

DISTRICT COURT-SRBA  
Fifth Judicial District  
County of Twin Falls - State of Idaho

MAY - 2 2005

JUDICIAL DISTRICT OF THE

COUNTY OF TWIN FALLS

Clerk  
Deputy Clerk

IN RE: SRBA

**Consolidated Subcase No. 79-13597  
Hells Canyon National Recreation Area Act  
Claims (Encompassing Subcases 79-14054 through  
79-14079 and Subcases 78-12200 through 78-12205)**

## Order Approving Entry of Basin 78 Partial Decrees

The Court having previously approved the Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees, with the effective date of September 1, 2003 (“Stipulation”), filed herein by United States of America, the State of Idaho and Idaho Power Company; due notice of the 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; objections to the claims having been filed by Robert J. Culley and Wayne E. Bottoms; the Court having reviewed the proposed Basin 78 Partial Decrees and supporting affidavits and having heard the parties concerning these matters;

THE SRBA DISTRICT COURT NOW FINDS AS FOLLOWS:

1. The objections filed by Messrs. Culley and Bottoms challenge the claims based on their assertion that the “water right[s] should not exist.” *See* SF-1 Objections in Subcases 78-ORDER APPROVING ENTRY OF BASIN 78 PARTIAL DECREES

12200 through 78-12205. The United States' entitlement to federal reserved water rights for the Hells Canyon National Recreation Area ("HCNRA") pursuant to the HCNRA Act, was affirmed, however, by the Idaho Supreme Court in *Potlatch v. United States*, 134 Idaho 916, 12 P.3d 1260 (2000). These objectors' challenge to the existence of these rights is, therefore, not well taken.

2. 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 and good cause has been shown for granting the requested entry of the Basin 78 Partial Decrees.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Claims numbered 78-12200 through 78-12205 are hereby consolidated into Consolidated Subcase No. 79-13597.

2. All terms of the Court's Order Approving Stipulation and Entry of Basin 79 Partial Decrees, dated November 16, 2004, are incorporated herein. The Court's approval of the Stipulation applies to the Stipulation as it pertains to these Basin 78 Partial Decrees, including the Court's retained jurisdiction concerning administration of the water rights confirmed by the Basin 78 Partial Decrees.

3. 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. 78, i.e., Partial Decrees numbered 78-12200 through 78-12205, are hereby ratified, confirmed and approved.

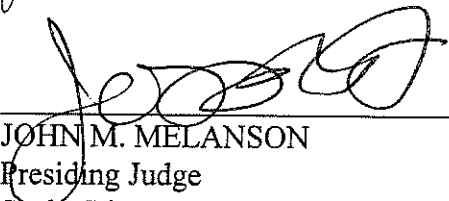
4. The water rights adjudicated by the Basin 78 Partial Decrees are in full satisfaction of all the United States' claims in the SRBA for the portion of the Hells Canyon

National Recreation Area within Idaho Department of Water Resources Administrative Basin

No. 78.

IT IS SO ORDERED.

DATED this 2nd day of May, 2005.



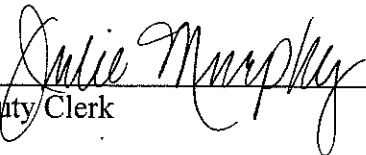
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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication

**CERTIFICATE OF MAILING**

I hereby certify that on this 2nd day of May, 2005, I served a true and correct copy of the foregoing **ORDER APPROVING ENTRY OF BASIN 78 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

  
Deputy Clerk

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER APPROVING ENTRY OF BASIN 78 PARTIAL DECREES was mailed on May 02, 2005, with sufficient first-class postage to the following:

IDAHO POWER COMPANY

Represented by:  
JOHN K. SIMPSON  
205 N 10TH ST, STE 520  
PO BOX 2139  
BOISE, ID 83701-2139  
Phone: 208-336-0700

STATE OF IDAHO

Represented by:  
NATURAL RESOURCES DIV CHIEF  
STATE OF IDAHO  
ATTORNEY GENERAL'S OFFICE  
PO BOX 44449  
BOISE, ID 83711-4449

US FOREST SERVICE (HELLS CNYN)

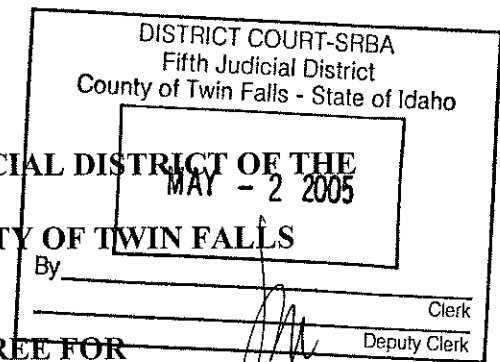
Represented by:  
US DEPARTMENT OF JUSTICE  
ENVIRONMENT & NATL' RESOURCES  
550 WEST FORT STREET, MSC 033  
BOISE, ID 83724

DIRECTOR OF IDWR

PO BOX 83720  
BOISE, ID 83720-0098

A handwritten signature in cursive script, appearing to read "Julie Murphy", is written over a horizontal line. The signature is fluid and stylized, with the first name "Julie" and last name "Murphy" clearly distinguishable.

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 78-12205**  
**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:** Upper Cannon Lake
3. **Quantity of right:**
  - a. This water right establishes the lake level of Upper Cannon Lake at 95.82 feet referenced to Upper Cannon BM1 (Elevation 100 feet) located at X=537290, Y=5018767 (UTM Zone 11 North NAD 27).
  - b. This water right precludes any diversion of water out of the watershed of Upper Cannon 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 NW $\frac{1}{4}$ NE $\frac{1}{4}$ , in unsurveyed Sec. 24, 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 | 02W | 24  |    | X  |    |    | X  |    |    | 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 Upper Cannon Lake basin upstream from the point of diversion, identified 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-hundreds (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 May 2, 2005.

  
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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication