

APPENDIX A

APPENDIX A-1

One of the dams covered by this bill has sluice gates that are not operable. One of the dams covered by this bill has got a powerhouse so dangerous that the Bureau of Reclamation told its employees to stay away from it. One of the dams in this bill has got metal overflow tubes that have been rusted away. And one of the newest dams owned by the United States and the Colorado River has a concrete spillway with a right angle turn in it, and at the elbow of that turn the action of the water and tiny bubbles popping in that area have eroded away altogether the cement.

Now, all of these things are not a matter of finding fault or attributing blame. The job of the Congress is to address those problems and to address them sensibly. Here, we are addressing the repair of old dams. We have fought in the past over cost sharing, but here we are providing for cost sharing. This bill provides for the repair of old dams, some of which go back 50 and 60 and 70 years ago. What we have said here is that where the Federal design failure has caused the dam to be unsafe, repairs will be the responsibility of the Federal Government, just like the repair of a defective product is not the responsibility of the local shopowner, it is the responsibility of the manufacturer. In addition, where the repair work involves new and additional economic benefits, those benefits will be paid for by the users.

The sums authorized here will repair approximately 50 dams. This bill will bring all the Burec dams up to the Burec standards for structural safety. This sum is modest when you consider the preventative maintenance it will provide. By comparison, look at the costs of one single dam failure. Look at the Teton Dam. As a result of that failure, 11 lives were lost and claims against the United States totaled more than \$350 million. And Teton was a relatively rural area.

In closing, this legislation is absolutely critical, not just to the West that is entirely dependent upon it, but to the entire economy of this country that has reaped benefits decade after decade as a result of wise development of water resources in the arid West that has ultimately resulted in the growth of this Nation's economy. It is a critical and important piece of legislation and I urge my colleagues to support it. ●

● Mr. McCAIN. Mr. Speaker, I want to say just a few words in strong support of H.R. 1652, the Reclamation Safety of Dams Act.

While the bill now pending final congressional approval does impose a 15-percent cost-sharing requirement, it is entirely in keeping with the administration's, as well as Congress', case-by-case, project-by-project philosophy. The moneys contained in this legisla-

tion will provide the necessary funding to make structural repairs to some 50 federally built dams.

Mr. Speaker, this legislation is an investment in our country's future. It will prevent another catastrophe like the Teton Dam collapse in 1976, and more importantly, it illustrates that the Congress of the United States can act in a responsible and responsive manner before a national tragedy occurs.

Finally, Mr. Speaker, I want to comment on the many long hours of negotiation and compromise that has brought us to where we are today. Chairman UDALL, Congressman CHENEY, Congressman KAZEN, and numerous staff members deserve a great deal of credit for their dedication and perseverance in seeing the enactment by this Congress of the Reclamation Safety of Dams Act. ●

● Mrs. VUCANOVICH. Mr. Speaker, I rise in strong support of the safety of dams bill. H.R. 1652, the Reclamation Safety of Dams Act amendments, passed the House on March 20. The other body approved the bill yesterday with some modifications to the cost-sharing provisions. Given the importance of this bill, I believe we should move quickly in passing this legislation.

The cost-sharing provisions added by the other body are a fair compromise. We now have a situation where project beneficiaries will pay for 15 percent of the repair costs—and, I note, this provision will apply even where the Federal Government is responsible for the repairs. The bill already provided for cost sharing when additional benefits are created such as increased flood control or water supply.

In my district alone, there are three dams that have been determined to be unsafe and will be repaired under the Safety of Dams Program. We should all be aware that to delay is to take the chance that we will have a dam failure, similar to the Teton Dam failure in Idaho—for which the Federal Government was liable. The cost of delay is significantly more than the funds authorized by this bill—the failure to Teton Dam alone cost the Federal Government, and thus the American taxpayers, more than half the cost of this entire bill.

I therefore urge my colleagues to join me in concurring with the Senate amendments to H.R. 1652 so we can get on with this much-needed program. ●

Mr. SOLOMON. Mr. Speaker, I withdraw my reservation of objection.

Mr. UDALL. Mr. Speaker, I thank the gentleman.

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the Senate amendments to the bill, H.R. 1652.

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

There was no objection.

ARIZONA WILDERNESS ACT OF 1984

Mr. UDALL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4707) to designate certain national forest lands in the State of Arizona as wilderness, and for other purposes, with a Senate amendment thereto and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Strike out all after the enacting clause and insert:

That this Act may be cited as the "Arizona Wilderness Act of 1984".

TITLE I

Sec. 101. (a) In furtherance of the purposes of the Wilderness Act (16 U.S.C. 1131-1136), the following lands in the State of Arizona are hereby designated as wilderness and therefore as components of the National Wilderness Preservation System:

(1) certain lands in the Prescott National Forest, which comprise approximately five thousand four hundred and twenty acres, as generally depicted on a map entitled "Apache Creek Wilderness—Proposed", dated February 1984, and which shall be known as the Apache Creek Wilderness;

(2) certain lands in the Prescott National Forest, which comprise approximately fourteen thousand nine hundred and fifty acres, as generally depicted on a map entitled "Cedar Bench Wilderness—Proposed", dated August 1984, and which shall be known as the Cedar Bench Wilderness;

(3) certain lands in the Apache-Sitgreaves National Forest, which comprise approximately eleven thousand and eighty acres, as generally depicted on a map entitled "Bear Wallow Wilderness—Proposed", dated March 1984, and which shall be known as the Bear Wallow Wilderness;

(4) certain lands in the Prescott National Forest, which comprise approximately twenty-six thousand and thirty acres, as generally depicted on a map entitled "Castle Creek Wilderness—Proposed", dated August 1984, and which shall be known as the Castle Creek Wilderness;

(5) certain lands in the Coronado National Forest, which comprise approximately sixty-nine thousand seven hundred acres, as generally depicted on a map entitled "Chiricahua Wilderness—Proposed", dated March 1984, and which are hereby incorporated in and shall be deemed part of the Chiricahua Wilderness, as designated Public Law 88-577;

(6) certain lands in the Coconino National Forest, which comprise approximately eleven thousand five hundred and fifty acres, as generally depicted on a map entitled "Fossil Springs Wilderness—Proposed",

dated April 1984, and which shall be known as the Fossil Springs Wilderness;

(7) certain lands in the Tonto National Forest, which comprise approximately fifty-three thousand five hundred acres, as generally depicted on a map entitled "Four Peaks Wilderness—Proposed", dated April 1984, and which shall be known as the Four Peaks Wilderness;

(8) certain lands in the Coronado National Forest, which comprise approximately twenty-three thousand six hundred acres, as generally depicted on a map entitled "Galluro Wilderness Additions—Proposed", dated April 1984, and which are hereby incorporated in and shall be deemed a part of the Galluro Wilderness as designated by Public Law 88-577;

(9) certain lands in the Prescott National Forest, which comprise approximately nine thousand eight hundred acres, as generally depicted on a map entitled "Granite Mountain Wilderness—Proposed", dated April 1984, and which shall be known as Granite Mountain Wilderness;

(10) certain lands in the Tonto National Forest, which comprise approximately thirty-six thousand seven hundred and eighty acres, as generally depicted on a map entitled "Hellsgate Wilderness—Proposed", dated August 1984, and which shall be known as the Hellsgate Wilderness;

(11) certain lands in the Prescott National Forest which comprise approximately seven thousand six hundred acres, as generally depicted on a map entitled "Juniper Mesa Wilderness—Proposed", dated February 1984, and which shall be known as the Juniper Mesa Wilderness;

(12) certain lands in the Kaibab and Coconino National Forests, which comprise approximately six thousand five hundred and ten acres, as generally depicted on a map entitled "Kendrick Mountain Wilderness—Proposed", dated February 1984, and which shall be known as Kendrick Mountain Wilderness;

(13) certain lands in the Tonto National Forest, which comprise approximately forty-six thousand six hundred and seventy acres, as generally depicted on a map entitled "Mazatzal Wilderness Additions—Proposed", dated August 1984, and which are hereby incorporated and shall be deemed a part of the Mazatzal Wilderness as designated by Public Law 88-577: *Provided*, That within the lands added to the Mazatzal Wilderness by this Act, the provisions of the Wilderness Act shall not be construed to prevent the installation and maintenance of hydrologic, meteorologic, or telecommunications facilities, or any combination of the foregoing, or limited motorized access to such facilities when nonmotorized access means are not reasonably available or when time is of the essence, subject to such conditions as the Secretary deems desirable, where such facilities or access are essential to flood warning, flood control, and water reservoir operation purposes;

(14) certain lands in the Coronado National Forest, which comprise approximately twenty thousand one hundred and ninety acres, as generally depicted on a map entitled "Miller Peak Wilderness—Proposed", dated February 1984, and which shall be known as the Miller Peak Wilderness;

(15) certain lands in the Coronado National Forest, which comprise approximately twenty-five thousand two hundred and sixty acres, as generally depicted on a map entitled "Mt. Wrightson Wilderness—Proposed", dated February 1984, and which shall be known as the Mt. Wrightson Wilderness;

(16) certain lands in the Coconino National Forest, which comprise approximately eighteen thousand one hundred and fifty acres, as generally depicted on a map entitled "Munds Mountain Wilderness—Proposed", dated August 1984, and which shall be known as the Munds Mountain Wilderness;

(17) certain lands in the Coronado National Forest, which comprise approximately seven thousand four hundred and twenty acres, as generally depicted on a map entitled "Pajarita Wilderness—Proposed", dated March 1984, and which shall be known as the Pajarita Wilderness;

(18) certain lands in the Coconino National Forest, which comprise approximately forty-three thousand nine hundred and fifty acres, as generally depicted on a map entitled "Red Rock-Secret Mountain Wilderness—Proposed", dated April 1984, and which shall be known as the Red Rock-Secret Mountain Wilderness;

(19) certain lands in the Coronado National Forest, which comprise approximately thirty-eight thousand five hundred and ninety acres, as generally depicted on a map entitled "Rincon Mountain Wilderness—Proposed", dated February 1984, and which shall be known as the Rincon Mountain Wilderness;

(20) certain lands in the Tonto National Forest, which comprise approximately eighteen thousand nine hundred and fifty acres, as generally depicted on a map entitled "Salome Wilderness—Proposed", dated August 1984, and which shall be known as the Salome Wilderness;

(21) certain lands in the Tonto National Forest, which comprise approximately thirty-two thousand eight hundred acres, as generally depicted on a map entitled "Salt River Canyon Wilderness—Proposed", dated April 1984, and which shall be known as the Salt River Canyon Wilderness;

(22) certain lands in the Coconino National Forest, which comprise approximately eighteen thousand two hundred acres, as generally depicted on a map entitled "Kachina Peaks Wilderness—Proposed", dated August 1984, and which shall be known as the Kachina Peaks Wilderness;

(23) certain lands in the Coronado National Forest, which comprise approximately twenty-six thousand seven hundred and eighty acres, as generally depicted on a map entitled "Santa Teresa Wilderness—Proposed", dated February 1984, and which shall be known as the Santa Teresa Wilderness; the governmental agency having jurisdictional authority may authorize limited access to the area, for private and administrative purposes, from U.S. Route 70 along Black Rock Wash to the vicinity of Black Rock;

(24) certain lands in the Tonto National Forest, which comprise approximately thirty-five thousand six hundred and forty acres, as generally depicted on a map entitled "Superstition Wilderness Additions—Proposed", dated August 1984, and which are hereby incorporated in and shall be deemed to be a part of the Superstition Wilderness as designated by Public Law 88-577;

(25) certain lands in the Coconino National Forest and Prescott National Forest, which comprise approximately eight thousand one hundred and eighty acres, as generally depicted on a map entitled "Sycamore Canyon Wilderness Additions—Proposed", dated April 1984, and which are hereby incorporated in and shall be deemed a part of the Sycamore Canyon Wilderness as designated by Public Law 92-241;

(26) certain lands in the Coconino National Forest, which comprise approximately thirteen thousand six hundred acres, as generally depicted on a map entitled "West Clear Creek Wilderness—Proposed", dated April 1984, and which shall be known as the West Clear Creek Wilderness;

(27) certain lands in the Coconino National Forest, which comprise approximately six thousand seven hundred acres, as generally depicted on a map entitled "Wet Beaver Wilderness—Proposed", dated February 1984, and which shall be known as the Wet Beaver Wilderness;

(28) certain lands in the Prescott National Forest, which comprise approximately five thousand six hundred acres, as generally depicted on a map entitled "Woodchute Wilderness—Proposed", dated August 1984, and which shall be known as the Woodchute Wilderness.

(29) certain lands in the Coconino National Forest, which comprise approximately ten thousand one hundred and forty acres, as generally depicted on a map entitled "Strawberry Crater Wilderness—Proposed", dated April 1984, and which shall be known as Strawberry Crater Wilderness;

(30) certain lands in the Apache-Sitgreaves National Forest, which comprise approximately five thousand two hundred acres, as generally depicted on a map entitled "Escudilla—Proposed Wilderness", dated April 1984, and which shall be known as Escudilla Wilderness.

(b) Subject to valid existing rights, the wilderness areas designated under this section shall be administered by the Secretary of Agriculture (hereinafter in this title referred to as the "Secretary") in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness, except that any reference in such provisions to the effective date of the Wilderness Act (or any similar reference) shall be deemed to be a reference to the date of enactment of this Act.

(c) As soon as practicable after enactment of this Act, the Secretary shall file a map and a legal description of each wilderness area designated under this section with the Committee on Interior and Insular Affairs of the United States House of Representatives and with the Committee on Energy and Natural Resources of the United States Senate. Such map and description shall have the same force and effect as if included in this Act, except that correction of clerical and typographical errors in such legal description and map may be made. Such map and legal description shall be on file and available for public inspection in the Office of the Chief of the Forest Service, United States Department of Agriculture.

(d) The Congress does not intend that designation of wilderness areas in the State of Arizona lead to the creation of protective perimeters or buffer zones around each wilderness area. The fact that nonwilderness activities or uses can be seen or heard from areas within a wilderness shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area.

(e)(1) As provided in paragraph (6) of section 4(d) of the Wilderness Act, nothing in this Act or in the Wilderness Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from Arizona State water laws.

(2) As provided in paragraph (7) of section 4(d) of the Wilderness Act, nothing in this Act or in the Wilderness Act shall be construed as affecting the jurisdiction or re-

sponsibilities of the State of Arizona with respect to wildlife and fish in the national forests located in the State.

(1)(1) Grazing of livestock in wilderness areas established by this title, where established prior to the date of the enactment of this Act, shall be administered in accordance with section 4(d)(4) of the Wilderness Act and section 108 of Public Law 96-560.

(2) The Secretary is directed to review all policies, practices, and regulations of the Department of Agriculture regarding livestock grazing in national forest wilderness areas in Arizona in order to insure that such policies, practices, and regulations fully conform with and implement the intent of Congress regarding grazing in such areas, as such intent is expressed in this Act.

(3) Not later than one year after the date of the enactment of this Act, and at least every five years thereafter, the Secretary of Agriculture shall submit to the Committee on Interior and Insular Affairs of the United States House of Representatives and to the Committee on Energy and Natural Resources of the United States Senate a report detailing the progress made by the Forest Service in carrying out the provisions of paragraphs (1) and (2) of this section.

Sec. 102. (a) In furtherance of the purposes of the Wilderness Act, the Secretary of Agriculture shall review the following as to their suitability or nonsuitability for preservation as wilderness and shall submit his recommendations to the President:

(1) certain lands in the Coronado National Forest, which comprise approximately eight hundred fifty acres, as generally depicted on a map entitled "Bunk Robinson Wilderness Study Area Additions—Proposed", dated February 1984, and which are hereby incorporated in the Bunk Robinson Wilderness Study Area as designated by Public Law 96-550;

(2) certain lands in the Coronado National Forest, which comprise approximately five thousand and eighty acres, as generally depicted on a map entitled "Whitemire Canyon Study Area Additions—Proposed", dated February 1984, and which are hereby incorporated in the Whitemire Canyon Wilderness Study Area as designated by Public Law 96-550; and

(2) certain lands in the Coronado National Forest, which comprise approximately sixty-two thousand acres, as generally depicted on a map entitled "Mount Graham Wilderness Study Area", dated August, 1984, and which shall be known as the Mount Graham Wilderness Study Area.

With respect to the areas named in paragraphs (1) and (2); the President shall submit his recommendations to the United States House of Representatives and the United States Senate no later than January 1, 1986.

(b) Subject to valid existing rights, the wilderness study areas designated by this section shall, until Congress determines otherwise, be administered by the Secretary so as to maintain their presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System.

Sec. 103. (a) The Congress finds that—

(1) the Department of Agriculture has completed the second roadless area review and evaluation program (RARE II);

(2) The Congress has made its own review and examination of national forest system roadless areas in Arizona and of the environmental impacts associated with alternative allocations of such areas.

(b) On the basis of such review, the Congress hereby determines and directs that—

(1) without passing on the question of the legal and factual sufficiency of the RARE II final environmental statement (dated January 1979) with respect to national forest system lands in States other than Arizona, such statement shall not be subject to judicial review with respect to national forest system lands in the State of Arizona;

(2) with respect to the national forest system lands in the State of Arizona which were reviewed by the Department of Agriculture in the second roadless area review and evaluation (RARE II) and those lands referred to in subsection (d), except those lands designated for wilderness study upon enactment of this Act, that review and evaluation or reference shall be deemed for the purposes of the initial land management plans required for such lands by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, to be an adequate consideration of the suitability of such lands for inclusion in the National Wilderness Preservation System and the Department of Agriculture shall not be required to review the wilderness option prior to the revisions of the plans, but shall review the wilderness option when the plans are revised, which revisions will ordinarily occur on a ten-year cycle, or at least every fifteen years, unless, prior to such time the Secretary of Agriculture finds that conditions in a unit have significantly changed;

(3) areas in the State of Arizona reviewed in such final environmental statement or referred to in subsection (d) and not designated wilderness or wilderness study upon enactment of this Act shall be managed for multiple use in accordance with land management plans pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976; *Provided*, That such areas need not be managed for the purpose of protecting their suitability for wilderness designation prior to or during revision of the initial land management plans;

(4) in the event that revised land management plans in the State of Arizona are implemented pursuant to section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, and other applicable law, areas not recommended for wilderness designation need not be managed for the purpose of protecting their suitability for wilderness designation prior to or during revision of such plans, and areas recommended for wilderness designation shall be managed for the purpose of protecting their suitability for wilderness designation as may be required by the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1974, as amended by the National Forest Management Act of 1976, and other applicable law; and

(5) unless expressly authorized by Congress, the Department of Agriculture shall not conduct any further statewide roadless area review and evaluation of national forest system lands in the State of Arizona for the purpose of determining their suitability for inclusion in the National Wilderness Preservation System.

(c) As used in this section, and as provided in section 6 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976, the term "revision" shall not include an "amendment" to a plan.

(d) The provisions of this section shall also apply to national forest system roadless lands in the State of Arizona which are less than five thousand acres in size.

Sec. 104. Section 3(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1274) is amended by inserting the following after paragraph (50):

"(51) VERDE, ARIZONA.—The segment from the boundary between national forest and private land in sections 28 and 27, township 13 north, range 5 east, Gila Salt River meridian, downstream to the confluence with Red Creek, as generally depicted on a map entitled 'Verde River—Wild and Scenic River', dated March 1984, which is on file and available for public inspection in the Office of the Chief, Forest Service, United States Department of Agriculture; to be administered by the Secretary of Agriculture. This designation shall not prevent water users receiving Central Arizona Project water allocations from diverting that water through an exchange agreement with downstream water users in accordance with Arizona water law. After consultation with State and local governments and the interested public and within two years after the date of enactment of this paragraph, the Secretary shall take such action as is required under subsection (b) of this section."

Sec. 105. There are added to the Chiricahua National Monument, in the State of Arizona, established by Proclamation Numbered 1692 of April 18, 1924 (43 Stat. 1946) certain lands in the Coronado National Forest which comprise approximately eight hundred and fifty acres as generally depicted on the map entitled "Bonita Creek Watershed", dated May 1984, retained by the United State Park Service, Washington, D.C. The area added by this paragraph shall be administered by the National Park Service as wilderness.

TITLE II

Sec. 201. The Congress finds that—

(1) the Aravaipa Canyon, situated in the Galiuro Mountains in the Sonoran desert region of southern Arizona, is a primitive place of great natural beauty that, due to the rare presence of a perennial stream, supports an extraordinary abundance and diversity of native plant, fish, and wildlife, making it a resource of national significance; and

(2) the Aravaipa Canyon should, together with certain adjoining public lands, be incorporated within the national wilderness preservation system in order to provide for the preservation and protection of this relatively undisturbed but fragile complex of desert, riparian and aquatic ecosystems, and the native plant, fish, and wildlife communities dependent on it, as well as to protect and preserve the area's great scenic, geologic, and historical values, to a greater degree than would be possible in the absence of wilderness designation.

Sec. 202. In furtherance of the purposes of the Wilderness Act of 1964 (78 Stat. 890, 16 U.S.C. 1131 et seq.) and consistent with the policies and provisions of the Federal Land Policy and Management Act of 1976 (90 Stat. 2743; 43 U.S.C. 1701 et seq.), certain public lands in Graham and Pinal Counties, Arizona, which comprise approximately six thousand six hundred and seventy acres, as generally depicted on a map entitled "Aravaipa Canyon Wilderness—Proposed" and dated May 1980, are hereby designated as the Aravaipa Canyon Wilderness and, therefore, as a component of the national wilderness preservation system.

Sec. 203. Subject to valid existing rights, the Aravaipa Canyon Wilderness shall be administered by the Secretary of the Interior in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness. For purposes of this title, any references in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act and any reference to the Secretary of Agriculture with regard to administration of such areas shall be deemed to be a reference to the Secretary of the Interior, and any reference to wilderness areas designated by the Wilderness Act or designated national forest wilderness areas shall be deemed to be a reference to the Aravaipa Canyon Wilderness. For purposes of this title, the reference to national forest rules and regulations in the second sentence of section 4(d)(3) of the Wilderness Act shall be deemed to be a reference to rules and regulations applicable to public lands, as defined in section 103(e) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1702).

Sec. 204. As soon as practicable after this Act takes effect, the Secretary of the Interior shall file a map and a legal description of the Aravaipa Canyon Wilderness with the Committee on Energy and Natural Resources of the United States Senate and with the Committee on Interior and Insular Affairs of the United States House of Representatives, and such map and description shall have the same force and effect as if included in this Act: *Provided*, That correction of clerical and typographical errors in the legal description and map may be made. The map and legal description shall be on file and available for public inspection in the offices of the Bureau of Land Management, Department of the Interior.

Sec. 205. Except as further provided in this section, the Aravaipa Primitive Area designations of January 18, 1969, and April 28, 1971, are hereby revoked.

TITLE III

Sec. 301. (a) In furtherance of the purposes of the Wilderness Act, the following lands are hereby designated as wilderness and therefore, as components of the National Wilderness Preservation System.

(1) certain lands in the Arizona Strip District of the Bureau of Land Management, Arizona, which comprise approximately six thousand five hundred acres, as generally depicted on a map entitled "Cottonwood Point Wilderness—Proposed", dated May 1983, and which shall be known as the Cottonwood Point Wilderness;

(2) certain lands in the Arizona Strip District of the Bureau of Land Management, Arizona, which comprise approximately thirty-six thousand three hundred acres, as generally depicted on a map entitled "Grand Wash Cliffs Wilderness—Proposed", dated May 1983, and which shall be known as the Grand Wash Cliffs Wilderness;

(3) certain lands in the Kaibab National Forest and in the Arizona Strip District of the Bureau of Land Management, Arizona, which comprise approximately seventy-seven thousand one hundred acres, as generally depicted on a map entitled "Kanab Creek Wilderness—Proposed", dated May 1983, and which shall be known as the Kanab Creek Wilderness;

(4) certain lands in the Arizona Strip District of the Bureau of Land Management, Arizona, which comprise approximately fourteen thousand six hundred acres, as generally depicted on a map entitled "Mt. Logan Wilderness—Proposed", dated May

1983, and which shall be known as the Mount Logan Wilderness;

(5) certain lands in the Arizona Strip District of the Bureau of Land Management, Arizona, which comprise approximately seven thousand nine hundred acres, as generally depicted on a map entitled "Mt. Trumbull Wilderness—Proposed", dated May 1983, and which shall be known as the Mount Trumbull Wilderness;

(6) certain lands in the Arizona Strip District of the Bureau of Land Management, Arizona, which comprise approximately eighty-four thousand seven hundred acres, as generally depicted on a map entitled "Paiute Wilderness—Proposed", dated May 1983, and which shall be known as the Paiute Wilderness;

(7) certain lands in the Arizona Strip District, Arizona, and in the Cedar City District, Utah, of the Bureau of Land Management, which comprise approximately one hundred and ten thousand acres, as generally depicted on a map entitled "Paria Canyon-Vermilion Cliffs Wilderness—Proposed", dated May 1983, and which shall be known as the Paria Canyon-Vermilion Cliffs Wilderness;

(8) certain lands in the Kaibab National Forest, Arizona, which comprise approximately forty thousand six hundred acres, as generally depicted on a map entitled "Saddle Mountain Wilderness—Proposed", dated May 1983, and which shall be known as the Saddle Mountain Wilderness; and

(9) certain lands in the Arizona Strip District, Arizona, and in the Cedar City District, Utah, of the Bureau of Land Management which comprise approximately nineteen thousand six hundred acres, as generally depicted on a map entitled "Beaver Dam Mountains Wilderness—Proposed", dated May 1983, and which shall be known as the Beaver Dam Mountains Wilderness;

(b) The previous classifications of the Paiute Primitive Area and the Paria Canyon Primitive Area are hereby abolished.

Sec. 302. (a) Subject to valid existing rights, each wilderness area designated by this title shall be administered by the appropriate Secretary in accordance with the provisions of the Wilderness Act: *Provided*, That any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act, and any reference to the Secretary of Agriculture shall be deemed to be a reference to the Secretary who has administered jurisdiction over the area.

(b) Within the wilderness areas designated by this title, the grazing of livestock, where established prior to the date of enactment of this Act, shall be permitted to continue subject to such reasonable regulations, policies, and practices as the Secretary concerned deems necessary, as long as such regulations, policies, and practices fully conform with and implement the intent of Congress regarding grazing in such areas as such intent in expressed in the Wilderness Act.

Sec. 303. As soon as practicable after enactment of this Act, a map and a legal description on each wilderness area designated by this title shall be filed by the Secretary concerned with the Committee on Energy and Natural Resources of the United States Senate and the Committee on Interior and Insular Affairs of the House of Representatives, and each such map and description shall have the same force and effect as if included in this Act: *Provided*: That correction of clerical and typographical errors in each such legal description and map may be

made by the Secretary concerned subsequently to such filings. Each such map and legal description shall be on file and available for public inspection in the Office of the Chief of the Forest Service, Department of Agriculture or in the Office of the Director of the Bureau of Land Management, Department of the Interior, as is appropriate.

Sec. 304. The Congress hereby finds and directs that lands in the Arizona Strip District of the Bureau of Land Management, Arizona, and those portions of the Starvation Point Wilderness Study Area (UT-040-057) and Paria Canyon Instant Study Area and contiguous Utah units in the Cedar City District of the Bureau of Land Management, Utah, not designated as wilderness by this Act have been adequately studied for wilderness designation pursuant to section 603 of the Federal Land Policy and Management Act (Public Law 94-579), and are no longer subject to the requirement of Section 603(c) of the Federal Land Policy and Management Act pertaining to the management of wilderness study areas in a manner that does not impair the suitability of such areas for preservation as wilderness.

TITLE IV

Sec. 401. If any provision of this Act or the application thereof is held invalid, the remainder of the Act and the application thereof shall not be affected thereby.

Mr. UDALL (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendment be considered as read and printed in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The SPEAKER. Is there objection to the initial request of the gentleman from Arizona?

Mr. LUJAN. Reserving the right to object, Mr. Speaker, I take this opportunity simply to ask the gentleman to give us a little background as to what is in this legislation, if he would, please.

□ 1010

Mr. UDALL. Mr. Speaker, will the gentleman yield?

Mr. LUJAN. I yield to the gentleman from Arizona.

Mr. UDALL. Mr. Speaker, it gives me great pleasure today to ask the House to give final approval to H.R. 4707, the Arizona Wilderness Act. This omnibus legislation has just been considered by the Senate, and I urge my colleagues to accept the Senate amendment without change.

If we pass this bill today and the President then signs it, Arizona will have proudly contributed more than 1 million additional acres to the national wilderness preservation system and the great bulk of the controversy over which forest lands in our State should be managed as wilderness will be terminated.

Mr. Speaker, the House approved H.R. 4707 by an overwhelming margin in April. Since that time, I have worked closely with Senator BARRY

GOLDWATER to refine and modify the House proposal to further accommodate the concerns of ranchers, miners, conservationists and others. I want to express my deepest appreciation and respect for the truly superb job Senator GOLDWATER and his staff have done on this legislation. If there is a better example of a wilderness bill which is the product of bipartisan cooperation, and which has been built from the bottom up by those citizens most directly affected by its provisions, then I don't know what that bill is. I also want to thank Senator DeCONCINI and his staff for their excellent cooperation and steadfast support in seeing to it that this job gets done. And finally, I want to thank my Arizona colleagues on this side of the Capitol, especially Representatives JIM McNULTY and JOHN McCAIN for their tireless and invaluable efforts.

Mr. Speaker, in most important respects the amended bill closely tracks the bill passed by the House. Title I designates as wilderness 658,580 acres of national forest lands south of the Grand Canyon. One area—the proposed Sheridan Mountain Wilderness—has been dropped from the House bill. Two areas—Strawberry Crater and Escudilla Mountain—have been added. For the following areas the bill inserts final acreage calculations prepared by the Forest Service, but does not change the actual boundaries originally approved by the House—Bear Wallow, Chiricahua Additions, Kendrick Mountain, Miller Peak, Mount Wrightson, Pajarita, Rincon Mountain, Santa Teresa and the Bunk Robinson Wilderness Study Area. This is also the case with the Saddle Mountain Wilderness designated in title III. The Red Rock-Secret Mountain boundaries are those passed by the Senate and are only slightly different from the House boundaries, although the acreage calculation has been substantially reduced. The name of the Arnold Mesa Wilderness has been changed to the Cedar Bench Wilderness and the San Francisco Peaks Wilderness has been changed to Kachina Peaks to reflect the deep Hopi religious significance of the area. Although the acreage calculation has not changed, the map has been slightly altered to permit a narrow, underground utility corridor for possible observatory development on top of the mountain. Also, the Senate has amended language regarding access across a road near the Santa Teresa Wilderness. Representative McNULTY will address this subject, and I fully concur in his remarks.

Title I retains all the important management directives contained in the original House bill. Most importantly, the Senate has agreed to the House provisions dealing with the grazing rights of ranchers with allotments in wilderness.

The language releasing Forest Service lands not designated as wilderness is the formula that Representative JOHN SEIBERLING, Senator JAMES McCLURE and I were able to work out this spring and which ended a lengthy controversy that had held up enactment of the RARE II bills for many years. This language has now become the standard formula for all statewide Forest Service wilderness bills. I would note here that in Arizona, the release language applies equally to Forest Service lands not designated as wilderness north of the Grand Canyon on the so-called Arizona Strip, as well as to such lands elsewhere in the state. It does not, of course, apply to the Blue Range Primitive Area, which retains its present status.

Title I also retains without change the designation of a 39.5-mile segment of the Verde River as a component of the Wild and Scenic Rivers System. I am especially proud of this provision, not only because it is the first addition to the system in more than 4 years, but also because it is the very first time that a desert river has been so favored.

Finally, title I adds a small 850-acre parcel called the Bonita Creek area to the existing Chiricahua National Monument, which is managed by the National Park Service. This will integrate an important and sensitive watershed into protective status, and I wish to thank Senator DeCONCINI for bringing this issue to our attention.

Title III designates as wilderness 6,670 acres of the beautiful Aravaipa Canyon, which is managed by the Bureau of Land Management. This title remains unchanged from the House bill. Title III designates as wilderness about 396,000 acres of BLM and Forest Service land on the Arizona Strip. This model of cooperation between conservationists, business and industry groups remains identical to the House provisions, except the previous references to release of Forest Service lands on the strip have been deleted so as not to conflict with the release language provisions covering all undesignated forest lands throughout Arizona, including those on the strip.

Mr. Speaker, this is a day that many people thought would be a long time coming in Arizona, indeed a day that some said would never come. But Arizonans throughout the State, of widely differing political views and economic interests, rallied to work out their differences to produce a bill that is in everybody's interests. I am very proud to support their efforts here today.

Mr. LUJAN. Mr. Speaker, I thank the gentleman for that explanation.

I understand the entire Arizona delegation on both sides of the Capitol have in essence agreed to this legislation?

Mr. UDALL. Not in every respect. There are some differences, but Senator GOLDWATER and the Senate delegation, the Governor, the gentleman from Arizona [Mr. McCAIN], and I are all in agreement on all provisions.

● Mr. McNULTY. Mr. Speaker, with regards to the provision for access across Black Rock Wash road to the Santa Theresa Wilderness Area, I offer the following historical information which resulted in inclusion of the provision. It is the intention of this provision that the Forest Service retains all jurisdiction over the Santa Theresa Wilderness and that the access provision applies only to the right of way across Black Rock Wash road.

The Black Rock Wash road provides the most reasonable vehicular access to the vicinity of the proposed wilderness. In addition, the road is vital to several ranching families in the area. The road traverses lands known as the San Carlos Mineral Strip which are held in trust by the United States for the benefit of the San Carlos Apache Tribe as described by the Executive orders of November 9, 1871 and December 14, 1872, the act of June 10, 1896 (29 Stat. 321,360), orders of the Secretary of the Interior dated June 17, 1963 and January 16, 1969, and judgment of the U.S. District Court for the District of Arizona, dates April 11, 1978, in *State of Arizona v. Rogers C. B. Morton, the United States of America and the San Carlos Tribe of Indians*, No. Civ. 74-696,m PHX-WPC.

No right of way pursuant to Federal law has been acquired. Although the lands were once opened to entry pursuant to the mineral entry laws of the United States, no rights of way were acquired during that period. All of these lands were closed to entry by Secretarial Order of March 30, 1931 and September 9, 1934.

The State of Arizona, the United States and local ranchers have been permitted access across this land by the tribe. In 1978, the tribe offered to formalize that access by the issuance of permits to the State, to the ranchers, their agents and representatives, and to the United States. The permits proposed by the tribe for the States and the United States were to be for governmental administrative purposes and not for general public access.

It is recommended that the parties formalize this access by issuance and acceptance of tribal access permits.

It is also recommended that a joint permit system be established between the San Carlos Apache Tribe and other Federal departments to govern public access to the area. The area is remote and difficult to protect from vandalism. It is believed that this method of limited access to be in the best interest of protecting the wilderness area, the governments and per-

sons having real property interests in the area.●

Mr. LUJAN. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the initial request of the gentleman from Arizona?

There was no objection.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. UDALL. Mr. Speaker, I ask unanimous consent that all members may have 5 legislative days in which to revise and extend their remarks on the legislation just adopted.

The SPEAKER. Is there objection to the request of the gentleman from Arizona?

There was no objection.

ESTABLISHING A STATE MINING AND MINERAL RESOURCES RESEARCH INSTITUTE PROGRAM

Mr. UDALL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 4214) to establish a State Mining and Mineral Resources Research Institute Program, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Strike out all after the enacting clause and insert:

AUTHORIZATION OF STATE ALLOTMENTS TO INSTITUTES

SECTION 1. (a)(1) There are authorized to be appropriated to the Secretary of the Interior (hereafter in this Act referred to as the "Secretary") funds adequate to provide for each participating State \$300,000 for the fiscal year ending September 30, 1985, and \$400,000 to each participating State for each fiscal year thereafter for a total of five years, to assist the States in carrying on the work of a competent and qualified mining and mineral resources research institute or center (hereafter in this Act referred to as the "institute") at one public college or university in the State which meets the eligibility criteria established in section 10.

(2)(A) Funds appropriated under this section shall be made available for grants to be matched on a basis of no less than one and one-half non-Federal dollars for each Federal dollar during the fiscal years ending September 30, 1985, and September 30, 1986, and no less than two non-Federal dollars for each Federal dollar during the fiscal years ending September 30, 1989.

(B) If there is more than one such eligible college or university in a State, funds appropriated under this Act shall, in the absence of a designation to the contrary by act of the legislature of the State, be granted to one such college or university designated by the Governor of the State.

(C) Where a State does not have a public college or university eligible under section 10, the Committee on Mining and Mineral Resources Research establishment in section 9 (hereafter in this Act referred to as the "Committee") may allocate the State's

allotment to one private college or university which it determines to be eligible under such section.

(b) It shall be the duty of each institute to plan and conduct, or arrange for a component or components of the college or university with which it is affiliated to conduct, research, investigations, demonstrations, and experiments of either, or both, a basic or practical nature in relation to mining and mineral resources, and to provide for the training of mineral engineers and scientists through such research, investigations, demonstrations, and experiments. The subject of such research, investigation, demonstration, experiment, and training may include exploration; extraction; processing; development; production of mineral resources; mining and mineral technology; supply and demand for minerals; conservation and best use of available supplies of minerals; the economic, legal, social, engineering, recreational, biological, geographic, ecological, and other aspects of mining, mineral resources, and mineral reclamation. Such research, investigation, demonstration, experiment and training shall consider the interrelationship with the natural environment, the varying conditions and needs of the respective States, and mining and mineral resources research projects being conducted by agencies of the Federal and State Governments and other institutes.

RESEARCH FUNDS TO INSTITUTES

SEC. 2. (a) There is authorized to be appropriated to the Secretary \$10,000,000 for the fiscal year ending September 30, 1985. This amount shall be increased by \$1,000,000 for each fiscal year thereafter for four additional years, which shall remain available until expended. Such funds when appropriated shall be made available to institutes to meet the necessary expenses for purposes of—

(1) specific mineral research and demonstration projects of broad application, which could not otherwise be undertaken, including the expenses of planning and coordinating regional mining and mineral resources research projects by two or more institutes; and

(2) research into any aspects of mining and mineral resources problems related to the mission of the Department of the Interior, which are deemed by the Committee to be desirable and are not otherwise being studied.

(b) Each application for funds under subsection (a) of this section shall state, among other things, the nature of the project to be undertaken; the period during which it will be pursued; the qualifications of the personnel who will direct and conduct it; the estimated costs; the importance of the project to the Nation, region, or State concerned; its relation to other known research projects theretofore pursued or being pursued; the extent to which the proposed project will provide opportunity for the training of mining and mineral engineers and scientists; and the extent of participation by nongovernmental sources in the project.

(c) The Committee shall review all such funding applications and recommend to the Secretary the use of the institutes, insofar as practicable, to perform special research. Recommendations shall be made without regard to the race, religion, or sex of the personnel who will conduct and direct the research, and on the basis of the facilities available in relation to the particular needs of the research project; special geographic, geologic, or climatic conditions within the immediate vicinity of the institute; any other special requirements of the research

project; and the extent to which such project will provide an opportunity for training individuals as mineral engineers and scientists. The Committee shall recommend to the Secretary the designation and utilization of such portions of the funds authorized to be appropriated by this section as it deems appropriate for the purpose of providing scholarships, graduate fellowships, and postdoctoral fellowships.

(d) No funds shall be made available under subsection (a) of this section except for a project approved by the Secretary and all funds shall be made available upon the basis of merit of the project, the need for the knowledge which it is expected to produce when completed, and the opportunity it provides for the training of individuals as mineral engineers and scientists.

(e) No funds made available under this section shall be applied to the acquisition by purchase or lease of any land or interests therein, or the rental, purchase, construction, preservation, or repair of any building.

FUNDING CRITERIA

SEC. 3. (a) Funds available to institutes under sections 1 and 2 of this act shall be paid at such times and in such amounts during each fiscal year as determined by the Secretary, and upon vouchers approved by him. Each institute shall—

(1) set forth its plan to provide for the training of individuals as mineral engineers and scientists under a curriculum appropriate to the field of mineral resources and mineral engineering and related fields;

(2) set forth policies and procedures which assure that Federal funds made available under this Act for any fiscal year will supplement and, to the extent practicable, increase the level of funds that would, in the absence of such Federal funds, be made available for purposes of this Act, and in no case supplant such funds; and

(3) have an officer appointed by its governing authority who shall receive and account for all funds paid under the provisions of this Act and shall make an annual report to the Secretary on or before the first day of September of each year, on work accomplished and the status of projects underway, together with a detailed statement of the amounts received under any provisions of this Act during the preceding fiscal year, and of its disbursements on schedules prescribed by the Secretary.

If any of the funds received by the authorized receiving officer of any institute under the provisions of this Act shall by any action or contingency be found by the Secretary to have been improperly diminished, lost, or misapplied, such funds shall be replaced by the State concerned and until so replaced no subsequent appropriation shall be allotted or paid to any institute of such State.

(b) The institutes are authorized and encouraged to plan and conduct programs under this Act in cooperation with each other and with such other agencies and individuals as may contribute to the solution of the mining and mineral resources problems involved. Moneys appropriated pursuant to this Act shall be available for paying the necessary expenses of planning, coordinating, and conducting such cooperative research.

DUTIES OF THE SECRETARY

SEC. 4. (a) The Secretary shall administer this Act and, after full consultation with other interested Federal agencies, shall prescribe such rules and regulations as may be

APPENDIX A-2

(For message, see proceedings of the Senate of Tuesday, February 27, 1990, at page S1732.)

**ANNOUNCEMENT BY THE
SPEAKER PRO TEMPORE**

The SPEAKER pro tempore (Mr. LEHMAN of California). Pursuant to the provisions of House Resolution 344, the Chair desires to inform Members that the official picture of the House while in session will be taken immediately after the approval of the Journal when the House convenes on Wednesday, March 14, 1990.

**RE-REFERRAL OF H.R. 2894, RE-
MOVAL OF LIMITATION ON
AMOUNT OF WATER ANNUAL-
LY SUPPLIED TO CITY OF
DENISON, TX**

Mr. UDALL. Mr. Speaker, I ask unanimous consent that the Committee on Interior and Insular Affairs be discharged from the consideration of the bill, H.R. 2894, and that it be referred to the Committee on Public Works and Transportation.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

**APPOINTMENT OF CONFEREES
ON S. 1098, PROVIDING FOR
USE AND DISTRIBUTION OF
FUNDS AWARDED TO SEMI-
NOLE INDIAN TRIBE**

Mr. UDALL. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1098), to provide for the use and distribution of funds awarded the Seminole Indian in dockets 73, 151, and 73-A of the Indian Claims Commission, with House amendments thereto, insist on the House amendments, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The SPEAKER pro tempore. The Speaker will appoint the conferees upon his return to the Chair.

**ARIZONA DESERT WILDERNESS
ACT OF 1990**

The SPEAKER pro tempore. Pursuant to House Resolution 338 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 2570.

□ 1257

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 2570) to provide for the designa-

tion of certain public lands as wilderness in the State of Arizona, with Mr. MAZZOLI in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Minnesota [Mr. VENTO] will be recognized for 30 minutes and the gentleman from Arizona [Mr. RHODES] will be recognized for 30 minutes.

The Chair recognizes the gentleman from Minnesota [Mr. VENTO].

Mr. VENTO. Mr. Chairman, I am very pleased that this bill is here. I yield such time as he may consume to the gentleman from Arizona [Mr. UDALL], the esteemed chairman of the committee and the driving force behind this legislation.

Mr. UDALL. Mr. Chairman, it is a great pleasure today to rise in support of H.R. 2570, the Arizona Desert Wilderness Act. This measure is half of a package of bills aimed at substantially completing the wilderness review process in my State of Arizona. The other half of this package, H.R. 2571, addresses four wildlife refuges in Arizona and is currently before the Merchant Marine and Fisheries Committee.

Today's measure addresses public lands under the jurisdiction of the Bureau of Land Management. For many years, the BLM lands were considered the leftovers, the lands not good enough for the parks, refuges, or forests. But anyone who has experienced these lands knows what a terribly mistaken notion this is. The lands proposed for designation as wilderness include richly varied desert mountains steep canyons, and meandering desert rivers that are literally streams of life. They include lands with a fascinating array of plant life and wildlife habitat, all of which have adapted to the harsh conditions of the desert. Many areas have rich cultural resources that need protection. These, truly, are lands of undisputable national significance.

BLM inventoried more than 2 million acres of its lands for its wilderness review and recommended a little over half for designation as wilderness. As introduced, this legislation proposed about 1.4 million acres of wilderness. Over the course of a year of intensive discussions and negotiations with innumerable individuals and interests in Arizona, a process that involved everyone in the Arizona congressional delegation, we arrived at the compromise that is before the House today.

This bill proposes about 1.1 million acres, just about the figure BLM arrived at. Frankly, we could have had more acreage in this bill, but in the tough bargaining that produced the final compromise, I felt that it was more important to have quality than quantity. All but one of the study areas with major riparian resources are protected by this bill. The largest

and most diverse areas are retained and even expanded, such as the Arrastra Mountains. And many of the smaller and more delicate areas are protected as well.

Mr. Chairman, we have made innumerable adjustments to accommodate mining and other commercial interests. We have incorporated language specifying that grazing, where established prior to wilderness designation, may continue in a manner compatible with wilderness, including, where necessary, the use of motorized equipment. We have incorporated language outlining appropriate terms and conditions for the continuation of wildlife management activities in wilderness areas. And perhaps most importantly, we release from wilderness study management about 950,000 acres of BLM lands.

We have extended the creative model of the San Pedro Riparian National Conservation Area to the controversial Gila Box in southeastern Arizona. Probably the single most controversial study area in the BLM inventory, Gila Box was not recommended by BLM but was proposed for wilderness in my bill. The conservation area is not just a compromise providing some less than wilderness level of protection, however. It is a different notion, really. We have established an area for specific purposes, with all uses and activities within the area to be managed in a way that is compatible with and promotes those purposes. Moreover, we have not just replaced a study area with a conservation area, we have expanded it to include other related riparian areas, including Bonita Creek and additional portions of the Gila River. This is a very strong conservation tool. I want to thank Congressman KOLB for his hard and diligent work on this very important product.

Mr. Chairman, over the long and arduous road that brought us here, we have labored endlessly over mining claims and hunting permits, management plans and cherrystems, water rights, boundaries, and interests of great complexity. We strive to meet the tests that all our acts here strive to meet—of fairness and balance, of reasonableness and common sense, of vision and practicality. I think we have done a good job on those important counts.

But for just a moment today I would like to also lift our thoughts above these matters and touch on what we are really doing here. Mr. Chairman, each generation has its important tasks to complete. The generations of Udalls before me met their challenge to tame the wilderness, to settle it and make it a home for succeeding generations.

But the challenge of our generation is different. We must show ourselves

capable not only of conquering nature but also of caring for it and aware that we are not only masters of our world but also its dependents. It is important that those who come after us know that we cherished these living deserts, their waters and all the life that regenerates itself there season after season, generation after generation. In wilderness, we value that which man did not create and by restraining man's altering hand, we hope to honor this powerful work.

Long after our own footsteps have been forgotten, these places will remain. Their eloquent stillness will bear testimony that we as a people are grateful for our chance to walk upon this Earth and that we have the strength, the courage and the wisdom to leave at least these places as we found them.

□ 1300

Mr. VENTO. Mr. Chairman, I reserve the balance of my time.

Mr. RHODES. Mr. Chairman, I yield myself such time as I may consume.

Mr. RHODES. Mr. Chairman, it has been a long road to get H.R. 2570 on the floor. Before I begin my remarks, I would like to say one thing. It is customary when we reach a point such as this where a delegation is united on legislation that directly impacts the entire State for us to stand here and congratulate each other on the tremendous work we have done, and certainly I would do so and will. But I think it is very appropriate that we take a moment to recognize the fact that without our staffs, both the committee staff, minority and majority, and the personal staff of every Member of the Arizona delegation, both House and Senate, this never would have been accomplished. They have put in literally thousands of hours working on very contentious issues, and I know I speak for all of my colleagues in the delegation in thanking them and also in thanking the staff of the gentleman from Minnesota [Mr. VENTO] and the gentleman from California [Mr. MILLER] for their invaluable assistance in getting us to this point as well.

Mr. Chairman, on balance this is a good bill. It has evolved from a very lengthy, open public process. Virtually every interest group involved has been heard and fully considered by the delegation and by the committee.

H.R. 2570 releases from wilderness study roughly as many acres, almost a million, back to multiple use management as it designates as wilderness, which is about 1.1 million, and that is a pretty good balance. Personally I am an active supporter and will continue to be an active supporter of multiple use management, and the concepts of multiple use management which is why having nearly 1 million acres released from restrictive wilderness

study management is important to me, to my constituents, to hunters, to miners, outdoor enthusiasts, ranchers, and thousands of others who enjoy the public use of our lands in the West.

I also recognize that some of the very special and sensitive desert lands and the relatively few desert riparian areas deserve special protection, and that special protection is provided by this bill.

Because this is a consensus bill, there are geographical areas in the bill that many think should have been left out. There are geographical areas not in the bill that I know many think should have been included. I have a special concern about three specific areas that I think I should mention. They include the Gila Box, the Needles Eye, and Upper Burro Creek, and Lower Burro Creek.

First of all as to the Gila Box, difficulties abounded with this particular area, but they were resolved and reconciled by the development of a new riparian national conservation area. I especially want to congratulate my colleague, JIM KOLBE, for the enormous amount of time and effort that he put in, not only in devising this management device, but also in getting consensus agreement as to how to handle this particular area.

□ 1310

This bill designates Upper Burro Creek as a wilderness area, and releases from wilderness management Lower Burro Creek.

My preference would have been to release them both. My basic concern has been with the potential impact the wilderness designation may have on continued operation and expansion and jobs recommended to the nearby Cyprus Bagdad Copper Mine. I want to make it abundantly clear that the language of the committee report and my supplemental views include the proposed expansion of the Cyprus Mine, include and recognize, the proposed expansion of the Cyprus Mine. Our clear intent is that this wilderness designation for Upper Burro Creek will have no adverse impact on the present operation of the mine, nor the proposed expansion of the mine and its related tailing ponds and tailing ties. The continued operation and expansion of the mine is crucial to the town of Bagdad, and to hundreds of Cyprus employees and their families.

Likewise, the report language recognizes and protects the existing water system for the town of Bagdad, and recognizes that it is available for maintenance, for repair, and for expansion when necessary.

I am also concerned about over 6,000 acres private subsurface mineral rights in the Upper Burro area. In my view this amounts to taking of private property rights and should have been ex-

cluded, or the area should not have been designated. As for Needle's Eye, this area has a high voltage power line running through it. The power line will be upgraded and replaced in the future, and although statutory language is included to include the existing right-of-way, it should not have been designated.

I am pleased with other important parts of this bill. We have included statutory and report language to protect continued grazing where established prior to the designation, and we have included statutory and report language to allow wildlife and wildlife habitat activities, facilitating and management to be maintained and improved.

The most important issue, and the most difficult issue in coming to this point in this bill has been the issue of water rights. This issue is not over, and I want to emphasize this point. This issue is not over, whether or not there should be a Federal reserve water right for wilderness purposes in Arizona. There should be, and it is recognized in this bill. On that, my colleague from Arizona and I depart from many of our colleagues in this body, and some in the other body, on both sides of the aisle. Nonetheless, I recognize and respect their viewpoints and convictions on this vital issue, and will continue to respect them.

My concern is not with the reserving of the right, but where and in what form these reserve water rights are quantified and adjudicated. It should be done in Arizona, in our courts, and under our system. That has been the focus of our debate.

I am pleased to advise my colleagues that virtually at the very last moment we have been able to reach agreement on this issue. At the appropriate time I will be offering on behalf of all my colleagues in the Arizona delegation, with the exception of the gentleman from Arizona [Mr. STUMP], an amendment which makes a specific reference to our intent that these reserve water rights should be quantified and adjudicated in the courts of the State. This amendment would resolve the existing conflict between bill language and report language regarding the nature of the wilderness water right, and it further asserts that this water language applies to this bill, not to any past or future bills in other States. It is not to be determined or cited as precedent in future legislative consideration. We believe this compromise addresses our concerns in Arizona. We do not expect or intend that this language will address concerns in other western States. That is a matter that will be decided in the future, on a case-by-case and State-by-State basis.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. The gentleman from Arizona [Mr. RHODES] has consumed 8 minutes.

Mr. VENTO. Mr. Chairman, I yield myself such time as I may consume.

I rise first to recognize the outstanding job done under the leadership of Chairman UDALL with regard to the Arizona wilderness bill—H.R. 2570. This measure is the first BLM wilderness bill that we have brought before the House. I think the gentleman from Arizona [Mr. UDALL], is blazing a new path in terms of setting policy with regard to these important BLM wilderness measures that will be coming before the Congress for the next decade, dealing with our important public BLM lands. As the chairman said, that too often the BLM areas have been looked upon as lands of little value. The truth is, as we look at these lands now, we recognize the tremendous natural resources, the Sonoran Desert, the Mohave Desert, in the Southwest for example, qualities that persist in many of them, the very unique ecosystem, and the biological diversity that persists, the silent desert, are indeed very special almost magical resources, clearly we have all learned a great deal under the leadership of the gentleman from Arizona [Mr. UDALL], in terms of the value of Arizona. As Members look at the map of reapportionment, we notice that Arizona now has a lot of folks moving to Arizona from other parts of the country. Therefore, I think Chairman UDALL's sales pitch with regard to Arizona as being a very special place is appropriate, and obviously will be recognized by the 1990 Census numbers that will surely emphasize the importance of this special State. These BLM wilderness areas are very special areas, these public lands.

The Chairman mentioned to me that 10 million acres of BLM lands exist in Arizona. This bill, the Arizona desert wilderness bill, seeks to put about 1.1 million of those 10 million into wilderness categories, which means that once designated as wilderness the qualities that make them very special today will be preserved. The bill has introduced, of course, designating 53 separate wilderness areas, 1.4 million acres but through the committee process and the achievement of consensus, that has been reduced to about 39 areas. Actually about 300,000 acres less than the 1.4 million in the initial measure. However, one of these areas that have been so special like the Gila Box have been conserved, through the hard work of the Arizona delegation this will be designated a national conservation area under BLM land management scheme in this substitute before the House.

Two additional areas that are very important—I was amazed to learn about the quality of these areas in committee—are outlined in the com-

mittee report will remain wilderness study areas, which I think will someday be addressed in substantive way for wilderness classification. We are putting off making a decision until a later date for the Baker Canyon area and cactus plain wilderness study areas.

The bill, of course, embodies changes worked out by the subcommittee and the full committee, agreed to by the Arizona delegation. I want to thank the entire Arizona delegation. We, in some cases, agreed to disagree on issues, but I think there has been a good professional working relation with the staff and with the members, especially the gentleman from Arizona [Mr. RHODES], who serves well on our committee and subcommittees of the Committee on Interior and Insular Affairs.

Mr. Chairman, I rise in strong support of this bill.

The Subcommittee on National Parks and Public Lands, which I chair, held all-day hearings on the bill last summer in Phoenix and Lake Havasu City, AZ, and another hearing here in Washington, DC, in September.

The reported bill embodies changes worked out in the subcommittee and full committee and agreed to by the Arizona delegation. The wilderness designations would be reduced to a total of 39 areas, amounting to almost 1.1 million acres in all, while two areas would remain in their present status as wilderness study areas. The reported bill would also designate a new national conservation area, the Gila Box Riparian National Conservation Area, amounting to about 21,000 acres to be managed by BLM in a manner essentially identical to the way the existing San Pedro National Conservation Area, also in Arizona, is managed now.

The rest of the BLM wilderness study areas in Arizona, amounting to some 947,200 acres, would be released from study status and returned to multiple-use management.

The reported bill would more precisely and clearly address the management of wildlife in BLM wilderness, essentially by affirming BLM's present guidelines; similarly, it affirms existing guidelines for grazing of livestock in those newly-designated areas where that use has been established.

In summary, the reported bill represents a very high degree of balance. It is a good bill, a wilderness bill that protects outstanding resources that rival any elsewhere in the Nation, and does so in a way that recognizes the need for a balanced approach and the importance of continued development of resources on some of the public lands. I am proud to have worked with the chairman to develop it. I think he sets a high mark for others that will propose BLM wilderness bills to this House.

There is one area in which there was not complete agreement among the Arizona delegation and members of the committee when the bill was ordered reported. I refer to the language regarding the process which would be followed for quantification of water and water rights reserved by the bill.

The present language in the bill is quite appropriate in my judgment and all that is needed. But I have been striving to understand my Arizona colleagues' concerns and remain flexible today concerning possible revision, so long as the national interest and essential legal principles of water rights are properly protected—a subject and topic of great concern with regards to public land policy.

Mr. Speaker, I want to join in congratulating the Arizona delegation and especially our esteemed chairman, Mr. UDALL, for their hard work on this bill. I urge its approval by the House.

□ 1320

Mr. Chairman, I reserve the balance of my time.

Mr. RHODES. Mr. Chairman, I yield 8 minutes to the gentleman from Arizona [Mr. KOLBE].

Mr. KOLBE. Mr. Chairman, I support this bill to designate 39 areas as wilderness to be managed by the Bureau of Land Management. I do so because I believe that the wilderness areas we preserve today will be the areas we most cherish tomorrow.

This bill designates seven wilderness areas totaling 74,000 acres in my district, and releases seven areas from study status, for a total of 70,000 released acres. In addition, and perhaps most important, it designates the 20,000-acre Gila Box Riparian National Conservation Area. This designation is the most appropriate for an area which contains some wilderness qualities, but requires more restorative management to enhance the resource to its potential.

Conservation Area status will provide for preservation of this remarkable approach is the San Pedro Riparian National Conservation Area which was designated by Congress near the end of the 100th Congress. That designation has been a remarkable success. The Bureau of Land Management has made the San Pedro a showcase of intelligence management emphasizing its most outstanding values.

In my statement, I would like to discuss each of the areas being designated for wilderness or conservation, and some of the issues thereto.

GILA BOX

This section represents the most significant compromise achieved in this bill. When this process began, the local communities, ranchers, and the managers of one of the world's largest copper mines stood opposed to designation of the Gila Box as wilderness.

On the other side were hikers, rafters, hunters and a variety of environmentalists who felt that protection was absolutely vital for the area. Some even suggested making the area a national park. It was a situation made to order for protracted conflict and disagreement.

After considering all the issues, I concluded that this most definitely deserved protection, but that wilderness was not the most appropriate management strategy to pursue. I think all of Arizona is united in its appreciation for riparian areas, and the unique vegetation and wildlife that makes its home streamside. Protection of our riparian areas is and should be a statewide priority.

But the kind of intense use this area has seen, its extreme proximity to a huge open copper mine and associated tailings—less than a mile away in some areas—and the type of management the area requires calls for a unique, flexible and restorative kind of management. It is tailor made for conservation area designation, one that requires the area be preserved, protected and enhanced.

There are three issues of particular concern to some of the citizens and businesses in the vicinity of the Gila Box. One is the question of grazing within the conservation area. Report language from the committee identifies the fact that grazing is a long standing historical use within the conservation area. It also notes that allotment management plans currently in place are designed to remove cattle from the streamside habitat along the Gila River and Bonita Creek. These efforts should continue in the name of riparian habitat enhancement. I consider this kind of management, through the use of pumps, watering facilities and fences to be consistent with the bill's requirement for enhancement of the riparian area.

Under these circumstances, with appropriate steps being taken to eliminate grazing in the river bottom, I believe grazing is acceptable and appropriate within the conservation area and for public lands adjacent to the conservation area.

Within the conservation area, the Corps of Engineers has a withdrawal for an authorized flood control dam, called the Camelsback Dam. This dam has a poor cost/benefit ratio, and its certificate of withdrawal is scheduled to expire in 1992. The NCA designation is not intended to deauthorize the dam. If flood control strategies can be found outside of the conservation area to benefit residents in the Gila Valley, then the Camelsback Dam authorization should be considered sufficient authority to provide that flood control.

Finally, the Phelps Dodge Corp. has agreed not to oppose designation of the Gila Box National Conservation

Area because of language included in the bill and committee report assuring that their activities outside of the Area would not be restricted or regulated more strictly because of the designation of the NCA. What is in the conservation area is in; and what is out, is out.

Therefore, conservation area regulations should not apply outside of the conservation area. There is no "buffer zone" created by designation of this area. If clean air or clean water laws, on their own, require more strict enforcement of mining activities, so be it. But that regulation should not hinge on the designation or existence of this conservation area.

The Gila Box Riparian National Conservation Area will be a valuable asset to the communities in Graham and Greenlee County. This unique and special designation will provide appropriate protection, but will permit a variety of recreational activities that will be extremely attractive to tourists from the crowded cities, as well as to the residents of more rural parts of Arizona.

WHITE CANYON

The White Canyon Wilderness Area is another site of significant compromise between environmentalists and mining interests. In this case, significant mineral claims lie just adjacent to the wilderness area. Asarco, Inc., negotiated with members of the Arizona Wilderness Coalition and agreed to boundary modifications to give them a greater degree of comfort about the proximity of their mining operation to the wilderness area. Mining just outside the area should not detract from the wilderness qualities within because of the topographical features of the wilderness area.

Committee report language discusses the possibility that the Forest Service should study the wilderness qualities of land immediately to the north of the BLM wilderness area. This area was somehow excluded from study leading up to the RARE II bill of 1984. While we do not require its study in this legislation, we do recommend that a study be undertaken at an appropriate time within the framework of the Forest Service planning schedule.

BLACK ROCK

At the appropriate time in this debate, I will offer an amendment to clarify the rights of private land owners, the land management agencies and the public relative to the Black Rock Wash Road in the San Carlos Apache Indian Reservation. I will reserve my discussion of this designated area until then.

NEEDLE'S EYE

Although the Needle's Eye wilderness lies immediately outside my district, I want to express my concern about how the BLM will manage the area. Bisecting almost the entire area

is an old power line serving the town of San Carlos in the San Carlos Apache Indian Reservation. That right of way is owned by the Bureau of Indian Affairs and is permanent. Yesterday, I introduced legislation to divest the Federal Government of the San Carlos Indian Irrigation project, which operates and maintains this power line. Upon enactment, the Arizona Public Service Co. will take title to the line.

An upgrade of this line is of extreme importance. Most of the area where the power line crosses is inaccessible by motorized vehicle anyway. When the upgrade takes place, helicopters will be used, consistent with the Wilderness Act's minimum tool requirement.

It should be made clear that transfer of title of this line to APS should not effect the right of way. There really is no effective way to move or relocate the line. The Bureau of Land Management declared this area as suitable for wilderness despite the power line, because of its antique condition. Therefore, this act should not be construed as preventing this right-of-way from being renewed.

WATER RIGHTS

For the last several years, Congress—and more importantly, the courts—have been wrestling with the issue of Federal water rights in wilderness areas. Language to be offered today by Mr. KYL, Mr. RHODES, and Chairman UDALL will successfully identify the rights of the States to adjudicate Federal water rights under State law and State procedures.

The doctrine of "first in time, first in right" is important to protect. It offers certainty to water users throughout the State, and preempts severe conflicts that would take place if newer rights were to impinge on historical uses.

The Rhodes-Kyl amendment ensures that State procedures will apply to Federal reserved rights within wilderness areas. The wilderness areas we designate will not suffer as a result. The Federal Government has shown that it can and will aggressively pursue wilderness water rights within State court.

For the sake of the rule of law, the prevention of chaos and the orderly disposition of water priority, the Rhodes-Kyl amendment deserves the support of the House.

Representative RHODES, KYL, and Chairman UDALL deserve a great deal of credit for finding a satisfactory resolution to this extremely complicated and technical question.

CONCLUSION

This wilderness bill was built upon the efforts of many—not just seven members of the House and Senate and their staffs. Ranchers, conservationists, miners, local elected officials,

hunters—to name only a few—were involved at every step and at every turn in this process. The final product represents to the extent possible a consensus. A perfect consensus was, regrettably, not achieved in the final analysis. While I regret this failure, I believe all points of view were fairly considered in this legislation.

Wilderness debates are difficult, because they focus on values as much as they focus on facts. That's why it's easy for reasonable people to disagree about the appropriateness of wilderness designation in specific areas.

It's up to elected representatives to make such difficult judgments based on the information available. Some difficult decisions have been made here—some unpopular decisions as well, I imagine. But all in all, this bill is positive for the State and the Nation.

It's not just a matter of local pride when I say that Arizona has some of the most beautiful areas in the country. We have more national parks and monuments than any other State in the Nation. We also have more Riparian National Conservation Areas than any other State in the Nation. And, by the time the 101st Congress comes to an end, we will have the first statewide BLM wilderness bill enacted into law.

Mr. VENTO. Mr. Chairman, I yield such time as he may consume to the gentleman from California [Mr. MILLER], who is the chairman of the Subcommittee on Water, Power and Offshore Energy Resources of the Committee on Interior and Insular Affairs. Let me say here that I want to thank the gentleman from California for his assistance in working on this bill, especially with reference to the water language.

Mr. MILLER of California. Mr. Chairman, I would like to extend my compliments to Chairman UDALL and the members of the Arizona delegation in putting together the Arizona Desert Wilderness Act. I can appreciate the long hours and hard work that went into this bill.

In particular, I would like to say that I appreciate the hard work and difficult decisions that Chairman UDALL, Mr. RHODES, and Mr. KYL had to make to reach an agreement on the water rights language that is being offered here today.

My understanding of the language in the amendments is that: There is an express reservation of water to the Federal Government sufficient to fulfill the purposes of the wilderness areas set aside by this bill; the Secretary of the Interior is directed to take all those steps necessary to protect the reserved water rights; and one of the steps the Secretary would take would be to file a claim in an appropriate stream adjudication in the Arizona State courts to quantify those claims.

This language does not amend the McCarran Act. This language does not prevent the Secretary from going to the Federal courts to protect the Federal reserved water rights, as the Secretary may do today, should that action be necessary.

The language of the amendments reflects our expectation that the Secretary will seek to quantify the reserved water for the areas protected by this bill in an appropriate stream adjudication in the Arizona State courts. I understand that there are several major stream adjudications, covering about 90 percent of the streams in Arizona, already underway. The Federal Government has been joined in these adjudications and that is the forum where the reserved water rights for much of the area covered by this bill is likely to be quantified. There appears to be only two major areas, included in wilderness in this bill, which is not part of a stream adjudication already. It is my expectation that this area will be part of a stream adjudication at a later date and that the Secretary will participate in that adjudication.

Again, I would like to compliment Chairman UDALL and his colleagues from Arizona for their hard work and their willingness to make the compromises necessary to develop this water rights language.

□ 1330

Mr. RHODES. Mr. Chairman, I yield 5 minutes to the gentleman from Idaho [Mr. CRAIG].

Mr. CRAIG. Mr. Chairman, I oppose the creation by Congress of a Federal reserved water right for wilderness. H.R. 2570 does just that.

Water is the lifeblood of the West, vital to our economy and way of life. We have fought hard over the years to maintain State preeminence, and it's good to see our efforts have met with at least some success.

In Idaho and the West, we believe water belongs to the States and that water issues should be resolved in State jurisdictions.

In an ideal world, States and their representatives in Congress could remain silent, knowing that States rights would remain States rights, and that outside forces would not intrude. Unfortunately, those days have passed.

Today we must fight for States' water rights at every level. We must not only confront an intrusive Federal Government, but also overactive courts and the legal system.

The Colorado decision of 1985, *Sierra versus Block*, asserted Federal water claims. And that decision was augmented by still other decisions diluting our States' positions and assuming greater Federal control.

To confuse things further, a court in New Mexico has concluded the opposite of the Colorado decision.

The courts have placed a huge cloud over water rights, creating an atmosphere of uncertainty. As a result, to remain silent is to risk the complete loss of State control.

Legislation that creates Federal wilderness must expressly state that such a designation does not establish a Federal water right. This is a matter Idaho's two Senators and I have brought to Congress time and time again.

A failure to explicitly state the intent of legislation on water rights can lead to the courts deciding what water rights are created—it can lead to the creation of an implied water right for wilderness.

As a Representative from Idaho, I cannot let that happen.

It is my duty to take out an insurance policy against the intrusion of the courts and the Federal Government into a States rights issue. And, together with Senator JIM McCLEURE, I'll continue to do so.

In Idaho, water is a matter of States rights. It has always been and always will be. We must not allow the Federal Government or courts to decide how a State manages its waters.

In addition, we should not be creating wilderness areas before the BLM makes its final recommendations concerning wilderness study areas. To do so would be to deny Congress the benefit of that organization's information and guidance.

Because the legislation before us today creates a Federal water right and for the aforementioned reason, I must oppose H.R. 2570.

Mr. VENTO. Mr. Chairman, I yield 4 minutes to the distinguished gentleman from Utah [Mr. OWENS].

Mr. OWENS of Utah. Mr. Chairman, I rise with genuine pleasure to support this important legislation and to commend the gentleman from Arizona [Mr. UDALL] and the Arizona delegation for bringing it forward. It is significant legislation, and it has been artfully crafted. It is a tribute to Chairman UDALL that this legislation is in its current condition. This is the man who is, perhaps, respected as much or more than anyone in the Congress on environmental and wilderness issues, and I commend him especially for the attainment of this important legislation today.

Mr. Chairman, I have in a small way been involved in the process which gave rise to the Arizona Desert Wilderness Act. Last year I traveled to Arizona to assist the gentleman from Minnesota [Mr. VENTO] at his request to help chair hearings in which the merits of protecting this land was debated. We had more than 150 witnesses on one day. The result of this equitable process is a fair bill which would designate 1.1 million acres of Bureau of Land Management land as

wilderness. It will allow 60 million acres to remain as wilderness study areas and to establish a national conservation area as well.

Mr. Chairman, wilderness is precious and limited. Man cannot create it. He can only protect it or destroy it. Wilderness cannot defend itself; only wise laws and wise government can. What we fail to protect now will ultimately lose its true character forever.

Mr. Chairman, we have protected some of our national forests as wilderness, but little of our desert lands. This act will serve to set aside a portion of our arid lands to preserve their beautiful and irreplaceable scenic treasures. It will also stop the destruction of wildlife habitat, rare plants, and archeological resources caused by marginal economic exploitation and offroad vehicles.

Mr. Chairman, I have spent a great deal of time studying the issues of protecting wild desert lands as a result of my own efforts to save 5.1 million acres of BLM lands in my own State. As we must protect the portion of the high desert ecosystem of the Colorado Plateau in Utah, we should also protect some of the Sonoran Desert of Arizona. This act will serve that latter goal very well.

Twenty-five years ago, Mr. Chairman, people such as the gentleman from Arizona [Mr. UDALL] had the foresight to create the wilderness preservation system. It is time now to implement that act to protect the totally natural character of some of our remaining desert lands, and that is what this bill today will accomplish.

Mr. RHODES. Mr. Chairman, I yield 3 minutes to my colleague, the gentleman from Arizona [Mr. KYL].

Mr. KYL. Mr. Chairman, I, too, rise in support of the addition of this important wilderness to the State of Arizona or in the State of Arizona. This is a bill about the future, and I think it is important that we lay these lands aside for future generations to enjoy, much as we have enjoyed the wonderful wilderness and lands in the State of Arizona in the past.

With respect to the water rights which are a very important part of this bill, we are doing two very critical things. One, we are designating reserved water rights to accompany this wilderness, which I think is critical to the preservation of the wilderness as we know it. Second, because we have very good proceedings for adjudicating water rights in the State of Arizona pursuant to State law, we are saying that the quantification of these wilderness water rights, these reserved water rights, should be in the State courts of Arizona, and we will be requesting approval of an amendment which specifically provides for the quantification of such rights in any present or future appropriate stream adjudication in the courts of the State

of Arizona in which the United States is or may be joined and which is conducted in accordance with the McCarran amendment.

The point of this, Mr. Chairman, is to ensure that the State court proceedings in which most of the water rights are currently being adjudicated in the State of Arizona will be the forum in which these water rights will be adjudicated as well. Under the McCarran amendment generally there is an option for the Federal Government to litigate reserved rights either in Federal or State courts. We are not upsetting that option in any other cases. We are saying in this case that we, the Congress, being the people who create this water right, are exercising the option of going into the State courts if there are proceedings there in which the Federal Government is or may be joined as a party and which are conducted in accordance with the principles of the McCarran amendment.

Mr. Chairman, we believe this is the best way to ensure that all of the rights are adjudicated vis-a-vis each other, that there will not be duplicative proceedings. We anticipate that there could be a situation in which the Federal Government needed to go into Federal court for the protection of water rights and for some other reason in some other way not to quantify the water rights, and that right would certainly continue to exist for the Federal Government, but for the quantification of the rights, that would be done in the State court proceedings under our proposed amendment.

With all of those thoughts in mind, Mr. Chairman, this is a bill which we are all proud to support, and I urge my colleagues to support it.

□ 1340

Mr. RHODES. Mr. Chairman, I yield 2 minutes to the gentleman from Wyoming [Mr. THOMAS].

Mr. THOMAS of Wyoming. Mr. Chairman, I simply rise briefly to express my concern about the principle of the expressed reservation of water rights as set forth in this particular piece of legislation. I certainly recognize the hard work that has gone into it, the recognition of the problem; but the concept of State appropriation of water is vital to our arid Western States, and I must rise in opposition to the notion of an expressed reservation. Even though it does refer to the State appropriation process for the development of the volume question, I am afraid that over the years we will simply go to court and say that water rights have been expressly reserved and that in fact the courts will then set that volume amount.

Therefore, Mr. Chairman, I rise in opposition.

Mr. RHODES. Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. LEWIS].

Mr. LEWIS of California. Mr. Chairman, I appreciate my colleague yielding me this time.

I rise to speak regarding H.R. 2570, not because I pretend to be an expert in the problems of Arizona, but because of the precedents in this bill that relate to developing and establishing wilderness in other Western States. My district involves territory that will be subject to the California Wilderness bill. You could easily place five Eastern States in my congressional district and yet a relatively small group of people are trying to decide how much wilderness should be accommodated there.

In our case, the Congress felt the issue was so important that we established a process whereby a public commission met for several years to hear all the parties involved. We spent \$8 million over 4 years doing that. At the end of it, a very few people decided to walk away from the public process and develop their own desert wilderness bill behind closed doors.

In this case, at least the delegation has been negotiating in a prolonged and bipartisan way.

I must say, I do have serious reservations about the water language that is a part of this bill.

On the other hand, I am rather pleased that this bill does set three positive precedents which should be followed as we fashion a California bill. First, it returns 950,000 acres to multiple use.

Second, it allows for the upgrade and expansion of utility corridors. Third, it recognizes the 1964 Wilderness Act's preservation of grazing rights where they do exist. These precedents should be maintained and held over, if you will, as preconditions for passage of the California bill.

Having said that, my greatest concern now about this bill is that an accommodation has not been made that is acceptable to the Arizona Member that has 75 percent of the land, and that individual, of course, is my colleague, the gentleman from Arizona [Mr. STUMP].

Indeed, items that affect Members' individual districts dramatically and directly should be settled to that Member's satisfaction before we move such bills out to the House floor.

Mr. RHODES. Mr. Chairman, I yield 5 minutes to my colleague, the gentleman from Arizona [Mr. STUMP].

Mr. STUMP. Mr. Chairman, I thank my colleague for yielding this time to me.

I would like to express special thanks to my colleague, the gentleman from Arizona [Mr. RHODES], a member of the committee. I would also like to tell Chairman UDALL how much I ap-

preciate his having hearings in Arizona last year to accommodate us, and I appreciate the efforts of my colleagues in the Arizona delegation to try to resolve the question of wilderness designations.

However, Mr. Chairman, I must rise in strong opposition to H.R. 2570, the Arizona Desert Wilderness Act. Almost 75 percent of the 1.1 million acres of public lands being designated to the wilderness system by this bill are located in my district. This bill does not represent a reasonable balance between the multiple use of our public resources and environmental concerns.

It is no secret that I am a strong multiple use advocate. Yet I recognize that there are unique lands in our State which could be added to the wilderness system. However, wilderness advocates would have you believe that the designation of 1.1 million acres of BLM lands as wilderness represents the only opportunity to save these lands, and that the lands are incapable of being managed otherwise in a responsible manner. Wilderness designations may, in fact, remove the flexibility necessary to manage public resources in a way which preserves and enhances the land for the future.

When we designate wilderness areas, we are not just preserving those lands for future generations, but we are in fact telling future generations that we do not trust them to make the right decisions on how to best use and manage public resources.

We also cannot ignore our responsibility to the present. At a time when Arizona's economy is in need of new stimulation, it makes no sense to me to impose additional constraints on new and needed economic development.

Specifically, the inclusion of two areas in this bill illustrate my point, and generally, the inclusion of lands which have been determined to hold moderate to high mineral potential cannot be ignored for Arizona's future or the future of this country. With regard to mineral potentials, not all of the lands which have been considered or will be designated by this bill have been inventoried for mineral potential. In addition, it should be noted today in Arizona, there already exists more than 2 million acres in wilderness, there are 2.5 million acres of National Park lands, and another 2.5 million acres of wildlife refuges, effectively precluding mineral entry in 7 million acres, not to mention the multitude of lands included in the half-dozen or so military installations in Arizona.

An area upon which no conclusion could be reached is the 57,800 acres of the Cactus Plain Wilderness Study Area. One of the factors why its status could not be resolved, and it will remain classified as a wilderness study area, is the proximity of the new townsite for the town of Parker. The town is located in La Paz County, a county

of 4,400 square miles, in which only 141,000 acres is privately owned—the remainder being public lands, wildlife refuges, a military installation, State lands, and Indian reservation.

Immediately adjacent to Cactus Plains, and a separate unit only by virtue of a concrete-lined portion of the Central Arizona Project water canal, is an area called East Cactus Plains which is being designated wilderness. The quality of the lands in East Cactus Plains have far more value as wilderness than those in Cactus Plains.

But aside from the questionable wilderness values of Cactus Plains, it is inevitable that the area will see a tremendous growth of residential and commercial development, including an airport facility. There is no doubt but that the encroachment of development will be an adverse pressure on managing Cactus Plain as a wilderness area. The town is currently surrounded on all sides by an Indian reservation, and the new townsite offers the opportunity for growth and economic development. The potential of the new townsite being bounded by the reservation on the west and a wilderness area on the east leaves little optimism for growth. The ability of the BLM to manage the area as wilderness under such encroachment must be considered, as should the opportunities for those who will be in the immediate vicinity to use the area for a variety of recreation purposes.

The inclusion of the Upper Burro Creek Wilderness Area also troubles me. Included in the 27,390 acre area are 6,400 acres of private, subsurface mineral rights owned by Santa Fe Minerals. While Santa Fe has over the last few years negotiated the exchange of more than 140,000 acres of subsurface mineral rights to clear the way for the designation of 8 wilderness areas included in this bill, and the Havasu National Wildlife Refuge included in H.R. 2571, the inclusion of Upper Burro Creek will force the company to look toward yet another exchange rather than be encumbered with the difficulties of developing their holdings in a wilderness area.

Further, Upper Burro Creek is within a mile or so of an existing copper mine, owned by Cyprus Minerals. That mine contributes more than 620 jobs and in 1989, generated about \$2 million in tax revenue to the economy of the area and the State. The designation of Upper Burro Creek will undoubtedly have an adverse impact on the operation of the mine, and can only throw the future expansion of the mining operation into serious doubt.

In an overzealous effort to protect public lands from human intrusion, we are too often sacrificing the historical use of lands by a public which deserves consideration in their use and access

to public resources. Mr. Chairman, Arizona is the sixth largest State in the Union—with more than 113,000 square miles and over 72 million acres. Yet, only 18 percent of the State is privately owned. Consequently, every decision we make regarding public resources is extremely critical.

While we heard and responded to some of the concerns which have been expressed by those Arizonans who are directly affected by the decisions in this bill, I do not believe that this bill is in the best interest of Arizona's future.

Mr. Chairman, I urge my colleagues to take a hard look at the contents and the consequences of this bill, and to vote no.

Mr. RHODES. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I simply would like to say in closing that I and all my colleagues do appreciate the efforts of the gentleman from Arizona [Mr. STUMP]. We recognize his concerns. He and his staff worked just as hard as anybody else on this issue.

Mr. Chairman, I yield back the balance of my time.

Mr. VENTO. Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

The CHAIRMAN. All time has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute now printed in the reported bill shall be considered as an original bill for the purpose of amendment, and each section shall be considered as having been read.

The Clerk will designate section 1.

Mr. VENTO. Mr. Chairman, I ask unanimous consent that the committee amendment in the nature of a substitute be printed in the Record and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 2570

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Arizona Desert Wilderness Act of 1990".

SEC. 2. WILDERNESS DESIGNATION AND MANAGEMENT.

(a) DESIGNATION.—In furtherance of the purposes of the Wilderness Act, the following public lands are hereby designated as wilderness and therefore, as components of the National Wilderness Preservation System:

(1) Certain lands in Mohave County, Arizona, which comprise approximately 23,600 acres, as generally depicted on a map entitled "Mount Wilson Wilderness" and dated February 1990, and which shall be known as the Mount Wilson Wilderness.

(2) Certain lands in Mohave County, Arizona, which comprise approximately 31,070 acres, as generally depicted on a map entitled "Mount Tipton Wilderness" and dated February 1990, and which shall be known as the Mount Tipton Wilderness.

(3) Certain lands in Mohave County, Arizona, which comprise approximately 27,530 acres, as generally depicted on a map entitled "Mount Nutt Wilderness" and dated February 1990, and which shall be known as the Mount Nutt Wilderness.

(4) Certain lands in Mohave County, Arizona, which comprise approximately 76,600 acres, as generally depicted on a map entitled "Warm Springs Wilderness" and dated February 1990, and which shall be known as the Warm Springs Wilderness.

(5) Certain lands in Mohave County, Arizona, which comprise approximately 15,900 acres, as generally depicted on a map entitled "Aubrey Peak Wilderness" and dated February 1990, and which shall be known as the Aubrey Peak Wilderness.

(6) Certain lands in La Paz County, Arizona, which comprise approximately 14,630 acres, as generally depicted on a map entitled "East Cactus Plain Wilderness" and dated February 1990, and which shall be known as the East Cactus Plain Wilderness.

(7) Certain lands in Mohave and Yavapai Counties, Arizona, which comprise approximately 41,600 acres, as generally depicted on a map entitled "Rawhide Mountains Wilderness" and dated February 1990, and which shall be known as the Rawhide Mountains Wilderness.

(8) Certain lands in Mohave, Yavapai, and La Paz Counties, Arizona, which comprise approximately 129,525 acres, as generally depicted on a map entitled "Arastra Mountain Wilderness" and dated February 1990, and which shall be known as the Arastra Mountain Wilderness.

(9) Certain lands in La Paz County, Arizona, which comprise approximately 25,287 acres, as generally depicted on a map entitled "Harcuvar Mountains Wilderness" and dated February 1990, and which shall be known as the Harcuvar Mountains Wilderness.

(10) Certain lands in La Paz and Maricopa Counties, Arizona, which comprise approximately 22,865 acres, as generally depicted on a map entitled "Harquahala Mountains Wilderness" and dated February 1990, and which shall be known as the Harquahala Mountains Wilderness.

(11) Certain lands in Maricopa County, Arizona, which comprise approximately 20,600 acres, as generally depicted on a map entitled "Big Horn Mountains Wilderness" and dated February 1990, and which shall be known as the Big Horn Mountains Wilderness.

(12) Certain lands in Maricopa County, Arizona, which comprise approximately 30,170 acres, as generally depicted on a map entitled "Hummingbird Springs Wilderness" and dated February 1990, and which shall be known as the Hummingbird Springs Wilderness.

(13) Certain lands in La Paz, Yuma, and Maricopa Counties, Arizona, which comprise approximately 94,100 acres, as generally depicted on a map entitled "Eagletail Mountains Wilderness" and dated February 1990, and which shall be known as the Eagletail Mountains Wilderness.

(14) Certain lands in Maricopa County, Arizona, which comprise approximately 15,250 acres, as generally depicted on a map entitled "Signal Mountain Wilderness" and dated February 1990, and which shall be known as the Signal Mountains Wilderness.

(15) Certain lands in Maricopa County, Arizona, which comprise approximately 61,000 acres, as generally depicted on a map entitled "Woolsey Peak Wilderness" and dated February 1990, and which shall be known as the Woolsey Peak Wilderness.

(16) Certain lands in Maricopa County, Arizona, which comprise approximately 14,500 acres, as generally depicted on a map entitled "Sierra Estrella Wilderness" and dated February 1990, and which shall be known as the Sierra Estrella Wilderness.

(17) Certain lands in Maricopa and Pinal Counties, Arizona, which comprise approximately 34,400 acres, as generally depicted on a map entitled "Table Top Wilderness" and dated February 1990, and which shall be known as the Table Top Wilderness.

(18) Certain lands in Pima County, Arizona, which comprise approximately 5,080 acres, as generally depicted on a map entitled "Coyote Mountains Wilderness" and dated February 1990, and which shall be known as the Coyote Mountains Wilderness.

(19) Certain lands in Pima County, Arizona, which comprise approximately 2,065 acres, as generally depicted on a map entitled "Baboquivari Peak Wilderness" and dated February 1990, and which shall be known as the Baboquivari Peak Wilderness.

(20) Certain lands in Gila County, Arizona, which comprise approximately 9,201 acres, as generally depicted on a map entitled "Needle's Eye Wilderness" and dated February 1990, and which shall be known as the Needle's Eye Wilderness. The right-of-way reserved by right-of-way reservation A-18043 dated October 20, 1986, together with the right of ingress and egress thereto, shall not be affected by this Act, and the existing powerline utilizing such right-of-way may be operated, maintained, and upgraded, subject to reasonable requirements to protect wilderness values.

(21) Certain lands in Graham County, Arizona, which comprise approximately 6,590 acres, as generally depicted on a map entitled "North Santa Teresa Wilderness" and dated February 1990, and which shall be known as the North Santa Teresa Wilderness.

(22) Certain lands in Graham County, Arizona, which comprise approximately 10,883 acres, as generally depicted on a map entitled "Fishhooks Wilderness" and dated February 1990, and which shall be known as the Fishhooks Wilderness.

(23) Certain lands in Cochise County, Arizona, which comprise approximately 11,998 acres, as generally depicted on a map entitled "Dos Cabezas Mountains Wilderness" and dated February 1990, and which shall be known as the Dos Cabezas Mountains Wilderness.

(24) Certain lands in Graham County, Arizona, which comprise approximately 6,800 acres, as generally depicted on a map entitled "Redfield Canyon Wilderness" and dated February 1990, and which shall be known as the Redfield Canyon Wilderness.

(25) Certain lands in La Paz County, Arizona, which comprise approximately 18,805 acres, as generally depicted on a map entitled "Gibraltar Mountain Wilderness" and dated February 1990, and which shall be known as the Gibraltar Mountain Wilderness.

(26) Certain lands in La Paz County, Arizona, which comprise approximately 15,755 acres, as generally depicted on a map entitled "Swansea Wilderness" and dated February 1990, and which shall be known as the Swansea Wilderness.

(27) Certain lands in La Paz County, Arizona, which comprise approximately 29,095

acres, as generally depicted on a map entitled "Trigo Mountain Wilderness" and dated February 1990, and which shall be known as the Trigo Mountain Wilderness.

(28) Certain lands in Yuma County, Arizona, which comprise approximately 8,855 acres, as generally depicted on a map entitled "Muggins Mountain Wilderness" and dated February 1990, and which shall be known as the Muggins Mountain Wilderness.

(29) Certain lands in Yavapai and Maricopa Counties, Arizona, which comprise approximately 9,200 acres, as generally depicted on a map entitled "Hells Canyon Wilderness" and dated February 1990, and which shall be known as the Hells Canyon Wilderness.

(30) Certain lands in Maricopa County, Arizona, which comprise approximately 63,600 acres, as generally depicted on a map entitled "North Maricopa Mountains Wilderness" and dated February 1990, and which shall be known as the North Maricopa Mountains Wilderness.

(31) Certain lands in Maricopa County, Arizona, which comprise approximately 72,004 acres, as generally depicted on a map entitled "South Maricopa Mountains Wilderness" and dated February 1990, and which shall be known as the South Maricopa Mountains Wilderness.

(32) Certain lands in Mohave County, Arizona, which comprise approximately 38,400 acres, as generally depicted on a map entitled "Wabayuma Peak Wilderness" and dated February 1990, and which shall be known as the Wabayuma Peak Wilderness.

(33) Certain lands in Mohave County, Arizona, which comprise approximately 27,390 acres, as generally depicted on a map entitled "Upper Burro Creek Wilderness" and dated February 1990, and which shall be known as the Upper Burro Creek Wilderness.

(34) Certain lands in Yavapai County, Arizona, which comprise approximately 11,840 acres, as generally depicted on a map entitled "Hassayampa River Canyon Wilderness" and dated February 1990, and which shall be known as the Hassayampa River Canyon Wilderness.

(35) Certain lands in Pinal County, Arizona, which comprise approximately 5,800 acres, as generally depicted on a map entitled "White Canyon Wilderness" and dated February 1990, and which shall be known as the White Canyon Wilderness.

(36) Certain lands in Mohave County, Arizona, which comprise approximately 8,700 acres, as generally depicted on a map entitled "Tres Alamos Wilderness" and dated February 1990, and which shall be known as the Tres Alamos Wilderness.

(37) Certain lands in Cochise County, Arizona, which comprise approximately 19,650 acres, as generally depicted on a map entitled "Peloncillo Mountains Wilderness" and dated February 1990, and which shall be known as the Peloncillo Mountains Wilderness.

(38) Certain lands in Yuma County, Arizona, which comprise approximately 21,860 acres, as generally depicted on a map entitled "New Water Mountains Wilderness" and dated February 1990, and which shall be known as the New Water Mountains Wilderness.

(39) Certain lands in Gila and Graham Counties, Arizona, which comprise approximately 12,711 acres, as generally depicted on a map entitled "Aravaipa Wilderness Additions" and dated February 1990, and which

shall be added to and managed as part of Aravaipa Wilderness.

(b) **MANAGEMENT.**—Subject to valid existing rights, the wilderness area designated by this Act shall be administered by the Secretary of the Interior (hereinafter in this Act referred to as the "Secretary") in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness, except that any reference in such provisions to the effective date of the Wilderness Act (or any similar reference) shall be deemed to be a reference to the date of enactment of this Act.

(c) **MAP AND LEGAL DESCRIPTION.**—As soon as practicable after enactment of this Act, the Secretary shall file a map and a legal description of each wilderness area designated under this section with the Committee on Interior and Insular Affairs of the United States House of Representatives and with the Committee on Energy and Natural Resources of the United States Senate. Such map and description shall have the same force and effect as if included in this Act, except that correction of clerical and typographical errors in such legal description and map may be made. Such map and legal description shall be on file and available for public inspection in the Office of the Director, Bureau of Land Management, United States Department of the Interior.

(d) **NO BUFFER ZONES.**—The Congress does not intend for designation of wilderness area in the State of Arizona to lead to the creation of protective perimeters or buffer zones around any such wilderness area. The fact that nonwilderness activities or uses can be seen or heard from areas within a wilderness shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area.

(e) **FISH AND WILDLIFE.**—As provided in paragraph (7) of section 4(d) of the Wilderness Act, nothing in this Act or in the Wilderness Act shall be construed as affecting the jurisdiction or responsibilities of the State of Arizona with respect to wildlife and fish on the public lands located in that State.

(f) **LIVESTOCK.**—(1) Grazing of livestock in wilderness areas designated by this Act, where established prior to the date of the enactment of this Act, shall be administered in accordance with section 4(d)(4) of the Wilderness Act and the guidelines set forth in Appendix A of the Report of the Committee on Interior and Insular Affairs to accompany H.R. 2570 of the One Hundred First Congress (H. Rept. 101-405).

(2) The Secretary is directed to review all policies, practices, and regulations of the Bureau of Land Management regarding livestock grazing in Bureau of Land Management Wilderness areas in Arizona in order to insure that such policies, practices, and regulations fully conform with and implement the intent of Congress regarding grazing in such areas, as such intent is expressed in this Act.

(g) **WATER.**—With respect to each wilderness area designated by this Act, Congress hereby reserves a quantity of water sufficient to fulfill the purposes of this Act. The priority date of such reserved rights shall be the date of enactment of this Act. The Secretary of the Interior shall file a claim for the quantification of such rights in an appropriate stream adjudication, and shall take all steps necessary to protect such rights in such an adjudication. The Federal water rights reserved by this Act shall be in addition to any water rights which may have been previously reserved or obtained by the

United States for other than wilderness purposes.

(h) **WILDLIFE MANAGEMENT.**—In furtherance of the purposes and principles of the Wilderness Act, management activities to maintain or restore fish and wildlife populations and the habitats to support such populations may be carried out within wilderness areas, where consistent with relevant wilderness management plans, in accordance with appropriate policies and guidelines such as those set forth in appendix B of the Report of the Committee on Interior and Insular Affairs to accompany H.R. 2570 of the One Hundred First Congress (H. Rept. 101-405).

SEC. 2. CONGRESSIONAL FINDING.

Excepting for the Baker Canyon area (AZ-040-070), and the approximately 57,800 acres of public land as generally depicted on a map entitled "Cactus Plain Wilderness Study Area" dated February, 1990, the Congress hereby finds and directs that all public lands in Arizona, administered by the Bureau of Land Management pursuant to the Federal Land Policy and Management Act of 1976 not designated as wilderness by this Act, or previous Acts of Congress, have been adequately studied for wilderness designation pursuant to section 603 of such Act and are no longer subject to the requirement of section 603(c) of such Act pertaining to the management of wilderness study areas in a manner that does not impair the suitability of such areas for preservation as wilderness.

SEC. 4. GILA BOX RIPARIAN NATIONAL CONSERVATION AREA.

(a) **PURPOSES.**—In order to conserve, protect, and enhance the riparian and associated areas described in subsection (b) and the aquatic, wildlife, archeological, paleontological, scientific, cultural, recreational, educational, scenic, and other resources and values of such areas, there is hereby established the Gila Box Riparian National Conservation Area (hereafter in this section referred to as the "conservation area").

(b) **AREAS INCLUDED.**—The conservation area shall consist of the public lands generally depicted on a map entitled "Gila Box Riparian National Conservation Area" dated February 1990, and comprising approximately 20,900 acres.

(c) **MAP.**—As soon as practicable after the date of enactment of this Act, a map and legal description of the conservation area shall be filed by the Secretary with the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. Such map shall have the same force and effect as if included in this section. Copies of such map shall be on file and available for public inspection in the Office of the Director of the Bureau of Land Management, Department of the Interior, and in appropriate office of the Bureau of Land Management in Arizona.

(d) MANAGEMENT OF CONSERVATION AREA.

(1) The Secretary shall manage the conservation area in a manner that conserves, protects, and enhances its resources and values (including the resources and values specified in subsection (a)), pursuant to the Federal Land Policy and Management Act of 1976 and other applicable law, including this section.

(2) The Secretary shall allow only such uses of the conservation area as the Secretary finds will further the purposes for which the conservation area is established. Except where needed for administrative purposes or to respond to an emergency, use of motorized vehicles in the conservation area

shall be permitted only on roads specifically designated for such use as part of the management plan prepared pursuant to this section.

(e) **WITHDRAWAL AND WATER.**—(1) Subject to valid existing rights, all Federal lands within the conservation area are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws; from location, entry, and patent under the United States mining laws; and from disposition under all laws pertaining to mineral and geothermal leasing, and all amendments thereto.

(2) Congress hereby reserves a quantity of water sufficient to fulfill the purposes (as specified in subsection (a)) for which the conservation area is established. The priority date of this reserved right shall be the date of enactment of this Act. The Secretary shall file a claim for the quantification of this right in an appropriate stream adjudication, and shall take all steps necessary to protect such right in such adjudication. The Federal water right reserved by this paragraph shall be in addition to any other water rights reserved or obtained by the United States.

(f) **MANAGEMENT PLAN.**—(1) No later than two years after the date of enactment of this Act, the Secretary shall develop a comprehensive plan for the long-term management of the conservation area in order to fulfill the purposes for which the conservation area is established. The management plan shall be developed with full public participation and shall include provisions designed to assure protection of the resources and values (including the resources and values specified in subsection (a)) of the conservation area. For the purposes of this section, the term "management plan" means the plan developed under this subsection.

(2) The management plan shall include a discussion of the desirability of the inclusion in the conservation area of additional lands, including the lands not in Federal ownership that are contiguous to the boundary of the conservation area (as depicted on the map referenced in subsection (b) or as hereafter adjusted pursuant to subsection (g)) and within the area extending two miles on either side of the centerline of Eagle Creek from the point where Eagle Creek crosses the southern boundary of the Apache National Forest to the confluence of Eagle Creek with the Gila River (this area is hereafter referred to in this section as the "Eagle Creek riparian area").

(3) In order to better implement the management plan, the Secretary may enter into cooperative agreements with appropriate State and local agencies pursuant to section 307(b) of the Federal Land Policy and Management Act of 1976.

(4) In order to assist in the development and implementation of the management plan, the Secretary may authorize appropriate research, including research concerning the environmental, biological, hydrological, cultural, and other characteristics, resources, and values of the conservation area, pursuant to section 307(a) of the Federal Land Policy and Management Act of 1976.

(g) **ACQUISITION AND BOUNDARY ADJUSTMENTS.**—(1) The Secretary is authorized to acquire non-Federal lands or interests therein within the boundaries of the conservation system unit or within the Eagle Creek riparian area.

(2) The Secretary is authorized to adjust the boundaries of the conservation area so as to incorporate within the conservation area any lands or interests within the Eagle

Creek riparian area that may be acquired after the date of enactment of this Act as well as public lands within that portion of the Eagle Creek riparian area west of the centerline of Eagle Creek that the Secretary finds appropriate in order to properly manage such acquired lands as part of the conservation area. Any lands or interests so incorporated shall be managed as part of the conservation area.

(3) No lands or interests therein owned by the State of Arizona or any political subdivision of such State shall be acquired pursuant to this subsection except through donation or exchange, and no lands or interests within the conservation area or the Eagle Creek riparian area shall be acquired from any other party or entity except by donation, exchange, or purchase with the consent of the owner of such lands or interests.

(h) **NO BUFFER ZONES, AND SO FORTH.**—The Congress does not intend for the establishment of the conservation area to lead to the creation of protective perimeters or buffer zones around the conservation area. The fact that there may be activities or uses on lands outside the conservation area not permitted in the conservation area shall not preclude such activities or uses up to the boundary of the conservation area to the extent consistent with other applicable law.

(i) **ADVISORY COMMITTEE.**—The Secretary shall establish an advisory committee to advise the Secretary with respect to the preparation and implementation of the management plan. Such advisory committee shall consist of seven members appointed by the Secretary. One member shall be appointed from nominations supplied by the Governor of Arizona and one member each shall be appointed from nominations supplied by the supervisors of Graham and Greenlee Counties, respectively. The remaining members shall be persons with recognized backgrounds in wildlife conservation, riparian ecology, archeology, paleontology, or other disciplines directly related to the purposes for which the conservation area is established.

(j) **REPORT.**—No later than five years after the date of enactment of this Act, and at least each ten years thereafter, the Secretary shall report to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate on the implementation of this section, the condition of the resources and values of the conservation area, and the progress of the Secretary in achieving the purposes for which the conservation area is established.

(k) **ENFORCEMENT.**—Any person who violates any regulation promulgated by the Secretary to implement this section shall be subject to a fine in accordance with applicable provisions of the Sentencing Reform Act of 1984 (18 U.S.C. 3572) or to imprisonment for at least six months but no more than one year, or both such fine and imprisonment.

(l) **AUTHORIZATION.**—There are hereby authorized to be appropriated such sums as may be necessary to implement the provisions of this section.

AMENDMENTS OFFERED BY MR. VENTO

Mr. VENTO. Mr. Chairman, I offer a series of technical amendments, which have been cleared with the minority.

The Clerk read as follows:

Amendments offered by Mr. VENTO:

Page 2, line 22, change "76,800" to "90,800".

Page 3, line 11, change "Yavapai" to "La Paz".

Page 3, line 19, change "129,525" to "128,780".

Page 4, line 24, change "94,100" to "89,000".

Page 9, line 2, change "72,004" to "80,800".

Page 9, line 12, change "Mohave" to "Yavapai".

Page 10, line 3, change "Mohave" to "Yavapai".

Page 10, line 14, change "Yuma" to "La Paz".

Page 10, line 15, change "21,880" to "21,880".

Page 13, line 21, change "H. Rept. 101—" insert "405".

Page 13, line 22, change "CONGRESSIONAL FINDING." to "AREAS RELEASED.".

Page 16, line 18, change "reserved" to "which may have been previously reserved".

Page 19, line 1, strike "AND SO FORTH".

Page 19, line 5, change "not" to "that would not be".

Page 19, line 7, after "activities or uses" insert "on such lands".

Mr. VENTO (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered en bloc, considered as read, and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. VENTO. Mr. Chairman, these are simply technical amendments in nature. As I said, they have already been cleared with the minority. They correct some typographical errors in the committee substitute, revise some section headings, revise acreages to reflect the recalculations made by the Bureau of Land Management and make similar technical changes. I know of no objection to them and I urge their adoption.

I would be happy to yield to the manager on the part of the minority, if he wishes, for concurrence in my technical amendments.

Mr. RHODES. Mr. Chairman, will the gentleman yield?

Mr. VENTO. I yield to the gentleman from Arizona.

Mr. RHODES. I thank the gentleman for yielding to me.

Mr. Chairman, we have reviewed the technical amendments. We agree with them, and we have no objection to them.

Mr. VENTO. Mr. Chairman, I appreciate the gentleman's comments.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Minnesota [Mr. VENTO].

The amendments were agreed to.

□ 1350

AMENDMENTS OFFERED BY MR. KOLBE

Mr. KOLBE. Mr. Chairman, I offer two amendments, and I ask unanimous consent that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona.

There was no objection.

The Clerk read as follows:

Amendments offered by Mr. KOLBE: Page 6, after line 24, insert the following: "The Secretary of the Interior, acting through the Bureau of Indian Affairs, shall administer that portion of the Black Rock Wash Road located within the boundaries of the San Carlos Apache Reservation so as to allow reasonable use of the road for private and administrative purposes and may permit limited public use of such road for the purpose of access to the public lands outside the reservation boundary."

Page 13, after line 21, insert the following:

(i) **AMENDMENT.**—Section 101(a)(23) of the Arizona Wilderness Act of 1984 (98 Stat. 1487) is amended by striking "the governmental agency having jurisdictional authority may authorize limited access to the area, for private and administrative purposes, from U.S. Route 70 along Black Rock Wash to the vicinity of Black Rock;"

Mr. KOLBE (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. KOLBE. Mr. Chairman, the intent of this amendment is to clarify rights and uses along a road which passes through the San Carlos Indian Reservation on its way from U.S. Route 70 to several ranches and the North Santa Theresa Wilderness Area. This amendment should resolve long-standing questions which have put the private landowners, the tribe and the land management agencies in a perpetual state of potential conflict.

This amendment clarifies that the administration of the road is the responsibility of the Secretary of the Interior, working through the Bureau of Indian Affairs. This ensures that decisions will be made with utmost sensitivity to the needs of the San Carlos Apache Tribe, as well as the ranchers who live between the reservation and the wilderness, and the land management agencies and public visitors.

There is some question extant about whether the Black Rock Wash Road, where it passes through the reservation, is a tribal road or a public road. This amendment does not attempt to answer that question. Emotions run too high, and the stakes are too great for that kind of confrontation to be joined here. Rather, within that uncertainty, this amendment endeavors to establish a structure and a process which will meet the needs of all concerned parties.

The San Carlos Apaches have legitimate concerns about the possibility that increased public access along the Black Rock Wash Road could lead to increased vandalism, looting of cultural resources, or other criminal activities. They assert that their law enforcement capabilities in this remote area require the implementation of a permit system so that they can keep

tabs on those who enter their reservation.

This system is not to be applied to the private landowners whose only access to their land is through the reservation. At this time, these families are not required to obtain permits. Based on recognition, the tribal authorities allow these non-Indian families to proceed to their homes and to their grazing allotments. Those that are not recognized are stopped.

However, this is a haphazard system which creates tensions and uncertainties. I intend to convene a meeting with the tribal chairman of the San Carlos Apaches, and to include the Bureau of Land Management, the Forest Service, and the private landowners, to see if this system can be refined and coordinated.

Many members of the public will no doubt want to visit the new North Santa Theresa Wilderness, and the adjacent Santa Theresa Wilderness designated in the 1984 Arizona RARE II Act. Such visits should not be denied, but they can be managed through a permit system that is flexible and accessible. Such a permit system will serve to protect both the San Carlos Apache's and the ranchers in the area.

This permit system should not be extended to the ranchers themselves. They have the right to all reasonable access they may desire so they can carry out their daily activities. Working together with the tribe, they can ensure that problems along the road are reported and repaired. The potential for mutual cooperation and assistance between the tribe and the ranchers is great.

If the designation of wilderness is responsible for increased traffic along Black Rock Wash Road, I am prepared to advocate increased appropriations for the San Carlos Apaches for both law enforcement and maintenance. Funds for these activities are authorized under the Snyder Act, and not by the Arizona Desert Wilderness Act of 1990.

Mr. Chairman, I offer this amendment in an attempt to make the designation of the North Santa Theresa Wilderness a constructive vehicle for resolving longstanding frictions. I ask for the support of the House membership in this effort so that the rights of the tribe, the private inholders, the land management agencies and the public will be clear.

Mr. VENTO. Mr. Chairman, I rise in support of the amendments en bloc.

Mr. Chairman, just briefly, I want to rise in support.

I have consulted with the chairman, the gentleman from Arizona [Mr. UDALL], on this amendment. Obviously the amendments en bloc repeal a section of the law that was written in the Wilderness Act of 1984, and it further goes on to direct the Secretary of the Interior to provide, and to try to re-

solve these access problem for private inholders, for public land management purposes, and for some public use with regard to access to the wilderness.

This amendment, we think, is necessary and feel that it is appropriate to place in the bill so that we can resolve this particular issue in Arizona.

We look forward to working with the gentleman as the administrative procedure emanates from this legislative direction.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Arizona [Mr. KOLBE].

The amendments were agreed to.

AMENDMENTS OFFERED BY MR. RHODES

Mr. RHODES. Mr. Chairman, I offer two amendments, and I ask unanimous consent that they be considered en bloc.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The Clerk read as follows:

Amendments offered by Mr. RHODES: Page 13, strike lines 1 through 11 and in lieu thereof insert the following:

"(g) WATER.—(1) With respect to each wilderness area designated by this Act, Congress hereby reserves a quantity of water sufficient to fulfill the purposes of this Act. The priority date of such reserved rights shall be the date of enactment of this Act.

"(2) The Secretary of the Interior and all other officers of the United States shall take all steps necessary to protect the rights reserved by paragraph (1), including the filing by the Secretary of a claim for the quantification of such rights in any present or future appropriate stream adjudication in the courts of the State of Arizona in which the United States is or may be joined and which is conducted in accordance with the McCarran Amendment, 43 U.S.C. 666."

"(3) Nothing in this Act shall be construed as a relinquishment or reduction of any water rights reserved or appropriated by the United States in the State of Arizona on or before the date of enactment of this Act."

"(4) The federal water rights reserved by this Act are specific to the wilderness areas and national conservation area located in the State of Arizona designated by this Act. Nothing in this Act related to reserved federal water rights shall be construed as establishing a precedent with regard to any future designations, nor shall it constitute an interpretation of any other Act or any designation made pursuant thereto." Page 18, strike lines 10 through 19 in their entirety and in lieu thereof insert the following:

"(2)(A) Congress hereby reserves a quantity of water sufficient to fulfill the purposes (as specified in subsection (a)) for which the conservation area is established. The priority date of this reserved right shall be the date of enactment of this Act.

"(B) The Secretary of the Interior and all other officers of the United States shall take all steps necessary to protect the right reserved by this paragraph, including the filing by the Secretary of a claim for the quantification of such right in any present or future appropriate stream adjudication in the courts of the State of Arizona in which the United States is or may be joined and which is conducted in accordance with the McCarran Amendment, 43 U.S.C. 666."

Mr. RHODES (during the reading). Mr. Chairman, I ask unanimous consent that the amendments be considered as read and printed in the Record.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. RHODES. Mr. Chairman, let me say for the record that this amendment is cosponsored by myself, the gentleman from Arizona [Mr. KYL], the gentleman from Arizona [Mr. KOLBE], the gentleman from Arizona [Mr. UDALL], and the gentleman from Minnesota [Mr. VENTO].

As I mentioned in my remarks during general debate, this issue concerning water rights and the adjudication of water rights has been the most difficult for us to resolve during our negotiations on the bill. There has been honest disagreement on both sides as to just exactly how this issue should be addressed. Again, let me reiterate that the question is not the existence of a Federal reserve water right. That has always been in the bill. It has always been agreed to by all parties to this debate. That is not the issue.

The issue is how, where, and when should that right be quantified and adjudicated. Our concern has been the forum in which those rights should be determined. It has been our concern that they be done in Arizona, that they be adjudicated in the Arizona courts under the Arizona system.

This amendment, which is now agreed to by all those who have been engaged in this debate, speaks to those concerns raised by those of us from Arizona worried about this particular issue, and I particularly want to thank my colleague, the gentleman from Arizona [Mr. KYL], for the work he put in on helping us to be able to come to closure on this issue.

The amendment makes specific reference to our intention that these reserve water rights should be quantified and adjudicated in the courts of the State. The amendment resolves the conflict between existing bill language and existing report language regarding the nature of the wilderness water right.

I need to elaborate on that briefly. These wilderness water rights will not necessarily be greater than any existing Federal water rights which the United States may have acquired for any other purposes. That will be determined in the State quantification process, and in any case, no existing Federal water rights are intended to be relinquished or diminished in any way under this amendment.

This language was supported by the State of Arizona, specifically by the Arizona Department of Water Resources.

Finally, the amendment asserts that the water language applies to this bill, the Arizona Bureau of Land Management Wilderness bill, and not to any past or future wilderness bills in any other State. It is our firm belief that these issues related to water should be resolved on a State-by-State basis as each State's BLM and Forest Service wilderness bills are brought to the floor of this House for consideration. We have no intention, no intention, that the solution to this problem that we have found for our State should be imposed upon any other State. We believe the compromise addresses our concerns for Arizona.

As I have just said, we do not expect that they will address or resolve concerns in other States.

Mr. Chairman, at this point, I would like to engage the chairman, the gentleman from Minnesota [Mr. VENTO], in a colloquy with respect to these amendments and certain portions of them.

Mr. Chairman, is it your understanding that in order to quantify the Federal reserved water rights being created, the Secretary of the Interior would file a claim in an appropriate stream adjudication in the courts of the State of Arizona?

Mr. VENTO. Mr. Chairman, will the gentleman yield?

Mr. RHODES. I am happy to yield to the gentleman from Minnesota.

Mr. VENTO. The McCarran amendment allows the United States to be joined as a defendant in a general stream adjudication in State courts. It is my expectation that when the United States is so joined, that the Secretary will participate under the McCarran amendment to adjudicate the Federal reserve water rights created by H.R. 2570 in the Arizona State court system.

Mr. RHODES. Although the Secretary retains the right to file in the Federal district court in cases in which the United States is not joined, would the amended bill require that he file there?

Mr. VENTO. No. The amendments do not amend the McCarran amendment, so neither the State court option nor the Federal court option would be mandated. However, with regard to the Federal reserve rights being created for wilderness areas in Arizona, we expect that the Secretary act to quantify such rights through the State system, when afforded an appropriate opportunity to do so consistent with the McCarran amendment.

□ 1400

Mr. RHODES. Does the gentleman anticipate a filing by the Secretary in Federal district court with respect to the Gila or Little Colorado River systems?

Mr. VENTO. We have been informed that the pending State adjudications of the Gila and Little Colorado River systems presumably may serve as the appropriate forum for quantification of the rights reserved by the bill related to those systems. Further, it is my understanding that if the Secretary were to file for claims on those systems in the Federal district court, the proceedings would probably be removed to State court.

Mr. RHODES. Does the gentleman or the committee anticipate a filing by the Secretary in Federal district court with respect to the Federal reserved rights being created on the Bill Williams River?

Mr. VENTO. No State adjudication is currently pending for the Bill Williams. The committee does not intend to prompt a premature adjudication on the Bill Williams, as was noted in the committee's report. Based on what we know now, we do expect that the Secretary would more than likely file for quantification of rights in a future Bill Williams adjudication in the courts of the State of Arizona at the appropriate time.

Mr. RHODES. Mr. Chairman, I thank the gentleman for his participation. I would remind the Committee of the Whole and the House that this has been a hard fought amendment. We are pleased to be joined in it by our colleagues. I would urge its adoption.

Mr. UDALL. Mr. Chairman, I move to strike the requisite number of words. Before we wind up tonight, I want to respond to the compliments that have been showered upon me. I want to return the compliments, especially to my colleague, the gentleman from Arizona [Mr. RHODES]. The gentleman has been almost an instant leader since he came to the committee. He is responsible, long suffering, innovative, and just a genuine good legislator.

The gentleman could have ducked the issue. He could have sabotaged what was going on here at several points. But, working with the gentlemen from Arizona, Mr. STUMP, Mr. KOLBE, and Mr. KYL, they have a lot to be proud of. I think Arizona in looking back will have to say this is one of the finest hours of our congressional delegation.

Mr. Chairman, I support this amendment. I join in the colloquy, which has accurately stated my position.

Mr. Chairman, I am extremely pleased that we have been able to arrive at an understanding on this very important matter. The issue of Federal reserved water rights for wilderness areas created by this act is without doubt among the most hotly contested and complex of the many issues we have faced in this legislation.

Over the past several months, there have been very detailed discussions between myself, my colleagues in the Arizona delega-

tion and the relevant subcommittee chairmen. We have learned a great deal in the course of those discussions, which led directly to the agreement now before us. I believe this amendment is an important and appropriate clarification of the language previously agreed to by the Interior Committee.

Those concerned that the water rights reserved by H.R. 2570 be adjudicated and quantified in Arizona State courts under Arizona water law can expect that they will be. At the same time, we have left the McCarran amendment fully intact and protected the ability of the United States to defend its rights in appropriate court proceedings.

I want to associate myself entirely with the colloquy that has just been entered into regarding the meaning and intent of the amendment and say that I share their interpretation.

Mr. Chairman, I want to commend Mr. RHODES, Mr. KYL, Mr. MILLER, and Mr. VENTO for the diligent and patient work on this amendment. It is important work and I am pleased to support it.

Mr. VENTO. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the amendments en bloc and have joined as an author of it myself with Chairman UDALL. These amendments would revise the language in the bill dealing with the reservation of water rights. The first amendment would apply to the water rights reserved with respect to the 39 wilderness areas designated by the bill, and also would state that nothing in the bill should be construed as a relinquishment of any other Federal water rights in Arizona.

The second amendment is similar, but relates specifically to the reservation of a water right related to the Gila Box Riparian National Conservation Area that would be established by section 4 of the bill.

Mr. Chairman, these amendments would require the Secretary of the Interior and all other officials of the National Government to take whatever steps may be necessary to protect the water rights that would be reserved by the bill. One of those steps would be the filing of claims for the quantification of the amounts of water reserved by the bill, in any present or future appropriate stream adjudication in the Arizona courts in which the United States is joined under the McCarran amendment, and which is conducted in accordance with that provision of existing law.

As a practical matter, Mr. Chairman, that is exactly what we would expect would happen in any event, whether or not this language is included in the bill. In fact, the committee has been told that about 90 percent of the streams in Arizona are already the subject of State adjudications, and after enactment of this bill the water rights reserved by the bill will be added to the matters dealt with in those proceedings. And, for the major

river system not now in adjudication, the Bill Williams River, the major concern of the State, as explained to us, is that adjudication not occur too soon. Neither the bill as reported nor these amendments would require that. This is explained in detail in the committee's report, and that discussion will remain applicable after adoption of the amendments.

Still, Mr. Chairman, I support the amendments because it seems appropriate to include their explicit reference to State stream adjudications.

At the same time, the amendments would leave intact the existing law and practice in this area, specifically the McCarran amendment, which provides the basis for concurrent Federal and State court jurisdiction over adjudication of Federal water rights. This is a most important point, because I am convinced that this existing law is sound and works well, not only in Arizona but in other States as well.

The existing law is not "broken." Mr. Chairman, and so Congress should not be "fixing" it in the context of this bill.

As to the part of the amendments that disclaim any intent to relinquish any existing Federal water rights, that is really only a rewording of what is now in the bill. I believe that the bill as it stands means and accomplishes the same thing, but the gentleman from Arizona [Mr. RHODES], and others have raised questions about it, and prefer the rewording included in the amendments. I believe that the effect is exactly the same, and so I support the rewordings.

So, Mr. Chairman, to summarize, these amendments would leave existing law, including the McCarran amendment intact. They would not change the jurisdiction of the Federal courts. They would not reduce the procedural options now available to officials of the national government to protect the rights of the United States or to enforce or implement such Federal laws as the Endangered Species Act. They would not require quantification in State courts. However, they would accurately reflect a congressional expectation that these the Federal reserved water rights will presumably be quantified in the State courts of Arizona in adjudications in which the United States has been joined under the provisions of the McCarran amendment.

Thus, Mr. Chairman, these amendments en bloc maintain the same careful, sound balance between Federal and State judicial jurisdiction and procedures as reflected in the McCarran amendment and other existing law and practice.

The amendments deserve the strong approval of the House and I urge their adoption.

The CHAIRMAN. The question is on the amendments offered by the gentleman from Arizona [Mr. RHODES].

The amendments were agreed to.

Are there any further amendments to the bill?

If not, the question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. FLIPPO) having assumed the chair, Mr. MAZZOLI, Chairman of the Committee of the Whole House on the State of the Union, reported that Committee, having had under consideration the bill (H.R. 2570), to provide for the designation of certain public lands as wilderness in the State of Arizona, pursuant to House Resolution 338, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. VENTO. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device and there were—yeas 356, nays 45, not voting 30, as follows:

(Roll No. 18)
YEAS—356

Ackerman
Akaka
Alexander
Anderson
Annunzio
Applegate
Archer
Aspin
Atkins
Baker
Ballenger
Barnard
Bartlett
Bateman
Bates
Bellenson
Bennett
Bentley
Bereuter
Berman
Bevill
Blibray

Bilirakis
Billie
Boehlert
Boggs
Bonior
Borski
Bosco
Boucher
Boxer
Brennan
Brooks
Broomfield
Browder
Brown (CA)
Bruce
Bryant
Buechner
Bunning
Bustamante
Callahan
Campbell (CA)
Cardin

Carper
Carr
Chandler
Chapman
Clarke
Clay
Clement
Clinger
Coleman (MO)
Coleman (TX)
Collins
Condit
Conte
Conyers
Cooper
Costello
Coughlin
Courter
Cox
Coyne
Crockett
Darden

Davis
de la Garza
DePaolo
DeWine
Dickinson
Dicks
Dingell
Dixon
Donnelly
Dorgan (ND)
Douglas
Downey
Dreler
Duncan
Durbn
Dwyer
Dymally
Dyson
Early
Eckart
Edwards (CA)
Engel
Engleah
Erdreich
Espy
Evans
Fascell
Fawell
Felghan
Fish
Flake
Flippo
Foglietta
Frank
Frenzel
Frost
Gallegly
Gaydos
Gejdenson
Gephardt
Ceren
Gibbons
Gillmor
Gilman
Gingrich
Glickman
Gonzales
Goodling
Gordon
Goss
Gradison
Grandy
Grant
Green
Guarini
Gunderson
Hall (OH)
Hamilton
Harris
Hastert
Hatcher
Hawkins
Hayes (IL)
Hayes (LA)
Hefley
Hefner
Henry
Hertel
Hiler
Hosagland
Hochbrueckner
Holloway
Hopkins
Horton
Hoyer
Hubbard
Huckaby
Hughes
Hutto
Inhofe
Ireland
Jacobs
James
Jenkins
Johnson (CT)
Johnson (SD)
Johnston
Jones (GA)
Jones (NC)
Jontz
Kanjorski
Kaptur
Kasich
Kaestnemer
Kennedy
Kennelly
Kildee

Kiecza
Kolbe
Kostmayer
Kyl
LaFalce
Lagomarsino
Lancaster
Lantos
Laughlin
Leach (IA)
Lehman (CA)
Lehman (FL)
Lent
Levin (MI)
Lewis (GA)
Lightfoot
Lipinski
Livingston
Lloyd
Long
Lowey (NY)
Luken, Thomas
Lukens, Donald
Machtley
Madigan
Markey
Martin (NY)
Martinez
Matsui
Mavroules
Mazooli
McCloskey
McCollum
McCurdy
McDade
McDermott
McEwen
McGrath
McHugh
McMillan (NC)
McMillen (MD)
McNulty
Meyers
Mfume
Miller (CA)
Miller (OH)
Miller (WA)
Mineta
Moakley
Mollohan
Moody
Moorhead
Morella
Morrison (CT)
Morrison (WA)
Mrazek
Murphy
Murtha
Myers
Nagle
Natcher
Neal (MA)
Neal (NC)
Nowak
Oaker
Oberstar
Obey
Olin
Ortiz
Owens (NY)
Owens (UT)
Oxley
Packard
Pallone
Panetta
Parker
Pashayan
Patterson
Paxon
Payne (NJ)
Payne (VA)
Pease
Pelosi
Penny
Perkins
Petri
Pickett
Pickle
Porter
Poehard
Price
Kaptur
Pursell
Quillen
Rahall
Rangel
Ravenel
Ray

Regula
Rhodes
Richardson
Ridge
Rinaldo
Ritter
Roe
Rohrabacher
Roe-Lehtinen
Rose
Roetenkowaki
Roth
Roukema
Rowland (CT)
Rowland (GA)
Roybal
Russo
Sabo
Saiti
Sangmeister
Sarpalius
Savage
Sawyer
Saxton
Scheuer
Schiff
Schneider
Schroeder
Schuette
Schulze
Schumer
Sensenbrenner
Sharp
Shaw
Shays
Sikorski
Slasky
Skaggs
Slattery
Slaughter (NY)
Slaughter (VA)
Smith (IA)
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (VT)
Smith, Robert
(NH)
Snowe
Solomon
Spence
Spratt
Staggers
Stangeland
Stark
Stearns
Stokes
Studds
Swift
Synar
Tallon
Tanner
Tauke
Tausin
Taylor
Thomas (GA)
Torres
Torrice
Towns
Traficant
Traxler
Udall
Unsoeld
Upton
Valentine
Vander Jagt
Vento
Vielocky
Volker
Walgren
Walker
Walsh
Watkins
Waxman
Weber
Weiss
Weldon
Whitlen
Williams
Wilson
Wise
Wolf
Wyden
Wylie
Yatron
Young (AK)
Young (FL)

NAYS—45

Arney	Hammerschmidt	Shuster
Barton	Hancock	Skeen
Brown (CO)	Hansen	Skelton
Burton	Herger	Smith, Denny
Campbell (CO)	Hunter	(OR)
Coble	Leath (TX)	Smith, Robert
Combest	Lewis (CA)	(OR)
Craig	Marlenee	Stallings
Crane	McCandless	Stenholm
Dannemeyer	Montgomery	Stump
DeLay	Nielson	Sundquist
Dornan (CA)	Roberts	Thomas (CA)
Emerson	Robinson	Thomas (WY)
Felds	Rogers	Vucanovich
Gekas	Schaefer	Whittaker
Hall (TX)	Shumway	

NOT VOTING—30

Andrews	Gallo	McCrery
Anthony	Gray	Michel
AuCoin	Houghton	Nelson
Byron	Hyde	Parrish
Dellums	Kolter	Smith (FL)
Derrick	Levine (CA)	Solars
Edwards (OK)	Lewis (FL)	Washington
Fazio	Lowery (CA)	Wheat
Ford (MI)	Manton	Wolpe
Ford (TN)	Martin (IL)	Yates

□ 1433

Messrs. STANGELAND, GALLEGLY, MORRISON, and WASHINGTON, YOUNG of Alaska, and WAXMAN, changed their vote from "nay" to "yea."

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 2570, ARIZONA DESERT WILDERNESS ACT OF 1990

Mr. VENTO. Mr. Speaker, I ask unanimous consent that the Clerk be authorized to make technical, conforming and grammatical corrections in the engrossment of H.R. 2570, Arizona Desert Wilderness Act of 1990.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

GENERAL LEAVE

Mr. VENTO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks, and include therein extraneous material on H.R. 2570, the bill just passed.

The SPEAKER pro tempore (Mr. MAZZOLI). Is there objection to the request of the gentleman from Minnesota?

There was no objection.

PERSONAL EXPLANATION

Mr. NELSON of Florida. Mr. Speaker, had I been present, I would have voted "aye" on rollcall No. 18.

LEGISLATIVE BUSINESS

(Mr. GINGRICH asked and was given permission to address the House for 1 minute.)

Mr. GINGRICH. Mr. Speaker, I ask for this time for the purpose of receiving the schedule for the rest of the day and for next week.

Mr. Speaker, I yield to my friend, the majority leader, the gentleman from Missouri [Mr. GEPHARDT].

Mr. GEPHARDT. Mr. Speaker, I thank the gentleman for yielding.

The House has finished its business for the day. There will be no legislative business on tomorrow, March 1. The House will not be in session on Friday, March 2.

On Monday, March 5, the House will meet at noon, but again, no legislative business. Tuesday, March 6, the House will meet at noon to consider six bills under suspension, first,

H.R. 4077, regarding Farmers Home Administration delinquent loans and inventory.

H.R. 4099, to suspend section 332 of the Agricultural Adjustment Act of 1938 for the 1991 crop of wheat.

H.R. 1159, to amend the National Trails System Act by designating the Juan Bautista de Anza National Historic Trail.

H.R. 1109, California National Historic Trail and Pony Express National Trail.

H.R. 1243, requiring the Secretary of Energy to establish three Centers for Metal Casting Competitiveness Research.

H. Res. 17, to provide for the concurrence of the House to the amendments of the Senate to H.R. 1396, with an amendment.

On Wednesday, March 7, and Thursday, March 8, the House will meet at 10 a.m.

On March 7, the House will recess immediately and reconvene at 11 a.m. to receive His Excellency, the President of the Council of Ministers of the Italian Republic, Mr. Giulio Andreotti, in a joint meeting. Following the joint meeting, the House will reconvene for legislative business.

The House meets at 11 a.m. on Thursday, March 8, and legislative business will be H.R. 1231, to establish a Commission To Investigate and Report Respecting the Dispute Between Eastern Airlines and Its Collective Bargaining Units (veto override; 1 hour debate), and H.R. 3581, Rural Economic Development Act (subject to a rule).

On Friday, March 9, the House will not be in session.

On Tuesday, March 6, as I said, there will be six suspension bills. The votes will be held until after all of the suspensions have been considered. We will have votes on that day.

Mr. GINGRICH. Let me ask a couple of questions: Does the gentleman know, will the majority be ap-

pointing conferees on the TV violence bill, H.R. 1391?

Mr. GEPHARDT. If the gentleman will yield, we will be, but not this week. It will be sometime soon in the future.

Mr. GINGRICH. So, sometime after the week of the 6th?

Mr. GEPHARDT. It will not be next week. It will be sometime after that.

Mr. GINGRICH. Second, when will we have an anticipated vote schedule for the rest of March for Members who are trying to figure out when they will go back and forth to their districts?

Mr. GEPHARDT. We will provide for Members a March calendar before this week is out, either tomorrow or the next day. Most likely, tomorrow.

Mr. GINGRICH. Lastly, I noticed with some concern this morning, the fall in the durable goods order for January, and that brings Members back to the question of a tax bill, and the capital gains proposal by the President, or a modified version thereof.

Do you have any notion at this time as to when Members might expect the Committee on Ways and Means to be reporting such a bill?

Mr. GEPHARDT. As the gentleman knows, there is a capital gains bill in the Senate at this time. We will be proceeding on the budget, and our reconciliation, and obviously, tax and revenue measures in that context as well. Therefore, I believe there will be ample opportunities in the near future for Members of both sides to consider questions on the Tax Code.

Mr. GINGRICH. I only raised it because I think there is some very real concern about the danger of the economy sliding into recession, and we are looking, frankly, for some legitimate ways to accelerate economic growth. I appreciate the knowledge that we will, between the budget and other things, be getting on to that.

□ 1440

ADJOURNMENT FROM THURSDAY, MARCH 1, 1990, TO MONDAY, MARCH 5, 1990

Mr. GEPHARDT. Mr. Speaker, I ask unanimous consent that then the House adjourns on Thursday, March 1, 1990, it adjourn to meet at noon on Monday, March 5, 1990.

The SPEAKER pro tempore (Mr. MAZZOLI). Is there objection to the request of the gentleman from Missouri? There was no objection.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. GEPHARDT. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednes-

Public Law 101-628
101st Congress

An Act

To provide for the designation of certain public lands as wilderness in the State of Arizona.

Nov. 28, 1990
(H.R. 2570)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.—Titles I through III of this Act may be cited as the "Arizona Desert Wilderness Act of 1990".

Arizona Desert
Wilderness
Act of 1990.
16 USC 460ddd
note.
National
Wilderness
Preservation
System.
16 USC 1132
note.

TITLE I—DESIGNATION OF WILDERNESS AREAS TO BE
ADMINISTERED BY THE BUREAU OF LAND MANAGEMENT

SEC. 101. DESIGNATION AND MANAGEMENT.

(a) DESIGNATION.—In furtherance of the purposes of the Wilderness Act, the following public lands are hereby designated as wilderness and therefore, as components of the National Wilderness Preservation System:

(1) certain lands in Mohave County, Arizona, which comprise approximately 23,600 acres, as generally depicted on a map entitled "Mount Wilson Wilderness" and dated February 1990, and which shall be known as the Mount Wilson Wilderness;

(2) certain lands in Mohave County, Arizona, which comprise approximately 31,070 acres, as generally depicted on a map entitled "Mount Tipton Wilderness" and dated February 1990, and which shall be known as the Mount Tipton Wilderness;

(3) certain lands in Mohave County, Arizona, which comprise approximately 27,530 acres, as generally depicted on a map entitled "Mount Nutt Wilderness" and dated February 1990, and which shall be known as the Mount Nutt Wilderness: *Provided*, That the existing water pipeline for the town of Oatman, together with the right of ingress and egress thereto, may be operated, maintained, and upgraded, subject to reasonable requirements to protect wilderness values;

(4) certain lands in Mohave County, Arizona, which comprise approximately 90,600 acres, as generally depicted on a map entitled "Warm Springs Wilderness" and dated February 1990, and which shall be known as the Warm Springs Wilderness;

(5) certain lands in Mohave County, Arizona, which comprise approximately 15,900 acres, as generally depicted on a map entitled "Aubrey Peak Wilderness" and dated February 1990, and which shall be known as the Aubrey Peak Wilderness;

(6) certain lands in La Paz County, Arizona, which comprise approximately 14,630 acres, as generally depicted on a map entitled "East Cactus Plain Wilderness" and dated February 1990, and which shall be known as the East Cactus Plain Wilderness;

(7) certain lands in Mohave and La Paz Counties, Arizona, which comprise approximately 41,600 acres, as generally depicted on a map entitled "Rawhide Mountains Wilderness" and

dated February 1990, and which shall be known as the Rawhide Mountains Wilderness;

(8) certain lands in Mohave, Yavapai, and La Paz Counties, Arizona, which comprise approximately 126,760 acres, as generally depicted on a map entitled "Arrastra Mountain Wilderness" and dated February 1990, and which shall be known as the Arrastra Mountain Wilderness;

(9) certain lands in La Paz County, Arizona, which comprise approximately 25,287 acres, as generally depicted on a map entitled "Harcuvar Mountains Wilderness" and dated February 1990, and which shall be known as the Harcuvar Mountains Wilderness;

(10) certain lands in La Paz and Maricopa Counties, Arizona, which comprise approximately 22,865 acres, as generally depicted on a map entitled "Harquahala Mountains Wilderness" and dated February 1990, and which shall be known as the Harquahala Mountains Wilderness;

(11) certain lands in Maricopa County, Arizona, which comprise approximately 20,600 acres, as generally depicted on a map entitled "Big Horn Mountains Wilderness" and dated February 1990, and which shall be known as the Big Horn Mountains Wilderness;

(12) certain lands in Maricopa County, Arizona, which comprise approximately 30,170 acres, as generally depicted on a map entitled "Hummingbird Springs Wilderness" and dated February 1990, and which shall be known as the Hummingbird Springs Wilderness;

(13) certain lands in La Paz, Yuma, and Maricopa Counties, Arizona, which comprise approximately 89,000 acres, as generally depicted on a map entitled "Eagletail Mountains Wilderness" and dated February 1990, and which shall be known as the Eagletail Mountains Wilderness;

(14) certain lands in Maricopa County, Arizona, which comprise approximately 15,250 acres, as generally depicted on a map entitled "Signal Mountain Wilderness" and dated February 1990, and which shall be known as the Signal Mountains Wilderness;

(15) certain lands in Maricopa County, Arizona, which comprise approximately 61,000 acres, as generally depicted on a map entitled "Woolsey Peak Wilderness" and dated February 1990, and which shall be known as the Woolsey Peak Wilderness;

(16) certain lands in Maricopa County, Arizona, which comprise approximately 14,500 acres, as generally depicted on a map entitled "Sierra Estrella Wilderness" and dated February 1990, and which shall be known as the Sierra Estrella Wilderness;

(17) certain lands in Maricopa and Pinal Counties, Arizona, which comprise approximately 34,400 acres, as generally depicted on a map entitled "Table Top Wilderness" and dated February 1990, and which shall be known as the Table Top Wilderness;

(18) certain lands in Pima County, Arizona, which comprise approximately 5,080 acres, as generally depicted on a map entitled "Coyote Mountains Wilderness" and dated February 1990, and which shall be known as the Coyote Mountains Wilderness;

(19) certain lands in Pima County, Arizona, which comprise approximately 2,065 acres, as generally depicted on a map entitled "Baboquivari Peak Wilderness" and dated February 1990, and which shall be known as the Baboquivari Peak Wilderness;

(20) certain lands in Gila County, Arizona, which comprise approximately 9,201 acres, as generally depicted on a map entitled "Needle's Eye Wilderness" and dated February 1990, and which shall be known as the Needle's Eye Wilderness: *Provided*, That the right-of-way reserved by right-of-way reservation A-16043 dated October 20, 1986, together with the right of ingress and egress thereto, shall not be affected by this Act, and the existing powerline utilizing such right-of-way may be operated, maintained, and upgraded, subject to reasonable requirements to protect wilderness values;

(21) certain lands in Graham County, Arizona, which comprise approximately 6,590 acres, as generally depicted on a map entitled "North Santa Teresa Wilderness" and dated February 1990, and which shall be known as the North Santa Teresa Wilderness;

(22) certain lands in Graham County, Arizona, which comprise approximately 10,883 acres, as generally depicted on a map entitled "Fishhooks Wilderness" and dated February 1990, and which shall be known as the Fishhooks Wilderness;

(23) certain lands in Cochise County, Arizona, which comprise approximately 11,998 acres, as generally depicted on a map entitled "Dos Cabezas Mountains Wilderness" and dated February 1990, and which shall be known as the Dos Cabezas Mountains Wilderness;

(24) certain lands in Graham and Cochise Counties, Arizona, which comprise approximately 6,600 acres, as generally depicted on a map entitled "Redfield Canyon Wilderness" and dated February 1990, and which shall be known as the Redfield Canyon Wilderness;

(25) certain lands in La Paz County, Arizona, which comprise approximately 18,805 acres, as generally depicted on a map entitled "Gibraltar Mountain Wilderness" and dated February 1990, and which shall be known as the Gibraltar Mountain Wilderness;

(26) certain lands in La Paz and Mohave Counties, Arizona, which comprise approximately 15,755 acres, as generally depicted on a map entitled "Swansea Wilderness" and dated February 1990, and which shall be known as the Swansea Wilderness;

(27) certain lands in LaPaz County, Arizona, which comprise approximately 29,095 acres, as generally depicted on a map entitled "Trigo Mountain Wilderness" and dated February 1990, and which shall be known as the Trigo Mountain Wilderness;

(28) certain lands in Yuma County, Arizona, which comprise approximately 8,855 acres, as generally depicted on a map entitled "Muggins Mountain Wilderness" and dated February 1990, and which shall be known as the Muggins Mountain Wilderness;

(29) certain lands in Yavapai and Maricopa Counties, Arizona, which comprise approximately 9,200 acres, as generally depicted on a map entitled "Hells Canyon Wilderness" and dated

February 1990, and which shall be known as the Hells Canyon Wilderness;

(30) certain lands in Maricopa County, Arizona, which comprise approximately 63,600 acres, as generally depicted on a map entitled "North Maricopa Mountains Wilderness" and dated February 1990, and which shall be known as the North Maricopa Mountains Wilderness;

(31) certain lands in Maricopa County, Arizona, which comprise approximately 60,800 acres, as generally depicted on a map entitled "South Maricopa Mountains Wilderness" and dated February 1990, and which shall be known as the South Maricopa Mountains Wilderness;

(32) certain lands in Mohave County, Arizona, which comprise approximately 38,400 acres, as generally depicted on a map entitled "Wabayuma Peak Wilderness" and dated February 1990, and which shall be known as the Wabayuma Peak Wilderness;

(33) certain lands in Yavapai and Mohave Counties, Arizona, which comprise approximately 27,900 acres, as generally depicted on a map entitled "Upper Burro Creek Wilderness" and dated June 1990, and which shall be known as the Upper Burro Creek Wilderness;

(34) certain lands in Yavapai County, Arizona, which comprise approximately 11,840 acres, as generally depicted on a map entitled "Hassayampa River Canyon Wilderness" and dated February 1990, and which shall be known as the Hassayampa River Canyon Wilderness;

(35) certain lands in Pinal County, Arizona, which comprise approximately 5,800 acres, as generally depicted on a map entitled "White Canyon Wilderness" and dated February 1990, and which shall be known as the White Canyon Wilderness;

(36) certain lands in Yavapai County, Arizona, which comprise approximately 8,700 acres, as generally depicted on a map entitled "Tres Alamos Wilderness" and dated February 1990, and which shall be known as the Tres Alamos Wilderness;

(37) certain lands in Cochise, Greenlee, and Graham Counties, Arizona, which comprise approximately 19,650 acres, as generally depicted on a map entitled "Peloncillo Mountains Wilderness" and dated February 1990, and which shall be known as the Peloncillo Mountains Wilderness;

(38) certain lands in La Paz County, Arizona, which comprise approximately 21,680 acres, as generally depicted on a map entitled "New Water Mountains Wilderness" and dated February 1990, and which shall be known as the New Water Mountains Wilderness;

(39) certain lands in Pinal and Graham Counties, Arizona, which comprise approximately 12,711 acres, as generally depicted on a map entitled "Aravaipa Wilderness Additions" and dated February 1990, and which are hereby incorporated in and shall be deemed to be a part of the Aravaipa Canyon Wilderness (designated in Public Law 98-406, 98 Stat. 1491).

(b) **MANAGEMENT.**—Subject to valid existing rights, the wilderness areas designated by this title shall be administered by the Secretary of the Interior (hereinafter in this title referred to as the "Secretary") in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness, except that any reference in such provisions to the effective date of the Wilder-

ness Act (or any similar reference) shall be deemed to be a reference to the date of enactment of this Act.

(c) **MAP AND LEGAL DESCRIPTION.**—As soon as practicable after enactment of this Act, the Secretary shall file a map and a legal description of each wilderness area designated under this title with the Committee on Interior and Insular Affairs of the United States House of Representatives and with the Committee on Energy and Natural Resources of the United States Senate. Such map and description shall have the same force and effect as if included in this title, except that correction of clerical and typographical errors in such legal description and map may be made. Copies of such map and legal description shall be on file and available for public inspection in the Office of the Director, Bureau of Land Management, United States Department of the Interior, and in the appropriate office of the Bureau of Land Management in Arizona.

(d) **NO BUFFER ZONES.**—The Congress does not intend for the designation of wilderness areas in the State of Arizona pursuant to this title to lead to the creation of protective perimeters or buffer zones around any such wilderness area. The fact that nonwilderness activities or uses can be seen or heard from areas within a wilderness shall not, of itself, preclude such activities or uses up to the boundary of the wilderness area.

(e) **FISH AND WILDLIFE.**—As provided in paragraph (7) of section 4(d) of the Wilderness Act, nothing in this title or in the Wilderness Act shall be construed as affecting the jurisdiction or responsibilities of the State of Arizona with respect to wildlife and fish on the public lands located in that State.

(f) **LIVESTOCK.**—(1) Grazing of livestock in wilderness areas designated by this title, where established prior to the date of the enactment of this Act, shall be administered in accordance with section 4(d)(4) of the Wilderness Act and the guidelines set forth in Appendix A of the Report of the Committee on Interior and Insular Affairs to accompany H.R. 2570 of the One Hundred First Congress (H. Rept. 101-405).

(2) The Secretary is directed to review all policies, practices, and regulations of the Bureau of Land Management regarding livestock grazing in Bureau of Land Management administered wilderness areas in Arizona in order to insure that such policies, practices, and regulations fully conform with and implement the intent of Congress regarding grazing in such areas, as such intent is expressed in this title.

(g) **WATER.**—(1) With respect to each wilderness area designated by this title, Congress hereby reserves a quantity of water sufficient to fulfill the purposes of this title. The priority date of such reserved rights shall be the date of enactment of this Act.

(2) The Secretary and all other officers of the United States shall take steps necessary to protect the rights reserved by paragraph (1), including the filing by the Secretary of a claim for the quantification of such rights in any present or future appropriate stream adjudication in the courts of the State of Arizona in which the United States is or may be joined and which is conducted in accordance with the McCarran Amendment (43 U.S.C. 666).

(3) Nothing in this title shall be construed as a relinquishment or reduction of any water rights reserved or appropriated by the United States in the State of Arizona on or before the date of enactment of this Act.

Claims.

(4) The Federal water rights reserved by this title are specific to the wilderness areas located in the State of Arizona designated by this title. Nothing in this title related to reserved Federal water rights shall be construed as establishing a precedent with regard to any future designations, nor shall it constitute an interpretation of any other Act or any designation made pursuant thereto.

(h) WILDLIFE MANAGEMENT.—In furtherance of the purposes and principles of the Wilderness Act, management activities to maintain or restore fish and wildlife populations and the habitats to support such populations may be carried out within wilderness areas designated by this title, where consistent with relevant wilderness management plans, in accordance with appropriate policies and guidelines such as those set forth in Appendix B of the Report of the Committee on Interior and Insular Affairs to accompany H.R. 2570 of the One Hundred First Congress (H. Rept. 101-405).

(i) MILITARY ACTIVITIES.—Nothing in this title shall preclude low level overflights of military aircraft, the designation of new units of special airspace, or the use or establishment of military flight training routes over wilderness areas designated by this title.

(j) MINERAL EXCHANGES.—It is the intent of Congress that private mineral rights within wilderness areas designated by this title be acquired as expeditiously as possible by the Secretary using existing authority to acquire such rights by exchange.

(k) BLACK ROCK WASH ROAD ACCESS.—(1) Section 101(a)(23) of the Arizona Wilderness Act of 1984 (98 Stat. 1487) is amended by striking "the governmental agency having jurisdictional authority may authorize limited access to the area, for private and administrative purposes, from U.S. Route 70 along Black Rock Wash to the vicinity of Black Rock;

(2)(A) In order to permit adequate public and private access to Federal, State, and private lands on the east side of the Santa Teresa Mountains, the Secretary, acting through the Bureau of Indian Affairs, shall administer that portion of Black Rock Wash Road located within the boundaries of the San Carlos Apache Reservation so as to allow reasonable use of the road for private and administrative purposes and may permit limited public use of such road for the purpose of access to the public lands outside of the reservation boundary.

(B) The Secretary, acting through the Bureau of Indian Affairs, is authorized, subject to the provisions of the Act of June 18, 1934, chapter 576, section 16 (25 U.S.C. 476; 48 Stat. 987), to enter into cooperative agreements with the Bureau of Land Management, the Forest Service, and Graham County, Arizona, for signing, fencing, and maintenance of the portion of Black Rock Wash Road referred to in paragraph (A). The entering into of cooperative agreements as authorized by this subsection shall not be construed in any way as a determination of the ownership of such portion of Black Rock Wash Road.

(3) There are authorized to be appropriated such sums as may be necessary to carry out this subsection.

(l) ALAMO DAM.—Nothing in this title shall be construed to affect the operation for flood control purposes of the Alamo Dam located on the Bill Williams River.

SEC. 102. AREAS RELEASED.

Excepting for the Baker Canyon area (AZ-040-070), and the approximately 57,800 acres of public land as generally depicted on a

16 USC 1132
note.

Appropriation
authorization.

map entitled "Cactus Plain Wilderness Study Area" dated February, 1990, the Congress hereby finds and directs that all public lands in Arizona, administered by the Bureau of Land Management pursuant to the Federal Land Policy and Management Act of 1976 not designated as wilderness by this title, or previous Acts of Congress, have been adequately studied for wilderness designation pursuant to section 603 of such Act and are no longer subject to the requirement of section 603(c) of such Act pertaining to the management of wilderness study areas in a manner that does not impair the suitability of such areas for preservation as wilderness.

**TITLE II—DESIGNATION OF THE GILA BOX RIPARIAN
NATIONAL CONSERVATION AREA**

Natural
resources.

SEC. 201. DESIGNATION AND MANAGEMENT.

16 USC 460ddd.

Establishment.

(a) **PURPOSES.**—In order to conserve, protect, and enhance the riparian and associated areas described in subsection (b) and the aquatic, wildlife, archeological, paleontological, scientific, cultural, recreational, educational, scenic, and other resources and values of such areas, there is hereby established the Gila Box Riparian National Conservation Area (hereafter in this title referred to as the "conservation area").

(b) **AREAS INCLUDED.**—The conservation area shall consist of the public lands generally depicted on a map entitled "Gila Box Riparian National Conservation Area" dated February 1990, and comprising approximately 20,900 acres.

(c) **MAP.**—As soon as practicable after the date of enactment of this Act, a map and legal description of the conservation area shall be filed by the Secretary with the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. Such map shall have the same force and effect as if included in this section. Copies of such map shall be on file and available for public inspection in the Office of the Director of the Bureau of Land Management, Department of the Interior, and in the appropriate office of the Bureau of Land Management in Arizona.

(d) **MANAGEMENT OF CONSERVATION AREA.**—(1) The Secretary shall manage the conservation area in a manner that conserves, protects and enhances its resources and values, including the resources and values specified in subsection (a), pursuant to the Federal Land Policy and Management Act of 1976 and other applicable law, including this title.

(2) The Secretary shall allow only such uses of the conservation area as the Secretary finds will further the purposes for which the conservation area is established. Except where needed for administrative purposes or to respond to an emergency, use of motorized vehicles in the conservation area shall be permitted only on roads specifically designated for such use as part of the management plan prepared pursuant to subsection (g).

(e) **WITHDRAWAL.**—Subject to valid existing rights, all Federal lands within the conservation area are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws; from location, entry, and patent under the United States mining laws; and from disposition under all laws pertaining to mineral and geothermal leasing, and all amendments thereto.

Claims.

(f) **WATER.**—(1) Congress hereby reserves a quantity of water sufficient to fulfill the purposes, as specified in subsection (a), for which the conservation area is established. The priority date of this reserved right shall be the date of enactment of this Act.

(2) The Secretary and all other officers of the United States shall take all steps necessary to protect the right reserved by paragraph (1), including the filing by the Secretary of a claim for the quantification of such right in any present or future appropriate stream adjudication in the courts of the State of Arizona in which the United States is or may be joined and which is conducted in accordance with the McCarran Amendment (43 U.S.C. 666).

(3) Nothing in this title shall be construed as a relinquishment or reduction of any water rights reserved or appropriated by the United States in the State of Arizona on or before the date of enactment of this Act.

(4) The Federal rights reserved by this title are specific to the conservation area located in the State of Arizona designated by this title. Nothing in this title related to reserved Federal water rights shall be construed as establishing a precedent with regard to any future designations, nor shall it constitute an interpretation of any other Act or any designation made pursuant thereto.

(5) Nothing in this title shall be construed to impair or conflict with the implementation of the authorization contained in section 304(f) of Public Law 90-537, approved September 30, 1968.

(g) **MANAGEMENT PLAN.**—(1) No later than two years after the date of enactment of this Act, the Secretary shall develop a comprehensive plan for the long-term management of the conservation area (hereinafter in this title referred to as the "management plan") in order to fulfill the purposes for which the conservation area is established. The management plan shall be developed with full public participation and shall include provisions designed to assure protection of the resources and values (including the resources and values specified in subsection (a)) of the conservation area.

(2) The management plan shall include a discussion of the desirability of the inclusion in the conservation area of additional lands, including the lands not in Federal ownership that are contiguous to the boundary of the conservation area (as depicted on the map referenced in subsection (b) or as hereafter adjusted pursuant to subsection (h)) and within the area extending two miles on either side of the centerline of Eagle Creek from the point where Eagle Creek crosses the southern boundary of the Apache National Forest to the confluence of Eagle Creek with the Gila River (this area is hereafter referred to in this title as the "Eagle Creek riparian area").

(3) In order to better implement the management plan, the Secretary may enter into cooperative agreements with appropriate State and local agencies pursuant to section 307(b) of the Federal Land Policy and Management Act of 1976.

(4) In order to assist in the development and implementation of the management plan, the Secretary may authorize appropriate research, including research concerning the environmental, biological, hydrological, cultural, and other characteristics, resources, and values of the conservation area, pursuant to section 307(a) of the Federal Land Policy and Management Act of 1976.

(h) **ACQUISITION AND BOUNDARY ADJUSTMENTS.**—(1) Subject to the limitations set forth in paragraph (3), the Secretary is authorized to

acquire non-Federal lands or interests therein within the boundaries of the conservation area or within the Eagle Creek riparian area.

(2) The Secretary is authorized to adjust the boundaries of the conservation area so as to incorporate within the conservation area any lands or interests within the Eagle Creek riparian area that may be acquired after the date of enactment of this Act as well as public lands within that portion of the Eagle Creek riparian area west of the centerline of Eagle Creek that the Secretary finds appropriate in order to properly manage such acquired lands as part of the conservation area. Any lands or interests so incorporated shall be managed as part of the conservation area.

(3) No lands or interests therein owned by the State of Arizona or any political subdivision of such State shall be acquired pursuant to this subsection except through donation or exchange, and no lands or interests within the conservation area or the Eagle Creek riparian area shall be acquired from any other party or entity except by donation, exchange, or purchase with the consent of the owner of such lands or interests.

(i) **NO BUFFER ZONES.**—The Congress does not intend for the establishment of the conservation area to lead to the creation of protective perimeters or buffer zones around the conservation area. The fact that there may be activities or uses on lands outside the conservation area that would not be permitted in the conservation area shall not preclude such activities or uses on such lands up to the boundary of the conservation area to the extent consistent with other applicable law.

(j) **ADVISORY COMMITTEE.**—The Secretary shall establish an advisory committee to advise the Secretary with respect to the preparation and implementation of the management plan. Such advisory committee shall consist of seven members appointed by the Secretary. One member shall be appointed from among recommendations submitted by the Governor of Arizona, one member shall be appointed from among recommendations submitted by the Graham County Board of Supervisors and one member shall be appointed from among recommendations submitted by the Greenlee County Board of Supervisors. The remaining members shall be persons recognized as experts in wildlife conservation, riparian ecology, archeology, paleontology, or other disciplines directly related to the purposes for which the conservation area is established.

(k) **REPORT.**—No later than five years after the date of enactment of this Act, and at least each ten years thereafter, the Secretary shall report to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate on the implementation of this title, the condition of the resources and values of the conservation area, and the progress of the Secretary in achieving the purposes for which the conservation area is established.

(l) **ENFORCEMENT.**—Any person who violates any regulation promulgated by the Secretary to implement the provisions of this title shall be subject to a fine in accordance with applicable provisions of the Sentencing Reform Act of 1984, or imprisonment of not more than 1 year, or both such fine and imprisonment.

(m) **AUTHORIZATION.**—There are hereby authorized to be appropriated such sums as may be necessary to implement the provisions of this title.

Appropriation
authorization.

National
Wilderness
Preservation
System.

16 USC 1132
note.

**TITLE III—DESIGNATION OF WILDERNESS AREAS TO BE
ADMINISTERED BY THE UNITED STATES FISH AND
WILDLIFE SERVICE**

SEC. 301. DESIGNATION AND MANAGEMENT

(a) **DESIGNATION.**—In furtherance of the purposes of the Wilderness Act, the following lands are hereby designated as wilderness and therefore as components of the National Wilderness Preservation System:

(1) certain lands in the Havasu National Wildlife Refuge, Arizona, which comprise approximately 14,606 acres, as generally depicted on a map entitled "Havasu Wilderness" and dated March 13, 1990, and which shall be known as the Havasu Wilderness;

(2) certain lands in the Imperial National Wildlife Refuge, Arizona, which comprise approximately 9,220 acres, as generally depicted on a map entitled "Imperial Refuge Wilderness" and dated March 13, 1990, and which shall be known as the Imperial Refuge Wilderness;

(3) certain lands in the Kofa National Wildlife Refuge, Arizona, which comprise approximately 510,900 acres, and certain other public lands comprising approximately 5,300 acres which are hereby added to and incorporated within such refuge (and which shall be managed accordingly), all as generally depicted on a map entitled "Kofa Wilderness" and dated August 1, 1990, and which shall be known as the Kofa Wilderness; and

(4) certain lands in the Cabeza Prieta National Wildlife Refuge, Arizona, which comprise approximately 803,418 acres, as generally depicted on a map entitled "Cabeza Prieta Wilderness" and dated March 13, 1990, and which shall be known as the Cabeza Prieta Wilderness.

(b) **MANAGEMENT.**—Subject to valid existing rights, the wilderness areas designated under this title shall be administered by the Secretary of the Interior (hereinafter in this title referred to as the "Secretary") in accordance with the provisions of the Wilderness Act governing areas designated by that Act as wilderness, except that any reference in such provisions to the effective date of the Wilderness Act (or any similar reference) shall be deemed to be a reference to the date of enactment of this title.

(c) **MAP AND LEGAL DESCRIPTION.**—As soon as practicable after enactment of this title, the Secretary shall file a map and a legal description of each wilderness area designated under this section with the Committee on Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries of the United States House of Representatives and with the Committee on Energy and Natural Resources and the Committee on Environment and Public Works of the United States Senate. Such map and description shall have the same force and effect as if included in this title, except that correction of clerical and typographical errors in such legal description and map may be made. Such map and legal description shall be on file and available for public inspection in the Office of the Director, United States Fish and Wildlife Service, United States Department of the Interior.

(1)(A) With respect to each wilderness area designated by this title, and subject to the limitations set forth in subparagraph (B), Congress hereby reserves a quantity of water sufficient to

APPENDIX A-3

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN CHAMBERS (X) IN OPEN COURT ()

SPECIAL MASTER GEORGE A. SCHADE, JR.
Presiding

IN RE THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN THE
GILA RIVER SYSTEM AND SOURCE

DATE: August 17, 2009

CIVIL NO. W1-11-3342

CASE INITIATION ORDER
AND DESIGNATION OF
INITIAL ISSUES FOR BRIEFING

CONTESTED CASE NAME: *In re Aravaipa Canyon Wilderness Area.*

HSR INVOLVED: San Pedro River Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master organizes a contested case to resolve the objections arising from the Final Hydrographic Survey Report for the San Pedro River Watershed concerning the Aravaipa Canyon Wilderness Area, designates seven issues for initial briefing, and sets times for disclosure statements, discovery, and briefing.

NUMBER OF PAGES: 10; Attachment A - 1; total 11 pages.

DATE OF FILING: August 17, 2009.

The Special Master has reviewed all comments regarding the organization of a contested case for the Aravaipa Canyon Wilderness Area. The United States, Freeport-McMoRan Corporation (“Freeport-McMoRan”), and Salt River Project (“SRP”) submitted comments.

The United States suggested briefing seven legal issues following a process similar to that implemented in *In re San Pedro Riparian National Conservation Area*

("SPRNCA"). SRP supports establishing a contested case and the United States' formulation of "foundational legal questions" for resolution.

Freeport-McMoRan opposes organizing a contested case because the United States has not fully defined its water rights claims, and the factual evidence to determine if unappropriated waters were available at the time of the area's designation is currently not available. The company objects to a proposed issue, namely, if unappropriated waters were reserved for the purposes of the reservation, did Congress intend to reserve all unappropriated waters at the time of designation of the wilderness area?

We have successful experience with this situation.¹ In the *SPRNCA* and *In re Fort Huachuca* contested cases, we initially briefed reserved rights issues that were not dependent on updated technical information. Likewise, the issues suggested by the United States can be determined while the United States completes the technical work to update its claims. A contested case will be organized, and the issues suggested by the United States will be set for briefing.

Second, at this point, we are as in the *SPRNCA* and *Fort Huachuca* cases - in the progressive process of determining whether all the attributes of a reserved water right exist for the Aravaipa Canyon Wilderness Area. When the initial briefing concludes, we will not have reached a full decision, but we will have taken steps toward that outcome.²

The objection concerning the final issue proposed by the United States raises a question as to the economy of briefing an issue that appears was decided by the Idaho Supreme Court in *Potlatch Corp. v. United States*, 12 P.3d 1260 (Idaho 2000). However, because the Aravaipa Canyon Wilderness Area came about as the result of Executive designations and at least two Congressional acts, the parties will be asked to brief the issue in order to develop fully the enactment history of the wilderness area. In this regard, the Special Master wants to hear if, and how, these different actions might affect priority dates of claimed reserved water rights.

SRP suggested the Redfield Canyon Wilderness Area be included in any contested case organized to resolve these issues because both wilderness areas "raise the same or similar legal issues" of reserved water rights. The suggestion appeals but is not implemented because the Final Hydrographic Survey Report for the San Pedro River Watershed ("San Pedro HSR") does not present as much information about the Redfield Canyon area as it does for the Aravaipa Canyon area,³ and determinations of the issues involving Aravaipa Canyon could be adopted as precedent for the Redfield Canyon area.

¹ This statement focuses on the trial experience gained in other federal non-Indian reserved rights cases where the initial steps taken were similar to those in this new contested case.

² See *In re SPRNCA*, Order Determining Initial Issues Designated for Briefing 7-8 (Mar. 4, 2009) and Scheduling Order 2 (June 28, 2007).

³ The reason may be that the Redfield Canyon Wilderness Area was established shortly before the San Pedro HSR was published. Compare Vol. 1, Hydrographic Survey Report for the San Pedro River Watershed 447-56 (Aravaipa Canyon) and 464-5 (Redfield Canyon).

Furthermore, the Special Master appreciates that in the next two years parties will be engaged in other equally important matters in the watershed.

Disclosures, discovery, and briefing shall be limited to these issues. Because the United States likely has the majority of the documents relevant to these issues, it will be directed to file its disclosure statement before the other parties are required to file their disclosures and will be allowed more time to file its disclosures than the other parties.

The Arizona Department of Water Resources (“ADWR”) will be directed to develop and maintain an electronic data base and index of disclosed documents similar to those it created in other contested cases. Until further order, ADWR will not be directed to update or conduct technical work related to the Aravaipa Canyon Wilderness Area.

I. MOTION OF THE UNITED STATES FOR EXTENSION OF TIME TO FILE AMENDED STATEMENTS OF CLAIMANT

On July 21, 2009, the United States requested an extension of time until December 31, 2011, “to complete the detailed data collection and analysis required [and] to file amendments to its federal reserved water rights” claim for the Aravaipa Canyon Wilderness Area. No objections to the motion were received. The request is reasonable given the extent and nature of data the United States plans to obtain.

Accordingly, IT IS ORDERED, granting the request of the United States for an extension of time to file amendments. On or before **December 31, 2011**, the United States shall file amendments to Statement of Claimant No. 39-68704, and other statements, to show the extent of its claims to federal reserved water rights for the Aravaipa Canyon Wilderness Area.

II. DESIGNATION OF CONTESTED CASE

A contested case is organized to address the objections and issues related to the adjudication of the water rights claimed for the Aravaipa Canyon Wilderness Area. The following procedures and timelines shall apply.

1. Contested Case. This case is designated *In re Aravaipa Canyon Wilderness Area*, Docket No. W1-11-3342.

2. Litigants. At this time, the litigants in this case are the United States of America, Bureau of Land Management, Arizona Game and Fish Department, The Arizona Nature Conservancy, ASARCO LLC, Cities of Benson and Sierra Vista, Philip Denormandie, Gila River Indian Community, Porter House Station, L.L.C., Salt River Project, Kathy Sergent, San Carlos Apache Tribe, Tonto Apache Tribe, and the Yavapai-Apache Nation. These litigants are the landowner, current livestock grazing permittees previously named by the United States, and claimants who objected to all or portions of Watershed File Report No. 115-5-19 of the San Pedro HSR.

3. Motion to Intervene. Any claimant in the San Pedro River Watershed may request to intervene in this case pursuant to Arizona Rule of Civil Procedure 24. The

initial deadline to file motions to intervene shall be **November 19, 2009**.

4. Court Approved Mailing List. The mailing list for this case shall include all the litigants named in Paragraph 2, the Clerk of the Maricopa County Superior Court, the Arizona Department of Water Resources, and the Special Master. Judge Eddward P. Ballinger, Jr. will not be included in the mailing list.

A. The initial mailing list is set forth in Attachment A. Parties allowed to intervene will be added to the mailing list. The list may be modified from time to time, and litigants are responsible for using the current Court approved mailing list.

B. A copy of any pleading filed with the Clerk of the Maricopa County Superior Court shall be served upon all persons listed on the mailing list.

C. Claimants wishing to be added or removed from the mailing list shall file a motion with the Special Master.

D. Inform the Special Master if a name or address is incorrect.

5. Filings.

A. Date of Filing. Papers submitted to the Clerk of the Maricopa County Superior Court shall be considered timely filed if postmarked by the deadline specified in an order issued in this case.

B. Signature Page. In papers joined by numerous parties, in lieu of separate signature pages, the Special Master will accept as sufficient an avowal by the lead counsel that includes a listing of the attorneys and the parties each represents who join in the pleading. This allowance is made pursuant to Arizona Rule of Civil Procedure 1 that the rules “shall be construed to secure the ... inexpensive determination of every action.” If a party has concerns related to Rule 11(a), that party may request or provide an individual signature.

6. Initial Issues. The following issues shall be initially briefed:

A. Did Congress in enacting the legislation establishing the Aravaipa Canyon Wilderness Area expressly intend to reserve unappropriated waters to accomplish the purposes of the reservation?

B. If so, what were the purposes of the reservation?

C. If Congress did not expressly intend to reserve water, does the evidence establish that the United States withdrew land from the public domain and reserved the Aravaipa Canyon Wilderness Area for federal purposes?

D. If the land was withdrawn and reserved, what were the purposes of the

reservation?

E. If the land was withdrawn and reserved, did the United States impliedly reserve unappropriated waters to accomplish the purposes of the reservation?

F. If unappropriated waters were reserved for the purposes of the reservation, what is the date or dates of priority of the reserved water rights?

G. If unappropriated waters were reserved for the purposes of the reservation, did Congress intend to reserve all unappropriated waters at the time of designation?

7. Disclosure Statements.

A. Scope. Disclosure statements shall be limited to matters concerning the issues designated for briefing in this case initiation order.

B. Filing Date for the United States. On or before **February 16, 2010**, the United States shall file its initial Arizona Rule of Civil Procedure 26.1 disclosure statement.

C. Filing Date for All Other Parties. On or before **March 19, 2010**, all other parties shall file their initial Rule 26.1 disclosure statements.

D. Contents. All disclosures shall include information and data in the possession, custody, and control of the disclosing party as well as that which can be ascertained, learned, or acquired by reasonable inquiry and investigation. The disclosure statement shall set forth:

(1). The factual basis of a party's claim concerning each of the designated issues.

(2). The legal theory upon which each claim is based including, where necessary for a reasonable understanding of the claim, citations of pertinent legal or case authorities.

(3). The names, addresses, and telephone numbers of any witnesses whom the disclosing party expects to call to substantiate its claims with a fair description of the substance of each witness' expected testimony.

(4). The names and addresses of all persons whom the disclosing party believes may have knowledge or information relevant to the events, transactions, or occurrences that gave rise to each claim, and the nature of the knowledge or information each such individual is believed to possess.

(5). The names and addresses of all persons who have given statements, whether written or recorded, signed or unsigned, and the custodian of the copies of those statements.

(6). The name and address of each person whom the disclosing party expects to call as an expert witness, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, a summary of the grounds for each opinion, the qualifications of the witness, and the name and address of the custodian of copies of any reports prepared by the expert.

(7). The existence, location, custodian, and general description of any tangible evidence, relevant documents, or electronically stored information that the party plans to use to support its claims.

(8). A list of the documents or electronically stored information, or in the case of voluminous documentary information or electronically stored information, a list of the categories of documents or electronically stored information, known by the disclosing party to exist whether or not in its possession, custody, or control and which that party believes may be relevant to any of its claims concerning the designated issues, and those which appear reasonably calculated to lead to the discovery of admissible evidence, and the date(s) upon which those documents or electronically stored information will be made, or have been made, available for inspection and copying. Unless good cause is stated for not doing so, a copy of the documents and electronically stored information listed shall be served with the disclosure. If production is not made, the name and address of the custodian of the document and electronically stored information shall be indicated. A party who produces documents for inspection shall produce them as they are kept in the usual course of business.

E. Continuing Duty. All parties shall have a continuing duty to disclose as required by and in the manner provided in Rule 26.1(b)(2).

F. Service of Disclosures. All disclosing parties shall provide a notice of filing and a listing of the disclosed documents and electronically stored information to all persons appearing on the Court approved mailing list for this case. Paper copies of disclosed documents need not be served upon the other parties in this case, as copies can be obtained from ADWR.

G. Service of Lengthy Listing of the Disclosed Documents: If a party's listing of its disclosed documents or electronically stored information, not the disclosure statement, exceeds twenty-five pages, that party shall so

state in its disclosure statement and shall provide a copy of the complete listing to the Special Master, ADWR, and to those parties who request from the disclosing party a copy of the complete listing.

8. Electronic Data Base and Index Provided by ADWR. ADWR is directed to create and maintain an electronic data base and index of all disclosed documents which shall be available on ADWR's Internet site. ADWR may confer and work with any of the parties in this case to implement the electronic data base and index.

A. Electronic Format. A disclosing party shall submit to ADWR a copy of all documents disclosed and an index of the documents in accordance with the following requirements:

(1). Number each document in numeric sequence with a unique alpha identifier that is related to the name of the disclosing party.

(2). *Counsel who has prior experience with these data bases should note the changes made in subsections a, b, c, e, i, and j, and new subsection k.* Complete a Disclosure Input Form in Microsoft Excel format for each disclosed document containing the following searchable index fields:

a. Title or description of document. The verbatim title of the document shall be used. If a document does not have a title, a brief description in square brackets shall be provided.

b. Unique identifying number created by the disclosing party for each document. The unique identifying number shall be limited to ten alpha numeric characters.

c. Date of publication or preparation of document. The format shall be YYYY/MM/DD. Where a date is not identified in a document, the format shall be YYYY/MM/00. Where neither a date nor a month is identified, the format shall be YYYY/00/00.

d. Document type (article, book, letter, map, report).

e. Recipient. The format shall be Last Name, First Name.

f. Number of pages of document.

g. Disclosing party.

h. Date of submittal of document.

i. Subject matter of document (up to three categories). To

the extent a party wishes to use the subject matter field, information already entered in any other field shall not be repeated in the subject matter field.

j. Author. The format shall be Last Name, First Name.

k. Recipient Title Position. The format shall be Position Title, Employee Entity.

(3). Create a portable document format file (.pdf) of each document.

(4). Provide a compact disc to ADWR with copies of the Disclosure Input Forms (Microsoft Excel files) and corresponding disclosure documents in .pdf file format.

(5). Provide to ADWR paper copies of disclosed documents and corresponding Disclosure Input Forms. ADWR will maintain paper copies to satisfy the Public Records Act, A.R.S. §§ 39-101 *et seq.*

B. Internet Access. ADWR shall place a blank copy of the Disclosure Input Form together with format protocols on the Internet at a domain or address made known to all persons who appear on the Court approved mailing list for this case. In order to provide access to the disclosed documents, each index field in the Disclosure Input Form shall be subject to query. To the greatest extent possible, electronic copies of all disclosed documents and completed Disclosure Input Forms shall be made available on the Internet for viewing and copying.

C. Form. To the extent possible, parties shall submit documents in the following form: single-sided, 8.5" x 11" size, no punched holes, no permanent binding (staples excepted), and no tabs.

D. Copies of Disclosed Documents. ADWR shall make available to any claimant, at the claimant's expense, a copy of disclosed documents on a CD-ROM or a paper copy. ADWR shall determine the best and most practical manner for providing copies.

E. Fees. ADWR may collect its standard fees for copies and other services rendered related to the use of the electronic data base and index.

9. Discovery.

A. Scope. Discovery shall be limited to matters concerning the issues designated for briefing in this order.

B. Commencement. Parties may commence formal discovery on or after **March 19, 2010**, but prior thereto may, and are encouraged, to engage in

informal discovery.

C. **Completion.** All discovery including depositions shall be completed by **September 10, 2010.**

D. **Rules.** All discovery related to the designated issues shall be conducted according to Arizona Rules of Civil Procedure 26 through 37, and as applicable, pretrial orders issued in this adjudication and the Rules for Proceedings Before the Special Master.

10. Expert Reports. On or before **June 14, 2010**, all parties shall exchange expert reports that a party considers relevant to the issues designated for briefing.

11. Motions. On or before **November 15, 2010**, any party in this case may file the appropriate motion that presents the party's position concerning any of the designated issues. Each issue shall be separately addressed in the motion. Parties sharing the same position are encouraged to file joint pleadings.

12. Responses. Responses to all motions shall be filed by **January 31, 2011.**

13. Replies. Replies to all motions shall be filed by **March 18, 2011.**

14. Statement of Position. A party may file a statement of position in lieu of a motion. Responses to a statement and replies shall be subject to the foregoing deadlines.

15. Page Limitations. Parties are excused from mandated page limitations for motions, responses, and replies, but reasonableness is expected.

16. Oral Argument and Hearings. Oral argument will be held on all the issues. The place, date, and time of oral argument will be announced later. Oral argument and hearings will be held in the Maricopa County Superior Court in Phoenix.

17. Technical Investigations. Until further order, ADWR will not be directed to update or conduct technical work related to the Aravaipa Canyon Wilderness Area.

18. Status Conferences. At this time, a status conference is not set. Any party may request a conference, which may be held telephonically, to consider any matter including the need for an evidentiary hearing.

19. Additional Information. For more information about the Gila River Adjudication, you may contact the following offices, but these offices cannot give you legal advice:

A. For information about the San Pedro HSR, copies of documents, and ordering a monthly docket subscription for the Gila River Adjudication:

Arizona Department of Water Resources
3550 North Central Avenue
Phoenix, Arizona 85012

Tel. (602) 771-8627 (Phoenix area)
Tel. 1-(866) 246-1414 (toll free within the United States)

B. For information about filing papers, reviewing contested case court files, and obtaining copies of court filings:

Clerk of the Maricopa County Superior Court
Attn: Water Case
601 West Jackson Street
Phoenix, Arizona 85003

DATED: August 17, 2009.

/s/ George A. Schade, Jr.
GEORGE A. SCHADE, JR.
Special Master

On August 17, 2009, the original of the foregoing was delivered to the Clerk of the Maricopa County Superior Court for filing and distributing a copy to all persons listed on the Court approved mailing list for the Gila River Adjudication Nos. W-1, W-2, W-3, and W-4 (Consolidated) dated July 27, 2009, and to the following persons:

City of Benson
P. O. Box 2223
Benson, Arizona 85602

Phillip Denormandie
12 Marshall Street
Boston, Massachusetts 02108

Kathy Sergent
4700 North Dry Camp Road, Box 5012
Klondyke, Arizona 85643

The Arizona Nature Conservancy
300 East University Boulevard, Suite 230
Tucson, Arizona 85705

Porter House Station, L.L.C.
P. O. Box 228
Tucson, Arizona 85702

U.S. Bureau of Land Management
Safford District Office
711 14th Avenue
Safford AZ 85546

/s/ George A. Schade, Jr.
George A. Schade, Jr.

Court Approved Mailing List
 In re Aravaipa Canyon Wilderness Area
 W1-11-3342 (17 Names)
 Prepared by the Special Master
 August 17, 2009

<p>Clerk of the Superior Court Maricopa County Attn: Water Case 601 West Jackson Street Phoenix AZ 85003</p> <p>Porter House Station L.L.C. P. O. Box 228 Tucson AZ 85702</p> <p>U.S. Bureau of Land Management Safford District Office 711 14th Avenue Safford AZ 85546</p> <p>The Arizona Nature Conservancy 300 East University Boulevard, Suite 230 Tucson AZ 85705</p> <p>Fennemore Craig, P.C. Lauren J. Caster 3003 North Central Avenue, Suite 2600 Phoenix AZ 85012-2913</p> <p>Philip Denormandie 12 Marshall Street Boston MA 02108</p> <p>Gila River Indian Community Jennifer K. Giff, R. B. Lewis, J. T. Hestand, R. E. Koester, and A. M. Chischilly 525 West Gu u Ki P. O. Box 97 Sacaton AZ 85247</p> <p>U.S. Department of Justice Environment and Natural Resources Division R. Lee Leininger 1961 Stout Street, 8th Floor Denver CO 80294</p> <p>Montgomery & Interpreter, P.L.C. Susan B. Montgomery and Robyn L. Interpreter 11811 North Tatum Blvd, Suite 3031 Phoenix AZ 85028</p>	<p>Arizona Attorney General's Office Natural Resources Section Kenneth D. Nyman and Theresa M. Craig 1275 West Washington Phoenix AZ 85007-2997</p> <p>Office of the City Attorney Benson, City of P. O. Box 2223 Benson AZ 85602</p> <p>Arizona Department of Water Resources Legal Division Janet L. Ronald 3550 North Central, 4th Floor Phoenix AZ 85012</p> <p>Special Master Arizona General Stream Adjudication George A. Schade, Jr. 201 West Jefferson, CCB 5B Phoenix AZ 85003-2205</p> <p>Kathy Sergent 4700 North Dry Camp Road, Box 5012 Klondyke AZ 85643</p> <p>The Sparks Law Firm, P.C. Joe P. Sparks and Laurel A. Herrmann 7503 First Street Scottsdale AZ 85251-4573</p> <p>Curtis, Goodwin, Sullivan, Udall & Schwab, P.L.C. William P. Sullivan 501 East Thomas Road Phoenix AZ 85012-3205</p> <p>Salmon, Lewis & Weldon, P.L.C. John B. Weldon, Jr. and Lisa M. McKnight 2850 East Camelback Road, Suite 200 Phoenix AZ 85016</p>
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APPENDIX A-4

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN CHAMBERS (X) IN OPEN COURT ()

SPECIAL MASTER GEORGE A. SCHADE, JR.
Presiding

IN RE THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN THE
GILA RIVER SYSTEM AND SOURCE

DATE: November 2, 2011

CIVIL NO. W1-11-3342

ORDER DETERMINING THE
INITIAL SEVEN ISSUES
BRIEFED

CONTESTED CASE NAME: *In re Aravaipa Canyon Wilderness Area.*

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master enters his determinations of the initial seven issues designated for briefing and sets a deadline for submission of new issues.

NUMBER OF PAGES: 19.

DATE OF FILING: November 2, 2011.

In the Case Initiation Order, the Special Master designated seven issues for briefing and set timelines for filing disclosure statements and conducting discovery limited to the issues.¹

I. CHRONOLOGY OF PROCEEDINGS

The issues considered in this initial briefing are the following:

¹ Order (Aug. 17, 2009). The text of the order is available at http://www.superiorcourt.maricopa.gov/SuperiorCourt/Adjudications/_schade/ACWAcio081709.pdf.

1. Did Congress in enacting the legislation establishing the Aravaipa Canyon Wilderness Area expressly intend to reserve unappropriated waters to accomplish the purposes of the reservation?
2. If so, what were the purposes of the reservation?
3. If Congress did not expressly intend to reserve water, does the evidence establish that the United States withdrew land from the public domain and reserved the Aravaipa Canyon Wilderness Area for federal purposes?
4. If the land was withdrawn and reserved, what were the purposes of the reservation?
5. If the land was withdrawn and reserved, did the United States impliedly reserve unappropriated waters to accomplish the purposes of the reservation?
6. If unappropriated waters were reserved for the purposes of the reservation, what is the date or dates of priority of the reserved water rights? And,
7. If unappropriated waters were reserved for the purposes of the reservation, did Congress intend to reserve all unappropriated waters at the time of designation?

A. The Litigants and Briefing Schedule

ASARCO LLC (“ASARCO”), Freeport-McMoRan Corporation (“Freeport-McMoRan”), Salt River Project (“SRP”), San Carlos Apache Tribe and Tonto Apache Tribe jointly, Yavapai-Apache Nation, and the United States filed disclosure statements.

The Arizona Department of Water Resources (“ADWR”) maintained on its Internet site an electronic data base and index of all disclosed documents. All disclosing parties were directed to submit to ADWR electronic copies, an index, and paper copies of all disclosures. ADWR made available to claimants copies of disclosed documents.

ASARCO, Freeport-McMoRan, SRP, and the United States filed motions for summary judgment, responses, and replies. The San Carlos Apache Tribe and Tonto Apache Tribe joined in portions of the United States’ reply to the response of Freeport-McMoRan to the federal motion. Oral argument on all motions was heard on September 8, 2011. The parties who filed summary relief motions participated in the argument.

B. Form of the Special Master’s Determinations

In accordance with the reasons set forth in the Special Master’s March 4, 2009, order entered in the contested case *In re San Pedro Riparian National Conservation Area*, Contested Case No. W1-11-232, the Special Master at this time will not file an

Arizona Rule of Civil Procedure 53(g) report with the Court.²

C. Standard for Summary Judgment

Arizona Rule of Civil Procedure 56(c)(1) provides that summary judgment shall be granted if the papers filed “show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Summary judgment “should be granted if the facts produced in support of the claim or defense have so little probative value, given the quantum of evidence required, that reasonable people could not agree with the conclusion advanced by the proponent of the claim or defense.”³

Conclusion of Law No. 1. With the exception of the seventh issue, the arguments presented to resolve the issues briefed do not encompass material factual disputes that preclude summary judgment.

II. ARAVAIPA CANYON WILDERNESS AREA

Congress established the Aravaipa Canyon Wilderness Area by legislation enacted in 1984 and 1990. The following findings of fact provide a partial legislative background relevant to the resolution of the issues briefed.

In the Wilderness Act enacted in 1964 (“Wilderness Act of 1964”), the Congress established the National Wilderness Preservation System to be composed of congressionally designated wilderness areas.⁴

Finding of Fact No. 1. Federally owned lands are included within the National Wilderness Preservation System by Act of Congress.⁵

In pertinent part as codified, the Wilderness Act of 1964 contains the following “Congressional declaration of policy:”

(a) In order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition, it is hereby declared to be the policy of the Congress to secure for the American people of present and future generations the benefits of an

² Order (Mar. 4, 2009). The text of the order is available at http://www.superiorcourt.maricopa.gov/SuperiorCourt/Adjudications/_schade/SPRNCAord030409.pdf.

³ *Orme School v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990).

⁴ Pub. L. No. 88-577, 78 Stat. 890, codified as amended in 16 U.S.C. §§ 1131-1136 (2010) (Wilderness Act). See Freeport-McMoRan Exhibit (“Exh.”) A attached to its Motion for Sum. Judg. For convenience, the Wilderness Act enacted in 1964 will be cited to the United States Code and at times in this order will be referred to as the “Wilderness Act of 1964.” The other congressional acts considered in this order specified the year of enactment in their titles.

⁵ 16 U.S.C. §§ 1131(a and b).

enduring resource of wilderness. For this purpose there is hereby established a National Wilderness Preservation System to be composed of federally owned areas designated by the Congress as “wilderness areas,” and these shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness; and no Federal lands shall be designated as “wilderness areas” except as provided for in this Act or by a subsequent Act.

(b) The inclusion of an area in the National Wilderness Preservation System notwithstanding, the area shall continue to be managed by the Department and agency having jurisdiction thereover immediately before its inclusion in the National Wilderness Preservation System unless otherwise provided by Act of Congress....⁶

The Wilderness Act of 1964 defines the term “wilderness” as follows:

A wilderness, in contrast with those areas where man and his works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this Act an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.⁷

Finding of Fact No. 2. In the Arizona Wilderness Act of 1984, the Congress designated as wilderness and a component of the National Wilderness Preservation System approximately 6,670 acres of public lands in Graham and Pinal Counties, Arizona, known as the Aravaipa Canyon Wilderness Area.⁸

Finding of Fact No. 3. In the Arizona Desert Wilderness Act of 1990, the Congress designated as wilderness and as a component of the National Wilderness

⁶ *Id.* As originally enacted, this provision contained the term “statement of policy.”

⁷ 16 U.S.C. § 1131(c).

⁸ Pub. L. No. 98-406, § 202, 98 Stat. 1485, 1491 (Ariz. Wilderness Act of 1984). *See* Freeport-McMoRan Exh. D.

Preservation System approximately 12,711 acres of public lands in Pinal and Graham Counties, Arizona, are incorporated and deemed to be a part of the Aravaipa Canyon Wilderness Area designated in 1984.⁹

Finding of Fact No. 4. The Bureau of Land Management, an agency of the United States Department of the Interior, manages the Aravaipa Canyon Wilderness Area.

III. DID CONGRESS IN ENACTING THE LEGISLATION ESTABLISHING THE ARAVAIPA CANYON WILDERNESS AREA EXPRESSLY INTEND TO RESERVE UNAPPROPRIATED WATERS TO ACCOMPLISH THE PURPOSES OF THE RESERVATION?

The Arizona Wilderness Act of 1984 did not clearly and expressly reserve water for the Aravaipa Canyon Wilderness Area. On the other hand, in the Arizona Desert Wilderness Act of 1990, the Congress expressly reserved water for the purposes of the wilderness additions designated that year.

A. Arizona Wilderness Act of 1984

SRP argued that the United States Supreme Court's decision in *Cappaert*, the language of the 1984 Act, that Act's legislative history, and the purposes of the Wilderness Act of 1964 and the need for water to serve those purposes compel "the conclusion that the 1984 Act expressly created a federal reserved water right for the" Aravaipa Canyon Wilderness Area.¹⁰

The Wilderness Act of 1964 does not contain clear and unambiguous language that reserves water for wilderness areas. The question of what the Act means for reserved water rights has generated considerable controversy. In the briefing, there was much argument concerning the purposes of the legislation and whether the Congress impliedly reserved water rights for lands included in the National Wilderness Preservation System.

The Special Master believes it is not necessary to join the debate because this question can be answered by examining the specific legislation that established the Aravaipa Canyon Wilderness Area. This fact may not be found in other contested cases, but here it facilitates a resolution.

Second, if *Cappaert* is to be applied to answer this issue as SRP suggests, the analysis must give higher importance to the language of the Arizona Wilderness Act of 1984 than to its legislative history. Although *Cappaert* involved a presidential proclamation, the Supreme Court based its decision on the language of President Truman's proclamation without reference to its executive history or administrative background.

In *Cappaert* Chief Justice Burger described President Truman's Proclamation No.

⁹ Pub. L. No. 101-628, § 101(a)(39), 104 Stat. 4469, 4472 (Ariz. Desert Wilderness Act of 1990). See Freeport-McMoRan Exh. F.

¹⁰ SRP's Motion for Sum. Judg. at 14.

2961 as follows:

The 1952 Proclamation notes that Death Valley was set aside as a national monument “for the preservation of the unusual features of scenic, scientific, and educational interest therein contained.” The Proclamation also notes that Devil’s Hole is near Death Valley and contains a “remarkable underground pool.” Additional preambulatory statements in the Proclamation explain why Devil’s Hole was being added to the Death Valley National Monument:

“Whereas the said pool is a unique subsurface remnant of the prehistoric chain of lakes which in Pleistocene times formed the Death Valley Lake System, and is unusual among caverns in that it is a solution area in distinctly striated limestone, while also owing its formation in part to fault action; and

“Whereas the geologic evidence that this subterranean pool is an integral part of the hydrographic history of the Death Valley region is further confirmed by the presence in this pool of a peculiar race of desert fish, and zoologists have demonstrated that this race of fish, which is found nowhere else in the world, evolved only after the gradual drying up of the Death Valley Lake System isolated this fish population from the original ancestral stock that in Pleistocene times was common to the entire region; and,

“Whereas the said pool is of such outstanding scientific importance that it should be given special protection, and such protection can be best afforded by making the said forty-acre tract containing the pool a part of the said monument....”

The Proclamation provides that Devil’s Hole should be supervised, managed, and directed by the National Park Service, Department of the Interior. Devil’s Hole is fenced off, and only limited access is allowed by the Park Service.¹¹

After analyzing the “reserved-water-rights-doctrine,” the Court agreed with the decisions of the district court and court of appeals “that the 1952 Proclamation expressed an intention to reserve unappropriated water,” and held that:

The Proclamation discussed the pool in Devil’s Hole in four of the five preambles and recited that the “pool ... should be given special protection.” Since a pool is a body of water, the protection contemplated is meaningful only if the water remains; the water right reserved by the 1952 Proclamation was thus explicit, not implied.¹²

¹¹ *Cappaert v. United States*, 426 U.S. 128, 132-33 (1976) (“*Cappaert*”).

¹² *Id.* at 139-40.

In the Arizona Wilderness Act of 1984, the Congress made the following findings:

The Congress finds that -

(1) the Aravaipa Canyon, situated in the Galiuro Mountains in the Sonoran desert region of southern Arizona, is a primitive place of great natural beauty that, due to the presence of a rare perennial stream, supports an extraordinary abundance and diversity of native plant, fish, and wildlife, making it a resource of national significance; and

(2) the Aravaipa Canyon should, together with certain adjoining public lands, be incorporated within the National Wilderness Preservation System in order to provide for the preservation and protection of this relatively undisturbed but fragile complex of desert, riparian and aquatic ecosystems, and the native plant, fish, and wildlife communities dependent on it, as well as to protect and preserve the area's great scenic, geologic, and historical values, to a greater degree than would be possible in the absence of wilderness designation.¹³

In the first finding, the Congress noted “the presence of a rare perennial stream.” The stream “supports an extraordinary abundance and diversity of native plant, fish, and wildlife.” The second finding refers to the “fragile complex” of “riparian and aquatic ecosystems” and “the native plant, fish, and wildlife communities dependent on it.”

In *Cappaert* the Supreme Court noted that the “Proclamation discussed the pool in Devil’s Hole in four of the five preambles.” In both of its findings in the 1984 Act, the Congress mentioned the presence of water and its vital effect.

In *Cappaert* the Court noted that the proclamation directed that the “pool is of such outstanding scientific importance that it should be given special protection.” In the 1984 Act, the Congress stated that the environment supported by the perennial stream “is a resource of national significance” that should be preserved and protected.

In *Cappaert* the Court noted the existence of a “remarkable underground pool.” In the 1984 Act, the Congress noted “the presence of a rare perennial stream.” The adjectives “remarkable” and “rare” highlight the uniqueness of each water source.

In *Cappaert* the Court noted that President Truman’s proclamation stated that “protection can be best afforded by making the said forty-acre tract containing the pool a part of the said monument.” In the 1984 Act, the Congress noted the need to protect Aravaipa Canyon “to a greater degree than would be possible in the absence of wilderness designation.”

In *Cappaert* the Court commented that “Devil’s Hole is fenced off, and only

¹³ Pub. L. No. 98-1485, § 201, 98 Stat. 1491. The Congress designated forty new wilderness areas, but made findings only for the designation of the Aravaipa Canyon Wilderness Area.

limited access is allowed by the Park Service.” The Special Master, who has known this fact for many years, takes judicial notice that access to the Aravaipa Canyon Wilderness Area is limited to a specific number of daily visitors who require reservations and permits.¹⁴

Finding of Fact No. 5. The wilderness area designated in 1984 bordered Aravaipa Creek, the perennial stream, approximately 0.5 to 1.5 miles wide on both sides.¹⁵

The extent of the 1984 boundary shows Congress adhered to its objective of protecting the riparian ecosystem of Aravaipa Creek.

Finding of Fact No. 6. A perennial stream that maintains a riparian and aquatic ecosystem supporting native plant, fish and wildlife is a body of water.

Finding of Fact No. 7. The protection and preservation contemplated by the Arizona Wilderness Act of 1984 is meaningful only if water is available.

The Special Master recognizes that wilderness areas are established because each possesses a unique and special character. The Special Master has carefully analyzed this issue to assure that his analysis and determinations accord with *Cappaert’s* holdings.

Conclusion of Law No. 2. In the Arizona Wilderness Act of 1984, the Congress explicitly intended to reserve water to accomplish the purposes of the Aravaipa Canyon Wilderness Area designated by the Act.

B. Arizona Desert Wilderness Act of 1990

The Arizona Desert Wilderness Act of 1990 states in pertinent part as follows:

“WATER. - (1) With respect to each wilderness area designated by this title, Congress hereby reserves a quantity of water sufficient to fulfill the purposes of this title.”¹⁶

The Special Master agrees with the movants that the Arizona Desert Wilderness Act of 1990 expressly reserved a quantity of water sufficient to fulfill the purposes of the wilderness additions designated that year.

Conclusion of Law No. 3. In the Arizona Desert Wilderness Act of 1990, the Congress expressly intended to reserve water to accomplish the purposes of the lands added to the Aravaipa Canyon Wilderness Area.

¹⁴ “A permit is required to visit Aravaipa Canyon Wilderness. The fee is \$5.00 per person per day. Canyon use is limited to 50 people per day, 30 from the West end and 20 from the East end. This system helps to reduce the potential impacts to the environment caused by human use and allows visitors to enjoy the canyon’s solitude.” <http://www.blm.gov/az/st/en/aro/rsmain/aravaipa/permits.html> (visited on Nov. 2, 2011).

¹⁵ The exterior boundary of the Aravaipa Canyon Wilderness Area as designated in 1984, is shown on a map dated 1987. *See* Freeport-McMoRan Exh. E.

¹⁶ Pub. L. No. 101-628, § 101(g)(1), 104 Stat. 4473.

Because the question has arisen in other contested cases, the Special Master reiterates that a non-Indian reserved water right is limited to unappropriated water. This point need not be briefed. In *Cappaert* the Supreme Court held as follows:

This Court has long held that when the Federal Government withdraws its land from the public domain and reserves it for a federal purpose, the Government, by implication, reserves appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation....

....

In determining whether there is a federally reserved water right implicit in a federal reservation of public land, the issue is whether the Government intended to reserve unappropriated and thus available water.¹⁷

IV. IF SO, WHAT WERE THE PURPOSES OF THE RESERVATION?

In order to resolve this issue, the three congressional acts must be examined. “This case requires us to apply settled principles of statutory construction under which we must first determine whether the statutory text is plain and unambiguous. (citation omitted). If it is, we must apply the statute according to its terms.”¹⁸

A. Wilderness Act of 1964

The first act to consider is the Wilderness Act which states as follows:

In order to assure that an increasing population, accompanied by expanding settlement and growing mechanization, does not occupy and modify all areas within the United States and its possessions, leaving no lands designated for preservation and protection in their natural condition, **it is hereby declared to be the policy of the Congress** to secure for the American people of present and future generations the benefits of an enduring resource of wilderness. (Emphasis added.)¹⁹

The second sentence of the Act, this statement expresses the congressional policy underlying the legislation.

In the third sentence, the Act states that “for this purpose:”

[T]here is hereby established a National Wilderness Preservation System

¹⁷ 426 U.S. at 138-39; see *United States v. New Mexico*, 438 U.S. 696, 698 (1978) (“*New Mexico*”); see *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 195 Ariz. 411, 417, 989 P.2d 739, 745 (1999), cert. denied sub nom. *Phelps Dodge Corp. v. U.S. and Salt River Valley Water Users’ Assn. v. U.S.*, 530 U.S. 1250 (2000).

¹⁸ *Carcieri v. Salazar*, 555 U.S. 379, 385, 129A S. Ct. 1058, 1063-64 (2009).

¹⁹ 16 U.S.C. § 1131(c).

to be composed of federally owned areas designated by Congress as “wilderness areas”, and these shall be administered for the use and enjoyment of the American people in such manner as will leave them unimpaired for future use and enjoyment as wilderness, and so as to provide for the protection of these areas, the preservation of their wilderness character, and for the gathering and dissemination of information regarding their use and enjoyment as wilderness....²⁰

The Special Master interprets the second sentence to express the congressional policy underlying the Wilderness Act and the third sentence to state the purposes of wilderness areas designated in furtherance of the Wilderness Act.

Conclusion of Law No. 4. The language of the Wilderness Act enacted in 1964 is plain and unambiguous concerning the purposes of wilderness areas.

Conclusion of Law No. 5. The purposes of the Wilderness Act enacted in 1964 are to protect designated wilderness areas, preserve their wilderness character, and gather and disseminate information regarding their use and enjoyment as wilderness.

B. Arizona Wilderness Act of 1984

In 1984, the Congress designated approximately 6,670 acres of federal land as the Aravaipa Canyon Wilderness Area. The Congress made this designation “[i]n furtherance of the purposes of the Wilderness Act of 1964” and “in order to provide for the preservation and protection of this relatively undisturbed but fragile complex of desert, riparian and aquatic ecosystems, and the native plant, fish, and wildlife communities dependent on it, as well as to protect and preserve the area’s great scenic, geologic, and historical values.”²¹

Conclusion of Law No. 6. The language of the Arizona Wilderness Act of 1984 is plain and unambiguous concerning the purposes of the Aravaipa Canyon Wilderness Area.

Conclusion of Law No. 7. The purposes of the Aravaipa Canyon Wilderness Area designated in 1984 are the following:

1. The protection of the area,
2. The preservation of its wilderness character,
3. The gathering and dissemination of information regarding the area’s use and enjoyment as wilderness,
4. The preservation and protection of the complex of desert, riparian and aquatic ecosystems,

²⁰ *Id.*

²¹ Pub. L. No. 98-1485, §§ 201 and 202, 98 Stat. 1491.

5. The preservation and protection of the native plant, fish, and wildlife communities dependent on the foregoing complex of ecosystems, and

6. The protection and preservation of the area's scenic, geologic, and historical values.

C. Arizona Desert Wilderness Act of 1990

In 1990, the Congress incorporated within the existing Aravaipa Canyon Wilderness Area approximately 12,711 acres of federal land “[i]n furtherance of the purposes of the Wilderness Act.”²² Unlike the 1984 legislation, the Congress did not provide additional specific purposes for the wilderness designation of these lands. At oral argument, it was stated that the added lands are located away from Aravaipa Creek, and while these lands might contain water sources, the areas are generally more arid than the original 6,670 acres.

Conclusion of Law No. 8. The language of the Arizona Desert Wilderness Act of 1990 is plain and unambiguous concerning the purposes of the lands added to the Aravaipa Canyon Wilderness Area.

Conclusion of Law No. 9. The purposes of the wilderness additions designated in 1990 are the following:

1. The protection of the added area,
2. The preservation of its wilderness character, and
3. The gathering and dissemination of information regarding the added area's use and enjoyment as wilderness.

V. IF CONGRESS DID NOT EXPRESSLY INTEND TO RESERVE WATER, DOES THE EVIDENCE ESTABLISH THAT THE UNITED STATES WITHDREW LAND FROM THE PUBLIC DOMAIN AND RESERVED THE ARAVAIPA CANYON WILDERNESS AREA FOR FEDERAL PURPOSES?

A withdrawal of federal lands and their reservation for a federal purpose are necessary in order to determine if Congress reserved unappropriated water to accomplish the purpose of the reservation. This question pertains to the 1984 wilderness designation.

“It is important to note at the outset that ‘withdrawal’ and ‘reservation’ are not synonymous terms.... A withdrawal makes land unavailable for certain kinds of private appropriation under the public land laws” such as the operation of federal mining, homestead, preemption, desert entry, and other land laws.²³ Withdrawn lands “are tracts that the government has placed off-limits to specified forms of use and disposition,” but a

²² Pub. Law No. 101-628, § 101(a)(39), 104 Stat. 4469 and 4472.

²³ *Southern Utah Wilderness Alliance v. Bureau of Land Management*, 425 F.3d 735, 784 (10th Cir. 2005).

“withdrawn parcel may also be reserved for particular purposes, and often is.”²⁴

The Wilderness Act of 1964 provides in pertinent sections that:

1. Except as specifically provided for in this chapter, and subject to existing private rights, there shall be no commercial enterprise and no permanent road within any wilderness area designated by this chapter and, except as necessary to meet minimum requirements for the administration of the area for the purpose of this chapter ... there shall be no temporary road, no use of motor vehicles, motorized equipment or motorboats, no landing of aircraft, no other form of mechanical transport, and no structure or installation within any such area. 16 U.S.C. § 1133(c).
2. Subject to valid rights then existing, effective January 1, 1984, the minerals in lands designated by this chapter as wilderness areas are withdrawn from all forms of appropriation under the mining laws and from disposition under all laws pertaining to mineral leasing and all amendments thereto. 16 U.S.C. § 1133(d)(3).
3. [T]he grazing of livestock, where established prior to September 3, 1964, shall be permitted to continue subject to such reasonable regulations as are deemed necessary by the Secretary of Agriculture. 16 U.S.C. § 1133(d)(4).
4. Commercial services may be performed within the wilderness areas designated by this chapter to the extent necessary for activities which are proper for realizing the recreational or other wilderness purposes of the areas. 16 U.S.C. § 1133(d)(5).

Conclusion of Law No. 10. The prohibition and restriction of uses and disposition within the Aravaipa Canyon Wilderness Area show that the Congress withdrew the wilderness lands from the public domain.

“A reservation ... goes a step further: it not only withdraws the land from the operation of the public land laws, but also dedicates the land to a particular public use.... [a] reservation necessarily includes a withdrawal; but it also goes a step further, effecting a dedication of the land ‘to specific public uses’.”²⁵ Reserved lands “are the federal tracts that Congress or the Executive has dedicated to particular uses (footnote omitted). The dedication removes them from availability for contrary use or disposition.”²⁶

The purposes of the Aravaipa Canyon Wilderness Area designated in 1984 and

²⁴ 1 GEORGE CAMERON COGGINS & ROBERT L. GLICKSMAN, *Public Natural Resources Law*, § 1:12 at 1-17 (2d ed. 2010), § 1:12 at 1-16 (1st ed. 2004) (“The main distinction between withdrawn and reserved lands is that a withdrawal is negative, forbidding certain uses, while a reservation is a positive declaration of future use.”).

²⁵ 425 F.3d at 784.

²⁶ 1 COGGINS & GLICKSMAN § 1:11 at 1-16 (2d ed.), *supra*, § 1:11 at 1-15 (1st ed.), *supra*.

1990 are set forth above in section IV.

Conclusion of Law No. 11. The purposes of the Aravaipa Canyon Wilderness Area are sufficiently specific to show that the Congress removed the lands from availability for contrary uses.

Conclusion of Law No. 12. The 1984 and 1990 designations of the Aravaipa Canyon Wilderness Area constituted a withdrawal and reservation of federal lands.

VI. IF THE LAND WAS WITHDRAWN AND RESERVED, WHAT WERE THE PURPOSES OF THE RESERVATION?

This question is answered above in section IV.

VII. IF THE LAND WAS WITHDRAWN AND RESERVED, DID THE UNITED STATES IMPLIEDLY RESERVE UNAPPROPRIATED WATERS TO ACCOMPLISH THE PURPOSES OF THE RESERVATION?

It was determined in section III that Congress in the Arizona Wilderness Act of 1984 explicitly intended to reserve water to accomplish the purposes of the Aravaipa Canyon Wilderness Area designated that year, and second, that Congress expressly intended to reserve water to accomplish the purposes of the lands added in 1990. Because the 1990 Act expressly reserved water, the question concerning whether an implied reserved water right exists pertains to the 1984 legislation.

The Arizona Supreme Court has held that in determining the existence of an implied reserved water right “the trier of fact:”

[M]ust examine the documents reserving the land from the public domain and the underlying legislation authorizing the reservation; determine the precise federal purposes to be served by such legislation; determine whether water is essential for the primary purposes of the reservation; and finally determine the precise quantity of water - the minimal need as set forth in *Cappaert* and *New Mexico* - required for such purposes.²⁷

In *Cappaert* the United States Supreme Court held that:

In determining whether there is a federally reserved water right implicit in a federal reservation of public land, the issue is whether the Government intended to reserve unappropriated and thus available water. Intent is inferred if the previously unappropriated waters are necessary to accomplish the purposes for which the reservation was created (citations omitted).²⁸

²⁷ *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 201 Ariz. 307, 313, 35 P.3d 68, 74 (2001) (“*Gila V*”).

²⁸ 426 U.S. at 139.

In *New Mexico*, the Supreme Court held that “[e]ach time this Court has applied the ‘implied-reservation-of-water doctrine,’ it has carefully examined both the asserted water right and the specific purposes for which the land was reserved, and concluded that without the water the purposes of the reservation would be entirely defeated (footnote omitted).”²⁹

The analysis set forth above in section III concerning the Arizona Wilderness Act of 1984 is adopted and incorporated by reference for the resolution of this issue.

Conclusion of Law No. 13. Water is necessary to accomplish the purposes of the Aravaipa Canyon Wilderness Area.

Conclusion of Law No. 14. The purposes of the Aravaipa Canyon Wilderness Area would be defeated without water.

Conclusion of Law No. 15. In the Arizona Wilderness Act of 1984, the Congress impliedly reserved unappropriated water to accomplish the purposes of the Aravaipa Canyon Wilderness Area designated that year.

Freeport-McMoRan argued that a provision common to both the Wilderness Act of 1964 and the Arizona Wilderness Act of 1984 precludes finding that either legislation reserved water for a wilderness area. The United States Code designates the provision “State water laws exemption.” In briefing, the United States referred to it as a “neutrality clause,” but it has also been called a “disclaimer” and the “no claim or denial language.”

Section 4(d)(6) (the section was originally numbered section 4(d)(7)) of the Wilderness Act of 1964 states as follows:

“Nothing in this chapter shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.”³⁰

Section 101(e)(1) of the Arizona Wilderness Act of 1984 states as follows:

“As provided in [section 4(d)(7)] of the Wilderness Act, nothing in this Act or in the Wilderness Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from Arizona State water laws.”³¹

In 1987, the District Court for the District of Colorado was presented arguments similar to the ones made here. There and here the parties examined legislative history and other congressional acts to answer whether this provision precludes finding the existence of a reserved water right for a wilderness area.

²⁹ 438 U.S. at 700.

³⁰ 16 U.S.C. § 1133(d)(6) (“State water laws exemption”).

³¹ Pub. L. No. 98-1485, § 101, 98 Stat. 1488.

District Court Judge John L. Kane, Jr. ruled as follows:

I need not delve into the labyrinthine complexities of each of these arguments. It is axiomatic that “[w]here, as here, resolution of a question of federal law turns on a statute and the intention of Congress, [I] look first to the statutory language and then to the legislative history if the statutory language is unclear.” (Citation omitted). I do not find the statutory language of § 4(d)(7) to be unclear. Hence, there is no need to resort to the legislative history of that section. (footnote omitted)....

A plain reading of § 4(d)(7) indicates that section is simply a disclaimer. “By its drafting and passage of section 4(d)(7) of the Wilderness Act, 16 U.S.C. § 1133(d)(6), Congress meant to do nothing more than to maintain the *status quo* of basic water law....

By its own terms, § 4(d)(7) does not purport to work any substantive change in the rights parties may acquire under the various doctrines of water law, including the reserved rights doctrine. Any decisions in that regard are properly left to case-by-case adjudication.³²

The Idaho Supreme Court considered this issue and held that:

Section 4(d)(6) (footnote omitted) of the Wilderness Act states that “[n]othing in this Act shall constitute an express or implied claim or denial on the part of the Federal Government as to exemption from State water laws.” (citation omitted). The “no claim or denial” language used in section 4(d)(6) has been included in other congressional acts dealing with the disposition of federal lands. *See, e.g., Sawtooth National Recreation Area Act* § 9, (citation omitted); *Wildlife Refuge System Administration Act* § 4(i), (citation omitted); *Wild and Scenic Rivers Act* § 13(b), (citation omitted). In the Wild and Scenic Rivers Act Congress used the “no claim or denial” language and then expressly reserved water in another section of the Act. **The language of 4(d)(6) neither establishes a federal water right nor precludes the recognition of such a right if water is otherwise reserved.** (Emphasis added.)³³

These rulings are persuasive authority for the determination that the “no claim or denial” provision, found in the Wilderness Act and the Arizona Wilderness Act of 1984, does not preclude finding that the Congress reserved water when the facts show otherwise. Judge Kane was correct that whether the Congress reserved water for a wilderness area is “properly left to case-by-case adjudication.”

Conclusion of Law No. 16. Section 4(d)(6) of the Wilderness Act and section 101(e)(1) of the Arizona Wilderness Act of 1984 do not preclude the existence of a

³² *Sierra Club v. Lyng*, 661 F.Supp. 1490, 1493-94 (D. Colo. 1987).

³³ *Potlach Corp. v. United States*, 134 Idaho 916, 922, 12 P.3d 1260, 1266 (Idaho 2000).

federal reserved water right for the Aravaipa Canyon Wilderness Area.

VIII. IF UNAPPROPRIATED WATERS WERE RESERVED FOR THE PURPOSES OF THE RESERVATION, WHAT IS THE DATE OR DATES OF PRIORITY OF THE RESERVED WATER RIGHTS?

The United States Supreme Court “has long held” that a federal reserved water right “vests on the date of the reservation.”³⁴ The “federal right vests on the date a reservation is created, not when water is put to a beneficial use.”³⁵

Finding of Fact No. 8. President Ronald Reagan signed into law the Arizona Wilderness Act of 1984 on August 28, 1984.

Finding of Fact No. 9. Section 101(g)(1) of the Arizona Desert Wilderness Act of 1990, which expressed the Congress’ intent to reserve water for the lands added to the Aravaipa Canyon Wilderness Area, states that “[t]he priority date of such reserved rights shall be the date of enactment of this Act.”³⁶

Finding of Fact No. 10. President George H. W. Bush signed into law the Arizona Desert Wilderness Act of 1990 on November 28, 1990.

Conclusion of Law No. 17. The date of priority of the explicit or implied reserved water right for the Aravaipa Canyon Wilderness Area designated in 1984 is August 28, 1984.

Conclusion of Law No. 18. The date of priority of the express reserved water right for the lands the Arizona Desert Wilderness Act of 1990 added to the Aravaipa Canyon Wilderness Area is November 28, 1990.

The United States argued that the November 28, 1990, priority date of the express reserved water right extends to the lands designated wilderness in 1984. The reason is that when the wilderness area was enlarged and water was reserved, the Congress provided that the water rights were “incorporated in and shall be deemed to be a part of the [existing] Aravaipa Canyon Wilderness Area.”³⁷

Section 101(g)(4) of the Arizona Desert Wilderness Act of 1990 states as follows:

³⁴ *Cappaert*, 426 U.S. at 138.

³⁵ *Gila V*, 201 Ariz. at 310, 35 P.3d at 71 (citing *Arizona v. California*, 373 U.S. 546, 600 (1963)); see also 2 Waters and Water Rights § 37.03(b) (Robert E. Beck and Amy L. Kelley, eds., 3rd ed. LexisNexis/Matthew Bender 2010) (“The priority date for a federal reserved water right is the date of the statute ... establishing the reservation.”).

³⁶ Pub. L. No. 101-628, § 101(g)(1), 104 Stat. 4473.

³⁷ See U.S. Motion for Sum. Judg. at 13-14 and Statement of Fact No. 25 (Feb. 14, 2011); see also U.S. Reply at 5 (June 16, 2011). The statutory phrase is in Pub. L. No. 101-628, § 101(a)(39), 104 Stat. 4472.

WATER. - (4) The Federal water rights reserved by this title are specific to the wilderness areas located in the State of Arizona designated by this title. Nothing in this title related to reserved Federal water rights shall be construed as establishing a precedent with regard to any future designations, nor shall it constitute an interpretation of any other Act or any designation made pursuant thereto.³⁸

Section 101(g)(4) clearly states that the water rights reserved by the Act “are specific to the wilderness areas ... designated by” the legislation. Second, the clause states that “[n]othing ... related to reserved Federal water rights” stated in the Act “shall constitute an interpretation of any other Act or any designation made pursuant thereto.”

Furthermore, the phrase “are hereby incorporated in and shall be deemed to be a part of the Aravaipa Canyon Wilderness Area (designated [in 1984])” must be read as a whole. The term “shall be deemed to be a part of” is not independent from “incorporated in.” The Special Master interprets the complete phrase to say that Congress added lands to the 1984 wilderness area, and thereafter, the original and added land portions would be geographically considered to constitute the singular Aravaipa Canyon Wilderness Area.

Having set the geographic boundary of the enlarged wilderness area in section 101(a), the Congress clearly legislated in section 101(g)(4) that the express reserved water rights are “specific” to the added lands. There is no proper way to conclude other than the November 28, 1990, priority date does not extend to the wilderness area designated in 1984.

IX. IF UNAPPROPRIATED WATERS WERE RESERVED FOR THE PURPOSES OF THE RESERVATION, DID CONGRESS INTEND TO RESERVE ALL UNAPPROPRIATED WATERS AT THE TIME OF DESIGNATION?

In *Cappaert* the Supreme Court held that “[t]he implied-reservation-of-water-rights doctrine ... reserves only that amount of water necessary to fulfill the purpose of the reservation, no more.”³⁹ Two years later, Chief Justice Rehnquist reiterated that “the Court has repeatedly emphasized that Congress reserved ‘only that amount of water necessary to fulfill the purpose of the reservation, no more’.”⁴⁰

The Arizona Supreme Court held that one of the tests for determining whether a non-Indian reserved water right exists is to “determine the precise quantity of water - the minimal need as set forth in *Cappaert* and *New Mexico* - required for such purposes.”⁴¹ The “allocation [of water] must be tailored to the ‘minimal need’ of the reservation.” The Court held that this “limitation makes good sense because federally reserved water rights are implied (citation omitted), uncircumscribed by the beneficial use doctrine, and

³⁸ Pub. L. No. 101-628, § 101(g)(4), 104 Stat. 4474.

³⁹ 426 U.S. at 141.

⁴⁰ *New Mexico*, 438 U.S. at 700 (citing *Cappaert*, 426 U.S. at 141); see *Arizona v. California*, 373 U.S. 546, 600-01 (1963).

⁴¹ *Gila V*, 201 Ariz. at 313, 35 P.3d at 74.

preemptive in nature. (Citation omitted).”⁴²

The United States argued that the minimal need of Aravaipa Canyon Wilderness Area is all the unappropriated water constituting the natural flow in the area as of August 28, 1984. Without evidence establishing the quantity of available water and water needed to fulfill the purposes of the wilderness area, the Special Master cannot answer this question.

The United States submitted a decision of the State of Colorado District Court, Water Division No. 1, which granted the United States a ruling like the one it requests on this issue. In that decision, the Water Judge stated that in another recent matter he had experienced “more than one hundred days of trial,” during which he “received a liberal education in the somewhat arcane science of fluvial geomorphology,” and had had “the opportunity to be instructed by internationally renowned experts in the application of fluvial morphology principles.”⁴³ The Water Court took judicial notice of principles learned in that trial to enter the decision the United States cites.

This question raises genuine issues of material fact for which no evidence has been presented. Therefore, summary judgment is not proper at this time.

This case presents the interaction of a federal reserved water right and a vested state law based water right. The United States holds Certificate of Water Right No. 87114.0000 for the use of the waters flowing in Aravaipa Creek, inside the Aravaipa Canyon Wilderness Area, for recreation and wildlife, including fish, with a priority date of June 1, 1981 (before the wilderness area was designated).⁴⁴ In order to resolve this issue, the scope of that interaction must be considered.

The Special Master cannot determine whether the Congress intended to reserve all the unappropriated water flowing naturally within the Aravaipa Canyon Wilderness Area. This question will be answered after applying the guidance of *Cappaert, New Mexico*, *Gila V*, and other relevant law to an evidentiary record.

X. FUTURE PROCEEDINGS

The Special Master requests parties to submit issues for consideration in the next round of briefing which will follow the procedures used in this initial round.

The briefs and arguments raised questions as to whether the United States Department of the Interior has filed the required maps and legal descriptions with the congressional committees, the true acreage of the Aravaipa Canyon Wilderness Area,⁴⁵

⁴² 201 Ariz. at 312, 35 P.3d at 73, fn1.

⁴³ Memo. Dec. and Order Concerning App. of U.S. for Reserved Rights in Rocky Mt. Natl. Park at 3 and 4, Water Div. No. 1 (Colo.), Case No. W-8439-76 (W-8788-77) (Dec. 29, 1993). A copy of the decision was submitted with the U. S. Motion for Sum. Judg.

⁴⁴ A copy of the certificate of water right is provided in Freeport-McMoRan Exh. J.

⁴⁵ In its summary judgment motion, the United States indicated the Aravaipa Canyon Wilderness Area contains 19,410 acres of land; the designating legislations total 19,381 acres; and the Final

and the interaction of a federal reserved water right with state law based water claims and rights. The Special Master would like to know which issues would expedite this matter and if a contested case steering committee should be appointed.

Based upon the foregoing, IT IS ORDERED:

1. Granting and denying the motions for summary judgment consistent with the determinations contained in this order, and
2. Directing parties to submit on or before **February 3, 2012**, issues for consideration in the next round of briefing.

DATED: November 2, 2011.

/s/ George A. Schade, Jr.
GEORGE A. SCHADE, JR.
Special Master

On November 2, 2011, the original of the foregoing was delivered to the Clerk of the Maricopa County Superior Court for filing and distributing a copy to all persons listed on the Court approved mailing list for Contested Case No. W1-11-3423 dated July 25, 2011.

/s/ Barbara K. Brown
Barbara K. Brown

San Pedro River Watershed Hydrographic Survey Report (vol. 1, p. 447, 1991) indicated 20,089 acres. All acreages are approximate.

APPENDIX A-5

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN CHAMBERS (X) IN OPEN COURT ()

SPECIAL MASTER GEORGE A. SCHADE, JR.
Presiding

IN RE THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN THE
GILA RIVER SYSTEM AND SOURCE

DATE: April 17, 2012

CIVIL NO. W1-11-3342

ORDER CONCERNING THE
REQUESTS OF THE UNITED
STATES FOR (1) ADDITIONAL
TIME TO SUBMIT INFORMATION
AND (2) THE SUBMISSION OF A
SPECIAL MASTER'S REPORT

CONTESTED CASE NAME: *In re Aravaipa Canyon Wilderness Area.*

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master grants the request of the United States for a period of ninety days to investigate and report concerning the transmittal of maps and legal descriptions to Congress and the acreage contained within the Aravaipa Canyon Wilderness Area. The request of the United States for the Special Master to file a report with the Court concerning the Special Master's order dated November 2, 2011, is denied. The Special Master sets an evidentiary hearing to consider five issues and requests a joint pre-hearing statement.

NUMBER OF PAGES: 5.

DATE OF FILING: April 17, 2012.

The United States made two requests related to the Special Master's order filed on November 2, 2011. The first request is for a period of ninety days to investigate and

report concerning the transmittal of maps and legal descriptions of the Aravaipa Canyon Wilderness Area to congressional committees. The second request is for the Special Master to submit an Arizona Rule of Civil Procedure Rule 53(g) report (“Rule 53(g) report”) to the Court for purposes of review of the November 2, 2011, order.

I. REQUEST FOR NINETY DAYS TO PROVIDE INFORMATION

In the November 2, 2011, order, the Special Master noted that the “briefs and arguments raised questions as to whether the United States Department of the Interior has filed the required maps and legal descriptions with the congressional committees [and] the true acreage of the Aravaipa Canyon Wilderness Area.”¹ The United States has requested ninety days to investigate and report on the information it obtains concerning both matters. The request has not been opposed. It will be granted.

II. REQUEST FOR SUBMISSION OF A RULE 53(g) REPORT TO THE COURT

This request is based on a desire to obtain Judge Ballinger’s guidance on, at least, the two issues which the Special Master found raised genuine issues of material fact for which no evidence had been presented, and hence, summary relief was precluded. It is argued that the Court’s guidance “will eliminate uncertainty concerning the legal parameters related to the quantity of water reserved and result in a more expedited decree, potentially saving the parties and the Court substantial time and expense.”²

The opposition argues that the two issues are not ripe for review absent a factual record, and second, consideration of a Rule 53(g) report will unreasonably delay this case.

The applicable law was set forth in the November 2, 2011, order. First, a non-Indian federal reserved water right is limited to unappropriated water. The United States Supreme Court “has long held that when the Federal Government withdraws its land from the public domain and reserves it for a federal purpose, the Government, by implication, reserves appurtenant water then unappropriated to the extent needed to accomplish the purpose of the reservation.”³

Second, a congressional reservation of water reserves “only that amount of water necessary to fulfill the purpose of the reservation, no more.”⁴ The “allocation [of water]

¹ Order Determining the Initial Seven Issues Briefed at 19 (Nov. 2, 2011).

² U. S. Response to Order Determining the Initial Seven Issues and Motion for Rule 53(g) Report at 7 (Feb. 10, 2012).

³ *Cappaert v. United States*, 426 U.S. 128, 138 (1976) (“*Cappaert*”); see *United States v. New Mexico*, 438 U.S. 696, 698 (1978) (“*New Mexico*”) and *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 195 Ariz. 411, 417, 989 P.2d 739, 745 (1999), cert. denied sub nom. *Phelps Dodge Corp. v. U.S. and Salt River Valley Water Users’ Assn. v. U.S.*, 530 U.S. 1250 (2000).

⁴ *New Mexico*, 438 U.S. at 700 (citing *Cappaert*, 426 U.S. at 141); see *Arizona v. California*, 373 U.S. 546, 600-01 (1963).

must be tailored to the ‘minimal need’ of the reservation. (footnote omitted).”⁵

The Special Master has determined that the Congress both explicitly and impliedly intended to reserve water for the Aravaipa Canyon Wilderness Area. However, we must determine how much unappropriated water existed when different public land parcels were designated wilderness in 1984 and 1990. The answer requires a factual record of hydrologic and technical evidence.

The Special Master found that the purposes of the Aravaipa Canyon Wilderness Area designated in 1984 were the following:

1. The protection of the area,
2. The preservation of its wilderness character,
3. The gathering and dissemination of information regarding the area’s use and enjoyment as wilderness,
4. The preservation and protection of the complex of desert, riparian and aquatic ecosystems,
5. The preservation and protection of the native plant, fish, and wildlife communities dependent on the foregoing complex of ecosystems, and
6. The protection and preservation of the area’s scenic, geologic, and historical values.

The purposes of the wilderness additions designated in 1990 were the first three enumerated above.⁶ The foregoing purposes frame the scope of evidence for the determination of the minimal needs for reserved water rights.

It is argued that determining the minimal quantity of water to serve each of these purposes will be costly and time consuming. If the Court finds that the Congress intended to reserve all the unappropriated waters for these purposes, that costly undertaking would be avoided.

The rub is we do not yet have relevant and material evidence supporting a finding that the Congress intended to reserve all the unappropriated waters - or “all natural flows, including normal variations and fluctuations”⁷ - existing in 1984 and 1990. A factual record is needed to determine as a matter of law that the Congress intended to reserve all natural flows because - as the United States argues - that is required to preserve the Aravaipa Canyon Wilderness Area in its natural, unimpaired condition as mandated by federal legislation. Further review at this time will not overcome this hurdle.

⁵ *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 201 Ariz. 307, 312, 35 P.3d 68, 73 (2001).

⁶ All the purposes are discussed in the November 2, 2011, order at 10-11, fn.1, *supra*.

⁷ U. S. Motion for Summary Judgment at 14 (Feb. 14, 2011).

This case has been compared to *Cappaert*. Even in *Cappaert*, where the United States Supreme Court found an explicit reservation of water, the Court adhered to its minimal need standard. The Court held that the reserved water right was limited to the “water sufficient to maintain the level of the pool to preserve its scientific value.”

Thus, as the District Court has correctly determined, the level of the pool may be permitted to drop to the extent that the drop does not impair the scientific value of the pool as the natural habitat of the species sought to be preserved. The District Court thus tailored its injunction, very appropriately, to minimal need, curtailing pumping only to the extent necessary to preserve an adequate water level at Devil's Hole, thus implementing the stated objectives of the Proclamation.

We hold, therefore, that as of 1952 when the United States reserved Devil's Hole, it acquired by reservation water rights in unappropriated appurtenant water sufficient to maintain the level of the pool to preserve its scientific value and thereby implement Proclamation No. 2961.⁸

III. EVIDENTIARY HEARING

The only proper course at this time is to hold an evidentiary hearing to answer the following five questions:

1. Did the Congress intend to reserve all unappropriated waters within the Aravaipa Canyon Wilderness Area?
2. How much, if any, unappropriated water was available on August 28, 1984?
3. If unappropriated water was available on August 28, 1984, what is the precise quantity of unappropriated water required to fulfill the minimal need of, and satisfy, the primary purposes of the Arizona Wilderness Act of 1984?
4. How much, if any, unappropriated water was available on November 28, 1990?
5. If unappropriated water was available on November 28, 1990, what is the precise quantity of unappropriated water required to fulfill the minimal need of, and satisfy, the primary purposes of the Arizona Desert Wilderness Act of 1990?

The Special Master will consider all efficient and effective ways to ameliorate the costs and challenges of an evidentiary hearing.

⁸ *Cappaert*, 426 U.S. at 141 and 147.

The Arizona Department of Water Resources (“ADWR”) will have a role in the hearing. However, its technical assistance should be integrated with the parties’ presentation of evidence and not be the sole focus of the hearing.

IT IS ORDERED:

1. Granting the request of the United State for a period of ninety days to provide information it obtains concerning the transmittal of maps and legal descriptions to Congress and the acreage contained within the Aravaipa Canyon Wilderness Area. The United States shall file the information on or before **July 20, 2012**.

2. Denying the request that the Special Master submit the determinations made in the November 2, 2011, order in a Rule 53(g) report to the Court.

3. Setting an evidentiary hearing to consider the five issues described above.

4. Requesting the parties to submit a joint pre-hearing statement on or before **June 22, 2012**, setting forth timelines for filing disclosure statements, conducting discovery, exchanging expert reports, filing motions, and completing any other actions that will expedite an evidentiary hearing. Parties may request a telephonic or court conference to consider the matters of a pre-hearing statement.

5. Requesting the parties to submit comments on or before **June 22, 2012**, concerning the scope and timeline of ADWR’s technical assistance in the hearing.

DATED: April 17, 2012.

/s/ George A. Schade, Jr.
GEORGE A. SCHADE, JR.
Special Master

On April 17, 2012, the original of the foregoing was delivered to the Clerk of the Maricopa County Superior Court for filing and distributing a copy to all persons listed on the Court approved mailing list for Contested Case No. W1-11-3342 dated January 31, 2012.

/s/ George A. Schade, Jr.
George A. Schade, Jr.

APPENDIX A-6

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN CHAMBERS (X) IN OPEN COURT ()

SPECIAL MASTER GEORGE A. SCHADE, JR.
Presiding

IN RE THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN THE
GILA RIVER SYSTEM AND SOURCE

DATE: August 9, 2012

CIVIL NO. W1-11-3342

ORDER SETTING A PRE-HEARING
SCHEDULE AND CLARIFYING THE
SCOPE OF THE TECHNICAL
ASSISTANCE OF THE ARIZONA
DEPARTMENT OF WATER
RESOURCES AT THIS TIME

CONTESTED CASE NAME: *In re Aravaipa Canyon Wilderness Area.*

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master sets time lines for filing disclosure statements, completing discovery, disclosing expert reports, filing dispositive motions, and holding a status conference. The Special Master clarifies the scope of the technical assistance of the Arizona Department of Water Resources at this time.

NUMBER OF PAGES: 4.

DATE OF FILING: August 9, 2012.

The Special Master has considered the proposed pre-hearing statements and the comments concerning the technical assistance to be provided by the Arizona Department of Water Resources (“ADWR”) at this time.

All understand “the burden that the trial court will face in adjudicating the extent

and relative priority of” federal reserved water rights, but “we must heed the lesson that ‘the best way out is always through.’”¹ The Special Master is going to focus on the five issues set for an evidentiary hearing and will proceed in the most efficient and proper manner to advance this case.

Directing ADWR at this time to prepare a report consistent with A.R.S. § 45-256(B), as the United States argues, will put this case on hold for 12 to 24 months. It will require ADWR to ask the parties for information and data that could be obtained more completely and efficiently through disclosures. Moreover, we risk involving ADWR in determining what the majority of the litigants argue are questions of law.

The optimal timing for such a report is not at this time. However, such report will have to be considered at a future time as the San Carlos Apache Tribe, Tonto Apache Tribe, and City of Sierra Vista argue.

The Special Master will set time lines for filing disclosure statements, completing discovery, disclosing expert reports, filing dispositive motions, and holding a status conference.

Concurrent with these time lines, ADWR will be directed to work on several matters whose completion will make the scope of a report clearer. An update of the watershed file reports associated with the wilderness area should satisfy the suggestion of the San Carlos Apache Tribe and Tonto Apache Tribe concerning the identification of water claims and users.²

The Salt River Project mentioned the issue of the interaction of a federal reserved water right and a vested state law based right. This is an issue the Special Master hopes and encourages the litigants to discuss to determine if a mutual resolution or stipulations on certain aspects can be reached.

IT IS ORDERED:

1. On or before **November 13, 2012**, the United States shall file its initial Arizona Rule of Civil Procedure 26.1 disclosure statement.
2. On or before **January 11, 2013**, all other parties shall file their initial Rule 26.1 disclosure statements.
3. All disclosure statements shall be limited to matters concerning the five issues designated in the Special Master’s order filed on April 17, 2012. All disclosures shall conform to the procedures and requirements set forth in section II.7 of the Special Master’s case initiation order filed on August 17, 2009.

¹ *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 195 Ariz. 411, 422, 989 P.2d 739, 750 (1999), *cert. denied sub nom. Phelps Dodge Corp. v. U.S. and Salt River Valley Water Users' Assn. v. U.S.*, 530 U.S. 1250 (2000).

² Apache Tribes’ Comments at 4 (June 22, 2012).

4. ADWR is directed to maintain the electronic data base and index of all disclosed documents as set forth in section II.8 of the Special Master's case initiation order filed on August 17, 2009.

5. On or after **January 14, 2013**, parties may commence formal discovery, but prior thereto may, and are encouraged, to engage in informal discovery. Discovery shall be limited to matters concerning the five issues designated in the Special Master's order filed on April 17, 2012. All discovery related to these issues shall be conducted according to Arizona Rules of Civil Procedure 26 through 37, and as applicable, pretrial orders issued in this adjudication and the Rules for Proceedings Before the Special Master.

6. On or before **March 8, 2013**, the United States shall disclose expert reports for any expert witnesses that it plans to call as witnesses at the evidentiary hearing.

7. On or before **May 10, 2013**, all other parties shall disclose expert reports for any expert witnesses that they plan to call as witnesses at the evidentiary hearing.

8. By **July 12, 2013**, all discovery including depositions shall be completed.

9. On or before **September 13, 2013**, any party in this case may file the appropriate motion or statement of position that presents the party's position concerning any of the designated issues. Each issue shall be separately addressed. Parties sharing the same position are encouraged to file joint pleadings. Parties are excused from mandated page limitations for motions, responses, and replies, but reasonableness is expected.

10. On **October 2, 2013, at 9:00 a.m. (MST)**, location to be announced later, a conference will be held to discuss the status of the case, set time lines for responses and replies, schedule oral argument, discuss the need and scope of a report provided by ADWR, and consider any other matter that will expedite the conclusion of this case.

11. ADWR is directed to begin immediately compiling the following information:

- A. A summary of the federal claims for reserved water rights as amended and all state law based water rights held or claimed by the United States within the boundaries of the Aravaipa Canyon Wilderness Area;
- B. An evaluation of the methodologies used by the United States to quantify its federal and state law based claims;
- C. An evaluation of the quantities claimed by the United States for its state law based water rights and claims; and,
- D. An update of the watershed file reports associated with the Aravaipa Canyon Wilderness Area reported in the 1991 Final Hydrographic Survey Report for the San Pedro River Watershed.

ADWR is directed to exert its best efforts to complete or significantly complete these four assignments by September 9, 2013.

DATED: August 9, 2012.

/s/ George A. Schade, Jr.
GEORGE A. SCHADE, JR.
Special Master

On August 9, 2012, the original of the foregoing was delivered to the Clerk of the Maricopa County Superior Court for filing and distributing a copy to all persons listed on the Court approved mailing list for Contested Case No. W1-11-3342 dated July 17, 2012.

/s/ Barbara K. Brown
Barbara K. Brown

APPENDIX A-9

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN CHAMBERS (X) IN OPEN COURT ()

SPECIAL MASTER GEORGE A. SCHADE, JR.

Presiding

IN RE THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN THE
GILA RIVER SYSTEM AND SOURCE

DATE: June 20, 2013

CIVIL NO. W1-11-3342

ORDER TERMINATING THE
SUSPENSION OF TIME LINES
AND SECOND MODIFICATION
OF THE AUGUST 9, 2012, ORDER
SETTING NEW TIME LINES

CONTESTED CASE NAME: *In re Aravaipa Canyon Wilderness Area.*

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master terminates the temporary suspension of time lines and sets new deadlines for disclosing expert reports, completing discovery, filing dispositive motions, and holding a status conference.

NUMBER OF PAGES: 2.

DATE OF FILING: June 20, 2013.

The United States requested a stay of this case which was denied, but the Special Master temporarily suspended the then pending future time lines until the United States filed a status report concerning its fiscal situation. The United States submitted its status report and avows that it can file the reports of all its experts no later than September 3, 2013. Pursuant to the order dated May 29, 2013, the Special Master sets new time lines for disclosing expert reports, completing discovery, filing dispositive motions, and holding a status conference.

In the August 9, 2012, order, the Arizona Department of Water Resources (“ADWR”) was “directed to begin immediately compiling” certain specified information. ADWR was “directed to exert its best efforts to complete or significantly complete these four assignments by September 9, 2013.” ADWR has not requested additional time, and the Special Master not only hopes it does not but also that the project is completed by then. Having this information at this time will advance this case.

IT IS ORDERED:

1. On or before **Tuesday, September 3, 2013**, the United States shall disclose expert reports for any expert witnesses that it plans to call as witnesses at the evidentiary hearing.

2. On or before **Tuesday, November 5, 2013**, all other parties shall disclose expert reports for any expert witnesses that they plan to call as witnesses at the evidentiary hearing.

3. By **Tuesday, January 7, 2014**, all discovery including depositions shall be completed.

4. On or before **Tuesday, March 11, 2014**, any party in this case may file the appropriate motion or statement of position that presents the party’s position concerning any of the designated issues. The guidelines set forth in the August 9, 2012, order remain in effect.

5. On **Thursday, March 27, 2014, at 9:00 a.m. (MST)**, location to be announced later, a conference will be held to discuss the status of the case, set time lines for responses and replies, schedule oral argument, discuss the need and scope of a report provided by ADWR, schedule an evidentiary hearing, and consider any other matter that will expedite the conclusion of this case. And,

6. No other changes to the August 9, 2012, order are made.

DATED: June 20, 2013.

/s/ George A. Schade, Jr. _____
GEORGE A. SCHADE, JR.
Special Master

On June 20, 2013, the original of the foregoing was delivered to the Clerk of the Maricopa County Superior Court for filing and distributing a copy to all persons listed on the Court approved mailing list for Contested Case No. W1-11-3342 dated January 10, 2013.

/s/ Barbara K. Brown _____
Barbara K. Brown

APPENDIX A-:

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN CHAMBERS (X) IN OPEN COURT ()

SPECIAL MASTER GEORGE A. SCHADE, JR.
Presiding

IN RE THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN THE
GILA RIVER SYSTEM AND SOURCE

DATE: August 14, 2013

CIVIL NO. W1-11-3342

ORDER GRANTING THE ARIZONA
DEPARTMENT OF WATER
RESOURCES ADDITIONAL TIME
UNTIL FEBRUARY 14, 2014, TO
FILE INFORMATION

CONTESTED CASE NAME: *In re Aravaipa Canyon Wilderness Area.*

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master grants the request of the Arizona Department of Water Resources for additional time until February 14, 2014, to file the information requested in the order dated August 9, 2012.

NUMBER OF PAGES: 2.

DATE OF FILING: August 14, 2013.

The Arizona Department of Water Resources (“ADWR”) has requested additional time until February 14, 2014, to file the information that is due on September 9, 2013. ADWR states that it should have the benefit of information disclosed during discovery, including all expert witness reports, in order to evaluate properly the federal quantification methodologies.

Discovery is scheduled to be completed by January 7, 2014. A conference is set

on March 27, 2014, to map the future course of this case.

In his June 20, 2013, order, the Special Master noted that “ADWR has not requested additional time, and the Special Master not only hopes it does not but also that the project is completed by then.” The first hope is moot, but it looks like the second one will be met. The additional time will not only give ADWR the opportunity to review disclosed and discovered information but also assure that the project is completed. The Special Master remembers that when the September 9, 2013, date was set, there was a possibility that the project would not be completed by then. No objections have been filed opposing ADWR’s request.

Accordingly, IT IS ORDERED granting ADWR’s request for additional time. ADWR is directed to complete the four assignments and submit the information described in the order dated August 9, 2012, on or before **Friday, February 14, 2014**.

DATED: August 14, 2013.

/s/ George A. Schade, Jr.
GEORGE A. SCHADE, JR.
Special Master

On August 14, 2013, the original of the foregoing was delivered to the Clerk of the Maricopa County Superior Court for filing and distributing a copy to all persons listed on the Court approved mailing list for Contested Case No. W1-11-3342 dated July 1, 2013.

/s/ Barbara K. Brown
Barbara K. Brown