

WATER RIGHTS AGREEMENT BETWEEN THE STATE OF IDAHO
AND THE UNITED STATES FOR YELLOWSTONE NATIONAL PARK

The State of Idaho and the United States agree as follows:

1. Preamble

- 1.1 The State of Idaho, pursuant to Idaho Code § 42-1406A (1990), has commenced in the Fifth Judicial District Court of the State of Idaho in and for the County of Twin Falls a general adjudication of the rights to the use of the water from that portion of the Snake River Basin located within the State of Idaho.
- 1.2 Idaho Code § 42-1409(3) (1990) provides that a claimant of a water right reserved under federal law may submit a negotiated agreement between the State of Idaho and the claimant in lieu of a notice of claim.
- 1.3 Executive Order Nos. 85-9, 87-9, and 91-8 provide that it is in the interest of the State of Idaho to quantify federal reserved water rights through negotiations.
- 1.4 The State of Idaho and the United States desire to exercise the right to submit a negotiated agreement quantifying the rights of the United States to the use of water, pursuant to both federal and Idaho law, for Yellowstone National Park.

2. Definitions

- 2.1 The following definitions apply for the purpose of this Agreement:

- .1 "Acre foot" or "AF" means the amount of water necessary to cover one acre of land to a depth of one foot and is equivalent to 43,560 cubic feet or 325,851 gallons.
- .2 "Acre feet per year" or "AFY" means the number of acre feet of water used in a calendar year commencing January 1 and ending December 31.
- .3 "Annual diversion volume" means the maximum volume of water in AFY that can be diverted or stored by the holder of a water right.
- .4 "Annual volume of consumptive use" means the maximum volume of water in AFY that can be consumptively used by the holder of a water right.
- .5 "Aquifer" means a geologic formation, group of formations, or part of a formation or other body of earth material capable of transmitting water at a rate sufficient for water supply purposes.
- .6 "Basis of right" refers to the legal authority pursuant to which the water right is established or the document by which the right is evidenced.
- .7 "Consumptive use" means the amount of water that is used by any action or process and is not returned to the water system. For an instream flow right, the term "natural consumption" shall mean consumption of water by natural processes.
- .8 "Date of Priority" means the priority date assigned to the water right.

- .9 "Director" means the Director of the Idaho Department of Water Resources or any successor.
- .10 "Diversion" means the removal of water from its natural course or location by means of a ditch, canal, flume, bypass, pipeline, conduit, well, pump, or other act of man, or the impoundment of water in a reservoir.
- .11 "Ground water" means any water contained in an aquifer.
- .12 "Idaho Department of Water Resources" or "IDWR" means, the executive agency of the State of Idaho created by Idaho Code § 42-1701 (1990), or any successor agency.
- .13 "Idaho Water Resource Board" means the Idaho State Water Resource Agency constituted in accordance with Idaho Const. art. XV, § 7, or any successor agency.
- .14 "Instream flow use" means the use of water for the maintenance of natural stream conditions.
- .15 "Lake level uses" means the use of water for the maintenance of the natural lake level.
- .16 "Park commercial use" means the use of water for the maintenance and administration of the Park, including visitor centers and other related facilities.
- .17 "Park domestic use" means the use of water for homes, organization camps, and public campgrounds maintained within the Park for visitors and Park personnel use.
- .18 "Park irrigation use" means the application of water to the land surface or root zone of the soil for the

purpose of producing a garden, lawn, or landscaping on Park land.

- .19 "Parties" means the United States and the State of Idaho.
- .20 "Period of use" means the time of the year when water may be used for a particular purpose.
- .21 "Person" means an individual, a partnership, a trust, an estate, a corporation, a municipal corporation, the State of Idaho or any political subdivision, the United States, an Indian tribe, or any other public or private entity. Idaho Code § 42-1401A(8) (1990).
- .22 "Place of use" means the location where water is used.
- .23 "Point of diversion" means any location at which water is diverted from the water system.
- .24 "Purpose of use" means the nature of use of the water right.
- .25 "Right number" means the number assigned to each decreed water right for purposes of identification. The first two numerals of the right number indicate the IDWR's hydrologic basin number.
- .26 "Snake River Basin Adjudication" or "SRBA" means Civil Case No. 39576 filed in the Fifth Judicial District Court of the State of Idaho in and for Twin Falls County on June 17, 1987 entitled "In Re the General Adjudication of Rights to the Use of Water from the Snake River Basin Water System," which was commenced pursuant to Idaho Code § 42-1406A (1990).

- .27 "Source" means the named or described source of water within the water system.
- .28 "Surface water" means any lake, spring, creek, stream, river, or other natural body of standing or moving water on the surface of the earth.
- .29 "United States" means the United States of America.
- .30 "Yellowstone National Park" or "Park" means those lands located in Idaho that were withdrawn and reserved by the Act of March 1, 1872, 16 U.S.C. § 21 et seq. 17 Stat. 32.

3. Scope of Agreement

- 3.1 The purpose of this Agreement is to quantify all existing rights of the United States under state and federal law for present and future use of water for the Park.
- 3.2 This Agreement relates to all waters on, under, adjacent to, or otherwise appurtenant to the Park in the State of Idaho.

4. Parties and Authority

- 4.1 The Governor has authority to execute this Agreement pursuant to Idaho Constitution art. IV, § 5, and Idaho Code § 67-802 (1989).
- 4.2 The Idaho Attorney General, or any duly designated official of the Office of the Idaho Attorney General, has authority to execute this Agreement pursuant to the authority to

settle litigation as provided for in Idaho Constitution, art. IV, § 1, and Idaho Code § 67-1401 (1989).

- 4.3 The Idaho Water Resource Board has authority to execute this Agreement pursuant to Idaho Code § 42-1734(3) (1990) and Executive Order Nos. 85-9, 87-9, and 98-1.
- 4.4 The United States Attorney General, or any duly designated official of the United States Department of Justice, has authority to execute this Agreement on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. § 516-517 (1982).
- 4.5 The Secretary of the Interior, or any duly designated official of the United States Department of the Interior, has authority to execute this Agreement on behalf of the United States Department of Interior pursuant to 43 U.S.C. § 1457 (1982).

5. Water Rights of the United States for the Park

- 5.1 The name and address of the claimant for all the water rights negotiated and settled by this Agreement is as follows:

United States of America
c/o National Park Service
Rocky Mountain Regional Office
12795 West Alameda Parkway
Lakewood, Colorado 80225

- 5.2 Water Right For Consumptive Use Under the Act of March 1, 1872, ch. XXIV, 17 Stat. 32:

- .1 Right No. 21-11958.

- .i Source: All surface and ground water sources arising on, occurring on, or underlying the Park.
- .ii Annual Diversion Volume: 1 AFY, except as provided in Article 5.4 *infra*.
- .iii Date of Priority: March 1, 1872.
- .iv Points of Diversion: Any point within the Park.
- .v Purpose of Use: Park commercial use, Park domestic use, and Park irrigation use.
- .vi Period of Use: January 1 - December 31.
- .vii Annual Volume of Consumptive Use: The maximum consumptive use is 1 AFY. The quantity consumed for fire suppression in accordance with Article 5.4 *infra* is not limited by this Agreement.
- .viii Place of Use/Legal Description of Reservation: Any place within the Park.
- .ix Basis of Right: Reservation under the Act of March 1, 1872, ch. XXIV, 17 Stat. 32.
- .x Comments: None.

5.3 Water Rights For Nonconsumptive Use Under the Act of March 1, 1872, ch. XXIV, 17 Stat. 32:

.1 Right No. 21-11959.

- .i Source: Thirsty Creek and all of its tributaries.

- .ii Amount of Water: Entire flow of source in excess of amount diverted by Right No. 21-11958 [Article 5.2.1].
 - .iii Date of Priority: March 1, 1872.
 - .iv Beginning and Ending Point of Instream Flow: Beginning where each segment of Thirsty Creek or any of its tributaries arises on the Park, or crosses the state line or crosses the Park boundary and enters the Park, and ending where each segment of Thirsty Creek or any of its tributaries flows out of the Park or across the state line.
 - .v Purpose of Use: Instream flow uses.
 - .vi Period of Use: January 1 - December 31.
 - .vii Annual Volume of Consumptive Use: None other than natural consumption.
 - .viii Place of Use/Legal Description of Reservation: Within the Park.
 - .ix Basis of Right: Reservation under the Act of March 1, 1872, ch. XXIV, 17 Stat. 32.
 - .x Comments: None.
- .2 Right No. 21-11960.
- .i Source: North Fork Split Creek and all of its tributaries.
 - .ii Amount of Water: Entire flow of source in excess of amount diverted by Right No. 21-11958 [Article 5.2.1].

- .iii Date of Priority: March 1, 1872.
 - .iv Beginning and Ending Point of Instream Flow:
Beginning where each segment of North Fork Split Creek or any of its tributaries arises on the Park, or crosses the state line or crosses the Park boundary and enters the Park and ending where each segment of North Fork Split Creek or any of its tributaries flows out of the Park or across the state line.
 - .v Purpose of Use: Instream flow use.
 - .vi Period of Use: January 1 - December 31.
 - .vii Annual Volume of Consumptive Use: None other than natural consumption.
 - .viii Place of Use/Legal Description of Reservation: Within the Park.
 - .ix Basis of Right: Reservation under the Act of March 1, 1872, ch. XXIV, 17 Stat. 32.
 - .x Comments: None.
- .3 Right No. 21-11961.
- .i Source: South Fork Split Creek and all of its tributaries.
 - .ii Amount of Water: Entire flow of source in excess of amount diverted by Right No. 21-11958 [Article 5.2.1].
 - .iii Date of Priority: March 1, 1872.
 - .iv Beginning and Ending Point of Instream Flow:
Beginning where each segment of South Fork

Split Creek or any of its tributaries arises on the Park, or crosses the state line or crosses the Park boundary and enters the Park and ending where each segment of South Fork Split Creek or any of its tributaries flows out of the Park or across the state line.

- .v Purpose of Use: Instream flow use.
 - .vi Period of Use: January 1 - December 31.
 - .vii Annual Volume of Consumptive Use: None other than natural consumption.
 - .viii Place of Use/Legal Description of Reservation: Within the Park.
 - .ix Basis of Right: Reservation under the Act of March 1, 1872, ch. XXIV, 17 Stat. 32.
 - .x Comments: None.
- .4 Right No. 21-11962.
- .i Source: Boundary Creek and all of its tributaries.
 - .ii Amount of Water: Entire flow of source in excess of amount diverted by Right No. 21-11958 [Article 5.2.1].
 - .iii Date of Priority: March 1, 1872.
 - .iv Beginning and Ending Point of Instream Flow: Beginning where each segment of Boundary Creek or any of its tributaries arises on the Park, or crosses the state line or crosses the Park boundary and enters the Park and

ending where each segment of Boundary Creek or any of its tributaries flows out of the Park or across the state line.

- .v Purpose of Use: Instream flow use.
 - .vi Period of Use: January 1 - December 31.
 - .vii Annual Volume of Consumptive Use: None other than natural consumption.
 - .viii Place of Use/Legal Description of Reservation: Within the Park.
 - .ix Basis of Right: Reservation under the Act of March 1, 1872, ch. XXIV, 17 Stat. 32.
 - .x Comments: None.
- .5 Right No. 21-11963.
- .i Source: South Fork Partridge Creek and all of its tributaries.
 - .ii Amount of Water: Entire flow of source in excess of amount diverted by Right No. 21-11958 [Article 5.2.1].
 - .iii Date of Priority: March 1, 1872.
 - .iv Beginning and Ending Point of Instream Flow: Beginning where each segment of the South Fork Partridge Creek or any of its tributaries arises on the Park, or crosses the state line or crosses the Park boundary and enters the Park and ending where each segment of the South Fork Partridge Creek or

any of its tributaries flows out of the Park or across the state line.

- .v Purpose of Use: Instream flow use.
 - .vi Period of Use: January 1 - December 31.
 - .vii Annual Volume of Consumptive Use: None other than natural consumption.
 - .viii Place of Use/Legal Description of Reservation: Within the park.
 - .ix Basis of Right: Reservation under the Act of March 1, 1872, ch. XXIV, 17 Stat. 32.
 - .x Comments: None.
- .6 Right No. 21-11964.
- .i Source: Robinson Creek and all of its tributaries, including Little Robinson Creek.
 - .ii Amount of Water: Entire flow of source in excess of amount diverted by Right No. 21-11958 [Article 5.2.1].
 - .iii Date of Priority: March 1, 1872.
 - .iv Beginning and Ending Point of Instream Flow: Beginning where each segment of the Robinson Creek or any of its tributaries arises on the Park, or crosses the state line or crosses the Park boundary and enters the Park and ending where each segment of the Robinson Creek or any of its tributaries flows out of the Park or across the state line.
 - .v Purpose of Use: Instream flow use.

- .vi Period of Use: January 1 - December 31.
 - .vii Annual Volume of Consumptive Use: None other than natural consumption.
 - .viii Place of Use/Legal Description of Reservation: Within the Park.
 - .ix Basis of Right: Reservation under the Act of March 1, 1872, ch. XXIV, 17 Stat. 32.
 - .x Comments: None.
- .7 Right No. 21-11965.
- .i Source: Rock Creek and all of its tributaries.
 - .ii Amount of Water: Entire flow of source in excess of amount diverted by Right No. 21-11958 [Article 5.2.1].
 - .iii Date of Priority: March 1, 1872.
 - .iv Beginning and Ending Point of Instream Flow: Beginning where each segment of the Rock Creek or any of its tributaries arises on the Park, or crosses the state line or crosses the Park boundary and enters the Park and ending where each segment of the Rock Creek or any of its tributaries flows out of the Park or across the state line.
 - .v Purpose of Use: Instream flow use.
 - .vi Period of Use: January 1 - December 31.
 - .vii Annual Volume of Consumptive Use: None other than natural consumption.

- .viii Place of Use/Legal Description of Reservation: Within the Park.
 - .ix Basis of Right: Reservation under the Act of March 1, 1872, ch. XXIV, 17 Stat. 32.
 - .x Comments: None.
- .8 Right No. 21-11966.
- .i Source: Buffalo Lake
 - .ii Amount of Water: The amount of water necessary to maintain the lake at its natural level.
 - .iii Date of Priority: March 1, 1872
 - .iv Beginning and Ending Point of Instream Flow: Not applicable.
 - .v Purpose of Use: Lake level uses.
 - .vi Period of Use: January 1 - December 31.
 - .vii Annual Volume of Consumptive Use: None other than natural consumption.
 - .viii Place of Use/Legal Description of Reservation: Within the Park.
 - .ix Basis of Right: Reservation under the Act of March 1, 1872, ch. XXIV, 17 Stat. 35.
 - .x Comments: None.
- .9 Right No. 21-11967.
- .i Source: Robinson Lake
 - .ii Amount of Water: The amount of water necessary to maintain the lake at its natural level.

- .iii Date of Priority: March 1, 1872
 - .iv Beginning and Ending Point of Instream Flow:
Not applicable.
 - .v Purpose of Use: Lake level uses.
 - .vi Period of Use: January 1 - December 31.
 - .vii Annual Volume of Consumptive Use: None other than natural consumption.
 - .viii Place of Use/Legal Description of
Reservation: Within the Park.
 - .ix Basis of Right: Reservation under the Act of
March 1, 1872, ch. XXIV, 17 Stat. 35.
 - .x Comments: None.
- .10 Right No. 21-11968.
- .i Source: Unnamed lakes, identified by the
approximate location of their center points as
follows:

<u>Lake No.</u>	<u>Latitude</u>	<u>Longitude</u>
1	44° 08' 31"N	111° 03' 27"W
2	44° 09' 28"N	111° 05' 23"W
3	44° 09' 40"N	111° 05' 00"W
4	44° 09' 41"N	111° 05' 40"W
5	44° 09' 52"N	111° 05' 21"W
6	44° 09' 52"N	111° 04' 48"W
7	44° 09' 51"N	111° 04' 31"W
8	44° 09' 59"N	111° 04' 38"W
9	44° 10' 04"N	111° 04' 54"W
10	44° 10' 12"N	111° 05' 19"W
11	44° 10' 18"N	111° 04' 43"W
12	44° 10' 25"N	111° 04' 12"W
13	44° 10' 32"N	111° 03' 25"W
14	44° 10' 40"N	111° 03' 56"W
15	44° 10' 48"N	111° 04' 02"W
16	44° 10' 49"N	111° 03' 38"W
17	44° 10' 51"N	111° 03' 40"W
18	44° 13' 51"N	111° 03' 29"W

19	44°20'15"N	111°05'28"W
20	44°22'05"N	111°05'13"W
21	44°22'30"N	111°04'04"W
22	44°22'31"N	111°04'03"W
23	44°22'33"N	111°03'59"W
24	44°22'37"N	111°04'04"W

- .ii Amount of Water: The amount of water necessary to maintain the lakes at their natural level.
- .iii Date of Priority: March 1, 1872.
- .iv Beginning and Ending Point of Instream Flow: Not applicable.
- .v Purpose: Lake level uses.
- .vi Period of Use: January 1 - December 31.
- .vii Annual Volume of Consumptive Use: None other than natural consumption.
- .viii Place of Use/Legal Description of Reservation: Within the Park.
- .ix Basis of Right: Reservation under the Act of March 1, 1872, ch. XXIV, 17 Stat. 35.
- .x Comments: None.

5.4 The United States may also divert water for fire suppression in accordance with the following paragraph to be included in the final decree in this matter:

"The use of water for fire suppression benefits the public. Water diverted for fire suppression may be taken randomly, without a definition of the specific elements of a recordable water right, and if so diverted for fire suppression, existing water rights shall not be diminished."

- 5.5 The rights described in this Agreement are Federal Reserved Water Rights with all the characteristics appertaining thereto. Non-use of all or any part of the Federal Reserved Water Rights shall not constitute a relinquishment, forfeiture or abandonment of the rights.
- 5.6 The United States shall not change any element of any Federal Reserved Water Right described in Article 5.
- 5.7 The United States shall manage the Park for the preservation of the natural flow regime of the water system and shall retain the water system in its natural condition; however, this section does not limit the diversion of water under the rights described at Articles 5.2 and 5.4 of this Agreement.
- 5.8 The United States claims such ground water as is necessary to maintain the natural thermal features such as geysers, mudpots, hot springs, and similar features of the Park. Because the parties are not able to quantify or otherwise describe the amount, sources or temperature of ground water that may be required to protect these natural thermal features, this Agreement does not address this claim. Such claim is left for resolution when the need arises. This Agreement quantifies all other ground water right claims of the United States.

6. Finality of Settlement Agreement

- 6.1 The parties agree that this Agreement will be submitted to the Director in lieu of a notice of claim in the SRBA, that

the Director will submit this Agreement and an abstract of this Agreement to the Fifth Judicial District Court of the State of Idaho in and for the County of Twin Falls as part of a Director's Report, and that state law allows other persons not signatory to this Agreement to file objections to the approval of this Agreement by the District Court.

6.2 The parties agree to move the Court for adoption of a decree awarding the United States the water rights set forth in this Agreement, and to jointly support and defend this Agreement against any and all objections or other challenges that may arise in any phase of the SRBA, including any appeals, and in securing any necessary ratification of the Agreement. If the Court, after notice and hearing, fails to approve the terms of this Agreement, then this Agreement shall be null and void.

6.4 The United States' water rights for the Park confirmed in Agreement 5 shall be final and conclusive as to all parties to the SRBA upon the completion of all judicial proceedings, including any appeals, relative to this Agreement.

7. Disclaimers and Reservation of Rights

7.1 Except for the United States' water rights recognized in Article 5, the United States hereby relinquishes forever any and all existing claims to water under federal and state law from any source for present and future use in the Park.

7.2 This Agreement has been reached through good faith negotiations for the purpose of resolving legal disputes, including pending litigation, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding .

7.3 Entry of judgment as set forth above has been consented to by the parties without trial or adjudication of fact or law herein and without the judgment constituting evidence or an admission by any party, with respect to any such issue, which is, will be, or could be litigated in any proceeding other than the SRBA. See McShan v. Omega Louis Brandt et Frere, S.A., 536 F.2d 516, 519 (2d Cir. 1976). Once this Agreement becomes effective as provided by Article 13.1, the water rights described in Article 5 of this Agreement shall be binding upon all parties to the SRBA, whether signatory to the Agreement or not.

7.4 Nothing in this Agreement shall be so construed or interpreted:

.1 To establish any standard to be used for the quantification of Federal Reserved Water Rights in any judicial or administrative proceeding;

.2 To determine the relative rights inter sese of persons using water under the authority of state law or to authorize the taking of a water right which is vested under state or federal law;

- .3 To limit in any way the rights of the parties or any person to litigate any issue or question not resolved by this Agreement;
 - .4 To restrict the acquisition or exercise of an appropriative right to the use of water under state law, provided the water rights confirmed in this Agreement have been fully used at the time the application is made or are not physically available for use through reasonable diversion facilities.
 - .5 To restrict the power of the United States to reserve water in the future, in accordance with applicable law.
- 7.5 Although this Agreement recognizes a water right to the entire flow of several different sources, because of the unique nature of Yellowstone National Park, the Agreement shall not constitute an admission or precedent for any other federal water right claim.
- 7.6 The parties are unable to agree upon who may administer the water rights set forth in this Agreement. Accordingly, this Agreement does not address or resolve this issue. Each party reserves the right to litigate the issue of administration, if and when the issue arises.

8. Severability

- 8.1 This Agreement is not severable.

9. Successors

9.1 This Agreement shall bind and inure to the benefit of the respective successors of the parties.

10. Entire Agreement

10.1 This Agreement sets forth all the covenants, promises, provisions, agreements, conditions, and understandings between the parties and there are no covenants, provisions, promises, agreements, conditions, or understandings, either oral or written between them other than are herein set forth.

11. Effect of Headings

11.1 Headings appearing in this Agreement are inserted for convenience and reference and shall not be construed as interpretations of the text.

12. Multiple Originals

12.1 This Agreement is executed in quintuplicate. Each of the five (5) Agreements with an original signature of each party shall be an original.

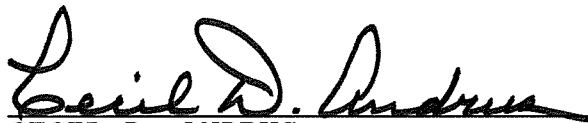
13. Effective Date

13.1 This Agreement shall be effective when all of the following events have occurred:

.1 This Agreement is executed; and

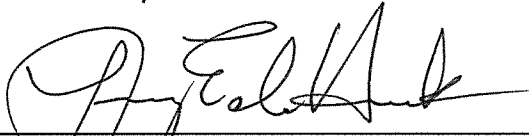
.2 The water rights described in Article 5 of this Agreement have been confirmed in a decree in the SRBA and such decree has become final and nonappealable.

The parties have executed this Agreement on the date following their respective signatures.



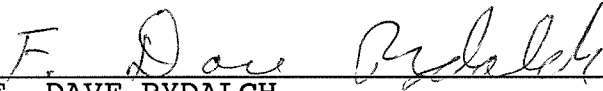
CECIL D. ANDRUS
Governor, State of Idaho

5-13-92
Date



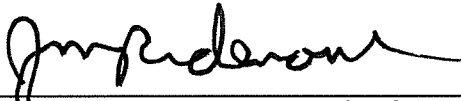
LARRY ECH HAWK
Attorney General, State of Idaho

5-14-92
Date



F. DAVE RYDALCH
Chair, Idaho Water Resource Board

1/16/1992
Date



United States Dept. of the Interior

1/24/92
Date



United States Department of Justice

1/17/92
Date