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DEPARTMENT OF WATER RESOURCES

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

AUG 09 2016

By _____ Clerk
 _____ Deputy Clerk

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

IN RE CSRBA

Case No. 49576

ORDER APPROVING STIPULATION

Federal Reserved Water Right: 91-07624

(St. Joe Wild and Scenic River)

The District Court of the Fifth Judicial District in and for the County of Twin Falls, entered its Commencement Order on November 12, 2008, commencing the Coeur d'Alene-Spokane River Basin Adjudication ("CSRBA"); the United States of America, objectors the State of Idaho, Northwest Property Owners Alliance, the individual members of which are listed on Attachment 1 hereto, Benewah County Board of County Commissioners, Potlatch Forest Holdings, Inc., Potlatch Land & Lumber, LLC, Potlatch TRS Idaho, LLC, Alpine Meadows Water and Sewer District, North Kootenai Water & Sewer District (a/k/a North Kootenai Water District), Hauser Lake Water Association, Inc., Coeur d'Alene Lakeshore Property Owners Association, the individual members of which are listed on Attachment 2 hereto, Jamestown Forestlands, LLC, Cherry Tree Timber, LLC, Jackson Timberland Opportunities-Tristar, LLC, Carmona Tristar, LLC, Hancock Timberland X, Inc. and associated Hancock entities, Boston Timber Opportunities, LLC, Golden Pond Timberlands, Inc., Hancock Timberland XI, Inc., John Hancock Life Insurance Company (U.S.A.), John Hancock Life Insurance Company - Account 72 (U.S.A.), SFG HCK Timber Partnership, L.P., System Global Timberlands, LLC (which Hancock entities are parties to this subcase based on the Court's Order granting their motion to participate), and respondents North Idaho Water Rights Alliance, the individual members of which

are listed on Attachment 3, and Hagadone Hospitality Co. (the United States, these objectors and respondents referred to as the “parties”), through their respective counsel, having presented a Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decree, with the effective date of October 31, 2015 (“Stipulation”); due notice of the requested approval of the Stipulation and the proposed entry of the Partial Decree having been given pursuant to the Idaho Rules of Civil Procedure, the Docket Sheet, and the CSRBA *Administrative Order 1*; the Court having reviewed the Stipulation, the proposed Partial Decree and supporting affidavits and having heard the parties concerning these matters;

THE CSRBA DISTRICT COURT NOW FINDS AS FOLLOWS:

The parties have satisfied the requirements of Idaho Code Section 42-1411A, the Idaho Rules of Civil Procedure and CSRBA *Administrative Order 1*. The *Stipulation* is a fair and equitable settlement of the United States’ claim in the CSRBA for the St. Joe Wild and Scenic River. The *Stipulation* does not appear to 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 Decree*.

IT IS HEREBY ORDERED that:

1. All terms of the Stipulation and the Proposed Partial Decree for the United States’ Wild and Scenic Rivers Act federal reserved water right claim number 91-07624 for the St. Joe River, attached as Attachment 4 to the Stipulation (the “Partial Decree”), are hereby recommended, confirmed and approved.

2. Pursuant to Idaho Rule of Evidence 408, nothing in the Stipulation, the Partial Decree, 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 claims or objections in the CSRBA 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 CSRBA in any future proceedings in the CSRBA, in any appellate proceedings concerning the CSRBA, or in any other proceeding, other than those for interpretation, enforcement or

administration of the Stipulation or the Partial Decree, or for a purpose contemplated by Idaho Rule of Evidence 408. This *Order Approving Stipulation* is fully in accordance with Idaho Rule of Evidence 408, as well as the policy underlying that rule and the policy of the CSRBA Court directed at furthering the strong public policy favoring out-of-court settlement of disputes over litigation.

3. The water right set forth in the Proposed Partial Decree is recommended and is in full satisfaction of the United States' claim in the CSRBA for the federally designated St. Joe Wild and Scenic River, and all objections and responses thereto. A *Special Master's Report and Recommendation* will issue.

IT IS SO ORDERED.

DATED: August 9, 2016.



Brigette Bilyeu

Special Master

Coeur d'Alene-Spokane River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER APPROVING STIPULATION was mailed on August 09, 2016, with sufficient first-class postage to the following:

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OFFICE OF THE ATTORNEY GENERAL
STATE OF IDAHO
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BOISE, ID 83720-0010
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Represented by:
US DEPARTMENT OF JUSTICE
ENVIRONMENT & NATL' RESOURCES
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ATTACHMENT 1

LIST OF INDIVIDUALS WHO ARE A PART OF THE
NORTHWEST PROPERTY OWNERS ALLIANCE

Addington, Steve
Aldredge, Linda
Andersen, R. Earl
Andersen, Audrey
Anderson, Carl W
Anderson, Dianne
Anderson, Naomi
Anderson, Perry
BackusDennis
Black Bear Water Assn (Robert Nettleton)
Blalack, Arliss
Blalack, Carl
Blue Wolf. Community Club Marilyn Tanner, President
Boothe, John
Briggs, Gale
Briggs, Janet
Browning, Carol Felt
Burger, Terry
Cabeza, Miguel
Caroll, Norman
Carroll, Vicki
Chatfield-Dietrich, Annika
Cochrane, Carl
Coleman, Kevin
Conner, Bill L
Cooper, Cindy
Corkill, David 'Brad' & Mary
Day, Julie
Day, Rick & Holly
Day, Tim
Dohrman, Jean
Donahoe, Larry
Donohoe, Bonnie (Eleanor Y)
Donohoe, Darby G
Donohoe, Russel
Doose, Bonnie
Dredge, Susan E
Dunn, Rickey
Dunnigan, Thomas F
Ecklund, Ernest & Myra
Ellis, Robert
Farber, Florence

Figueroa, Jeremie
Francis, Troy
Fritz
Frutchey, Frank
Funk, Jeff
Gilbreth, Terry
Graves, Phillip
Grunzweig, Robert & Julie
Hall, Warren
Hancock, Betty
Harpole, Barbara
Harrison, William B & Gretchen R
Hasz, Connie L
Hasz, Fred & Marcy
Hasz, William K
Herboldt, Dale
Higbee, Michael D.
Holm, Sheila M.
Jacquemin, Helen
Jacquemin, Wendy
Johnson, Gary
Jordan, Kathy
Jordan, Lance M
Jordan, Wesley & Linda
Kahn, Kathryn
Kahn, Ralph
Klein, Beverly & Floyd
KleinKhecht, Keith
KleinKhecht, Nancy
Kraack, John R
Kropf, Mark P
Kuhnline, Mike & Tina
LaBolle, Daren
LaBolle, Daren & Janet
Layton, Barney
Layton, Dwayne
Layton, Rosie
Lehtola, Larry
Levine, Jaida
Levine, Phillip
Liss, Kim
Liss, Steven M
Littlejohn, Alan
Littlejohn, Linda
Lozano, Patricia
Lucas, Serena

Lucas, Tom
Luchini, Doug
Maddux, Bruce & Carol
Maehler, Michael R
Mainsey, Kaye A
Marsan, John M
Marsan, Shirley
Matthews, Stephen
Mc Caw, Donald & Christine
Mc Daniel, David & Kathy
McFaddin, John & Agnes
Mc Inturff, Douglas & Darcy
Mendive, Ron
Mitchell, Gary
Mitchell, Patricia
Morden, Joyce
Mortensen, Roy
Moyer, Derald
Murray, Paul
Murray, Paul
Neirinckx, John
Neirinckx II, John
Noel-Wessel, Darla
Owen, Vicki Hendrick & Sam
Powell, Jodi
Powell, Robert
Prueher, Cheryl
Radford, Ben
Razor Family Property Revocable Trust
Redman, Jordon
Remmick, Daniel G
Renner, Glennie & Elizabeth
Renner, Johanna
Renner, Kevin & Tiffany
Renner, Patricia & Kenneth
Rider, Linda
Rider, Robert
Rodgers, Jed
Rodgers, Susan
Rush, Joseph
Ryssman, Linda & Dwayne
Sanders, Gordon
Segsworth, Paul
Shannon, Tim
Sherfey, Don H
Sheridan, David

Sheridan, Margaret
Sichlinger, Alfred
Simonsen, Kevin & Shannon
Skidmore, Eric & Susan
Smith, Sharon & Fred
Stewart, Marsha J
Stock, Joyce D & Charles R
Strom, Neil & Nancy
Sutton, Donald
Sutton, Gina
Takashina, Hisaya & Dorothy
Tanner, Russel & Marilyn
Thomson, Steve
Timken, Peggy
Tyler, Jeff
Vawter, Les
Wall, Terry L
Warren, Gene L & Wesley L
Webb, Gene
Weeks, Gary
Weingar, David & Janet
White, William
White, Robert & Norma
Wilson, Randy
Woempner, Carla
Woempner, Verland
Wood, Ron
Zaken, Ken & Aileen

ATTACHMENT 2

LIST OF INDIVIDUALS WHO ARE A PART OF THE
COEUR D'ALENE LAKESHORE PROPERTY OWNERS

Harmon Property Owners Association
James and Molly Dolliver
Bruce Cyr
Gianotti Trust DTD 1991
Sutherland Family Revocable Trust
Greg Delavan
Stanley J. Harrison
David and Jill Christiansen
Thomas M. Patrick Revocable Trust
Jakar Ventris, LLC
Clyde H. Sheppard
Richard J. Clemson

ATTACHMENT 3

LIST OF INDIVIDUALS WHO ARE A PART OF THE
NORTH IDAHO WATER RIGHTS ALLIANCE

Doug & Kristi Payne
Pam Secord for Oceanwood Oasis Trust
Robin & Leslee Stanley
Robert & Dianna Bostrom
Bernard & Dawn Weber
Ken & Yvonne Devries
Tom & Eileen DuHamel
James & Victoria Furth
J. Rachael Johnson
John & Michelle McMahon
Thomas & Mary Carver
Edward & Candace Anderson
Robert & Patty Anderson
Ralph & Martha Banderob
Roderick & Beth Halvorson
Ronald & Sherlene Mendive
William & Gretchen Harrison
William & Nancy McAnich
John & Agnes McFaddin
Joel & Cindy Newson
Jeff & Dede Shippy
Larry & Susan Sotin
Leland & Danielle Boldt
Pinehurst Water District
Shoshone County Sportsmen's Association
Richard L. Powell
Lois Tuel
Don & Martha Vail
Vic & Rita Brodie
Fernwood Water & Sewer District
Andrew & Heather Scott
Patrick & Annette Petrie
Robert & Gail Short
Harry Grubham
Edmond & Janet Farrel
Shoshone County Public Works
Kellogg School District
Paul & Colleen Smith
Elizabeth Roberts
Marvin & MaryAnne Wheeler
Lance & J. Michele McDaniel
East Shoshone County Water District

Martha Green
Gary & Patricia Mitchell
Mullan School District #392
Jack & Eleanor Buell
Norman McCall
Dick & Carole Harwood
Crows Nest Water Association
Nona Bruns
Weber Farms
Carol Clark
Rick & Holly Day
Jean Dohrman
John & Shirley Ferris
Roy & Linda Michael
Patrice Hartel
Dean & Glenda Gentry
Terry & Wilma Murray

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 THE GENERAL ADJUDICATION OF RIGHTS TO THE USE OF WATER FROM THE COEUR D'ALENE- SPOKANE RIVER WATER SYSTEM CASE NO. 49576)))))	PARTIAL DECREE FOR Federal Reserved Water Right 91- 07624 St. Joe Wild and Scenic River
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1. Name and address of owner:

UNITED STATES OF AMERICA, on behalf of the U.S.D.A. Forest Service
 550 W. Fort Street MSC033
 Boise, Idaho 83724

2. Source of water:

St. Joe River Tributary to Coeur d'Alene Lake

3. Quantity of right:

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

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

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

- (2) When the stream flow at the St. Joe above North Fork quantification site is greater than or equal to 6,220 cfs (as adjusted by upstream junior depletions), the United States is entitled to all flows up to 20,300 cfs.
- (3) The quantification site for the flows identified above at the St. Joe above North Fork quantification site is the St. Joe River immediately above its confluence with the North Fork of the St. Joe River, located in Lots 5 & 6 (NW1/4NW1/4), Sec. 14, T45N, R5E, Boise Meridian; Latitude N 47° 15' 03", Longitude W 115° 47' 51" (NAD 83).

- b. This water right does not prohibit the appropriation, diversion and use of water within the St. Joe River basin upstream from the ending point, as identified in element 5.b below ("St. Joe Wild and Scenic River Basin") when the stream flow at the St. Joe above North Fork quantification site exceeds the flow amount in Section 3.a.(1) and is less than 6,220 cfs, or when the stream flow at the St. Joe above North Fork quantification site exceeds 20,300 cfs.
- c. This water right precludes any diversion of water out of the watershed of the St. Joe River Wild and Scenic River Basin.

4. Priority date:

November 10, 1978

5. Point of diversion:

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

a. Location of beginning point:

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

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

b. Location of ending point:

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

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

6. Purpose of use:

To fulfill the purposes of the Wild and Scenic Rivers Act, Pub. L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.), and the National Parks and Recreation Act, Pub. L. 95-625m, 92 Stat. 3467, Nov. 10, 1978 (codified at 16 U.S.C. § 1274(a)(23)).

7. Period of use:

January 1 - December 31

8. Place of use:

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

9. Annual volume of consumptive use:

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

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

- a. This is a federal reserved water right established pursuant to the Wild and Scenic Rivers Act, Pub. L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.), and the National Parks and Recreation Act, Pub. L. 95-625m 92 Stat. 3467, Nov. 10, 1978 (codified as amended at 16 U.S.C. § 1274(a)(23)).
- b. This Partial Decree is subject to the October 31, 2015 Stipulation between the United States, objectors State of Idaho ("State"), Northwest Property Owners Alliance, Benewah County Board of Commissioners, Potlatch Forest Holdings, Inc., Potlatch Land & Lumber, LLC, Potlatch TRS Idaho, LLC, Alpine Meadows Water and Sewer District, North Kootenai Water and Sewer District (aka North Kootenai Water District), Hauser Lake Water Association, Inc., Coeur d'Alene Lakeshore Property Owners Association, Jamestown Forestlands, LLC, Cherry Tree Timber, LLC, Jackson Timberland Opportunities-Tristar, LLC, Carmona Tristar, LLC, Hancock Timberland X, Inc. and associated Hancock entities, Boston Timber Opportunities, LLC, Golden Pond Timberlands, Inc., Hancock Timberland XI, Inc., John Hancock Life Insurance Company (U.S.A.), John Hancock Life Insurance Company – Account 72 (U.S.A.), SFG HCK Timber Partnership, L.P., System Global Timberlands, LLC, and respondents North Idaho Water Rights Alliance, and Hagadone Hospitality Co. ("2015 Stipulation"). Pursuant to the terms of the Stipulation, this water right is subordinated to the following water rights and uses that are junior to this federal reserved water right

and that have points of diversion or impoundment and places of use within the St. Joe Wild and Scenic River Basin:

- (1) All water right claims filed in the Coeur d'Alene-Spokane River Basin Adjudication ("CSRBA") as of the effective date of the 2015 Stipulation, to the extent ultimately decreed in the CSRBA.
- (2) All applications for permit and permits with proof of beneficial use due after November 12, 2008, on file with IDWR as of the effective date of the 2015 Stipulation, to the extent such applications for permit or permits are ultimately licensed; and all water right licenses with proof of beneficial use due after November 12, 2008 on file with IDWR as of the effective date of the 2015 Stipulation.
- (3) All "*de minimis* domestic rights," which for the purposes of this Partial Decree shall be defined to mean (a) the use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half acre of land, if the total use is not in excess of thirteen-thousand (13,000) gallons per day, or (b) any other uses, if the total does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day. This subordination to *de minimis* domestic water rights does not apply to domestic purposes or domestic uses for subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in (b) above. This subordination to *de minimis* domestic purposes or domestic uses does not apply to multiple water rights for domestic uses or domestic purposes that satisfy a single combined water use or purpose that would not itself come within the definitions above. For purposes of this Partial Decree "subdivision" is defined as set forth in Shoshone County Subdivision Ordinance No. 139, Section 10-2-2, adopted December 22, 2009, which is attached to the 2015 Stipulation, and which is incorporated herein by reference.
- (4) All "*de minimis* stock water rights," which for the purposes of this Partial Decree shall be defined to mean the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen-thousand (13,000) gallons per day. This *de minimis* stock water use subordination is further limited and defined so that the subordination shall not and does not apply to multiple water rights for stock water uses which satisfy a single combined water use that would not itself come within the above definition of stock water use.
- (5) Water appropriated or to be appropriated for mining purposes on private lands, up to a total combined diversion of 5.0 cfs, provided that the rate of diversion shall never exceed twenty-five (25) percent of the rate of flow then available in the stream at the point of diversion. This subordination provision

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

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

- c. This water right does not prohibit the use of water by the owners of private lands in the St. Joe Wild and Scenic River Basin, and all successors thereto, for "non-consumptive, run-of-the-river" hydropower purposes as defined in paragraph 4 of the 2015 Stipulation.
- d. The provisions of the 2015 Stipulation are incorporated herein by reference.
- e. These additional provisions contained in element 10 do not fall within the other elements listed above and are necessary to: (1) define the unique characteristics of these federal reserved water rights; and (2) describe the rights and uses to which these federal reserved water rights are subordinated in order to provide for proper administration of these water rights and other existing and future water rights.

IT IS SO ORDERED.

DATED this _____ day of _____, 20__.

ERIC J. WILDMAN
Presiding Judge
Coeur d'Alene-Spokane River Basin Adjudication