

ATTACHMENT 17

**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 NO. 39576)
)
_____)

**PARTIAL DECREE FOR
Federal Reserved Water Right 79-14070
Hells Canyon National Recreation Area**

- 1. Name and address of owner:** UNITED STATES OF AMERICA, on behalf of the
 U.S.D.A. Forest Service
 550 W. Fort Street, MSC033
 Boise, ID 83724
- 2. Source of water:** Bernard Lake
- 3. Quantity of right:** a. This water right establishes the lake level of
 Bernard Lake at 101.19 feet referenced to Bernard BM1
 (Elevation 100 feet) located at X=532976, Y=5023600
 (UTM Zone 11 North NAD 83)
- b. This water right precludes any diversion of water out
of the watershed of Bernard Lake upstream from the point
of diversion, except for transfers of point of diversion from
above the lake to below the lake.
- 4. Priority date:** December 31, 1975.
- 5. Point of diversion:** The projection of the NE $\frac{1}{4}$ NE $\frac{1}{4}$, of unsurveyed Sec. 4,
 T23N, R2W, Boise Meridian.
- 6. Purpose of use:** To fulfill the purposes of the Hells Canyon National
 Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec.
 31, 1975 (codified at 16 U.S.C. § 460gg).
- 7. Period of use:** 01-01 to 12-31.

8. Place of use:

Note: Tracts are projections in unsurveyed sections.

TWP	RGE	SEC	NE				NW				SW				SE			
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE
23N	2W	3						X										
23N	2W	4	X															

9. Annual volume of consumptive use:

This lake level maintenance water right is non-consumptive (other than evaporation and evapotranspiration which may take place from the lake).

10. Other provisions necessary for definition or administration of this water right:

a. This is a federal reserved water right based on the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to the Stipulation between the United States, the State of Idaho, and Idaho Power Company effective September 1, 2003 ("the Stipulation"), and pursuant to that Stipulation this water right is subordinated to the following water rights and uses that are junior to this federal reserved water right and that have points of diversion or impoundment and places of use within the Bernard Lake basin upstream from the point of diversion, identified for the lake in element 5 above:

(1) All water right claims filed in the Snake River Basin Adjudication (SRBA) as of the effective date of the Stipulation to the extent ultimately decreed in the SRBA.

(2) All applications for permit and permits with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation, to the extent such applications for permit or permits are ultimately licensed; and all water right licenses with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation.

(3) All domestic uses, which for purposes of this Partial Decree shall be defined as set forth at I.C. § 42-111(1)(a) & (b) to mean the use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half acre of land, if the total use is not in excess of thirteen-thousand (13,000) gallons per day or any other uses, if the total does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day, provided that this domestic use subordination is limited and defined by I.C. § 42-111(2), so that the subordination shall not and does not apply to multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in I.C. § 42-111(1)(b) (0.04 cfs/2,500 gpd), and by I.C. § 42-111(3), so that the subordination shall not and does not apply to multiple water rights for domestic uses which satisfy a single combined water use that would not itself come within the above definition of domestic use.

(4) All de minimus stockwater uses, which for the purposes of this Partial Decree shall be defined as set forth at I.C. § 42-1401A(11) to mean the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen-thousand (13,000) gallons per day. This de minimus stockwater use subordination is limited and defined by I.C. § 42-111(3), so that the subordination shall not and does not apply to multiple water rights for stockwater uses which satisfy a single combined water use that would not itself come within the above definition of stockwater use.

c. The administrative provisions of paragraph 3 of the Stipulation are incorporated herein by reference.

d. Information needed to locate the benchmark referenced in element 3.a. above is on file with IDWR.

e. These additional provisions contained in element 10 do not fall within the other elements listed above and are necessary to: (1) define the unique characteristics of these federal reserved water rights; and (2) 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.

IT IS SO ORDERED.

DATED this _____ day of _____, 2004.

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication