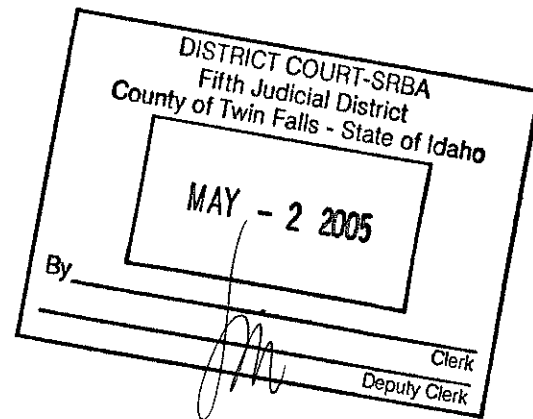


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DEPARTMENT OF
WATER RESOURCES



**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	)	ORDER DISMISSING OBJECTIONS
	)	
Case No. 39576	)	For water Right Claims 78-12200, 78-12201,
	)	78-12202, 78-12203, 78-12204 and 78-12205
	)	(Hells Canyon National Recreation Area Act)

I.

PROCEDURAL AND FACTUAL BACKGROUND

A. The above-captioned water right claims represent non-consumptive federal reserved claims to additional sources located within the boundaries of the Hells Canyon National Recreation Area as established by the Hells Canyon National Recreation Act, Pub. L. No. 940199, 89 Stat. 117, § 1(b) (codified as amended at 16 U.S.C. § 460gg(b)). ("HCNRA").

B. The original claims brought pursuant to the HCNRA were previously filed in the SRBA in 1994. The source for the federal reserved claims was described as follows:

Source of Water Supply: All streams, springs, seeps, lakes, ponds and other natural sources of water, including groundwater, whether named or not and whether perennial, intermittent or ephemeral and which are tributary to the Snake River. This claim is intended to also include those sources of water which are not presently known or not reasonably susceptible of quantification because of the de minimus and diffuse nature of their flow and which supply wetlands, marshes, and other vegetation which serves such National Recreation Area purposes as habitat protection. These diffuse sources also provide drinking water for livestock, wildlife and the public.

The implication being that there may have existed yet to be identified sources within the boundaries of the HCNRA. All of the original claims were claimed to sources located in Idaho Department of Water Resources Administrative Basin 79.

C. Following proceedings on objections to the original claims, the issue of whether the HCNRA created a federal reserved water right was decided by the Idaho Supreme Court in *Potlatch v. United States*, 134 Idaho 916 (2000). The Supreme Court held that the HCNRA created a federal reserved water right. The Supreme Court held that the purpose of the reservation was

[T]o assure that the natural beauty, and historical and archeological values of the Hells Canyon Area and the seventy-one mile segment of the Snake River between Hells Canyon Dam and the Oregon-Washington border, *together with portions of certain of its tributaries* and adjacent lands, are preserved for this future generations, and that the recreational and ecologic values and public enjoyment of the area are thereby enhanced

The case was then remanded back to the SRBA District Court with the directive to quantify the flows with tributaries originating within the boundaries of the HCNRA based on the minimum amount necessary to fulfill the primary purpose of the reservation. *Id.*

D. In conjunction with the quantification proceedings on remand, new parties were permitted the opportunity to motion the Court to participate in the proceedings. The Court also ordered the parties to engage in settlement negotiations in addition to the litigation track.

E. As part of the settlement negotiations, the United States identified six additional sources not previously described in the original claims. All six claims are to sources located in Administrative Basin 78. In implementing the settlement agreement, this Court granted the United States' *Motion to File Late Claims* to the additional sources located in Basin 78.¹ Parties to the adjudication were then given the opportunity to file objections and responses in accordance with *SRBA Administrative Order 1*. However, any such objections filed would be limited to the scope of the issues before the Court on remand and were not intended to pertain to issues already decided in the entitlement proceedings already addressed by the Supreme Court.

F. On January 11, 2005, Wayne E. Bottoms and Robert J. Culley (collectively as "Objectors") filed objections to each of the late claims. The basis for the objections as contained in the *Standard Form 1* stated generally that the water rights should not exist. The Objectors did not participate in the proceedings regarding the original claims.

¹ Pursuant to the terms of the settlement agreement, *Partial Decrees* were issued for the original claims filed in Basin 79.

G. At the hearing held on the late claims on April 14, 2005, the Objectors elaborated on the basis for their objections. After hearing argument from both Objectors, this Court concluded that the basis for the objections went to issues concerning whether the HCNRA created a federal reserved water right and the purposes for the federal reserved water right but agreed to review and take the matter under advisement.

II.

CONCLUSIONS OF LAW

The Court having reviewed the files, the pleadings and having listened to the arguments of the Objectors and Counsel for the United States in the above-captioned matter, and being fully apprised in the premises, makes the following conclusions of law.

A. The issues raised in the objections were previously decided by the Idaho Supreme Court in the *Potlatch* decision and are beyond the scope of the proceedings before this Court on remand. On remand issues were limited to those pertaining to quantification and whether claimed sources are covered by or within the geographical boundaries of the HCNRA.

B. In addition, the concerns raised by the Objectors in open court regarding the United States' potential future use of the rights are without merit because of the defined purpose of use for which the federal reserved water rights will be decreed and the non-consumptive nature of those water rights.

III.

ORDER

THEREFORE, for the above-stated reasons, IT IS HEREBY ORDERED that the objections filed to water right claims **78-12200, 78-12201, 78-12202, 78-12203, 78-12204 and 78-12205** are **dismissed**. An order approving the entry of the partial decrees will be issued separately.

DATED May 2, 2005.



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I hereby certify that true and correct copies of the **ORDER DISMISSING OBJECTIONS** were mailed on May 2, 2005, by first-class mail to the following:

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