be remanded back to state court from the federal district court. *Id.*

of *Lab.*, 569 F.3d 898, 903 (9th Cir. 2009). A waiver of sovereign immunity “must be unequivocally expressed,” and the party suing the United States “bears the burden of pointing to such an unequivocal waiver of immunity.” *Holloman v. Watt*, 708 F.2d 1399, 1401 (9th Cir. 1983) (per curiam) (quoting *United States v. Mitchell*, 445 U.S. 535, 538 (1980)).

B. The Baker-Lehman Decree Was Comprehensive

The McCarran Amendment waives sovereign immunity only for the administration of rights determined in a “comprehensive” adjudication. *See Eagle Cnty.*, 401 U.S. at 524 (“[T]he administration of such rights’ in § 666(a)(2) must refer to the rights described in” § 666(a)(1).); *Idaho*, 508 U.S. at 3 (the United States may be joined “as a defendant in a comprehensive water right adjudication”). Plaintiffs sued to enforce rights determined by the Baker-Lehman Adjudication between 1925 and 1934, years before the passage of the McCarran Amendment would have required the United States to participate. Because the United States was not a party and the reserved rights it asserts today were not determined in the adjudication, the United States and the dissent argue that the Baker-Lehman Adjudication was not “comprehensive.”

But this reasoning distorts the meaning and purpose of the requirement that adjudications be “comprehensive.” This requirement—which does not appear in the text of the statute—was imposed by courts to reflect the purpose of the McCarran Amendment. *See Dugan v. Rank*, 372 U.S. 609, 618 (1963) (citing S. Rep. No. 755, 82d Cong., 1st Sess. 9 (1951)); *see also Oregon*, 44 F.3d at 766. “The clear federal policy evinced by [the McCarran Amendment] is the avoidance of piecemeal adjudication of water rights in a

river system [T]he McCarran Amendment bespeaks a policy that recognizes the availability of *comprehensive state systems* for adjudication of water rights as the means for achieving these goals.” *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 819 (1976) (emphasis added). Because the McCarran Amendment exists to support “comprehensive state systems for adjudication,” its waiver of sovereign immunity is construed to extend only to adjudications that take place in that context. *Id.* By contrast, “piecemeal, private water rights litigation”—the types of suits that the McCarran Amendment was intended to help comprehensive state systems replace—sit outside the scope the McCarran Amendment. *Oregon*, 44 F.3d at 768.

The 1913 Nevada Water Law is clearly one of those “comprehensive state systems” that the McCarran Amendment was meant to support. Our caselaw has recognized it as such. *See Te-Moak*, 339 F.3d at 811 (describing the law as “Nevada’s comprehensive system for adjudicating water rights”). It replaced piecemeal adjudications by providing a comprehensive procedure for the collection, adjudication, and final determination of all rights to water on a stream system. *See Nev. Rev. Stat. §§ 533.087-533.320*. Those claiming a right to water must submit proof of their claim, or the claim will be deemed abandoned. *See id.* § 533.087. Nor could the system function any other way: claims that are not asserted cannot be allowed to linger, as that would undermine the certainty and finality that these adjudications were meant to establish.

Over the course of nine years, the Baker-Lehman Adjudication was conducted scrupulously according to the procedures laid out in the 1913 Nevada Water Law. The State Engineer and the Seventh Judicial District Court of Nevada repeatedly provided notice to all claimants and to the

United States. The United States chose not to assert any claims, raise any exceptions, or apply for any modifications to the resulting Baker-Lehman Decree. A claimant's failure to assert its alleged water rights during an adjudication does not render the adjudication any less "comprehensive," in the sense that the drafters of the McCarran Amendment intended.

Regardless of the United States' failure to claim the reserved rights that it alleges today, the Baker-Lehman Adjudication was meant to serve as a final determination of all relative water rights upon the Baker-Lehman Creeks, meaning it was "necessary to adjudicate all of the rights of various owners" to avoid the sort of piecemeal litigation that existed before such statutory mass adjudications were possible. *Eagle Cnty.*, 401 U.S. at 525 (quoting S. Rep. No. 755, 82d Cong., 1st Sess., 9). It was therefore precisely the sort of "comprehensive" adjudication that the McCarran Amendment was meant to support. *See id.*

According to the United States, an adjudication is not comprehensive unless it is "able to determine all claims in a river system, including those of the United States where it has some water rights." The dissent goes even further, asserting that an adjudication is not comprehensive unless it in fact did "resolve the rights of *all* claimants to a stream of water." Under these readings, the Baker-Lehman Adjudication was not comprehensive because it took place while the United States still enjoyed sovereign immunity from water rights adjudications, and the United States' reserved water rights went unadjudicated. The United States argues that applying the McCarran Amendment here would be unfair, as it would "cause the retroactive forfeiture of all federal claims and defenses . . . that the United States could

have presented had there been a waiver of sovereign immunity at the time of the adjudication.”

But the United States’ argument runs headlong against the purpose of the McCarran Amendment and our caselaw, which has repeatedly warned against narrowing the Amendment based on “extremely technical” constructions of the comprehensiveness requirement. *Eagle Cnty.*, 401 U.S. at 525; *see also Oregon*, 44 F.3d at 768. The McCarran Amendment was motivated by Congress’ concern that “the United States not be subjected to piecemeal, private water rights litigation,” and “[t]he comprehensiveness standard requires the consolidation of existing controversies, not the reopening of settled determinations.” *Oregon*, 44 F.3d at 768 (first citing *Eagle Cnty.*, 401 U.S. at 525; and then citing *United States v. Dist. Ct. for Water Div. No. 5*, 401 U.S. 527, 529 (1971)).

The United States would instead have us reopen a settled determination that has stood for decades. Indeed, sixty-seven decrees in Nevada pre-date the McCarran Amendment’s waiver of sovereign immunity, and the United States’ argument undermines the finality of each of them. The United States suggests that because these adjudications took place before the passage of the McCarran Amendment, it has the right to assert, at any time—even centuries from now—any previously-unadjudicated claim to water rights, regardless of how long it has sat on those alleged rights. This would mean that none of those sixty-seven pre-McCarran Amendment decrees can be considered settled. It would be absurd to wring this result out of a requirement crafted by courts to further the McCarran Amendment’s purpose of *ending* piecemeal adjudications and the interminable water rights conflicts they engendered. *See, e.g., Oregon*, 44 F.3d at 768; *Eagle Cnty.*, 401 U.S. at 525.

Furthermore, retroactively applying the McCarran Amendment is no issue. The United States argues that it cannot be bound to respect water rights determined in an adjudication where it did not have the opportunity to raise potential claims and defenses. But the Supreme Court rejected that argument in *Eagle County*, holding that the United States could be joined in a supplemental adjudication despite not being a party to the preceding adjudication. *See* 401 U.S. at 525-26. Because the supplemental adjudication could not unsettle rights determined in the preceding adjudication, the United States was bound to respect the water rights determined in the preceding adjudication, where it—like here—did not have the opportunity to raise potential claims or defenses.⁴ *See id.*

Moreover, we have squarely held, for decades, that “the McCarran Amendment waives the United States’s immunity from suit, not only for the administration of water rights acquired after the statute’s enactment, but also for the

⁴ That supplemental adjudications may not unsettle rights determined under previous mass adjudications further undermines the United States’ argument that it is unfair to bind it to the results of an adjudication it chose not to take part in. The United States suggests that anyone who owns water rights under the sixty-seven pre-McCarran Amendment decrees should simply seek a supplemental adjudication to determine the United States’ reserved rights. But because rights determined in those supplemental adjudications could not supplant any previously adjudicated rights, this would place the United States in precisely the same position—bound to respect the results of the preceding adjudications, which it did not participate in. *See Nev. Rev. Stat. § 533.210(1)* (decrees entered pursuant to the 1913 Water Law are “final” and “conclusive”); *Mineral County*, 473 P.3d at 429 (Nevada’s water law “expressly prohibits reallocating adjudicated water rights that have not been abandoned, forfeited, or otherwise lost pursuant to an express statutory provision”).

administration of water rights acquired before the law came into effect.” *Te-Moak*, 339 F.3d at 813. In that case, we found no issue with applying the McCarran Amendment to waive the United States’ immunity from administration of the pre-McCarran Amendment Humboldt Decree. *Id.* at 811-13. The Supreme Court likewise found the McCarran Amendment applicable even when the underlying federal water rights were acquired in 1905, nearly a half-century before the passage of the McCarran Amendment. *See Eagle Cnty.*, 401 U.S. at 523. And the First Circuit has independently come to a similar conclusion, holding that “the McCarran Amendment applies to water rights acquired prior to 1952, as long as the suit against the government is commenced subsequent to that date.” *Puerto Rico*, 287 F.3d at 217.

The dissent acknowledges that *Te-Moak* holds “that the McCarran Amendment applies retroactively.” But it claims that *Orff v. United States*, 358 F.3d 1137 (9th Cir. 2004), a case that “[t]ellingly . . . did not discuss or distinguish *Te-Moak*,” constitutes binding precedent requiring “that the McCarran Amendment does not apply absent adjudication of the claims of all parties.”

Orff and *Te-Moak* are in fact distinguishable for an important reason: *Orff*, unlike *Te-Moak*, is not a McCarran Amendment case. The plaintiffs in *Orff* “did not even plead jurisdiction under the McCarran Amendment.” 358 F.3d at 1144. Tellingly, neither the United States nor the district court found it necessary to discuss *Orff*’s implications on the instant litigation.

Orff involved a 1963 contract between the Westlands Water District and the United States. *See id.* at 1141. The dispute was whether the United States had waived its

sovereign immunity under a *different* statute, 43 U.S.C. § 390uu. *See id.* at 1144. We discussed the McCarran Amendment solely to reject the plaintiffs’ argument that a prior McCarran Amendment case precluded the United States from asserting sovereign immunity under this different statute.⁵ *See id.* at 1142-43. We explained that the McCarran Amendment did not apply in *Orff* because it concerned a “private lawsuit for damages between the farmers and the government.” *Id.* at 1143. Simply put, we conclude that the clear retroactivity language of *Te-Moak*, which is a McCarran Amendment case, speaks far louder than anything in *Orff*, which is not.

The dissent cites *Metropolitan Water Dist.* and *Dugan* for the same proposition as *Orff*: that the McCarran Amendment applies solely to adjudications of the rights of all claimants on a stream. But those cases clarify only that, consistent with the McCarran Amendment’s purpose, the private lawsuits involved in those cases were not comprehensive. *See Metro. Water Dist. of S. Cal. v. United States*, 830 F.2d 139, 144 (9th Cir. 1987) (holding that the McCarran Amendment “does not authorize private suits to decide priorities between the United States and particular claimants”); *Dugan*, 372 U.S. at 618 (holding that the McCarran Amendment does not apply to “a private suit to determine water rights solely between the respondents and the United States”). Neither case imposes a requirement that a comprehensive adjudication include all possible claimants. These cases did not involve adjudications of the rights of

⁵ In that prior case, the district court applied the McCarran Amendment, rejecting the United States’ argument that it did not apply “because all of the claimants to water from a given stream [were] not defendants in the action.” *Barcellos & Wolfson, Inc. v. Westlands Water Dist.*, 491 F. Supp. 263, 266 (E.D. Cal. 1980).

multiple parties like those at issue in *Te-Moak* and *Eagle Cnty.*

Like the dissent, the United States also attempts to limit *Te-Moak*, arguing that it applies only to cases in which the United States is a later purchaser of previously adjudicated rights. It insists that the McCarran Amendment cannot be retroactive in the instant case, where the United States is claiming unadjudicated reserved rights. This argument fails twice over.

First, the United States *is* a later purchaser of previously adjudicated rights, which it holds in addition to the reserved rights it now claims. In *Te-Moak*, the United States acquired rights that had previously been adjudicated under the Humboldt Decree, so it was subject to suits for the administration of the Humboldt Decree; here, the United States acquired rights that had been previously adjudicated under the Baker-Lehman Decree, so it should be subject to suits for the administration of the Baker-Lehman Decree.⁶ See *Te-Moak*, 339 F.3d at 807. Indeed, forcing the United States to take the bitter with the sweet was one of the key purposes of the McCarran Amendment: in stripping the United States of sovereign immunity in state water rights

⁶ The district court found the United States' acquisition of decreed rights "irrelevant to this case" because Baker Ranches' claims "relate[d] to the United States' reserved water rights" and "do not stem from the United States' acquired decreed rights." We disagree with this reasoning. Plaintiffs are suing to enforce their own rights under the Baker-Lehman Decree. Plaintiffs are not bringing any claims regarding the United States' reserved rights; it is the United States that now alleges the existence of reserved water rights to claim that the Baker-Lehman Adjudication was not comprehensive. The water rights that Plaintiffs seek to enforce are interconnected with all other water rights on the Baker-Lehman Creeks.

proceedings, Congress sought to prevent it from receiving the protection of state water law on one hand while flouting it with impunity on the other. *See, e.g., Hearings on S.18*, 82d Cong. 44 (1951) (statement of Rep. Yorty) (the United States “should take the same disabilities as well as take the benefits” of private appropriators). The United States’ own water rights enjoy the protection of the Baker-Lehman Decree; the United States must therefore respect the water rights of others under the very same Decree.

Second, even if the United States had not purchased rights adjudicated under the Baker-Lehman Decree, the distinction that the United States attempts to draw between reserved rights and adjudicated rights is untenable. The Supreme Court had no issue applying the McCarran Amendment when the United States held pre-McCarran Amendment reserved rights, just as it does here. *See Eagle Cnty.*, 401 U.S. at 523 (holding that the McCarran Amendment waived sovereign immunity where the United States held “reserved waters for the White River National Forest, withdrawn in 1905”). And nothing in *Te-Moak*’s reasoning limited its holding to cases where the United States is a later purchaser of adjudicated rights. *See* 339 F.3d at 812–13 (reasoning that a waiver of sovereign immunity does not implicate the fair notice concerns associated with retroactively applying laws governing the conduct of private citizens, and the Amendment’s use of the present tense indicates that Congress intended it to be applied retroactively). No courts or commentators have read *Te-Moak* as the government suggests.

C. Baker Ranches is Suing for the Administration of Water Rights

The McCarran Amendment “only controls in cases ‘adjudicati[ng]’ or ‘administ[ering]’ water rights.” *Klamath Irrigation Dist. v. U.S. Bureau of Reclamation*, 48 F.4th 934, 946 (9th Cir. 2022) (alterations in original). The United States argues that even if the Baker-Lehman Adjudication was comprehensive, the McCarran Amendment does not apply because Plaintiffs’ “requested relief far exceeds water-rights administration.” *See* 43 U.S.C. § 666(a).

It is clearly administration of a decree “to execute [that decree], to *enforce its provisions*, to resolve conflicts as to its meaning, to construe and to interpret its language.” *S. Delta Water Agency v. U.S. Dep’t of the Interior*, 767 F.2d 531, 541 (9th Cir. 1985) (emphasis added) (quoting *United States v. Hennen*, 300 F. Supp. 256, 263 (D. Nev. 1968)). Many of Plaintiffs’ requests for relief are simply requests to enforce provisions of the Baker-Lehman Decree. The Decree provides that “each and every water user of the Baker and Lehman Creeks stream system” is enjoined “[f]rom at any time *diverting or using* or preventing or *obstructing the flow*, in whole or in part, in or along its natural channel, of any of the water or said stream system.” Plaintiffs ask that the United States “shall refrain from diverting and using tributary water from Baker and Lehman Creeks at the campgrounds,” and “refrain from diverting water in any manner other than as allowed under the Decree.”

Plaintiffs also request more extensive relief, including requiring the United States “move rocks and debris to block caves, sinks and seeps” and “redirect water back into the channel,” and enjoining it from “planting vegetation in the riparian corridors of Baker and Lehman Creeks.” According

to the United States, Plaintiffs seek not to administer their decreed water rights, but to “enjoin federal land-management practices that do not implicate the administration of water rights.” But even this more extensive relief is merely a means of enforcing Baker Ranches’ decreed water rights, and in fact one that the Decree itself contemplated. To protect decreed rights, the Baker-Lehman Decree required every water user to “keep . . . the main stream channel through his land[] reasonably clean of weeds, vegetation, and deposits of silt” and “maintain” the channels to facilitate “minimum loss of conveyed water.” Blocking caves, sinks and seeps is a form of “maintaining” channels to facilitate “minimum loss of conveyed water,” and planting vegetation in riparian corridors is inconsistent with keeping the channel “reasonably clean” of vegetation.

III. CONCLUSION

The Baker-Lehman Adjudication was “comprehensive,” and Plaintiffs sue for the “administration” of the water rights they hold under the Baker-Lehman Decree. We therefore hold that the McCarran Amendment waives the United States’ sovereign immunity from this suit.⁷

REVERSED AND REMANDED.

⁷ The dissent suggests that our interpretation of the McCarran Amendment’s scope serves to “sanction . . . unprecedented disruption of the national park system.” We do not opine in any way on the merits of Plaintiffs’ claims, but merely hold that the suit is not barred by sovereign immunity.

Rawlinson, Circuit Judge, dissenting:

I respectfully but emphatically dissent from the majority opinion reversing the decision of the district court, which faithfully applied the law governing this case in determining that the sovereign immunity of the United States was not waived by the McCarran Amendment. The plain language of the statute, Ninth Circuit precedent, and Supreme Court precedent support the district court's decision.

This case involves competing water rights originating from the Baker-Lehman Creeks in northern Nevada. As the majority notes, although the water initially flowed through public lands, in more recent years the streams flow through Great Basin National Park, a part of the federal park system. *See Majority Opinion*, p. 6.

In 1925, and in accordance with applicable Nevada statutes, the Nevada State Engineer commenced a proceeding to determine the respective water rights of claimants to streams of water flowing through the Baker-Lehman Creeks. The State Engineer published notice to anyone having an interest in water rights flowing through the Baker-Lehman Creeks that they were required to file a claim with the State Engineer. The United States did not file a claim.¹ Nevertheless, the Nevada proceedings continued,

¹ The majority opinion repeatedly references the absence of the United States from the Nevada proceedings. *See e.g.*, *Majority Opinion*, p. 11 ("The United States did not participate or assert any claims"); *id.* ("Again, the United States did not participate"); *id.* p. 12 ("[T]he United States now claims reserved water rights, which . . . were not adjudicated or recognized in the Baker-Lehman Decree."); *id.* pp. 16-17 (noting that in the "Baker-Lehman Adjudication" in the Nevada administrative system and Nevada courts, "[t]he United States chose not to assert any claims, raise any exceptions or apply for any modifications to the . . . Baker-

culminating in the Baker-Lehman Decree issued on October 16, 1934.² It is this Decree that forms the basis for the claims of Baker Ranches in this case.

Under the auspices of the Baker-Lehman Decree, Baker Ranches has trespassed onto United States park land and engaged in extensive construction activities, including moving rocks and debris, and cleaning and straightening the creek channel. These activities are sometimes conducted with heavy equipment such as bulldozers.³

Prior to removal of these proceedings to federal court, Baker Ranches sought an order in Nevada state court to prohibit the Park Service's fire suppression activities and other authorized Park Service activities that, according to Baker Ranches, obstruct waterflow. Baker Ranches also sought permission to trespass onto federal park lands and

Lehman Decree"). However, because these proceedings occurred prior to the express waiver of the United States' sovereign immunity in the McCarran Amendment, the Nevada courts had no jurisdiction to adjudicate water rights belonging to the United States. *See Orff v. United States*, 358 F.3d 1137, 1142 (9th Cir. 2004) ("Any claim for which sovereign immunity has not been waived *must be dismissed* for lack of jurisdiction.") (citation omitted) (emphasis added). Because any action involving the United States would have been dismissed for lack of jurisdiction, these references to the United States' lack of participation in the Nevada proceedings are red herrings. *See id.*

² It is undisputed that the Baker-Lehman Decree did not adjudicate the water rights of the United States. *See Majority Opinion*, p. 12 (commenting that the reserved water rights of the United States "were not adjudicated or recognized in the Baker-Lehman Decree").

³ The United States makes a plausible argument that the trespass onto federal land and engagement in extensive construction activities go far beyond the administration of water rights. Because I conclude that the United States did not waive its sovereign immunity, I do not address this argument.

manipulate waterflow within the confines of Great Basin National Park, all in an effort to increase the waterflow onto the Baker Ranches property. In addition, Baker Ranches requested that the Federal Government be precluded from pursuing trespass charges for its unauthorized entry onto federal land. Finally, Baker Ranches sought to enjoin the United States from planting vegetation in the riparian corridors of the Baker-Lehman Creeks, otherwise consuming tributary waters, or removing trees or other vegetation in the Baker-Lehman Creeks channels. The United States vehemently challenges these requests on the basis that it did not waive its sovereign immunity and is thus not bound by the Baker-Lehman Decree. Unlike the majority, I agree with the United States.

We start from the unquestioned premise “that the United States is a sovereign, and, as such, is immune from suit unless it has expressly waived such immunity and consented to be sued.” *Orff*, 358 F.3d at 1142 (citation omitted). Importantly, “[w]e strictly construe *in favor of the government* the scope of any waiver of sovereign immunity.” *Id.* (citation omitted) (emphasis added); *see also Metropolitan Water Dist. of Southern Calif. v. United States*, 830 F.2d 139, 143 (9th Cir. 1987) (per curiam), *affirmed by California v. United States*, 490 U.S. 920 (1989) (per curiam) (“Waivers of sovereign immunity are construed strictly and narrowly. . . .”) (citation omitted).⁴ As stated above, “[a]ny claim for which sovereign immunity has not been waived must be dismissed for lack of jurisdiction.” *Id.* (citation omitted).

⁴ The majority does not mention, much less apply, this stringent standard.

Because the majority and Bakers Ranches are of the view that passage of the McCarran Amendment expressly waived the United States' sovereign immunity for the proceedings culminating in the Baker-Lehman Decree, the provisions of that statute are pivotal.

The McCarran Amendment provides in pertinent part:

Suits for adjudication of water rights

(a) Joinder of United States as defendant.

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. . . .

43 U.S.C. § 666 (1952) (emphasis added).

It is crucial to acknowledge that the provisions of the McCarran Amendment apply only when the United States is “a party” to the proceeding adjudicating or administering water rights. *Id.*⁵ The proceeding in this case is the Baker-Lehman Decree. And as the majority pointed out repeatedly, the United States decidedly was not a party to the proceedings resulting in the Baker-Lehman Decree. Thus, under the plain language of the statute, the United States did not waive its sovereign immunity. *See id.* “[S]trictly construe[d] *in favor of the government*,” as our precedent requires, the plain language of the statute supports the argument of the United States that it did not waive its sovereign immunity. *Orff*, 358 F.3d at 1142 (citation omitted) (emphasis added).

Without addressing the plain language of the statute, and without “[s]trictly constru[ing]” the language of the statute “in favor of the government;” *id.*, the majority nevertheless concludes that the McCarran Amendment waives the United States’ sovereign immunity. *See Majority Opinion*, pp. 15-23.

As an initial matter, I agree with the majority that the McCarran Amendment “waives sovereign immunity only for the administration of rights determined in a ‘comprehensive’ adjudication.”⁶ *Majority Opinion*, p. 15. However, I part company with the majority regarding the definition of what constitutes a comprehensive adjudication of water rights.

⁵ The majority ignores this language in the statute.

⁶ Interestingly, the majority cites *Orff* for this proposition, but makes no mention of the instruction in *Orff* to “strictly construe in favor of the government the scope of any waiver of sovereign immunity.” 358 F.3d at 1142 (citation omitted).

It appears that the majority uses the term “comprehensive” in the sense of a state regulatory scheme that “replace[s] piecemeal adjudication” of water rights. *Majority Opinion*, p. 16. However, we have more precisely defined the concept of “comprehensive” in our precedent to only encompass determinations that resolve the rights of *all* claimants to a stream of water.

The majority takes issue with the conclusion that a water rights adjudication is not comprehensive unless it “resolve[s] the rights of *all* claimants to a stream of water.” *Majority Opinion*, p. 17. But this conclusion is embodied in our precedent. See *United States v. State of Oregon*, 44 F.3d 758, 768-69 (9th Cir. 1994) (“[T]he United States refers to cases stating that the [McCarran] Amendment’s waiver is limited to ‘general’ or ‘comprehensive’ adjudications. *These cases make clear* that the [water] adjudication must include the undetermined claims of all parties with an interest in the relevant water source”) (emphasis added). For good measure, in *State of Oregon*, we cited to *Dugan*, a case the majority attempts to distinguish. See *Majority Opinion*, pp. 21-22. But see *State of Oregon*, 44 F.3d at 768 (citing to *Dugan* as one of the cases making “clear that the [water] adjudication must include the undetermined claims of all parties with an interest in the relevant water source”).

The majority also seeks to distinguish *Orff*. See *Majority Opinion*, pp. 20-21. However, it is undeniable that in *Orff* we concluded that the lawsuit was “not the type of suit contemplated by the McCarran Amendment.” See 358 F.3d at 1143. Citing *Metropolitan Water Dist.* and *Dugan*, we explained that the lawsuit was “not the type of suit contemplated by the McCarran Amendment” because “[t]his

is not a suit to adjudicate the rights of all claimants on a stream.” *Id.*

In *Orff*, we addressed a dispute between the Westlands Water District and the United States. In discussing whether the action was “the type of suit contemplated by the McCarran Amendment,” *id.* at 1143, we held that the McCarran Amendment only authorizes actions “to adjudicate the rights of *all* claimants on a stream.” *Id.* (citation omitted) (emphasis added). We relied upon *Metropolitan Water Dist.*, 830 F.2d at 144, and *Dugan v. Rank*, 372 U.S. 609, 617-18 (1963).

In *Metropolitan Water Dist.*, which was affirmed by the United States Supreme Court, we addressed a challenge to the resurveying of boundaries between the Fort Mojave reservation and other public land in Southern California. *See* 830 F.2d at 140. The resurveying affected the water supply of several entities with lower priorities than the Fort Mojave Indian Tribe, including the Metropolitan Water District. *See id.* at 141.

One of the jurisdictional bases asserted by the Metropolitan Water District was the McCarran Amendment. *See id.* at 142. In resolving this jurisdictional issue, we held that the McCarran Amendment waives the United States’ sovereign immunity “only [for] suits to adjudicate the rights of *all claimants* to a stream.” *Id.* at 144 (citing *Dugan*, 372 U.S. at 617-18) (emphasis added). Stated differently, if a case does not adjudicate the water rights of all parties, the McCarran Amendment provides no basis for jurisdiction over the United States. *See id.*

The Supreme Court made this point explicitly in *Dugan*, only eleven years after passage of the McCarran Amendment. In that case, *some* water rights claimants along

the San Joaquin River, in the Central Valley of California, sought to enjoin the United States from storing and diverting water at the Friant Dam. *See* 372 U.S. at 610.⁷ After the district court “held that the United States was a proper party under the McCarran Amendment,” the Ninth Circuit reversed. *Id.* at 616-17. We concluded that the United States could not be joined as a party without its consent. *See id.* at 617. The Supreme Court affirmed the Ninth Circuit’s ruling, noting that there was no need to “consider the contention at length.” *Id.* at 617-18. In other words, the proposition was so well settled that no lengthy discussion of the issue was warranted. *See id.*

The Supreme Court explained:

“We go directly to the question of joinder of the United States as a party. We agree with the [Ninth Circuit] Court of Appeals on this issue and therefore do not consider the contention [that jurisdiction existed under the McCarran Amendment] at length. It is sufficient to say that the provision of the McCarran amendment relied upon by the [water claimants] and providing that the United States may be joined in suits for the adjudication of rights to the use of water of a river system or other source is not applicable here.

Id. at 617-18 (citation, footnote reference, and internal quotation marks omitted).

⁷ Only the water claimants below the Friant Dam were parties to the action. *See id.*

The Supreme Court explained that the McCarran Amendment was not applicable because the case before it did not “involv[e] a general adjudication of *all of the rights of various owners on a given stream*.” *Id.* at 618 (quoting S. Rep. No. 755, 82d Cong., 1st Session 9 (1951)) (emphasis added).⁸ The Supreme Court explicitly relied on “the fact that all of the claimants to water rights along the river [were] not made parties.” *Id.* The same is true in this case—the United States was not made a party to the proceedings culminating in the Baker-Lehman Decree. Therefore, construing the McCarran Amendment waiver of sovereign immunity strictly, narrowly, and in favor of the United States, as we must, *see Orff*, 358 F.3d at 1142, *see also Metropolitan Water Dist.*, 830 F.2d at 143, the Supreme Court’s decision in *Dugan* compels the conclusion that the McCarran Amendment did not waive the United States’ sovereign immunity for a proceeding to which it was not a party. *See Dugan*, 372 U.S. at 617-18 (affirming the Ninth Circuit’s decision so holding). Accordingly, the majority’s reliance on *Dugan* to support a determination that the United States waived its sovereign immunity is simply misplaced.

In *Orff*, we relied on *Dugan* and *Metropolitan Water Dist.* in concluding that the action at issue was “not the type of suit contemplated by the McCarran Amendment.” 358 F.3d at 1143 & n.3. We followed our reasoning and that of

⁸ Interestingly, this is the same legislative history quoted by the majority. *See Majority Opinion*, p. 17 (citing *Eagle Cnty.*, 401 U.S. 525 (quoting S. Rep. No. 755, 82d Cong., 1st Session 9)). However the majority parrots the language without adhering to the Supreme Court’s interpretation of that language: The McCarran Amendment does not apply when, as in this case, the water adjudication did not determine “*all of the rights of various owners on a given stream*.” *Dugan*, 372 U.S. at 618 (quoting S. Rep. No. 755, 82d Cong., 1st Session 9 (1951)).

the Supreme Court in concluding that the dispute between the United States and “[l]andowners and water users within the Westlands district” was “not a suit to adjudicate or administer the rights of all claimants on a stream.” *Id.* at 1141, 1143.

We determined that “finding otherwise and granting waiver under [the McCarran Amendment] in this case would still be counter to the holdings of *Metropolitan Water Dist.* and *Dugan*, which expressly *limit the government’s consent in waiving* sovereign immunity under the McCarran Amendment to those cases that implicate the rights of *all* claimants on a stream.” *Id.* at 1143 n.3 (first emphasis added). The majority’s reasoning is in direct conflict with this binding precedent.

None of the cases cited by the majority call into question this binding precedent. The majority relies heavily on *State Engr. v. S. Fork Band of the Te-Moak Tribe of W. Shoshone Indians of Nev. (Te-Moak)*, 339 F.3d 804 (9th Cir. 2003), decided one year prior to *Orff*. In *Te-Moak*, no issue was raised regarding whether the adjudication addressed the claims of all parties, and our decision in *Te-Moak* did not discuss that issue in any manner. *See* 339 F.3d at 812 (holding only that the McCarran Amendment applies retroactively.) Tellingly, our decision in *Orff* did not discuss or distinguish *Te-Moak* in holding that the McCarran Amendment does not apply absent adjudication of the claims of all parties. *See* 358 F.3d at 1143. Rather, we relied on *Metropolitan Water Dist.* and *Dugan* “which expressly limit the government’s consent in waiving sovereign immunity under the McCarran Amendment to those cases that implicate the rights of *all* claimants on a stream.” *Id.* at 1143 n.3 (emphasis in the original). It is reasonable to infer from

this language that we did not consider the decision in *Te-Moak* to be “counter to the holdings of *Metropolitan Water Dist.* and *Dugan*” because there was no indication in *Te-Moak* that less than all the claimed rights were administered in the water decree. *Id.*

The other cases cited by the majority are similarly distinguishable. In *State of Oregon*, proceedings were commenced in 1975, almost twenty-five years after enactment of the McCarran Amendment. *See* 44 F.3d at 762. Therefore, no issue arose of retroactive application of the amendment or of less than all claims being administered. *See id.* at 765-66 (analyzing whether “Oregon’s adjudication of water rights . . . constitute[s] a ‘suit’ . . . rather [than] an ‘administrative proceeding’ outside the plain language of the McCarran Amendment”).

The majority reasons that the McCarran Amendment applies retroactively and thus “waives the United States’ immunity from suit for the administration of water rights . . . acquired before the law came into effect.” *Majority Opinion*, pp. 19-20. This reasoning relies on *Te-Moak*, the First Circuit’s decision in *United States v. Puerto Rico*, 287 F.3d 212 (1st Cir. 2002), and the Supreme Court decision in *United States v. Dist. Ct. in & for Eagle Cnty. (Eagle Cnty. II)*, 401 U.S. 520 (1971). *See id.* at 20. However, these cases do not support a conclusion that the United States waived its sovereign immunity under the facts of this case.

As previously discussed, in *Te-Moak*, decided one year prior to *Orff*, no issue was raised or addressed regarding whether the adjudication of water rights included the claims of all parties. *See Te-Moak*, 393 F.3d at 812-13. In addition, in *Te-Moak* the claims of the United States arose after the

water rights adjudication, unlike in this case where the water rights claimed by the United States existed prior to the challenged water rights adjudication. *See id.* at 807 (noting that the decree “encompassed five ranches that were *later* purchased by the federal government”) (emphasis added).

One year later in *Orff*, we expressly and explicitly held that the McCarran Amendment only waives the sovereign immunity of the United States when the water rights of “all claimants on a stream” are adjudicated. 358 F.3d at 1143 n.3 (emphasis in the original). *See also Metropolitan Water Dist.*, 830 F.2d at 144 (concluding that the McCarran Amendment “authorize[s] . . . only suits to adjudicate the rights of all claimants on a stream”) (citing *Dugan*, 372 U.S. at 617-18).

The First Circuit’s decision actually supports the view of the United States. In its decision, the First Circuit recognized that any waiver under the McCarran Amendment “must be strictly construed in favor of the United States, and not enlarged beyond what the language of the statute requires. . . .” *United States v. Puerto Rico*, 287 F.3d at 217 (quoting *United States v. Idaho*, 508 U.S. 1, 7 (1993)).⁹ In

⁹ *United States v. Idaho* involved a water rights adjudication commenced decades after enactment of the McCarran Amendment, and the United States was joined as a party. *See* 508 U.S. at 4 (noting that the petition commencing the water rights adjudication naming the United States as a party “followed the enactment by the Idaho Legislature in 1985 and 1986 of legislation providing for the Snake River Basin Adjudication”). Therefore, there was no occasion for the Supreme Court to address application of the McCarran Amendment to adjudications when all claimants to water rights are not made parties. *cf. id.* (“The Director of the Idaho Department of Water Resources filed a petition in the District Court of the Fifth Judicial District naming the United States *and all other water users as defendants*. . . .”) (emphasis added).

addition, the First Circuit observed that “the McCarran Amendment applies to water rights acquired prior to 1952, so long as *the suit against the government is commenced subsequent to that date.*” *Id.* (emphasis added). But the Baker-Lehman Creeks suit was not “commenced subsequent to [1952].” *Id.* Rather, the water rights adjudication was commenced more than twenty-five years before 1952. Therefore, the First Circuit decision does not support a waiver of sovereign immunity in this case.

Finally, in *Eagle County II*, the United States argued that the McCarran Amendment did not waive its sovereign immunity because the Amendment contemplated waiver “only for the adjudication of water rights which the United States acquired pursuant to state law,” rather than “reserved water rights based on withdrawals from the public domain.” 401 U.S. 522-23. The Supreme Court rejected this argument. The Supreme Court also characterized and rejected as “extremely technical” the argument that, in a supplemental adjudication, “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 [the McCarran Amendment] is not present.” *Id.* at 525. This ruling was made exclusively in the context of a supplemental adjudication rather than enforcement of an initial adjudication, as is presently before us. Indeed, in *Eagle County II*, the Supreme Court declined to opine on the merits of the initial adjudication. *See id.* at 525-26 (“The absence of owners of previously decreed rights may present problems going to the merits, in case there develops a collision between them and any reserved rights of the United States. 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"). The Supreme Court referenced the observation by the Colorado state court that the state court was

not determining whether the United States has reserved water rights . . . 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.

Id. at 526 n. 7 (quoting *United States v. District Ct. in and for Eagle Cnty.*, 458 P.2d 760, 770 (Colo. 1969) (en banc) (*Eagle Cnty. I*) (footnote reference omitted).

The Colorado Supreme Court in *Eagle County I* expressly declined to definitively resolve the United States' argument that the state court lacked jurisdiction over it in the supplemental adjudication due to the absence of the United States from the prior water adjudications. *See Eagle Cnty. I*, 458 P.2d at 771. The Colorado Supreme Court noted that in its brief the United States cited to Colorado statutes and court decisions holding that water adjudication decrees could not "be attacked after four years and in a subsequent water adjudication a priority cannot be given to a use of water prior to the date of the last adjudicated decree." *Id.*

The Colorado Supreme Court observed that the United States quoted from *Arizona v. California*, 298 U.S. 558, 571-72 (1936), that "no decree rendered in its absence can bind or affect the United States." *Id.*

The Colorado Supreme Court further quoted the United States' brief:

It is self-evident that supplemental water adjudications are not actions to which the United States has consented. It would be absurd to hold that the United States is bound by prior adjudications to which it was not a party and is thus now bound by proceedings in which it cannot have its rights adjudicated. Such a holding would convert [the McCarran Amendment] into an instrument of injustice that would destroy the rights of the United States. It is for this reason that [the McCarran Amendment] consents only to an adjudication in which all users are before the court.

Id.

The Colorado Supreme Court responded to the United States' argument by stating that the language quoted from *Arizona v. California* "was not made in connection with an adjudication of water rights by a state court¹⁰ and here again we are going to wait until the matter is argued more fully and specifically before making a determination as to whether [the quoted language] applies to Colorado water adjudications." *Id.* Nevertheless, the Colorado Supreme

¹⁰ *Arizona v. California* involved an original petition to the United States Supreme Court to fix "the quantum of Arizona's equitable share of the water flowing in the Colorado river, subject to diversion and use." 298 U.S. at 559.

Court professed its belief: “Offhand, we are inclined to believe that [the quoted language] does apply.” *Id.*

The Colorado Supreme Court then referenced one of its earlier cases, *West End Irrigation Co. v. Garvey*, 184 P.2d 476 (Colo. 1947) (en banc) for the proposition that “to the extent a decree is beyond the authority of the court, it cannot be made valid by any rule of res judicata or any statutes of limitation. It is no more effectual after four years than before.” *Id.* Based on this prior ruling, the Colorado Supreme Court opined: “It may well be that the same principle should be applied to [water] appropriations made by the United States which have not been included in previous adjudications to which the United States was not a party.” *Id.*

It was in this context that the United States Supreme Court in *Eagle County II* characterized the government’s sovereign immunity argument as “extremely technical.” 401 U.S. at 525.

In sum, the context in *Eagle County II* involved:

- A supplemental adjudication rather than an initial adjudication of water rights. *See id.*
- All interested claimants joined as parties. *See id.*
- The merits of the United States claims not subject to adjudication. *See id.* at 526.
- Preservation of the United States’ ability to assert the priority of its water rights

following the supplemental adjudication.
See Eagle Cnty. I at 770.¹¹

In contrast, Baker Ranches is seeking to enforce an initial adjudication to which the United States was not a party *and* most importantly, under the Nevada statutory scheme, the water rights previously adjudicated cannot be reassessed in a supplemental adjudication. *See Majority Opinion*, p.19 n.4. Because of this entirely different context, *Eagle County II* is not governing precedent for this case. Rather, the Supreme Court's decision in *Dugan*, and our binding precedent in *Orff* and *Metropolitan Water Dist.* compel the conclusion that the United States did not waive its sovereign immunity.

Finally, the majority asserts that it would be “absurd” to permit the United States to challenge “settled” pre-McCarran Amendment decrees in Nevada. *Majority Opinion*, p. 18. However, those pre-McCarran Amendment decrees were “settled” at a time when the United States had not waived its sovereign immunity. And under the language of the McCarran Amendment, it does not apply when the adjudication did not include the United States as a party. *See* 43 U.S.C. § 666 (“The United States, *when a party to any such suit*, shall be deemed to have waived [its sovereign immunity]”) (emphasis added); *see also Dugan*, 372 U.S. at 617-18; *Orff*, 358 F.3d at 1141, 1143. This outcome is especially indicated in view of our obligation to construe the McCarran Amendment strictly, narrowly, and in favor of the

¹¹ This portion of *Eagle County I* refutes the majority's assertion that “the United States was bound to respect the water rights determined in the preceding adjudication.” *Majority Opinion*, p. 19.

government. *See Orff*, 358 F.3d at 1142; *see also Metropolitan Water Dist.*, 830 F.2d at 143.

In any event, it was the decided intent of Congress that the McCarran Amendment apply only when *all* parties were included in the challenged water adjudication. In *Eagle County II*, the United States Supreme Court noted that the “whole community of claims is involved” and quoted Senator McCarran, Chairman of the Committee reporting on the bill, on the intent of the McCarran Amendment. *See* 401 U.S. at 525. Senator McCarran’s words reflect an express intent to waive sovereign immunity only when all parties are permitted to present their claims. He was quoted by the Supreme Court as stating that the McCarran Amendment:

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.

Id. (emphasis added).

The Supreme Court agreed with this statement in *Dugan*, holding that the McCarran Amendment does not apply to a pre-McCarran water decree that did not include the United States as a party. *See Dugan*, 372 U.S. at 617-18.

And speaking of intent, it certainly was not the intent of Congress that the McCarran Amendment be interpreted to facilitate the trespass of private landowners onto public

parklands and engage in diversion of water from federal property, extensive excavation of federal lands, and displacement of vegetation to the detriment of the park-going public. The majority does not and cannot cite any portion of the McCarran Amendment or any case that would sanction this unprecedented disruption of the national park system.¹²

In conclusion, under the language of the statute, expressed legislative intent, Supreme Court authority, and our precedent, the United States did not waive its sovereign immunity for the Baker-Lehman Creeks adjudication. Thus, the Baker-Lehman Decree does not bind the United States. The district court got it right. The majority got it wrong. I respectfully dissent.

¹² The majority attempts to deny the disastrous effect of its decision by declaring that it expresses no view on the merits of Baker Ranches claims. *See Majority Opinion*, p.25 n.7. But by requiring the United States to comply with the Baker-Lehman Creeks adjudication, the effect is the same.