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**SENATE JOINT MEMORIAL 8014**

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**State of Washington**

**54th Legislature**

**1995 Regular Session**

**By** Senators Fraser, Morton, Winsley and Rasmussen

Read first time 02/03/95. Referred to Committee on Energy,  
Telecommunications & Utilities.

1 TO THE HONORABLE BILL CLINTON, PRESIDENT OF THE UNITED STATES, AND  
2 TO THE PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF  
3 REPRESENTATIVES, AND TO THE SENATE AND HOUSE OF REPRESENTATIVES OF THE  
4 UNITED STATES, IN CONGRESS ASSEMBLED:

5 We, your Memorialists, the Senate and House of Representatives of  
6 the State of Washington, in legislative session assembled, respectfully  
7 represent and petition as follows:

8 WHEREAS, Congress traditionally has deferred to state regulation of  
9 water; and

10 WHEREAS, Congress enacted the McCarran Amendment, 43 U.S.C. Sec.  
11 666, to allow the joinder of the United States in state general stream  
12 adjudications; and

13 WHEREAS, Congress intended the United States to be subject to the  
14 same procedures as all other water users joined in state stream  
15 adjudications; and

16 WHEREAS, Many of the western states' general stream adjudication  
17 procedures require claimants to pay a fee to offset a part of the  
18 state's expenses arising from state general stream adjudications; and

19 WHEREAS, Many of the western states are conducting general stream  
20 adjudications in state courts for the purpose of quantifying all water  
21 right claims in accordance with the McCarran Amendment; and

1           WHEREAS, The United States is a large claimant of water rights in  
2 these general stream adjudications; and

3           WHEREAS, The United States often provides legal representation of  
4 Indian tribes claiming reserved rights in state general stream  
5 adjudications, and these rights stem from agreements with the United  
6 States; and

7           WHEREAS, The adjudication of federal and Indian water right claims  
8 takes a great deal of the state courts' and state water rights  
9 agencies' time, effort, and resources; and

10           WHEREAS, In some instances, federal agencies have promised  
11 financial support to states in these adjudications which the western  
12 states have included in their budgets; and

13           WHEREAS, The United States has in the past paid adjudication filing  
14 fees in some western states; and

15           WHEREAS, The United States Supreme Court interpreted the McCarran  
16 Amendment as not waiving the United States' sovereign immunity to  
17 payment of state adjudication fees; and

18           WHEREAS, This suit by the federal government is contrary to  
19 Congress's intent to subject the United States to state adjudication  
20 procedures and to promises and assertions made by various federal  
21 officials to provide financial assistance to states for the conduct of  
22 the adjudication; and

23           WHEREAS, Equity and fairness dictate that the United States share  
24 the financial burden borne by other claimants and the state in funding  
25 these adjudications;

26           NOW, THEREFORE, Your Memorialists respectfully pray that Congress  
27 require federal agencies to pay state adjudication fees to the same  
28 extent as required of other claimants; and

29           BE IT RESOLVED, That Congress require the Bureau of Indian Affairs  
30 to pay state adjudication fees for Indian reserved claims to the same  
31 extent as required by other claimants; and

32           BE IT FURTHER RESOLVED, That Your Memorialists urge Congress to  
33 appropriate moneys for payments to states that have incurred costs as  
34 a result of federal or Indian reserved claims or objections to private  
35 claims in a state general stream adjudication for services that the  
36 respective states have provided to the federal government in  
37 quantifying its water rights.

38           BE IT RESOLVED, That copies of this Memorial be immediately  
39 transmitted to the Honorable Bill Clinton, President of the United

1 States, the President of the United States Senate, the Speaker of the  
2 House of Representatives, and each member of Congress from the State of  
3 Washington.

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