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DEPARTMENT OF  
WATER RESOURCES

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

IN THE MATTER OF CREATING THE  
UPPER SALMON RIVER BASIN WATER  
DISTRICT (DESIGNATED AS WATER  
DISTRICT NO. 170)

Case No. CV-2006-66

THOMPSON CREEK MINING COMPANY,  
  
Petitioner,

**OBJECTION TO ADMINISTRATIVE  
RECORD LODGED BY THE  
DEPARTMENT OF WATER  
RESOURCES**

vs.

IDAHO DEPARTMENT OF WATER  
RESOURCES,

Respondent.

On March 21, 2007, the Department of Water Resources served upon Thompson  
Creek Mining Company its *Notice of Lodging of Transcript and Record* in the above-referenced

matter. Pursuant to Idaho Rule of Civil Procedure 84(j), Thompson Creek hereby objects to the administrative record lodged by the Department because it omits several documents that are either directly relevant to, or that provide critical background and context regarding, the creation of Water District 170 (“WD170”).

## I. DISCUSSION

### A. **The Administrative Record Should Include Documents Related to the Federal Government’s Wild & Scenic Rivers Act Water Right Claims in the Snake River Basin Adjudication.**

The administrative record in this case should include certain documents from the previous legal proceeding that addressed water right claims filed in the Snake River Basin Adjudication (the “SRBA”) by the federal government based on the Wild & Scenic Rivers Act. The Department has stated on numerous occasions that WD170 was formed in order to implement the agreement between the federal government, the state of Idaho, and various other parties that purported to resolve the disputes over those claims. Accordingly, certain documents from that proceeding provide background and context that is critical to an understanding of the current dispute over the formation of WD170.

In the SRBA, the federal government filed several claims to instream flow water rights that it asserted were reserved to it by the federal Wild & Scenic Rivers Act. *See, e.g.,* Exhibits A and B. Several parties, including Thompson Creek, objected to these claims, and these claims and objections became the subject of consolidated subcase 75-13316 in the SRBA. *See, e.g.,* Exhibits C and D. On August 20, 2004, the federal government, the state of Idaho, and several of the objectors settled this dispute over the Wild & Scenic Rivers Act claims in a stipulation that became known as the Wild & Scenic Rivers Agreement. *See* Exhibit N. This Agreement was approved by the SRBA district court on November 18, 2004. *See* Exhibit R.

And, paragraph 2(b) of that Agreement states that the Department is required to create a new water district in Basins 71 and 72. Exhibit N at 3-4.

The administrative record lodged by the Department demonstrates that WD170 was created in order to implement the Wild & Scenic Rivers Agreement and its water district provision. *See, e.g., R* at 57, 59, 65. Due to this direct relationship between the Wild & Scenic Rivers Agreement and the creation of WD170, documents related to the Agreement and the federal Wild & Scenic Rivers Act water right claims should be included in the administrative record. Without them and the background and context that they provide, a full understanding of the issues in the current proceeding will not be possible.

Importantly, Thompson Creek does not suggest that all documents from consolidated subcase 75-13316 should be included in the administrative record. Rather, Thompson Creek believes that the following documents, which are attached to this Objection as Exhibits, are sufficient to provide the necessary background and context:

1. *Notice of Claim to a Water Right Reserved Under Federal Law (Amended)*, by the United States of America (Water Right No. 75-13316) (undated) (Exhibit A).
2. *Notice of Claim to a Water Right Reserved Under Federal Law (Amended)*, by the United States of America (Water Right No. 77-11941) (undated) (Exhibit B).
3. *Objection*, by Thompson Creek Mining Company (Water Right No. 75-13316, Oct. 11, 1995) (Exhibit C).
4. *Objection*, by Thompson Creek Mining Company (Water Right No. 77-11941, Oct. 11, 1995) (Exhibit D).
5. *Motion to File Amended Notice of Claim*, by the United States of America (Subcase No. 75-13316, Feb. 26, 1997) (Exhibit E).
6. *United States' Motion for Partial Summary Judgment on Its Claims to Federal Reserved Water Rights for Wild and Scenic Rivers* (Consolidated Subcase No. 75-13316, Jan. 15, 1998) (Exhibit F).

7. *United States' Memorandum in Support of its Motion for Partial Summary Judgment on Its Claims to Federal Reserved Water Rights for Wild and Scenic Rivers* (Consolidated Subcase No. 75-13316, Jan. 15, 1998) (Exhibit G).
8. *Thompson Creek's Memorandum in Response to United States' Motion for Partial Summary Judgment on its Federal Reserved Water Rights Claims for Wild and Scenic Rivers* (Consolidated Subcase No. 75-13316, Feb. 27, 1998) (Exhibit H).
9. *The United States' Consolidated Reply Memorandum In Support of Its Motion for Partial Summary Judgment On Its Claims to Federal Reserved Water Rights For Wild and Scenic Rivers* (Consolidated Subcase No. 75-13316, April 1, 1998) (Exhibit I).
10. *Stipulation and Joint Motion for Order Approving Stipulation and Dismissing Objections*, by the United States of America and Thompson Creek Mining Company (Consolidated Subcase Nos. 63-25239, 75-13316 and 75-13605, May 29, 1998) (Exhibit J).
11. *Order Approving Stipulation and Dismissing Objections* (Consolidated Subcase Nos. 63-25239, 75-13316 and 75-13605, June 16, 1998) (Exhibit K).
12. *Memorandum Decision Granting, In Part, and Denying, In Part, the United States' Motion for Summary Judgment on Reserved Water Rights Claims* (Consolidated Subcase No. 75-13316, July 27, 1998) (Exhibit L).
13. *Potlatch Corporation and Hecla Mining. v. United States of America* (Idaho Supreme Court, 2000 Opinion No. 106, Oct 27, 2000), or *Potlatch Corporation v. United States*, 12 P.3d 1256 (Idaho 2000) (Exhibit M)
14. *Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees*, between the United States of America, the State of Idaho, et al. (Consolidated Subcase No. 75-13316, Aug 20, 2004) (i.e., the Wild & Scenic Rivers Agreement) (Exhibit N).
15. *Thompson Creek Mining Company's Objection to Proposed Settlement Agreement* (Consolidated Subcase No. 75-13316, Oct. 14, 2004) (Exhibit O).
16. *Memorandum in Support of Thompson Creek Mining Company's Objection to Proposed Stipulation* (Consolidated Subcase No. 75-13316, Oct 14, 2004) (Exhibit P).

17. *Order Approving Stipulation and Entry of Partial Decrees* (Consolidated Subcase No. 75-13316, Nov. 16, 2004) (Exhibit Q)
18. *Amended Order Approving Stipulation and Entry of Partial Decrees* (Consolidated Subcase No. 75-13316, Nov. 18, 2004) (Exhibit R).

**B. The Administrative Record Should Include Additional Documents Related to the WD170 Steering Committee.**

The record lodged by the Department already contains a number of documents related to the steering committee that was formed by the Department and local water users to provide input on the formation of WD170. However, it appears that the Department has omitted a number of other documents from the same general time period that are also relevant to the WD170 steering committee. Thompson Creek believes the following documents, which are included as Exhibits to this Objection, should be included in the administrative record:

19. *Letter from Tim Luke Re: Announcement of Meeting With Existing State Water Districts in the Upper Salmon River Basin to Discuss the Wild and Scenic Rivers Water Rights Agreement and Establishing a New Water District in the Upper Salmon River Basin* (Feb. 9, 2005) (Exhibit S): This letter was sent to watermasters, secretaries, and advisory committee members of already existing water districts within WD170. It contains detailed discussions of the background and purpose of WD170 and is therefore relevant to this proceeding.
20. *Letter from Tim Luke Re: Upper Salmon Water District Steering Committee* (June 17, 2005) (Exhibit T): This letter was sent to certain water users in Basins 71, 72, 73, 74, and 75 as an invitation to join the WD170 steering committee. It also contains helpful discussions of the background and purposes of the formation of WD170 and is therefore relevant to this proceeding.
21. *Wild & Scenic Water Rights Agreement: Upper Salmon River Basin* (Sept. 13, 2005) (Exhibit U): This is a printout of a PowerPoint slideshow that was presented at the September 13, 2005 WD170 advisory committee meeting and that was also apparently included as an enclosure to a letter of September 27, 2005 from Tim Luke to members of the committee. R at 59, 68-88

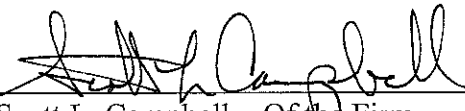
**C. The Administrative Record Should Include These Other, Miscellaneous Documents.**

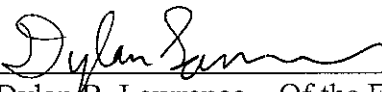
For the reasons described below, Thompson Creek believes the following documents should also be included in the administrative record:

22. *Written Comments of Thompson Creek Mining Company* (Nov. 18, 2005) (without exhibits)<sup>1</sup> (Exhibit V hereto): This was submitted directly to the Director after the November 9, 2005, hearing on the creation of WD170, but also well before both the *Final Order Creating Water District No. 170* that was issued on March 8, 2006, and the *Amended Final Order Creating Water District No. 170* that was issued on April 7, 2006. As such, this submission constitutes “evidence received or considered” that Idaho Code Section 67-5249(2)(b) requires to be included in the administrative record.
23. As the *Notice of Information Meeting and Hearing* of October 7, 2005, indicates, the Department held a public information meeting in Challis on October 24, 2005, to discuss the creation of WD170 in anticipation of the November 9, 2005, hearing. To the extent that there are any minutes, transcripts, or other documents describing that meeting, such documents should be included in the administrative record.
24. The record reflects that Department representatives presented a slide show at the public information meeting of October 24, 2005. A hard copy of that slide show presentation should be included in the administrative record.

DATED this 3rd day of April, 2007

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By   
Scott L. Campbell – Of the Firm

By   
Dylan B. Lawrence – Of the Firm  
Attorneys for Thompson Creek Mining  
Company

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<sup>1</sup> All exhibits to the *Written Comments* appear elsewhere in the Department’s administrative record and are accordingly not included with this *Objection*.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 3rd day of April, 2007, I caused a true and correct copy of the foregoing **OBJECTION TO ADMINISTRATIVE RECORD LODGED BY THE DEPARTMENT OF WATER RESOURCES** to be served by the method indicated below, and addressed to the following:

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IDAHO DEPARTMENT OF WATER RESOURCES  
Idaho Water Center  
322 E Front Street, 6th Floor  
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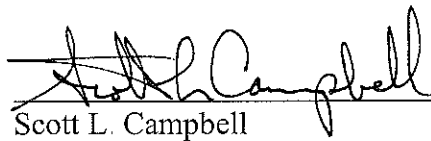
- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile

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Scott L. Campbell