

U.S. Department of Justice

Environment and Natural Resources Division

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November 5, 2004

VIA FACSIMILE TO: (200) 736-2121

The Honorable John M. Melanson  
Presiding Judge  
Snake River Basin Adjudication  
P.O. Box 2707  
Twin Falls, Idaho 83303

Re: SRBA Case No. 39576; Settlement of Consolidated Subcase Nos. 75-13316 (Wild and Scenic Rivers Act claims) and 79-13597 (Hells Canyon National Recreation Area claim)

Dear Judge Melanson:

I am pleased to report that the parties to the settlement to the United States' Wild and Scenic Rivers Act ("WSRA") claims and Thompson Creek Mining Company have agreed to the form of an Order approving that settlement that resolves the concerns raised by Thompson Creek's objection. A copy of that proposed Order is enclosed.

In addition, although no party objected to the Hells Canyon National Recreation Area water rights settlement, I have enclosed a revised proposed Order for approval that settlement that includes changes paralleling those in the WSRA Order.

The parties to the WSRA settlement thought it might be helpful to hold a short telephone conference/hearing to explain the WSRA Order and answer any questions that you may have. I have cleared time with the clerk of the court for a short conference call/hearing on Tuesday, November 9, 2004, at 1:30 p.m., to address the requested approvals. By copies of this letter, as well as by notice to be served on the parties, Thompson Creek Mining Company and IDWR, we are notifying the parties that those wishing to participate in the conference call/hearing may do so by calling the SRBA Court conference line at 1-918-583-3445, participant code 406128.

We look forward to discussing this matter with you on Tuesday.

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TWIN FALLS, IDAHO

**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

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)  
) **Consolidated Subcase No. 75-13346**  
) **Wild & Scenic Rivers Act Claims**  
) **(Encompassing Subcases 75-13346, 77-13944, 77-13844**  
) **78-13861, 84-10472, 84-10613 and 84-10625)**

CASE NO. 39576

) **Order Approving Stipulation and Entry of**  
) **Partial Decrees**  
)  
)

The District Court of the Fifth Judicial District in and for the County of Twin Falls, having entered its Commencement Order on November 19, 1987, commencing the Snake River Basin Adjudication ("SRBA"); the United States of America, the State of Idaho and the other objectors to these consolidated subcases, through their respective counsel, having presented a Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees, with the effective date of September 1, 2003 ("Stipulation"); due notice of the requested approval of the Stipulation and the proposed entry of the Partial Decrees having been given pursuant to the Idaho Rules of Civil Procedure and the SRBA Court Administrative Order 1; a timely objection having been filed by Thompson Creek Mining Company ("Thompson Creek"); Thompson Creek's objection having been resolved by agreement as to the form of this Order; the Court having reviewed the Stipulation, the proposed Partial Decrees and supporting affidavits and

**ORDER APPROVING STIPULATION AND ENTRY OF PARTIAL DECREES**

having heard the parties concerning these matters:

**THE SRBA DISTRICT COURT NOW FINDS AS FOLLOWS:**

The parties have satisfied the requirements of Chapter 14, Title 42, Idaho Code, including Section 42-1411A, the Idaho Rules of Civil Procedure and SRBA Administrative Order 1. The Stipulation is a fair and equitable settlement of all the United States' claims in the SRBA for federally designated Wild and Scenic Rivers. The Stipulation does not adversely affect the interests of persons not party to the Stipulation and good cause has been shown for granting the Joint Motion for Order Approving Stipulation and Entry of Partial Decrees.

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:**

1. The Partial Decrees for the United States' Wild and Scenic Rivers Act federal reserved water rights claims numbered 75-13316, 77-11941, 77-13844, 78-11961, 81-10472, 81-10513 and 81-10625, as attached to the Stipulation (the "Partial Decrees"), are hereby ratified, confirmed and approved. The Court shall retain jurisdiction for the purpose of resolving disputes regarding the interpretation and implementation of the Partial Decrees.

2. The Stipulation is hereby approved, provided, that the provisions of paragraph 2 of the Stipulation ("paragraph 2") that address administration of water rights are covenants among the signatory parties only and shall not be binding on this Court or non-signatory parties with regard to administration of water rights by IDWR. The Court retains jurisdiction for the purpose of resolving disputes among the signatory parties regarding the implementation and enforcement of the Stipulation. The provisions of paragraph 2 shall not affect the rights of Thompson Creek or any other non-signatory party to participate in and object to any motion for interim administration, proceeding for creation of a water district, or other administrative action

or other judicial proceeding affecting their water rights or their use, diversion, or increment of water; nor shall the provisions of paragraph 2 affect the disposition or review of such proceedings.

3. Nothing in this Order, the Partial Decrees, or the Stipulation shall affect Thompson Creek's decreed water rights or the stipulated subordination of the United States' Partial Decree for the Main Salmon River to Thompson Creek's decreed water rights that was approved by this Court, nor shall this Order, the Partial Decrees, or the Stipulation be construed as limiting IDWR's authority to administer water rights as provided by State law.

4. Pursuant to Idaho Rule of Evidence 408, nothing in the Stipulation, including the stipulated entry of Partial Decrees for these claims and any affidavits or other evidence or pleading submitted or relied upon for approval of the Stipulation, or any offers or compromises made in the course of negotiating the Stipulation, shall be construed as admissions against interest or tendered or used as evidence to support or oppose any party's claims or objections in the SRBA or in any other adjudication involving claims for the same or similar purposes, including the quantities of water claimed, or in any other manner by any party in the SRBA in any future proceedings in the SRBA, in any appellate proceedings concerning the SRBA, or in any other proceeding, other than those for interpretation, enforcement or administration of the Stipulation or the Partial Decrees or for a purpose contemplated by Rule 408. This Order is fully in accordance with Idaho Rule of Evidence 408, as well as the policy underlying that rule and the policy of the SRBA Court directed at furthering the strong public policy favoring out-of-court settlement of disputes over litigation.

5. The water rights adjudicated by the Partial Decrees are in full satisfaction of all the United States' claims in the SRBA for federally designated Wild and Scenic Rivers.

IT IS SO ORDERED.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication

**CERTIFICATE OF MAILING**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2004, I served a true and correct copy of the foregoing **ORDER APPROVING STIPULATION AND ENTRY OF PARTIAL DECREES**, by depositing a copy thereof in the U.S. mail, postage prepaid to the following:

All parties indicated on the attached Certificate of Service for Wild and Scenic Rivers Act Claims, Consolidated Subcase 75-13316

\_\_\_\_\_  
Deputy Clerk

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**ATTACHMENT 32 - PROPOSED ORDER**

**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

Subcase No. 79-13597  
Balls Canyon National Recreation Area Act  
Claims (Encompassing Subcases 79-14054 through  
79-14079; and to further encompass and be consolidated  
with Subcases 78-12288 through 78-12289)

CASE NO. 39576

Order Approving Stipulation and Entry of  
Basin 79 Partial Decrees

The District Court of the Fifth Judicial District in and for the County of Twin Falls, having entered its Commencement Order on November 19, 1987, commencing the Snake River Basin Adjudication ("SRBA"); the United States of America, the State of Idaho and Idaho Power Company, through their respective counsel, having presented a Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees, with the effective date of September 1, 2003 ("Stipulation"); due notice of the requested approval of the Stipulation, the proposed entry of the Basin 79 and the SF-4 motions to file late notices of claim for the Basin 78 Partial Decrees having been given pursuant to the Idaho Rules of Civil Procedure and the SRBA Court Administrative Order 1; the Court having reviewed the Stipulation, the proposed Basin 79 Partial

ORDER APPROVING STIPULATION AND ENTRY OF BASIN 79 PARTIAL DECREES

Decrees, the supporting affidavits and the SF-4 motions for the Basin 78 claims and having heard the parties concerning these matters;

**THE SRBA DISTRICT COURT NOW FINDS AS FOLLOWS:**

The parties have satisfied the requirements of Chapter 14, Title 42, Idaho Code, including Section 42-1411A, the Idaho Rules of Civil Procedure and SRBA Administrative Order 1. The Stipulation is a fair and equitable settlement of all the United States' claims in the SRBA for the portion of the Hells Canyon National Recreation Area within Idaho Department of Water Resources Administrative Basin No. 79. The Stipulation does not adversely affect the interests of persons not party to the Stipulation and good cause has been shown for granting the Joint Motion for Order Approving Stipulation and Entry of Partial Decrees and the SF-4 motions to file late notices of claim for the Basin 78 Partial Decrees.

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:**

1. The Partial Decrees for the United States' Hells Canyon National Recreation Area Act federal reserved water rights within Idaho Department of Water Resources Administrative Basin No. 79, i.e., Partial Decrees numbered 79-14054 through 79-14079, are hereby ratified, confirmed and approved. The Court shall retain jurisdiction for the purpose of resolving disputes regarding the interpretation and implementation of the Partial Decrees.

2. The SF-4 motions to file late notices of claim for the Basin 78 Partial Decrees, i.e., Partial Decrees numbered 78-12200 through 78-12205, were granted by the Court's Order dated November 2, 2004. Notice of the Director's Report that includes these late notices of claim shall be provided in the SRBA Docket Sheet. The hearing on entry of those Partial Decrees is hereby set for February 15, 2005.

3. The Stipulation is hereby approved, provided, that the provisions of paragraph 2 of the Stipulation ("paragraph 2") that address administration of water rights are covenants among the signatory parties only and shall not be binding on this Court or non-signatory parties with regard to administration of water rights by IDWR. The Court retains jurisdiction for the purpose of resolving disputes among the signatory parties regarding the implementation and enforcement of the Stipulation. The provisions of paragraph 2 shall not affect the rights of any non-signatory party to participate in and object to any motion for interim administration, proceeding for creation of a water district, or other administrative action or other judicial proceeding affecting their water rights or their use, diversion, or measurement of water; nor shall the provisions of paragraph 2 affect the disposition or review of such proceedings.

4. Pursuant to Idaho Rule of Evidence 408, nothing in the Stipulation, including the stipulated entry of Partial Decrees for these claims and any affidavits or other evidence or pleading submitted or relied upon for approval of the Stipulation, or any offers or compromises made in the course of negotiating the Stipulation, shall be construed as admissions against interest or tendered or used as evidence to support or oppose any party's claims or objections in the SRBA or in any other adjudication involving claims for the same or similar purposes, including the quantities of water claimed, or in any other manner by any party in the SRBA in any future proceedings in the SRBA, in any appellate proceedings concerning the SRBA, or in any other proceeding, other than those for interpretation, enforcement or administration of the Stipulation or the Partial Decrees or for a purpose contemplated by Rule 408. This Order is fully in accordance with Idaho Rule of Evidence 408, as well as the policy underlying that rule and the policy of the SRBA Court directed at furthering the strong public policy favoring out-of-court

settlement of disputes over litigation.

6. The water rights adjudicated by the Basin 79 Partial Decrees are in full satisfaction of all the United States' claims in the SRBA for the portion of the Hells Canyon National Recreation Area within Idaho Department of Water Resources Administrative Basin No. 79.

IT IS SO ORDERED.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication

**CERTIFICATE OF MAILING**

I hereby certify that on this \_\_\_\_\_ day of \_\_\_\_\_, 2004, I served a true and correct copy of the foregoing **ORDER APPROVING STIPULATION AND ENTRY OF PARTIAL DECREES**, by depositing a copy thereof in the U.S. mail, postage prepaid to the following:

All parties indicated on the attached Certificate of Service for Hells Canyon National Recreation Area Act Claims, Consolidated Subcase 79-13597

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Deputy Clerk