

DESCRIPTIVE INVENTORY: National Park Service Reserved Lands and Reserved Water Rights

Whiskeytown National Recreation Area, California

The Whiskeytown National Recreation Area is part of a truly gigantic recreational complex in Northern California. Along with the Shasta and Trinity areas (administered under the Secretary of Agriculture in cooperation with the Secretary of Interior's administration of Whiskeytown) this national recreation area is accessible to over 5 million people within a 3½ hour drive. Whiskeytown comprises over 42,000 acres of which approximately 14,000 acres were withdrawn from public domain or national forest lands and to which a Federal Reserve Water Right (FRWR) should apply. The major feature of the area is the 3,200 acre Whiskeytown Lake (note that Trinity dam creates Clair Engle Lake which is 5 times larger than Whiskeytown Lake; and Shasta lake is almost 10 times larger). The entire area is rugged, mountainous terrain.

Historically the Whiskeytown area has known man's presence since 7000 B.C.. Some permanent habitations were established as early as 900 A.D. by the Wintu Indians. Europeans first reached the vicinity in 1828 when "mountain men" such as Jedediah Smith explored the area. Twenty years later the gold rush brought many prospectors and a few settlers. Some of the historic buildings, such as Tower House, still remain from that colorful period.

The express purpose for the establishment of Whiskeytown NRA was "to provide... for the public outdoor recreation use and enjoyment of the Whiskeytown, Shasta, Clair Lake, and Lewiston reservoirs and surrounding lands... by the present and future generations." (79 Stat. 1295, November 8, 1965) Further language calls for the "conservation of scenic, scientific, historic, and other values contributing to the public enjoyment of such lands and waters." (Id) Whiskeytown is to be administered by the Secretary of the Interior, while Shasta-Trinity are to be administered by the Secretary of Agriculture. The act of establishment clearly states that the "two Secretaries shall coordinate their planning and administration of the respective units in such a manner as to provide integrated management policies...." (Id)

The entire act is drawn to insure that the area will be preserved and developed as a recreational area for the public enjoyment and use. A variety of public uses are mentioned in the act and have been expanded to include such diverse activities as hunting and fishing; motor boating and water skiing; and hiking and camping. (See Final Master Plan, Whiskeytown/Shasta/Trinity National Recreational Area, July 1976)

Land Status and Water Rights

Lands which are removed from the public domain and whose ownership by the Federal Government has never been interrupted by private owners or otherwise carry a Federal Reserve Water Right (FRWR). Winters v. U.S., 207 U.S. 564 (1908). This Winter's Doctrine permits the federal government

to appropriate water sufficient to satisfy the needs and intents for which the land was reserved or dedicated. These needs and intents are those expressed in the act establishing the park or dedicating the land to some Congressional or Executive purpose. The right to these waters dates from the establishment date of the act creating the park or monument.

The Winters Doctrine has been qualified somewhat by recent U.S. Supreme Court decisions. Under the Cappaert v. U.S., 426 U.S. 128 (1976) the right was deemed to include even ground water when such was hydrologically connected to a park source and that source was a necessary and explicit part of the original purpose for the establishment of the site. Then in the U.S. v. New Mexico, 438 U.S. 696 (1978) the Supreme Court interpreted the Doctrine to include a FRWR only for such water as was necessary to satisfy the purposes and intents clearly expressed in the language of the establishment act. The latter interpretation requires that some clear language be present in the establishment act calling for the use or purposes to which the FRWR is to be applied. Ibid at 698-700.

Since the establishment act for Whiskeytown expressly states the purpose of the area as for the recreational enjoyment of "present and future generations" and to conserve the "scenic, scientific, historic, and other values contributing to public enjoyment," these would be the proper uses to which water could be appropriated under any FRWR. (See 79 Stat. 1295, November 8, 1965)

The FRWR would apply only to those sources arising on land which has always been owned and controled by the federal government and that right would take the establishment date of the act as its own (i.e. November 8, 1965). Such a FRWR should apply to lands removed from the Bureau of Land Management and Bureau of Reclamation that were dedicated to the public enjoyment as a part of Whiskeytown NRA. The breakdown of the Whiskeytown land ownership is as follows:

Federal Land: FRWR should apply		13,746.50 acres
State Lands: No FRWR should apply		60.10 acres
Private Lands: No FRWR should apply		
	(approximately)...	28,193.40 acres
Total:	(approximately)...	42,000.00 acres

Water Sources on Site

There are no documented water source dockets on file for the Whiskeytown National Recreation Area. However, the area contains a substantial body of water in the reservoir and numerous streams and creeks. The potential for ground water has been judged to be minimal by the geologic/hydrologic investigations. (See Report of Field Trip to Whiskeytown National Recreation Area, 12/13-14/78) This same Field Trip Report also mentions a water right per a deed to "residence #154" but no docket has been developed for this source or any other.

As visitor use increases, especially in the more remote backcountry, it may become necessary to develop water sources in these remote areas.



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Where streams or creeks are not available this will most likely be accomplished by the development of springs and seeps. Since the productivity of a well is rather low, it is unlikely such would be attempted in most situations. Much of the remote areas would fall under the FRWR. As such they could be developed to satisfy the purposes expressed in the establishing act. Further, water sources may have to be developed for planting and soil stabilization in many areas of the park. Again a FRWR may be applicable to some of these sites.

Summary

A significant portion (approximately one third) of the land in Whiskeytown National Recreation Area should qualify for a FRWR. Most of this area is in the remote sections of the park away from the Lake location. Such a water right may be important for the development of backcountry water sources for campers, hikers, or for use in planting and soil stabilization.

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