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AUG 11 2016

DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - CSRBA	
Fifth Judicial District	
County of Twin Falls - State of Idaho	
AUG 09 2016	
By _____	Clerk
_____	Deputy Clerk

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	)	SPECIAL MASTER'S REPORT AND
	)	RECOMMENDATION; FINDINGS OF
Case No. 39576	)	FACT AND CONCLUSIONS OF LAW
	)	
	)	FEDERAL RESERVED
	)	WATER RIGHT: 91-07624
	)	
	)	(ST. JOE WILD AND SCENIC RIVER)

I. PROCEDURAL BACKGROUND

This water right was claimed by the United States in the CSRBA as a federal reserved right based on the Wild and Scenic Rivers Act of 1968. The elements of this claim were reported by the Idaho Department of Water Resources. *Objections* were filed by multiple parties. A hearing was held on this claim on July 13, 2016 in compliance with Idaho Code § 42-1411A. Pursuant to that statute, the United States is required to demonstrate a *prima facie* showing of the elements of a federal reserve water right. In conjunction with that hearing, the United States filed the *Affidavit of Eric Johnston*.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the file and record in this subcase, the *Affidavit of Eric Johnston* and the *Stipulation and Joint Motion for Order Approving Stipulation*, this Special Master makes the following findings of fact and conclusions of law:

1. The priority date is Nov. 10, 1978. This is the date when Congress designated the St. Joe River as a component of the national Wild and Scenic Rivers System by enacting the St. Joe WSR Designation Act.
2. The source contained in this claim is the St. Joe Wild and Scenic River, tributary to the Coeur d'Alene Lake.

3. That the *Stipulation and Joint Motion for Order Approving Stipulation* and the *Affidavit of Eric Johnston* include quantity described with a base flow component and a high flow component.
 4. That the State of Idaho supported approval of the *Stipulation*, however, the State preserved objections to quantification methodologies for future subcases.
 5. That all parties reached a settlement contained in the *Stipulation and Joint Motion for Order Approving Stipulation*.
 6. That the Court entered an *Order Approving Stipulation* which approved the elements of this right.
 7. That the United States has satisfied its burden under Idaho Code section 42-1411A as to the nature and existence of this claimed federal reserve water right.
 8. The elements of the federal water right for this claim are set forth on the attached *Special Master's Recommendation*.
-

III. RECOMMENDATION

Therefore, based on the file and record herein, IT IS RECOMMENDED that this water right be decreed as a federal water right with the elements set forth in the attached *Special Master's Recommendation for Partial Decree Pursuant to I.R.C.P. 54 (b)*.

DATED: August 9, 2016.



BRIGETTE BILYEU
Special Master
Spokane-Coeur d'Alene River Basin Adjudication

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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 CSRBA

CASE NO. 49576

PARTIAL DECREE

Clerk
Deputy Clerk

Federal Reserved

Water Right: 91-07624

(St. Joe Wild and Scenic River)

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, Idaho 83724

2. Source of water:

St. Joe River Tributary to Coeur d'Alene Lake

3. Quantity of right:

a. Stream flows at the St. Joe River above North Fork of the St. Joe River quantification site:

- (1) When the stream flow at the St. Joe River above North Fork quantification site, as identified in Section 3.a. (3) below ("St. Joe above North Fork quantification site"), is less than 6,220 cfs, the United States is entitled to the following flows:

Period of Use	Discharge (cfs)	Period of Use	Discharge (cfs)
January 1-15	811	July 1-15	1240
January 16-31	755	July 16-31	667
February 1-15	763	August 1-15	431
February 16-28(29)	976	August 16-31	333
March 1-15	1050	September 1-15	281
March 16-31	1460	September 16-30	270
April 1-15	2550	October 1-15	281
April 16-30	3980	October 16-31	337
May 1-15	4930	November 1-15	503
May 16-31	5750	November 16-30	682
June 1-15	4350	December 1-15	763
June 16-30	2480	December 16-31	726

- (2) When the stream flow at the St. Joe above North Fork quantification site is greater than or equal to 6,220 cfs (as adjusted by upstream junior depletions), the United States is entitled to all flows up to 20,300 cfs.
 - (3) The quantification site for the flows identified above at the St. Joe above North Fork quantification site is the St. Joe River immediately above its confluence with the North Fork of the St. Joe River, located in Lots 5 & 6 (NW1/4NW1/4), Sec. 14, T45N, R5E, Boise Meridian; Latitude N 47° 15' 03", Longitude W 115° 47' 51" (NAD 83).
- b. This water right does not prohibit the appropriation, diversion and use of water within the St. Joe River basin upstream from the ending point, as identified in element 5.b below ("St. Joe Wild and Scenic River Basin") when the stream flow at the St. Joe above North Fork quantification site exceeds the flow amount in Section 3.a.(1) and is less than 6,220 cfs, or when the stream flow at the St. Joe above North Fork quantification site exceeds 20,300 cfs.
-
- c. This water right precludes any diversion of water out of the watershed of the St. Joe River Wild and Scenic River Basin.

4. Priority date:

November 10, 1978

5. Point of diversion:

There is no diversion associated with this instream flow water right. The legal description of the beginning and ending points of the instream flow water right are as follows:

a. Location of beginning point:

Origin of St. Joe River at St. Joe Lake:

Lot 3 (NE 1/4NW1/4), Sec. 4, T42N, R11E, Boise Meridian.
Latitude N 47° 01' 7", Longitude W 115° 04' 58" (NAD 83).

b. Location of ending point:

Confluence of the St. Joe River with the North Fork of the St. Joe River:

Lots 5 & 6 (NW1/4NW1/4), Sec. 14, T45N, R5E, Boise Meridian.
Latitude N 47° 15' 3", Longitude W 115° 47' 51" (NAD 83).

6. Purpose of use:

To fulfill the purposes of the 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.), and the National Parks and Recreation Act, Pub. L. 95-625m, 92 Stat. 3467, Nov. 10, 1978 (codified at 16 U.S.C. § 1274(a)(23)).

7. Period of use:

January 1 - December 31

8. Place of use:

This instream flow water right is used throughout the designated St. Joe Wild and Scenic River from the beginning point to the ending point as identified above.

9. Annual volume of consumptive use:

----- This instream flow water right is non-consumptive (other than evaporation and -----
evapotranspiration that may take place within the designated segment).

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

- a. This is a federal reserved water right established pursuant to the 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.), and the National Parks and Recreation Act, Pub. L. 95-625m, 92 Stat. 3467, Nov. 10, 1978 (codified as amended at 16 U.S.C. § 1274(a)(23)).
- b. This Partial Decree is subject to the October 31, 2015 Stipulation between the United States, objectors State of Idaho ("State"), Northwest Property Owners Alliance, Benewah County Board of Commissioners, Potlatch Forest Holdings, Inc., Potlatch Land & Lumber, LLC, Potlatch TRS Idaho, LLC, Alpine Meadows Water and Sewer District, North Kootenai Water and Sewer District (aka North Kootenai Water District), Hauser Lake Water Association, Inc., Coeur d'Alene Lakeshore Property Owners Association, Jamestown Forestlands, LLC, Cherry Tree Timber, LLC, Jackson Timberland Opportunities-Tristar, LLC, Carmona Tristar, LLC, Hancock Timberland X, Inc. and associated Hancock entities, Boston Timber Opportunities, LLC, Golden Pond Timberlands, Inc., Hancock Timberland XI, Inc., John Hancock Life Insurance Company (U.S.A.), John Hancock Life Insurance Company – Account 72 (U.S.A.), SFG HCK Timber Partnership, L.P., System Global Timberlands, LLC, and respondents North Idaho Water Rights Alliance, and Hagadone Hospitality Co. ("2015 Stipulation"). Pursuant to the terms of the 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 St. Joe Wild and Scenic River Basin:

(1) All water right claims filed in the Coeur d'Alene-Spokane River Basin Adjudication ("CSRBA") as of the effective date of the 2015 Stipulation, to the extent ultimately decreed in the CSRBA.

(2) All applications for permit and permits with proof of beneficial use due after November 12, 2008, on file with IDWR as of the effective date of the 2015 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 12, 2008 on file with IDWR as of the effective date of the 2015 Stipulation.

(3) All "*de minimis* domestic rights," which for the purposes of this Partial Decree shall be defined to mean (a) 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 (b) 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. This subordination to *de minimis* domestic water rights does not apply to domestic purposes or domestic uses for subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in (b) above. This subordination to *de minimis* domestic purposes or domestic uses does not apply to multiple water rights for domestic uses or domestic purposes that satisfy a single combined water use or purpose that would not itself come within the definitions above. For purposes of this Partial Decree "subdivision" is defined as set forth in Shoshone County Subdivision Ordinance No. 139, Section 10-2-2, adopted December 22, 2009, which is attached to the 2015 Stipulation, and which is incorporated herein by reference.

(4) All "*de minimis* stock water rights," which for the purposes of this Partial Decree shall be defined 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 minimis* stock water use subordination is further limited and defined so that the subordination shall not and does not apply to multiple water rights for stock water uses which satisfy a single combined water use that would not itself come within the above definition of stock water use.

(5) Water appropriated or to be appropriated for mining purposes on private lands, up to a total combined diversion of 5.0 cfs, provided that the rate of diversion shall never exceed twenty-five (25) percent of the rate of flow then available in the stream at the point of diversion. This subordination provision

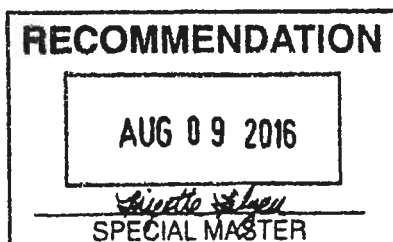
does not include storage, other than incidental storage, which is defined as storage of not more than a 24 hour water supply for mining use.

(6) Use of water to carry out forest practices and for forest dust abatement, up to a total annual volume of two-tenths (0.2) acre-feet per square-mile (640 acres) on state and private forest land within the St. Joe Wild and Scenic River Basin, provided that the rate of diversion shall never exceed twenty-five (25) percent of the rate of flow then available in the stream at the point of diversion. "Forest practices" includes (a) the harvesting of forest tree species; (b) road construction associated with harvesting of forest tree species; (c) reforestation; (d) use of chemicals or fertilizers for the purpose of growing or managing forest tree species; (e) the management of slashings resulting from harvest, management or improvement of forest tree species; or (f) the prompt salvage of dead or dying timber or timber that is threatened by insects, disease, windthrow, fire or extremes of weather. "Forest land" means state and private land growing forest tree species which are, or could be at maturity, capable of furnishing raw material used in the manufacture of lumber or other forest products. The term "forest land" includes state and private land from which forest tree species have been removed but have not yet been restocked, but it does not include land affirmatively converted to uses other than the growing of forest tree species.

- c. This water right does not prohibit the use of water by the owners of private lands in the St. Joe Wild and Scenic River Basin, and all successors thereto, for "non-consumptive, run-of-the-river" hydropower purposes as defined in paragraph 4 of the 2015 Stipulation.
- d. The provisions of the 2015 Stipulation are incorporated herein by reference.
- 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: _____, 2016.



Eric Wildman
Presiding Judge
Coeur d'Alene-Spokane River Basin Adjudication

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By _____

Clerk

Deputy Clerk

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

In Re CSRBA)

Case No. 49576)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

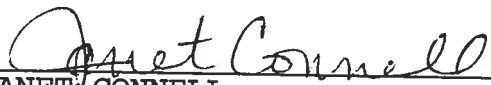
Water Right(s): 91-07624

On August 09, 2016, Special Master BRIGETTE BILYEU issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to CSRBA Administrative Order 1 (A01), Section 18a.

Pursuant to CSRBA Administrative Order 1 (A01), Section 18a, any party to the adjudication including parties to the subcase, may file a Motion to Alter or Amend on or before the 28th day of the next month.

Failure of any party in the adjudication to pursue or participate in a Motion to Alter or Amend the SPECIAL MASTER'S RECOMMENDATION shall constitute a waiver of the right to challenge it before the Presiding Judge.

DATED August 09, 2016.


JANET CONNELL
Deputy Clerk

AUG 09 2016

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S
REPORT AND RECOMMENDATION was mailed on August 9, 2016, with
sufficient first-class postage to the following:

Clerk

Deputy Clerk

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