

Office of the Attorney General

Washington, D. C. 20530

28 July 1988



Honorable Donald P. Hodel
Secretary
Department of the Interior
Washington, D. C. 20530

Dear Secretary Hodel:

Thank you for your recent letter submitting, for our comments, your Solicitor's opinion regarding implied reserved wilderness water rights. In considering this difficult issue, we have been mindful of our obligation to execute faithfully the law as Congress has enacted it. There can be no implied reserved water rights for wilderness purposes unless Congress intended to create them when it enacted the relevant legislation. After thorough study and discussion among concerned executive departments, we have concluded that your opinion correctly assesses Congress' intent and properly finds that no legally sufficient basis exists for an implication of federal reserved water rights for wilderness purposes. Accordingly, in the absence of express statutory language, we will not assert reserved wilderness water rights under federal law in any further litigation on behalf of the United States, but will seek water for wilderness purposes where appropriate under state law.

Of course, Congress has the power to reserve water rights for wilderness areas when it deems it necessary, and it can do so by forthright statutory reference when it designates lands for wilderness protection. Such a procedure will avoid the often confusing and conflicting results of litigation on a policy issue of considerable importance.

With kindest personal regards,

Sincerely,

A handwritten signature in cursive script, reading "Edwin Meeze III".

EDWIN MEESE III
Attorney General