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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CUSTER

IN RE: IDAHO DEPARTMENT OF WATER  
RESOURCES AMENDED FINAL ORDER  
CREATING WATER DISTRICT NO. 170

**THOMPSON CREEK MINING COMPANY'S  
PETITION FOR JUDICIAL REVIEW OF  
IDAHO DEPARTMENT OF WATER  
RESOURCES' AMENDED FINAL ORDER  
CREATING WATER DISTRICT NO. 170**

**I.  
INTRODUCTION**

Thompson Creek Mining Company ("Thompson Creek"), through Scott L. Campbell, its counsel of record, hereby submits this Petition for Judicial Review of the Amended Final Order Creating Water District No. 170, issued by the Director of the Idaho Department of Water Resources (the "Department") on April 6, 2006. This Petition for Judicial Review ("Petition") is brought pursuant to Idaho Code Sections 67-5270 through 67-5279 and Rule 84 of

the Idaho Rules of Civil Procedure. A copy of the Director's April 6, 2006 Amended Final Order Creating Water District No. 170 is attached hereto as Exhibit A.

Thompson Creek previously submitted to the Department a Petition for Reconsideration of the Final Order Creating Water District No. 170, as well as additional written comments explaining why creating the new district is improper. By issuing its Amended Order, the Director rejected these submissions. Accordingly, Thompson Creek has exhausted its administrative remedies.

## **II. HEARING**

The Department conducted a hearing on this matter on November 9, 2005, in Challis, Idaho. The hearing was recorded via electronic sound recording. On November 16, 2005, Patsy McGourty transcribed and certified the transcript of the hearing. The electronic sound recording is currently in the possession of the Idaho Department of Water Resources State Office, 322 East Front Street, 6th Floor, Boise, Idaho, 83702.

## **III. ISSUES FOR JUDICIAL REVIEW**

The primary issue to be decided on judicial review is whether the Director has a sufficient basis to determine that the creation of the new Water District No. 170 is "required" pursuant to Idaho Code Section 42-604. Thompson Creek alleges there is not a sufficient basis in the record for this determination. Additionally, Thompson Creek alleges the Director improperly used the August 20, 2004 Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees (attached hereto as Exhibit B) and the November 17, 2004 Amended Order Approving Stipulation and Entry of Partial Decrees (attached hereto as Exhibit C), as the primary basis for his decision to create Water District No. 170. By doing so,

the Director violated the terms of the Snake River Basin Adjudication District Court's Orders approving and implementing the Stipulation. Also, the Director's decision improperly modifies and substantially violates the Stipulation and Joint Motion for Order Approving Stipulation and Dismissing Objections, dated May 29, 1998, between the United States and Thompson Creek (attached hereto as Exhibit D) and the implementing Order of the Snake River Basin Adjudication District Court Approving Stipulation and Dismissing Objections, dated June 16, 1998 (attached hereto as Exhibit E). The Director's creation of the new water district is accordingly in violation of statutory provisions, in excess of the Department's statutory authority, made upon unlawful procedure, not supported by substantial evidence on the record as a whole, and arbitrary, capricious, and an abuse of discretion.

Pursuant to Rule 84(d) of the Idaho Rules of Civil Procedure, this is a non-binding, preliminary identification of the issues to be decided on judicial review, and Thompson Creek may raise additional issues as necessary.

#### **IV. TRANSCRIPT REQUEST**

Thompson Creek hereby requests a copy of the Department's agency record and transcript and certifies that it has paid to the Department the estimated fee for preparation of same. The Department's estimate for preparation is \$42.25.

DATED this 1st day of May, 2006.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By Scott L. Campbell  
Scott L. Campbell – Of the Firm  
Attorneys for Thompson Creek Mining  
Company

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of May, 2006, I caused a true and correct copy of the foregoing **THOMPSON CREEK MINING COMPANY'S PETITION FOR JUDICIAL REVIEW OF IDAHO DEPARTMENT OF WATER RESOURCES' AMENDED FINAL ORDER CREATING WATER DISTRICT NO. 170** to be served by the method indicated below, and addressed to the following:

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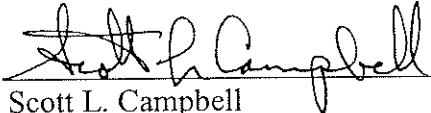
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\_\_\_\_\_  
Scott L. Campbell

# EXHIBIT A

to

Thompson Creek Mining Company's  
Petition for Judicial Review of Idaho Department of  
Water Resources' Amended Final Order Creating  
Water District No. 170

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF CREATING THE )  
UPPER SALMON RIVER BASIN WATER DISTRICT ) **AMENDED FINAL**  
(DESIGNATED AS WATER DISTRICT NO. 170) ) **ORDER CREATING**  
FOR ADMINISTRATION OF RIGHTS TO THE USE ) **WATER DISTRICT NO. 170**  
OF SURFACE WATER AND GROUND WATER IN )  
ADMINISTRATIVE BASINS 71 AND 72 )

The Director of the Idaho Department of Water Resources (“Director” or “Department”) is required by Idaho statutes to divide the state into water districts for the purpose of performing the essential governmental function of distributing water among appropriators under the laws of the State of Idaho. The requirement to create water districts applies to those streams, or other water sources, for which the priorities of appropriation have been adjudicated by court decree. By statute, during the pendency of a water rights adjudication, the district court having jurisdiction for the adjudication can authorize interim administration of the water rights by the Director if reasonably necessary to protect senior water rights. The district court may authorize the distribution of water pursuant to chapter 6, title 42, Idaho Code, in accordance with partial decrees entered by the court or in accordance with one or more Director’s Reports as may be modified by the court’s order.

On March 6, 2006, the Director issued *Final Order Creating Water District No. 170*. On March 17, 2006, Thompson Creek Mining Company (“Thompson Creek”) filed *Petition for Reconsideration of the Final Order Creating Water District No. 170*. Based on review of the petition filed by Thompson Creek, the Director finds that certain Findings and Conclusions of Law should be clarified. Consequently, the Director enters this Amended Final Order Creating Water District No. 170, which (1) includes new Findings of Fact 16 and 24; (2) renumbers Findings of Fact 17-23 and 25-26; (3) revises Conclusions of Law 1, 2, 5, 7, 9, 16, 17, 18, and 20; (4) adds new Conclusions of Law 23-26; (5) renumbers Conclusions of Law 27-31; (6) revises renumbered Conclusion of Law 31; (7) revises Ordering Paragraphs 2, 3, and 5; and (8) adds new Ordering Paragraph 6.

**FINDINGS OF FACT**

1. On May 16, 2005, the State of Idaho (“State”) filed a motion requesting an order authorizing the interim administration of water rights by the Director in the Department’s Administrative Basins 71 and 72 with the Snake River Basin Adjudication (“SRBA”) District Court. The State served copies of its motion and supporting briefing and affidavits on all affected parties by regular U. S. Mail on May 13, 2005. The State’s motion included a Notice of Hearing setting the matter for hearing by the SRBA District Court on September 20, 2005. The SRBA District Court designated the matter as SRBA Subcase 92-00021 (Interim Administration). The State’s motion and supporting briefing and affidavits are a part of the



public record in the matter of creating the Upper Salmon River Basin Water District within the Department's Administrative Basins ("Basins") 71 and 72.

2. The State's motion for interim administration described in Finding 1 above states that "interim administration of water rights in Basins 71 and 72 is reasonably necessary because an efficient means of administering water rights from ground water sources and some surface water sources in these basins does not exist. The establishment of water districts in these basins will provide watermasters with the ability to administer water rights in accordance with the prior appropriation doctrine as established by Idaho law."

3. All of the water rights claimed in Basins 71 and 72 have been reported or partially decreed in the SRBA as required under Idaho Code § 42-1417.

4. On November 16, 2004, the SRBA District Court entered a partial decree for water rights no. 75-13316 and no. 77-11941. These year-round water rights are held by the United States of America on the Salmon River 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 Central Idaho Wilderness Act of 1980, Pub.L. 96-312, 94 Stat. 948, July 23, 1980 (codified as amended at 16 U.S.C. §§ 1132, 1274, 1281). Water rights no. 75-13316 and no. 77-11941 are downstream of all of the water rights in Basins 71 and 72.

5. On September 20, 2005, the SRBA District Court held a hearing on the State's motion. No objections were filed in opposition to the motion, and no party appeared in opposition to the State's motion.

6. On September 29, 2005, the SRBA District Court issued an order authorizing the interim administration of water rights by the Director in Basins 71 and 72, pursuant to chapter 6, title 42, Idaho Code, based upon a determination that such interim administration is necessary to protect senior water rights.

7. On October 7, 2005, the Director signed a notice proposing to establish a water district in the Upper Salmon River Basin within Basins 71 and 72, pursuant to the provisions of Idaho Code § 42-604. Notice was mailed on October 11, 2005, by regular mail, to each holder of a water right within the boundaries of the proposed water district. The notice described the water district proposed to be established, the reasons therefor, the time and place for a public information meeting to be held on October 24, 2005, and the time and place for a hearing to be held on November 9, 2005, concerning establishment of the proposed water district. The notice also provided a time period within which written comments on the proposed action would be accepted.

8. In addition, the Director caused notice to be published of the proposed action establishing the Upper Salmon River Basin Water District ("Upper Salmon Water District"), designated Water District No. 170, once a week for two (2) weeks in the following newspapers having general circulation within the area of the proposed water district: *The Challis Messenger* of Challis, Idaho, on October 13 and 20, 2005; and the *Wood River Journal* of Hailey, Idaho, on October 12 and 19, 2005.

9. The notice mailed to water right holders proposed that establishment of the Upper Salmon Water District would include all water rights authorizing the use of surface water and ground water with points of diversion located within the boundaries of Basins 71 and 72, except those used solely for domestic or stock water purposes as defined under Idaho Code §§ 42-111 and 42-1401A(11). The Director's notice advised that a meeting of the holders of water rights within the district be held during the spring of 2006 for the purpose of electing a watermaster and conducting other business necessary to initiate operation of the district. The Director also proposed that the water district watermaster be responsible for certain duties under the direction and supervision of the Director including: (1) collection, recording, and reporting of diversion data; (2) enforcement of water rights in priority; and (3) curtailment and enforcement of unauthorized or excessive diversions, as necessary.

10. The Director's notice also included a description of the Director's proposal to expand the Upper Salmon Water District by 2007 to encompass all of Basins 73, 74, and 75, after the water rights in those basins have been decreed by the SRBA District Court or included in one or more Director's Reports anticipated to be filed with the SRBA District Court in 2006, provided the SRBA District Court grants the Director authority for interim administration in those basins.

11. The Director proposes to include existing water districts in the Upper Salmon River sub-basins as sub-districts within the proposed Upper Salmon Water District. There are currently three existing water districts within Basin 72 and the boundaries of the proposed Upper Salmon Water District: Water District No. 72-B, Garden Creek and tributaries; Water District No. 72-C, Challis Creek and tributaries; and Water District No. 72-F, Morgan Creek and tributaries. These districts include only water rights from surface water sources, and do not include any water rights from ground water. There are no existing water districts located within Basin 71.

12. Water districts 72-B and 72-C do not administer water rights from surface water sources outside the irrigation season for those rights included within the districts, nor do these districts administer water rights during the irrigation season when the surface water sources are not under watermaster regulation. Water District 72-F has not been active until recently and has not evolved to effectively administer water rights from surface water sources either during or outside of the irrigation season for those rights included within the district.

13. The Director conducted a hearing on the proposed establishment of the Upper Salmon Water District at the Challis High School Cafeteria in Challis, Idaho, at 7:00 pm on November 9, 2005. Approximately forty people attended the hearing.

14. Prior to commencing the hearing, the Director described factors he considered in proposing to establish the Upper Salmon Water District and answered questions about the establishment of the proposed water district and how the district was envisioned to function, both over a period of approximately 60 minutes.

15. Persons attending the hearing were provided an opportunity to make oral statements for the record. In addition, the Director held the record open through November 21, 2005, for the submittal of written comments.

16. At the beginning of the hearing on November 9, 2005, and prior to taking oral statements, the Director gave a brief introduction and reviewed the record and procedural history for the proposed establishment of the Upper Salmon Water District. During this introduction, the Director stated that: "Notice of this hearing was mailed to each affected water right holder in the proposed district as required under the provisions of Idaho Code § 42-604." The Director also stated that notice of the hearing was published in several newspapers of general circulation within the proposed district, and that Department staff had conducted a public information meeting on October 24, 2005, to discuss the reasons for establishing the water district and to explain the duties of the watermaster for the district. The Director further stated that notice of the public information meeting was also given in both the individual notice and the newspaper notices. Transcript of Hearing Conducted November 9, 2005, p. 2, Ln. 16-27.

17. Five individuals gave oral statements for the record at the hearing in Challis, Idaho. Three written statements were submitted to the Department on or before the deadline of November 21, 2005.

18. Mr. Jack Challis of Challis, Idaho, testified on his own behalf as a water right holder on Challis Creek in Basin 72. He also stated that he is the acting secretary-treasurer for both water districts 72-B and 72-C, Garden and Challis Creeks, respectively. In past years, Mr. Challis served as the watermaster for both districts. He also currently serves as a lateral manager on the Warm Springs Canal near Challis, Idaho. Mr. Challis testified that water districts 72-B and 72-C are already in compliance with all state water district requirements, and that other areas in the Upper Salmon River Basin should comply with similar standards before districts 72-B and 72-C participate in funding a watermaster for the proposed Upper Salmon Water District.

19. Mr. Jerry Hawkins of Challis, Idaho, testified on behalf of Water District No. 72-F, Morgan Creek and tributaries. Mr. Hawkins stated that Water District No. 72-F does not agree with the Director's proposal for a basin-wide water district that provides for a watermaster having oversight for existing water districts, such as district 72-F. Mr. Hawkins stated that Water District No. 72-F has a watermaster and secretary-treasurer, and that if district 72-F needs to answer to the Department, then it can do so through the existing Department employee based in Salmon, Idaho, rather than the water right holders contributing to the funding for a watermaster of a basin-wide water district. Mr. Hawkins also stated that Water District No. 72-F concurs with prior written comments submitted to the Department by certain water right holders from existing water districts in Basins 73, 74, and 75, which recommended that if the Upper Salmon Water District is established the watermaster should be a direct employee of the Department and paid by the State of Idaho.

20. Mr. Blair Kauer of Leadore, Idaho, testified on his own behalf. Mr. Kauer stated that he holds water rights in water districts 74, 74-W, and 74-Q, all in Basin 74. Mr. Kauer stated that he agreed with the need for water districts, but that it is not necessary to have another watermaster with oversight for other existing water districts in the Upper Salmon River Basin. He further stated that water districts in Basin 74 do not need to be in the proposed Upper Salmon Water District, or any proposed expansion of such district. Mr. Kauer also stated that water district assessments should be based on water rights held, not the amount of water diverted.

21. Mr. James Whittaker of Leadore, Idaho, testified on his own behalf but stated for the record that he is an advisory committee member for both Water District No. 74-W and Water District No. 74-Z. Mr. Whittaker stated that most water districts in Basin 74 do an adequate job of regulating themselves. Mr. Whittaker did not oppose appointment of a watermaster for the proposed Upper Salmon Water District at the Department's expense for a period of two years, as proposed by the Director, but that after two years there should not be a need for a basin-wide watermaster that has oversight for existing water districts because watermasters in those districts should be better trained and any problems after that point in time could be addressed by those watermasters and Department staff, including the Department's employee based in Salmon, Idaho.

22. Ms. Katie Breckenridge of Picabo, Idaho, testified on her own behalf. Ms. Breckenridge holds water rights in Basin 71. In her testimony, Ms. Breckenridge distinguished between areas in the Upper Salmon River Basin, like sub-basin 71, where diversions of water are not being measured or administered, and other areas within Basin 72 and 74 where existing water districts may be adequately measuring and regulating diversions of water. Ms. Breckenridge recommended that areas in Basin 71 and 72 that are not currently included in any water district where there are no watermasters measuring and reporting diversions be prioritized for inclusion in any new water district. She recommended that areas not currently within a water district be brought into compliance within two years, and then the Department and Upper Salmon River Basin water right holders could re-evaluate whether to organize under one district.

23. The Director received written comments from Mr. Scott Campbell, attorney for Thompson Creek Mining Company ("Thompson Creek"). Thompson Creek comments are summarized as follows:

- a. The Director failed to comply with the mandatory notice requirements of Idaho Code § 42-604, because the notice gave no explanation of the reasons for creating the water district;
- b. The public record does not support a determination by the Director that creation of the district is "required in order to properly administer uses of the water resource" as required by Idaho Code § 42-604;
- c. The Director cannot legally determine that a water district is "required in order to properly administer uses of the water resource" because an SRBA District Court order dated November 18, 2004, provides that a stipulated agreement involving the State of Idaho, the United States of America, and other parties in the matter of the Wild and Scenic Rivers Act Claims (Consolidated Subcase No. 75-13316), "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 action proceeding affecting their water rights or their use, diversion, or measurement of water;"

- d. The Director has no legally supportable basis for creation of the proposed water district because he cannot rely upon the provisions of the SRBA Wild and Scenic Rivers Agreement between the United States and the State of Idaho to justify creation of the district, and because the order of the SRBA District Court dated November 18, 2004, provided that the provisions in the Wild and Scenic Rivers agreement relative to water rights administration “shall not affect the disposition or review of such proceedings;” and
- e. No administration of the Thompson Creek water rights is necessary “to properly administer the uses of the water resource” because the rights held by the United States for the purposes of the Wild and Scenic Rivers Act are subordinated to Thompson Creek’s rights.

24. Thompson Creek also filed a petition for reconsideration March 17, 2006, reiterating many of the same issues raised in its written comments described in Finding 23.

25. The Department also received written comments from Mr. James Hawkins of Water District No. 72-F, Morgan Creek and tributaries. The Department received a petition from Mr. Hawkins dated May 19, 2005, on behalf of Water District No. 72-F seeking inclusion of certain water rights and diversions from the Salmon River near its confluence with Morgan Creek. This petition was submitted to the Department following a meeting that the Department held with representatives of existing water districts in the Upper Salmon River Basin in February of 2005 regarding the potential establishment of the Upper Salmon Water District. Mr. Hawkins submitted additional comments to the Department dated November 21, 2005, and received by the Department on November 28, 2005. The latter comments expressed concerns about overlapping duties with existing watermasters and additional costs resulting from appointment of a “super” watermaster. Mr. Hawkins’ second letter urges using local watermasters to collect data; encourages the Director to look at creating water district boundaries that go beyond the “normal” boundary of a drainage area such as Morgan Creek or Challis Creek; and recommends that “lockable” measuring device requirements be phased in over a reasonable period of time, such as two to three years.

26. The Department also received written comments from representatives of existing water districts in Basins 73, 74, and 75 on September 26, 2005. The comments were submitted in response to a steering committee meeting organized by the Department in September of 2005 with representatives of water right holders in the Upper Salmon River Basin regarding establishment of the Upper Salmon Water District. The comments submitted by the water districts’ representatives recommends that the watermaster for the Upper Salmon Water District be a direct employee of the Department at no additional costs to either the Department or water right holders who are affected by creation of the water district. The comments further recommend creation of sub-districts where deputy watermasters are elected and compensated by water right holders in each sub-district. A number of other detailed recommendations were proposed regarding watermaster and deputy watermaster duties, as well as headgate and measuring device requirements.

## CONCLUSIONS OF LAW

### Statutory Authorities

1. Idaho law declares all surface and ground waters in the State of Idaho to be the property of the state, whose duty it is to supervise the appropriation and allotment of the water to those diverting the same for beneficial use. *See* Idaho Code §§ 42-101, 42-103, and 42-226.

2. The Director has the statutory responsibility to administer the use of surface and ground water in the state so as to protect prior surface and ground water rights. *See* Idaho Code §§ 42-103, 42-202(1), 42-226 and 42-237a.g.

3. The Director has the responsibility for direction and control over the distribution of water in accordance with the prior appropriation doctrine as established by Idaho law within water districts to be accomplished through watermasters supervised by the Director, and subject to removal by the Director, as provided in chapter 6, title 42, Idaho Code.

4. The Director is authorized to form water districts as necessary to properly administer uses of water from public streams, or other independent sources of water supply, for which a court having jurisdiction thereof has adjudicated the priorities of appropriation. The Director may also revise the boundaries of a water district, abolish a water district, or combine two (2) or more water districts, by entry of an order, if such action is required in order to properly administer uses of the water resource. *See* Idaho Code § 42-604.

5. Idaho Code § 42-1417, *General adjudication – Interim administration of water rights*, provides authority to the district court having jurisdiction over a general water rights adjudication to authorize the interim administration of water rights pursuant to chapter 6, title 42, Idaho Code. Idaho Code § 42-1417(1) states, in pertinent part:

The district court may permit the distribution of water pursuant to chapter 6, title 42, Idaho Code:

- (a) in accordance with the director's report or as modified by the court's order;
- (b) in accordance with applicable partial decree(s) for water rights acquired under state law;
- (c) in accordance with applicable partial decree(s) for water rights acquired under federal law.

Idaho Code § 42-1417(4) states, in pertinent part:

After entry of the district court's order for interim administration, the director may form a water district pursuant to chapter 6, title 42, Idaho Code.

### Response to Testimony, Written Comments, and Petition for Reconsideration

6. Most of the testimony at the hearing in Challis Idaho conducted on November 9, 2005, and written comments submitted to the Department, raised concerns about inclusion of existing water districts as sub-districts in the proposed Upper Salmon Water District. Concerns

about the funding required for the watermaster of the Upper Salmon Water District and the oversight of watermasters for existing water districts were stated. Additional concerns regarding the duties of the Upper Salmon Water District watermaster with respect to the duties of existing watermasters were also identified, and the need to include existing water districts in the Upper Salmon Water District was questioned. Much of the testimony asserted that existing districts are already compliant with state law and Department requirements. Recommendations were made both in oral testimony at the hearing and in written comments to the Department that the costs for the Upper Salmon Water District watermaster should be borne by the Department.

7. In response to the hearing testimony, the written comments submitted on behalf of Water District No. 72-F, the written comments submitted on behalf of holders of water rights in existing water districts in Basins 73, 74, and 75, and the historic records of the water districts in Basins 72, 73, 74, and 75 on file at the Department, the Director concludes that during the irrigation season for the water rights in some of the existing water districts in Basins 72, 73, 74, and 75, the statutory requirements of Chapter 6, Title 42, Idaho Code, are mostly being met, while in other water districts in the Upper Salmon River Basin some or many of the statutory requirements are not being satisfied. For example, surface water diversions in some of the existing districts lack adequate measuring devices and controlling headgates, are not measured or recorded on a regular basis, or are not monitored or regulated during portions of the irrigation season. Additionally, some of the existing water districts do not maintain adequate measurement records, annual watermaster reports are not always complete or timely submitted, and some existing water districts have been inactive for many years. None of the existing water districts enforce limitations of surface water rights outside of the irrigation season for the rights, and none of the existing water districts regulate water rights diverting from ground water.

8. Given that: (1) there are no water districts in Basin 71; (2) the administration of surface water rights in the existing water districts in Basin 72 is often inconsistent; (3) none of the existing water districts in Basin 72 administer surface water rights outside of the irrigation season for those rights or during the irrigation season when the surface water sources are not in regulation; and (4) none of the existing water districts in Basin 72 regulate diversions from ground water; the Director concludes that there should be one water district created that encompasses all of the water rights within the Upper Salmon River Basin, and that the existing surface water districts in Basin 72 should be designated as sub-districts, in order to provide consistent and effective administration of water rights from both surface water sources and ground water sources year-round throughout the Upper Salmon River Basin.

9. Existing water districts in Basin 72, which now will be sub-districts within the Upper Salmon Water District, will each continue to function as water districts and continue to elect their own watermasters, who will serve as deputy watermasters under the watermaster for the Upper Salmon Water District, and adopt their own budgets for purposes of measuring, recording, reporting, and regulating surface water diversions within their districts. A sub-district that adequately measures, records, reports, and controls diversions should not be subject to future assessments to fund the watermaster for the Upper Salmon Water District for purposes of measuring, recording, reporting, and regulating surface water diversions within that sub-district. However, each sub-district may be subject to future assessments for costs associated with oversight of that sub-district. Oversight costs may include, but may not be limited to, technical assistance, enforcement assistance, training of deputy watermasters, collection and quality

control review of diversion data, periodic field checks of diversions, periodic or miscellaneous field calibration measurements of measuring devices, review of annual sub-district and budget reports, coordinating distribution of water to the Wild and Scenic River minimum instream flow water rights for the Salmon River as necessary, and general coordination with federal, state, and local agencies regarding water district operations, water use, and water right administration issues.

10. The written comments and the petition for reconsideration submitted by Thompson Creek both raise several legal or administrative issues. First, Thompson Creek alleges that the Director failed to comply with the mandatory notice requirements of Idaho Code § 42-604 because the notice gave no explanation of the reasons for creating the Upper Salmon Water District. As required by Idaho Code § 42-602, the notice described the proposed action, the reasons for the proposed action, and the time and place of a public hearing concerning the proposed action. The notice stated that the reason for the hearing was to consider the proposal to create a permanent water district in order to protect senior water rights. The notice referenced the SRBA District Court order that approved interim administration of the rights by the Director to protect senior water rights. The notice also provided a website link to a copy of the SRBA District Court order. The court's order found that the Director had sent individual notice of the State's Motion for Interim Administration and supporting documents, as well as notice of the SRBA Court's scheduled hearing on the matter, to all affected right holders in Basins 71 and 72.

11. Based on the State's motion for interim administration described in Finding 1 and its presentation to the SRBA District Court on September 20, 2005, the court made the following findings of fact and conclusions of law in its *Order Granting State's Motion for Order of Interim Administration of Water Rights in Basins 71 and 72*, dated September 29, 2005:

The State of Idaho has complied with the notice and service requirements of Idaho Code §§ 1417(2)(b) by serving of the State's *Motion* and related documents on those claimants in IDWR Basins 71 and 72 reasonably determined to be adversely affected by entry of the requested *Order*. Interim Administration in IDWR Basins 71 and 72 in accordance with the *Director's Reports* and *Partial Decrees* for water rights is reasonably necessary to efficiently administer water rights and protect senior water rights. The establishment of Water Districts for Basins 71 and 72 will provide the watermasters with the ability to administer water rights in accordance with the prior appropriation doctrine as established by Idaho law.

The creation of water districts will provide for a mechanism for administration, regulation, and enforcement of water rights, including ground and surface water rights.

12. The Director's notice also provided the following information regarding the necessity for creating a water district in Basins 71 and 72:

The Director proposes that the water district watermaster be responsible for certain duties under the direction and supervision of the Director including: (1) collection and recording of diversion data; (2) enforcement of water rights in priority; and (3) curtailment and enforcement of unauthorized or excessive diversions, as necessary.

13. The Director concludes that the notice required by Idaho Code § 42-604 was sufficient. The notice gave the time and place of a hearing, and provided a time period within



which written comments could be submitted. The notice stated that the proposed hearing was to consider the creation of a permanent water district in order to protect senior water rights. The notice informed affected right holders that the SRBA District Court had issued an order for interim administration of water rights in Basins 71 and 72 and provided a reference to a copy of the order. Finally, the notice listed specific watermaster duties in the proposed water district.

14. Thompson Creek's second allegation is that the public record does not support a determination by the Director that creation of the district is "required in order to properly administer uses of the water resource" as required by Idaho Code § 42-604.

15. The public record in this case includes the State's motion for Order of Interim Administration of Water Rights in Basins 71 and 72, together with supporting documentation, dated May 16, 2005; the SRBA District Court's transcript of the hearing on the State's motion for Order of Interim Administration of Water Rights in Basins 71 and 72, held on September 20, 2005; the SRBA District Court's *Order Granting the State of Idaho's Motion for Order of Interim Administration of Water Rights in Basins 71 and 72*, dated September 29, 2005; the Director's Notice of Public Information Meeting and Hearing in the Matter of the Proposed Creation of a Water District in the Upper Salmon River Basin Area in Administrative Basins 71 and 72, signed by the Director on October 7, 2005, and mailed on October 11, 2005; the transcript of the Director's hearing regarding creation of the proposed water district held on November 9, 2005, in Challis, Idaho; and written comments submitted for the record on or before November 21, 2005.

16. Justification for creation of the proposed district "to efficiently administer water rights and protect senior water rights" is provided in the Department's Notice of Public Information Meeting and Hearing in the Matter of the Proposed Creation of a Water District in the Upper Salmon River Basin Area in Administrative Basins 71 and 72, the SRBA District Court's *Order Granting Interim Administration*, and the State's motion for interim administration. The State's motion for interim administration and the Department's notice of public information meeting and hearing were served on all affected parties by regular U.S. mail, as required by Idaho Code §§ 42-6-4 and 42-1417(1). The Director concludes that the public record supports a determination that creation of the district is "required in order to properly administer uses of the water resource" as required by Idaho Code § 42-604.

17. Thompson Creek next alleges that the Director cannot legally determine that a water district is required because an SRBA District Court order dated November 18, 2004, provides that paragraph 2 of the stipulated agreement between the State of Idaho, the United States of America, and other parties in the matter of the Wild and Scenic Rivers Act Claims "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 action 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."

18. The SRBA District Court's order dated November 18, 2004, provides that Thompson Creek or other non-signatory parties of the Wild and Scenic Rivers agreement have rights to participate in and object to a motion for interim administration, or other administrative

proceeding for creation of a water district. The court's order does not prohibit the Director from determining that a water district is necessary. The court's order of November 18, 2004, does not prohibit the creation of a water district in the Upper Salmon River Basin, nor does it place limits on how the Director shall create a water district in the Upper Salmon River Basin.

19. Thompson Creek further argues that the Director has no legally supportable basis for creation of the proposed water district because he cannot rely upon the provisions of the SRBA Wild and Scenic Rivers Agreement between the United States and the State of Idaho to justify creation of the district, and because the SRBA District Court's Order dated November 18, 2004, provided that the provisions in the Wild and Scenic Rivers agreement relative to water rights administration shall not "affect the disposition or review of such proceedings."

20. The Director relies on the authority provided by Idaho Code § 42-604 for creation of the proposed water district. Idaho Code § 42-604 authorizes the Director to create a water district for streams or water supplies for which a court having jurisdiction thereof has adjudicated the priorities of appropriation. As stated in Finding 3, all of the water rights claimed in Basins 71 and 72 have been reported or partially decreed in the SRBA as required under Idaho Code § 42-1417. The Director proposes creation of a water district in Basins 71 and 72 for efficient administration of surface and ground water rights.

21. Next, Thompson Creek alleges that administration of Thompson Creek's water rights is not necessary "to properly administer the uses of the water resource" because the United States' Wild and Scenic River rights are subordinated to Thompson Creek's rights.

22. The Director finds that Thompson Creek is the holder of water rights to which the United States' Wild and Scenic River rights that have been partially decreed by the SRBA District Court are subordinated. This fact alone, however, does not preclude the need for creation of a water district, nor does it provide a reason to eliminate Thompson Creek's rights or other water rights to which the United States' Wild and Scenic River rights are subordinated. On the contrary, creation of the proposed water district is intended to fulfill the Director's statutory responsibilities to administer water rights for the purpose of protecting all prior water rights and distributing water in accordance with the prior appropriation doctrine as established by Idaho law.

23. The petition for reconsideration filed by Thompson Creek on March 17, 2006, states that "since all of the water rights within the proposed water district boundaries have not been adjudicated, the Director may not utilize his authorities under Idaho Code § 42-604 to create the Upper Salmon Water District." This argument is without merit and ignores Idaho Code § 42-1417 which clearly authorizes the Director to create a water district after the entry of the district court's order for interim administration, and that interim administration may be granted by the district court in accordance with a director's report or partial decrees acquired under state or federal law.

24. Thompson Creek's petition for reconsideration further states that there is no legal authority for the creation or recognition of "sub-districts" within a water district. This argument is without merit since "sub-districts" remain water districts pursuant to Idaho Code §§ 42-602 et seq. and Idaho Code § 42-604 specifically provides that:

The Director may create, revise the boundaries of, or abolish a water district or combine two (2) or more water districts by entry of an order if such action is required in order to properly administer uses of the water resource.

The designation of existing water districts in Basin 72 as “sub-districts” in Water District No. 170 is within the discretionary authority of the Director under Idaho Code § 42-604 to “create, revise the boundaries of, or abolish a water district or combine two (2) or more water districts by entry of an order if such action is required in order to properly administer uses of the water resource.” Conclusion of Law No. 7 of the Final Order Creating Water District No. 170 and the revised Conclusion of Law No. 7 of this Amended Order provide the necessary reasons as to why the designation of sub-districts is required in order to properly administer uses of the water resource within Water District No. 170.

25. Thompson Creek’s petition for reconsideration alleges that “sub-districts” and other features of Water District No. 170 established by the Director’s Final Order are provisions within paragraph 2 of the SRBA Wild and Scenic Rivers Stipulated Agreement and that the inclusion of any such provisions from paragraph 2 of the stipulated agreement violates the SRBA District Court’s order dated November 18, 2004. Again, as stated in the revised Conclusion of Law No. 18, the court’s order of November 18, 2004, with respect to paragraph 2 of the stipulated agreement, does not prohibit the creation of a water district in the Upper Salmon River Basin nor does it place limits on how the Director shall create a water district in the Upper Salmon River Basin. Moreover, Thompson Creek’s assertion that the Department is relying on the provisions of paragraph 2 of the stipulated agreement to create Water District No. 170 is without merit given that the Department either created or is in the process of creating water districts in other areas of Idaho that have the same or similar features established by the Final Order Creating Water District No. 170.

26. The remaining issues raised by Thompson Creek provide no new or additional reasons why Water District No. 170 should not be created. The Department has revised, clarified, or added certain Findings of Fact and Conclusions of Law in this Amended Order based on some of the points raised in Thompson Creek’s petition for reconsideration. All other concerns and issues raised in Thompson Creek’s petition for reconsideration were raised in the comments previously submitted by Thompson Creek. The Director concludes that those issues have been adequately addressed in either the Director’s Final Order dated March 6, 2006, or this Amended Order. Thompson Creek requests the Director to issue a revised order not creating the Upper Salmon Water District.

#### District Creation

27. Based on the statutory authorities described in preceding conclusions of law, the order of the SRBA District Court authorizing the interim administration of water rights pursuant to Idaho Code § 42-1417, the Director’s authority under chapter 6, title 42, Idaho Code, and the record in this proceeding, the Director should create the Upper Salmon Water District to administer water rights within Administrative Basins 71 and 72, as shown on the map appended hereto as Attachment A.

28. The Director concludes that the Upper Salmon Water District should be formed on a permanent basis and operated to administer the affected water rights in accordance with the prior appropriation doctrine as established by Idaho law.

#### Administration of Affected Water Rights

29. The Director concludes that immediate administration of water rights, other than de minimis domestic and stockwater rights as defined under Idaho Code §§ 42-111 and 42-1401A(11), pursuant to chapter 6, title 42, Idaho Code, is necessary for the protection of prior surface and ground water rights.

30. The Director concludes that the watermaster for the Upper Salmon Water District created by this order shall perform the following duties in accordance with guidelines, direction, and supervision provided by the Director:

- a. Measure, record, and report the diversions under water rights;
- b. Enforce the water rights in priority;
- c. Curtail unauthorized or excessive diversions as necessary (i.e., any diversion without a water right or in excess of the elements or conditions of a water right); and
- d. Consult with and coordinate the work activities of deputy watermasters, including the elected and appointed watermasters for sub-districts within the Upper Salmon Water District.

31. The Director concludes that the Upper Salmon Water District created by this order shall include the following organizational features:

- a. Election and appointment of a single watermaster for the water district. The water right holders may elect to have the district contract with the Department to provide watermaster services. Under a district contract with the Department, the watermaster will be a direct employee of the Department.
- b. Existing water districts in Basin 72 shall be combined with the Upper Salmon Water District pursuant to Idaho Code 42-604, and designated as sub-districts of the Upper Salmon Water District, or as otherwise determined by the Director.
- c. The water right holders may select a Water District Advisory Committee that includes, but need not be limited to, representation from advisory committees of existing water districts.

- d. The watermaster is authorized to appoint assistants or deputy watermasters as deemed necessary by the water users. Assistants are subject to appointment by the Director. Deputy watermasters shall work pursuant to instructions of the watermaster. Deputy watermasters may be other Department employees, or watermasters elected by sub-districts.
- e. Holders of water rights in the water district shall be assessed the costs for operating the Upper Salmon Water District directly by the water district watermaster.
- f. Water districts that are organized as sub-districts may collect assessments to pay the pro-rata expenses of the Upper Salmon Water District, if any, on behalf of the diversions and water right holders within their respective sub-district to avoid individual water right holders being assessed by both the sub-district and the Upper Salmon Water District.
- g. The Department will waive the requirement of compensation for providing watermaster services during 2006 and 2007 if the water right holders elect to have the Upper Salmon Water District contract with the Department to provide watermaster services.

### ORDER

The Director enters the following Order for the reasons stated in the foregoing Findings of Fact and Conclusions of Law.

IT IS HEREBY ORDERED as follows:

1. The Upper Salmon River Basin Water District, designated as Water District No. 170, is hereby established to include all surface water and ground water rights in the Idaho Department of Water Resources Administrative Basins 71 and 72, other than de minimis domestic and stockwater rights as defined under Idaho Code § 42-111 and 42-1401A(11), within the area depicted on the map appended hereto as Attachment A and incorporated herein by reference.
2. Water District No. 72-B (Garden Creek and tributaries), Water District No. 72-C (Challis Creek and tributaries), and Water District No. 72-F (Morgan Creek and tributaries), are hereby designated as sub-districts within Water District No. 170. These sub-districts shall continue to meet annually to elect a watermaster, adopt a budget, and select an advisory committee. These sub-districts shall be responsible for distribution of surface water rights that have been reported or partially decreed in the SRBA and located within the respective sub-districts. For 2006, water right holders within the sub-districts shall meet at a time and place as normally determined by the district.
3. For 2006, the water right holders within Water District No. 170 shall meet at a time and place to be announced by the Director to elect a watermaster, consider selection of an

advisory committee, and set a budget to be collected to operate the district. In future years, the annual meeting shall be held as provided in Idaho Code § 42-605.

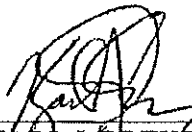
4. The watermaster for Water District No. 170 shall perform the following duties in accordance with guidelines, direction, and supervision provided by the Director:

- a. Measure, record, and report the diversions under water rights;
- b. Enforce the water rights in priority;
- c. Curtail unauthorized or excessive diversions as necessary (i.e., any diversion without a water right or in excess of the elements or conditions of a water right); and
- d. Consult with and coordinate the work activities of deputy watermasters, including the elected and appointed watermasters for sub-districts within the Water District No. 170.

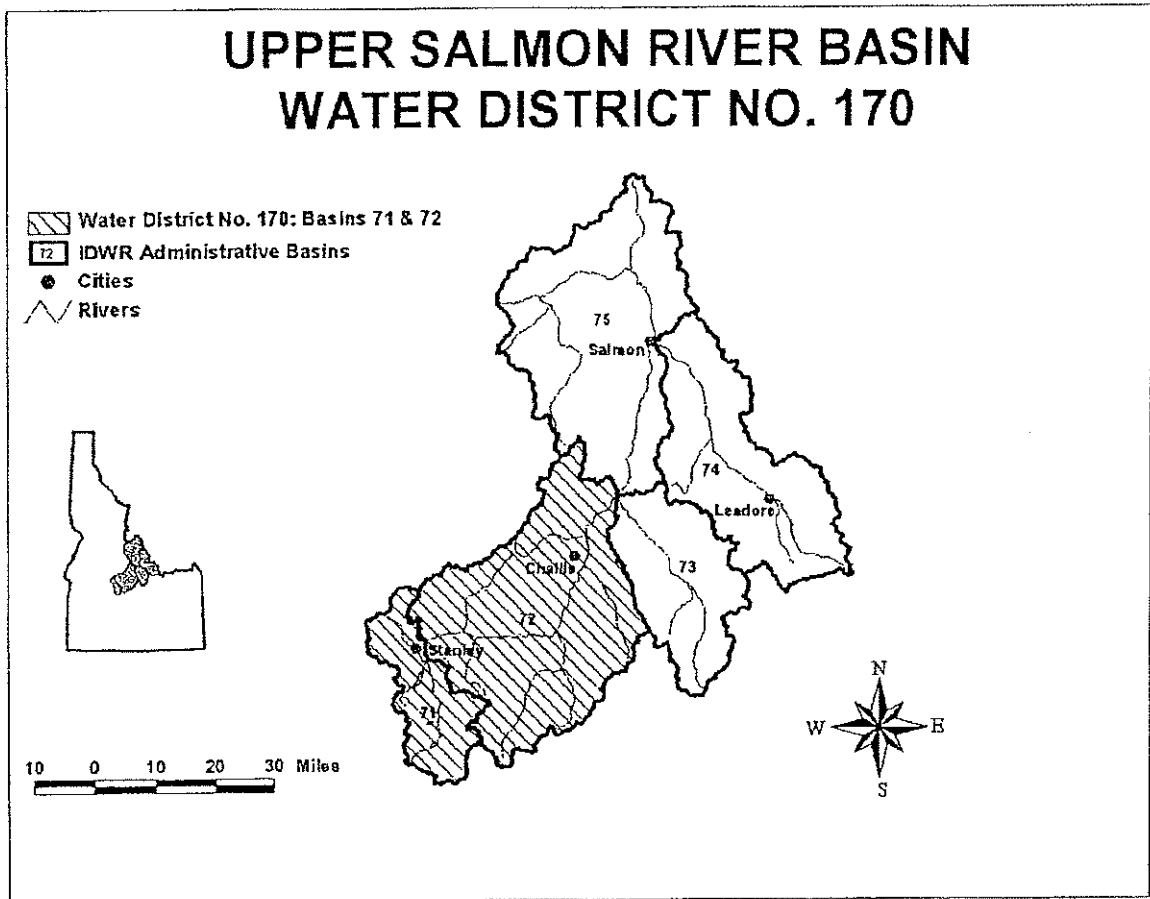
5. The Director shall issue separate orders, as necessary, requiring the installation of measuring devices and lockable controlling works for diversions within Water District No. 170. Such orders will allow installations to be phased in over a period of one to two years from the date of issuance, thereby allowing a sufficient period of time in which to comply with such orders.

6. The relief requested under the *Petition for Reconsideration of the Final Order Creating Water District No. 170* filed by Thompson Creek on March 17, 2006, asking that the Director issue a revised order not creating the Upper Salmon Water District, is denied.

DATED this 6<sup>th</sup> day of April 2006.

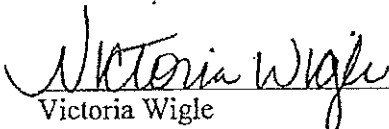
  
\_\_\_\_\_  
KARL J. OREHER  
Director

ATTACHMENT A



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7<sup>th</sup> day of April, 2006, the above and foregoing document was served on each individual or entity on the service list for this matter on file at the Idaho Department of Water Resources, 322 East Front Street, Boise, Idaho, and posted on the Department's website: [www.idwr.idaho.gov](http://www.idwr.idaho.gov). Each individual or entity on the service list was served by placing a copy of the above and foregoing document in the United States mail, postage prepaid and properly addressed.

  
Victoria Wigle  
Administrative Assistant to the Director  
Idaho Department of Water Resources



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RECEIVED  
JUL 10 1993  
WATER RESOURCES  
DIVISION

# EXHIBIT B

to

Thompson Creek Mining Company's  
Petition for Judicial Review of Idaho Department of  
Water Resources' Amended Final Order Creating  
Water District No. 170

UNITED STATES OF AMERICA

STATE OF IDAHO

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Attorneys for the United States of America

Attorneys for the State of 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	)	
	)	
	)	Consolidated Subcase No. 75-13316
	)	Wild & Scenic Rivers Act Claims
	)	(Encompassing Subcases 75-13316, 77-11941,
	)	77-13844, 78-11961, 81-10472, 81-10513 and 81-10625)
	)	
CASE NO. 39576	)	Stipulation and Joint Motion for Order
	)	Approving Stipulation and Entry of Partial
	)	Decrees
	)	
	)	

STIPULATION

The United States of America (“United States”), and objectors, the State of Idaho (“State”), and Dewey Mining Company, et al.,<sup>1/</sup> City of Challis, et al.,<sup>2/</sup> Big Bend Irrigation

<sup>1/</sup> Dewey Mining Company, Thunder Mountain Gold, Inc., and Potlatch Corp., all represented by Jeffrey C. Fereday, Esq.

<sup>2/</sup> City of Challis, City of Pocatello, City of Salmon, Basic American, Inc., and Lamb-Weston, Inc., all represented by Josephine P. Beeman, Esq.

District, et al.,<sup>3/</sup> Idaho Power Company, A & B Irrigation District, et al.,<sup>4/</sup> and Thomas R. Stuart III, et al.,<sup>5/</sup> (the State and these other objectors referred to as “Objectors;” the United States and Objectors sometimes referred to as the “parties”), who constitute all the parties to these consolidated subcases, hereby stipulate and agree, by and through their respective undersigned counsel, as follows:

1. Stipulation to Entry of Partial Decrees: The United States and Objectors stipulate to entry of 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, attached hereto and incorporated herein as Attachments 1 through 6 (the “Partial Decrees”), all parties to bear their own costs and fees. The Partial Decrees confirm the United States’ federal reserved water rights pursuant to the Wild and Scenic Rivers Act, as recognized by the Idaho Supreme Court in *Potlatch v. United States*, 134 Idaho 912, 12 P.3d 1256 (2000), and set forth the quantities and terms of those rights. The Partial Decrees quantify these federal reserved water rights based on identified flows, subject to subordinations to certain existing and future rights and uses, and the preclusion of out-of-basin diversions above the ending point of each of the respective federal reserved water rights as identified in the Partial Decrees. The parties request the Snake River Basin Adjudication Court (“SRBA Court” or “Court”) to

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<sup>3/</sup> Big Bend Irrigation District, Boise-Kuna Irrigation District, New York Irrigation District, and Wilder Irrigation District, all represented by Albert P. Barker, Esq.

<sup>4/</sup> A & B Irrigation District, Burley Irrigation District, Twin Falls Canal Company, North Side Canal Company, Progressive Irrigation District, Enterprise Irrigation District, New Sweden Irrigation District, Snake River Valley Irrigation District, Idaho Irrigation District, Harrison Canal & Irrigation Company, Burgess Canal & Irrigation Company, Peoples Canal & Irrigation Company, Egin Bench Canals, Inc., and North Fremont Canal Systems, Inc., all represented by Jerry R. Rigby, Esq.

<sup>5/</sup> Thomas R. Stuart III, Gene Bray, Bonnie Schonefeld, Alma Marie Osborn, and Phyllis K. Kochert, all represented by William Eddie, Esq.

approve, by granting the Joint Motion for Order Approving Stipulation and Entry of Partial Decrees and entering the attached proposed Order, the quantification of these Wild and Scenic Rivers federal reserved water rights as agreed to by the parties and set forth in the Partial Decrees. The parties also agree to entry of a final decree incorporating the Partial Decrees.

2. Administration of Water Rights.

a. Enforcement. The State, through the Idaho Department of Water Resources ("IDWR") and local water districts created and supervised by IDWR pursuant to Idaho Code §§ 42-604 et seq., shall distribute water to the federal reserved water rights set forth in this Stipulation and the Partial Decrees and all other hydraulically connected water rights, regardless of subbasin location, above the ending point of the respective federal reserved water rights in accordance with priority dates, quantities and all other elements of the rights as provided in this Stipulation and the Partial Decrees, and applicable law at all times when there is a hydraulic connection between the federal reserved water right and the right to be regulated. While this paragraph does not affect the present administration of existing water rights from tributary sources that are administered separately, all new water rights that are hydraulically connected with the Wild and Scenic Rivers federal reserved water right will be administered as a single source.

b. Creation of Water Districts.

(1) IDWR will establish water districts as necessary to assist IDWR in the administration of water rights. The parties agree that, regardless of whether a water district has been established for an area, IDWR will: A) collect and record diversion data; B) enforce the water rights in priority; and C) curtail unauthorized or excessive diversions as necessary.

(2) Within six months after issuance of the Partial Decrees confirming the Wild and Scenic Rivers federal reserved water rights, the parties will file a joint petition with the SRBA Court, pursuant to Idaho Code § 42-1417, for an order for interim administration of administrative basins 71 and 72 and IDWR will establish a water district for the Upper Salmon River Basin. The Upper Salmon Water District (the "USWD") shall initially consist of administrative basins 71 and 72, those basins for which Director's Reports have been filed for irrigation and other water rights. Within six months of the filing of Director's Reports for administrative basins 73, 74 and 75, the parties will file a joint petition with the SRBA Court, pursuant to Idaho Code § 42-1417, for an order for interim administration of those basins and IDWR will incorporate those basins into the USWD. Existing water districts within the basins will be converted to subdistricts within the USWD as appropriate to facilitate management. Other subdistricts will be formed as deemed necessary to accomplish the purposes of the USWD. Creation of the USWD shall involve full participation by water users in the area in accordance with state law, and the existing water districts will have an important role. The resulting organization will be fully under the supervision of IDWR.

(3) The parties agree that at present, the limited number of water rights above the ending point of the other Wild and Scenic Rivers federal reserved water rights confirmed by the Partial Decrees does not justify the creation of water districts for purposes of administration. If in the future any party believes that creation of a water district above the ending point of any of the other Wild and Scenic Rivers federal reserved water rights is warranted, such party shall be entitled to file a petition with the SRBA Court for an order of interim administration (or, in the event the final SRBA decree has been entered, file a petition with IDWR for administration) of such basin and the other parties to this Stipulation shall not

oppose such petition and IDWR will establish a water district for the basin if IDWR determines that a water district is necessary to properly administer water rights in the basin.

c. Administration of New Water Rights. IDWR will condition each water right permit or license issued after the effective date of this Stipulation for a non-de minimis water right upstream from the ending point of the Wild and Scenic River as set forth in this Stipulation to require that each diversion is equipped with lockable controlling works, a measuring device, and a data logger or other suitable device that regularly monitors and records the rate of diversion. The condition will require that the data logger or other suitable device be configured to accept a removable data card or other suitable memory device that must be submitted by the water user to the IDWR or the watermaster on a quarterly basis, for each quarter when diversion occurs.

d. Prevention of Unauthorized Uses. IDWR and the watermaster will utilize all appropriate techniques, including but not limited to remote-sensing, field observation and inventory, coordination with local water users and citizens, and input from other agencies, to identify unauthorized uses of water. IDWR and/or the watermaster will curtail identified unauthorized uses of water based on the authorities of Chapter 6, Title 42, Idaho Code, and IDWR will pursue appropriate civil enforcement action as provided in Idaho Code §§ 42-351 and 42-1701B.

e. Administration of Existing Water Rights. IDWR and the watermaster shall conduct a systematic inventory of diversions, giving priority to those diversions that have the greatest potential influence on other water rights. IDWR will evaluate the staffing requirement for operation of the water district and will identify needs for subdistricts and deputy watermasters as required. IDWR and the watermaster will specifically identify and curtail

unauthorized uses. IDWR and the watermaster will monitor all non-de minimis diversions through site visits and measurements by means of current meter or other appropriate methods to ensure that when water rights are found to be exceeded, such exceedance will be curtailed and that other unauthorized uses are curtailed, based on the authorities of Chapter 6, Title 42, Idaho Code. IDWR will collect and report diversion data on a quarterly basis; provided, however, that during times of shortage, IDWR and the watermaster will ensure that diversion data will be collected and reported on a daily basis as necessary to properly administer water rights. IDWR will require installation of lockable controlling works and measurement devices for any existing diversion if it is determined that the water right holder is refusing or failing to comply with IDWR's or the watermaster's instructions and will pursue appropriate civil enforcement action as provided in Idaho Code §§ 42-351 and 42-1701B.

f. Availability of Water Use Information. IDWR shall provide the United States, at its request, any water measurement reports prepared by or for IDWR and any other information relating to the implementation of this Stipulation, including the basis for all information reported in the subordination database described in paragraph 3.e. below.

g. Coordination. In order to provide for effective water management by IDWR and the watermaster, and to ensure effective communication between interested parties, periodic coordination meetings shall be held between IDWR, the watermaster, and water users, including representatives of private water users and the federal government. The purposes of such meetings include:

- (1) Agreeing upon management goals;
- (2) Identifying and prioritizing stream reaches or other locales needing improved management to focus the use and attention of available resources;



(3) Identifying sources of funding for regulation, equipment, and facilities;

(4) Identifying the need for creation of additional subdistricts with deputy watermasters;

(5) Sharing data and other information and assessing progress in meeting management needs.

Coordination meetings will involve members of the regulated public (advisory committee members) to assure continuing acceptance of the program. The meetings will be held periodically for the first two years of operation to provide for the development of consensus of appropriate procedures, and then annually or more frequently as driven by need.

h. United States' Measuring Devices. The stream gages identified in the Partial Decrees shall be utilized in the administration of the water rights confirmed by those Partial Decrees. The United States will install, maintain and provide Objectors access to such gages as necessary for administration of the water rights confirmed by the Partial Decrees. IDWR agrees to cooperate with the United States in the installation and maintenance of such gages, and the State agrees to provide access to state-owned lands for the purpose of installing and maintaining said gages.

i. Remedies. In the event the State fails to administer water rights in accordance with the terms of this Stipulation, the Partial Decrees and applicable law, any party to this Stipulation, upon a satisfactory showing to the SRBA Court, or any successor state court with jurisdiction to enforce the final decree issued by the SRBA Court, of such failure to administer, shall be entitled to an order under the Court's continuing jurisdiction, as described in paragraph 5, compelling the State to properly administer the water rights.

3. Administration of Subordination Provisions of Partial Decrees. The Wild and Scenic Rivers federal reserved water rights confirmed by the Partial Decrees are subordinated to certain water rights and uses with points of diversion or impoundment and places of beneficial use within the river basin upstream from the ending point of each of the federal reserved water rights. Administration of the subordination provisions shall be as follows:

a. Accounting of Diversion and Acreage Amounts Under Future Use Subordinations. IDWR will deduct from the subordination amounts provided for in paragraph 10.b.(6) of the Partial Decree for the Main Salmon River and paragraph 10.b.(5) of the other Partial Decrees the amount of the diversion rate, and if for irrigation, the acreage, of any decree, permit or license for a water right that IDWR determines will enjoy the benefit of those subordination provisions. If IDWR licenses any right for less than the amount permitted, the amount of the difference will be credited back to the subordination amount from which the permitted diversion was previously deducted.

b. Municipal Provider Reporting Requirement and Allocation to Future Use Subordination. IDWR will condition every new permit or license issued for a municipal water right with a priority date after the effective date of the Stipulation and enjoying the benefit of the subordination provided by paragraph 10.b.(5) of the Partial Decree for the Main Salmon River with the reporting condition described below. The reporting condition will require the right holder to report to IDWR when diversions commence under the permit or license and from that time forward to report to IDWR by January 31 of each year all new municipal connections installed in the prior calendar year of a size greater than 4 inches in diameter. The report will include the size, capacity, and location of each connection required to be reported. IDWR will, by March 1 of the year the report is received, post the reported information to the subordination

accounting database provided for in paragraph 3.e. and reduce the remaining subordination amount provided for in paragraph 10.b.(6) of the Partial Decree for the Main Salmon River by the capacity of any connection(s) greater than 2 cfs capacity, other than capacity for fire protection.

c. Diversion Adjustment for Forfeiture or Abandonment.

(1) If a water right enjoying the benefit of subordination provision 10.b.(6) of the Partial Decree for the Main Salmon River or provision 10.b.(5) of the remainder of the Partial Decrees (other than water rights of the United States, instream flow water rights, nonconsumptive water rights and replacement water rights as defined in those paragraphs of the Partial Decrees), is lapsed, forfeited, or abandoned, the diversion rate and, if for irrigation, the acreage will be added to the applicable subordination amount. The amount of diversion rate and, if for irrigation, acreage to be added to the applicable subordination will be the same quantity of subordination assigned to the water right at the time the water right was lost.

(2) The State may petition the SRBA Court, or any successor state court with jurisdiction to enforce the final decree issued by the SRBA Court, for an increase in the applicable subordination amount based upon the forfeiture or abandonment of water rights senior to the rights confirmed by the Partial Decrees that have points of diversion or impoundments and places of use within the basin and upstream from the Wild and Scenic River ending point, or subordinated to under paragraphs 10.b.(1) & (2) of the Partial Decrees, but, in either case, not for domestic uses (that if junior to the federal reserved water right would be subordinated to under paragraph 10.b.(3) of the Partial Decrees), stockwater uses (that if junior to the federal reserved water right would be subordinated to under paragraph 10.b.(4) of the Partial Decrees), and municipal uses (that if junior to the federal reserved water right would be

subordinated to under paragraph 10.b.(5) of the Partial Decree for the Main Salmon River). Any such petition shall be served on the U.S.D.A. Forest Service, 161 East Mallard Drive, Suite A, Boise, ID, 83706 or such other address that the Forest Service has provided IDWR, and the United States shall have the right to participate in all proceedings thereon for the purposes of monitoring, limiting or opposing the petition. The forfeiture or abandonment of water rights will be eligible to increase the subordination amounts if the following conditions are met:

(A) the forfeiture or abandonment is based on a period of non-use entirely after the effective date of this Stipulation;

(B) the forfeiture or abandonment results in an increased flow to the affected Wild and Scenic River; and

(C) the forfeited or abandoned water right is decreed by the SRBA Court or licensed by IDWR (not required to be claimed in the SRBA). The amount of any increase in subordination will be determined by the SRBA Court, or any successor state court with jurisdiction to enforce the final decree issued by the SRBA Court. The amount added to the future use subordination will be limited to use in the sub-basin in which it was historically used.

d. Water Right Database. IDWR will maintain a publicly available database of water right records on file with IDWR that are above the ending point of each Wild and Scenic federal reserved water right. The database will identify the statutory elements for each active water right record.

e. Subordination Accounting Database. In the normal course of application and claim processing, IDWR will maintain publicly available information for purposes of implementation of the subordinations provided under the Partial Decrees. The data will:

(1) identify all accepted applications for permit and all water right claims with points of diversion located upstream from the ending points of the water rights confirmed by the Partial Decrees;

(2) identify applications for permit that IDWR has determined will enjoy the benefit of any of the subordination provisions of the Partial Decrees, including the information described in paragraph 3.f.(1) below;

(3) separately identify those water rights decrees, permits and licenses that come within the applicable subordination provision;

(4) with respect to water rights decrees, permits and licenses that come within the future use subordination (paragraph 10.b.(6) of the Partial Decree for the Main Salmon River, paragraph 10.b.(5) of the other Partial Decrees), identify the diversion rate, and for irrigation rights, the number of irrigated acres, decreed, permitted or licensed, including any reductions in permitted amounts as licensed, to be credited to the applicable future use subordination;

(5) with respect to forfeited, abandoned or lapsed water rights as identified in paragraph 3.c.(1), identify those rights and the diversion and, if for irrigation, the acreage that IDWR has credited the applicable future use subordination as described in paragraph 3.c.(1) above;

(6) identify all accepted applications for permit and all water right claims that IDWR has determined will, if approved, constitute water rights of the United States, instream flow water rights, nonconsumptive water rights or replacement water rights within the meaning of those terms as used in paragraph 10.b.(6)(C) of the Partial Decree for the Main Salmon River, paragraph 10.b.(5)(C) of the Partial Decree for the Middle Fork Salmon River,

and paragraph 10.b.(5)(B) of the other Partial Decrees and that would otherwise be deducted from the applicable subordination amounts for future rights, and identify all water rights decrees, permits and licenses for water rights that IDWR has determined constitute water rights of the United States, instream flow water rights, nonconsumptive water rights or replacement water rights as described above;

(7) with respect to rights that come within the municipal right subordination provision (paragraph 10.b.(5) of the Partial Decree for the Main Salmon River), identify when diversions commence under any such permit or license, annually identify water diversion data, including the number of connections that exceed the 2 cfs threshold as reported to IDWR by the municipal right holder, and the amount subtracted from the future use subordination (paragraph 10.b.(6) of the Partial Decree for the Main Salmon River); and

(8) set forth a running total of the amounts of future use subordination remaining available for appropriation under paragraph 10.b.(6) of the Partial Decree for the Main Salmon River and paragraph 10.b.(5) of the other Partial Decrees. IDWR will make available to the United States or any other party upon request any and all documentation concerning the above referenced matters. "Publicly available" as used in this Stipulation means remote computer access or other similar future technology and the ability to request, on an as needed basis, composites of all water right records on contemporary media in a form that can be manipulated with contemporary technology (software and hardware). IDWR will review any comments or suggestions made by any of the parties concerning the adequacy of this records system.

f. Subordination Implementation and Review.

(1) IDWR will include in the public notice of any application for permit that IDWR has determined will enjoy the benefit of any of the subordination provisions, the subordination provision that IDWR has determined is applicable to the application and, with respect to the subordinations provided in paragraph 10.b.(6) of the Partial Decree for the Main Salmon River and paragraph 10.b.(5) of the other Partial Decrees, the diversion amount and, if for irrigation, the acreage applied for that IDWR has determined will enjoy the benefit of the identified subordination provision. This subordination information will be posted to the subordination accounting database concurrently with issuance of the public notice along with the remaining balance of available diversion rate and acreage for the applicable subordination.

(2) Upon issuance of a water right permit that IDWR has determined will enjoy the benefit of any of the subordination provisions of the Partial Decrees, IDWR will post to the subordination accounting database the subordination provision that IDWR has determined is applicable to the permit and the affected Partial Decrees and, with respect to the subordinations provided in paragraph 10.b.(6) of the Main Salmon Partial Decree and paragraph 10.b.(5) of the other Partial Decrees, the diversion amount and, if for irrigation, the acreage, allocated to the permit that IDWR has determined will enjoy the benefit of the identified subordination provision, as well as the remaining balance of available diversion rate and acreage for that subordination provision.

(3) Issuance of a license for a water right enjoying subordination under paragraph 10.b.(6) of the Partial Decree for the Main Salmon River or paragraph 10.b.(5) of any other Partial Decree will be posted to the subordination accounting database. If the issuance of the license resulted in an adjustment of the diversion rate or, if for irrigation, the acreage, the

amount of the adjustment will be noted in the posting of the license and reflected in an adjustment of the remaining diversion rate and acreage available under the subordination.

(4) Upon entry of a partial decree for a claimed water right that IDWR has determined will enjoy the benefit of any of the subordination provisions of the Partial Decrees, IDWR will post the partial decree to the subordination database along with the identity of the subordination provision that IDWR has determined is applicable to the partial decrees and, with respect to the subordination provision provided in paragraph 10.b.(6) of the Partial Decree for the Main Salmon River and paragraph 10.b.(5) of the other Partial Decree, the diversion rate and, if for irrigation, the acreage, allocated to the partial decree that IDWR has determined will enjoy the benefit of the identified subordination provision, as well as the remaining balance of available diversion rate and acreage for that subordination provision.

(5) Upon determination that an application for permit or water right claim will, if approved, constitute a water right of the United States, an instream flow water right, a nonconsumptive water right or a replacement water right within the meaning of those terms as used in paragraph 10.b.(6)(C) of the Partial Decree for the Main Salmon River, paragraph 10.b.(5)(C) of the Partial Decree for the Middle Fork Salmon River, and paragraph 10.b.(5)(B) of the other Partial Decrees that would otherwise be deducted from the applicable subordination amounts for future rights, and upon issuance of a water rights decree, permit or license for a water right that IDWR has determined constitutes a water right of the United States, an instream flow water right, nonconsumptive water right or replacement water right as described above, IDWR will post to the subordination accounting database the type of water right IDWR has determined the right to be, the diversion rate and, if for irrigation, the acreage, applied for, claimed or allocated to the water rights decree, permit or license that IDWR has



determined constitutes a water right of the United States, an instream flow water right, nonconsumptive water right or replacement water right as described above;

(6) Any party may contact IDWR at any time to request additional information concerning the matters described above or to inform IDWR of concerns raised by IDWR's proposed determination with respect to any permit, license, partial decree, abandonment, forfeiture, or lapsing of a water right or any municipal connection in excess of 2 cfs. Any party may request reconsideration or explanation by IDWR of implementation or proposed implementation of any subordination provision at any time and the parties agree to make a good faith effort to resolve questions and reach agreement regarding implementation of the subordination provisions.

4. Resolution of Disputes Concerning Implementation of Stipulation. The parties and IDWR agree to make good faith efforts to resolve any disputes which arise concerning IDWR's implementation of this Stipulation. IDWR will provide any party requested information concerning the subject matter of any such disputes. In the event the parties are unable to resolve any such disputes, any party may seek review of IDWR's implementation and enforcement of this Stipulation and administration of the water rights confirmed by the Partial Decrees, including, but not limited to, administration of the subordination provisions of the Partial Decrees, in the SRBA Court or any successor state court with jurisdiction to enforce the final decree issued by the SRBA Court. Review shall be de novo and any disputed factual issues shall be decided based upon a preponderance of the evidence. Judicial review must be brought within six months of the challenged action, or within six months of the notification of the challenged action (if notice is required under the terms of the Stipulation), whichever is later.

5. Continuing Jurisdiction. The parties request the SRBA Court, by granting the Joint Motion for Order Approving Stipulation and Entry of Partial Decrees and entering the attached proposed Order, to retain jurisdiction for the purpose of resolving disputes regarding the implementation and enforcement of this Stipulation and administration of the water rights confirmed by the Partial Decrees, including, but not limited to, administration of the subordination provisions of the Partial Decrees.

6. Parties' Rights to Object to Claims and Protest Permit Applications.

a. Adjudication Claims. This Stipulation does not affect the right of any party to object to any other claims in the SRBA (i.e., claims other than the United States' Wild and Scenic Rivers Act claims which are the subject of this Stipulation) or any claim in any other adjudication. The United States, however, may not assert in any objection that the claim (if subordinated to by the applicable Partial Decree) should be denied or conditioned to protect the flow of any Wild and Scenic River subject to this Stipulation.

b. Permit Applications. This Stipulation does not affect the right of any party to protest any application for permit to appropriate water filed with IDWR. The United States, however, may not assert in any protest that the application for permit (if subordinated to by the applicable Partial Decree) should be denied or conditioned (including on public interest grounds) to protect the flow of any of the Wild and Scenic Rivers subject to this Stipulation.

7. Request for Approval of the Stipulation and Entry of Partial Decrees by the SRBA Court. The parties agree to submit this Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees to the SRBA Court in full satisfaction of Claim Nos. 75-13316, 77-11941, 77-13844, 78-11961, 81-10472, 81-10513, and 81-10625. The parties agree to jointly provide notice of the Stipulation and Motion through the SRBA Docket Sheet and by

personal notice to Objectors and to jointly present affidavits and such other evidence as may be required by the Court for the approval of the Stipulation and Partial Decrees.

8. Defense of Stipulation. The parties agree to jointly support and defend the Joint Motion for Order Approving the Stipulation and for Entry of Partial Decrees against any and all objections or other challenges that may arise in any phase of the SRBA, including any appeals. If the SRBA Court fails to approve the Stipulation and to enter the Partial Decrees exactly as set forth herein, the Stipulation is voidable by any party, provided that any party electing to void the Stipulation shall notify the other parties and the Court in writing of that election within 30 days of the order of the Court not approving the Stipulation and/or Partial Decrees as set forth herein. Failure to provide such notification in the manner provided shall result in forfeiture of such right. If the Stipulation is voided, all parties shall retain all existing claims and objections as though no Stipulation ever existed.

9. Stipulation Does Not Affect Statutory or Regulatory Authority. The parties agree that nothing in this Stipulation or the Partial Decrees shall be construed or interpreted:

a. to establish any standard to be used for the quantification of federal reserved water rights; or

b. to limit or affect the authority of the United States or the State provided by statute or regulation.

10. Stipulation Not to be Used Against Parties. The United States and Objectors agree and request the SRBA Court to confirm by granting the Joint Motion for Order Approving Stipulation and Entry of Partial Decrees and entering the attached proposed Order, that this Stipulation has been entered into based upon good faith negotiations for the purpose of resolving legal disputes, including pending litigation, by compromise and settlement and that nothing in

this Stipulation, including the stipulated entry of partial decrees for these claims and any affidavits or other evidence or pleading submitted for the approval of the Stipulation, or any offers or compromises made in the course of negotiating this 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 seeking approval of the Order Approving Stipulation and Entry of Partial Decrees, for interpretation, enforcement or administration of this Stipulation or the Partial Decrees or for a purpose contemplated by Idaho Rule of Evidence 408.

11. Stipulation and Partial Decrees Binding. This Stipulation shall bind and inure to the benefit of the respective successors of the parties. Upon entry of the Partial Decrees, the Partial Decrees shall be binding on all parties in the SRBA.

12. Mutual Covenants of Authority. The parties represent and acknowledge that each of the undersigned is authorized to execute this Stipulation and Joint Motion on behalf of the party they represent.

13. Non-Severability. The provisions of this Stipulation are not severable. If any provision of this Stipulation is found to be unlawful and of no effect, then the parties hereto shall resume negotiations to revise such unlawful provision.

14. Effective Date: The effective date of this Stipulation shall be September 1, 2003.

#### **JOINT MOTION FOR ORDER APPROVING STIPULATION AND ENTRY OF PARTIAL DECREES**

The parties request the SRBA Court to: (1) approve the foregoing Stipulation; (2) approve and enter the Partial Decrees for claims numbered 75-13316, 77-11941, 77-13844, 78-

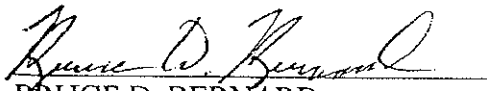
11961, 81-10472, 81-10513 and 81-10625; (3) retain jurisdiction for the purpose of resolving any disputes concerning implementation and enforcement of the Stipulation and administration of the water rights confirmed by the Partial Decrees, including, but not limited to, administration of the subordination provisions of the Partial Decrees; and (4) order that, 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 for the 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 seeking approval of the Order Approving Stipulation and Entry of Partial Decrees, for interpretation, enforcement or administration of the Stipulation or the Partial Decrees or for a purpose contemplated by Rule 408. The order sought by this Joint Motion, which is attached hereto, 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.

Wherefore, the United States and Objectors respectfully request that this Court grant this Joint Motion in all respects by entering the attached proposed order.

The United States and Objectors request expedited consideration of this Joint Motion.

The parties have executed this Stipulation and Joint Motion on the date following their respective signatures.

FOR THE UNITED STATES:



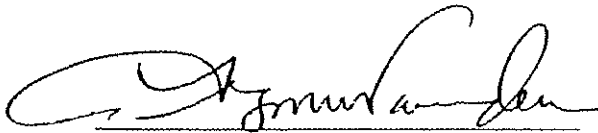
BRUCE D. BERNARD  
DAVID W. GEHLERT  
U.S. Department of Justice  
Environment and Natural Resources Division  
General Litigation Section  
999 18<sup>th</sup> Street, Suite 945  
Denver, Colorado 80202  
(303) 312-7319

Date:

8/17/04

DAVID L. NEGRI  
U.S. Department of Justice  
Environment and Natural Resources Division  
General Litigation Section  
550 W. Fort St. MSC033  
Boise, ID 83724  
(208) 331-5943

FOR THE STATE OF IDAHO, including THE IDAHO WATER RESOURCES BOARD:



Date:

8/ June /2004

LAWRENCE G. WASDEN,

Attorney General

CLIVE J. STRONG,

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Chief, Natural Resources Division

Office of the Attorney General

State of Idaho

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FOR DEWEY MINING COMPANY, THUNDER MOUNTAIN GOLD, INC., and POTLATCH CORPORATION:

Jeffrey C. Fereday

JEFFREY C. FEREDAY

Givens Pursley LLP

P.O. Box 2720

Boise, ID 83701-2720

(208) 388-1200

Date: 6/11/04



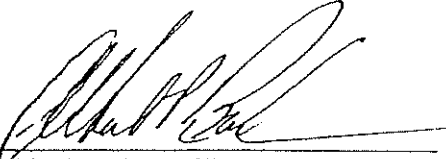
FOR CITY OF CHALLIS, CITY OF POCA TELLO, CITY OF SALMON, LAMB WESTON,  
INC., and BASIC AMERICAN, INC.:

*Josephine P. Beeman* Date: *July 12, 2004*

JOSEPHINE P. BEEMAN  
Beeman & Associates, P.C.

~~P.O. Box 1427~~ 409 W. Jefferson  
Boise, ID-83701-1427 83702  
(208) 331-0950

FOR BIG BEND IRRIGATION DISTRICT, BOISE-KUNA IRRIGATION DISTRICT, NEW YORK IRRIGATION DISTRICT, and WILDER IRRIGATION DISTRICT:



ALBERT P. BARKER  
Barker, Rosholt & Simpson LLP  
P.O. Box 2139  
Boise, ID 83701-2139  
(208) 336-0700

Date: July 17, 2004

FOR IDAHO POWER COMPANY:

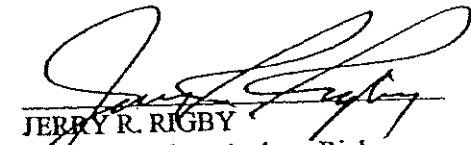


JAMES C. TUCKER  
Idaho Power Company  
P.O. Box 70  
Boise, ID 83707  
(208) 388-2112

Date: 7/22/04

MICHAEL MIRANDE  
Miller Bateman LLP  
1426 Alaskan Way, Suite 301  
Seattle, WA 98101  
(206) 903-0300

FOR A & B IRRIGATION DISTRICT, BURLEY IRRIGATION DISTRICT, TWIN FALLS CANAL COMPANY, NORTH SIDE CANAL COMPANY, PROGRESSIVE IRRIGATION DISTRICT, ENTERPRISE IRRIGATION DISTRICT, NEW SWEDEN IRRIGATION DISTRICT, SNAKE RIVER VALLEY IRRIGATION DISTRICT, IDAHO IRRIGATION DISTRICT, HARRISON CANAL & IRRIGATION COMPANY, BURGESS CANAL & IRRIGATION COMPANY, PEOPLES CANAL & IRRIGATION COMPANY, EGIN BENCH CANALS, INC., and NORTH FREMONT CANAL SYSTEMS, INC.:

  
JERRY R. RIGBY  
Rigby, Thatcher, Andrus, Rigby  
Kam & Moeller, Chtd.  
P.O. Box 250  
Rexburg, Idaho 83440-0250  
(208) 356-3633

Date: 6-11-04

FOR THOMAS R. STUART III, GENE BRAY, BONNIE SCHONEFELD, ALMA MARIE  
OSBORN, and PHYLLIS K. KOCHERT:



Date: July 16, 2004

WILLIAM EDDIE, Esq.  
Advocates for the West  
PO Box 1612  
Boise, ID 83701

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20<sup>th</sup> day of August, 2004, I served a true and correct copy of the foregoing **STIPULATION AND JOINT MOTION FOR 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 SRBA Court's Certificate of Mailing for Consolidated Subcase 75-13316 Wild and Scenic Rivers Act Claims.

Kevin D. Kennard

ATTACHMENT 1

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 Rights 75-13316 and 77-11941**  
**Salmon 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, ID 83724

**2. Source of water:** Salmon River

**3. Quantity of right:** a. When the stream flow at the Salmon River near Shoup  
quantification site as defined in Section 3.d. below (“Shoup  
gage”) is less than 13,600 cfs, the United States is entitled  
to the following flows:

Period of Use	Discharge (cfs)	Period of Use	Discharge (cfs)
January 1-15	1440	July 1-15	4730
January 16-31	1450	July 16-31	2700
February 1-15	1500	August 1-15	1390
February 16-28(29)	1550	August 16-31	1240
March 1-15	1510	September 1-15	1200
March 16-31	1540	September 16-30	1400
April 1-15	1590	October 1-15	1570
April 16-30	2470	October 16-31	1700
May 1-15	3920	November 1-15	1820
May 16-31	7310	November 16-30	1730
June 1-15	9450	December 1-15	1600
June 16-30	7790	December 16-31	1510

b. When the stream flow at the Shoup gage is greater than  
or equal to 13,600 cfs (as adjusted by upstream junior  
depletions, including depletions from water rights enjoying  
the subordination provided in this right), the United States  
is entitled to all flows, up to 28,400 cfs.

c. This water right does not prohibit the appropriation, diversion and use of water within the Salmon River basin upstream from the ending point of the Salmon Wild and Scenic River at Long Tom Bar and excluding the Middle Fork Salmon River basin, when the stream flow at the Shoup gage exceeds the flow amount in Section 3.a. and is less than 13,600 cfs (as adjusted by upstream junior depletions, including depletions from water rights enjoying the subordination provided in this right); provided, however, that the flow amounts identified in section 3.a. are maintained between the Shoup gage and the ending point of the Salmon Wild and Scenic River at Long Tom Bar.

d. The quantification site for the flows identified above is the USGS Salmon River near Shoup gage, number 13307000, located in NW1/4NE1/4, Sec. 14, T23N, R17E, Boise Meridian; Latitude N 45° 19' 20.8", Longitude W 114° 26' 21.2".

e. Water rights within the watershed of the Salmon River Basin upstream from the ending point of the Salmon Wild and Scenic River at Long Tom Bar will be administered to ensure the satisfaction of this right throughout the Wild and Scenic reach. When the stream flow at the Shoup gage is less than the flow amounts in section 3.a. or greater than 13,600 cfs (as adjusted by upstream junior depletions, including depletions from water rights enjoying the subordination provided in this right), water shall not be diverted at any location in the Salmon River basin above such ending point, including locations downstream from the Shoup gage (but excluding the Middle Fork Salmon River basin that is subject, instead, to the Middle Fork Salmon River Partial Decree No. 77-13844), other than under water rights enjoying the subordinations provided in section 10.b. "Futile call" may not be asserted as a basis for allowing any such downstream diversions so long as there is a hydraulic connection between the Salmon River and the right to be regulated.

f. This water right precludes any diversion of water out of the watershed of the Salmon River Basin upstream from the ending point of the Salmon Wild and Scenic River at Long Tom Bar, except for transfers of points of diversion from above the ending point to below the ending point.



- 4. Priority date:** July 23, 1980.
- 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:
- Beginning point: Mouth of the North Fork of the Salmon River -- SW1/4SW1/4, Sec. 16, T24N, R21E, Boise Meridian; Latitude N 45° 24' 17.6", Longitude W 113° 59' 36.7".
- Ending point: Long Tom Bar -- SE1/4SE1/4, Sec. 31, T25N, R5E, Boise Meridian; Latitude N 45° 27' 35.9", Longitude W 115° 52' 48.8".
- 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 Central Idaho Wilderness Act of 1980, Pub.L. 96-312, 94 Stat. 948, July 23, 1980 (codified as amended at 16 U.S.C. §§ 1132, 1274, 1281).
- 7. Period of use:** 01-01 to 12-31.
- 8. Place of use:** This instream flow water right is used throughout the designated Salmon 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 which 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 based on 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 Central Idaho Wilderness Act of 1980, Pub.L. 96-312, 94 Stat. 948, July 23, 1980 (codified as amended at 16 U.S.C. §§ 1132, 1274, 1281).
  - b. This Partial Decree is entered pursuant to that Stipulation among the United States, the State of Idaho and other objectors with an effective date of 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 Salmon River Basin upstream from the ending point, as 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-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(12) 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.

(5) All water rights having a priority date later than the effective date of the Stipulation and held by a municipality incorporated under Idaho Code, §§ 50-101 and -102, or an authorized franchise service provider for an incorporated municipality for use within the municipality's or provider's service area; provided, however, that any individual municipal hookup that has a manufacturer's rated maximum flow capacity of equal to or greater than 2 cfs of water on an instantaneous basis, other than capacity for fire protection, will count against the finite future subordination limit in paragraph (6) below. The phrase "municipal use" shall be defined as set forth at Idaho Code § 42-202B(5) and "service area" means that area within which a municipal provider is or becomes entitled or obligated to provide water for municipal purposes within the municipality's corporate limits or other recognized boundaries, including changes therein after a water right is developed. The service area for a municipality may also include areas outside its corporate limits, or other recognized boundaries, that are within the municipality's established planning area if the constructed delivery system for such outside areas share a common water distribution system with lands located within the corporate limits.

(6) (A) Water rights other than those described in paragraphs (3) through (5) above claimed or applied for after the effective date of the Stipulation:

(i) with a total combined diversion of 150 cfs (including not more than 5,000 acres of irrigation with a maximum diversion rate of 0.02 cfs/acre), when the mean daily discharge at the Shoup gage is  $< 1,280$  cfs. The specific acres to be irrigated each year will be identified to the IDWR by March 1 of each year, i.e., if a portion of the acreage permitted within this 150 cfs is to be idled for a year or more, an equal number of acres permitted for irrigation within the 225 cfs in subparagraph (ii) below can be substituted to take advantage of the subordination when the river is less than 1,280 cfs for the period of years the original acres are idled.

(ii) an additional diversion of 225 cfs (including up to an additional 10,000 acres of irrigation with a maximum diversion rate of 0.02 cfs/acre) when the mean daily discharge at the Shoup gage is  $\geq 1,280$  cfs.

(iii) These subordinated amounts do not include storage, other than incidental storage, which is defined as storage of not more than a 24 hour water supply for any beneficial use.

(B) The subordinated amounts identified in subparagraph (A) above apply to all diversions in the Salmon River basin above the ending point of this federal reserved water right, including diversions downstream from the Shoup gage, but excluding diversions in the Middle Fork Salmon River basin.

(C) Water rights of the United States, instream flow water rights, nonconsumptive water rights and replacement water rights shall not be deducted from the subordination amounts identified in this paragraph (5) for future rights. Nonconsumptive water rights mean all beneficial uses of water having these characteristics: i) the use involves no diversion from the designated reach of

the Wild and Scenic River as identified in this Partial Decree; ii) all return flows from the use accrue to the Wild and Scenic reach; and iii) the use does not cause a depletion or a change in timing of the flow (other than incidental evaporation or seepage) as determined at the point(s) of return, whether or not the depletion or change in timing can be measured within the designated reach. Examples of such uses include: i) run-of-the-river hydroelectric facilities; ii) fish propagation uses; and iii) other similar uses. Replacement water rights means all irrigation appropriations issued for the same purpose of use and place of use covered by an existing water right with no increase in period of use, diversion rate, and, if applicable, volume of water. To be considered a replacement water right: i) no element of the new appropriation may exceed that of the original water right; ii) only the original or the replacement water right or part of each water right may be used at the same time; and iii) the replacement water right cannot be used when water would not be legally and physically available under the original water right.

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

d. This water right is also subordinated to water right numbers 72-07193, 72-07219, 72-07220, 72-07257, and 72-07414 pursuant to the Order Approving Stipulation and Dismissing Objections in Consolidated Subcase Nos. 63-25239, 75-13316, and 75-13605, dated June 16, 1998.

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.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication

ATTACHMENT 2

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	)		PARTIAL DECREE FOR
	)		
CASE NO. 39576	)		Federal Reserved Water Right 77-13844
	)		
_____	)		Middle Fork Salmon 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, ID 83724

2. Source of water: Middle Fork Salmon River

3. Quantity of right: a. When the stream flow at the Middle Fork Salmon River  
quantification site as defined in Section 3.d. below  
("Middle Fork Salmon gage") is less than 14,400 cfs the  
United States is entitled to the following flows:

Period of Use	Discharge (cfs)	Period of Use	Discharge (cfs)
January 1-15	959	July 1-15	5170
January 16-31	1010	July 16-31	2550
February 1-15	1150	August 1-15	1790
February 16-28(29)	1150	August 16-31	1530
March 1-15	1150	September 1-15	1340
March 16-31	1500	September 16-30	1470
April 1-15	1500	October 1-15	1380
April 16-30	3510	October 16-31	1330
May 1-15	5450	November 1-15	1320
May 16-31	9210	November 16-30	1340
June 1-15	10800	December 1-15	1130
June 16-30	8760	December 16-31	1190

b. When the stream flow at the Middle Fork Salmon gage is  
greater than or equal to 14,400 cfs (as adjusted by upstream  
junior depletions, including depletions from water rights

enjoying the subordination provided in this right), the United States is entitled to all flows, up to 40,600 cfs.

c. This water right does not prohibit the appropriation, diversion and use of water within the Middle Fork Salmon River basin when the stream flow at the Middle Fork Salmon gage exceeds the flow amount in Section 3.a. and is less than 14,400 cfs.

d. The quantification site for the flows identified above is the USGS Middle Fork Salmon River measurement gage at the river's mouth near Shoup, gage number 13310199, located in SW1/4NE1/4, Sec. 33, T23N, R16E, Boise Meridian; Latitude N 45° 17' 38.0", Longitude W 114° 35' 43.0".

e. This water right precludes any diversion of water out of the watershed of the Middle Fork Salmon River Basin upstream from the ending point of the Middle Fork Salmon Wild and Scenic River at its confluence with the Salmon River, except for transfers of points of diversion from above the ending point to below the ending point.

**4. Priority date:**

October 2, 1968.

**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:

Beginning point: Origin of the Middle Fork Salmon River – NW1/4NW1/4, Sec. 23, T13N, R10E, Boise Meridian; Latitude N 44° 26' 57.0", Longitude W 115° 13' 47.9".

Ending point: Confluence with Salmon River – NE1/4NE1/4, Sec. 33, T23N, R16E, Boise Meridian; Latitude N 45° 17' 50.1", Longitude W 114° 35' 32.8".

**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.).

**7. Period of use:**

01-01 to 12-31.



**8. Place of use:**

This instream flow water right is used throughout the designated Middle Fork Salmon 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 which 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 based on 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.).

b. This Partial Decree is entered pursuant to that Stipulation among the United States, the State of Idaho and other objectors with an effective date of 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 Middle Fork Salmon River Basin upstream from the ending point, as 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-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(12) 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.

(5) (A) Water rights other than those described in paragraphs (3) and (4) above claimed or applied for after the effective date of the Stipulation with a total combined diversion of 60 cfs, provided that this amount shall include rights for irrigation of no more than 2,000 acres of irrigation with a maximum diversion rate of 0.02 cfs/acre. This subordinated amount does not include storage, other than incidental storage, which is defined as storage of not more than a 24-hour water supply for any beneficial use.

(B) In addition to the 60 cfs of subordination specified in subparagraph (A), above, a combined total of 5 cfs of diversions within (i) the east side of Monumental Creek basin upstream from and including the Mule Creek basin, to and including the Coon Creek basin; (ii) the west side of Marble Creek basin upstream from and including the Cornish Creek basin to and including the Sunnyside Creek basin; all as described on the map attached as Exhibit A, for any commercial or industrial uses, including storage of any portion of such 5 cfs for commercial or industrial use, provided that the total cumulative storage reservoir capacity established under the subordination described in this subparagraph (B) shall not be greater than 100 acre-feet.

(C) Water rights of the United States, instream flow water rights, nonconsumptive water rights and replacement water rights shall not be deducted from the subordination amounts identified in this paragraph (5) for future rights. Nonconsumptive water rights mean all beneficial uses of water having these characteristics: i) the use involves no diversion from the designated reach of the Wild and Scenic River as identified in this Partial Decree; ii) all return flows from the use accrue to the Wild and Scenic reach; and iii) the use does not cause a depletion or a change in timing of the flow (other than incidental evaporation or seepage) as determined at the point(s) of return, whether or not the depletion or change in timing can be measured within the designated reach. Examples of such uses include: i) run-of-the-river hydroelectric facilities; ii) fish propagation uses; and iii) other similar uses. Replacement water rights means all irrigation appropriations issued for the same purpose of use and place of use covered by an existing water right with no increase in period of use, diversion rate, and, if applicable, volume of water. To be considered a replacement water right: i) no element of the new appropriation may exceed that of the original water right; ii) only the original or the replacement water right or part of each water right may be used at the same time; and iii) the

replacement water right cannot be used when water would not be legally and physically available under the original water right.

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

d. 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.

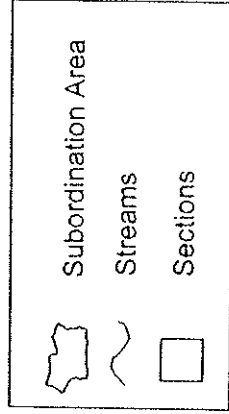
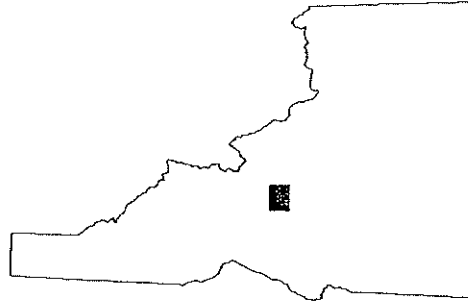
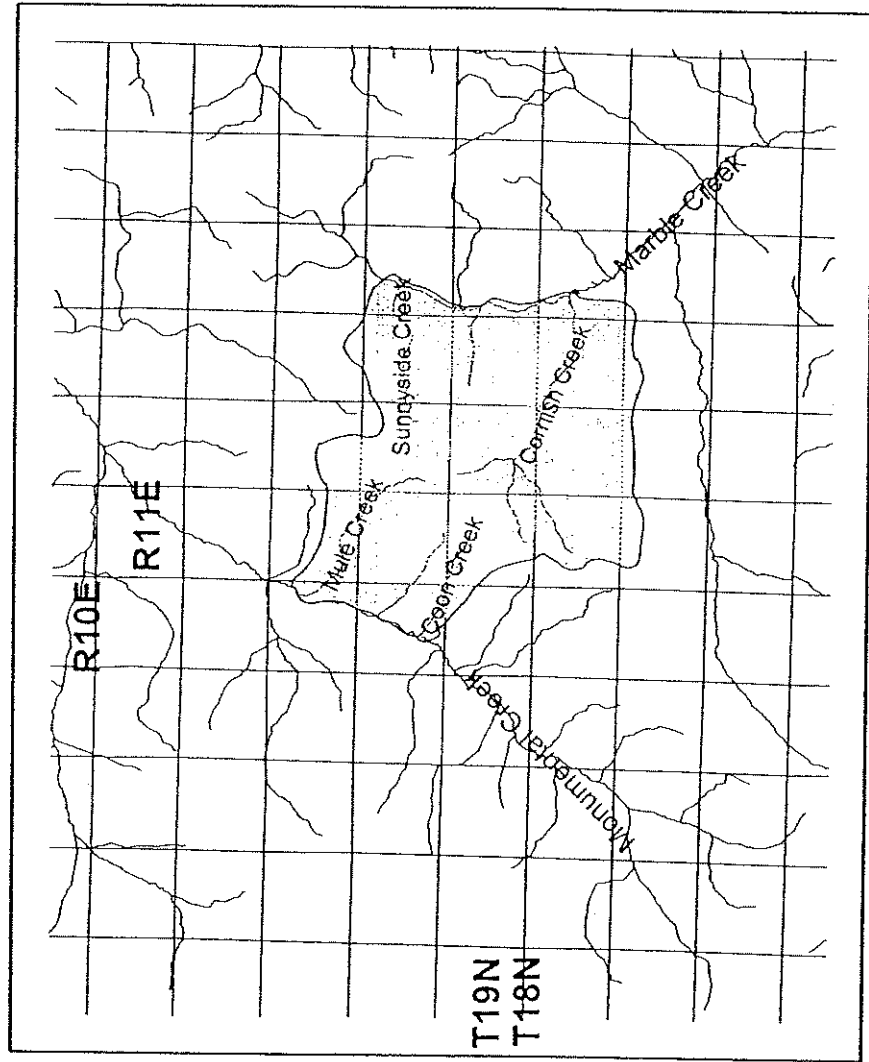
IT IS SO ORDERED.

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

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication

**Exhibit A**  
**Area Pertaining to Subordinations Under Element**  
**10.b.(5).B of Middle Fork Salmon Partial Decree**  
**77-13844**



ATTACHMENT 3

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	)		<b>PARTIAL DECREE FOR</b>
	)		
CASE NO. 39576	)		<b>Federal Reserved Water Rights 78-11961</b>
	)		<b>Rapid Wild and Scenic River (including West</b>
_____	)		<b>Fork)</b>

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:** Rapid River and West Fork Rapid River
  
3. **Quantity of right:**
  - a. When the stream flow at the Rapid River quantification site as defined in Section 3.d. below ("Rapid River gage") is less than 625 cfs, the United States is entitled to the following flows:

Period of Use	Discharge (cfs)	Period of Use	Discharge (cfs)
January 1-15	73	July 1-15	281
January 16-31	73	July 16-31	175
February 1-15	66	August 1-15	160
February 16-28(29)	63	August 16-31	136
March 1-15	75	September 1-15	124
March 16-31	99	September 16-30	118
April 1-15	109	October 1-15	108
April 16-30	160	October 16-31	97
May 1-15	249	November 1-15	87
May 16-31	403	November 16-30	88
June 1-15	524	December 1-15	73
June 16-30	432	December 16-31	78

b. When the stream flow at the Rapid River gage is greater than or equal to 625 cfs (as adjusted by upstream junior depletions, including depletions from water rights enjoying the subordination provided in this right), the United States is entitled to all flows, up to 2,160 cfs.

c. This water right does not prohibit the appropriation, diversion and use of water within the Rapid River basin upstream from the ending point of the Rapid Wild and Scenic River at the National Forest Boundary when the stream flow at the Rapid River gage exceeds the flow amount in Section 3.a. and is less than 625 cfs.

d. The quantification site for the flows identified above is the USDA Forest Service gage located in NE1/4NE1/4, Sec. 12, T23N, R1W, Boise Meridian; Latitude N 45° 21' 7.1", Longitude W 116° 23' 49.5".

e. This water right precludes any diversion of water out of the watershed of the Rapid Wild River Basin upstream from the ending point of the Rapid Wild and Scenic River at the National Forest Boundary as described below, except for transfers of points of diversion from above the ending point to below the ending point.

**4. Priority date:**

December 31, 1975.

**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:

Main Stem Rapid River:

Beginning point: Headwaters of the main stem Rapid River -- NE1/4SW1/4, Sec. 31, T21N, R1W, Boise Meridian; Latitude N 45° 06' 49.0", Longitude W 116° 30' 23.2".

Ending point: National Forest Boundary -- NE1/4NE1/4, Sec. 12, T23N, R1W, Boise Meridian; Latitude N 45° 21' 14.0", Longitude W 116° 23' 31.8".

West Fork Rapid River:

Beginning point: Wilderness boundary – NW1/4SW1/4, Sec. 1, T22N, R2W, Boise Meridian; Latitude N 45° 16' 19.1", Longitude W 116° 32' 1.4".

Ending point: Confluence with the main stem Rapid River – SW1/4NE1/4, Sec. 26, T23N, R1W, Boise Meridian; Latitude N 45° 18' 25.0", Longitude W 116° 25' 8.4".

- 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 Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified as amended at 16 U.S.C. §§ 460gg-469gg-13).
- 7. Period of use:** 01-01 to 12-31.
- 8. Place of use:** This instream flow water right is used throughout the designated Rapid Wild and Scenic River (including West Fork) from the beginning points to the ending points as identified above.
- 9. Annual volume of consumptive use:** This instream flow water right is non-consumptive (other than evaporation and evapotranspiration which 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 based on 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 Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified as amended at 16 U.S.C. §§ 460gg-469gg-13).
  - b. This Partial Decree is entered pursuant to that Stipulation among the United States, the State of Idaho and other objectors with an effective date of 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 Rapid River Basin upstream from the ending point, as 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-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(12) 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.

(5) (A) Water rights other than those described in paragraphs (3) and (4) above claimed or applied for after the effective date of the Stipulation with a total combined diversion of 10 cfs (including not more than 300 acres of irrigation with a maximum diversion rate of 0.02 cfs/acre. This subordinated amount does not include storage, other than incidental storage, which is defined as storage of not more than a 24 hour water supply for any beneficial use.

(B) Water rights of the United States, instream flow water rights, nonconsumptive water rights and replacement water rights shall not be deducted from the subordination amounts identified in this paragraph (5) for future rights. Nonconsumptive water rights mean all beneficial uses of water having these characteristics: i) the use involves no diversion from the designated reach of the Wild and Scenic River as identified in this Partial Decree; ii) all return flows from the use accrue to the Wild and Scenic reach; and iii) the use does not cause a depletion or a change in timing of the flow (other than incidental evaporation or seepage) as determined at the point(s) of return, whether or not the depletion or change in timing can be measured within the designated reach. Examples of such uses include: i) run-of-the-river hydroelectric facilities; ii) fish propagation uses; and iii) other similar uses. Replacement water rights means all irrigation appropriations issued for the same purpose of use and place of use covered by an existing water right with no increase in period of use, diversion rate, and, if applicable, volume of water. To be considered a replacement water right: i) no element of the new appropriation may exceed that of the original water right; ii) only the original or the replacement water right or part of each water

right may be used at the same time; and iii) the replacement water right cannot be used when water would not be legally and physically available under the original water right.

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

d. 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.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication

ATTACHMENT 4

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	)		PARTIAL DECREE FOR
	)		
CASE NO. 39576	)		Federal Reserved Water Right 81-10472
	)		
_____	)		Selway 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, ID 83724

**2. Source of water:** Selway River

**3. Quantity of right:** a. When the stream flow at the Selway River quantification site as defined in Section 3.d. below ("Selway gage") is less than 23,700 cfs, the United States is entitled to the following flow:

Period of Use	Discharge (cfs)	Period of Use	Discharge (cfs)
January 1-15	1670	July 1-15	5840
January 16-31	1670	July 16-31	2490
February 1-15	1670	August 1-15	1350
February 16-28(29)	1670	August 16-31	1000
March 1-15	1670	September 1-15	852
March 16-31	2220	September 16-30	960
April 1-15	5840	October 1-15	1080
April 16-30	9470	October 16-31	1310
May 1-15	13300	November 1-15	1660
May 16-31	19400	November 16-30	1740
June 1-15	19400	December 1-15	1670
June 16-30	13300	December 16-31	1670

b. When the stream flow at the Selway gage is greater than or equal to 23,700 cfs (as adjusted by upstream junior depletions, including depletions from water rights enjoying

the subordination provided in this right), the United States is entitled to all flows, up to 51,400 cfs.

c. This water right does not prohibit the appropriation, diversion and use of water within the Selway River basin when the stream flow at the Selway gage exceeds the flow amount in Section 3.a. and is less than 23,700 cfs.

d. The quantification site for the flows identified above is the USGS Selway River near Lowell gage, number 13336500, located in SE1/4NE1/4, Sec. 25, T32N, R7E, Boise Meridian; Latitude N 46° 05' 11.6", Longitude W 115° 30' 46.3".

e. This water right precludes any diversion of water out of the watershed of the Selway River Basin upstream from the ending point of the Selway Wild and Scenic River at its confluence with the Lochsa River at Lowell, except for transfers of points of diversion from above the ending point to below the ending point.

**4. Priority date:**

October 2, 1968.

**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:

Beginning point: Origin of the Selway River --  
SW1/4NE1/4, Sec. 21, T25N, R14E, Boise Meridian;  
Latitude N 45° 29' 48.9", Longitude W 114° 44' 33.7".

Ending point: Confluence with the Lochsa River at Lowell  
-- NW1/4SW1/4, Sec. 4, T32N, R7E, Boise Meridian;  
Latitude N 46° 08' 25.0", Longitude W 115° 35' 54.8".

**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.).

**7. Period of use:**

01-01 to 12-31.

**8. Place of use:**

This instream flow water right is used throughout the designated Selway 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 which 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 based on 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.).

b. This Partial Decree is entered pursuant to that Stipulation among the United States, the State of Idaho and other objectors with an effective date of 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 Selway River Basin upstream from the ending point, as described 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(12) 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.

(5) (A) Water rights other than those described in paragraphs (3) and (4) above claimed or applied for after the effective date of the Stipulation with a total combined diversion of 40 cfs (including not more than 500 acres of irrigation with a maximum diversion rate of 0.02 cfs/acre and no storage other than incidental storage). This subordinated amount does not include storage, other than incidental storage, which is defined as storage of not more than a 24 hour water supply for any beneficial use.

(B) Water rights of the United States, instream flow water rights, nonconsumptive water rights and replacement water rights shall not be deducted from the subordination amounts identified in this paragraph (5) for future rights. Nonconsumptive water rights mean all beneficial uses of water having these characteristics: i) the use

involves no diversion from the designated reach of the Wild and Scenic River as identified in this Partial Decree; ii) all return flows from the use accrue to the Wild and Scenic reach; and iii) the use does not cause a depletion or a change in timing of the flow (other than incidental evaporation or seepage) as determined at the point(s) of return, whether or not the depletion or change in timing can be measured within the designated reach. Examples of such uses include: i) run-of-the-river hydroelectric facilities; ii) fish propagation uses; and iii) other similar uses. Replacement water rights means all irrigation appropriations issued for the same purpose of use and place of use covered by an existing water right with no increase in period of use, diversion rate, and, if applicable, volume of water. To be considered a replacement water right: i) no element of the new appropriation may exceed that of the original water right; ii) only the original or the replacement water right or part of each water right may be used at the same time; and iii) the replacement water right cannot be used when water would not be legally and physically available under the original water right.

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

d. 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.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication



ATTACHMENT 5

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	)		PARTIAL DECREE FOR
	)		
CASE NO. 39576	)		Federal Reserved Water Right 81-10513
	)		
_____	)		Lochsa 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, ID 83724

**2. Source of water:** Lochsa River

**3. Quantity of right:** a. When the stream flow at the Lochsa River quantification site as defined in Section 3.d. below ("Lochsa gage") is less than 18,600 cfs, the United States is entitled to the following flow:

Period of Use	Discharge (cfs)	Period of Use	Discharge (cfs)
January 1-15	933	July 1-15	3600
January 16-31	933	July 16-31	1400
February 1-15	933	August 1-15	989
February 16-28(29)	933	August 16-31	743
March 1-15	933	September 1-15	646
March 16-31	2750	September 16-30	719
April 1-15	4620	October 1-15	855
April 16-30	8030	October 16-31	933
May 1-15	10300	November 1-15	933
May 16-31	17600	November 16-30	933
June 1-15	13600	December 1-15	933
June 16-30	8030	December 16-31	933

b. When the stream flow at the Lochsa gage is greater than or equal to 18,600 cfs (as adjusted by upstream junior depletions, including depletions from water rights enjoying

the subordination provided in this right), the United States is entitled to all flows, up to 39,300 cfs.

c. This water right does not prohibit the appropriation, diversion and use of water within the Lochsa River basin when the stream flow at the Lochsa gage exceeds the flow amount in Section 3.a. and is less than 18,600 cfs.

d. The quantification site for the flows identified above is the USGS Lochsa River near Lowell gage, number 13337000, located in SW1/4SE1/4, Sec. 33, T33N, R7E, Boise Meridian; Latitude N 46° 09' 2.1", Longitude W 115° 35' 10.6".

e. This water right precludes any diversion of water out of the watershed of the Lochsa River Basin, upstream from the ending point of the Lochsa Wild and Scenic River at its confluence with the Selway River at Lowell, except for transfers of points of diversion from above the ending point to below the ending point.

**4. Priority date:**

October 2, 1968.

**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:

Beginning point: Powell Ranger Station (USDA Forest Service) -- SW1/4NW1/4, Sec. 33, T37N, R14E, Boise Meridian; Latitude N 46° 30' 33.1", Longitude W 114° 42' 43.1".

Ending point: Confluence with the Selway River at Lowell -- NW1/4SW1/4, Sec. 4, T32N, R7E, Boise Meridian; Latitude N 46° 08' 25.0", Longitude W 115° 35' 54.8".

**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.).

**7. Period of use:**

01-01 to 12-31.

**8. Place of use:**

This instream flow water right is used throughout the designated Lochsa 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 which 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 based on 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.).

b. This Partial Decree is entered pursuant to that Stipulation among the United States, the State of Idaho and other objectors with an effective date of 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 Lochsa River Basin upstream from the ending point, as 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-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(12) 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.

(5) (A) Water rights other than those described in paragraphs (3) and (4) above claimed or applied for after the effective date of the Stipulation with a total combined diversion of 40 cfs (including not more than 500 acres of irrigation with a maximum diversion rate of 0.02 cfs/acre. This subordinated amount does not include storage, other than incidental storage, which is defined as storage of not more than a 24 hour water supply for any beneficial use.

(B) Water rights of the United States, instream flow water rights, nonconsumptive water rights and replacement water rights shall not be deducted from the subordination amounts identified

in this paragraph (5) for future rights.

Nonconsumptive water rights mean all beneficial uses of water having these characteristics: i) the use involves no diversion from the designated reach of the Wild and Scenic River as identified in this Partial Decree; ii) all return flows from the use accrue to the Wild and Scenic reach; and iii) the use does not cause a depletion or a change in timing of the flow (other than incidental evaporation or seepage) as determined at the point(s) of return, whether or not the depletion or change in timing can be measured within the designated reach. Examples of such uses include: i) run-of-the-river hydroelectric facilities; ii) fish propagation uses; and iii) other similar uses. Replacement water rights means all irrigation appropriations issued for the same purpose of use and place of use covered by an existing water right with no increase in period of use, diversion rate, and, if applicable, volume of water. To be considered a replacement water right: i) no element of the new appropriation may exceed that of the original water right; ii) only the original or the replacement water right or part of each water right may be used at the same time; and iii) the replacement water right cannot be used when water would not be legally and physically available under the original water right.

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

d. 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.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication

ATTACHMENT 6

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 81-10625**  
**Middle Fork Clearwater 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, ID 83724
- 2. Source of water:**                    Middle Fork Clearwater River
- 3. Quantity of right:**                a. When the stream flow at the Middle Fork Clearwater  
  River quantification site as defined in Section 3.d. below  
  ("Middle Fork Clearwater site") is less than 37,900 cfs, the  
  United States is entitled to the following flows:

Period of Use	Discharge (cfs)	Period of Use	Discharge (cfs)
January 1-15	2070	July 1-15	6250
January 16-31	2070	July 16-31	3100
February 1-15	2070	August 1-15	2320
February 16-28(29)	2070	August 16-31	1730
March 1-15	2070	September 1-15	1480
March 16-31	4040	September 16-30	1660
April 1-15	6850	October 1-15	1920
April 16-30	12700	October 16-31	2070
May 1-15	18200	November 1-15	2070
May 16-31	25100	November 16-30	2070
June 1-15	22000	December 1-15	2070
June 16-30	13000	December 16-31	2070

- b. When the stream flow at the Middle Fork Clearwater site is greater than or equal to 37,900 cfs (as adjusted by upstream junior depletions, including depletions from water

rights enjoying the subordination provided in this right), the United States is entitled to all flows, up to 80,700 cfs.

c. This water right does not prohibit the appropriation, diversion and use of water within the Middle Fork Clearwater River basin upstream from the ending point of the Middle Fork Clearwater Wild and Scenic River at the town of Kooskia when the stream flow at the Middle Fork Clearwater site exceeds the flow amount in Section 3.a. and is less than 37,900 cfs.

d. The quantification site for the flows identified above is at or above the ending point described below, either: based on the sum of the discharges measured at the USGS Lochsa River near Lowell gage, number 13337000, located in SW1/4SE1/4, Sec. 33, T33N, R7E, Boise Meridian; Latitude N 46° 09' 2.1", Longitude W 115° 35' 10.6", and at the USGS Selway River near Lowell gage, number 13336500, located in SE1/4NE1/4, Sec. 25, T32N, R7E, Boise Meridian; Latitude N 46° 05' 11.6", Longitude W 115° 30' 46.3", or the discharge measured at a new stream gage to be established in the vicinity of the ending point described below.

e. This water right precludes any diversion of water out of the watershed of the Middle Fork Clearwater River Basin upstream from the ending point of the Middle Fork Clearwater Wild and Scenic River at the town of Kooskia, except for transfers of points of diversion from above the ending point to below the ending point.

**4. Priority date:**

October 2, 1968.

**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:

Beginning point: Confluence of the Lochsa and Selway Rivers at the town of Lowell, Idaho -- NW1/4SW1/4, Sec. 4, T32N, R7E, Boise Meridian; Latitude N 46° 08' 25.0", Longitude W 115° 35' 54.8".



Ending point: Town of Kooskia, Idaho -- NE1/4SW1/4, Sec. 4, T32N, R4E, Boise Meridian; Latitude N 46° 08' 26.6", Longitude W 115° 57' 54.5".

- 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.).
- 7. Period of use:** 01-01 to 12-31.
- 8. Place of use:** This instream flow water right is used throughout the designated Middle Fork Clearwater 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 which 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 based on 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.).
  - b. This Partial Decree is entered pursuant to that Stipulation among the United States, the State of Idaho and other objectors with an effective date of 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 Middle Fork Clearwater River Basin upstream from the ending point, as described 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(12) 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.

(5) (A) Water rights other than those described in paragraphs (3) and (4) above claimed or applied for after the effective date of the Stipulation with a

total combined diversion of 40 cfs (including not more than 500 acres of irrigation with a maximum diversion rate of 0.02 cfs/acre. The 40 cfs of diversion and not more than 500 acres of irrigation are in addition to the 40 cfs of diversion and not more than 500 acres of irrigation from each, the Selway and Lochsa Rivers upstream from their confluence with the Middle Fork Clearwater River. This subordinated amount does not include storage, other than incidental storage, which is defined as storage of not more than a 24 hour water supply for any beneficial use.

(B) Water rights of the United States, instream flow water rights, nonconsumptive water rights and replacement water rights shall not be deducted from the subordination amounts identified in this paragraph (5) for future rights. Nonconsumptive water rights mean all beneficial uses of water having these characteristics: i) the use involves no diversion from the designated reach of the Wild and Scenic River as identified in this Partial Decree; ii) all return flows from the use accrue to the Wild and Scenic reach; and iii) the use does not cause a depletion or a change in timing of the flow (other than incidental evaporation or seepage) as determined at the point(s) of return, whether or not the depletion or change in timing can be measured within the designated reach. Examples of such uses include: i) run-of-the-river hydroelectric facilities; ii) fish propagation uses; and iii) other similar uses. Replacement water rights means all irrigation appropriations issued for the same purpose of use and place of use covered by an existing water right with no increase in period of use, diversion rate, and, if applicable, volume of water. To be considered a replacement water right: i) no element of the new appropriation may exceed that of the original water right; ii) only the original or the replacement water right or part of each water right may be used at the same time; and iii) the replacement water right cannot be used when water would not be legally and physically available under the original water right.

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

d. 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.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication

**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	)	
	)	
	)	<b>Consolidated Subcase No. 75-13316</b>
	)	<b>Wild &amp; Scenic Rivers Act Claims</b>
	)	<b>(Encompassing Subcases 75-13316, 77-11941, 77-13844</b>
	)	<b>78-11961, 81-10472, 81-10513 and 81-10625)</b>
	)	
CASE NO. 39576	)	<b>Order Approving Stipulation and Entry of</b>
	)	<b>Partial Decrees</b>
	)	
_____	)	

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; the Court having reviewed the Stipulation, the proposed Partial Decrees and supporting affidavits 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 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. All terms of the Stipulation and 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.

2. The Court shall retain jurisdiction for the purpose of resolving disputes regarding the implementation and enforcement of the Stipulation and administration of the water rights confirmed by the Partial Decrees, including, but not limited to, the relationship between these federal water rights and other water rights and administration of the subordination provisions of the Partial Decrees.

3. 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.

4. 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.

---

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



RECEIVED  
MAY 12 2000  
CLERK OF DISTRICT  
COURT

# EXHIBIT C

to

Thompson Creek Mining Company's  
Petition for Judicial Review of Idaho Department of  
Water Resources' Amended Final Order Creating  
Water District No. 170



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 measurement 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.

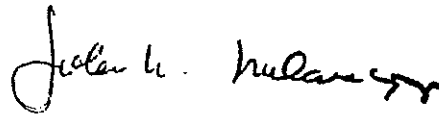
4. Pursuant to Idaho Rule of Evidence 408, nothing in the Stipulation, including the stipulated entry of Partial Decrees for these claims and any affidavits or other evidence or pleading submitted or relied upon for approval of the Stipulation, or any offers or compromises made in the course of negotiating 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.

6. This *Amended Order* supercedes the *Order Approving Stipulation and Entry of Partial Decrees* dated November 16, 2004, which was issued in error.

IT IS SO ORDERED.

DATED November 17, 2004.



---

JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the AMENDED ORDER APPROVING STIPULATION AND ENTRY OF PARTIAL DECREES was mailed on November 17, 2004, with sufficient first-class postage to the following:

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# EXHIBIT D

to

Thompson Creek Mining Company's  
Petition for Judicial Review of Idaho Department of  
Water Resources' Amended Final Order Creating  
Water District No. 170

UNITED STATES OF AMERICA

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Counsel for the United States of America

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	)	Consolidated Subcase Nos.: 63-25239, 75-13316
	)	and 75-13605
CASE NO. 39576	)	
	)	Stipulation and Joint Motion for Order Approving
	)	Stipulation and Dismissing Objections
	)	
_____	)	



## DESCRIPTIVE SUMMARY

This document is the Stipulation and Joint Motion for Order Approving Stipulation and Dismissing Objections, filed by the United States of America and Thompson Creek Mining Company.

## STIPULATION

The United States of America ("United States") and Thompson Creek Mining Company ("Thompson Creek"), by and through their respective undersigned counsel, hereby stipulate and agree as follows:

1. Thompson Creek's withdrawal of its opposition to United States' claims: The objections filed by Thompson Creek against claims numbered 77-10986 (Salmon River MUSY-recreation claim), 75-13316 and 77-11941 (Salmon River Wild & Scenic River claims), and 75-13605 and 77-12775 (Church Wilderness claims) are hereby withdrawn with prejudice, subject to the Court approving the attached Order Approving Stipulation and Dismissing Objections. Thompson Creek also agrees to promptly withdraw from any further participation in appellate proceedings involving the United States' Wilderness Claims in consolidated subcase no. 75-13605, Supreme Court No. 24545, 24546, 24547, 24548, 24557, 24558 and 24559 (consolidated under Supreme Court No. 24545), and the United States' MUSY Claims in consolidated subcase no. 63-25239, Supreme Court No. 24560. Thompson Creek further agrees that it shall not file any objections against any of the United States' claims made on behalf of the U.S.D.A. Forest Service as

identified in Attachment 1 hereto, including the United States' claims made under state law for MUSY purposes.

2. Clarification concerning claims to be withdrawn: The United States has previously notified the Idaho Department of Water Resources ("IDWR") and the Court that claims numbered 75-13606 and 77-12776 were incorrectly abstracted and should be withdrawn (incorrectly abstracted Church Wilderness claims). The United States has also previously notified the parties, including Thompson Creek and the State, that claim number 75-13504 was to be withdrawn (4<sup>th</sup> of July Creek MUSY-recreation claim). The United States and Thompson Creek agree that those claims, including both the federal and state law bases for the United States' 4<sup>th</sup> of July Creek MUSY-recreation claim number 75-13504, shall be withdrawn with prejudice, each party to bear its own costs, fees and expenses.
3. United States' subordination of its claims: The United States hereby subordinates its claims numbered 77-10986, 75-13316, 77-11941, 75-13605 and 77-12775 to Thompson Creek claims numbered 72-07193, 72-07219, 72-07220, 72-07257 and 72-07414 (the "Thompson Creek claims"). The United States' subordination of its Salmon River MUSY-recreation claim number 77-10986 to the Thompson Creek claims includes subordination of both the federal and state law bases for that claim, and shall apply to any new claim number which may be assigned by IDWR to the state law basis for that claim. The United States further agrees that it shall not object to the Thompson Creek claims in further proceedings in the

Snake River Basin Adjudication (“SRBA”). Based upon the subordination of the United States’ claims to the Thompson Creek claims, the United States and Thompson Creek agree and request the Court to confirm by approving the attached Order Approving Stipulation and Dismissing Objections, that the existence of the United States’ claims or water rights shall not preclude the Court from approving and decreeing Thompson Creek’s claims or water rights for any reason, including but not limited to the basis that water is not legally available for appropriation.

4. Stipulation not to be used against parties: The United States and Thompson Creek agree and request the Court to confirm by approving the attached Order Approving Stipulation and Dismissing Objections, that this Stipulation has been entered into based upon good faith negotiations for the purpose of resolving legal disputes, including pending litigation, by compromise and settlement and that nothing in this Stipulation, including the United States’ subordination of its claims to the Thompson Creek claims, or any offers or compromises made in the course of negotiating this Stipulation, shall be construed as admissions against interest or tendered or used as evidence to show the validity or invalidity of the United States’ or Thompson Creek’s claims, 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 seeking approval of the Order

Approving Stipulation and Dismissing Objections, for interpretation or enforcement of this Stipulation or for a purpose contemplated by Idaho Rule of Evidence 408.

**JOINT MOTION FOR ORDER APPROVING STIPULATION  
AND DISMISSING OBJECTIONS**

The United States and Thompson Creek request the Court to approve the foregoing Stipulation, to order that the objections filed by Thompson Creek Mining Company to claims numbered 77-10986, 75-13316, 77-11941, 75-13605 and 77-12775 are dismissed with prejudice, and to order that, pursuant to Idaho Rule of Evidence 408, nothing in the Stipulation, including the United States' subordination of its claims to the Thompson Creek claims, 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 show the validity or invalidity of the United States' or Thompson Creek's claims, 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 seeking approval of the Order Approving Stipulation and Dismissing Objections, for interpretation or enforcement of the Stipulation or for a purpose contemplated by Rule 408.

The Memorandum In Support Of Joint Motion For Order Approving Stipulation And Dismissing Objections filed herewith establishes that the order sought by this motion, which is attached hereto, is fully in accordance with the language of Idaho Rule of Evidence 408. Such an order would serve not only to facilitate the settlement between the United States and Thompson Creek, thus streamlining the process, but would very likely have the effect of encouraging future

settlements in the SRBA. The provisions of Rule 408, as well as the policy underlying that rule and the policy of the SRBA district court, are directed at furthering the strong public policy favoring out-of-court settlement of disputes over litigation.

Wherefore, the United States and Thompson Creek respectfully request that this Court grant this motion in all respects by entering the attached proposed order.

The United States and Thompson Creek further request oral argument and expedited consideration of this matter.

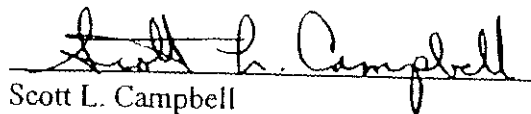
Dated May 29, 1998



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Counsel for the United States of America

Dated May 26, 1998



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(208) 343-5454

Counsel for Thompson Creek Mining Company

Attachment 1

PRIM_PURP_USE	SOURCE_NAME	BASIN	ST_FILE_NO
C	BOISE RIVER	63	25243
C	LITTLE SLATE CREEK	79	10755
C	LOCHSA RIVER	81	10492
C	LOLO CREEK	84	10893
C	NORTH FORK CLEARWATER RIVER	83	10805
C	RAPID RIVER	78	10670
C	RED RIVER	82	10954
C	SELWAY RIVER	81	10622
C	SOUTH FORK PAYETTE RIVER	65	19565
C	SOUTH FORK RED RIVER	82	10976
C	SOUTH FORK SALMON RIVER	77	11792
F	VALLEY CREEK	71	10434
F	BOISE RIVER	63	25239
F	LOCHSA RIVER	81	10501
F	LOLO CREEK	84	10884
F	NORTH FORK CLEARWATER RIVER	83	10806
F	RAPID RIVER	78	10669
F	RED RIVER	82	10953
F	SELWAY RIVER	81	10623
F	SOUTH FORK PAYETTE RIVER	65	19559
F	SOUTH FORK RED RIVER	82	10523
F	SOUTH FORK SALMON RIVER	77	11791
H	BONNEVILLE HOT SPRINGS	65	19505
H	JERRY JOHNSON HOT SPRINGS	81	10679
H	KIRKHAM HOT SPRING	65	19472
L	ALTURAS LAKE	71	10370
L	BAYHORSE LAKE	72	11015
L	BULL TROUT LAKE	65	19487
L	HAZARD LAKE	78	10564
L	PETTIT LAKE	71	10364
L	REDFISH LAKE	71	10372
L	STANLEY LAKE	71	10368
L	WARM LAKE	77	10665
W&S	CLEARWATER RIVER, MIDDLE FORK	81	10625
W&S	LOCHSA RIVER	81	10513
W&S	MIDDLE FORK SALMON	77	13844
W&S	RAPID RIVER	78	11961
W&S	SALMON RIVER	77	11941
W&S	SALMON RIVER	75	13316
W&S	SELWAY RIVER	81	10472
R	LOWER S FK CLEARWATER RIVER	82	10950
R	MIDDLE FORK BOISE RIVER	63	25430
R	NORTH FORK CLEARWATER RIVER	83	10807
R	SALMON RIVER	72	11183
R	SALMON RIVER	72	11218
R	SALMON RIVER	71	10416
R	SALMON RIVER	77	10986
W	FRANK CHURCH RIVER OF NO RETURN WILDERNESS	75	13605
W	FRANK CHURCH RIVER OF NO RETURN WILDERNESS	77	12775
W	GOSPEL HUMP WILDERNESS	82	11120
W	GOSPEL HUMP WILDERNESS	77	12774
W	SELWAY BITTERROOT WILDERNESS	81	11191
NRA	HELLS CANYON NRA	79	13597
NRA	SAWTOOTH NRA	65	20766
NRA	SAWTOOTH NRA	63	30428
NRA	SAWTOOTH NRA	72	16272
NRA	SAWTOOTH NRA	71	10761
NRA	SAWTOOTH NRA	37	19833

**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	)	<b>Consolidated Subcase Nos.: 63-25239,</b>
	)	<b>75-13316 and 75-13605</b>
Case No. 39576	)	
	)	<b>ORDER APPROVING STIPULATION</b>
	)	<b>AND DISMISSING OBJECTIONS</b>
_____	)	

The United States of America ("United States") and Thompson Creek Mining Company ("Thompson Creek"), through their respective counsel of record, have presented a Stipulation and Joint Motion For Order Approving Stipulation And Dismissing Objections ("Stipulation"), dated May \_\_\_\_, 1998, and a Memorandum In Support Of Joint Motion For Order Approving Stipulation And Dismissing Objections ("Memorandum"). The Stipulation deals with the terms under which Thompson Creek shall withdraw its objections to claims filed by the United States.

Based upon the Court's review of the Stipulation and the Memorandum and the file in this matter,

THE COURT HEREBY ORDERS that all terms of the Stipulation are approved by the Court and shall govern these proceedings as among the parties to the Stipulation and among the parties to the SRBA and that:

1. The objections filed by Thompson Creek against claims numbered 77-10986, 75-11316, 77-11941, 75-13605 and 77-12775 are deemed withdrawn with prejudice.
2. The terms of the subordination set forth in the Stipulation shall be incorporated in

the partial decrees entered for claims numbered 77-10986, 75-11316, 77-11941, 75-13605 and 77-12775 (and in any partial decree which may be entered for any new claim number which may be assigned by the Idaho Department of Water Resources to the state law basis for claim number 77-10986) and in the final decree entered in this matter, and, based upon the subordination of the United States' claims to the Thompson Creek claims as set forth in the Stipulation, the existence of the United States' claims or water rights shall not preclude the Court from approving and decreeing those Thompson Creek claims or water rights for any reason, including but not limited to the basis that water is not legally available for appropriation.

3. Pursuant to Idaho Rule of Evidence 408, nothing in the Stipulation or this Order, including the United States' subordination of its claims to the Thompson Creek claims, 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 show the validity or invalidity of the United States' or Thompson Creek's claims, 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 or enforcement of the Stipulation or for a purpose contemplated by Rule 408.



IT IS SO ORDERED.

DATED this \_\_\_\_\_ day of May, 1998.

---

DANIEL C. HURLBUTT, JR.  
Presiding Judge  
Snake River Basin Adjudication

**CERTIFICATE OF MAILING**

I certify that a true and correct copy of the **ORDER APPROVING STIPULATION AND DISMISSING OBJECTIONS** was mailed on May \_\_\_\_\_, 1998, with sufficient first-class postage to the following:

IDWR Document Depository  
PO Box 83720  
Boise, ID 83720-0098

All parties to the MUSY Claims. Consolidated Subcase 63-25239

All parties to the Wild and Scenic Rivers Claims, Consolidated Subcase 75-13316

All parties to the Wilderness Claims. Consolidated Subcase 75-13605

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Deputy Clerk

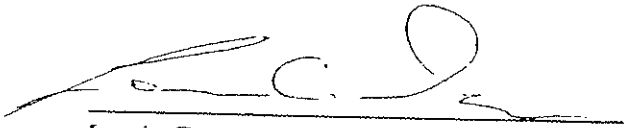
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 29<sup>th</sup> day of May, 1998, I served a true and correct copy of the foregoing **STIPULATION AND JOINT MOTION FOR ORDER APPROVING STIPULATION AND DISMISSING OBJECTIONS**, by depositing a copy thereof in the U.S. mail, postage prepaid, or via <sup>Fed Ex</sup> [REDACTED] where indicated, upon the following:

All parties indicated on the attached Certificate of Service for  
MUSY Claims

All parties indicated on the attached Certificate of Service for Wild  
and Scenic Rivers Claims

All parties indicated on the attached Certificate of Service for  
Wilderness Claims

  
Lorrin Dyer

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DEPARTMENT OF  
WATER RESOURCES

# EXHIBIT E

to

Thompson Creek Mining Company's  
Petition for Judicial Review of Idaho Department of  
Water Resources' Amended Final Order Creating  
Water District No. 170

1998 JUN 16 PM 3: 21

DISTRICT COURT-SRBA  
TWIN FALLS CO. 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

Case No. 39576

) **Consolidated Subcase Nos.: 63-25239,**  
) **75-13316 and 75-13605**

) **ORDER APPROVING STIPULATION**  
) **AND DISMISSING OBJECTIONS**

\_\_\_\_\_ )  
The United States of America ("United States") and Thompson Creek Mining Company ("Thompson Creek"), through their respective counsel of record, have presented a Stipulation and Joint Motion For Order Approving Stipulation And Dismissing Objections ("Stipulation"), dated May 29, 1998, and a Memorandum In Support Of Joint Motion For Order Approving Stipulation And Dismissing Objections ("Memorandum"). The Stipulation deals with the terms under which Thompson Creek shall withdraw its objections to claims filed by the United States.

Based upon the Court's review of the Stipulation and the Memorandum and the file in this matter,

THE COURT HEREBY ORDERS that all terms of the Stipulation are approved by the Court and shall govern these proceedings as among the parties to the Stipulation and among the parties to the SRBA and that:


1. The objections filed by Thompson Creek against claims numbered 77-10986, 75-11316, 77-11941, 75-13605 and 77-12775 are deemed withdrawn with prejudice.
2. The terms of the subordination set forth in the Stipulation shall be incorporated in

the partial decrees entered for claims numbered 77-10986, 75-11316, 77-11941, 75-13605 and 77-12775 (and in any partial decree which may be entered for any new claim number which may be assigned by the Idaho Department of Water Resources to the state law basis for claim number 77-10986) and in the final decree entered in this matter, and, based upon the subordination of the United States' claims to the Thompson Creek claims as set forth in the Stipulation, the existence of the United States' claims or water rights shall not preclude the Court from approving and decreeing those Thompson Creek claims or water rights for any reason, including but not limited to the basis that water is not legally available for appropriation.

3. Pursuant to Idaho Rule of Evidence 408, nothing in the Stipulation or this Order, including the United States' subordination of its claims to the Thompson Creek claims, 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 show the validity or invalidity of the United States' or Thompson Creek's claims, 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 or enforcement of the Stipulation or for a purpose contemplated by Rule 408.

IT IS SO ORDERED.

DATED this 16 day of <sup>June</sup>~~May~~, 1998.



DANIEL C. HURLBUTT, JR.  
Presiding Judge  
Snake River Basin Adjudication

**CERTIFICATE OF MAILING**

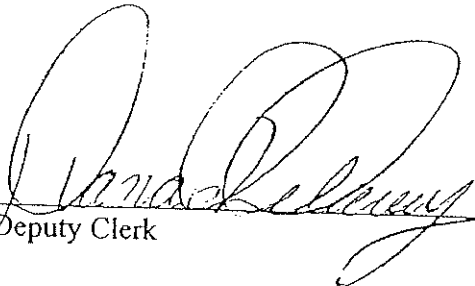
I certify that a true and correct copy of the **ORDER APPROVING STIPULATION AND DISMISSING OBJECTIONS** was mailed on ~~May~~ <sup>June</sup> 16, 1998, with sufficient first-class postage to the following:

IDWR Document Depository  
PO Box 83720  
Boise, ID 83720-0098

All parties to the MUSY Claims, Consolidated Subcase 63-25239

All parties to the Wild and Scenic Rivers Claims, Consolidated Subcase 75-13316

All parties to the Wilderness Claims, Consolidated Subcase 75-13605

  
Deputy Clerk