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For Immediate Release: October 23, 1979
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Interior Solicitor Leo M. Krulitz said today that any water needed for mineral development on western public lands will have to be acquired by developers through states systems and under applicable state law and not through the assertion by the United States of a federal water right.

Krulitz, speaking to the annual convention of the Wyoming Water Development Association in Casper, said it has been and continues to be the policy of the Carter Administration that the states must be allowed to allocate their water resources in their own way.

"President Carter's statement in Albuquerque earlier this month on state management of water resources left ID room for doubt about how this Administration feels on the question," said Krulitz. "The President pointed out that Western states' systems for allocating and

Managing water resources have evolved over decades, recognizing the high value and relative scarcity of the resource and must be protected."

Krulitz said another example of this administration's support for state water systems is the Interior Department's position on coal slurry pipelines. He said he recently testified before the House Interior Committee on a bill to authorize federal certification of such lines. In that testimony he supported a number of provisions aimed specifically at ensuring state water laws will not be circumvented. In addition, he urged the committee to adopt another provision to further toughen the language.

"The amendment I proposed ti.0uld make the matter absolutely clear," he said. "It would provide that all water rights needed for any coal slurry pipeline proposed under the bill must be acquired pursuant to state law--both procedural and substantive--before the

Secretary of the Interior may grant a certificate to build the line.

The same support for state systems was one of the major guidelines Interior attorneys used when drafting the Solicitor's Opinion on federal reserved and non-reserved water rights, Krulitz said.

"We knew that the states must be at the very center of the process, that the President wanted us to move as quickly as possible to eliminate the uncertainty about how much water the federal government was entitled to and to construe federal water rights in responsible way, rather than to advance highly speculative legal theories, " said the Solicitor. "I believe we achieved that. The conclusions in my opinion are logically consistent and are supported by the holdings of the Supreme Court."

Krulitz said that the Supreme Court's decision in the case of United States v. New Mexico forced federal land management agencies to re-examine federal water rights. Before that decision, federal agencies had assumed they could get 1IDSt of the water they needed to

carry out the mandates of Congress under the reserved rights doctrine. Dating from the landmark 1908 case of Winters v. United States, the doctrine holds that in setting aside federal lands for specific purpose, the Congress also set aside enough water to carry out those purposes. Though the original

case involved an Indian reservation, the Supreme Court applied the same principle to all federal reservations in the 1963 case, Arizona v. California.

"With the New Mexico case, we had to decide how we could obtain the water we needed," Krulitz said. "We rejected the creation of new federal reserves and new federal reserved rights. The federal reserved right is loaded with uncertainty. It is open-ended.

"The states have been complaining--justifiably, I think- for years about precisely these characteristics of the federal reserved water right. That's why we rejected this alternative. The one we finally decided to emphasize was the non-reserved right, perfected

under state procedures, for the water we need to carry out congressionally-mandated purposes."

Krulitz said the mu-reserved right fits easily into Western states' appropriative system for acquiring and perfecting water rights. The federal non-reserved right is dependent upon actual use. It is not open-ended and it cannot unexpectedly extinguish state water rights acquired after the federal claim is made. Under non-reserved rights, the federal government stands in line like all other water users and can claim, from unappropriated water only, no more that it needs to manage the public lands as the Congress has directed.