Application Processing No. 70
Water Delivery No. 3

ADMINISTRATOR'S MEMORANDUM

To: Regional Offices and Water Allocation Bureau
From: Jeff Peppersack
Date: October 30, 2009

RE: PARTIAL DECREES FOR WILD & SCENIC RIVER WATER RIGHTS, STIPULATION FOR SETTLEMENT OF WILD AND SCENIC RIVER DISPUTE

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I. Introduction

During the summer of 2004, the State of Idaho, the United States of America, and other interested parties (referred to hereafter as "the parties") signed a stipulation for settlement of objections to instream federal reserved water rights claimed pursuant to the Wild and Scenic Rivers Act. The stipulated agreement is referred to herein as the "Wild & Scenic Agreement." Under the Wild & Scenic Agreement, the parties agreed to recognize federal reserved instream water rights on the Main Salmon, Middle Fork Salmon, Rapid, Selway,

Lochsa, and Middle Fork Clearwater Wild & Scenic Rivers. These water rights will be referred to hereafter as the "Wild & Scenic Water Rights." The parties developed recommendations to the Snake River Basin Adjudication (SRBA) Court for those water rights and attached them to the agreement as Attachments 1 through 6.

The Wild & Scenic Agreement resolves the objections through both the objectors and claimants accepting the following:

- That the Wild & Scenic Water Rights are subordinate to certain existing and future water uses.
- That existing and future uses are subject to detailed administration to ensure water use conforms to all elements of the water rights.

The parties to the Wild & Scenic Agreement stipulated that the Wild & Scenic Water Rights would be subordinate to existing appropriations of water and some future appropriations of water and anticipated that IDWR would perform detailed administration of existing and new water rights following execution of the agreement and issuance of the recommended partial decrees by the SRBA Court.

The partial decrees for the Wild & Scenic Water Rights were decreed by the SRBA Court on November 16, 2004. The decreed water rights are numbered as shown in the table below.

Table 1. Decreed Water Right Numbers for the Wild & Scenic Water Rights

Wild & Scenic River	Decreed Water Right Numbers
Main Salmon River	75-13316 & 77-11941
Middle Fork Salmon River	77-13844
Rapid River	78-11961
Selway River	81-10472
Lochsa River	81-10513
Middle Fork Clearwater River	81-10625

This memorandum interprets language within the Wild & Scenic Agreement and the partial decrees for the Wild & Scenic Water Rights for purposes of recording, tracking, and administering water rights in the watersheds of the Wild & Scenic Water Rights.

II. Definitions/Global Concepts

a. Effective Date

The text of the Wild & Scenic Agreement establishes September 1, 2003, as the effective date of the agreement.

b. Hydraulic Connection

IDWR interprets the term "hydraulically connected sources" to mean all sources of water (including ground water) within the surface water drainages of the Wild & Scenic Rivers. Additionally, IDWR assumes that all such "hydraulically connected" sources of water remain connected to the Wild & Scenic River at all times. All surface water rights and ground water rights diverted from sources hydraulically connected to the Wild and Scenic River reaches upstream from the ending points will be recorded, tracked and administered as anticipated under the provisions of the Wild & Scenic Agreement.

IDWR has created GIS shape files depicting the areas where diversions of water will be recorded, tracked and administered as anticipated under the provisions of the agreement. The shape files have been posted on IDWR's Internet site and made available to staff members in IDWR's internal GIS database.

c. Conjunctive Management

IDWR will conjunctively manage the ground water and surface water in the Wild and Scenic River Basins. At a minimum, ground water users must account for their diversion of water. Ground water rights that do not enjoy the benefits of subordination will be curtailed in times of shortage.

Appropriations from all sources of water hydraulically connected to the Wild and Scenic River reaches, including ground water appropriations, must be included in the cumulative totals of water rights enjoying the benefits of subordination (see part III below).

III. Subordination Provisions of the Partial Decrees

Each partial decree for the Wild & Scenic Water Rights bears a provision stating that the water right is subordinate to certain existing and future water rights and uses. This means that, although the Wild & Scenic Water Right may be senior in priority, some junior water rights will not be regulated to provide water to satisfy the Wild & Scenic Water Right.

a. Subordination to Certain Junior Water Rights and Uses

All of the Wild & Scenic Water Rights are subordinate to eight classes of junior water rights and uses with points of diversion or impoundment and places of use within the Wild & Scenic basin upstream of the ending point of the Wild & Scenic instream water right. The eight classes are as follows:

1. All water right claims filed in the SRBA as of September 1, 2003, if ultimately decreed in the SRBA.
2. All water right licenses, permits, and applications bearing priority dates earlier than September 1, 2003, for which proof of beneficial use was due after November 19, 1987.
3. Domestic use as defined by Idaho Code § 42-111(1)(a) and (b) and consistent with Idaho Code § 42-111(2) and (3). Multiple ownership subdivisions do not enjoy the benefits of subordination as domestic uses unless the use meets the diversion rate and volume limitations set forth in Idaho Code § 42-111(1)(b).
4. De minimis stockwater uses as defined by Idaho Code § 42-111 and Idaho Code § 42-1401A(11).
5. Nonconsumptive water rights.
6. Water rights of the United States.
7. Instream flows.
8. Replacement water rights as defined in the partial decrees.

The Wild & Scenic Water Rights for the Main Salmon River are subordinate to the eight classes of water rights listed in section (a) above, and also to the following:

1. Municipal water rights bearing a priority date later than September 1, 2003. Hookups with a capacity less than 2 cfs will enjoy the benefits of subordination. However, any hookups with a capacity equal to or greater than 2 cfs (except if for fire protection) will enjoy subordination under the finite future use limit to the extent that the limit has not been met at the time the hookup is developed. Municipal is defined more narrowly than the statutory definition.

The other Wild & Scenic Water Rights are not subordinate to municipal uses. This is probably because there is so much federal land in those basins that there is not, and probably will never be, any municipal use within or upstream from the other Wild & Scenic River reaches.

b. Subordination to Finite Future Uses

Section 10.b.(6) of the partial decree for the Main Salmon River and 10.b.(5) of the remainder of the Wild & Scenic partial decrees provides that the federal reserved water rights in each Wild & Scenic basin will be subordinate to a limited amount of future development that would not otherwise enjoy the benefits of subordination under other provisions of the partial decrees. Each watershed within and upstream of the Wild and Scenic River reach was evaluated to determine limitations of uses and these limitations were incorporated into the development limitations. The amount of future development in each basin that will enjoy the benefits of subordination is summarized in Table 2 and is limited to a total combined diversion rate, only a portion of which is to be for purposes of irrigation.

Table 2. Future Use Amounts to which the Wild & Scenic Water Rights will be Subordinate

Partial Decrees	Flow Rate (cfs)	Irrigation Limit (acres at 0.02 cfs/acre)	Other
Main Salmon River	150	5,000	Subordinated to an additional 225 cfs/10,000 acres (at <= 0.02 cfs/acre) when the mean daily flow at the Shoup Gage is >1,280 cfs.
Middle Fork Salmon River	60	2,000	Subordinated to an additional 5 cfs of diversion from specific areas for commercial or industrial use or storage for such uses, where storage capacity is <= 100 acre-feet.
Rapid River	10	300	None
Selway River	40	500	None
Lochsa River	40	500	None
Middle Fork Clearwater River	40	500	None

The partial decree for the Main Salmon federal reserved water rights states that "if a portion of the acreage permitted within" the "150 cfs is to be idled for a year or more, an equal number of acres permitted for irrigation within the 225 cfs . . . 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." Although the flow rate quantities authorized by the water rights in each group determine whether the rights will be within the first 150 cfs block of water rights or the second 225 cfs block of water rights, for purposes of administration, portions of water rights within the first 150 cfs block not used during an entire calendar year will be temporarily removed from the 150 cfs subordination block of water rights. The earliest priority water rights in the second 225 cfs block of water rights will become a part of the 150 cfs block up to 150 cfs total diversion rate authorized by the first block of water rights.

The language in the partial decrees for the Wild & Scenic Water Rights is not entirely clear as to how much future irrigation use the federal reserved rights will be

subordinate to. Each partial decree bears language similar to that of the Main Salmon partial decree, which provides that the federal reserved rights will be subordinate to future appropriations 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."

Conservation of water resources within Idaho requires water users to be reasonably efficient. Modern irrigation methods typically do not require more than 0.02 cfs per acre of irrigation. Approving new irrigation water rights for more than 0.02 cfs in the areas tributary to the Wild & Scenic Rivers could be contrary to the subordination provisions of the partial decrees, and it could further limit the number of irrigated acres that can benefit from the subordination provisions of the Wild & Scenic water rights. Therefore, recognizing that each federal reserved water right has its own limits, but using the Main Salmon as the example, IDWR interprets the future appropriation statements of the partial decrees to mean the following:

1. The federal reserved water rights will be subordinate to a combined total of 150 cfs of new appropriations that do not already enjoy the benefits of subordination under other provisions of the partial decree.
2. Not more than 100 cfs (5,000 acres at 0.02 cfs/acre) of new irrigation appropriations will enjoy the benefits of subordination.
3. The federal reserved water rights will be subordinate to a new appropriation listing irrigation as a beneficial use only if the total diversion under all existing rights appurtenant to the place of use for that appropriation is less than or equal to 0.02 cfs/acre.

The above interpretation implies that some new appropriations will not enjoy the benefits of subordination even though the future use limits may not have been reached. This is discussed in more detail in the section of this document entitled P*ermitting and Licensing Guidelines*.

Storage water rights are specifically excluded from the future use subordination provisions of the partial decrees for the Wild & Scenic Water Rights. Because water rights for storage volumes cannot be easily converted to a flow rate that can be counted against the flow rates to which the Wild & Scenic water rights are subordinate, IDWR will treat on-stream storage rights in the same way that instream flow water rights and nonconsumptive water rights are treated in the partial decrees; they will not be deducted from the flow rate limitations to which the Wild & Scenic water rights will be subordinate.

If a water right that enjoys the benefits of subordination is forfeited or abandoned, the future use subordination amount available is increased by the amount of the water right that was forfeited or abandoned. If a water right (other than for domestic, stockwater, or municipal uses) that is senior to the federal reserved water rights is forfeited or abandoned, the State of Idaho may petition the SRBA court for an increase in the future use amounts equal to that of the forfeited or abandoned senior rights.

c. Accounting of Subordination to Finite Future Uses

To ensure adherence to subordination limitations for the Wild & Scenic Water Rights, diversion rates and irrigated acres must be totaled for all applications proposing appropriations from the "future use subordination" provisions in each Wild & Scenic partial decree. These summaries will change from time to time because of additional

appropriations, reduced development, lapsing or licensing of permits, or abandonment, voiding or forfeiture of water rights to which the Wild & Scenic water rights are subordinate.

The Wild & Scenic Agreement states that water rights enjoying the benefits of subordination shall be recorded, tracked, and made available via modern electronic means. The Water Rights Section shall diligently pursue computer programming assistance to create capability within the Enterprise database and access to the database information through queries available on IDWR's Internet site. As an interim measure, a spreadsheet has been created and is maintained as a temporary method for recording and tracking the water right records enjoying the benefits of subordination. IDWR staff in the regions and the state office will share responsibility for updating the spreadsheet as part of their regular data entry functions for new applications, permits, and licenses. IDWR shall post the spreadsheet to the IDWR Internet site at least once a month.

IV. Other Provisions of the Partial Decrees

a. Publicly Available Information

As anticipated under the Wild & Scenic Agreement, IDWR will maintain "publicly available" information in its databases about water rights "above the ending point of each Wild and Scenic federal reserved water right." All water rights (decreed, licensed, or permitted) enjoying the benefits of subordination must be separately identified.

b. Out of Basin Transfers Prohibited

Each partial decree contains language prohibiting new appropriations or transfers of any water right that would result in the transfer of water from within the watershed of the Wild & Scenic River (upstream of the ending point of the instream reach) to points outside of the of the watershed of the Wild & Scenic River. The partial decrees do not prohibit transfers of points of diversion from above the ending point to below the ending point of the same instream reach. The language does not prohibit approval of new water rights or water right transfers proposing use of water within the Wild & Scenic Watersheds. Although the partial decrees each use the phrase, "This water right precludes any diversion of water out of the watershed ..." the partial decrees are not meant to prohibit the use of rights already authorized to divert water from within the basin to lands outside the basin.

V. Permitting and Licensing in Wild & Scenic Watersheds

a. Permitting and Licensing Guidelines

- Published notices of water right applications must contain information about subordination of the Wild & Scenic Water Rights.

  If the application is for single domestic use, de minimis stock water use, or instream flow; or if it is a United States right, a nonconsumptive use, or a replacement right, language similar to the following text should be included in each published notice:

> This application proposes the diversion and use of water from <ground water tributary to/a tributary of> the _____ Wild & Scenic River. The decreed minimum stream flow rights for the federal Wild & Scenic Rivers are subordinate to certain categories of water use and to specific amounts of water use established after the minimum stream flow. The water use proposed in this application will benefit from the subordination provision because it is for _____ purposes.

If the use is NOT a single domestic, a de minimis stockwater use, a nonconsumptive use, a United States right, a replacement right, or an instream flow, language similar to the following text should be included in each published notice:

> This application proposes the diversion and use of water from <ground water tributary to/a tributary of> the _____ Wild & Scenic River. The decreed minimum stream flow rights for the federal Wild & Scenic Rivers are subordinate to certain categories of water use and to specific amounts of water use established after the minimum stream flow. The water use proposed in this application will benefit from the subordination provision because the diversion rate <<and acres>> will be applied to the subordination amounts specified in the decree for the Wild & Scenic River listed above.

- Permits for irrigation of more than 5 acres of new development will be issued with a diversion rate of no more than 0.02 cfs/acre – this diversion amount and acreage will be deducted from the future use amounts.
- Permits for irrigation of 5 acres or less of new development will be issued at a diversion rate of no more than 0.03 cfs/acre – this diversion amount and acreage will be deducted from the future use amounts.
- Permits for irrigation of existing irrigated acres that result in an overall diversion rate of more than 0.02 cfs/acre will not enjoy the benefits of subordination and will not be deducted from the future use subordination amounts. This applies even if the new license authorizes 0.02 cfs/acre or less, as long as the total diversion rate (including existing rights) for the irrigated acres exceeds 0.02 cfs/acre.
- Permits for municipal uses within the Main Salmon River drainage (basins 71 through 75) to which the Main Salmon Wild & Scenic Water Right will be subordinate based on paragraph 10.b.(5) of the partial decree must be conditioned to require the right holder to report when diversions commence and to submit to IDWR by January 31 of each year thereafter, a report listing the size, capacity, and location of all new connections greater than 4 inches in diameter.
- When a new application for appropriation is filed, a permit or license is issued, or, by order or operation of law, is voided, forfeited, abandoned, or lapsed, IDWR's action should be posted to the "subordination accounting database." Until that database is developed, this information should be posted to the tracking spreadsheet described in section III.c of this document.
- The Wild & Scenic Agreement anticipates that all permits or licenses issued for non-de minimis uses from sources of water in a Wild & Scenic River basin after September 1, 2003 will be conditioned to require a lockable controlling works, a measuring device, and a data logger or other suitable

device to record diversion rates at each point of diversion. The term "de minimis" is not defined in the agreement. IDWR coordinated with the federal government (U.S. Forest Service) to determine de minimis uses and the timing of requirements based on anticipated administration of rights through a water district. Please refer to the flow chart *"Measuring Device, Lockable Controlling Works, and Water District Conditions for Applications for Permit"* for specific information on these conditions. The flow chart is subject to revision, but the current version is available from the Water Rights Permits Section.

b. Current Moratoriums

The order establishing a moratorium on the appropriation of surface water in the Salmon River and Clearwater River basins dated April 30, 1993, and the order establishing a moratorium on the appropriation of surface and ground water in areas within and tributary to wilderness areas, dated October 26, 1999, were rescinded by order executed on November 9, 2005.

For additional guidance, see the information sheet *"Applying for a Permit to Appropriate Water in the Salmon and Clearwater River Basins"*, and the flow chart *"Water Right Application Review Process for the Salmon and Clearwater River Basins."* These documents are subject to revision, and the most current versions are available from the Water Rights Permits Section.

VI. Administration and Regulation

In the portion of the Wild & Scenic Agreement titled "Administration of Water Rights" subparagraph 2.a., titled "Enforcement," states:

> 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 sub-basin location, above the ending point of the respective federal reserved water rights . . . . [A]ll new water rights that are hydraulically connected with the Wild and Scenic Rivers federal reserved water right will be administered as a single source.

The following IDWR tasks are anticipated or implied under the agreement:

1. Insure the accuracy of the decreed water rights in basins 71, 72, 73, 74, and 75. Create user lists of water users for the purpose of notifying the water users of the need to create a water district.
2. Create the Upper Salmon Water District. Help water users find a watermaster suitable for election and appointment, determine place of work, determine number of deputy watermasters, and establish a budget and appropriate assessments for the water users. Determine interaction of the larger district with existing water districts.
3. Conduct a systematic inventory of diversions for watermaster oversight.
4. Measure existing diversions with a current meter and require adherence to water right limitations. Require installation of lockable controlling works, measuring devices, and data loggers where necessary.
5. Require installation of lockable controlling works, measuring devices, and data loggers for all new non-de minimis water permits and licenses issued after September 1, 2003 regardless of priority. See Section V.a for details regarding implementation of this task.

6. Collect and report diversion data quarterly. Collect and report diversion data daily in times of shortage "as necessary to properly administer water rights."
7. Conduct periodic coordination meetings with the watermaster, the federal government and other water users for the purposes listed below:
    - to agree upon management goals;
    - to identify and prioritize stream reaches or other locations needing improved management;
    - to identify sources of funding for regulation, equipment and facilities;
    - to identify needs for creation of additional sub-districts;
    - to share data and other information and assess progress in meeting management needs.

    The requirement for periodic meetings will continue to be met through meetings of the WD170 Advisory Committee, to be attended by the watermaster and representatives of IDWR.

a. Regulation of the Main Salmon River

The partial decree for the Salmon River Wild & Scenic water rights states that water rights within the watershed of the Salmon River Basin upstream of Long Tom Bar will be administered to ensure the satisfaction of the Wild & Scenic water right through out the Wild & Scenic reach. The instream flows established by the Wild & Scenic Water Rights can be diminished by diversions of water under the water rights enjoying the benefits of subordination, but junior water rights that do not enjoy the benefits of subordination will be regulated when the Wild & Scenic Water Rights are not being satisfied. The mean daily flow of the Salmon River at the Shoup Gage is used to determine whether the Salmon River Wild & Scenic water right is considered satisfied. The water rights have both a high flow and a normal flow component.

- **High Flow Component**. Section 3.b of the partial decree for the Salmon Wild & Scenic water rights provides that the United States is entitled to all flows up to 28,400 cfs at times when the flow at the Shoup gage is greater than 13,600 cfs, or would be greater than 13,600 cfs if not for junior upstream depletions. In other words, the total of depletions to the flow at Shoup due to junior water rights must be added to the flow at Shoup to determine whether the flow at Shoup is 13,600 cfs or more. Because the actual depletion is unknown, we must use an estimate. Although the depletion to the flow is not necessarily equivalent to the diversions from the system, the diversion amounts provide a conservative estimate of the depletions in the sense that it is less likely that the estimate will under-represent the depletions. As many of the junior diversions are not routinely measured, an upper limit of the diversions can be estimated based on the water rights.

  The IDWR database currently shows approximately 21,434 cfs of water rights junior to 7/23/1980. This includes water rights enjoying the benefits of subordination. All but approximately 740 cfs are minimum stream flow water rights, and approximately 290 cfs is non-consumptive (fish propagation and power), leaving approximately 450 cfs of junior water rights that may deplete flows to the Shoup gage. However, not all of these water rights are diverted at a given time, and the actual depletion is likely less than 100% of the diversion. Nevertheless, without having a well-founded estimate of how much of the 450 cfs is diverted at a given time, the assumption that it is all diverted and results in a depletion equal to 450 cfs at the Shoup gage will result in a conservative estimate of the depletions. As such, the 13,600 trigger occurs when the mean

daily flow at the Shoup Gage is 13,150 cfs. This value should be adjusted periodically as additional water is appropriated and as additional depletion information becomes available.

- **Normal Flow Component.** If the mean daily flow on a given date at the Shoup gage is less than 13,600 cfs, but equal to or greater than the amount shown in Table 3 for that date, then the water right is considered satisfied. Table 3 summarizes the regulatory action required to satisfy the federal reserved water rights.

Table 3. Quantity of Salmon Wild & Scenic Water Right when Flow at Shoup is Less than 13,600 cfs

Period of Use	Flow Rate at Shoup (cfs)	Regulatory Action
All Dates	> 13,150 and <= 28,400	All junior rights not enjoying the benefits of subordination will be regulated*
All Dates	> 28,400	No regulation necessary to satisfy W&S rights.
January 1-15	< 1440	Junior rights not enjoying the benefits of subordination will be regulated on a priority basis to supply the flow shown for the corresponding date*
January 16-31	< 1450	
February 1-15	< 1500	
February 16-28(29)	< 1550	
March 1-15	< 1510	
March 16-31	< 1540	
April 1-15	< 1590	
April 16-30	< 2470	
May 1-15	< 3920	
May 16-31	< 7310	
June 1-15	< 9450	
June 16-30	< 7790	
July 1-15	< 4730	
July 16-31	< 2700	
August 1-15	< 1390	
August 16-31	< 1240	
September 1-15	< 1200	
September 16-30	< 1400	
October 1-15	< 1570	*See Section III for a description of rights enjoying the benefits of subordination. When the flow at Shoup is > 1280 cfs, the 225 cfs block of future uses enjoy the benefits of subordination and will not be regulated.
October 16-31	< 1700	
November 1-15	< 1820	
November 16-30	< 1730	
December 1-15	< 1600	
December 16-31	< 1510	

b. Upper Salmon Water District

The Wild & Scenic Agreement states that "[w]ithin six months of 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 . . . for an order for interim administration of basins 71 and 72 and IDWR will establish a water district for the Upper Salmon River Basin." The petition for interim administration in basins 71 and 72 was filed on May 16, 2005 and was granted on September 29, 2005. On March 6,

2006, the Director issued Final Order Creating Water District No. 170. That order was amended in response to an objection by Thompson Creek Mining Company and reissued on April 6, 2006 as Amended Final Order Creating Water District No. 170. Thompson Creek Mining Company appealed the order and a decision was issued by the Idaho Supreme Court on October 27, 2009 upholding the Director's creation of the water district. The water district IDWR created will be referred to herein as "WD170" or the "Upper Salmon Water District."

Ultimately, the Upper Salmon Water District will be enlarged to include basins 73, 74, and 75. The director has recommended rights for the SRBA in basins 73, 74 and 75. A petition for interim administration of basin 74 has been submitted to the SRBA Court and was granted by the court on May 1, 2006. The Wild & Scenic Agreement states that additional petitions for orders of interim administration would be filed with the SRBA Court within six months of the filing of the SRBA recommendations for each basin. However, discussions with the SRBA Court and the United Sates have resulted in the decision not to petition for interim administration for basins 73 and 75 pending resolution of objections and/or issuance of the bulk of the partial decrees for water rights in those basins. As this occurs, these basins will be brought into WD170.

The Upper Salmon Water District envelopes existing water districts within its boundaries. The existing water districts have become sub-districts within the larger Upper Salmon Water District but retain much of the control over deputy watermaster selection, budgets and administration of water rights in the sub-districts as contemplated by the Wild & Scenic Agreement. As the district is expanded to encompass the remaining basins, preexisting water districts in those basins may be revised to become sub-districts of WD170.[1] For purposes of efficient administration, the Director may designate additional sub-districts within WD170.

Although not expressly written in the Wild & Scenic Agreement, the agreement contemplates a steady ramp up rather than full immediate operation of water district activities within the Upper Salmon Water District.

c. Regulation and Administration of Remaining W&S Rivers

The Wild & Scenic Agreement does not contemplate that a water district will be formed to administer any of the remaining Wild & Scenic Water Rights. However, section 2.b.(1) of the agreement states the following:

> 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.

This anticipates that IDWR will perform some level of measurement and control in the other Wild & Scenic River basins. Presently, as these areas are not under watermaster control, measurement and control are accomplished on an as-needed basis in response to user complaints and/or whenever IDWR is aware that illegal use of water is occurring.

[1] Water District Nos. 72-B and 72-C were merged to form Water District No. 72-A, a sub-district within WD170, by order of the Director on February 16, 2007. A sub-district was created to administer rights in basin 71 by order of the Director on December 11, 2008.

Although the current and near future anticipated level of permitted rights that enjoy subordination in these basins does not warrant a need for water districts, section 2.b.(3) of the Wild & Scenic Agreement acknowledges that any party may file a petition for administration and IDWR will evaluate the need for water districts in these areas at that time.