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Department of Water Resources

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18976

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE PROPOSED
CREATION OF A WATER DISTRICT IN THE
UPPER SALMON RIVER BASIN AREA IN
ADMINISTRATIVE BASINS 71 & 72

Case No. 39576

WRITTEN COMMENTS OF THOMPSON
CREEK MINING COMPANY

Scott L. Campbell of MOFFATT THOMAS BARRETT ROCK AND FIELDS, CHTD., on
behalf of Thompson Creek Mining Company ("Thompson Creek"), hereby submits the following
written comments.

**I.
INTRODUCTION**

On November 9, 2005, Karl J. Dreher, the Director ("Director") of the Idaho
Department of Water Resources ("IDWR") conducted a Public Hearing for Proposed Water
District for creation in the Upper Salmon River Basin Area in Administrative Basins 71 and 72.

Thompson Creek owns decreed water rights which will be affected by the creation of the proposed water district. Therefore, it is an interested party with vested property rights which will be affected and has standing to comment upon and potentially contest the intended creation of the proposed water district.

This constitutes the written comments of Thompson Creek in response to the Idaho Department of Water Resources Public Hearing for Proposed Water District, conducted on November 9, 2005, in Challis, Idaho. These written comments are submitted in compliance with and pursuant to the applicable provisions of Idaho Code Section 42-604.

II. DISCUSSION

The statutory authority of the Director to create a water district is circumscribed in Idaho Code Section 42-604. As a public official of the State of Idaho, the Director possesses only those powers and authorities explicitly conferred by legislative enactment or as extended by reasonable clarifications of statutory authority in duly adopted rules and regulations.¹ *Beker Industries v. Georgetown Irrigation District*, 101 Idaho 187, 610 P.2d 546 (1980); I.C. § 42-603. Since the Director has not adopted rules or regulations concerning the creation of water districts, his authority is confined to the specific language of Idaho Code Section 42-604.

A. Idaho Code Section 42-604

The relevant provisions of Idaho Code Section 42-604 describe the procedural and substantive parameters for the creation of a water district by the Director. For the purposes of these comments, the initial portions of the statute which are relevant state:

The director may create, revise the boundaries of, or abolish a water district or combine two (2) or more water districts by entry

¹ Additionally, the Director's authority is extended to include the applicable interpretations of the relevant statutes and rules or regulations by the Idaho Appellate Courts.

of an order *if such action is required in order to properly administer uses of the water resource*. Copies of the order shall be sent by regular mail to all holders of rights to the waters affected by the order. The director's order is subject to judicial review as provided in section 42-1701A, Idaho Code.

Id. (emphasis added).

Nothing in the administrative record created before or provided to the affected water users at the Public Hearing for Proposed Water District supports a determination by the Director that creation of the water district is “*required in order to properly administer uses of the water resource*.” Nor could there be any legitimate administrative record justification for such a determination with respect to the water rights of Thompson Creek.

B. Thompson Creek – U.S. Forest Service Settlement

Thompson Creek has been a party to the Snake River Basin Adjudication Consolidated Subcase No. 75-13316, which produced the “SRBA Wild and Scenic Rivers Agreement between the United States and the State of Idaho” throughout the course of the litigation over the U.S. Forest Service water right claims for instream flow federal reserved water rights. Thompson Creek and the U.S. Forest Service settled their disputes in the Consolidated Subcase, as documented in the Stipulation and Joint Motion for Order Approving Stipulation and Dismissing Objections, dated May 29, 1998, (Exhibit A). This stipulation received a complete review by all of the parties to the Consolidated Subcase proceeding, and despite opposition to the settlement by the State of Idaho (the only objector to it), the SRBA District Judge issued an Order approving the stipulation on June 16, 1998, (Exhibit B).

The stipulation and the subsequent Order specifically subordinated any water rights ultimately obtained by the U. S. Forest Service to the water rights of Thompson Creek. See Stipulation, pp. 3-4; Order pp. 1-2, ¶ 2.

Following the conclusion of the Thompson Creek / U.S. Forest Service Settlement in June 1998, litigation continued among the remaining parties until the SRBA District Judge issued the Order Approving Stipulation and Entry of Partial Decrees on November 16, 2004, (Exhibit C), and the Amended Order Approving Stipulation and Entry of Partial Decrees on November 18, 2004, (Exhibit D). As this last Order makes clear, Thompson Creek did not sign and was not a party to the Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees (Exhibit E). In fact, Thompson Creek filed a timely objection to the Stipulation and Joint Motion which was resolved by agreement as to the form of the final Order.

See Exhibit D, p. 1. More importantly, this Order specifically provides:

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 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.

Id.

By virtue of these provisions, Thompson Creek believes that the Director can not reasonably or legally determine that the creation of the proposed water district is “***required in order to properly administer uses of the water resource.***” This is particularly true with regard to Thompson Creek’s water rights, because of the specific subordination of the U.S. Forest Service instream flow water rights under the Thompson Creek / U.S. Forest Service Settlement

(“Thompson Creek Settlement”) and because of the clear language of the Court’s Order, “nor shall the provisions of paragraph 2 affect the disposition or review of such proceedings.”

Because of the subordination provisions of the Thompson Creek Settlement, no administration of the Thompson Creek water rights is necessary “*to properly administer uses of the water resource.*” No such administration was deemed necessary by the Director before the “SRBA Wild and Scenic Rivers Agreement between the United States and the State of Idaho.” See Notice of Public Information Meeting and Hearing (Exhibit E).

Based upon the clear prohibition of the last sentence of paragraph 2 of the Order of November 18, 2004 (Exhibit D), the Director may not rely upon the terms of the so-called “SRBA Wild and Scenic Rivers Agreement between the United States and the State of Idaho,” to justify a decision to create the proposed water district. See Exhibit E, p. 2. In fact, the only possible justification for the proposed action by the Director is that agreement. As a non-party with specifically reserved rights, pursuant to the SRBA District Court Order of November 18, 2004 (Exhibit D), Thompson Creek believes that the Director has no legally supportable basis for creation of the proposed water district. Such an action would violate that Order and would not be supportable under the statutory language of Idaho Code Section 42-604. This position is further supported by the testimony of all of the witnesses at the November 9, 2005 hearing, who uniformly stated that the existing water districts in the region were sufficient and there was no valid reason for the creation of the new “umbrella” water district proposed by the Director. See Transcript of Hearing (Exhibit F).

C. Notice Requirements of Idaho Code Section 42-604 Unsatisfied

As a separate basis for contesting the proposed creation of the water district, Thompson Creek believes the Director has failed to comply with the mandatory notice

requirements of Idaho Code Section 42-604. The statute requires that the notice for the proposed creation of a water district must “describe the proposed action to be taken, the reasons therefore [sic], the time and place of a hearing to be held concerning the proposed action. . .”

In view of the clear prohibition of the Order of November 18, 2004 (Exhibit D), precluding reliance of paragraph 2 of the Stipulation (Exhibit E) for creation of a water district, the Notice of Proposed Water District (Exhibit G) contains no legitimate explanation of the reasons for the proposed action. Consequently, the notice fails to comply with the specific requirements of Idaho Code Section 42-604, and is legally flawed.

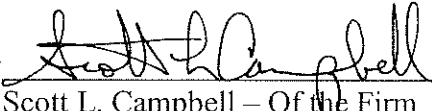
III. CONCLUSION

The Director of the IDWR may exercise only the authority specifically granted by legislative enactment. That applies with particular force here, where a new water district is proposed which will impose greater costs for individual water right owners and duplicate existing water district administration in basins with existing districts. The statutory restrictions upon the Director’s authority are even more important in view of the imposition of this new water district upon *non-parties* to the stipulation (Exhibit E), in apparent violation of the Order of November 18, 2004 (Exhibit D).

The Director has not satisfied the statutory requirements of Idaho Code Section 42-604 or the judicial limitations imposed upon his exercise of the authority granted by that provision. Consequently, under the present circumstances, based upon the existing administrative record and the applicable law, the Director can not legally create the proposed Upper Salmon River Basin Area Water District.

DATED this 18th day of November, 2005.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

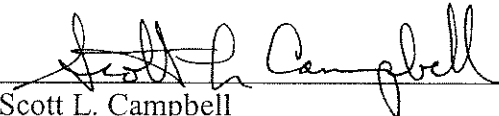
By 
Scott L. Campbell – Of the Firm
Attorneys for Thompson Creek Mining
Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of November, 2005, I caused a true and correct copy of the foregoing **WRITTEN COMMENTS OF THOMPSON CREEK MINING COMPANY** to be served by the method indicated below, and addressed to the following:

Karl Dreher, Director
IDAHO DEPARTMENT OF WATER RESOURCES
P.O. Box 83720
Boise, ID 83720
Fax: 208-287-6700

() U.S. Mail, Postage Prepaid
(☒) Hand Delivered
() Overnight Mail
() Facsimile



Scott L. Campbell

EXHIBIT A

to

Written Comments of Thompson Creek Mining Company

JUN 01 1998

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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 (4th 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' 4th 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.

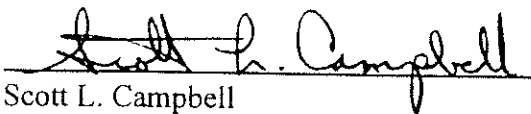
Dated May 29, 1998



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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	)	Consolidated Subcase Nos.: 63-25239,
	)	75-13316 and 75-13605
Case No. 39576)	
	)	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 ____, 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

Deputy Clerk

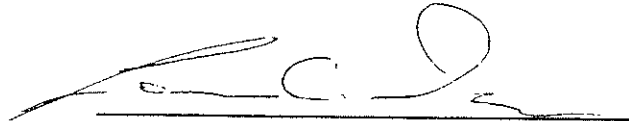
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th 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 ^{Fed Ex} [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

CERTIFICATE OF SERVICE via FEDERAL EXPRESS OR MAIL FOR (ALL) MUSYA CLAIMS

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CERTIFICATE OF SERVICE via FEDERAL EXPRESS OR MAIL FOR WILD AND SCENIC
RIVERS ACT CLAIMS

Chief, Natural Resource Div.
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CERTIFICATE OF SERVICE via FEDERAL EXPRESS OR MAIL FOR WILDERNESS ACT CLAIMS

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Environment and Natural
Resources Division
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EXHIBIT B

to

Written Comments of Thompson Creek Mining Company

1998 JUN 16 PM 3: 21

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

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)	
	)	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:

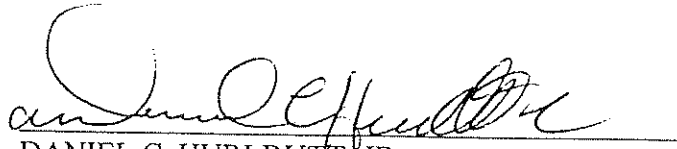
1. The objections filed by Thompson Creek against claims numbered 77-10986, 75-11316, 77-11941, 75-13605 and 77-12775 are deemed withdrawn with prejudice.
2. The terms of the subordination set forth in the Stipulation shall be incorporated in

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 ^{June}~~May~~, 1998.

A handwritten signature in cursive script, appearing to read "Daniel C. Hurlbutt, Jr.", written over a horizontal line.

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~~ ^{June} 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

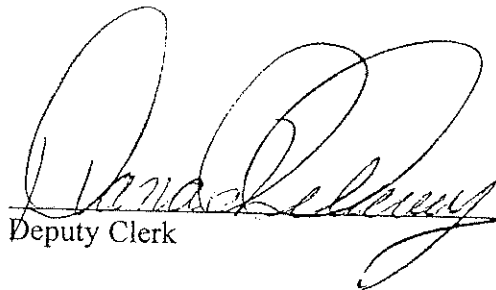

Deputy Clerk

EXHIBIT C

to

Written Comments of Thompson Creek Mining Company

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NOV 17 2004

RINGERT CLARK

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE: SRBA

)

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CASE NO. 39576

)

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)

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)

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

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

ORDER APPROVING STIPULATION AND ENTRY OF PARTIAL DECREES

FILE COPY

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 16th day of November, 2004.



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER APPROVING STIPULATION AND ENTRY OF PARTIAL DECREES was mailed on November 16, 2004, with sufficient first-class postage to the following:

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2004 NOV 16 PM 4:36

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 NE1/4SW1/4, 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 effective September 1, 2003 (the "Stipulation"), and pursuant to that Stipulation this water right is subordinated to the following water rights and uses that are junior to this federal reserved water right and that have points of diversion or impoundment and places of use within the 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-hundreds (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day, provided that this domestic use subordination is limited and defined by I.C. 42-111(2), so that the subordination shall not and does not apply to multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in I.C. 42-111(1)(b) (0.04 cfs/2,500 gpd), and by I.C. 42-111(3), so that the subordination shall not and

does not apply to multiple water rights for domestic uses which satisfy a single combined water use that would not itself come within the above definition of domestic use.

(4) All de minimus stockwater uses, which for the purposes this Partial Decree shall be defined as set forth at I.C. § 42-1401A(11) to mean the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen-thousand (13,000) gallons per day. This de minimus stockwater use subordination is limited and defined by I.C. § 42-111(3), so that the subordination shall not and does not apply to multiple water rights for stockwater uses which satisfy a single combined water use that would not itself come within the above definition of stockwater use.

(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.

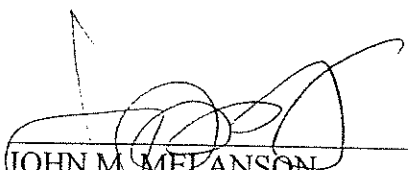
c. The administrative provisions of paragraph 3 of the Stipulation are incorporated herein by reference.

d. 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 November 16, 2004.



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

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 DISTRICT COURT - SRBA
 TWIN FALLS CO., IDAHO
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IN RE SRBA)
)
 CASE NO. 39576)
)
 _____)

PARTIAL DECREE FOR

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 effective September 1, 2003 (the "Stipulation"), and pursuant to that Stipulation this water right is subordinated to the following water rights and uses that are junior to this federal reserved water right and that have points of diversion or impoundment and places of use within the 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 this Partial Decree shall be defined as set forth at I.C. § 42-1401A(11) to mean the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen-thousand (13,000) gallons per day. This de minimus stockwater use subordination is limited and defined by I.C. § 42-111(3), so that the subordination shall not and does not apply to multiple water rights for stockwater uses which satisfy a single combined water use that would not itself come within the above definition of stockwater use.

(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

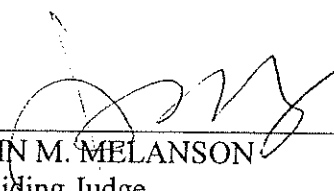
would not be legally and physically available under the original water right.

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.

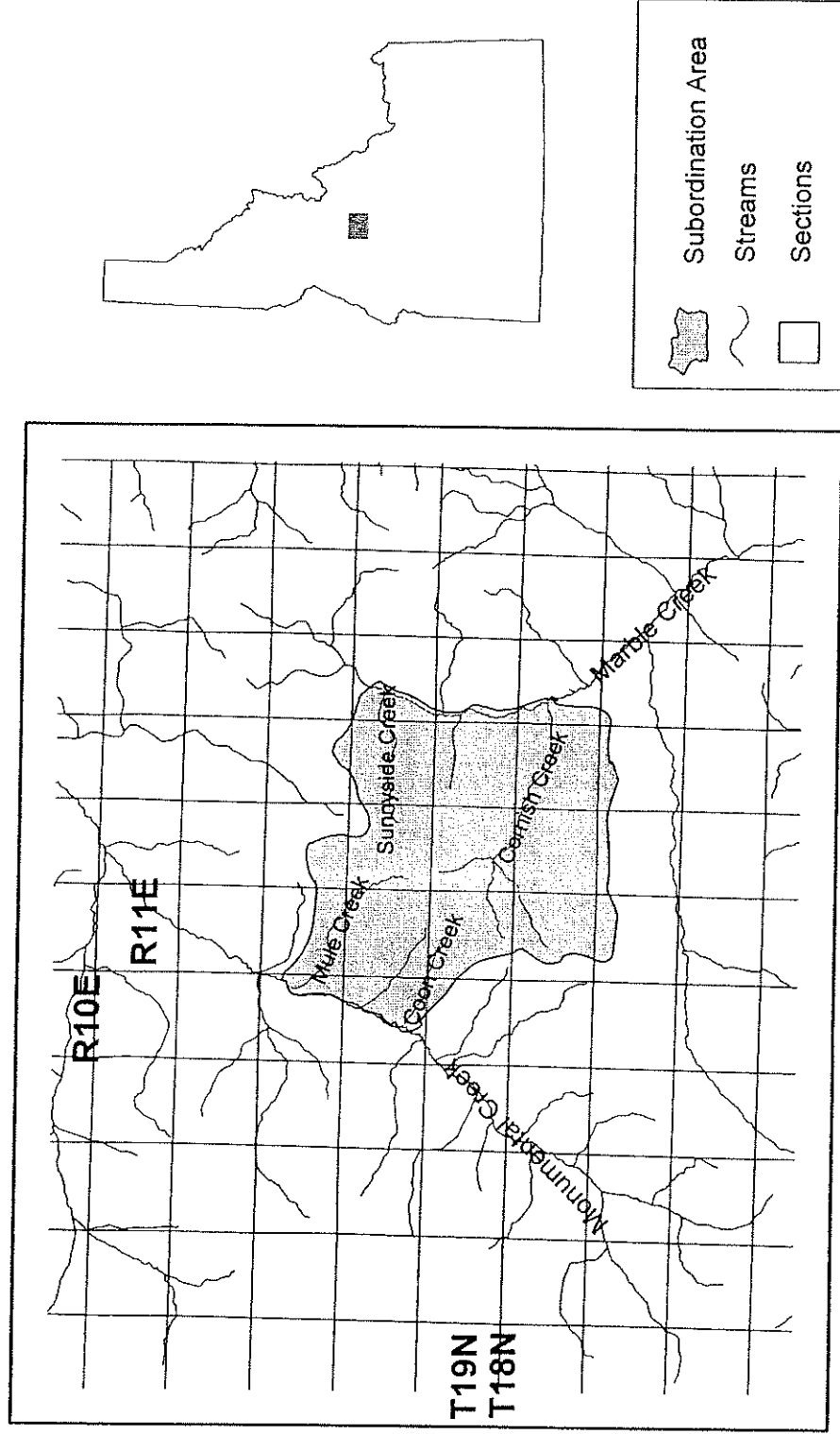
IT IS SO ORDERED.

DATED November 16, 2004.



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



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

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TWIN FALLS CO., IDAHO
FILED

IN RE SRBA)
CASE NO. 39576)
_____)

PARTIAL DECREE FOR

**Federal Reserved Water Rights 78-11961
Rapid Wild and Scenic River (including West
Fork)**

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 effective September 1, 2003 (the "Stipulation"), and pursuant to that Stipulation this water right is subordinated to the following water rights and uses that are junior to this federal reserved water right and that have points of diversion or impoundment and places of use within the 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 this Partial Decree shall be defined as set forth at I.C. § 42-1401A(11) to mean the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen-thousand (13,000) gallons per day. This de minimus stockwater use subordination is limited and defined by I.C. § 42-111(3), so that the subordination shall not and does not apply to multiple water rights for stockwater uses which satisfy a single combined

water use that would not itself come within the above definition of stockwater use.

(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 November 16, 2004.



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, IDAHO

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TWIN FALLS CO., IDAHO
FILED

IN RE SRBA)
CASE NO. 39576)
_____)

PARTIAL DECREE FOR

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' 45.8", Longitude W 114° 44' 34.8".

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 effective September 1, 2003 (the "Stipulation"), and pursuant to that Stipulation this water right is subordinated to the following water rights and uses that are junior to this federal reserved water right and that have points of diversion or impoundment and places of use within the 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 this Partial Decree shall be defined as set forth at I.C. § 42-1401A(11) to mean the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen-thousand (13,000) gallons per day. This de minimus stockwater use subordination is limited and defined by I.C. § 42-111(3), so that the subordination shall not and does not apply to multiple water rights for stockwater uses which satisfy a single combined water use that would not itself come within the above definition of stockwater use.

(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

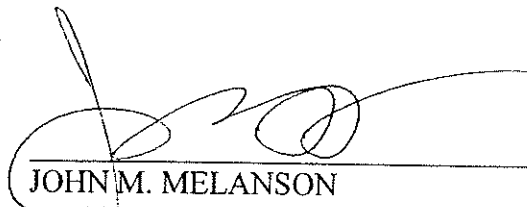
the Wild and Scenic River as identified in this Partial Decree; ii) all return flows from the use accrue to the Wild and Scenic reach; and iii) the use does not cause a depletion or a change in timing of the flow (other than incidental evaporation or seepage) as determined at the point(s) of return, 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 November 16th, 2004.


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

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TWIN FALLS CO., IDAHO
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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 effective September 1, 2003 (the "Stipulation"), and pursuant to that Stipulation this water right is subordinated to the following water rights and uses that are junior to this federal reserved water right and that have points of diversion or impoundment and places of use within the 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-hundreds (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day, provided that this

domestic use subordination is limited and defined by I.C. 42-111(2), so that the subordination shall not and does not apply to multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in I.C. 42-111(1)(b) (0.04 cfs/2,500 gpd), and by I.C. 42-111(3), so that the subordination shall not and does not apply to multiple water rights for domestic uses which satisfy a single combined water use that would not itself come within the above definition of domestic use.

(4) All de minimus stockwater uses, which for the purposes this Partial Decree shall be defined as set forth at I.C. § 42-1401A(11) to mean the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen-thousand (13,000) gallons per day. This de minimus stockwater use subordination is limited and defined by I.C. § 42-111(3), so that the subordination shall not and does not apply to multiple water rights for stockwater uses which satisfy a single combined water use that would not itself come within the above definition of stockwater use.

(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

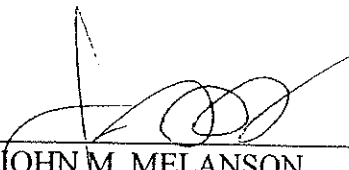
the Wild and Scenic River as identified in this Partial Decree; ii) all return flows from the use accrue to the Wild and Scenic reach; and iii) the use does not cause a depletion or a change in timing of the flow (other than incidental evaporation or seepage) as determined at the point(s) of return, 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 November 16, 2004.



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.

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FILED
TWIN FALLS CO., IDAHO

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 effective September 1, 2003 (the "Stipulation"), and pursuant to that Stipulation this water right is subordinated to the following water rights and uses that are junior to this federal reserved water right and that have points of diversion or impoundment and places of use within the 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-hundreds (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day, provided that this domestic use subordination is limited and defined by I.C. 42-111(2), so that the subordination shall not and does not apply to multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in I.C. 42-111(1)(b) (0.04 cfs/2,500 gpd), and by I.C. 42-111(3), so that the subordination shall not and does not apply to multiple water rights for domestic uses which satisfy a single combined water use that would not itself come within the above definition of domestic use.

(4) All de minimus stockwater uses, which for the purposes this Partial Decree shall be defined as set forth at I.C. § 42-1401A(11) to mean the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen-thousand (13,000) gallons per day. This de minimus stockwater use subordination is limited and defined by I.C. § 42-111(3), so that the subordination shall not and does not apply to multiple water rights for stockwater uses which satisfy a single combined water use that would not itself come within the above definition of stockwater use.

(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.

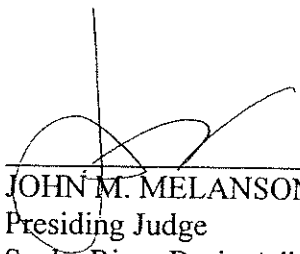
(B) Water rights of the United States, instream flow water rights, nonconsumptive water rights and replacement water rights shall not be deducted from the subordination amounts identified in this paragraph (5) for future rights. Nonconsumptive water rights mean all beneficial uses of water having these 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 November 16, 2004.



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

EXHIBIT D

to

Written Comments of Thompson Creek Mining Company

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McNeil, Thomas, Barrett, Beck and Fickel

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RINGERT CLARK

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DISTRICT COURT - SRI
TWIN FALLS CO., IDAHO
FILED

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE: SRBA

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CASE NO. 39576

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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)

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

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

AMENDED ORDER APPROVING STIPULATION AND ENTRY OF PARTIAL DECREES

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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.

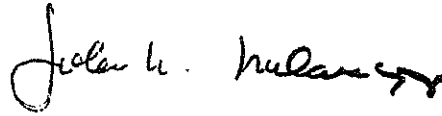
4. Pursuant to Idaho Rule of Evidence 408, nothing in the Stipulation, including the stipulated entry of Partial Decrees for these claims and any affidavits or other evidence or pleading submitted or relied upon for approval of the Stipulation, or any offers or compromises made in the course of negotiating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

A handwritten signature in black ink, appearing to read "John M. Melanson". The signature is fluid and cursive, with a large initial "J" and a stylized "M".

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 E

to

Written Comments of Thompson Creek Mining Company

UNITED STATES OF AMERICA

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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.,^{1/} City of Challis, et al.,^{2/} Big Bend Irrigation

^{1/} Dewey Mining Company, Thunder Mountain Gold, Inc., and Potlatch Corp., all represented by Jeffrey C. Fereday, Esq.

^{2/} 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.,^{3/} Idaho Power Company, A & B Irrigation District, et al.,^{4/} and Thomas R. Stuart III, et al.,^{5/} (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

^{3/} Big Bend Irrigation District, Boise-Kuna Irrigation District, New York Irrigation District, and Wilder Irrigation District, all represented by Albert P. Barker, Esq.

^{4/} 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.

^{5/} 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-

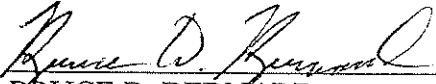
11961, 81-10472, 81-10513 and 81-10625; (3) retain jurisdiction for the purpose of resolving any disputes concerning implementation and enforcement of the Stipulation and administration of the water rights confirmed by the Partial Decrees, including, but not limited to, administration of the subordination 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 18th 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

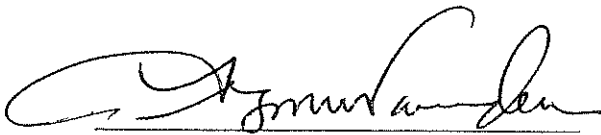
General Litigation Section

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

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CLIVE J. STRONG,
Deputy Attorney General
Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
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Boise, ID 83711-4449
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FOR DEWEY MINING COMPANY, THUNDER MOUNTAIN GOLD, INC., and POTLATCH CORPORATION:

Jeffrey C. Fereday

Date: 6/11/04

JEFFREY C. FEREDAY

Givens Pursley LLP

P.O. Box 2720

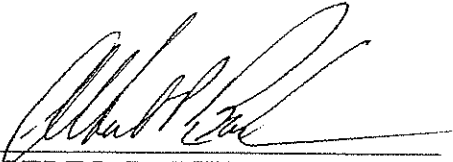
Boise, ID 83701-2720

(208) 388-1200

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

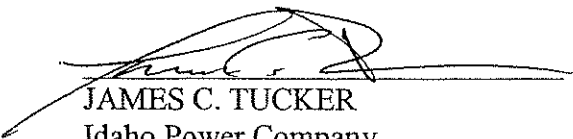
FOR BIG BEND IRRIGATION DISTRICT, BOISE-KUNA IRRIGATION DISTRICT, NEW YORK IRRIGATION DISTRICT, and WILDER IRRIGATION DISTRICT:



ALBERT P. BARKER
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Date: July 17, 2004

FOR IDAHO POWER COMPANY:



JAMES C. TUCKER

Idaho Power Company

P.O. Box 70

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(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:

A handwritten signature in black ink, appearing to be 'W E' followed by a long horizontal stroke.

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 20th 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.

Renee 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	)		PARTIAL DECREE FOR
)		
CASE NO. 39576	)		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.

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)
)
CASE NO. 39576)
)
_____)

PARTIAL DECREE FOR

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.

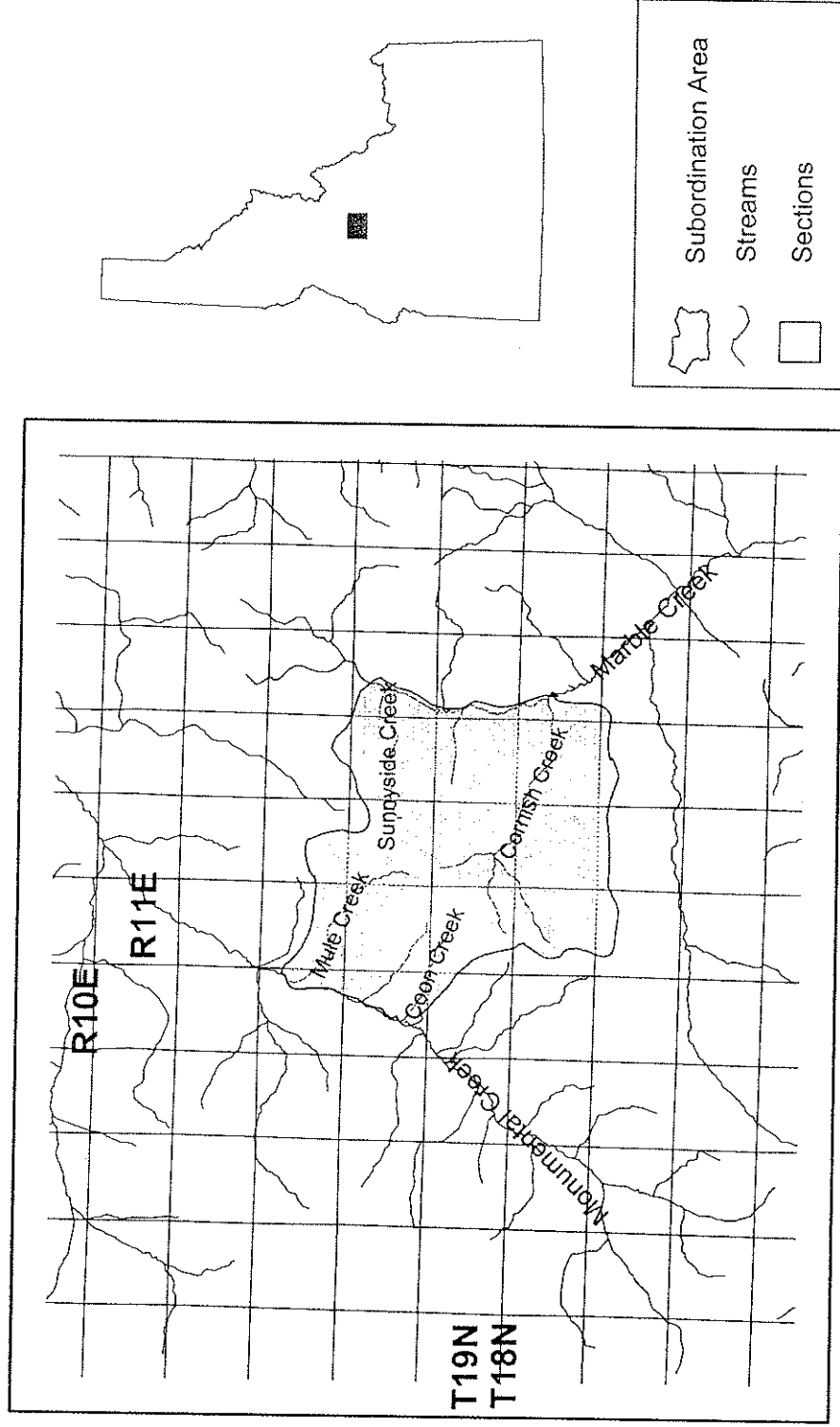
d. These additional provisions contained in element 10 do not fall within the other elements listed above and are necessary to: (1) define the unique characteristics of these federal reserved water rights; and (2) describe the rights and uses to which these federal reserved water rights are subordinated 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.

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)
)
CASE NO. 39576)
)
_____)

PARTIAL DECREE FOR

**Federal Reserved Water Rights 78-11961
Rapid Wild and Scenic River (including West
Fork)**

- 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-hundreds (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day, provided that this domestic use subordination is limited and defined by I.C. 42-111(2), so that the subordination shall not and does not apply to multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in I.C. 42-111(1)(b) (0.04 cfs/2,500 gpd), and by I.C. 42-111(3), so that the subordination shall not and does not apply to multiple water rights for domestic uses which satisfy a single combined water use that would not itself come within the above definition of domestic use.

(4) All de minimus stockwater uses, which for the purposes of this Partial Decree shall be defined as set forth at I.C. § 42-1401A(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.

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-hundreds (0.04) cubic feet per second and a diversion volume of twenty-five

hundred (2,500) gallons per day, provided that this domestic use subordination is limited and defined by I.C. 42-111(2), so that the subordination shall not and does not apply to multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in I.C. 42-111(1)(b) (0.04 cfs/2,500 gpd), and by I.C. 42-111(3), so that the subordination shall not and does not apply to multiple water rights for domestic uses which satisfy a single combined water use that would not itself come within the above definition of domestic use.

(4) All de minimus stockwater uses, which for the of purposes 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.

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.

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.

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

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

ORDER APPROVING STIPULATION AND ENTRY OF PARTIAL DECREES

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

EXHIBIT F

to

Written Comments of Thompson Creek Mining Company

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE PROPOSED)
CREATION OF A WATER DISTRICT IN)
THE UPPER SALMON RIVER BASIN AREA)
IN ADMINISTRATIVE BASINS 71 & 72)
_____)

TRANSCRIPT OF HEARING

Conducted November 9, 2005, Challis, Idaho
Before Presiding Officer Karl J. Dreher
Director, Idaho Department of Water Resources

Transcribed by Patsy McGourty
Administrative Assistant
Department of water Resources

Proceedings transcribed from electronic sound recording.

1 KARL DREHER: Good evening. I am Karl Dreher, Director of the Idaho Department of
2 Water Resources. I am serving as the presiding officer in this matter which deals with
3 the creation of a water district in the Upper Salmon River Basin. The matter concerns the
4 creation of this proposed district that would include both department administrative
5 basins 71 and 72. The provisions of Idaho Code § 42-604 require that this hearing be
6 held prior to the creation of a water district by the director of the Department of Water
7 Resources. The hearing is being conducted on November 9, 2005. We went on the
8 record at approximately 8:10 p.m. This meeting began shortly after 7:00 p.m. but was
9 preceded by a period of questions and answers on related matters.

10 The purpose of this hearing is to provide affected water right holders or their
11 representatives an opportunity to make an oral statement on the record stating their
12 position, views or concerns regarding the creation of the proposed water district. For the
13 purposes of this hearing persons making statements do not need to be sworn in nor will
14 they be subject to cross-examination. All persons signing up to speak will be heard
15 before others are heard and all persons wishing to speak once will be heard once before
16 anyone speaks a second time. Notice of this hearing was mailed to each affected water
17 right holder in the proposed district as required under the provisions of Idaho Code § 42-
18 604. In addition, notice was published in the *Challis Messenger* and the *Big Wood River*
19 *Journal*, two newspapers of general circulation within the proposed district. This hearing
20 was preceded by a public information meeting that was held on October 24, 2005. That
21 meeting was conducted by Mr. Dave Tuthill and Mr. Tim Luke of the Department of
22 Water Resources and it too was noticed along with this hearing in the individual notices
23 sent to individual right holders as well as the notice that was published in the *Challis*

24 *Messenger* and the *Big Wood River Journal*. The purpose of the public information
25 meeting was to determine the reasons for the creation of the proposed water district and
26 to describe the duties that the watermaster of the district would be expected to carry out
27 under the supervision of myself or the person in my position.

28 Assuming that there are no further questions, we're now at the point to where we
29 need to take formal statements and comments from those persons who wish to be heard at
30 this time. So we'll take these in order of the people that signed up. The first individual is
31 J.R. Challis if you would come forward and state your name and address for the record.
32 Go ahead and have a seat.

33

34 CHALLIS: Director Dreher my name is Jack Challis I'm a water right owner in Challis
35 Creek Water District 72C. Also currently serve as secretary-treasurer for both water
36 district 72C and 72B and have served in past years as watermaster for both of these
37 districts and currently continue to serve as watermaster for the Warm Spring Canal water
38 users. Though my testimony this evening is my own, I am confident that put to a vote it
39 would represent the opinion of the vast majority of all water right owners in both districts
40 72C, having 86 right owners representing 158 surface water rights, as well as 72B having
41 32 water right owners representing 60 surface water rights.

42 In 1997 our district 72C took the initiative with the help of IDWR personnel to
43 GPS and numerically identify all diversions in our drainage. At the same time while
44 utilizing duly approved district resolutions all diversions were mandated within a
45 reasonable time frame to be brought into compliance with IDWR Water Master
46 Handbook Construction Guidelines, as well as Idaho Code, with regard to lockable head

47 gates and approved measuring devices. This was completed by our water district as well
48 as 72B in 1997. Simultaneously, we began to develop a data base software program
49 subsequently dubbed watermaster whereby we could 1) maintain complete records of
50 individual water right owners, both past and current, as well as designated authorized
51 representatives in cases of out-of-state or off premises water right owners; 2) key to each
52 owner their respective water right, their purchase date, their maximum allowable cfs and
53 the priority date; 3) key water right and source to each diversion or diversions designated
54 by the right to receive such deliveries; 4) allow an ongoing entry of flows throughout the
55 irrigation season as logged and submitted by our watermaster for each water right at their
56 respective point of diversion; and 5) configure data base extraction procedures whereby
57 water deliveries could be detailed and made available in hard copy or electronically in
58 virtually any format for reporting usage by owner, right, diversion, source, irrigation
59 season, and time period within any irrigation season or any combination thereof.

60 Now we are being presented with the creation of what is deemed the Upper
61 Salmon Water District though many in this proposed new district would question any
62 actual needs for such actually exists. Let it suffice to say that the majority realize, like it
63 or not, the now finalized Wild and Scenic Rivers Agreement has made this proposed new
64 district mandatory. That having been said, I like others in the proposed district have been
65 working in a steering committee created by your department to establish a workable
66 format. This effort continues but in light of the hearing tonight preceding any steering
67 committee recommendations or conclusions, I felt it necessary to bring forward facts and
68 a resulting proposal I feel should be considered in your evaluation of this new district.

69 In the presentation by the department's Mr. Dave Tuthill and Mr. Tim Luke in the
70 Upper Salmon Water District public meeting held here October 24, slides were included
71 outlining the necessity for an Upper Salmon Water District watermaster to oversee this
72 new district. Relevant discussion revealed expense to water owners for this man or
73 woman anywhere from \$70,000 to \$100,000 annually. While it was noted the
74 department, you specifically, had generously offered to provide this individual and
75 support requirements free of charge for the first two years, thereafter this expense will
76 undoubtedly have to be borne by Upper Salmon Water District water right owners. This
77 is where my concern arises. The justification for the aforementioned expense depicted by
78 Mr. Tuthill and Mr. Luke's slides outlined the obligations to which IDWR must comply
79 in order to meet conditions of the Wild and Scenic Rivers Agreement and the resulting
80 requirements of the Upper Salmon Water District watermaster and in turn all water right
81 owners. These include lockable controlling works, approved measuring devices,
82 collection and recording diversion data, enforcing water rights in priority, curtailing
83 unauthorized and excessive diversions, include surface water as well as ground water,
84 quarterly reporting of diversions, again surface water and ground water, annual reports
85 and budgets. Director Dreher, other than inclusion of the ground water information
86 easily added to our database and reporting quarterly rather than annually, a simple two-
87 hour matter of programming our current software to create such a report from data
88 already available, we can do everything you require now today. Not only that, we could
89 provide the same data back to 1997. No less important and the obvious learning curve
90 we faced were done at our sole expense. In this light, how is it logical much less fair that

91 water district 72C as well as 72B should be burdened to pay for the other water users in
92 the new Upper Salmon Water District to comply with everything we can already do?

93 One last point. I'm going to take the liberty of anticipating your suggestion that
94 by providing the Upper Salmon Water District watermaster the first two years this will
95 allow sufficient time to even the playing field, as to say, and allow the others to catch up.

96 With all due respect, IDWR has not been able to get anyone in the proposed Upper
97 Salmon Water District other than 72C and 72B to comply for the many, many years
98 Idaho Code has always mandated most of these exact procedures. Frankly, we consider it
99 highly unrealistic that in the next two years the department can possibly get this done.

100 However, if we are proven wrong, and you get it done, we should then unquestionably
101 contribute our proportional share. On the other hand, if you cannot, we do not feel we
102 should be forced to participate in any of the costs until all Upper Salmon Water District
103 water right owners are in compliance with what we have already done and will continue
104 to do in the future. Thank you.

105 DREHER: Thank you. Okay, Jerry Hawkins.

106 HAWKINS: Mr. Director, I'm going to be short. I might even write mine out. I can't
107 remember that much. I'm Jerry Hawkins. Live here in Challis. I'm here for Water
108 District 72F and I don't have a lot to say except on the concerns of putting an upper basin
109 watermaster over that we have to pay for up in here. When Mr. Foster's already over
110 there and we view him as the man to go to in the upper basin and since our watermaster
111 and our secretary-treasurers run the districts that are established and the one that will be
112 required will have to compile and keep documentation and information that the
113 Department of Water Resources need, we feel that there is no need for the upper basin

114 watermaster because if the district needs to answer to the department, that can be done
115 through Mr. Foster at the Salmon office and eliminate the middle man in a role there that
116 we'd have to pay for out of our pocket.

117 Now so many of the people that we've been dealing with here the last few years
118 especially around through the many challenges the state's been up against with the
119 landowners and water users here, we understand about a head gate and a measuring
120 device because we're going to go there through a court. One or the other is where we're
121 going and we have no problem with that and we understand it and as a matter of fact, the
122 people in a lot of areas are supportive of it since they fully understand the position of the
123 state. But we do not support the upper basin watermaster and have to pay for him. We
124 would talk to the department to give us Mr. Foster here, let us work with him. Let him be
125 our watermaster and we've asked to sign on with the recommendation that was made by
126 73, 74 and 75 that put together here awhile back and outlined that a plan of what we
127 would like to go to and we would fully like to support him in this and we hope that you
128 all would support us in it. I do want to thank you for having the town meetings in closing
129 here because it saved us and the people around here a lot of travel time and stuff and put
130 it on yawl's back instead of just having a regional meeting and have us come down to em.
131 We really appreciate that and thank you for listening.

132 DREHER: Thank you. Blair.

133 KAUER: Director Dreher and those concerned, my name is Blair Kauer. I'm a person
134 within the boundaries of water district 74, 74W, 74Q and several other water districts.
135 We have several water districts in Basin 74, more than is on my toes and feet, more than I
136 can count. The creation of water districts is necessary certainly for the administration of

137 water, but particularly in water district 74, all of the appropriated water is being mastered.
138 It just isn't necessary to have another watermaster mastering something that isn't
139 necessary. That's the whole reason for creating a water district is to master appropriated
140 water; therefore, I do not feel that water district 74 needs to be an Upper Salmon Basin
141 water district. Whose senior water rights are not already being protected?

142 Another question that I had is who's going to pay for that Upper Salmon Basin
143 watermaster once it is created and of course, and if it is created under one person, one
144 vote regardless of how much water they own, they would have an equal share of election
145 for that watermaster. In my opinion, also, as we do in water district 74, we pay the
146 assessment on water right held and it works very well for paying that watermaster under
147 the water right held, not the water right used. It's a good system. And those particular
148 statutes I think can be created in this water district and function quite well.

149 My last comment is if we don't need it, we don't want it and I guess we don't
150 want it in water district 74. Thank you.

151 DREHER: Mr. Kauer, you did not state your address for the record.

152 COWER: The address is Box 111, Lemhi, Idaho 83465.

153 DREHER: Thank you. Okay, I believe that's everybody that signed up to testify that
154 didn't subsequently indicate that they had decided not to testify. Is there anybody else
155 here... oh, wait a minute. I'm sorry, Mr. Whitaker, if you would like to testify, please.

156 WHITAKER: Director Dreher, I'm James Whitaker, Leodore, Idaho, P.O. Box 240 I'm
157 on the advisory board of 74W and 74Z, and I guess the thing I kind of want to
158 reemphasize... I disagree somewhat with a little that's been said here but I think we're
159 pretty unanimous on this Upper Salmon River Basin head watermaster as far as who's

160 going to pay for him and who's deriving the benefit. And as you've already indicated
161 that the Forest Service and the Idaho Dept. of Water Resources, the main reason we're
162 having the watermaster is to make sure that we're not irrigating any ground that's not
163 supposed to be irrigated or we're not diverting any water that's not supposed to be
164 diverted. Well, in most of these districts, we're pretty good policemen ourselves on our
165 neighbors and I feel like that the concept has been working real good in our area the way
166 we have it in essence. . . over there we've got the sub districts 74W and 74Z, and if we've
167 had a problem as far as measuring or training or something, we've called in Rick Sager
168 who is on the Lemhi River or Bob (Foster) to come or both of them to come out and
169 straighten that thing out and I feel like . . . I think it's good to have that the first two years
170 to get this whole organization put together and I agree that the state should pay for that at
171 that point in time, but after we kind of get this thing evolved and I think as you've
172 indicated, it's kind of open to do things, but with the days that we've got computers and
173 we get these people trained . . . in essence I can't see why we probably need anybody that
174 we don't presently have in the system already. We might just need to expand Bob's area
175 over the whole area or something like that because I realize that 71 and 72 probably
176 haven't been receiving this same coverage, but I feel like that 73, 74 and 75 apparently
177 have, and we're pretty well already, like I say, policing each other, and if we have a
178 problem, why we've always called in your personnel probably out of the Eastern Idaho
179 office and they've come up and went through with the watermaster and we've had that
180 done on our tributaries . . . just as in the past when somebody isn't happy, why we've had
181 them come up and go with the watermaster and the advisory board and then we'd go out
182 and go up and check the ditches and if we needed to put in and block somebody's head

183 gate, or if we needed a measuring device fixed, why we got it fixed, but I think we're
184 way over emphasizing the need down the road for this fellow that's going to be requiring
185 a lot of money to police us in essence. And if that's his job, merely police us and train
186 us, I think he can train us in a couple years and I think that we've got the training with
187 Bob and Rick already on the ground. Those guys can come; they're close to us. I don't
188 see a need after a couple of years of possibly having this head watermaster in at least why
189 we can't just go to the water department if we have problem. I think that we ought to give
190 that some real consideration not cut in stone that we're going to have that and assume that
191 responsibility of paying for him down the road, but anyway with that, thank you, Director
192 Dreher, for giving me the opportunity to testify tonight and I think we're heading in the
193 right direction, and I appreciate the effort that you folks have made working with the
194 steering committee, and coming up and giving everybody an opportunity to ask questions
195 and hopefully work this thing out right to begin with. I realize that we've come to a point
196 in time when water is very important and that we need it tied to us and with that, thanks
197 again.

198 DREHER: Thank you. Okay, now is there anybody here who's had a change of heart
199 that didn't sign up to testify that now wants to testify? Okay Please state your name and
200 address for the record.

201 BRECKINRIDGE: Katie Breckinridge, Box 685, Picabo 83348. After listening to a lot
202 of testimony and understanding very significantly that there are large portions of water
203 that have already been measured and there are already adequate water measurement
204 districts in place, I refer back to my experience in a different water management district
205 where the same scenario took place, but there were still large areas and amounts of water

206 that did not have a current way to be measured and so that became... I question now if the
207 first stage of this district could be looking at a map and including all of the area that does
208 not have a current water measurement district, a current means of measuring their water.
209 And I think a lot of that is going to fall in 71 and my understanding is that 71 and 72 are
210 the first districts that have to come on line. It sounds like 72 is well prepared. I know 71
211 is not. And if there could be a way that 71 could look in a different matter instead of
212 looking at 71 and 72, but look at all of the districts that fall under the proposed water
213 measurement districts, and identify the areas and the water users that are not currently
214 being measured, and identify that water and those water right users become the first ones
215 that have to step forward and come up with a form of measuring our water and would fall
216 under the benefit of the first two years of your offer to pay or hire a watermaster. I think
217 from that point forward we could then look at all the other areas that have the current
218 water measurement district and try to decide how we could all come together and that
219 would alleviate the strong question here tonight of why do we need to have a layered
220 system. There are large quantities of water that are already measured. There are also
221 large quantities of water that are not measured. I think we need to be able to identify
222 both of those as we move forward. Thank you very much.

223 DREHER: Thank you. Okay anybody else that did not sign up to testify that wants to
224 testify now? Is there anybody that has testified that wishes to add something or testify a
225 second time? Okay. Going once, going twice. All right.

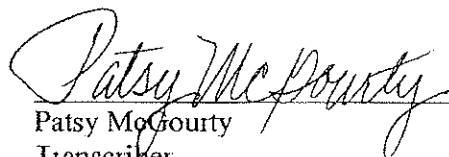
226 Given that it appears that there are no other persons that want to make a
227 statement, that will conclude the record of oral statements in this proceeding. Thank you
228 to all that did come forward to testify. The hearing record for this matter will remain

229 open for a little more than ten days through November 21st to allow time for the submittal
230 of additional written comments as provided for in the notice of this proceeding and as
231 required by Idaho Code § 42-604. After considering the entirety of the record, I will
232 issue a final order following the close of the comment period to dispose of this matter and
233 a copy of that final order will be sent by regular mail to all holders of water rights
234 affected by the order. Any water right holder who disagrees with the final order may file
235 a petition for reconsideration with me within 14 days of the service date of the order.
236 Any party feeling aggrieved by the final order may seek judicial review before the district
237 court within 28 days of the issuance of the final order or within 28 days of the action
238 taken on any petition for reconsideration. Thank you for attending. The record is now
239 closed except for the taking of additional written comments.

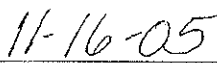
PROCEEDINGS CONCLUDED

CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM
THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.



Patsy McGourty
Transcriber



Date

EXHIBIT G

to

Written Comments of Thompson Creek Mining Company

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF THE PROPOSED CREATION OF A WATER DISTRICT IN THE UPPER SALMON RIVER BASIN AREA IN ADMINISTRATIVE BASINS 71 & 72))))))	NOTICE OF PUBLIC INFORMATION MEETING AND HEARING
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The Director of the Idaho Department of Water Resources ("Director") is authorized to divide the state into water districts for the purpose of distributing water among appropriators under the laws of the State of Idaho. The authority to create water districts applies to those streams, or other water sources including ground water, for which the priorities of appropriation have been adjudicated by court decree. During a water rights adjudication, Idaho Code § 42-1417 authorizes the district court to approve interim administration of the rights by the Director if reasonably necessary to protect senior rights. The district court may permit 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 a Director's Report as may be modified by the court's order.

On September 29, 2005 the Snake River Basin Adjudication ("SRBA") District Court issued an order authorizing the Director to distribute water pursuant to chapter 6, title 42, Idaho Code, in accordance with the Director's Reports and partial decrees that have superseded the Director's Reports within Administrative Basins 71 and 72 (a copy of the order is posted on the following SRBA Court website link: <http://www.idwr.idaho.gov/water/districts/>). The Director proposes to create a permanent water district for all of Administrative Basins 71 and 72 as shown on the attached map.

NOTICE IS HEREBY GIVEN, pursuant to Idaho Code § 42-604, that the Director of the Department of Water Resources will conduct a public hearing regarding the proposed creation of the water district as follows:

PUBLIC HEARING FOR PROPOSED WATER DISTRICT:

**7:00 PM, November 9, 2005 at the Challis High School Cafeteria,
100 High St., Challis, Idaho.**

NOTICE IS FURTHER GIVEN that the Department of Water Resources will also hold a public information meeting as follows:

PUBLIC INFORMATION MEETING FOR PROPOSED WATER DISTRICT:

**7:00 PM, October 24, 2005 at the Challis High School Cafeteria,
100 High St., Challis, Idaho.**

Information and testimony presented at the hearing on November 9, 2005, will create a record upon which the Director will rely to determine whether formation of a water district is appropriate, and if so, how the district should be formed. It is important that holders of water rights understand and participate in the hearing process. The Director will serve as the hearing officer. Persons attending the hearing will be provided an opportunity to provide oral testimony regarding the

creation of the proposed district. Written comments may also be submitted to the Director at the hearing or at any time prior to the close of the written comment period on November 21, 2005. Written comments not presented at the hearing can be sent to the Director to be received at the Department of Water Resources, P. O. Box 83720, Boise, Idaho, 83720-0098, no later than November 21, 2005.

The hearing will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. Should you require special accommodations in order to attend, participate in, or understand the hearing, please contact the Department of Water Resources at least 10 days prior to the hearing.

The public information meeting scheduled on October 24, 2005, will provide information about why the Director is proposing creation of the district; a timeline for district formation, operation, and expansion; and related information regarding the SRBA Wild and Scenic Rivers Agreement between the United States and the State of Idaho. The Director proposes creation of the Upper Salmon Water District, which will initially be limited to Basins 71 and 72 and become operational in 2006. Upon creation of the water district, a meeting of the holders of water rights within the district will 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 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.

The Director further proposes that the Upper Salmon Water District be expanded by 2007 to encompass all of Administrative Basins 73, 74, and 75, after the water rights in those basins have been decreed by the SRBA District Court or included in a Directors Report submitted to the SRBA District Court. The Director expects the State of Idaho to petition the SRBA District Court for interim administration in Basins 73, 74, and 75 within six months after Director's Reports are submitted to the Court for those basins. The Director plans to file Director's Reports for these basins with the SRBA District Court in 2006. The Director proposes that existing water districts in the Upper Salmon River sub-basins will be converted to sub-districts within the proposed Upper Salmon Water District.

The Director proposes that all water rights with points of diversion located within the boundaries of the proposed district be included in the district, except those used solely for domestic and/or stock water purposes. Permitted and licensed rights not decreed in the SRBA and/or not included in SRBA Director's Reports, and all future rights that may be permitted in accordance with the Wild and Scenic Rivers Agreement, are subject to inclusion within the proposed water district unless used solely for domestic and/or stock water purposes. This notice of hearing has been sent to all water right holders of record in accordance with these criteria.

If you have questions concerning this notice, please call the Department of Water Resources hotline at (800) 451-4129. You can also contact the Department's field office in Salmon at (208) 756-6644 or state office at (208) 287-4958.

DATED this 7th day of October 2005


KARL J. DREHER
Director

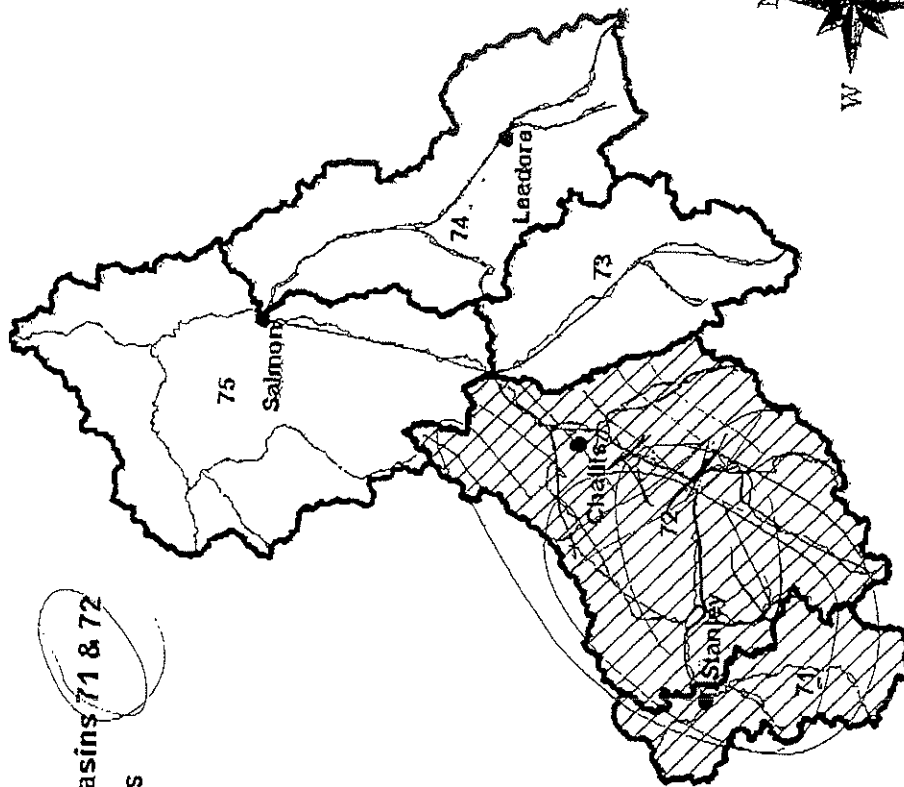
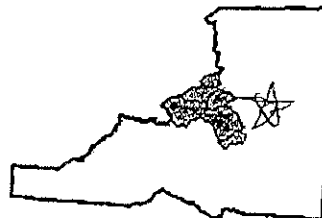
PROPOSED WATER DISTRICT UPPER SALMON RIVER BASIN

 Proposed Water District: Basins 71 & 72

 IDWR Administrative Basins

 Cities

 Rivers



10 0 10 20 30 Miles



DRAFT**Upper Salmon Water District Steering Committee
Oct. 4, 2005
Challis, Idaho**

The meeting was called to order at approximately 7:05 p.m.

The minutes of the Sept. 13 steering committee meeting were approved by the committee on a motion by Jack Challis, seconded by Carl Ellsworth.

Tim announced that the public information meeting about water district formation would be held Oct. 24, 7:00 p.m. at the Challis High School cafeteria. Advertisements will be published in the Challis Messenger and the Blaine County paper (Wood River Journal). Individual notices will be sent to holders of non-de minimis water rights in Basins 71, 72, 73, 74 and 75. Holders of water rights for domestic and stock water rights will not receive individual notice. IDWR excluded domestic, stock and other uses as defined in Section 42-111 (both surface and ground water sources) for purpose of sending notice since these uses will be excluded from the proposed district.

Karl Dreher, Director of the Idaho Department of Water Resources, will conduct the hearing scheduled for November 9th about water district formation (also at Challis High School cafeteria at 7:00 p.m.). The Director will present some information about how the Wild and Scenic Rivers agreement was reached and allow questions from attendees before taking testimony for the record. Written comments will be due Nov. 21.

The steering committee does not need to make any decisions about the Upper Salmon Water District structure or operation before the public meeting or hearing.

Some questions were raised about the water rights spreadsheets Tim had sent electronically. Tim said Basins 71 and 72 should be accurate because those rights have been decreed and the database tables have been cleaned-up. The other basins are still being adjudicated. Bob Loucks brought up the fact that processing of ownership changes is a problem, and they are not reflected in the spreadsheets, especially where land has been subdivided. The numbers of acres irrigated are over-stated where there are stacked water rights.

The US Forest Service (USFS) water rights were discussed. Some Forest Service irrigation water rights are rights that the Forest Service purchased a number of years ago so that all or a portion of the rights could go towards instream flows or uses. Bob Kenworthy, USFS, stated that some of these rights are currently in the water supply bank. There are still some irrigation or other consumptive use rights that the Forest Service uses, and these rights will be subject to water district assessments when the district starts doing assessments. The USFS also has some stock water rights. Tim Luke mentioned that non-consumptive use rights, if any (example, fish hatchery rights) can be assessed at different rates, but based generally on the amount of time and effort expended by the watermaster in administering such rights.

Some committee members said they were surprised at how many water rights are held by the USFS. Katie Breckenridge said it is not fair to other water users in Basin 71 who have to pay

assessments when the USFS has many water rights that will not be assessed. Tim stated that the Idaho Code provides that water district assessments are based on water use or water delivery, so the rights that are not used cannot legally be assessed except for perhaps a minimum charge of up to \$50. This is common practice in other water districts.

There was a discussion about the moratorium on issuing new rights on the Salmon River. The committee asked for clarification before the next meeting on whether there would be any forfeiture of water rights during the moratorium. Some people commented that forfeiture is not related to the moratorium. The question that needs clarification is when does the clock start on non-use? Tim agreed to research these questions further and respond via e-mail. Water rights and permits issued prior to Sept. 1, 2003, do not count toward the cap allowed in the Wild and Scenic agreement.

One difference between the State Water Bank and the Lemhi Water Bank was discussed as it relates to assessments. There is no assessment on rights placed in the State Water Bank, only on water that is beneficially used. There is an assessment in the Lemhi Water Bank if water is leased and shepherded downstream because there is an administrative cost. Water does not go into the Lemhi Water Bank unless there is a renter for it.

The illegal use of Salmon River water was raised. A number of people without water rights pump out of the river to water lawns. Tim pointed out that one duty of the water master would be to enforce against illegal water use.

A question was raised about the map of diversions on the Pahsimeroi River. The map shows a diversion at the head of each creek. What is this showing?

How long will Basins 71 and 72 have to come on line with measurement and reporting? Tim said that the Department might issue an order requiring headgate and measurement structures in the two basins as early as this winter, or sometime within the next twelve months. The order should provide some deadline for installation. Tim said the Department would probably allow some reasonable time for installation, such as the start of the 2007 irrigation season for example. Allowing some limited amount of time may give users an opportunity to get some funding or technical assistance from government agencies.

A question was asked about whether the water master or measuring devices comes first Tim answered that the water master would have duties beginning in 2006, which would include measuring diversions. The water master needs to be in place first to help evaluate diversions, and provide assistance and guidance to the basins on such things as measuring devices and headgates. Measurements made in 2006 may help with sizing and design of measuring devices that need to be installed over the next year or two.

The issue was raised again that not all diversions need measuring devices. Gary Chamberlain pointed out that Idaho Code 42-701 requires diversion structures to have a measuring device. Tim added that pursuant to the Code and the Wild and Scenic Agreement, there is a general expectation that measuring devices be installed on most diversions in water districts, but there is some flexibility provided by the agreement with respect to measuring devices. Certain exceptions may be allowed. Where exceptions may be allowed, diversions still need to be measured periodically by the watermaster or deputy watermaster using portable measuring

devices, or perhaps some other acceptable method of measurement. Tim suggested that the Committee needs to work on identifying what those general exceptions should be, and that the exceptions be realistic, reasonable, and acceptable to the parties involved as well as IDWR. The minimum interval for measurement of most diversions usually is once per week, but there is some flexibility depending on the water source and/or other circumstances.

Some committee members said if there is no measuring device on which to assess fairly, the water right holder should be assessed on the full right. One member asked if there isn't a way to measure small rights without installing a device. Could the water master come once or twice a year and take a flow measurement? Jack Challis said in Challis Creek they use locking headgates, even when there are just 16 inches of water.

Tim stated that there is often a perception by some organizations and people that there are illegal, or excessive diversion occurring throughout the Upper Salmon basin. Installation of measuring devices, ability to control diversions when necessary, and some acceptable method of regular measuring and reporting is needed to verify that there are not many excessive, unauthorized, or out of priority diversions.

The issue of assessments in time of drought was raised. If full allotments are not available, how are assessments made? The existing water districts increase the rate per cfs during drought so they are able to cover their budgets.

Tim asked Bob Loucks to present or review the document he and several other committee members from Basins 74 and 75 compiled to clarify and comment on IDWR's presentation of information about the Upper Salmon Water District. Tim tried to clarify some confusion about layering of watermasters that was described in Bob's document and generated from his presentation at the last meeting. Bob Loucks said that he had gotten an e-mail response from Tim on this issue and circulated it to others. Bob said the comments from his document regarding watermaster layering could be disregarded.

Bob Loucks offered that one of the recommendations in the document was that each sub-district continues to pay for its own watermaster, and the state should pay for the head watermaster. The state made the agreement, saying the people of Idaho benefited from the agreement. So, all the people of Idaho, or the State, should pay for the head watermaster.

Bob also mentioned that enforcement of violations is a problem in the basin. Whether there is a response from IDWR depends largely on whether the violation is in the Eastern or Southern region. It is difficult to get a response from the Eastern region. The head watermaster should be in charge of enforcement and should be able to issue notices of violation.

A question was raised by one of the committee members about the benefit of a head watermaster to individuals in water district 74 or tributary districts in Basin 74? How does each sub-district or individual user in each sub-district benefit? Several committee members pointed out that the Wild and Scenic Agreement requires compliance, and that the head watermaster would provide some level of accountability and oversight. There are many parties to the agreement, not just the State of Idaho and the USFS.

Bob Loucks continued with points from the Basin 74-75 users' document and raised a question about the definition of a lockable headgate? Does it mean the gate can be locked or adjusted? Is a tag sufficient that says the head gate was set by the water master and should not be adjusted? Bob indicated that very few gates in Water District 74 are locked by the watermaster, that posting notice is usually sufficient and users will rarely adjust a gate once it is posted.

What are the specifications for water measurement devices? Maintenance of measuring devices is a bigger problem than installation. Tim said the department has minimum guidelines for measuring devices that can be found on the Department's web site.

Another recommendation from the Basin 74-75 users' document is that the head watermaster be responsible for ensuring consistency in reporting and operation among sub-districts. There was also a recommendation that the method of naming or numbering diversions be consistent throughout the basin.

A question from a committee member was raised about ground water users in the basin? Do they need to measure water use? Can they use power bills? Tim said ground water diversions and rights are included in the water district and ground water use does generally need to be measured, especially new diversions as specified in the Wild and Scenic agreement. Some irrigators may be able to use power records for estimating annual volume of water use. When using the power method, the watermaster will need to make periodic discharge measurements of wells to derive the power consumption coefficient used in the annual volume estimates. Tim said that IDWR already gets annual power consumption records from most utilities in Southern Idaho. Commercial water rights generally cannot use power records because there usually is not a separate power meter for the well, rather the meter measures the well and all other electrical loads used at the facility.

The discussion shifted to resolutions to be presented at an annual meeting. Treasurers were discussed at length. Some committee members wanted to know if each sub-district needs a treasurer. According to existing water district statutes, a treasurer is needed if the budget is more than \$3,000 per year. Tim said that when the Upper Salmon water district begins collecting assessments, a treasurer will need to be elected and appointed, but this position does not have to be compensated (compensation, if any, can be determined by resolution at the annual meeting). The time commitment should be minimal, limited to signing a few checks or vouchers once per month, and periodic review of bank statements, and either preparing or overseeing preparation of an annual financial statement in coordination with the watermaster. The treasurer would need to have his or her name added to the bank account along with the watermaster. Tim indicated that only one treasurer is needed for the Upper Salmon Water District, although sub-districts would need to continue to have their own treasurers if they are collecting their own assessments, and if their budgets exceed \$3,000.

Members of sub-districts raised a number of problems with billing and keeping water rights data current. There was general consensus that it would be easier for each sub-district to continue billing its water rights holders and add a surcharge for the head watermaster.

Jack Challis handed out draft bylaws and resolutions for the Upper Salmon Water District and asked people to read them and comment to him by the next meeting.

Jim and Tina Hawkins said they have had requests from water users with diversions on the Salmon River to be placed in the Morgan Creek Water District. They have sent a letter to IDWR asking how these users can be included in the Morgan Creek Water District. Tim said the department is in receipt of the letter. He advised the Hawkins to present testimony about this request at the November 9th hearing and include a copy of the letter with their testimony so that it can be added to the hearing record.

The next committee meeting will be Monday, Nov. 14, in Challis.

Minutes prepared by:

Mary McGown, IDWR
October 14, 2005

UPPER SALMON WATER DISTRICT
STEERING COMMITTEE

MEETING AGENDA

November 14, 2005

7:00 p.m.

Challis Ranger District Conference Room, Challis

- I. Introductions and approve minutes of last meeting All Participants
- II. Quick Review & Clarification of Water District Creation T. Luke, IDWR
 - Timeline, boundaries, who is included
 - Watermaster duties
 - Benefits/justification of Upper Salmon Water District
- III. Water District Presentation and Q&A
 - 5 to 10 min presentation by Cindy Yenter, IDWR & Water District 130 Watermaster
 - Open Discussion and Q&A, involving representatives or watermasters from water districts in Upper Salmon Area, IDWR, and all participants
- IV. Water District Resolutions All Participants
 - Develop draft resolutions
 - Address sub-districts, governance
- V. Schedule Next Meeting and Adjournment All Participants