PRINCIPLES GOVERNING FEDERAL WATER RIGHTS UNDER THE CALIFORNIA DESERT PROTECTION ACT

I. INTRODUCTION

The California Desert Protection Act 1994 (CDPA) is, along with the Arizona Wilderness Act of 1991, unique among wilderness legislation. Congress in Section 706 of the CDPA explicitly reserved a quantity of water sufficient to fulfill the purposes of the Act. The water rights reserved are specific to the wilderness areas located in California designated by the Act. The CDPA bypasses the debate over whether reserving Federal lands as "wilderness" establishes an implicit Federal reserved water right for that purpose.

Federal reserved water rights are a unique class of water right. Such rights are not established by the operation of State law and are exempt from State requirements for permits, diversion, actual use for beneficial purposes, forfeiture and abandonment. Such rights allow for the assertion of a Federal reserved water right to unappropriated water available on the date of the reservation (i.e., 10/31/94), but "only that amount of water necessary to fulfill the purpose of the reservation and no more." Federal reserved water rights only reserves pertinent water which is unappropriated on the date of the reservation (Cappaert vs. US., 1976). Thus, the establishment of the CDPA Federal reserved water right does not and cannot infringe upon or undo any reserved or appropriated water rights existing on the date of the reservation, including those of the United States.

Section 706(b) mandates that the Secretary and all other officers of the United States take "all steps necessary to protect the rights reserved by this section". Hence, it is the responsibility of both the NPS and BLM to protect the explicit reserved water rights established under the CDPA.

In addition to the explicit reserved water rights of Section 706, the courts have long held that National Park System units, wilderness or non-wilderness, are Federal reservations to which attach an implicit Federal reserved water right. (Arizona vs. CA, 1963)

BLM and NPS will apply the following principles to discharge their responsibilities under Section 706 of the CDPA to manage and protect Federal reserved water rights. Each agency shall also incorporate their respective policies, guidelines, and administrative procedures in the performance of these duties.

II. PRINCIPLES

1. BLM in its wilderness planning process for each wilderness area, and NPS in its general planning process for each unit of the National Park System, will inventory all water sources within the boundaries of the wilderness area/system unit. This inventory should also include (1) identification of previously appropriated water rights of the United States under State law, (2) identification of riparian and groundwater rights of the United States, (3) identification of existing Federal reserved rights under authorities other than CDPA, e.g., public water reserves, and (4) quantification of the amount of water from the water source necessary to fulfill the purpose of the reservation.

2. BLM and NPS will identify as a Federal reserved water right all of the unappropriated water from any water source identified on federal lands within the boundaries of designated wilderness and/or Park areas in the California Desert. Such quantities are the minimum necessary to fulfill the purposes of the reservations which is to preserve, protect, and maintain the natural conditions of the wilderness and/or Park areas.

3. NPS and BLM will, as appropriate, share water source inventory data.

4. NPS and BLM will jointly request the California Division of Water Rights to inform the BLM and/or NPS of any filing for appropriated water rights that is located (1) within the boundaries of a BLM-administered wilderness area or National Park System unit in the California Desert, and (2) outside but adjacent to these boundaries if the appropriation may affect Federal reserved water rights necessary to fulfill the purpose of the reservation and/or appropriated water rights of the United States.

5. NPS and BLM will vigorously defend Federal reserved water rights of the wilderness areas and system units through the State of California administrative process and, if necessary, seek judicial remedy in the appropriate courts.

6. NPS and BLM will quantify the amount of water reserved to fulfill the purpose of the reservation as part of any adjudication in California in which the United States may be joined under the McCarran Amendment.

7. Where necessary, NPS and BLM should pursue acquisition of any existing non-Federal appropriated water right within their respective jurisdictions to enhance wilderness and park values.

8. Because use of percolating groundwater does not require a permit from the State of California, NPS and BLM will participate in local government proceedings that authorize non-Federal parties to withdraw percolating groundwater where such withdrawals may impact water sources within their respective jurisdictions to which Federal reserved water rights are attached.

9. NPS and BLM will participate in any proceedings pursuant to Nevada state water law that may authorize withdrawal of groundwater where such withdrawal may impact water sources within their respective jurisdictions to which Federal reserved or appropriated water rights are attached.

SIGNATURES

Manager, California Desert District — DATE 9/15/95

Manager, Yuma District — DATE 9/15/95

Superintendent, Mojave National Preserve — DATE

Superintendent, Death Valley National Park — DATE 9/15/95

Superintendent, Joshua Tree National Park — DATE 9/15/95

State Supervisor, U.S. Fish & Wildlife Service — DATE 9/15/95