

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: July 9, 2014

CIVIL NO. W1-11-2664  
(Consolidated)

ORDER DETERMINING THE  
INITIAL ISSUES, INITIATING  
THE SECOND PHASE, AND  
REQUESTING A STATUS  
REPORT ON LAND OWNERSHIP

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

HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report.

DESCRIPTIVE SUMMARY: The Special Master determines the initial issues, designates two quantification issues for resolution, sets timelines for disclosure statements, requests a status report on land ownership, and schedules a conference.

NUMBER OF PAGES: 13.

DATE OF FILING: July 9, 2014.

The case initiation order designated seven issues for briefing and set timelines for filing disclosure statements and conducting discovery limited to the issues.<sup>1</sup>

**I. CHRONOLOGY OF PROCEEDINGS**

<sup>1</sup> Case Initiation Order and Designation of Initial Issues for Briefing (Apr. 5, 2012). The text of the order is available at <http://tinyurl.com/por76ru>.

The issues are the following:

1. Did Congress in enacting the legislation establishing the Redfield 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 Redfield 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 If the land was withdrawn and reserved, what were the purposes of the reservation?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 If the land was withdrawn and reserved, did the United States impliedly reserve unappropriated waters to accomplish the purposes of the reservation?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**

The Arizona State Land Department (“ASLD”), City of Sierra Vista, Freeport Minerals Corporation (“Freeport”), Salt River Project (“SRP”), San Carlos Apache Tribe and Tonto Apache Tribe jointly, Yavapai-Apache Nation, and the United States filed disclosure statements. There is no indication that parties conducted formal discovery regarding these issues.

The Arizona Department of Water Resources (“ADWR”) maintained on its Internet site an electronic data base and index of all disclosed documents. The 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.

SRP and the United States filed motions for summary judgment addressing the issues set for briefing. The ASLD filed a position statement. Freeport and SRP filed responses to the motions and ASLD’s position statement. The ASLD filed a response to the United States’ motion for summary judgment. Only SRP filed a reply.

Because the litigants generally agree that the language of the reserving legislation resolves the initial issues, pursuant to Arizona Rule of Civil Procedure 7.1(c)(1 and 2), the Special Master did not hear oral argument on the motions or position statement.<sup>2</sup> The

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<sup>2</sup> A.R.S. § 45-259 provides that the “general adjudication is governed in all respects by the ... Arizona rules of civil procedure” except where a conflict exists between the adjudication statutes and the rules. No conflict exists here.

seven issues can be determined without oral argument.

### **B. Form of the Special Master’s Determinations**

In accordance with the reasons set forth in an order entered in the contested case *In re San Pedro Riparian National Conservation Area*, No. W1-11-232, the Special Master at this time will not file a Rule 53(g) report with the Court concerning the determinations contained in this order.<sup>3</sup>

### **C. Standard for Summary Judgment**

Rule 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.”<sup>4</sup> 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.”<sup>5</sup>

Conclusion of Law No. 1. The arguments presented to resolve the initial issues do not encompass material factual disputes that preclude summary judgment.

## **II. REDFIELD CANYON WILDERNESS AREA**

In the Wilderness Act enacted in 1964 (“Wilderness Act of 1964”), the Congress established the National Wilderness Preservation System to be composed of “federally owned areas” designated by the Congress as wilderness areas.<sup>6</sup>

Conclusion of Law No. 2. Federally owned lands become part of the National Wilderness Preservation System by an act of Congress promulgated into law.

The Wilderness Act of 1964 contains, in pertinent part as codified, 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,

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<sup>3</sup> Order Determining Initial Issues Designated for Briefing at 2-4 (Mar. 4, 2009). The text of the order is available at <http://tinyurl.com/k4hekmn>. See also Order Determining the Initial Seven Issues Briefed at 2-3, *In re Aravaipa Canyon Wilderness Area*, No. W1-11-3342 (Nov. 2, 2011). The text of the order is available at <http://tinyurl.com/qx2wkzg>.

<sup>4</sup> See *In re General Adjudication of All Rights to Use Water in the Gila River System and Source*, 231 Ariz. 8, 12, 289 P.3d 936, 940 (2012).

<sup>5</sup> *Orme School v. Reeves*, 166 Ariz. 301, 309, 802 P.2d 1000, 1008 (1990).

<sup>6</sup> Pub. L. No. 88-577, 78 Stat. 890, codified as amended in 16 USCS §§ 1131-1136 (LexisNexis/Michie 2000). For convenience, hereinafter the Wilderness Act will be cited to the United States Code and be referred to as the “Wilderness Act of 1964.” A copy of the Act is included in Exhibit (“Exh.”) 5 attached to SRP’s Mot. for S. J.

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. 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 ... agency having jurisdiction thereover immediately before its inclusion in the National Wilderness Preservation System unless otherwise provided by Act of Congress....<sup>7</sup>

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.<sup>8</sup>

In the Arizona Desert Wilderness Act of 1990, the Congress designated as a wilderness area and a component of the National Wilderness Preservation System approximately 6,600 acres of public lands in Graham and Cochise Counties, Arizona, “which shall be known as the Redfield Canyon Wilderness.”<sup>9</sup> The lands were “as

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<sup>7</sup> 16 USCS § 1131(a and b). As enacted, the title of this section was “Wilderness System Established Statement of Policy.”

<sup>8</sup> 16 USCS § 1131(c).

<sup>9</sup> Pub. L. No. 101-628, § 101(a)(24), 104 Stat. 4471. A copy of the Act is included in Exh. 6 attached to SRP’s Mot. for S. J.

generally depicted on a map entitled ‘Redfield Canyon Wilderness’ and dated February 1990.”

Title I of the Arizona Desert Wilderness Act of 1990 is entitled “DESIGNATION OF WILDERNESS AREAS TO BE ADMINISTERED BY THE BUREAU OF LAND MANAGEMENT.” The 29 designated wilderness areas are located on Bureau of Land Management lands.

Finding of Fact No. 1. The Bureau of Land Management, an agency of the United States Department of the Interior, manages the Redfield Canyon Wilderness Area.

### **III. DID CONGRESS IN ENACTING THE LEGISLATION ESTABLISHING THE REDFIELD CANYON WILDERNESS AREA EXPRESSLY INTEND TO RESERVE UNAPPROPRIATED WATERS TO ACCOMPLISH THE PURPOSES OF THE RESERVATION?**

The Wilderness Act of 1964 did not clearly and expressly reserve water for wilderness areas established pursuant to the Act. On the other hand, in the Arizona Desert Wilderness Act of 1990, the Congress expressly reserved water for the Redfield Canyon Wilderness Area.

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.”

(2) The Secretary and all other officers of the United States shall Claims, 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)....

(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.<sup>10</sup>

The reserved water right for the Redfield Canyon Wilderness Area is limited to unappropriated water available on November 28, 1990. The United States Supreme Court has:

[L]ong 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 so doing the United States acquires a reserved right in unappropriated water which

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<sup>10</sup> Pub. L. No. 101-628, § 101(g)(1), 104 Stat. 4473-4.

vests on the date of the reservation and is superior to the rights of future appropriators.<sup>11</sup>

Conclusion of Law No. 3. In the Arizona Desert Wilderness Act of 1990, the Congress expressly intended to reserve unappropriated waters to accomplish the purposes of the Redfield Canyon Wilderness Area.

#### **IV. IF SO, WHAT WERE THE PURPOSES OF THE RESERVATION?**

The Arizona Desert Wilderness Act of 1990 designated the Redfield Canyon Wilderness Area “[i]n furtherance of the purposes of the Wilderness Act” of 1964.<sup>12</sup>

##### **A. Wilderness Act of 1964**

The first sentence of the Act declares the congressional policy underlying the legislation:

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.<sup>13</sup>

The second sentence of the Act states that “for this purpose:”

[T]here is hereby established a National Wilderness Preservation System 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....<sup>14</sup>

The Special Master interprets the first sentence to state the congressional policy underlying the Wilderness Act of 1964 and the second sentence to identify the purposes of wilderness areas designated in furtherance of the Wilderness Act of 1964.

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<sup>11</sup> *Cappaert v. United States*, 426 U.S. 128, 138 (1976); see *United States v. New Mexico*, 438 U.S. 696, 698 (1978); see also *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).

<sup>12</sup> Pub. L. No. 101-628, § 101(a), 104 Stat. 4469.

<sup>13</sup> 16 USCS § 1131(a).

<sup>14</sup> *Id.*

Conclusion of Law No. 4. The language of the Wilderness Act of 1964 is plain and unambiguous concerning the purposes of wilderness areas reserved and added to the National Wilderness Preservation System.

Conclusion of Law No. 5. The purposes of reservations designated in furtherance of the Wilderness Act of 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 Desert Wilderness Act of 1990**

Congress did not provide additional specific purposes for wilderness areas established under the Arizona Desert Wilderness Act of 1990.

Conclusion of Law No. 6. The purposes of the Redfield Canyon Wilderness Area are to protect the wilderness area, preserve its wilderness character, and gather and disseminate information regarding its use and enjoyment as wilderness.

As the congressional definition states, a “wilderness area” is “an area where the earth and its community of life are untrammelled by man, where man himself is a visitor who does not remain,” and is “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.”<sup>15</sup> The definition accords with the purposes of a wilderness area set forth in the Wilderness Act of 1964.

## **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 REDFIELD CANYON WILDERNESS AREA FOR FEDERAL PURPOSES?**

The Special Master has determined that the Congress expressly reserved unappropriated waters when it designated the Redfield Canyon Wilderness Area under the Arizona Desert Wilderness Act of 1990. In order to assist the Court, the Special Master submits the following findings of fact and conclusions of law.

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. “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.<sup>16</sup> Withdrawn lands “are tracts that the government has placed off-limits to specified forms of use and disposition,” but a “withdrawn parcel may also be reserved for particular purposes, and

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<sup>15</sup> 16 USCS § 1131(c).

<sup>16</sup> *So. Utah Wilderness Alliance v. BLM*, 425 F.3d 735, 784 (10th Cir. 2005).

often is.”<sup>17</sup>

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 USCS § 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 USCS § 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 USCS § 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 USCS § 1133(d)(5).

Conclusion of Law No. 7. The prohibition and restriction of uses and disposition within the Redfield Canyon Wilderness Area show that the Congress withdrew the 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.’ ”<sup>18</sup> 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.”<sup>19</sup>

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<sup>17</sup> 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.”).

<sup>18</sup> 425 F.3d at 784. *See* 231 Ariz. at 15, 289 P.3d at 943 (“A reservation dedicates land to a specific public use,” citing *So. Utah Wilderness Alliance*, 425 F.3d at 785).

<sup>19</sup> 1 COGGINS & GLICKSMAN § 1:11 at 1-16 (2d ed.), § 1:11 at 1-15 (1st ed.), *supra*.

The purposes of the Redfield Canyon Wilderness Area are to protect the wilderness area, preserve its wilderness character, and gather and disseminate information regarding its use and enjoyment as wilderness.

Conclusion of Law No. 8. The purposes of the Redfield Canyon Wilderness Area are sufficiently specific to show that the Congress removed the federal lands from availability for contrary use or disposition.

Conclusion of Law No. 9. The congressional designation of the Redfield 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?**

The Special Master has determined that the purposes of the Redfield Canyon Wilderness Area are to protect the wilderness area, preserve its wilderness character, and gather and disseminate information regarding its use and enjoyment as wilderness.

**VII. IF THE LAND WAS WITHDRAWN AND RESERVED, DID THE UNITED STATES IMPLIEDLY RESERVE UNAPPROPRIATED WATERS TO ACCOMPLISH THE PURPOSES OF THE RESERVATION?**

It has been determined that the Congress expressly reserved unappropriated waters when it designated the Redfield Canyon Wilderness Area under the Arizona Desert Wilderness Act of 1990. The litigants who submitted papers did not brief this issue. In light of the clear language of the reserving legislation, the Special Master does not find it necessary to make findings of fact and conclusions of law concerning this question.

**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 reserved water rights doctrine provides that a federal reserved right “vests on the date of the reservation.”<sup>20</sup> “The priority date for a federal reserved water right is the date of the statute ... establishing the reservation.”<sup>21</sup>

Section 101(g)(1) of the Arizona Desert Wilderness Act of 1990, which expresses Congress’ intent to reserve water for the Redfield Canyon Wilderness Area, states that “[t]he priority date of such reserved rights shall be the date of enactment of this Act.”<sup>22</sup>

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<sup>20</sup> 426 U.S. at 138.

<sup>21</sup> 2 Waters and Water Rights § 37.03(b) (Robert E. Beck and Amy K. Kelley, eds., 3rd ed. LexisNexis/Matthew Bender 2010). See also *In re the General Adjudication of All Rights to Use Water in the Gila River System and Source*, 201 Ariz. 307, 310, 35 P.3d 68, 71 (2001) (A “federal right vests on the date a reservation is created, not when water is put to a beneficial use.”).

<sup>22</sup> Pub. L. No. 101-628, § 101(g)(1), 104 Stat. 4473.

Finding of Fact No. 2. President George H. W. Bush signed into law the Arizona Desert Wilderness Act of 1990 on November 28, 1990.

Conclusion of Law No. 10. The date of priority of the expressed reserved water right for the Redfield Canyon Wilderness Area is November 28, 1990.

**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?**

The United States did not brief this issue in its motion for summary judgment, the only pleading it filed. The ASLD, Freeport, and SRP briefed this question.

The Arizona Desert Wilderness Act of 1990 provides that “[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.”<sup>23</sup>

Conclusion of Law No. 11. The Congress reserved a quantity of water sufficient to fulfill the purposes of the Redfield Canyon Wilderness Area.

The language of the Arizona Desert Wilderness Act of 1990 is consistent - noteworthy is the word “fulfill” - with the holding of the United States Supreme Court in *Cappaert* 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.”<sup>24</sup> 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.’ ”<sup>25</sup>

The point is made that the United States took the position in its initial disclosure statement that the Redfield Canyon Wilderness Area is entitled to a reserved water right “for the entire amount of unappropriated water constituting the natural flow in the wilderness area.”<sup>26</sup> The United States neither briefed this issue in its motion nor filed a response or reply. The Special Master will not consider this argument at this time.

**X. LANDS OWNED BY THE STATE OF ARIZONA**

The ASLD’s position statement and response to the motion of the United States focus on the argument that the exterior boundaries of the Redfield Canyon Wilderness Area include parcels of land owned by the State of Arizona, and the United States cannot obtain federal reserved water rights in those State Trust Lands. The United States did not respond to this argument.

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<sup>23</sup> *Id.*

<sup>24</sup> 426 U.S. at 141.

<sup>25</sup> 438 U.S. at 700 (citing *Cappaert*, 426 U.S. at 141); see *Arizona v. California*, 373 U.S. 546, 600-1 (1963).

<sup>26</sup> SRP’s Mot. for S. J. at 9.

The ASLD claims that the State of Arizona holds title to certain parcels of land located within the following two cadastral sections:

1. Section 20, Township 11 South, Range 20 East, GSRB&M
2. Section 31, T 11 S, R 20 E,

and holds title to all parcels within the following sections:

1. Section 36, T 11 S, R 19 E
2. Section 32, T 11 S, R 20 E.<sup>27</sup>

The State obtained ownership of these parcels over a period of years by various means associated with conveyance of title to State Trust Lands.

As stated above, the Wilderness Act of 1964 provides that:

1. The National Wilderness Preservation System is “composed of *federally owned areas* designated by the Congress” as wilderness areas.
2. “[N]o *Federal* lands shall be designated as ‘wilderness areas’ except as provided for in this Act or by a subsequent Act.” And,
3. “An area of wilderness is further defined to mean in this Act an area of undeveloped *Federal* land.” (Italicized emphasis added.)<sup>28</sup>

The Arizona Desert Wilderness Act of 1990 states that the Redfield Canyon Wilderness Area consists of “public lands.”<sup>29</sup>

Conclusion of Law No. 12. Only federally owned lands have been designated as the Redfield Canyon Wilderness Area. Lands that are not federally owned are not part of the wilderness area.

Concerning the express reserved water right for the wilderness area, the Arizona Desert Wilderness Act of 1990 states that:

1. The reserved water right is for “each wilderness area” designated by the Act, and
2. “The Federal water rights reserved by this title are specific to the wilderness areas located in the State of Arizona designated by” the

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<sup>27</sup> ASLD’s Stmt. of Fact No. 1, ASLD’s Resp. to U.S.’ Stmt. of Facts in Supp. of U.S.’ Mot. for S. J. at 3-4 (Jan. 31, 2014). For a discussion of State Trust Lands, *see* 231 Ariz. at 15, 289 P.3d at 943 (“Thus, after approval of a survey and selections, State Trust Lands were neither owned by the federal government nor withheld from disposition.”).

<sup>28</sup> *See* nn.6-8, *supra*, and Conclusion of Law No. 2.

<sup>29</sup> *See* n.9, *supra*.

Act.<sup>30</sup>

Conclusion of Law No. 13. The water right expressly reserved by the Congress for the Redfield Canyon Wilderness Area is specific for the federally owned lands located within the exterior boundaries of the wilderness area. The reserved right does not serve the lands owned by the State of Arizona located inside the wilderness area.

The ASLD suggests that the “issue of what land is included in the reservation should be the subject of a later briefing.”<sup>31</sup> The Special Master believes that the ASLD and United States should fully discuss the issue and determine if it can be agreeably resolved. The issue merits these parties’ optimal efforts to achieve a mutual resolution.

In fact, this case merits serious consideration for settlement. Before concerted litigation of the next phase begins, the parties should consider if this entire case can be resolved with an agreement that can serve as a model for other federal wilderness areas. We have learned much from prior cases. This case does not present the existence of a vested state law based instream flow water right. It presents a great opportunity to reach a global settlement.

## **XI. FUTURE PROCEEDINGS**

The litigants agree that this case should proceed to the quantification of the reserved water right. We have had a good experience with adjudicating the Aravaipa Canyon Wilderness Area, and that case can serve as a model for the next step.

The Special Master will designate two quantification issues for an evidentiary hearing, set timelines for disclosure statements concerning these issues, and will schedule a conference thereafter to set future proceedings.

Based upon the foregoing, IT IS ORDERED:

1. Granting and denying the motions for summary judgment consistent with the determinations contained in this order.
2. On or before **Wednesday, January 7, 2015**, the United States shall file its Rule 26.1 disclosure statement concerning the following issues:
  - A. How much, if any, unappropriated water was available on November 28, 1990?
  - B. If unappropriated water was available on November 28, 1990, what is the quantity of water sufficient to fulfill the purposes of the Redfield Canyon Wilderness Area?
3. On or before **Wednesday, March 11, 2015**, all other parties shall file their Rule 26.1 disclosure statements concerning these issues.

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<sup>30</sup> See n.10, *supra*.

<sup>31</sup> ASLD’s Pstn. Stmt. at 2, n.1.

4. All disclosure statements shall be limited to matters concerning the issues designated in this order. All disclosures shall conform to the procedures and requirements set forth in section II(8) (*Disclosure Statements*) of the Case Initiation Order dated April 5, 2012.

5. ADWR is directed to maintain the electronic data base and index of all disclosed documents as set forth in section II(9) (*Electronic Data Base and Index Provided by ADWR*) of the Case Initiation Order.

6. On or before **Wednesday, March 11, 2015**, the ASLD and United States shall file a status report indicating the progress achieved to resolve the land ownership matters, which issues have been resolved, which remain under review, the potential for a complete resolution, and if an evidentiary hearing is needed. And,

7. Scheduling a conference on **Thursday, March 19, 2015, at 9:00 a.m. (MST)**, location to be announced later, to set future proceedings.

DATED: July 9, 2014.

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

On July 9, 2014, 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. W1-11-2664 dated January 9, 2014.

/s/ Barbara K. Brown  
Barbara K. Brown