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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re: SRBA

Case Number: 39576

)
) Consolidated Subcase No. 75-13316
) (Wild and Scenic Rivers claims)

)
) **Affidavit of Jacquelyn A. Diedrich**
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)
)

AFFIDAVIT OF JACQUELYN A. DIEDRICH

WILD AND SCENIC RIVERS CLAIMS

State of Oregon)
County of Multnomah)

JACQUELYN A. DIEDRICH, being first duly sworn upon oath, deposes and says:

I. Introduction.

1. **Position.** In January of 2000, I became the Wild and Scenic Rivers Program Specialist for the United States Department of Agriculture Forest Service ("Forest Service"). In effect, I am the national administrator for the Forest Service's Wild and Scenic Rivers program. I also serve as Chair of the Interagency Wild and Scenic Rivers Coordinating Council. As Chair, I have contributed to development of technical papers and other products for river managers and the public. I have authored three detailed technical papers for the Council: *Wild and Scenic Rivers Act: Section 7; Implementing the Wild and Scenic Rivers Act: Authorities and Roles of Key Federal Agencies*; and *Wild and Scenic River Management Responsibilities*. I have co-authored two additional papers: *Wild and Scenic Rivers and the Use of Eminent Domain*, and *The Wild and Scenic River Study Process*. Prior to being appointed Program Specialist, I served for twelve years as the Wild and Scenic Rivers Program Manager for the Pacific Northwest Region of the Forest Service.

2. **Duties.** My duties as Wild and Scenic Rivers Program Specialist included participating in the preparation of the Forest Service Wild and Scenic Rivers claims in the Snake River Basin Adjudication, and specifically preparation of the Amended Notices of Claim filed by the United States on or about February 7, 2002. I am familiar with the *Resource Assessments* that have been prepared for each of the Wild and Scenic Rivers subject to the Snake River Basin

Adjudication. I provided direction to the technical experts concerning Forest Service Policy regarding Wild and Scenic Rivers and facilitated a team of Forest Service staff and experts in developing the recreation component of the claims. I have reviewed and am familiar with the proposed Partial Decrees approving these Wild and Scenic Rivers claims under the terms of the Stipulation between the United States and the State of Idaho and the other objectors to these claims.

3. **Purpose of affidavit.** I submit this affidavit to address the basis for each element of the United States' proposed Partial Decrees for nonconsumptive water rights for certain river segments pursuant to the Wild and Scenic Rivers Act, 16 U.S.C. § 1271, *et seq.*

4. **Wild and Scenic Rivers Act claims overview.** The Forest Service asserts nonconsumptive claims to instream flows in six separate river segments within the Snake River Basin Adjudication. The United States' claims are based on the acts of Congress designating the segments as components of the National Wild and Scenic Rivers System. *See* Wild and Scenic Rivers Act, Pub.L. 90-542, 82 Stat. 906, Oct 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, *et seq.*); Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified as amended at 16 U.S.C. §§ 460gg-469gg-13); Central Idaho Wilderness Act of 1980, Pub.L. 96-312, 94 Stat. 948, July 23, 1980 (codified as amended at 16 U.S.C. §§ 1132, 1274, 1281).

5. **Legal basis for the claimed right.** The nonconsumptive water right claimed for each of the Wild and Scenic River segments is based on the Wild and Scenic Rivers Act. *See* 16 U.S.C. § 1284(c). The United States' entitlement to express federal reserved water rights to fulfill the purposes of the Wild and Scenic Rivers Act was affirmed for each of these six

designated Wild and Scenic River segments by the Idaho Supreme Court in *Potlatch v. United States*, 12 P.3d 1256 (Id. 2000).

II. Explanation of claim elements. This portion of this Affidavit addresses the basis for each element of the proposed Partial Decrees based on the elements described in I.C. § 42-1409-1(a), (b), (c), (d), (f), (g), (h) and (k) (2002 Supp.).

6. Name and address of owner (I.C. § 42-1409 (1)(a)): Element 1 of each of the Partial Decrees states that the owner of the right is:

United States of America,
on behalf of the U.S.D.A. Forest Service
550 W. Fort Street, MSC033
Boise, ID 83724

These federal reserved water rights claimed pursuant to the Wild and Scenic Rivers Act will be adjudicated in the name of the United States of America. As directed in the Forest Service Manual section 2541.22b, it is the responsibility of the Forest Service to prepare these claims and to compile the necessary evidence to support them.

7. Source of water (I.C. § 42-1409 (1)(b)): Element 2 of each of the Partial Decrees sets forth the name of the subject Wild and Scenic River as the source of the water claimed. The source includes each designated river.

8. Quantity of right (I.C. § 42-1409 (1)(c)): Element 3 of each of the Partial Decrees identifies the quantification point and the amounts of water to be decreed for each time period. Each Partial Decree includes: a base flow component, so that when the stream flow at the referenced gage is less than the identified high flow amount, the United States' water right is for the flows identified for each time period as set forth in the Partial Decree subject to the

subordinations set forth in element 10.b.; and a high flow component, so that when the stream flow at the referenced gage is equal to or greater than the identified high flow amount, the United States' water right is for the stream flow up to the high flow limit set forth in the Partial Decree subject to the subordinations set forth in element 10.b. The water rights to be adjudicated by the Partial Decrees preclude the diversion of water out of the subject Wild and Scenic River basin upstream from the ending point of the designated Wild and Scenic River segment. For each river segment, the total quantity to be decreed is based on protecting the fisheries values on each of the rivers, as well as the recreation values for all streams other than the Rapid River as more fully described in paragraph 11 below. Quantification of the flows necessary to protect fisheries, as incorporated into the Partial Decrees, is addressed in the *Affidavit of Dr. Thomas B. Hardy, Quantification of Wild and Scenic Rivers Claims*, Consolidated Subcase No. 75-13316, dated July 30, 2004, and filed concurrently with this affidavit, as well as Dr. Hardy's quantification affidavit filed in this matter on or about January 30, 2003, *Affidavit of Dr. Thomas B. Hardy, Quantification of Wild and Scenic Rivers Claims*, Consolidated Subcase No. 75-13316, dated January 23, 2003. I have reviewed the claims, the Stipulation and Partial Decrees and have consulted with Forest Service employees and experts. Based upon my understanding of the Wild and Scenic Rivers Act and the outstandingly remarkable recreation values of each river reach, my affidavit filed in this matter on or about January 30, 2003, *Affidavit of Jacquelyn A. Diedrich, Wild and Scenic Rivers Claims*, Consolidated Subcase No. 75-13316, dated January 23, 2003, and the quantification affidavit filed by Dr. Hardy on or about January 30, 2003, *Affidavit of Dr. Thomas B. Hardy, Quantification of Wild and Scenic Rivers Claims*, Consolidated Subcase No. 75-13316, dated January 23, 2003, I conclude that the flows provided for in each of the Partial

Decrees, taking into account the small depletions likely to occur under the subordinations provided for in paragraph 10.b. of the Partial Decrees, provide a sufficient variety, frequency and quantity of flows to protect the outstandingly remarkable recreation values Congress sought to protect for each of these designated Wild and Scenic Rivers.

9. **Priority date (I.C. § 42-1409 (1)(d)):** Element 4 of each of the Partial Decrees identifies the priority date. The priority date for each of the water rights is the date on which the river segment was designated by Congress as a component of the National Wild and Scenic Rivers System.

10. **Point of diversion (I. C. § 42-1409-(1)(f)):** Element 5 of each of the Partial Decrees states that there is no diversion associated with the water right and identifies the locations of the beginning point and the ending point of each of the water rights. The Wild and Scenic Rivers Act water rights apply to the entire designated reach. The stream flow decreed will be used throughout the identified stream segment.

11. **Purpose of use (I. C. § 42-1409 (1)(g)):** Element 6 of each of the Partial Decrees states that the purpose of the water right to be decreed is to fulfill the purposes of the Wild and Scenic Rivers Act and, with respect to the Rapid River, the Hells Canyon National Recreation Area Act and, with respect to the Mainstem Salmon River, the Central Idaho Wilderness Act. The purpose of the water rights to be decreed is to protect instream flows in quantities sufficient to fulfill the purposes for which each river segment was designated as a component of the National Wild and Scenic Rivers System. The Forest Service has prepared the following *Resource Assessments* that identify the outstandingly remarkable values of each of the designated rivers:

Salmon River Resource Assessment, December 15, 2000

Middle Fork Salmon River Resource Assessment, December 15, 2000

Rapid River Resource Assessment, August 22, 2002

Lochsa River Resource Assessment, February 14, 2002

Selway River Resource Assessment, February 14, 2002

Middle Fork Clearwater River Resource Assessment, February 15, 2002

The *Resource Assessments*, which are based on the legislation establishing each of the rivers as a Wild and Scenic River, identify fisheries as an outstandingly remarkable value for all of the rivers. In addition, recreation was determined to be an outstandingly remarkable value on all rivers except the Rapid River.

12. Period of use (I. C. § 42-1409 (1)(g)): Element 7 of each of the Partial Decrees states that the period of use is 01-01 to 12-31. Water is necessary to fulfill the purposes of the reservation year-round and, consequently, each of the water rights is to be adjudicated for year-round use.

13. Place of use (I. C. § 42-1409 (1)(h)): Element 8 of each of the Partial Decrees states that the instream flow water right is used throughout the entire designated Wild and Scenic River segment from the beginning point to the ending point. The federal reservation designating each Wild and Scenic River is identified in paragraph 10.a. of each of the Partial Decrees.

14. Annual volume of consumptive use: Element 9 of each of the Partial Decrees states that the instream flow water right is nonconsumptive. The instream flows to be decreed for Wild and Scenic River purposes are completely nonconsumptive (other than evaporation and evapotranspiration that may take place within each designated segment). No consumptive

volumes are included in the Partial Decrees. All natural flow remains available for appropriation and use downstream of the ending point of the Partial Decrees.

15. Other provisions necessary for definition or administration of water right (I. C. § 42-1409(1)(h)(ii); I.C. § 42-1409(1)(k)): Element 10.a. of each of the Partial Decrees identifies the Acts that reserved the subject Wild and Scenic Rivers. Paragraph 10.b. identifies the subordinations that have been agreed to under the terms of the Stipulation and to which the adjudicated federal rights will be subject. These additional provisions are necessary to define the unique characteristics of these federal reserved water rights and to describe the rights and uses to which these federal reserved water rights are subordinated in order to provide for proper administration of these water rights and other existing and future water rights.

16. Further affiant sayeth nought.

Dated this 12 of August, 2004.

Jacquelyn A. Diedrich
Jacquelyn A. Diedrich

SUBSCRIBED and SWORN to before me this 12th day of August, 2004.

James Michael Knox
NOTARY PUBLIC FOR District of Columbia
Residing at: 1101 McCallum St, NW #403
My Commission Expires: 02/28/2005

JAMES MICHAEL KNOX
Notary Public District of Columbia
My Commission Expires: 02/28/2005

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of August, 2004, I served a true and correct copy of the foregoing Affidavit of Jacquelyn A. Diedrich in Consolidated Subcase 75-13316 upon the following parties:

Original by hand delivery to:

Clerk of the District Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, ID 83303-2707

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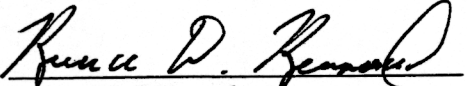
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