

## BASIN 78 GENERAL PROVISIONS

**The Director of the Idaho Department of Water Resources recommends to the Snake River Basin Adjudication District Court that the following general provisions be included in the decree determining rights to water from Basin 78.**

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The following water rights from the following sources of water in Basin 78 shall be administered separately from all other water rights in Basin 78 in accordance with the prior appropriation doctrine as established by Idaho law:

<u>Water Right No.</u>	<u>Source</u>
None	None

The following water rights from the following sources of water in Basin 78 shall be administered separately from all other water rights in the Snake River Basin in accordance with the prior appropriation doctrine as established by Idaho law:

<u>Water Right No.</u>	<u>Source</u>
None	None

Except as otherwise specified above, all other water rights within Basin 78 will be administered as connected sources of water in the Snake River Basin in accordance with the prior appropriation doctrine as established by Idaho law.



12200 through 78-12205. The United States' entitlement to federal reserved water rights for the Hells Canyon National Recreation Area ("HCNRA") pursuant to the HCNRA Act, was affirmed, however, by the Idaho Supreme Court in *Potlatch v. United States*, 134 Idaho 916, 12 P.3d 1260 (2000). These objectors' challenge to the existence of these rights is, therefore, not well taken.

2. 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 and good cause has been shown for granting the requested entry of the Basin 78 Partial Decrees.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Claims numbered 78-12200 through 78-12205 are hereby consolidated into Consolidated Subcase No. 79-13597.

2. All terms of the Court's Order Approving Stipulation and Entry of Basin 79 Partial Decrees, dated November 16, 2004, are incorporated herein. The Court's approval of the Stipulation applies to the Stipulation as it pertains to these Basin 78 Partial Decrees, including the Court's retained jurisdiction concerning administration of the water rights confirmed by the Basin 78 Partial Decrees.

3. The Partial Decrees for the United States' Hells Canyon National Recreation Area Act federal reserved water rights within Idaho Department of Water Resources Administrative Basin No. 78, i.e., Partial Decrees numbered 78-12200 through 78-12205, are hereby ratified, confirmed and approved.

4. The water rights adjudicated by the Basin 78 Partial Decrees are in full satisfaction of all the United States' claims in the SRBA for the portion of the Hells Canyon

National Recreation Area within Idaho Department of Water Resources Administrative Basin

No. 78.

IT IS SO ORDERED.

DATED this 2nd day of May, 2005.



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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication

**CERTIFICATE OF MAILING**

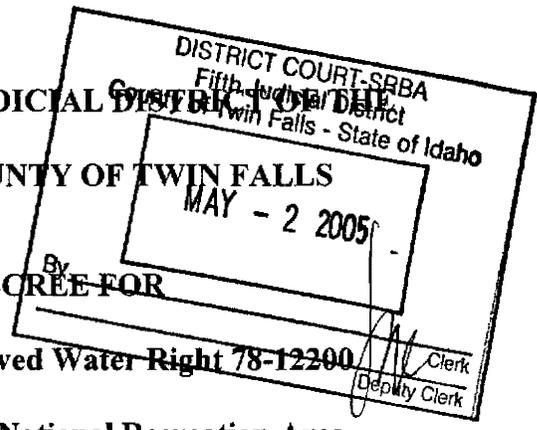
I hereby certify that on this 2nd day of May, 2005, I served a true and correct copy of the foregoing **ORDER APPROVING ENTRY OF BASIN 78 PARTIAL DECREES**, by depositing a copy thereof in the U.S. mail, postage prepaid to the following:

All parties indicated on the attached Certificate of Service for Hells Canyon National Recreation Area Act Claims, Consolidated Subcase 79-13597

  
\_\_\_\_\_  
Deputy Clerk

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF IDAHO

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



IN RE SRBA )  
CASE NO. 39576 )  
\_\_\_\_\_ )

PARTIAL DECREE FOR  
Federal Reserved Water Right 78-12200  
Hells Canyon National Recreation Area

- 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: Black Lake
- 3. Quantity of right:
  - a. This water right establishes the lake level of Black Lake at 98.22 feet referenced to Black BM1 (Elevation 100 feet) located at X=534802, Y=5003966 (UTM Zone 11 North NAD 27).
  - b. This water right precludes any diversion of water out of the watershed of Black Lake upstream from the point of diversion, except for transfers of point of diversion from above the lake to below the lake.
- 4. Priority date: December 31, 1975.
- 5. Point of diversion: SE¼NE¼, Sec. 3, T21N, R2W, Boise Meridian.
- 6. Purpose of use: To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
- 7. Period of use: 01-01 to 12-31.

**8. Place of use:**

TWP	RGE	SEC	NE				NW				SW				SE					
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
21N	02W	3			LOT 9	X											LOT 14	LOT 13		X

**9. Annual volume of consumptive use:**

This lake level maintenance water right is non-consumptive (other than evaporation and evapotranspiration which may take place from the lake).

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

a. This is a federal reserved water right based on the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to the Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Black Lake basin upstream from the point of diversion, identified for the lake 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 camp-grounds, 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(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.

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

d. Information needed to locate the benchmark referenced in element 3.a. above is on file with IDWR.

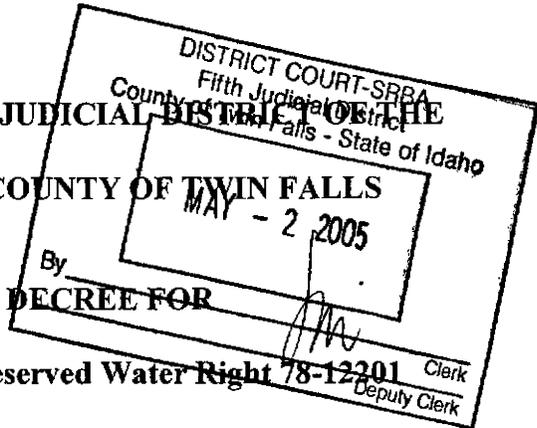
e. These additional provisions contained in element 10 do not fall within the other elements listed above and are necessary to: (1) define the unique characteristics of these federal reserved water rights; and (2) describe the rights and uses to which these federal reserved water rights are subordinated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

IT IS SO ORDERED. *jm*

DATED *May* 2, 2005.

  
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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 )  
CASE NO. 39576 )  
\_\_\_\_\_ )

**PARTIAL DECREE FOR**  
**Federal Reserved Water Right 78-12201**  
**Hells Canyon National Recreation Area**

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:** Crystal Lake
3. **Quantity of right:**
  - a. This water right establishes the lake level of Crystal Lake at 93.86 feet referenced to Crystal BM2 (Elevation 100 feet) located at X=535264, Y=5007542 (UTM Zone 11 North NAD 27).
  - b. This water right precludes any diversion of water out of the watershed of Crystal Lake upstream from the point of diversion, except for transfers of point of diversion from above the lake to below the lake.
4. **Priority date:** December 31, 1975.
5. **Point of diversion:** NW $\frac{1}{4}$ NW $\frac{1}{4}$ , Sec. 26, T22N, R2W, Boise Meridian.
6. **Purpose of use:** To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
7. **Period of use:** 01-01 to 12-31.

**8. Place of use:**

TWP	RGE	SEC	NE				NW				SW				SE			
			NE	NW	SW	SE												
22N	02W	26						X										

**9. Annual volume of consumptive use:**

This lake level maintenance water right is non-consumptive (other than evaporation and evapotranspiration which may take place from the lake).

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

a. This is a federal reserved water right based on the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to the Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Crystal Lake basin upstream from the point of diversion, identified for the lake 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 camp-grounds, 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(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.

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

d. Information needed to locate the benchmark referenced in element 3.a. above is on file with IDWR.

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 ~~April~~ <sup>May</sup> 2, 2005. *Jm*

  
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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication

DISTRICT COURT - SRBA  
 Fifth Judicial District  
 County of Twin Falls - State of Idaho  
 MAY - 2 2005  
 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 SRBA )  
 )  
 CASE NO. 39576 )  
 )  
 \_\_\_\_\_ )

**PARTIAL DECREE FOR**  
**Federal Reserved Water Right 78-12202**  
**Hells Canyon National Recreation Area**

- 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:** Dog Lake
  
- 3. Quantity of right:**
  - a. This water right establishes the lake level of Dog Lake at 98.84 feet referenced to Dog BM1 (Elevation 100 feet) located at X=534951, Y=5015617 (UTM Zone 11 North NAD 27).
  
  - b. This water right precludes any diversion of water out of the watershed of Dog Lake upstream from the point of diversion, except for transfers of point of diversion from above the lake to below the lake.
  
- 4. Priority date:** December 31, 1975.
  
- 5. Point of diversion:** The projection of the NW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>, of unsurveyed Sec. 35, T23N, R2W, Boise Meridian.
  
- 6. Purpose of use:** To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
  
- 7. Period of use:** 01-01 to 12-31.

**8. Place of use:**

Note: Tracts are projections in unsurveyed sections

TWP	RGE	SEC	NE				NW				SW				SE			
			NE	NW	SW	SE												
23N	02W	34	X															
23N	02W	35						X	X									

**9. Annual volume of consumptive use:**

This lake level maintenance water right is non-consumptive (other than evaporation and evapotranspiration which may take place from the lake).

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

a. This is a federal reserved water right based on the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to the Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Dog Lake basin upstream from the point of diversion, identified for the lake 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(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.

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

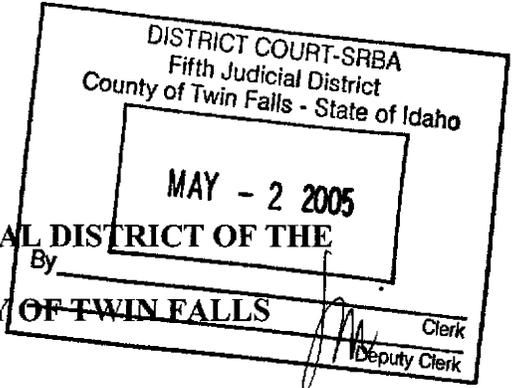
d. Information needed to locate the benchmark referenced in element 3.a. above is on file with IDWR.

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 *May 2* *jm*  
April 2, 2005.

  
\_\_\_\_\_  
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 )  
CASE NO. 39576 )  
\_\_\_\_\_ )

**PARTIAL DECREE FOR**  
**Federal Reserved Water Right 78-12203**  
**Hells Canyon National Recreation Area**

- 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:** Mirror Lake
- 3. **Quantity of right:**
  - a. This water right establishes the lake level of Mirror Lake 92.89 at feet referenced to Mirror BM1 (Elevation 100 feet) located at X=537342, Y=5020425 (UTM Zone 11 North NAD 27).
  - b. This water right precludes any diversion of water out of the watershed of Mirror Lake upstream from the point of diversion, except for transfers of point of diversion from above the lake to below the lake.
- 4. **Priority date:** December 31, 1975.
- 5. **Point of diversion:** The projection of the NW¼NE¼, in unsurveyed Sec. 13, T23N, R2W, Boise Meridian.
- 6. **Purpose of use:** To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
- 7. **Period of use:** 01-01 to 12-31.

**8. Place of use:**

Note: Tracts are projections in unsurveyed sections.

TWP	RGE	SEC	NE				NW				SW				SE			
			NE	NW	SW	SE												
23N	02W	13		X	X						X							

**9. Annual volume of consumptive use:**

This lake level maintenance water right is non-consumptive (other than evaporation and evapotranspiration which may take place from the lake).

**10. Other provisions necessary for definition or administration of this water right: 1**

a. This is a federal reserved water right based on the Hells Canyon National Recreation Area Act, Pub.L. 94-99, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to the Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Mirror Lake basin upstream from the point of diversion, identified for the lake 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 camp-grounds, 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(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.

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

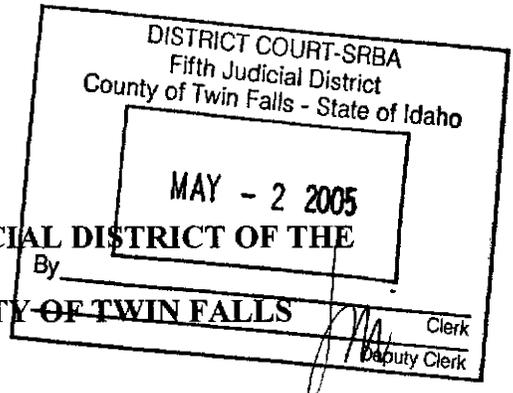
d. Information needed to locate the benchmark referenced in element 3.a. above is on file with IDWR.

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 May 2, 2005 *JM*

  
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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 )  
CASE NO. 39576 )  
\_\_\_\_\_ )

**PARTIAL DECREE FOR**  
**Federal Reserved Water Right 78-12204**  
**Hells Canyon National Recreation Area**

- 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:** Ruth Lake
- 3. **Quantity of right:**
  - a. This water right establishes the lake level of Ruth Lake at 98.38 feet referenced to Ruth BM1 (Elevation 100 feet) located at X=534948, Y=5009783 (UTM Zone 11 North NAD 27).
  - b. This water right precludes any diversion of water out of the watershed of Ruth Lake upstream from the point of diversion, except for transfers of point of diversion from above the lake to below the lake.
- 4. **Priority date:** December 31, 1975.
- 5. **Point of diversion:** SW¼SW¼, Sec. 14, T22N, R2W, Boise Meridian.
- 6. **Purpose of use:** To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
- 7. **Period of use:** 01-01 to 12-31.

**8. Place of use:**

TWP	RGE	SEC	NE				NW				SW				SE			
			NE	NW	SW	SE												
22N	02W	14										X	X					
22N	02W	15													X			X

**9. Annual volume of consumptive use:**

This lake level maintenance water right is non-consumptive (other than evaporation and evapotranspiration which may take place from the lake).

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

a. This is a federal reserved water right based on the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to the Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Ruth Lake basin upstream from the point of diversion, identified for the lake 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(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.

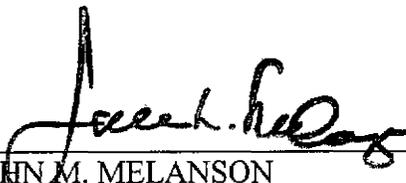
c. The administrative provisions of paragraph 3 of the Stipulation are incorporated herein by reference.

d. Information needed to locate the benchmark referenced in element 3.a. above is on file with IDWR.

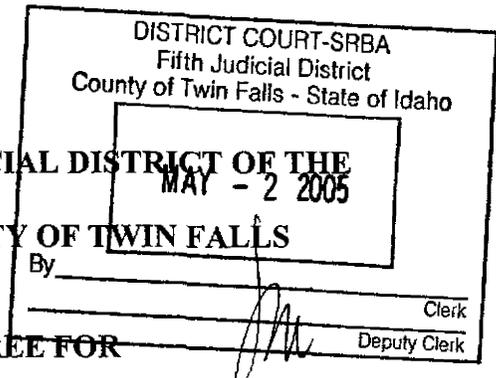
e. These additional provisions contained in element 10 do not fall within the other elements listed above and are necessary to: (1) define the unique characteristics of these federal reserved water rights; and (2) describe the rights and uses to which these federal reserved water rights are subordinated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

IT IS SO ORDERED.

DATED <sup>May 2</sup> April 2, 2005.

  
\_\_\_\_\_  
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 )  
CASE NO. 39576 )  
\_\_\_\_\_ )

**PARTIAL DECREE FOR**  
**Federal Reserved Water Right 78-12205**  
**Hells Canyon National Recreation Area**

- 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:** Upper Cannon Lake
  
- 3. **Quantity of right:**
  - a. This water right establishes the lake level of Upper Cannon Lake at 95.82 feet referenced to Upper Cannon BM1 (Elevation 100 feet) located at X=537290, Y=5018767 (UTM Zone 11 North NAD 27).
  
  - b. This water right precludes any diversion of water out of the watershed of Upper Cannon Lake upstream from the point of diversion, except for transfers of point of diversion from above the lake to below the lake.
  
- 4. **Priority date:** December 31, 1975.
  
- 5. **Point of diversion:** The projection of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , in unsurveyed Sec. 24, T23N, R2W, Boise Meridian.
  
- 6. **Purpose of use:** To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
  
- 7. **Period of use:** 01-01 to 12-31.

**8. Place of use:**

Note: Tracts are projections in unsurveyed sections.

TWP	RGE	SEC	NE				NW				SW				SE			
			NE	NW	SW	SE												
23N	02W	24		X			X			X								

**9. Annual volume of consumptive use:**

This lake level maintenance water right is non-consumptive (other than evaporation and evapotranspiration which may take place from the lake).

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

a. This is a federal reserved water right based on the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to the Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Upper Cannon Lake basin upstream from the point of diversion, 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 camp-grounds, 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(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.

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

d. Information needed to locate the benchmark referenced in element 3.a. above is on file with IDWR.

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 May 2, 2005.

  
\_\_\_\_\_  
JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER APPROVING ENTRY OF BASIN 78 PARTIAL DECREES was mailed on May 02, 2005, with sufficient first-class postage to the following:

IDAHO POWER COMPANY

Represented by:

JOHN K. SIMPSON  
205 N 10TH ST, STE 520  
PO BOX 2139  
BOISE, ID 83701-2139  
Phone: 208-336-0700

STATE OF IDAHO

Represented by:

NATURAL RESOURCES DIV CHIEF  
STATE OF IDAHO  
ATTORNEY GENERAL'S OFFICE  
PO BOX 44449  
BOISE, ID 83711-4449

US FOREST SERVICE (HELLS CNYN)

Represented by:

US DEPARTMENT OF JUSTICE  
ENVIRONMENT & NATL' RESOURCES  
550 WEST FORT STREET, MSC 033  
BOISE, ID 83724

DIRECTOR OF IDWR

PO BOX 83720  
BOISE, ID 83720-0098



Handwritten signature of Julie Murphy in cursive script, positioned above a horizontal line that serves as a signature line.

August 20, 2004

Diana Delaney  
Case Administrator of the District Court  
Snake River Basin Adjudication  
253 3<sup>rd</sup> Ave. North  
Twin Falls, Idaho 83301

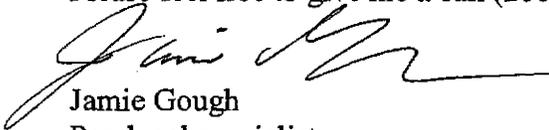
Re: Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees and associated settlement documents concerning Wild and Scenic Rivers Act Claims, Consolidated Case Number 75-13316, (encompassing Subcases 75-13316, 77-11941, 77-13844, 78-11961, 81-10472, 81-10513, and 81-10625)

Dear Diana:

Enclosed for filing, please find the following documents:

1. Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees - Consolidated Subcase No. 75-13316, Wild and Scenic Rivers Act Claims, including:
  - Attachment 1: Salmon River Partial Decree, Partial Decree, Water Rights 75-13316 and 77-11941
  - Attachment 2: Middle Fork Salmon River Partial Decree, Water Right 77-13844
  - Attachment 3: Rapid River (including West Fork of Rapid River Partial Decree, Water Right 78-11961
  - Attachment 4: Selway River Partial Decree, Water Right 81-10472
  - Attachment 5: Lochsa River Partial Decree, Water Right 81-10513
  - Attachment 6: Middle Fork Clearwater River Partial Decree, Water Right 81-10625
2. [Proposed] Order Approving Stipulation and Entry of Partial Decrees.
3. Affidavit of Jacquelyn A. Diedrich
4. Affidavit of Dr. Thomas B. Hardy

Please feel free to give me a call (208-331-5942) if you have any questions.

  
Jamie Gough  
Paralegal specialist  
USDA Forest Service

cc: Parties listed on the certificate of mailing for W&SR Claims  
Enclosure(s)



August 20, 2004

Diana Delaney  
Case Administrator of the District Court  
Snake River Basin Adjudication  
253 3<sup>rd</sup> Ave. North  
Twin Falls, Idaho 83301

Re: Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees and associated settlement documents concerning Consolidated Case Number 79-13597, Hells Canyon National Recreation Area Act Claims (encompassing subcases 79-14054 through 79-14079; and to further encompass and be consolidated with subcases 78-12200 through 78-12205)

Dear Diana,

Enclosed for filing, please find the following documents:

1. Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees Subcase No. 79-13597, Hells Canyon National Recreation Area Act Claims, including:

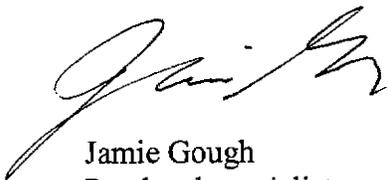
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- Attachment 2: Big Canyon Creek Partial Decree, Water Right No. 79-14055
- Attachment 3: Corral Creek Partial Decree, Water Right No. 79-14056
- Attachment 4: Deep Creek Partial Decree, Water Right No. 79-14057
- Attachment 5: Granite Creek Partial Decree, Water Right No. 79-14058
- Attachment 6: Jones Creek Partial Decree, Water Right No. 79-14059
- Attachment 7: Kirby Creek Partial Decree, Water Right No. 79-14060
- Attachment 8: Kirkwood Creek Partial Decree, Water Right No. 79-14061
- Attachment 9: Klopton Creek Partial Decree, Water Right No. 79-14062
- Attachment 10: Kurry Creek Partial Decree, Water Right No. 79-14063
- Attachment 11: Oxbow Creek Partial Decree, Water Right No. 79-14064
- Attachment 12: Sheep Creek Partial Decree, Water Right No. 79-14065
- Attachment 13: Three Creek Partial Decree, Water Right No. 79-14066
- Attachment 14: West Creek Partial Decree, Water Right No. 79-14067
- Attachment 15: Baldy Lake Partial Decree, Water Right No. 79-14068
- Attachment 16: Basin Lake Partial Decree, Water Right No. 79-14069
- Attachment 17: Bernard Lake Partial Decree, Water Right No. 79-14070
- Attachment 18: Echo Lake Partial Decree, Water Right No. 79-14071
- Attachment 19: Emerald Lake Partial Decree, Water Right No. 79-14072
- Attachment 20: Gem Lake Partial Decree, Water Right No. 79-14073
- Attachment 21: He Devil Lake Partial Decree, Water Right No. 79-14074
- Attachment 22: Six Lake Basin Lake Partial Decree, Water Right No. 79-14075

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- Attachment 23: Lower Six Lake Basin Lake Partial Decree, Water Right No. 79-14076
  - Attachment 24: Sheep Lake Partial Decree, Water Right No. 79-14077
  - Attachment 25: Shelf Lake Partial Decree, Water Right No. 79-14078
  - Attachment 26: Southwest Pyramid Lake Partial Decree, Water Right No. 79-14079
  - Attachment 27: Black Lake Partial Decree, Water Right No. 78-12200
  - Attachment 28: Crystal Lake Partial Decree, Water Right No. 78-12201
  - Attachment 29: Dog Lake Partial Decree, Water Right No. 78-12202
  - Attachment 30: Mirror Lake Partial Decree, Water Right No. 78-12203
  - Attachment 31: Ruth Lake Partial Decree, Water Right No. 78-12204
  - Attachment 32: Upper Cannon Lake Partial Decree, Water Right No. 78-12205
  - Attachment 33: SF-4 Stipulated Motion to File Late Notice of Claim, Subcase No. 78-12200 Black Lake, with attached Late Notice of Claim
  - Attachment 34: SF-4 Stipulated Motion to File Late Notice of Claim, Subcase No. 78-12201, Crystal Lake, with attached Late Notice of Claim
  - Attachment 35: SF-4 Stipulated Motion to File Late Notice of Claim, Subcase No. 78-12202, Dog Lake, with attached Late Notice of Claim
  - Attachment 36: SF-4 Stipulated Motion to File Late Notice of Claim, Subcase No. 78-12203, Mirror Lake, with attached Late Notice of Claim
  - Attachment 37: SF-4 Stipulated Motion to File Late Notice of Claim, Subcase No. 78-12204, Ruth Lake, with attached Late Notice of Claim
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  - Attachment 39: Proposed Order Approving Stipulation and Entry of Basin 79 Partial Decrees
  - Attachment 40: Proposed Order Approving Entry of Basin 78 Partial Decrees

2. Affidavit of Kendall Clark
3. Affidavit of Thomas B. Hardy
4. SF-4 Stipulated Motion to File Late Notice of Claim, Subcase No. 78-12200
5. SF-4 Stipulated Motion to File Late Notice of Claim, Subcase No. 78-12201
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8. SF-4 Stipulated Motion to File Late Notice of Claim, Subcase No. 78-12204
9. SF-4 Stipulated Motion to File Late Notice of Claim, Subcase No. 78-12205

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Please feel free to give me a call (208)-331-5942 if you have any questions.



Jamie Gough  
Paralegal specialist  
USDA Forest Service

cc: Parties listed on the certificate of mailing for HCNRA claims.

Enclosure(s)

**STIPULATION(S) AND JOINT MOTION(S) FOR  
ORDER(S)  
APPROVING STIPULATION(S) AND  
ENTRY OF PARTIAL DECREES; AND  
ASSOCIATED  
SETTLEMENT DOCUMENTS:**

**WILD AND SCENIC RIVERS  
CONSOLIDATED SUBCASE NO. 75-13316**

**HELLS CANYON NATIONAL RECREATION AREA  
SUBCASE NO. 79-13597**

**AUGUST 20, 2004**

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**Settlement Documents**

**Wild and Scenic Rivers - Consolidated Subcase No. 75-13316  
Hells Canyon National Recreation Area - Subcase No. 79-13597**

**WILD AND SCENIC RIVERS:**

Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees - Consolidated Subcase No. 75-13316 - Wild and Scenic Rivers Act Claims (Encompassing Subcases 75-13316, 77-11941, 77-13844, 78-11961, 81-10472, 81-10513, and 81-10625), including:

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[Proposed] Order Approving Stipulation and Entry of Partial Decrees.

Affidavit of Jacquelyn A. Diedrich

Affidavit of Dr. Thomas B. Hardy

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Affidavit of Kendall Clark

Affidavit of Thomas B. Hardy





UNITED STATES OF AMERICA

STATE OF IDAHO

BRUCE D. BERNARD  
DAVID W. GEHLERT  
DAVID L. NEGRI  
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U.S. Department of Justice  
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(303) 312-7319

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CLIVE J. STRONG  
Deputy Attorney General  
Chief, Natural Resources Division  
P.O. Box 44449  
Boise, Idaho 83711-4449  
(208) 334-4126

Attorneys for the United States of America

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.,<sup>1/</sup> City of Challis, et al.,<sup>2/</sup> Big Bend Irrigation

<sup>1/</sup> Dewey Mining Company, Thunder Mountain Gold, Inc., and Potlatch Corp., all represented by Jeffrey C. Fereday, Esq.

<sup>2/</sup> 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.,<sup>3/</sup> Idaho Power Company, A & B Irrigation District, et al.,<sup>4/</sup> and Thomas R. Stuart III, et al.,<sup>5/</sup> (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

---

<sup>3/</sup> Big Bend Irrigation District, Boise-Kuna Irrigation District, New York Irrigation District, and Wilder Irrigation District, all represented by Albert P. Barker, Esq.

<sup>4/</sup> 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.

<sup>5/</sup> 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.

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:



Date: \_\_\_\_\_

8/17/04

BRUCE D. BERNARD  
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FOR THE STATE OF IDAHO, including THE IDAHO WATER RESOURCES BOARD:



Date:

8/ June / 2004

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CLIVE J. STRONG,

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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  
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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.

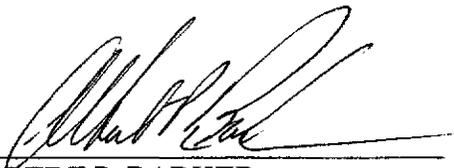
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83702

(208) 331-0950

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



ALBERT P. BARKER  
Barker, Rosholt & Simpson LLP  
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Date:



FOR IDAHO POWER COMPANY:



JAMES C. TUCKER  
Idaho Power Company  
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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, consisting of a large 'W' followed by a stylized 'E' and a long horizontal flourish.

Date: July 16, 2004

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WILLIAM EDDIE, Esq.  
Advocates for the West  
PO Box 1612  
Boise, ID 83701

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20<sup>th</sup> 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            )  
                              )  
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 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.

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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; and (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.

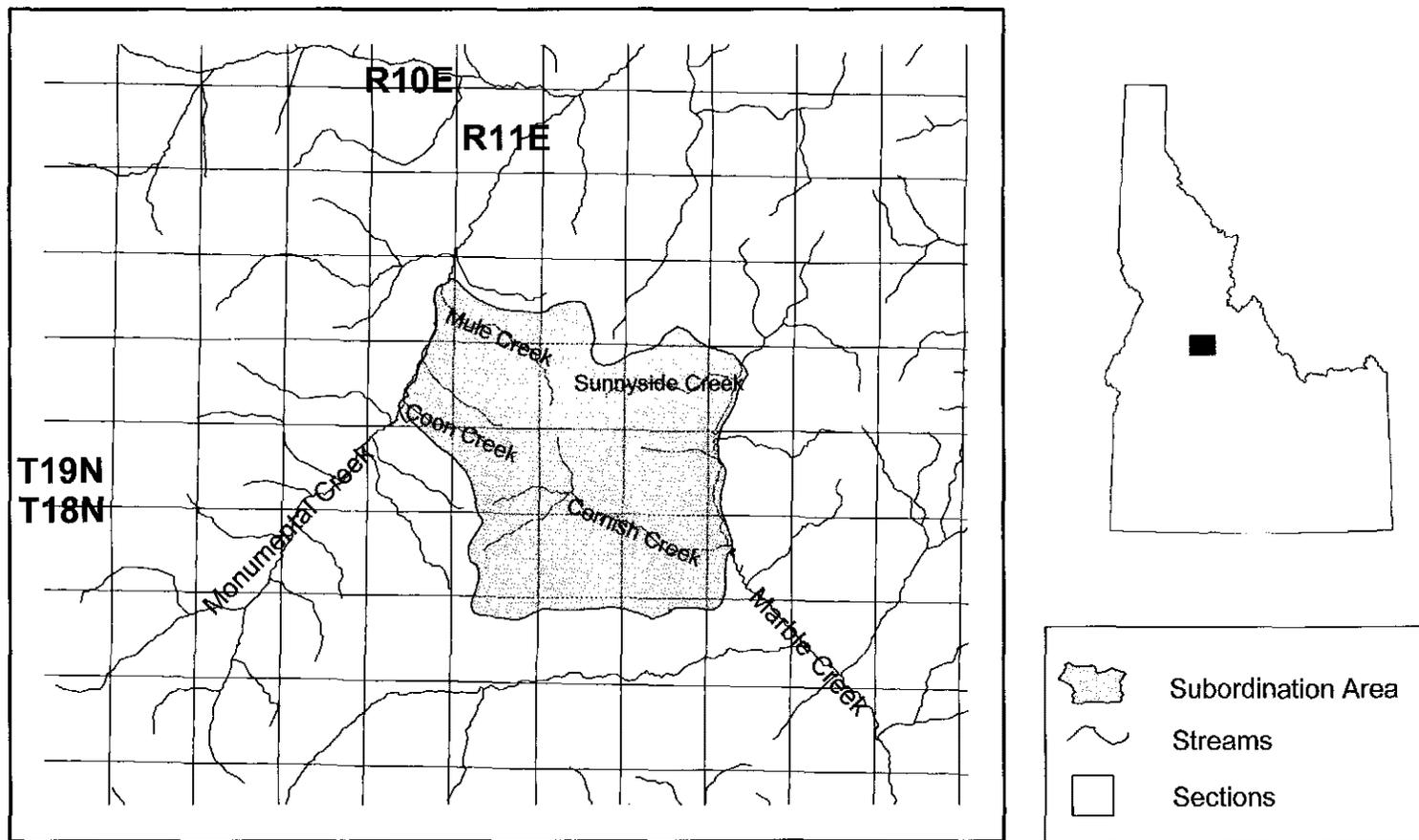
IT IS SO ORDERED.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

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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.

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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            )  
                              )  
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' 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-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 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.

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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 )  
                  )  
CASE NO. 39576 )  
                  )  
\_\_\_\_\_ )

**PARTIAL DECREE FOR**  
**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.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication



Attachment 2

**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:

<b>Period of Use</b>	<b>Discharge (cfs)</b>	<b>Period of Use</b>	<b>Discharge (cfs)</b>
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.

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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

CASE NO. 39576

)  
)  
) **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

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

**Affidavit of  
Jacquelyn Diedrich**



**AFFIDAVIT OF JACQUELYN A. DIEDRICH**

**WILD AND SCENIC RIVERS CLAIMS**

State of Oregon                    )  
County of Multnomah            )

JACQUELYN A. DIEDRICH, being first duly sworn upon oath, deposes and says:

**I. Introduction.**

1.     **Position.** In January of 2000, I became the Wild and Scenic Rivers Program Specialist for the United States Department of Agriculture Forest Service ("Forest Service"). In effect, I am the national administrator for the Forest Service's Wild and Scenic Rivers program. I also serve as Chair of the Interagency Wild and Scenic Rivers Coordinating Council. As Chair, I have contributed to development of technical papers and other products for river managers and the public. I have authored three detailed technical papers for the Council: *Wild and Scenic Rivers Act: Section 7; Implementing the Wild and Scenic Rivers Act: Authorities and Roles of Key Federal Agencies*; and *Wild and Scenic River Management Responsibilities*. I have co-authored two additional papers: *Wild and Scenic Rivers and the Use of Eminent Domain*, and *The Wild and Scenic River Study Process*. Prior to being appointed Program Specialist, I served for twelve years as the Wild and Scenic Rivers Program Manager for the Pacific Northwest Region of the Forest Service.

2.     **Duties.** My duties as Wild and Scenic Rivers Program Specialist included participating in the preparation of the Forest Service Wild and Scenic Rivers claims in the Snake River Basin Adjudication, and specifically preparation of the Amended Notices of Claim filed by the United States on or about February 7, 2002. I am familiar with the *Resource Assessments* that have been prepared for each of the Wild and Scenic Rivers subject to the Snake River Basin

Adjudication. I provided direction to the technical experts concerning Forest Service Policy regarding Wild and Scenic Rivers and facilitated a team of Forest Service staff and experts in developing the recreation component of the claims. I have reviewed and am familiar with the proposed Partial Decrees approving these Wild and Scenic Rivers claims under the terms of the Stipulation between the United States and the State of Idaho and the other objectors to these claims.

**3. Purpose of affidavit.** I submit this affidavit to address the basis for each element of the United States' proposed Partial Decrees for nonconsumptive water rights for certain river segments pursuant to the Wild and Scenic Rivers Act, 16 U.S.C. § 1271, *et seq.*

**4. Wild and Scenic Rivers Act claims overview.** The Forest Service asserts nonconsumptive claims to instream flows in six separate river segments within the Snake River Basin Adjudication. The United States' claims are based on the acts of Congress designating the segments as components of the National Wild and Scenic Rivers System. *See* 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.*); 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); 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).

**5. Legal basis for the claimed right.** The nonconsumptive water right claimed for each of the Wild and Scenic River segments is based on the Wild and Scenic Rivers Act. *See* 16 U.S.C. § 1284(c). The United States' entitlement to express federal reserved water rights to fulfill the purposes of the Wild and Scenic Rivers Act was affirmed for each of these six

designated Wild and Scenic River segments by the Idaho Supreme Court in *Potlatch v. United States*, 12 P.3d 1256 (Id. 2000).

**II. Explanation of claim elements.** This portion of this Affidavit addresses the basis for each element of the proposed Partial Decrees based on the elements described in I.C. § 42-1409-1(a), (b), (c), (d), (f), (g), (h) and (k) (2002 Supp.).

**6. Name and address of owner (I.C. § 42-1409 (1)(a)):** Element 1 of each of the Partial Decrees states that the owner of the right is:

United States of America,  
on behalf of the U.S.D.A. Forest Service  
550 W. Fort Street, MSC033  
Boise, ID 83724

These federal reserved water rights claimed pursuant to the Wild and Scenic Rivers Act will be adjudicated in the name of the United States of America. As directed in the Forest Service Manual section 2541.22b, it is the responsibility of the Forest Service to prepare these claims and to compile the necessary evidence to support them.

**7. Source of water (I.C. § 42-1409 (1)(b)):** Element 2 of each of the Partial Decrees sets forth the name of the subject Wild and Scenic River as the source of the water claimed. The source includes each designated river.

**8. Quantity of right (I.C. § 42-1409 (1)(c)):** Element 3 of each of the Partial Decrees identifies the quantification point and the amounts of water to be decreed for each time period. Each Partial Decree includes: a base flow component, so that when the stream flow at the referenced gage is less than the identified high flow amount, the United States' water right is for the flows identified for each time period as set forth in the Partial Decree subject to the

subordinations set forth in element 10.b.; and a high flow component, so that when the stream flow at the referenced gage is equal to or greater than the identified high flow amount, the United States' water right is for the stream flow up to the high flow limit set forth in the Partial Decree subject to the subordinations set forth in element 10.b. The water rights to be adjudicated by the Partial Decrees preclude the diversion of water out of the subject Wild and Scenic River basin upstream from the ending point of the designated Wild and Scenic River segment. For each river segment, the total quantity to be decreed is based on protecting the fisheries values on each of the rivers, as well as the recreation values for all streams other than the Rapid River as more fully described in paragraph 11 below. Quantification of the flows necessary to protect fisheries, as incorporated into the Partial Decrees, is addressed in the *Affidavit of Dr. Thomas B. Hardy, Quantification of Wild and Scenic Rivers Claims*, Consolidated Subcase No. 75-13316, dated July 30, 2004, and filed concurrently with this affidavit, as well as Dr. Hardy's quantification affidavit filed in this matter on or about January 30, 2003, *Affidavit of Dr. Thomas B. Hardy, Quantification of Wild and Scenic Rivers Claims*, Consolidated Subcase No. 75-13316, dated January 23, 2003. I have reviewed the claims, the Stipulation and Partial Decrees and have consulted with Forest Service employees and experts. Based upon my understanding of the Wild and Scenic Rivers Act and the outstandingly remarkable recreation values of each river reach, my affidavit filed in this matter on or about January 30, 2003, *Affidavit of Jacquelyn A. Diedrich, Wild and Scenic Rivers Claims*, Consolidated Subcase No. 75-13316, dated January 23, 2003, and the quantification affidavit filed by Dr. Hardy on or about January 30, 2003, *Affidavit of Dr. Thomas B. Hardy, Quantification of Wild and Scenic Rivers Claims*, Consolidated Subcase No. 75-13316, dated January 23, 2003, I conclude that the flows provided for in each of the Partial

Decrees, taking into account the small depletions likely to occur under the subordinations provided for in paragraph 10.b. of the Partial Decrees, provide a sufficient variety, frequency and quantity of flows to protect the outstandingly remarkable recreation values Congress sought to protect for each of these designated Wild and Scenic Rivers.

9. **Priority date (I.C. § 42-1409 (1)(d)):** Element 4 of each of the Partial Decrees identifies the priority date. The priority date for each of the water rights is the date on which the river segment was designated by Congress as a component of the National Wild and Scenic Rivers System.

10. **Point of diversion (I. C. § 42-1409-(1)(f)):** Element 5 of each of the Partial Decrees states that there is no diversion associated with the water right and identifies the locations of the beginning point and the ending point of each of the water rights. The Wild and Scenic Rivers Act water rights apply to the entire designated reach. The stream flow decreed will be used throughout the identified stream segment.

11. **Purpose of use (I. C. § 42-1409 (1)(g)):** Element 6 of each of the Partial Decrees states that the purpose of the water right to be decreed is to fulfill the purposes of the Wild and Scenic Rivers Act and, with respect to the Rapid River, the Hells Canyon National Recreation Area Act and, with respect to the Mainstem Salmon River, the Central Idaho Wilderness Act. The purpose of the water rights to be decreed is to protect instream flows in quantities sufficient to fulfill the purposes for which each river segment was designated as a component of the National Wild and Scenic Rivers System. The Forest Service has prepared the following *Resource Assessments* that identify the outstandingly remarkable values of each of the designated rivers:

*Salmon River Resource Assessment, December 15, 2000*

*Middle Fork Salmon River Resource Assessment, December 15, 2000*

*Rapid River Resource Assessment, August 22, 2002*

*Lochsa River Resource Assessment, February 14, 2002*

*Selway River Resource Assessment, February 14, 2002*

*Middle Fork Clearwater River Resource Assessment, February 15, 2002*

The *Resource Assessments*, which are based on the legislation establishing each of the rivers as a Wild and Scenic River, identify fisheries as an outstandingly remarkable value for all of the rivers. In addition, recreation was determined to be an outstandingly remarkable value on all rivers except the Rapid River.

12. **Period of use (I. C. § 42-1409 (1)(g)):** Element 7 of each of the Partial Decrees states that the period of use is 01-01 to 12-31. Water is necessary to fulfill the purposes of the reservation year-round and, consequently, each of the water rights is to be adjudicated for year-round use.

13. **Place of use (I. C. § 42-1409 (1)(h)):** Element 8 of each of the Partial Decrees states that the instream flow water right is used throughout the entire designated Wild and Scenic River segment from the beginning point to the ending point. The federal reservation designating each Wild and Scenic River is identified in paragraph 10.a. of each of the Partial Decrees.

14. **Annual volume of consumptive use:** Element 9 of each of the Partial Decrees states that the instream flow water right is nonconsumptive. The instream flows to be decreed for Wild and Scenic River purposes are completely nonconsumptive (other than evaporation and evapotranspiration that may take place within each designated segment). No consumptive

volumes are included in the Partial Decrees. All natural flow remains available for appropriation and use downstream of the ending point of the Partial Decrees.

**15. Other provisions necessary for definition or administration of water right (I. C. § 42-1409(1)(h)(ii); I.C. § 42-1409(1)(k)):** Element 10.a. of each of the Partial Decrees identifies the Acts that reserved the subject Wild and Scenic Rivers. Paragraph 10.b. identifies the subordinations that have been agreed to under the terms of the Stipulation and to which the adjudicated federal rights will be subject. These additional provisions are necessary to define the unique characteristics of these federal reserved water rights and to 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.

**16. Further affiant sayeth nought.**

Dated this 12 of August, 2004.

Jacquelyn A. Diedrich  
Jacquelyn A. Diedrich

SUBSCRIBED and SWORN to before me this 12th day of August, 2004.

James Michael Knox  
NOTARY PUBLIC FOR District of Columbia  
Residing at: 1101 McCallough St, NW #403 WDC 20001  
My Commission Expires: \_\_\_\_\_

**JAMES MICHAEL KNOX**  
Notary Public District of Columbia  
My Commission Expires: 02/28/2005

## CERTIFICATE OF SERVICE

I hereby certify that on this 20<sup>th</sup> day of August, 2004, I served a true and correct copy of the foregoing **Affidavit of Jacquelyn A. Diedrich in Consolidated Subcase 75-13316** upon the following parties:

### **Original by hand delivery to:**

Clerk of the District Court  
Snake River Basin Adjudication  
P.O. Box 2707  
Twin Falls, ID 83303-2707

### **Copies by hand delivery or United States Mail, postage prepaid to:**

Chief, Natural Resources Division  
Office of the Attorney General  
State of Idaho  
P.O. Box 44449  
Boise, ID 83711-4449

Travis L. Thompson  
Barker, Rosholt & Simpson LLP  
113 Main Ave. W. Ste. 303  
Twin Falls, ID 83301

United States Department of Justice  
Environment and Natural Resources Division  
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Jeffrey C. Fereday  
Givens Pursley, LLC  
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Boise, ID 83701-2720

Albert P. Barker  
John K. Simpson  
Barker Rosholt & Simpson LLP  
P.O. Box 2139  
Boise, ID 83701-2139

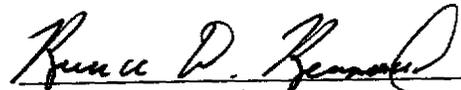
James C. Tucker  
Idaho Power Co.  
P.O. Box 70  
Boise, ID 83707

Roger D. Ling  
Ling, Robinson, & Walker  
P.O. Box 396  
Rupert, ID 83350

Michael Mirande  
Miller Bateman LLP  
1426 Alaskan Way, Ste 301  
Seattle, WA 98101

Lawrence (Laird) J. Lucas  
William Eddie  
P.O. Box 1612  
Boise, ID 83702

Jerry R. Rigby  
Ray W. Rigby  
Rigby, Thatcher, Andrus, Rigby Kam & Moeller, Chtd.  
P.O. Box 250  
Rexburg, ID 83440-0250

  
Bruce D. Bernard

**Affidavit of Dr.  
Thomas B. Hardy**

BRUCE D. BERNARD  
DAVID W. GEHLERT  
United States Department of Justice  
Environment and Natural Resources Division  
General Litigation Section  
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Denver, Colorado 80202  
(303) 312-7319  
(303) 312-7352

DAVID L. NEGRI, ISB # 6697  
United States Department of Justice  
Environment and Natural Resources Division  
General Litigation Section  
550 W. Fort St. MSC033  
Boise, ID 83724  
(208) 331-5943

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 No. 75-13316
	)	(Wild and Scenic Rivers claims)
Case No. 39576	)	
	)	<b>Affidavit of Dr. Thomas B. Hardy</b>
	)	
	)	
	)	

**AFFIDAVIT OF DR. THOMAS B. HARDY**

**AFFIDAVIT OF DR. THOMAS B. HARDY**

**QUANTIFICATION OF WILD AND SCENIC RIVERS CLAIMS**

State of Utah                    )  
County of Cache                )

DR. THOMAS B. HARDY, being first duly sworn upon oath, deposes and says:

**I. Introduction.**

1.     **Position.** I am a Professor of Civil and Environmental Engineering at Utah State University in the Department of Biological and Irrigation Engineering. I am also the Associate Director of the Utah Water Research Laboratory at Utah State University. I hold a Ph.D. in Civil and Environmental Engineering from Utah State University (1988) with emphasis in hydrology, hydraulics and water resources modeling. In addition, I hold a B.S. in Secondary Education (1977) as well as B.S. and M.S. degrees in Biology (1978, 1982) from the University of Nevada at Las Vegas. I am a Certified Fisheries Scientist with the American Fisheries Society (No. 1989). I have over twenty years of professional experience in research and teaching in the field of instream flows and multidisciplinary assessments in the United States and internationally.

As Associate Director of the Utah Water Research Laboratory, I oversee multi-disciplinary research on the development of assessment methodologies applicable to impact assessments in water resource systems.

2.     **Duties.** I have worked for the United States on the quantification of water rights claims in the Snake River Basin Adjudication for over ten years and have worked on the United States' claims directed at protecting fisheries habitat in certain rivers designated under the Wild and Scenic Rivers Act. I have supervised certain field investigations of the six Wild and Scenic Rivers for which the United States filed claims in the Adjudication and was responsible for

quantifying the flows necessary to protect the fisheries resources of these six designated Wild and Scenic Rivers. I have reviewed and am familiar with the proposed Partial Decrees approving these Wild and Scenic Rivers Act claims under the terms of the Stipulation between the United States and the State of Idaho and the other objectors to these claims.

**3. Purpose of affidavit.** I submit this affidavit to address the quantification of the fisheries component of the Wild and Scenic Rivers Act claims as identified in the Partial Decrees.

**4. Wild and Scenic Rivers Act claims overview.** The United States Department of Agriculture, Forest Service ("Forest Service") has filed claims pursuant to the Wild and Scenic Rivers Act for six separate river segments in the Snake River Basin Adjudication:

- a. Mainstem of the Salmon River – basin 75, claim no. 75-13316; basin 77, claim no. 77-11941
- b. Middle Fork of the Salmon River – claim no. 77-13844
- c. Rapid River – claim no. 78-11961
- d. Selway River – claim no. 81-10472
- e. Lochsa River – claim no. 81-10513
- f. Middle Fork of the Clearwater River – claim no. 81-10625

The general locations of the rivers are shown in Attachment A.

## **II. Quantification of water rights.**

**5. Basis of quantification.** The water rights to be decreed by the Partial Decrees were quantified based on the flows necessary to protect the fisheries on each of the rivers, as well as the recreation values for all of the rivers other than the Rapid River. The basis for each element of the Partial Decrees, identification of the outstandingly remarkable values of each of

the rivers, and quantification of the flows necessary to protect recreation values is addressed in the *Affidavit of Jacquelyn A. Diedrich, Wild and Scenic Rivers Claims*, Consolidated Subcase No. 75-13316, dated August 12, 2004, and filed concurrently with this affidavit, as well as in Ms. Diedrich's claim affidavit filed in this matter on or about January 30, 2003, *Affidavit of Jacquelyn A. Diedrich, Wild and Scenic Rivers Claims*, Consolidated Subcase No. 75-13316, dated January 23, 2003.

6. **Partial Decrees meet fisheries needs.** I have reviewed the claims, the Stipulation and the Partial Decrees and have consulted with Forest Service experts and employees. Based on my review and my quantification affidavit filed in this matter on or about January 30, 2003, *Affidavit of Dr. Thomas B. Hardy, Quantification of Wild and Scenic Rivers Claims*, Consolidated Subcase No. 75-13316, dated January 23, 2003, I conclude that the flows claimed by the United States, as identified in the Partial Decrees and taking into account the small depletions likely to occur under the subordinations provided for in paragraph 10.b. of the Partial Decrees, provide a sufficient variety, frequency and quantity of flows to protect the outstandingly remarkable fisheries values Congress sought to protect for each of these designated Wild and Scenic Rivers.

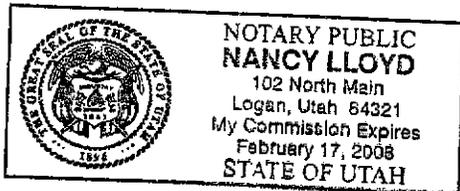
7. Further affiant sayeth nought.

Dated this 30<sup>th</sup> of July, 2004.

  
\_\_\_\_\_  
Thomas B. Hardy

SUBSCRIBED and SWORN to before me this 30<sup>th</sup> day of July, 2004.

  
\_\_\_\_\_  
NOTARY PUBLIC FOR  
Residing at: Dynum Utah  
My Commission Expires: Feb 17, 2008



## CERTIFICATE OF SERVICE

I hereby certify that on this 20<sup>th</sup> day of August, 2004, I served a true and correct copy of the foregoing **Affidavit of Dr. Thomas B. Hardy in Consolidated Subcase no. 75-13316** upon the following parties:

### **Original by hand delivery to:**

Clerk of the District Court  
Snake River Basin Adjudication  
P.O. Box 2707  
Twin Falls, ID 83303-2707

### **Copies by hand delivery or United States Mail, postage prepaid to:**

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Office of the Attorney General  
State of Idaho  
P.O. Box 44449  
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113 Main Ave. W. Ste. 303  
Twin Falls, ID 83301

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Albert P. Barker  
John K. Simpson  
Barker Rosholt & Simpson LLP  
P.O. Box 2139  
Boise, ID 83701-2139

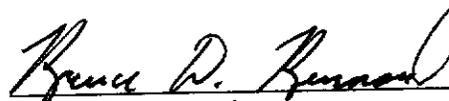
James C. Tucker  
Idaho Power Co.  
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Roger D. Ling  
Ling, Robinson, & Walker  
P.O. Box 396  
Rupert, ID 83350

Michael Mirande  
Miller Bateman LLP  
1426 Alaskan Way, Ste 301  
Seattle, WA 98101

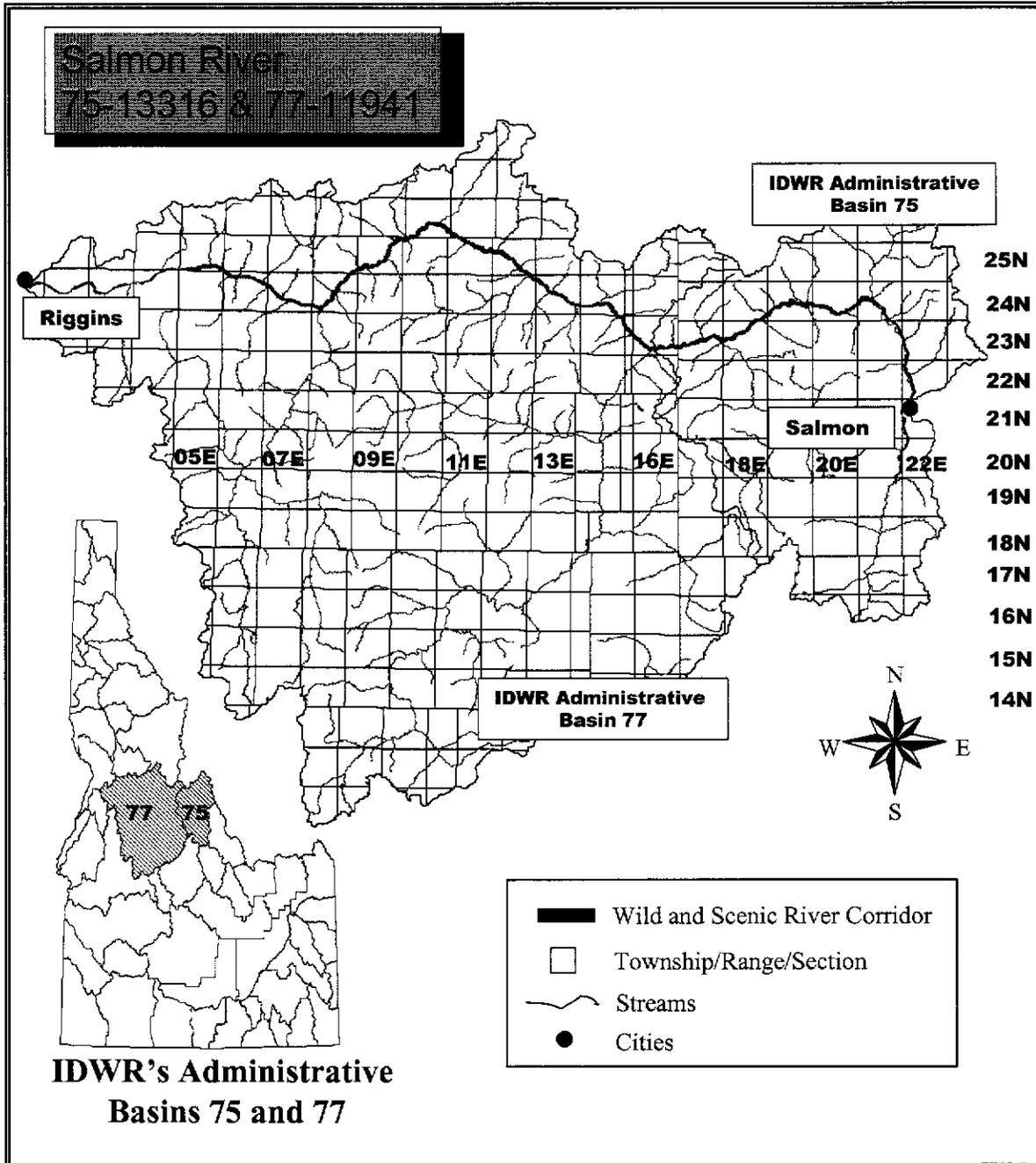
Lawrence (Laird) J. Lucas  
William Eddie  
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Jerry R. Rigby  
Ray W. Rigby  
Rigby, Thatcher, Andrus, Rigby Kam & Moeller, Chtd.  
P.O. Box 250  
Rexburg, ID 83440-0250

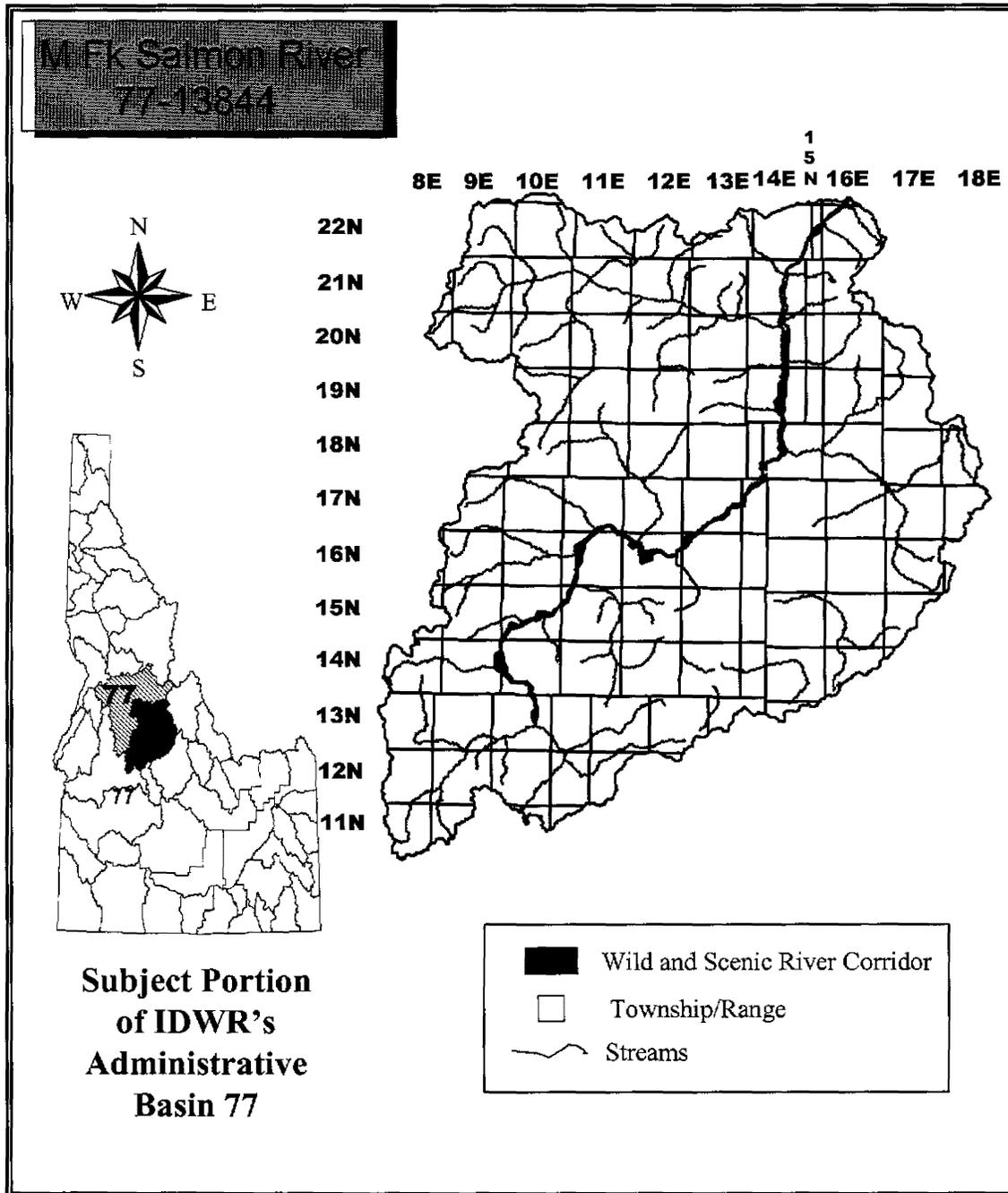
  
Bruce D. Bernard

**ATTACHMENT A**  
**MAPS OF WILD AND SCENIC RIVERS**

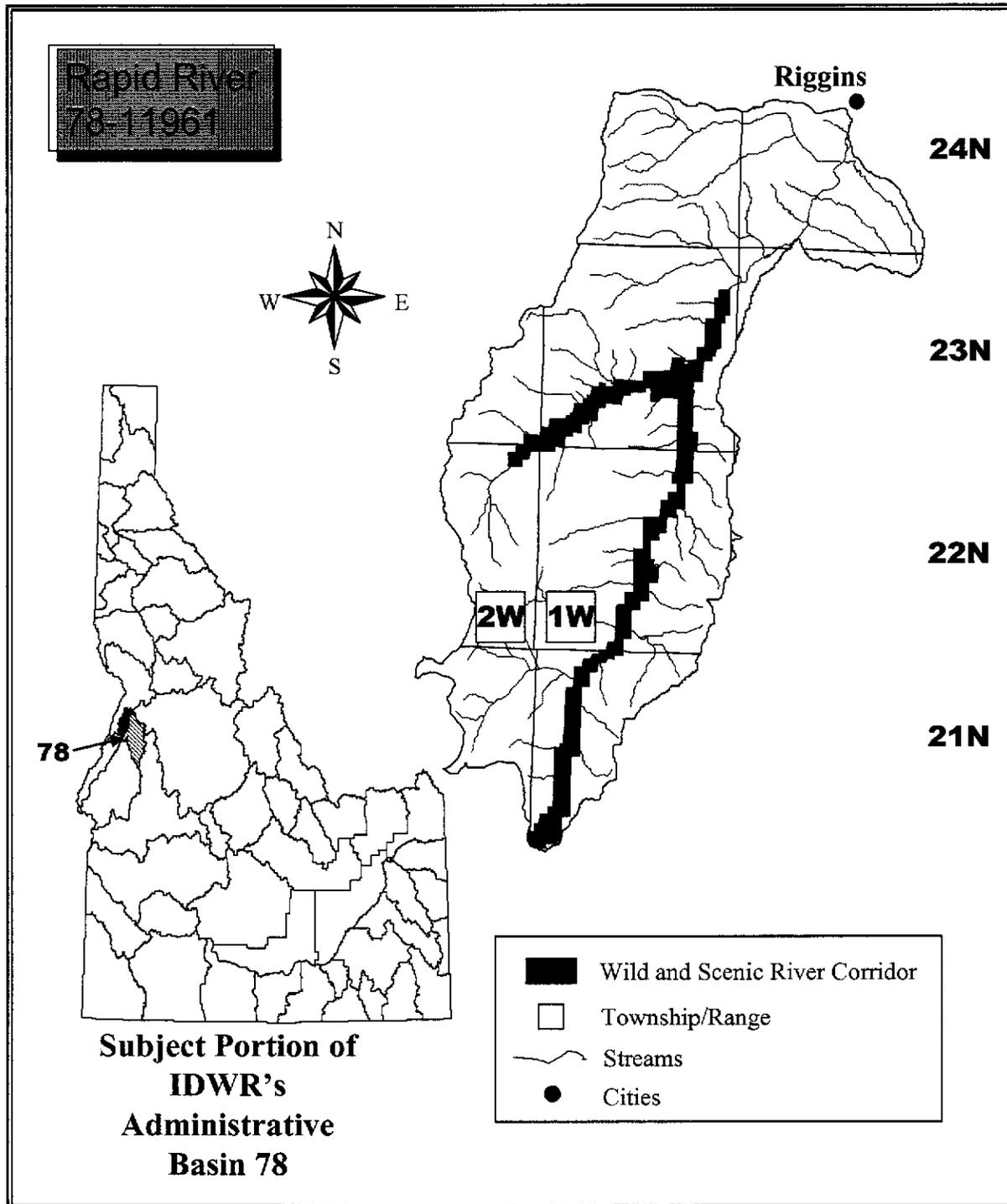
# Salmon Wild and Scenic River



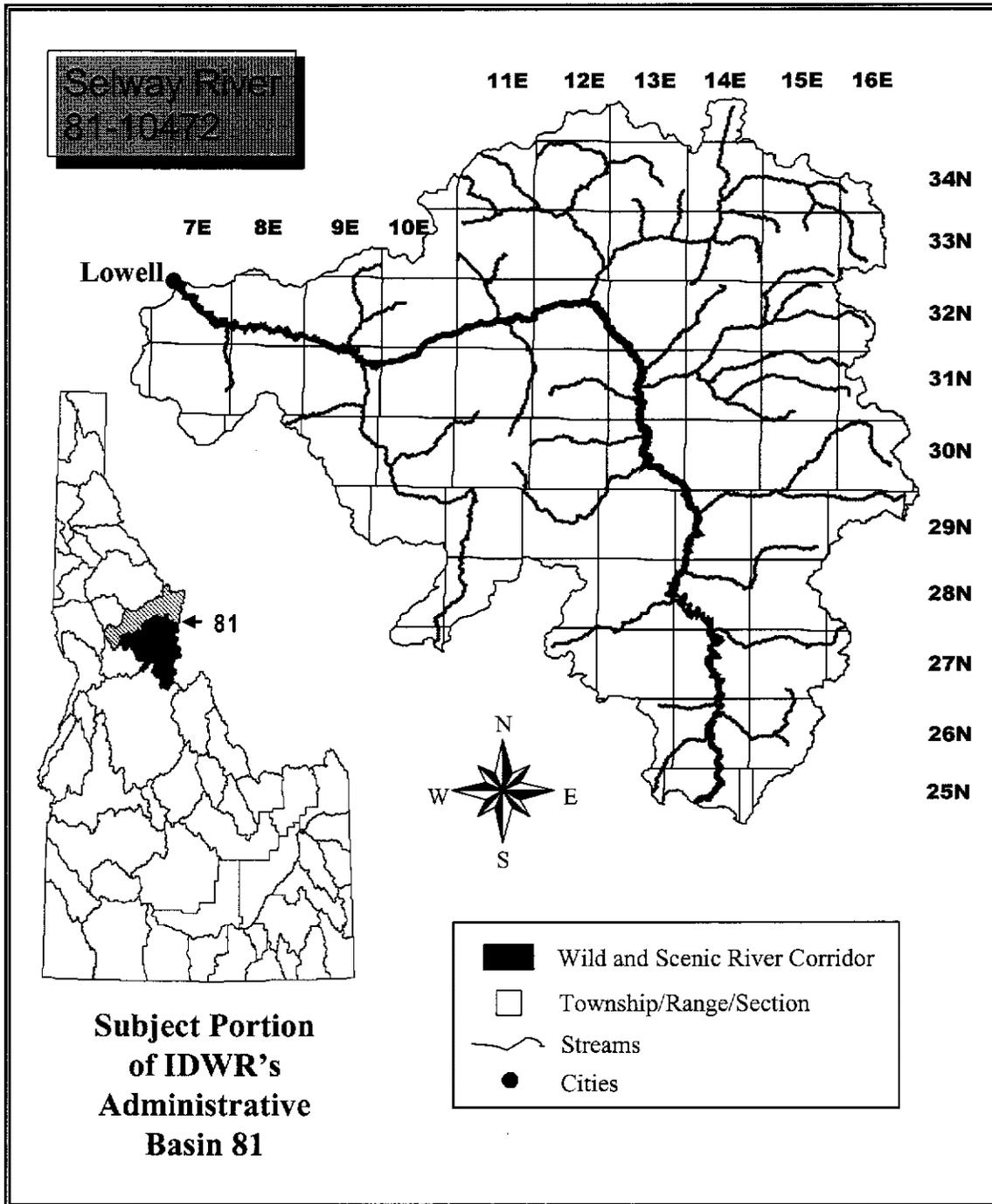
# Middle Fork Salmon Wild and Scenic River



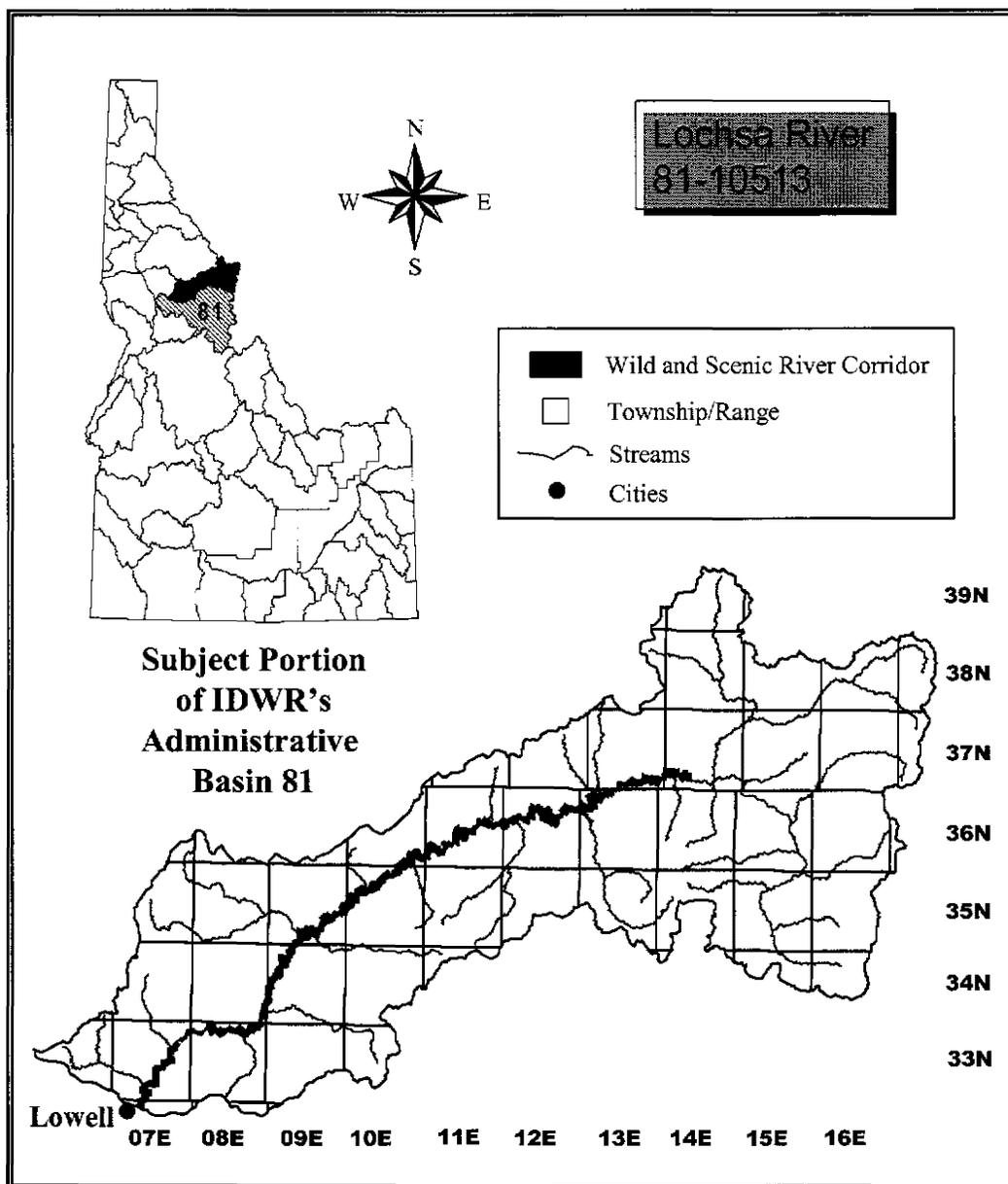
# Rapid Wild and Scenic River



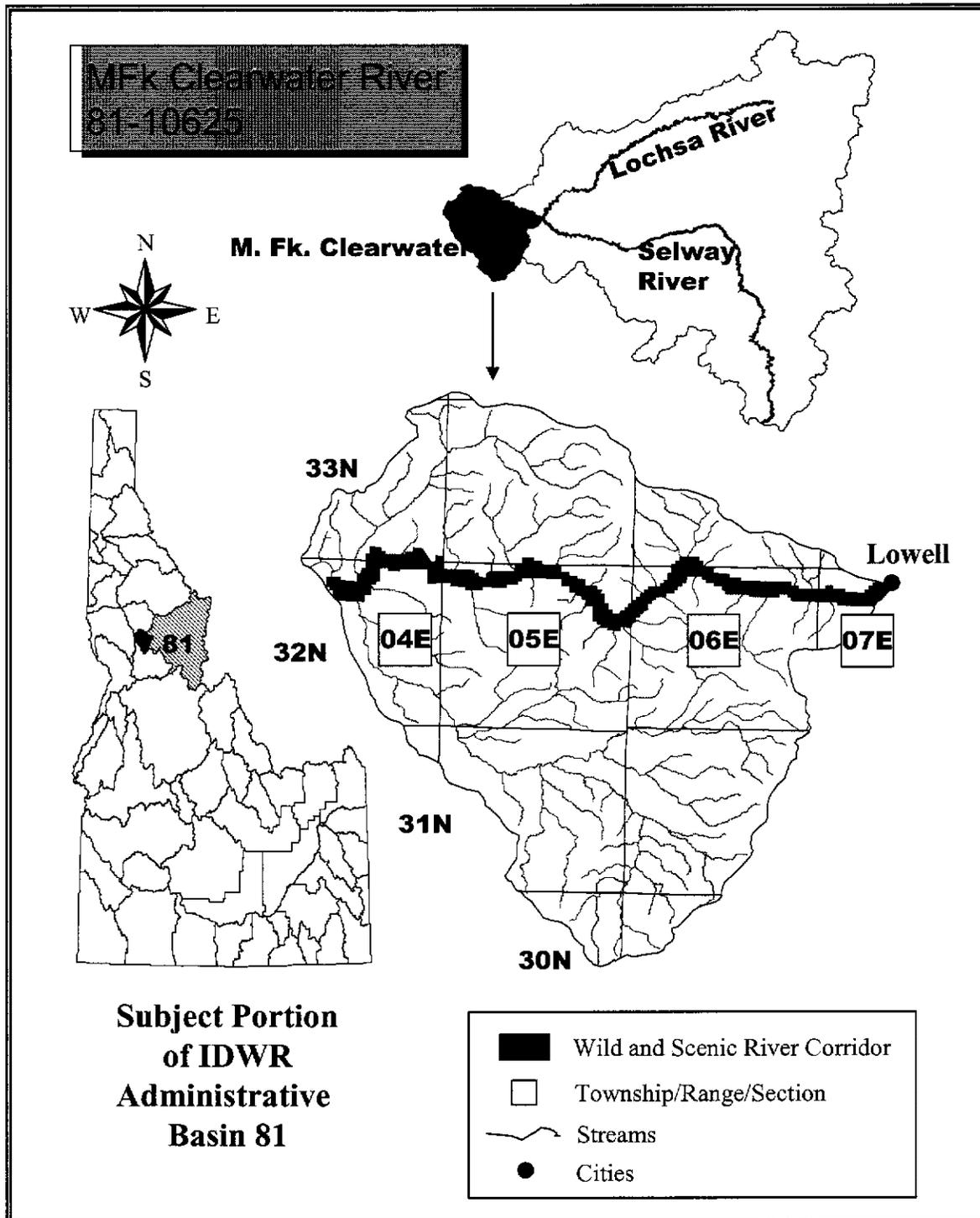
# Selway Wild and Scenic River



# Lochsa Wild and Scenic River



# Middle Fork Clearwater Wild and Scenic River







UNITED STATES OF AMERICA

STATE OF IDAHO

BRUCE D. BERNARD  
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Environment and Natural Resources Division  
General Litigation Section  
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P.O. Box 44449  
Boise, Idaho 83711-4449  
(208) 334-4126

Attorney for the United States of America

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

)  
)  
) **Subcase No. 79-13597**  
) **Hells Canyon National Recreation Area Act**  
) **Claims (Encompassing Subcases 79-14054 through**  
) **79-14079; and to further encompass and be consolidated**  
) **with Subcases 78-12200 through 78-12205)**  
)  
)

CASE NO. 39576

) **Stipulation and Joint Motion for Order**  
) **Approving Stipulation and Entry of Partial**  
) **Decrees**  
)  
)  
)

**STIPULATION**

The United States of America (“United States”), the State of Idaho (“State”), and Idaho Power Company, (the State and Idaho Power 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' Hells Canyon National Recreation Area ("HCNRA") Act federal reserved water rights claims numbered 78-12200 through 78-12205 and 79-14054 through 79-14079, attached hereto and incorporated herein as Attachments 1 through 32 (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 HCNRA Act, as recognized by the Idaho Supreme Court in *Potlatch v. United States*, 134 Idaho 916, 12 P.3d 1260 (2000), and set forth the quantities and terms of those rights. The Partial Decrees quantify these federal reserved water rights based on identified flows and lake levels on 32 streams and lakes within the HCNRA, subject to subordinations to certain existing and future rights and uses, and the preclusion of out-of-basin diversions above the ending point or point of diversion of each of the respective federal reserved water rights as identified in the Partial Decrees. Based on the agreement of the parties to quantify the HCNRA federal reserved water right specifically on these 32 separate water sources within the HCNRA, the Idaho Department of Water Resources ("IDWR") has assigned separate water right numbers to each of these sources. IDWR has assigned water right numbers 79-14054 through 79-14079 to the Partial Decrees for the 26 streams and lakes that are located in IDWR Administrative Basin No. 79 as described in Partial Decree Nos. 79-14054 through 79-14079 (the "Basin 79 Partial Decrees"). These water rights are within Claim No. 79-13597 and are part of this Subcase No. 79-13597. IDWR has assigned water right numbers 78-12200 through 78-12205 to the Partial Decrees for the six lakes that are located in IDWR Administrative Basin 78 as described in Partial Decree Nos. 12200 through 12205 (the "Basin 78 Partial Decrees"). The Basin 78 Partial Decrees will be the subject of late notices of claim, as addressed in paragraphs 7 and 8 below. The parties intend that, after due

notice, these Basin 78 claims will be consolidated into this Subcase No. 79-13597. The parties request the Snake River Basin Adjudication Court (“SRBA Court” or “Court”) to 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 HCNRA 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 IDWR 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 or point of diversion 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.

b. Creation of Water Districts. At present, the limited number of water rights above the ending point or point of diversion of the federal reserved water rights confirmed by the Partial Decrees do not justify the creation of a water district for purposes of administration. If in the future any party believes that creation of a water district above the ending point or point of diversion of any of the HCNRA 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. The parties agree that, regardless of whether a water district has been established for an area, IDWR will, as necessary: A) collect and record diversion data; B) enforce the water rights in priority; and C) curtail unauthorized or excessive diversions.

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 or point of diversion of any HCNRA federal reserved water right 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 will curtail unauthorized uses based on the authorities of Chapter 6, Title 42, Idaho Code. 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 as necessary 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) 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.

h. United States' Measuring Devices. At present, the rights set forth herein can be administered without gaging devices. In the event gages become necessary for

administration of the federal reserved water rights, 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 HCNRA 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 HCNRA upstream from the ending point or point of diversion of each of the federal reserved water rights. Administration of the subordination provisions shall be as follows:

a. Accounting of Diversion Amounts Under Future Use Subordinations. IDWR will deduct from the subordination amounts provided for in paragraph 10.b.(5) of the Corral Creek and Kirkwood Creek Partial Decrees (Partial Decrees numbered 79-14056 and 79-14061, respectively) the amount of the diversion rate 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. Diversion Adjustment for Forfeiture or Abandonment. If a water right enjoying the benefit of subordination provision 10.b.(5) of the Corral Creek and Kirkwood Creek 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 will be added to the applicable subordination amount. The amount of diversion rate 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.

c. Water Right Database. IDWR will maintain a publicly available database of water right records on file with IDWR that are above the ending point or point of diversion of each HCNRA federal reserved water right. The database will identify the statutory elements for each active water right record.

d. 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 or points of diversion 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.e.(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 10.b.(5) of the Corral Creek and Kirkwood Creek Partial Decrees, identify the diversion rate, 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.b, identify those rights and the diversion that IDWR has credited the applicable future use subordination as described in paragraph 3.b 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.(5)(B) of the Corral Creek and Kirkwood Creek Partial Decrees and that would otherwise be deducted from the subordination amounts set forth in paragraph 10.b.(5)(A) of these Partial Decrees, 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; and

(7) set forth a running total of the amounts of future use subordination remaining available for appropriation under paragraph 10.b.(5) of the Corral Creek and Kirkwood Creek 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.

e. 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.(5) of the Corral Creek and Kirkwood Creek Partial Decrees, the diversion amount 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 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.(5) of the Corral Creek and Kirkwood Creek Partial Decrees, the diversion amount 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 for that subordination provision.

(3) Issuance of a license for a water right enjoying subordination under paragraph 10.b.(5) of the Corral Creek and Kirkwood Creek Partial Decrees will be

posted to the subordination accounting database. If the issuance of the license resulted in an adjustment of the diversion rate, the amount of the adjustment will be noted in the posting of the license and reflected in an adjustment of the remaining diversion rate 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.(5) of the Corral Creek and Kirkwood Creek Partial Decrees, the diversion rate 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 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.(5)(B) of the Corral Creek and Kirkwood Creek Partial Decrees that would otherwise be deducted from the subordination amounts set forth in paragraph 10.b.(5)(A) of these Partial Decrees, and upon issuance of a water rights decree, permit or licenses 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 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. 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 that 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 dispute, 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' HCNRA federal reserved water rights 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 or lake level of the HCNRA federal reserved water rights 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 or lake level of any of the HCNRA federal reserved water rights subject to this Stipulation.

7. Late Claims for Basin 78 Water Sources. Objectors hereby stipulate to the SF-4 motions to file late notices of claim attached hereto as Attachments 33-38 (Identification Nos. 78-12200 through 78-12205). The United States shall file these SF-4 motions concurrently with the filing of this Stipulation as described below. IDWR shall prepare a Director's Report that

will include these late notices of claim. Notice of the Director's Report and the late notices of claim shall be provided through the SRBA Docket Sheet as described below.

8. Request for Approval of Stipulation and Entry of Partial Decrees by the SRBA Court.

a. Filing of Settlement Documents with Court, Notice, and Setting of Hearing. The parties agree to submit this Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees and the attached SF-4 motions to file late notices of claim for the Basin 78 Partial Decrees to the SRBA Court in full satisfaction of Claim Nos. 78-12200 through 78-12205 and 79-14054 through 79-14079. The parties agree to request the SRBA Court to provide notice of the Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees and the SF-4 motions through the SRBA Docket Sheet and by personal notice to Objectors. Upon submittal of these settlement documents to the SRBA Court, the parties will move the Court to set a hearing, at a date after the running of the notice period set forth in the Docket Sheet as determined by the Court, for approval of the Stipulation, approval of the SF-4 motions, and entry of the Basin 79 Partial Decrees (Partial Decree Nos. 79-14054 through 79-14079).

b. Approval of Stipulation, Approval of SF-4 for Basin 78 Partial Decrees, and Entry of Basin 79 Partial Decrees. The parties shall appear at the hearing set to consider approval of the Stipulation to request the SRBA Court to enter the proposed Order attached hereto as Attachment 39 and to jointly present affidavits and such other evidence as required by the Court for approval of the Stipulation, approval of the SF-4 motions and entry of the Basin 79 Partial Decrees. If the SRBA Court grants the stipulated SF-4 motions to file late notices of claim for the Basin 78 Partial Decrees, notice of the Director's Report that includes those late

notices of claim and the opportunity to object will be provided through the SRBA Docket Sheet and by personal notice to Objectors, and the parties shall request the Court to set a hearing, at a date after the running of the notice period set forth in the Docket Sheet as determined by the Court, for approval of the Basin 78 Partial Decrees.

c. Approval of Basin 78 Partial Decrees. At the hearing set to consider approval of the Basin 78 Partial Decrees, the parties shall request the SRBA Court to consolidate the Basin 78 claims with this Subcase No. 79-13597. If no objections are filed to the late notices of claim for the Basin 78 Partial Decrees (other than objections by parties to this Stipulation for the purposes of making them parties to these Basin 78 subcases), the parties shall appear at the hearing to request the SRBA Court to enter the proposed Order attached hereto as Attachment 40 and to jointly present affidavits and such other evidence as required by the Court for entry of the Basin 78 Partial Decrees. If any objections are filed to any of the late notices of claim (other than objections by parties to this Stipulation for the purposes of making them parties to those Basin 78 subcases), the United States and Objectors shall make best efforts to persuade any such objector(s) to join in this Stipulation. If any such objector(s) agree to join in this Stipulation, the parties shall file an addendum to this Stipulation adding such objector(s) as a party to this Stipulation and, if necessary, request the SRBA Court to set a new hearing date (if the previously set hearing date has been vacated) for the presentation of affidavits and such other evidence as required by the Court for entry of the Basin 78 Partial Decrees. If the United States and Objectors are unsuccessful in persuading any such additional objector(s) to join in this Stipulation or in otherwise resolving any such objector's(s') opposition to the late notices of claim, the United States shall prosecute the claims based on the terms of the Partial Decrees and Objectors shall jointly support and defend the claims against any and all such objections.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. Effective Date. The effective date of this Stipulation shall be September 1, 2003.

**JOINT MOTION FOR ORDER APPROVING STIPULATION  
AND ENTRY OF PARTIAL DECREES**

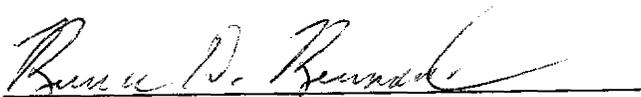
The parties request the SRBA Court to: (1) approve the foregoing Stipulation; (2) approve the attached SF-4 for the Basin 78 Partial Decrees and approve and enter the Partial Decrees for claims numbered 78-12200 through 78-12205 and 79-14054 through 79-14079 all in accordance with paragraph 8 of the Stipulation; (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.

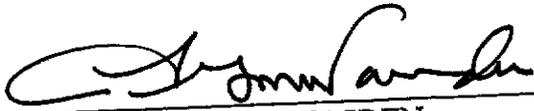
FOR THE UNITED STATES:



Date: 8/17/04

BRUCE D. BERNARD  
U.S. Department of Justice  
Environment and Natural Resources Division  
General Litigation Section  
999 18<sup>th</sup> Street, Suite 945  
Denver, Colorado 80202  
(303) 312-7319

FOR THE STATE OF IDAHO, including THE IDAHO WATER RESOURCES BOARD:



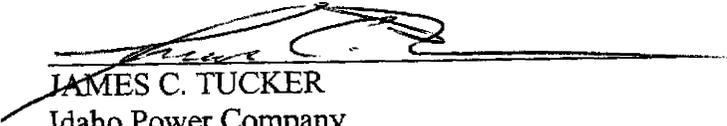
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Date: 20/August/2004

LAWRENCE G. WASDEN,  
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CLIVE J. STRONG,  
Deputy Attorney General  
Chief, Natural Resources Division  
Office of the Attorney General  
State of Idaho  
P.O. Box 44449  
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FOR IDAHO POWER COMPANY:

Date: 8/17/04

  
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Idaho Power Company  
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Boise, ID 83707  
(208) 388-2112

MICHAEL MIRANDE

Miller Bateman LLP  
1426 Alaskan Way, Suite 301  
Seattle, WA 98101  
(206) 903-0300

**Certificate of Service**

I certify that on August 20, 2004, I caused to be served a true and correct copy of the **Stipulation and Joint Motion for Order Approving Stipulation** for subcase no. 79-13597 to the parties listed below:

**Original by hand delivery to:**

Clerk of the District Court  
Snake River Basin Adjudication  
P.O. Box 2707  
Twin Falls, ID 83303-2707

**Copies by hand delivery or United States Mail, postage prepaid to:**

Chief, Natural Resources Division  
Office of the Attorney General  
State of Idaho  
P.O. Box 44449  
Boise, ID 83711-4449

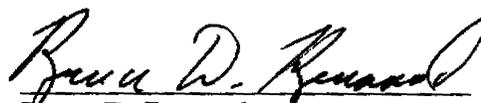
James C. Tucker  
Idaho Power Company  
P.O. Box 70  
Boise, ID 83707

United States Department of Justice  
Environment and Natural Resources Division  
General Litigation Section  
550 W. Fort St. MSC 033  
Boise, ID 83724

Merlyn W. Clark  
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Boise, ID 83701

IDWR Document Depository  
P.O. Box 83720  
Boise, ID 83720

John K. Simpson  
Barker Rosholt & Simpson LLP  
P.O. Box 2139  
Boise, ID 83701-2139

  
Bruce D. Bernard



**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            )  
                              )  
CASE NO. 39576        )  
                              )  
\_\_\_\_\_                  )

**PARTIAL DECREE FOR**  
**Federal Reserved Water Right 79-14054**  
**Hells Canyon National Recreation Area**

**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:** Bernard Creek

**3. Quantity of right:** a. This water right is for the following flows in cubic feet per second for each month:

Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
5.4	6.6	7.1	24	24	11	3.6	2.2	2.3	2.9	3.6	3.9

b. The quantification site for the flows identified above is near the mouth of Bernard Creek located in SE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 20, T24N, R2W, Boise Meridian.

c. This water right precludes any diversion of water out of the watershed of Bernard Creek upstream from the ending point, 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:

Beginning point: Within the projection of the SW<sup>1</sup>/<sub>4</sub>SE<sup>1</sup>/<sub>4</sub>, in unsurveyed Sec. 3, T23N, R2W, Boise Meridian.

Ending point: SE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>, Sec. 20, T24N, R2W, Boise Meridian.

**6. Purpose of use:**

To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

**7. Period of use:**

01-01 to 12-31.

**8. Place of use:**

This instream flow water right is used throughout the designated stream reach within the Hells Canyon National Recreation Area 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 Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to that Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Bernard Creek 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(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.

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.

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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 79-14055**  
**Hells Canyon National Recreation Area**

**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:** Big Canyon Creek

**3. Quantity of right:** a. This water right is for the following flows in cubic feet per second for each month:

Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
9.9	18	17	22	6.3	1.1	0.29	0.81	1.0	1.4	1.6	2.1

b. The quantification site for the flows identified above is near the mouth of Big Canyon Creek located in Lot 2 (SW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>), Sec. 13, T27N, R2W, Boise Meridian.

c. This water right precludes any diversion of water out of the watershed of Big Canyon Creek upstream from the ending point, 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:

Beginning point: NW $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 11, T27N, R1W, Boise Meridian.

Ending point: Lot 2 (SW $\frac{1}{4}$ NE $\frac{1}{4}$ ), Sec. 13, T27N, R2W, Boise Meridian.

- 6. Purpose of use:** To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
- 7. Period of use:** 01-01 to 12-31.
- 8. Place of use:** This instream flow water right is used throughout the designated stream reach within the Hells Canyon National Recreation Area 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 Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
  - b. This Partial Decree is entered pursuant to that Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Big Canyon Creek 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 camp-grounds, 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(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.

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.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication



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 Right 79-14056**  
**Hells Canyon National Recreation Area**

**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:** Corral Creek

**3. Quantity of right:** a. This water right is for the following flows in cubic feet per second for each month:

Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
7.1	12	15	30	15	3.4	0.87	1.1	1.2	1.6	2.0	2.7

b. The quantification site for the flows identified above is near the mouth of Corral Creek located in Lot 2 (SW $\frac{1}{4}$ NE $\frac{1}{4}$ ), Sec. 9, T26N, R1W, Boise Meridian.

c. This water right precludes any diversion of water out of the watershed of Corral Creek upstream from the ending point, 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:

Beginning point: SE¼SE¼, Sec. 24, T26N, R1W, Boise Meridian.

Ending point: Lot 2 (SW¼NE¼), Sec. 9, T26N, R1W, Boise Meridian.

- 6. Purpose of use:** To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
- 7. Period of use:** 01-01 to 12-31.
- 8. Place of use:** This instream flow water right is used throughout the designated stream reach within the Hells Canyon National Recreation Area 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 Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
  - b. This Partial Decree is entered pursuant to that Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Corral Creek 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(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 0.10 cfs, for any purpose. 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 stream reach within the Hells Canyon National Recreation Area as identified in this Partial Decree; ii) all return flows from the use accrue to the designated 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.

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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	)	<b>PARTIAL DECREE FOR</b>
	)	
CASE NO. 39576	)	<b>Federal Reserved Water Right 79-14057</b>
	)	
_____	)	<b>Hells Canyon National Recreation Area</b>

**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:** Deep Creek

**3. Quantity of right:** a. This water right is for the following flows in cubic feet per second for each month:

Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
3.2	3.3	5.0	19	35	29	13	2.9	2.6	3.1	4.3	5.0

b. The quantification site for the flows identified above is near the mouth of Deep Creek located in SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 5, T21N, R2W, Boise Meridian.

c. This water right precludes any diversion of water out of the watershed of Deep Creek upstream from the ending point, 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:

Beginning point: SE¼NW¼, Sec. 22, T21N, R2W, Boise Meridian.

Ending point: SW¼SW¼, Sec. 5, T21N, R2W, Boise Meridian.

- 6. Purpose of use:** To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
- 7. Period of use:** 01-01 to 12-31.
- 8. Place of use:** This instream flow water right is used throughout the designated stream reach within the Hells Canyon National Recreation Area 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 Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
  - b. This Partial Decree is entered pursuant to that Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Deep Creek 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(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.

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.

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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            )  
                              )  
CASE NO. 39576        )  
                              )  
\_\_\_\_\_                  )

**PARTIAL DECREE FOR**  
**Federal Reserved Water Right 79-14058**  
**Hells Canyon National Recreation Area**

**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:** Granite Creek

**3. Quantity of right:** a. This water right is for the following flows in cubic  
feet per second for each month:

Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
21	24	27	92	120	74	24	11	11	14	17	18

b. The quantification site for the flows identified above is near the mouth of Granite Creek located in Lot 2 (SW $\frac{1}{4}$ NW $\frac{1}{4}$ ), Sec. 12, T23N, R3W, Boise Meridian.

c. This water right precludes any diversion of water out of the watershed of Granite Creek upstream from the ending point, 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:

Beginning point: Lot 8 (NE¼NE¼), Sec. 4, T21N, R2W, Boise Meridian.

Ending point: Lot 2 (SW¼NW¼), Sec. 12, T23N, R3W, Boise Meridian.

**6. Purpose of use:**

To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

**7. Period of use:**

01-01 to 12-31.

**8. Place of use:**

This instream flow water right is used throughout the designated stream reach within the Hells Canyon National Recreation Area 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 Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to that Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Granite Creek 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(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.

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.

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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 79-14059**  
**Hells Canyon National Recreation Area**

**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:** Jones Creek

**3. Quantity of right:** a. This water right is for the following flows in cubic  
feet per second for each month:

Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
2.2	4.9	4.1	4.3	0.62	0.05	0.01	0.07	0.10	0.16	0.17	0.24

b. The quantification site for the flows identified above is near the mouth of Jones Creek located in Lot 2 (SE $\frac{1}{4}$ NE $\frac{1}{4}$ ), Sec. 2, T27N, R2W, Boise Meridian.

c. This water right precludes any diversion of water out of the watershed of Jones Creek upstream from the ending point, 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:

Beginning point: Lot 2 (NW¼NE¼), Sec. 6, T27N, R1W, Boise Meridian.

Ending point: Lot 2 (SE¼NE¼), Sec. 2, T27N, R2W, Boise Meridian.

**6. Purpose of use:**

To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

**7. Period of use:**

01-01 to 12-31.

**8. Place of use:**

This instream flow water right is used throughout the designated stream reach within the Hells Canyon National Recreation Area 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 Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to that Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Jones Creek 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(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.

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.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication

ATTACHMENT 7

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 79-14060**  
**Hells Canyon National Recreation Area**

**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:** Kirby Creek

**3. Quantity of right:** a. This water right is for the following flows in cubic feet per second for each month:

Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
2.3	4.2	4.4	6.5	1.9	0.28	0.08	0.19	0.23	0.33	0.39	0.53

b. The quantification site for the flows identified above is near the mouth of Kirby Creek located in Lot 2 (SW $\frac{1}{4}$ SE $\frac{1}{4}$ ), Sec. 17, T26N, R1W, Boise Meridian.

c. This water right precludes any diversion of water out of the watershed of Kirby Creek upstream from the ending point, 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:

Beginning point: NE¼SE¼, Sec. 27, T26N, R1W, Boise Meridian.

Ending point: Lot 2 (SW¼SE¼), Sec. 17, T26N, R1W, Boise Meridian.

**6. Purpose of use:**

To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

**7. Period of use:**

01-01 to 12-31.

**8. Place of use:**

This instream flow water right is used throughout the designated stream reach within the Hells Canyon National Recreation Area 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 Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to that Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Kirby Creek 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(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.

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.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication



ATTACHMENT 8

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 79-14061**  
**Hells Canyon National Recreation Area**

**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:** Kirkwood Creek

**3. Quantity of right:** a. This water right is for the following flows in cubic feet per second for each month:

Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
14	20	22	50	33	10	2.8	3.0	3.1	4.1	5.1	6.0

b. The quantification site for the flows identified above is near the mouth of Kirkwood Creek located in Lot 1 (NE $\frac{1}{4}$ NE $\frac{1}{4}$ ), Sec. 30, T26N, R1W, Boise Meridian

c. This water right precludes any diversion of water out of the watershed of Kirkwood Creek upstream from the ending point, 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:

Beginning point: NW¼NW¼, Sec. 14, T25N, R1W, Boise Meridian.

Ending point: Lot 1 (NE¼NE¼), Sec. 30, T26N, R1W, Boise Meridian.

- 6. Purpose of use:** To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
- 7. Period of use:** 01-01 to 12-31.
- 8. Place of use:** This instream flow water right is used throughout the designated stream reach within the Hells Canyon National Recreation Area 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 Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
  - b. This Partial Decree is entered pursuant to that Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Kirkwood Creek 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(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 0.10 cfs, for any purpose. 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 stream reach within the Hells Canyon National Recreation Area as identified in this Partial Decree; ii) all return flows from the use accrue to the designated 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.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication



ATTACHMENT 9

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 79-14062**  
**Hells Canyon National Recreation Area**

**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:** Klopton Creek

**3. Quantity of right:** a. This water right is for the following flows in cubic feet per second for each month:

Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
6.6	11	11	23	8.0	1.3	0.29	0.65	0.79	1.1	1.3	1.6

b. The quantification site for the flows identified above is near the mouth of Klopton Creek located in Lot 5 (SE $\frac{1}{4}$ NW $\frac{1}{4}$ ), Sec. 4, T26N, R1W, Boise Meridian.

c. This water right precludes any diversion of water out of the watershed of Klopton Creek upstream from the ending point, 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:

Beginning point: Lot 8 (NW¼SW¼), Sec. 6, T26N, R1E, Boise Meridian.

Ending point: Lot 5 (SE¼NW¼), Sec. 4, T26N, R1W, Boise Meridian.

- 6. Purpose of use:** To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
- 7. Period of use:** 01-01 to 12-31.
- 8. Place of use:** This instream flow water right is used throughout the designated stream reach within the Hells Canyon National Recreation Area 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 Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
  - b. This Partial Decree is entered pursuant to that Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Klopton Creek 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(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.

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.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication



ATTACHMENT 10

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 79-14063**  
**Hells Canyon National Recreation Area**

**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:**                    Kurry Creek

**3. Quantity of right:**                a.    This water right is for the following flows in cubic  
  feet per second for each month:

Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
8.0	16	16	18	4.5	0.69	0.18	0.54	0.67	0.95	1.1	1.5

b.    The quantification site for the flows identified above is near the mouth of Kurry Creek located in Lot 2 (SW ¼NE ¼), Sec. 32, T27N, R1W, Boise Meridian.

c.    This water right precludes any diversion of water out of the watershed of Kurry Creek upstream from the ending point, 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:

Beginning point: Lot 2 (SE¼NE¼), Sec. 25, T27N, R1W, Boise Meridian.

Ending point: Lot 2, (SW¼NE¼), Sec. 32, T27N, R1W, Boise Meridian.

**6. Purpose of use:**

To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

**7. Period of use:**

01-01 to 12-31.

**8. Place of use:**

This instream flow water right is used throughout the designated stream reach within the Hells Canyon National Recreation Area 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 Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to that Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Kurry Creek 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(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.

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.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication



ATTACHMENT 11

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 79-14064**  
**Hells Canyon National Recreation Area**

**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:** Oxbow Creek

**3. Quantity of right:** a. This water right is for the following flows in cubic feet per second for each month:

Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
1.4	1.6	1.9	8.4	12	7.5	3.0	1.0	0.99	1.3	1.6	1.8

b. The quantification site for the flows identified above is near the mouth of Oxbow Creek located in Lot 3, (NW $\frac{1}{4}$ SW $\frac{1}{4}$ ), Sec. 18, T22N, R2W, Boise Meridian.

c. This water right precludes any diversion of water out of the watershed of Oxbow Creek upstream from the ending point, 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:

Beginning point: NE $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 32, T22N, R2W, Boise Meridian.

Ending point: Lot 3, (NW $\frac{1}{4}$ SW $\frac{1}{4}$ ), Sec. 18, T22N, R2W, Boise Meridian.

- 6. Purpose of use:** To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
- 7. Period of use:** 01-01 to 12-31.
- 8. Place of use:** This instream flow water right is used throughout the designated stream reach within the Hells Canyon National Recreation Area 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 Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
  - b. This Partial Decree is entered pursuant to that Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Oxbow Creek 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(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.

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.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication



ATTACHMENT 12

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 79-14065**  
**Hells Canyon National Recreation Area**

**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:**                    Sheep Creek

**3. Quantity of right:**                 a.     This water right is for the following flows in cubic  
  feet per second for each month:

Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
34	41	46	120	150	85	27	16	15	19	24	25

b.     The quantification site for the flows identified above is near the mouth of Sheep Creek located in Lot 1, (NW $\frac{1}{4}$ NW $\frac{1}{4}$ ), Sec. 35, T25N, R2W, Boise Meridian.

c.     This water right precludes any diversion of water out of the watershed of Sheep Creek upstream from the ending point, 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:

Beginning point: Within the projection of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ , in unsurveyed Sec. 14, T23N, R2W, Boise Meridian.

Ending point: Lot 1 (NW $\frac{1}{4}$ NW $\frac{1}{4}$ ), Sec. 35, T25N, R2W, Boise Meridian.

**6. Purpose of use:**

To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

**7. Period of use:**

01-01 to 12-31.

**8. Place of use:**

This instream flow water right is used throughout the designated stream reach within the Hells Canyon National Recreation Area 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 Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to that Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Sheep Creek 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(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.

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.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication



ATTACHMENT 13

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	)	<b>PARTIAL DECREE FOR</b>
	)	
CASE NO. 39576	)	<b>Federal Reserved Water Right 79-14066</b>
	)	
_____	)	<b>Hells Canyon National Recreation Area</b>

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:** Three Creek

3. **Quantity of right:** a. This water right is for the following flows in cubic feet per second for each month:

Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
3.2	4.3	3.7	14	9.1	2.5	0.65	0.75	0.89	1.2	1.3	1.5

b. The quantification site for the flows identified above is near the mouth of Three Creek located in Lot 1, (NE $\frac{1}{4}$ NE $\frac{1}{4}$ ), Sec. 1, T23N, R3W, Boise Meridian.

c. This water right precludes any diversion of water out of the watershed of Three Creek upstream from the ending point, 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:

Beginning point: Within the projection of the NE<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>, in unsurveyed Sec. 9, T23N, R2W, Boise Meridian.

Ending point: Lot 1 (NE<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>), Sec. 1, T23N, R3W, Boise Meridian.

**6. Purpose of use:**

To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

**7. Period of use:**

01-01 to 12-31.

**8. Place of use:**

This instream flow water right is used throughout the designated stream reach within the Hells Canyon National Recreation Area 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 Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to that Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Three Creek 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(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.

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.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication



ATTACHMENT 14

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 79-14067**  
**Hells Canyon National Recreation Area**

**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:** West Creek

**3. Quantity of right:** a. This water right is for the following flows in cubic  
feet per second for each month:

Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
4.0	8.9	8.0	4.6	0.70	0.08	0.03	0.15	0.20	0.29	0.33	0.47

b. The quantification site for the flows identified above is near the mouth of West Creek located in Lot 3, (NE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 29, T27N, R1W, Boise Meridian.

c. This water right precludes any diversion of water out of the watershed of West Creek upstream from the ending point, 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:

Beginning point: NE $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 15, T27N, R1W, Boise Meridian.

Ending point: Lot 3 (NE $\frac{1}{4}$ SW $\frac{1}{4}$ ), Sec. 29, T27N, R1W, Boise Meridian.

- 6. Purpose of use:** To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
- 7. Period of use:** 01-01 to 12-31.
- 8. Place of use:** This instream flow water right is used throughout the designated stream reach within the Hells Canyon National Recreation Area 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 Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
  - b. This Partial Decree is entered pursuant to that Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 West Creek 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(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.

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.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication



ATTACHMENT 15

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 79-14068**  
**Hells Canyon National Recreation Area**

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:** Baldy Lake
3. **Quantity of right:**
  - a. This water right establishes the lake level of Baldy Lake at 99.49 feet referenced to Baldy BM1 (Elevation 100 feet) located at X=533566, Y=5017894 (UTM Zone 11 North NAD 83)
  - b. This Water right precludes any diversion of water out of the watershed of Baldy Lake upstream from the point of diversion, except for transfers of point of diversion from above the lake to below the lake.
4. **Priority date:** December 31, 1975.
5. **Point of diversion:** The projection of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ , of unsurveyed Sec. 22, T23N, R2W, Boise Meridian.
6. **Purpose of use:** To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
7. **Period of use:** 01-01 to 12-31.

**8. Place of use:**

Note: Tracts are projections in unsurveyed section

TWP	RGE	SEC	NE				NW				SW				SE				
			NE	NW	SW	SE													
23N	02W	22												X	X				
23N	02W	27					X	X											

**9. Annual volume of consumptive use:**

This lake level maintenance water right is non-consumptive (other than evaporation and evapotranspiration which may take place from the lake).

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

a. This is a federal reserved water right based on the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to the Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Baldy Lake basin upstream from the point of diversion, identified for the lake 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(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.

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

d. Information needed to locate the benchmark referenced in element 3.a. above is on file with IDWR.

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.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication



ATTACHMENT 16

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 79-14069**  
  
**Hells Canyon National Recreation Area**

- 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:**                 Basin Lake
- 3. Quantity of right:**             a.     This water right establishes the lake level of Basin  
  Lake at 92.23 feet referenced to Basin BM1 (Elevation 100  
  feet) located at X=534899, Y=5021260 (UTM Zone 11  
  North NAD 83).
- b.     This water right precludes any diversion of water  
  out of the watershed of Basin Lake upstream from the point  
  of diversion, except for transfers of point of diversion from  
  above the lake to below the lake.
- 4. Priority date:**                    December 31, 1975.
- 5. Point of diversion:**             The projection of the NW¼SW¼ of unsurveyed Sec. 11,  
  T23N, R2W, Boise Meridian.
- 6. Purpose of use:**                 To fulfill the purposes of the Hells Canyon National  
  Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec.  
  31, 1975 (codified at 16 U.S.C. § 460gg).
- 7. Period of use:**                   01-01 to 12-31.

**8. Place of use:**

Note: Tracts are projections in unsurveyed sections.

TWP	RGE	SEC	NE				NW				SW				SE			
			NE	NW	SW	SE												
23N	2W	10													X			
23N	2W	11										X						

**9. Annual volume of consumptive use:**

This lake level maintenance water right is non-consumptive (other than evaporation and evapotranspiration which may take place from the lake).

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

a. This is a federal reserved water right based on the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to the Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Basin Lake basin upstream from the point of diversion, identified for the lake 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(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.

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

d. Information needed to locate the benchmark referenced in element 3.a. above is on file with IDWR.

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.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication



ATTACHMENT 17

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 79-14070**  
**Hells Canyon National Recreation Area**

- 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:**                    Bernard Lake
- 3. Quantity of right:**                a.     This water right establishes the lake level of  
  Bernard Lake at 101.19 feet referenced to Bernard BM1  
  (Elevation 100 feet) located at X=532976, Y=5023600  
  (UTM Zone 11 North NAD 83)
- b.     This water right precludes any diversion of water out  
  of the watershed of Bernard Lake upstream from the point  
  of diversion, except for transfers of point of diversion from  
  above the lake to below the lake.
- 4. Priority date:**                     December 31, 1975.
- 5. Point of diversion:**                The projection of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ , of unsurveyed Sec. 4,  
  T23N, R2W, Boise Meridian.
- 6. Purpose of use:**                    To fulfill the purposes of the Hells Canyon National  
  Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec.  
  31, 1975 (codified at 16 U.S.C. § 460gg).
- 7. Period of use:**                     01-01 to 12-31.

**8. Place of use:**

Note: Tracts are projections in unsurveyed sections.

TWP	RGE	SEC	NE				NW				SW				SE			
			NE	NW	SW	SE												
23N	2W	3						X										
23N	2W	4	X															

**9. Annual volume of consumptive use:**

This lake level maintenance water right is non-consumptive (other than evaporation and evapotranspiration which may take place from the lake).

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

a. This is a federal reserved water right based on the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to the Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Bernard Lake basin upstream from the point of diversion, identified for the lake 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(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.

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

d. Information needed to locate the benchmark referenced in element 3.a. above is on file with IDWR.

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.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication



**ATTACHMENT 18**

**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 79-14071  
Hells Canyon National Recreation Area**

- 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:** Echo Lake
- 3. Quantity of right:**
- a. This water right establishes the lake level of Echo Lake at 95.77 feet referenced to Echo BM1 (Elevation 100 feet) located at X=533691, Y=5019403 (UTM Zone 11 North NAD 83).
  - b. This water right precludes any diversion of water out of the watershed of Echo Lake upstream from the point of diversion, except for transfers of point of diversion from above the lake to below the lake.
- 4. Priority date:** December 31, 1975.
- 5. Point of diversion:** The projection of the SE¼SW¼, of unsurveyed Sec. 15, T23N, R2W, Boise Meridian.
- 6. Purpose of use:** To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
- 7. Period of use:** 01-01 to 12-31.

**8. Place of use:**

Note: Tracts are projections in unsurveyed sections.

TWP	RGE	SEC	NE				NW				SW				SE				
			NE	NW	SW	SE													
23N	02W	15																	X

**9. Annual volume of consumptive use:**

This lake level maintenance water right is non-consumptive (other than evaporation and evapotranspiration which may take place from the lake).

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

a. This is a federal reserved water right based on the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to the Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Echo Lake basin upstream from the point of diversion, identified for the lake 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 camp-

grounds, 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(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.

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

d. Information needed to locate the benchmark referenced in element 3.a. above is on file with IDWR.

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 19**

**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 79-14072**  
**Hells Canyon National Recreation Area**

- 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:** Emerald Lake
  
- 3. Quantity of right:**
  - a. This water right establishes the lake level of Emerald Lake at 99.83 feet referenced to Emerald BM1 (Elevation 100 feet) located at X=533848, Y=5006630 (UTM Zone 11 North NAD 83).
  
  - b. This water right precludes any diversion of water out of the watershed of Emerald Lake upstream from the point of diversion, except for transfers of point of diversion from above the lake to below the lake.
  
- 4. Priority date:** December 31, 1975.
  
- 5. Point of diversion:** Lot 1 (NE<sup>1</sup>/<sub>4</sub>SW<sup>1</sup>/<sub>4</sub>), Sec. 27, T22N, R2W, Boise Meridian.
  
- 6. Purpose of use:** To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
  
- 7. Period of use:** 01-01 to 12-31.

**8. Place of use:**

TWP	RGE	SEC	NE				NW				SW				SE				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
22N	2W	27										LOT 1		LOT 2	LOT 3				
22N	2W	34					LOT 1												

**9. Annual volume of consumptive use:**

This lake level maintenance water right is non-consumptive (other than evaporation and evapotranspiration which may take place from the lake).

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

a. This is a federal reserved water right based on the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to the Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Emerald Lake basin upstream from the point of diversion, identified for the lake 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 camp-grounds, 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(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.

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

d. Information needed to locate the benchmark referenced in element 3.a. above is on file with IDWR.

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.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication



**ATTACHMENT 20**

**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 79-14073  
Hells Canyon National Recreation Area**

- 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:** Gem Lake
- 3. Quantity of right:**
- a. This water right establishes the lake level of Gem Lake at 98.21 feet referenced to Gem BM1 (Elevation 100 feet) located at X=535068, Y=5020336 (UTM Zone 11 North NAD 83).
  - b. This water right precludes any diversion of water out of the watershed of Gem Lake upstream from the point of diversion, except for transfers of point of diversion from above the lake to below the lake.
- 4. Priority date:** December 31, 1975.
- 5. Point of diversion:** The projection of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ , in unsurveyed Sec. 14, T23N, R2W, Boise Meridian.
- 6. Purpose of use:** To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
- 7. Period of use:** 01-01 to 12-31.

**8. Place of use:**

Note: Tracts are projections in unsurveyed sections.

TWP	RGE	SEC	NE				NW				SW				SE			
			NE	NW	SW	SE												
23N	02W	14						X	X									

**9. Annual volume of consumptive use:**

This lake level maintenance water right is non-consumptive (other than evaporation and evapotranspiration which may take place from the lake).

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

a. This is a federal reserved water right based on the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to the Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Gem Lake basin upstream from the point of diversion identified for the lake 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 camp-

grounds, 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(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.

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

d. Information needed to locate the benchmark referenced in element 3.a. above is on file with IDWR.

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.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication



ATTACHMENT 21

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 79-14074**  
**Hells Canyon National Recreation Area**

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:** He Devil Lake
3. **Quantity of right:**
  - a. This water right establishes the lake level of He Devil Lake at 99.24 feet referenced to He-Devil BM1 (Elevation 100 feet) located at X=534216, Y=5019063 (UTM Zone 11 North NAD 83).
  - b. This water right precludes any diversion of water out of the watershed of He Devil Lake upstream from the point of diversion, except for transfers of point of diversion from above the lake to below the lake.
4. **Priority date:** December 31, 1975.
5. **Point of diversion:** The projection of the SW $\frac{1}{4}$ SE $\frac{1}{4}$ , in unsurveyed Sec. 15, T23N, R2W, Boise Meridian.
6. **Purpose of use:** To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
7. **Period of use:** 01-01 to 12-31.

**8. Place of use:**

Note: Tracts are projections in unsurveyed sections.

TWP	RGE	SEC	NE				NW				SW				SE				
			NE	NW	SW	SE													
23N	02W	15																X	
23N	02W	22		X															

**9. Annual volume of consumptive use:**

This lake level maintenance water right is non-consumptive (other than evaporation and evapotranspiration which may take place from the lake).

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

a. This is a federal reserved water right based on the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to the Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 He Devil Lake basin upstream from the point of diversion, identified for the lake 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(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.

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

d. Information needed to locate the benchmark referenced in element 3.a. above is on file with IDWR.

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.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication



ATTACHMENT 22

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 79-14075**  
**Hells Canyon National Recreation Area**

- 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:** Six Lake Basin Lake
- 3. Quantity of right:**
- a. This water right establishes the lake level of Six Lake Basin Lake at 99.12 feet referenced to NW-Six-Basin BM1 (Elevation 100 feet) located at X=531717, Y=5004731 (UTM Zone 11 North NAD 83).
  - b. This water right precludes any diversion of water out of the watershed of Six Lake Basin Lake upstream from the point of diversion, except for transfers of point of diversion from above the lake to below the lake.
- 4. Priority date:** December 31, 1975.
- 5. Point of diversion:** SW¼SW¼, Sec. 33, T22N, R2W, Boise Meridian.
- 6. Purpose of use:** To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
- 7. Period of use:** 01-01 to 12-31.

**8. Place of use:**

TWP	RGE	SEC	NE				NW				SW				SE				
			NE	NW	SW	SE													
22N	02W	33												X	X				

**9. Annual volume of consumptive use:**

This lake level maintenance water right is non-consumptive (other than evaporation and evapotranspiration which may take place from the lake).

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

a. This is a federal reserved water right based on the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to the Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Six Lake Basin Lake basin upstream from the point of diversion, identified for the lake 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 camp-grounds, 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(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.

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

d. Information needed to locate the benchmark referenced in element 3.a. above is on file with IDWR.

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.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication



ATTACHMENT 23

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 79-14076**  
**Hells Canyon National Recreation Area**

- 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:** Lower Six Lake Basin Lake
- 3. Quantity of right:**
- a. This water right establishes the lake level of Lower Six Lake Basin Lake at 90.73 feet referenced to NW-Six-Basin BM1 (Elevation 100 feet) located at X=531717, Y=5004731 (UTM Zone 11 North NAD 83).
  - b. This water right precludes any diversion of water out of the watershed of Lower Six Lake Basin Lake upstream from the point of diversion, except for transfers of point of diversion from above the lake to below the lake.
- 4. Priority date:** December 31, 1975.
- 5. Point of diversion:** SE $\frac{1}{4}$ SE $\frac{1}{4}$ , Sec. 32, T22N, R2W, Boise Meridian.
- 6. Purpose of use:** To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
- 7. Period of use:** 01-01 to 12-31.

**8. Place of use:**

TWP	RGE	SEC	NE				NW				SW				SE			
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE
21N	2W	5	LOT 1															
22N	2W	32																X

**9. Annual volume of consumptive use:**

This lake level maintenance water right is non-consumptive (other than evaporation and evapotranspiration which may take place from the lake).

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

a. This is a federal reserved water right based on the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to the Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Lower Six Lake Basin Lake basin upstream from the point of diversion, 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(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.

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

d. Information needed to locate the benchmark referenced in element 3.a. above is on file with IDWR.

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.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication



ATTACHMENT 24

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 79-14077**  
**Hells Canyon National Recreation Area**

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:**                 Sheep Lake
  
3. **Quantity of right:**
  - a.     This water right establishes the lake level of Sheep Lake at 97.63 feet referenced to Sheep BM1 (Elevation 100 feet) located at X=536184, Y=5020047 (UTM Zone 11 North NAD 83).
  
  - b.     This water right precludes any diversion of water out of the watershed of Sheep Lake upstream from the point of diversion, except for transfers of point of diversion from above the lake to below the lake.
  
4. **Priority date:**                    December 31, 1975.
  
5. **Point of diversion:**             The projection of the SE $\frac{1}{4}$ NE $\frac{1}{4}$ , in unsurveyed Sec. 14, T23N, R2W, Boise Meridian.
  
6. **Purpose of use:**                    To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
  
7. **Period of use:**                    01-01 to 12-31.

**8. Place of use:**

Note: Tracts are projections in unsurveyed sections.

TWP	RGE	SEC	NE				NW				SW				SE				
			NE	NW	SW	SE													
23N	02W	14				X										X	X	X	X

**9. Annual volume of consumptive use:**

This lake level maintenance water right is non-consumptive (other than evaporation and evapotranspiration which may take place from the lake).

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

a. This is a federal reserved water right based on the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to the Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Sheep Lake basin upstream from the point of diversion, identified for the lake 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 camp-

grounds, 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(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.

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

d. Information needed to locate the benchmark referenced in element 3.a. above is on file with IDWR.

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.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication



ATTACHMENT 25

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 79-14078**  
**Hells Canyon National Recreation Area**

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:**                   Shelf Lake
  
3. **Quantity of right:**
  - a.     This water right establishes the lake level of Shelf  
          Lake at 98.79 feet referenced to Shelf BM1 (Elevation 100  
          feet) located at X=535302, Y=5021046 (UTM Zone 11  
          North NAD 83).
  
  - b.     This water right precludes any diversion of water  
          out of the watershed of Shelf Lake upstream from the point  
          of diversion, except for transfers of point of diversion from  
          above the lake to below the lake.
  
4. **Priority date:**                     December 31, 1975.
  
5. **Point of diversion:**               The projection of the SE $\frac{1}{4}$ SW $\frac{1}{4}$ , in unsurveyed Sec. 11,  
  T23N, R2W, Boise Meridian.
  
6. **Purpose of use:**                     To fulfill the purposes of the Hells Canyon National  
  Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec.  
  31, 1975 (codified at 16 U.S.C. § 460gg).
  
7. **Period of use:**                    01-01 to 12-31.



for homes, organization camps, public camp-grounds, 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(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.

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

d. Information needed to locate the benchmark referenced in element 3.a. above is on file with IDWR.

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.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication



ATTACHMENT 26

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 79-14079**  
**Hells Canyon National Recreation Area**

- 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:**                    Southwest Pyramid Lake
- 3. Quantity of right:**
- a.     This water right establishes the lake level of Southwest Pyramid Lake at 99.1 feet referenced to SW-Pyramid Peak BM1 (Elevation 100 feet) located at X=533626, Y=5002687 (UTM Zone 11 North NAD 83).
- b.     This water right precludes any diversion of water out of the watershed of Southwest Pyramid Lake upstream from the point of diversion, except for transfers of point of diversion from above the ending point to below the ending point.
- 4. Priority date:**                        December 31, 1975.
- 5. Point of diversion:**                 NW $\frac{1}{4}$ NW $\frac{1}{4}$ , Sec. 10, T21N, R2W, Boise Meridian.
- 6. Purpose of use:**                     To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
- 7. Period of use:**                        01-01 to 12-31.

**8. Place of use:**

TWP	RGE	SEC	NE				NW				SW				SE			
			NE	NW	SW	SE												
21N	2W	10					X	X										

**9. Annual volume of consumptive use:**

This lake level maintenance water right is non-consumptive (other than evaporation and evapotranspiration which may take place from the lake).

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

a. This is a federal reserved water right based on the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to the Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Southwest Pyramid Lake basin upstream from the point of diversion, 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 camp-

grounds, 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(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.

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

d. Information needed to locate the benchmark referenced in element 3.a. above is on file with IDWR.

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.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication



ATTACHMENT 27

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 78-12200**  
**Hells Canyon National Recreation Area**

- 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:**                    Black Lake
- 3. Quantity of right:**
- a.     This water right establishes the lake level of Black Lake at 98.22 feet referenced to Black BM1 (Elevation 100 feet) located at X=534802, Y=5003966 (UTM Zone 11 North NAD 83).
- b.     This water right precludes any diversion of water out of the watershed of Black Lake upstream from the point of diversion, except for transfers of point of diversion from above the lake to below the lake.
- 4. Priority date:**                        December 31, 1975.
- 5. Point of diversion:**                 SE $\frac{1}{4}$ NE $\frac{1}{4}$ , Sec. 3, T21N, R2W, Boise Meridian.
- 6. Purpose of use:**                     To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
- 7. Period of use:**                        01-01 to 12-31.

**8. Place of use:**

TWP	RGE	SEC	NE				NW				SW				SE				
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
21N	02W	3			LOT 9	X										LOT 14	LOT 13		X

**9. Annual volume of consumptive use:**

This lake level maintenance water right is non-consumptive (other than evaporation and evapotranspiration which may take place from the lake).

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

a. This is a federal reserved water right based on the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to the Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Black Lake basin upstream from the point of diversion, identified for the lake 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 camp-grounds, 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(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.

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

d. Information needed to locate the benchmark referenced in element 3.a. above is on file with IDWR.

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.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication



**ATTACHMENT 28**

**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 78-12201  
Hells Canyon National Recreation Area**

- 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:**                    Crystal Lake
- 3. Quantity of right:**                a.     This water right establishes the lake level of Crystal  
  Lake at 93.86 feet referenced to Crystal BM2 (Elevation  
  100 feet) located at X=535264, Y=5007542 (UTM Zone 11  
  North NAD 83).  
  
  b.     This water right precludes any diversion of water  
  out of the watershed of Crystal Lake upstream from the  
  point of diversion, except for transfers of point of diversion  
  from above the lake to below the lake.
- 4. Priority date:**                        December 31, 1975.
- 5. Point of diversion:**                NW¼NW¼, Sec. 26, T22N, R2W, Boise Meridian.
- 6. Purpose of use:**                    To fulfill the purposes of the Hells Canyon National  
  Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec.  
  31, 1975 (codified at 16 U.S.C. § 460gg).
- 7. Period of use:**                      01-01 to 12-31.

**8. Place of use:**

TWP	RGE	SEC	NE				NW				SW				SE				
			NE	NW	SW	SE													
22N	02W	26						X											

**9. Annual volume of consumptive use:**

This lake level maintenance water right is non-consumptive (other than evaporation and evapotranspiration which may take place from the lake).

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

a. This is a federal reserved water right based on the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to the Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Crystal Lake basin upstream from the point of diversion, identified for the lake 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 camp-grounds, 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(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.

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

d. Information needed to locate the benchmark referenced in element 3.a. above is on file with IDWR.

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





**8. Place of use:**

Note: Tracts are projections in unsurveyed sections

TWP	RGE	SEC	NE				NW				SW				SE			
			NE	NW	SW	SE												
23N	02W	34	X															
23N	02W	35						X	X									

**9. Annual volume of consumptive use:**

This lake level maintenance water right is non-consumptive (other than evaporation and evapotranspiration which may take place from the lake).

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

a. This is a federal reserved water right based on the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to the Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Dog Lake basin upstream from the point of diversion, identified for the lake 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(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.

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

d. Information needed to locate the benchmark referenced in element 3.a. above is on file with IDWR.

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





**8. Place of use:**

Note: Tracts are projections in unsurveyed sections.

TWP	RGE	SEC	NE				NW				SW				SE			
			NE	NW	SW	SE												
23N	02W	13		X	X						X							

**9. Annual volume of consumptive use:**

This lake level maintenance water right is non-consumptive (other than evaporation and evapotranspiration which may take place from the lake).

**10. Other provisions necessary for definition or administration of this water right: 1**

a. This is a federal reserved water right based on the Hells Canyon National Recreation Area Act, Pub.L. 94-99, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to the Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Mirror Lake basin upstream from the point of diversion, identified for the lake 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 camp-grounds, 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(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.

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

d. Information needed to locate the benchmark referenced in element 3.a. above is on file with IDWR.

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 31**

**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 78-12204  
Hells Canyon National Recreation Area**

- 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:** Ruth Lake
- 3. Quantity of right:**
- a. This water right establishes the lake level of Ruth Lake at 98.38 feet referenced to Ruth BM1 (Elevation 100 feet) located at X=534948, Y=5009783 (UTM Zone 11 North NAD 83).
- b. This water right precludes any diversion of water out of the watershed of Ruth Lake upstream from the point of diversion, except for transfers of point of diversion from above the lake to below the lake.
- 4. Priority date:** December 31, 1975.
- 5. Point of diversion:** SW¼SW¼, Sec. 14, T22N, R2W, Boise Meridian.
- 6. Purpose of use:** To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
- 7. Period of use:** 01-01 to 12-31.

**8. Place of use:**

TWP	RGE	SEC	NE				NW				SW				SE			
			NE	NW	SW	SE												
22N	02W	14										X	X					
22N	02W	15													X			X

**9. Annual volume of consumptive use:**

This lake level maintenance water right is non-consumptive (other than evaporation and evapotranspiration which may take place from the lake).

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

a. This is a federal reserved water right based on the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to the Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Ruth Lake basin upstream from the point of diversion, identified for the lake 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(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.

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

d. Information needed to locate the benchmark referenced in element 3.a. above is on file with IDWR.

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.

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JOHN M. MELANSON  
Presiding Judge  
Snake River Basin Adjudication



ATTACHMENT 32

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 78-12205**  
**Hells Canyon National Recreation Area**

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:** Upper Cannon Lake
3. **Quantity of right:**
- a. This water right establishes the lake level of Upper Cannon Lake at 95.82 feet referenced to Upper Cannon BM1 (Elevation 100 feet) located at X=537290, Y=5018767 (UTM Zone 11 North NAD 83).
  - b. This water right precludes any diversion of water out of the watershed of Upper Cannon Lake upstream from the point of diversion, except for transfers of point of diversion from above the lake to below the lake.
4. **Priority date:** December 31, 1975.
5. **Point of diversion:** The projection of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , in unsurveyed Sec. 24, T23N, R2W, Boise Meridian.
6. **Purpose of use:** To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).
7. **Period of use:** 01-01 to 12-31.

**8. Place of use:**

Note: Tracts are projections in unsurveyed sections.

TWP	RGE	SEC	NE				NW				SW				SE			
			NE	NW	SW	SE												
23N	02W	24		X			X			X								

**9. Annual volume of consumptive use:**

This lake level maintenance water right is non-consumptive (other than evaporation and evapotranspiration which may take place from the lake).

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

a. This is a federal reserved water right based on the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

b. This Partial Decree is entered pursuant to the Stipulation between the United States, the State of Idaho, and Idaho Power Company 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 Upper Cannon Lake basin upstream from the point of diversion, 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 camp-grounds, 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(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.

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

d. Information needed to locate the benchmark referenced in element 3.a. above is on file with IDWR.

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 33**  
**SF-4 STIPULATED MOTION TO FILE LATE NOTICE OF CLAIM**

BRUCE D. BERNARD  
Trial Attorney, General Litigation Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
999 18th Street, Suite 945  
Denver, Colorado 80202  
(303) 312-7319

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	)	Subcase No. 78-12200
	)	(To be consolidated with Subcase No.
	)	79-13597)
	)	Hells Canyon National Recreation Area
	)	
	)	
	)	<b>STANDARD FORM 4</b>
CASE NO. 39576	)	
	)	<b>STIPULATED MOTION TO FILE:</b>
	)	<b>LATE NOTICE OF CLAIM</b>
	)	
	)	
	)	

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**STIPULATED MOTION TO FILE LATE NOTICE OF CLAIM**

Claimant United States of America, on behalf of the United States Department of  
Agriculture, Forest Service ("United States"), by and through its undersigned attorney, and

pursuant to SRBA Administrative Order 1, Rules of Procedure, respectfully moves the Court to enter an Order granting permission to file a Late Notice of Claim in this subcase, and as grounds therefor, states:

1. The United States must file a Late Notice of Claim to the use of water in the SRBA because:

In 1993, the United States filed a Notice of Claim for all unappropriated water in the Hells Canyon National Recreation Area ("HCNRA"). The Idaho Department of Water Resources ("IDWR") assigned this claim number 79-13597 and, after objections were filed by the State of Idaho and the Idaho Power Company, the SRBA Court designated this subcase number 79-13597.

In 2000, the Idaho Supreme Court entered its opinion in *Potlatch Corporation v. United States of America*, 12 P.3d 1260 (Idaho 2000), in which it determined that the HCNRA Act, Pub. L. No. 94-199, 89 Stat. 1117 (1975 (codified at 16 U.S.C. §§ 460gg(1)-(13))), created an express federal reserved water right for water in the tributaries of the Snake River within the HCNRA. *Potlatch*, 12 P.3d at 1268-69. That decision also determined that this federal reserved water right was not for all unappropriated water in the tributaries of the Snake River within the HCNRA, but, rather, that the United States was required to quantify the minimum amount of water necessary to fulfill the purposes of the HCNRA Act. *Id.* at 1269-70.

After two years of negotiation, the United States, together with the State of Idaho and the Idaho Power Company, who constitute all the parties to Subcase No. 79-13597, have settled upon a mutually agreeable manner of quantifying the HCNRA federal reserved water right and have

entered into that certain Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees, with the effective date of September 1, 2003 ("Stipulation"). The Stipulation provides that the HCNRA water right shall be quantified at 32 separate water sources within the HCNRA. Most of these water sources, 26 streams and lakes, are located within IDWR reporting basin 79. However, six of these water sources, i.e., lakes, are located in IDWR reporting basin 78.

The United States' 1993 claim incorrectly referenced the claimed HCNRA federal reserved water right as lying in IDWR reporting basin 79. The parties to the Stipulation have therefore concluded that, in order to ensure that full and adequate notice has been provided of the quantification of the HCNRA federal reserved water right as including these six lakes in basin 78, it would be appropriate for the United States to file late Notices of Claim for the six lakes. Consequently, the United States is seeking leave to file late Notices of Claim for each of these lakes. IDWR has advised the parties that these claims will be assigned claim numbers 78-12200 through 78-12205. If the Court grants leave to file these late Notices of Claim, the parties to the Stipulation and Subcase No. 79-13597 will request the Court to consolidate these new subcases numbered 78-12200 through 78-12205 into Subcase No. 79-13597 after those late Notices of Claim have been duly noticed.

2. The State of Idaho and the Idaho Power Company have stipulated to this Motion to File Late Notice of Claim.

3. The United States is providing legal and factual documentation for its claimed use of water.

4. Counsel for the United States of America, on behalf of the United States Department of Agriculture, Forest Service, in this matter is identified below and has read SRBA Administrative Order 1, Rules of Procedure (amended October 16, 1997).

Bruce D. Bernard  
Trial Attorney, General Litigation Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
999 18th Street, Suite 945  
Denver, Colorado 80202  
(303) 312-7319

4. The Late Notice of Claim is attached to this Motion.

WHEREFORE, for good cause shown, the United States respectfully requests this Court to enter an Order granting leave to file the Late Notice of Claim herein.

Dated this \_\_\_\_\_ day of August, 2004.

Respectfully submitted,

---

BRUCE D. BERNARD  
Trial Attorney, General Litigation Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
999 18<sup>th</sup> Street, Suite 945  
Denver, Colorado 80202  
(303) 312-7319

Attorney for the United States of America, on  
behalf of the United States Department of  
Agriculture, Forest Service

**VERIFICATION**

State of Idaho        )  
County of Ada        )

Robert P. Kenworthy, being first duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this Stipulated Motion to File Late Notice of Claim, as defined by I.C. §§ 42-1401(1) and (7), and that I have read this Motion, know its contents, and believe that the statements are true to the best of my knowledge.

\_\_\_\_\_  
Robert P. Kenworthy

SWORN TO AND SUBSCRIBED BEFORE ME, in my presence, this \_\_\_\_\_ day of August, 2004, a Notary Public, Ada County, State of Idaho.

\_\_\_\_\_  
NOTARY PUBLIC  
STATE OF IDAHO

My Commission Expires:

### Certificate of Service

I certify that on August \_\_\_\_, 2004, I caused to be served a true and correct copy of the Stipulated Motion to File Late Notice of Claim for subcase no.78-12200 to the parties listed below:

**Original by hand delivery to:**

Clerk of the District Court  
Snake River Basin Adjudication  
P.O. Box 2707  
Twin Falls, ID 83303-2707

**Copies by hand delivery or United States Mail, postage prepaid to:**

Chief, Natural Resources Division  
Office of the Attorney General  
State of Idaho  
P.O. Box 44449  
Boise, ID 83711-4449

James C. Tucker  
Idaho Power Company  
P.O. Box 70  
Boise, ID 83707

United States Department of Justice  
Environment and Natural Resources Division  
General Litigation Section  
550 W. Fort St. MSC 033  
Boise, ID 83724

Merlyn W. Clark  
P.O. Box 1617  
Boise, ID 83701

IDWR Document Depository  
P.O. Box 83720  
Boise, ID 83720

John K. Simpson  
Barker Rosholt & Simpson LLP  
P.O. Box 2139  
Boise, ID 83701-2139

---

Bruce D. Bernard



6 Quantity claimed:

a. This water right establishes the lake level of Black Lake at 98.22 feet referenced to Black BM1 (Elevation 100 feet) located at X=534802, Y=5003966 (UTM Zone 11 North NAD 83).

b. This water right precludes any diversion of water out of the watershed of Black Lake upstream from the point of diversion, except for transfers of point of diversion from above the lake to below the lake.

7. Total consumptive use claimed for present and future use is:

This lake level claim is nonconsumptive (other than evaporation and evapotranspiration which may take place from the lake).

8. Present and future uses to which the water is or will be used:

To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

9. Attach the legal description of the reservation, and maps showing for each use the existing and proposed place of use.

The Hells Canyon National Recreation Area Act reserved the entire Hells Canyon National Recreation Area for the purposes of the Act. The legal description of the Hells Canyon National Recreation Area is filed with and is available for inspection and copying at the Idaho Department of Water Resources. The place of use of this water right is shown on the map attached hereto as Attachment A.

10. Remarks: (include a list of document(s) creating the federal reservation and/or negotiated agreement). Land and water was reserved pursuant to:

**Hells Canyon National Recreation Area Act**, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

11. Describe any other water rights used at the same place and for the same purposes as described above:

None

12. Counties within the reservation:

Adams

Notice is hereby given that the United States Department of Justice will represent the United States Department of Agriculture, Forest Service, in all matters pertaining to the Snake River Basin Adjudication.

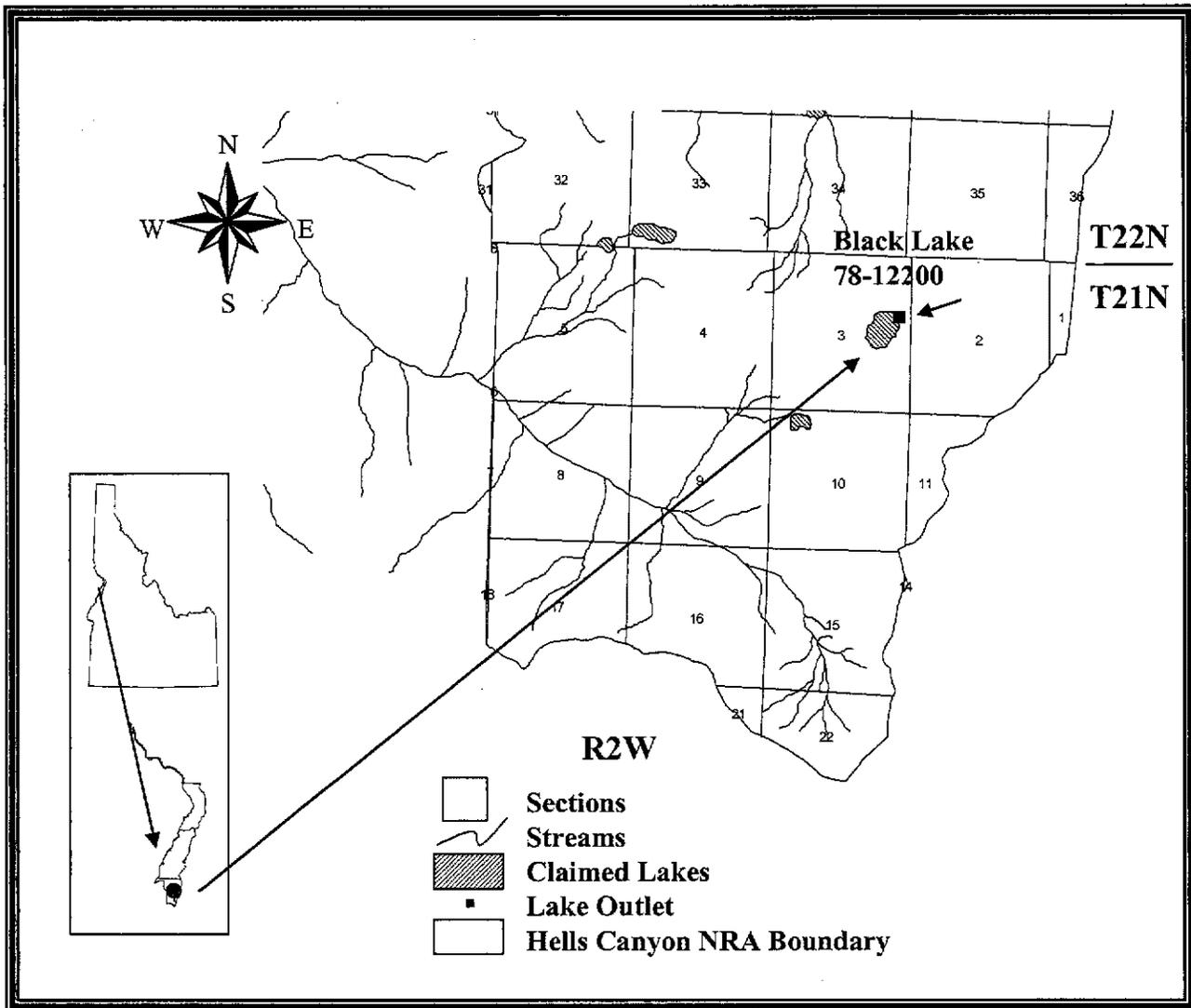
All notices required by law should be mailed to the individuals at the address below:

Bruce Bernard  
US Department of Justice  
Environment and Natural Resources Division  
550 W. Fort Street, MSC 33  
Boise, ID 83724

This form is an attachment to a Standard Form 4 – Stipulated Motion to File Late Notice of Claim by the United States. The signature and affirmation on such Motion constitutes the required signature of the authorized agent representing the United States.



# Attachment A – Location for Black Lake – 78-12200





**ATTACHMENT 34**  
**SF-4 STIPULATED MOTION TO FILE LATE NOTICE OF CLAIM**

BRUCE D. BERNARD  
Trial Attorney, General Litigation Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
999 18th Street, Suite 945  
Denver, Colorado 80202  
(303) 312-7319

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	)	Subcase No. 78-12201
	)	(To be consolidated with Subcase No.
	)	79-13597)
	)	Hells Canyon National Recreation Area
	)	
	)	
	)	<b>STANDARD FORM 4</b>
CASE NO. 39576	)	
	)	<b>STIPULATED MOTION TO FILE:</b>
	)	<b>LATE NOTICE OF CLAIM</b>
	)	
	)	
	)	

---

**STIPULATED MOTION TO FILE LATE NOTICE OF CLAIM**

Claimant United States of America, on behalf of the United States Department of  
Agriculture, Forest Service ("United States"), by and through its undersigned attorney, and

pursuant to SRBA Administrative Order 1, Rules of Procedure, respectfully moves the Court to enter an Order granting permission to file a Late Notice of Claim in this subcase, and as grounds therefor, states:

1. The United States must file a Late Notice of Claim to the use of water in the SRBA because:

In 1993, the United States filed a Notice of Claim for all unappropriated water in the Hells Canyon National Recreation Area ("HCNRA"). The Idaho Department of Water Resources ("IDWR") assigned this claim number 79-13597 and, after objections were filed by the State of Idaho and the Idaho Power Company, the SRBA Court designated this subcase number 79-13597.

In 2000, the Idaho Supreme Court entered its opinion in *Potlatch Corporation v. United States of America*, 12 P.3d 1260 (Idaho 2000), in which it determined that the HCNRA Act, Pub. L. No. 94-199, 89 Stat. 1117 (1975 (codified at 16 U.S.C. §§ 460gg(1)-(13)), created an express federal reserved water right for water in the tributaries of the Snake River within the HCNRA. *Potlatch*, 12 P.3d at 1268-69. That decision also determined that this federal reserved water right was not for all unappropriated water in the tributaries of the Snake River within the HCNRA, but, rather, that the United States was required to quantify the minimum amount of water necessary to fulfill the purposes of the HCNRA Act. *Id.* at 1269-70.

After two years of negotiation, the United States, together with the State of Idaho and the Idaho Power Company, who constitute all the parties to Subcase No. 79-13597, have settled upon a mutually agreeable manner of quantifying the HCNRA federal reserved water right and have

entered into that certain Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees, with the effective date of September 1, 2003 ("Stipulation"). The Stipulation provides that the HCNRA water right shall be quantified at 32 separate water sources within the HCNRA. Most of these water sources, 26 streams and lakes, are located within IDWR reporting basin 79. However, six of these water sources, i.e., lakes, are located in IDWR reporting basin 78.

The United States' 1993 claim incorrectly referenced the claimed HCNRA federal reserved water right as lying in IDWR reporting basin 79. The parties to the Stipulation have therefore concluded that, in order to ensure that full and adequate notice has been provided of the quantification of the HCNRA federal reserved water right as including these six lakes in basin 78, it would be appropriate for the United States to file late Notices of Claim for the six lakes. Consequently, the United States is seeking leave to file late Notices of Claim for each of these lakes. IDWR has advised the parties that these claims will be assigned claim numbers 78-12200 through 78-12205. If the Court grants leave to file these late Notices of Claim, the parties to the Stipulation and Subcase No. 79-13597 will request the Court to consolidate these new subcases numbered 78-12200 through 78-12205 into Subcase No. 79-13597 after those late Notices of Claim have been duly noticed.

2. The State of Idaho and the Idaho Power Company have stipulated to this Motion to File Late Notice of Claim.

3. The United States is providing legal and factual documentation for its claimed use of water.

4. Counsel for the United States of America, on behalf of the United States Department of Agriculture, Forest Service, in this matter is identified below and has read SRBA Administrative Order 1, Rules of Procedure (amended October 16, 1997).

Bruce D. Bernard  
Trial Attorney, General Litigation Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
999 18th Street, Suite 945  
Denver, Colorado 80202  
(303) 312-7319

4. The Late Notice of Claim is attached to this Motion.

WHEREFORE, for good cause shown, the United States respectfully requests this Court to enter an Order granting leave to file the Late Notice of Claim herein.

Dated this \_\_\_\_\_ day of August, 2004.

Respectfully submitted,

---

BRUCE D. BERNARD  
Trial Attorney, General Litigation Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
999 18<sup>th</sup> Street, Suite 945  
Denver, Colorado 80202  
(303) 312-7319

Attorney for the United States of America, on  
behalf of the United States Department of  
Agriculture, Forest Service

**VERIFICATION**

State of Idaho        )  
County of Ada        )

Robert P. Kenworthy, being first duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this Stipulated Motion to File Late Notice of Claim, as defined by I.C. §§ 42-1401(1) and (7), and that I have read this Motion, know its contents, and believe that the statements are true to the best of my knowledge.

\_\_\_\_\_  
Robert P. Kenworthy

SWORN TO AND SUBSCRIBED BEFORE ME, in my presence, this \_\_\_\_\_ day of August 2004, a Notary Public, Ada County, State of Idaho.

\_\_\_\_\_  
NOTARY PUBLIC  
STATE OF IDAHO

My Commission Expires:

### Certificate of Service

I certify that on August \_\_\_\_\_, 2004, I caused to be served a true and correct copy of the Stipulated Motion to File Late Notice of Claim for subcase no.78-12201 to the parties listed below:

**Original by hand delivery to:**

Clerk of the District Court  
Snake River Basin Adjudication  
P.O. Box 2707  
Twin Falls, ID 83303-2707

**Copies by hand delivery or United States Mail, postage prepaid to:**

Chief, Natural Resources Division  
Office of the Attorney General  
State of Idaho  
P.O. Box 44449  
Boise, ID 83711-4449

James C. Tucker  
Idaho Power Company  
P.O. Box 70  
Boise, ID 83707

United States Department of Justice  
Environment and Natural Resources Division  
General Litigation Section  
550 W. Fort St. MSC 033  
Boise, ID 83724

Merlyn W. Clark  
P.O. Box 1617  
Boise, ID 83701

IDWR Document Depository  
P.O. Box 83720  
Boise, ID 83720

John K. Simpson  
Barker Rosholt & Simpson LLP  
P.O. Box 2139  
Boise, ID 83701-2139

---

Bruce D. Bernard

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 SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576  
Ident. Number: 78-12201  
(To be consolidated with Subcase  
79-13597)  
Date received:  
Receipt No:

NOTICE OF CLAIM TO A WATER RIGHT  
RESERVED UNDER FEDERAL LAW

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. Priority date: December 31, 1975
3. Source of water: Crystal Lake
4. Location of point of diversion:
  - a. Point of diversion at lake outlet:  
  
NW $\frac{1}{4}$ NW $\frac{1}{4}$ , Sec. 26, T22N, R2W, Boise Meridian
  - b. Description of diversion works: lake level maintenance
  - c. Location of place of use:

TWP	RGE	SEC	NE				NW				SW				SE				
			NE	NW	SW	SE													
22N	02W	26						X											

The lake level claimed herein will be applied to beneficial use throughout the lake as identified above.

5. Period of use: 01/01 to 12/31

6. Quantity claimed:

a. This water right establishes the lake level of Crystal Lake at 93.86 feet referenced to Crystal BM2 (Elevation 100 feet) located at X=535264, Y=5007542 (UTM Zone 11 North NAD 83).

b. This water right precludes any diversion of water out of the watershed of Crystal Lake upstream from the point of diversion, except for transfers of point of diversion from above the lake to below the lake.

7. Total consumptive use claimed for present and future use is:

This lake level claim is nonconsumptive (other than evaporation and evapotranspiration which may take place from the lake).

8. Present and future uses to which the water is or will be used:

To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

9. Attach the legal description of the reservation, and maps showing for each use the existing and proposed place of use.

The Hells Canyon National Recreation Area Act reserved the entire Hells Canyon National Recreation Area for the purposes of the Act. The legal description of the Hells Canyon National Recreation Area is filed with and is available for inspection and copying at the Idaho Department of Water Resources. The place of use of this water right is shown on the map attached hereto as Attachment A.

10. Remarks: (include a list of document(s) creating the federal reservation and/or negotiated agreement). Land and water was reserved pursuant to:

**Hells Canyon National Recreation Area Act**, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

11. Describe any other water rights used at the same place and for the same purposes as described above:

None

12. Counties within the reservation:

Adams

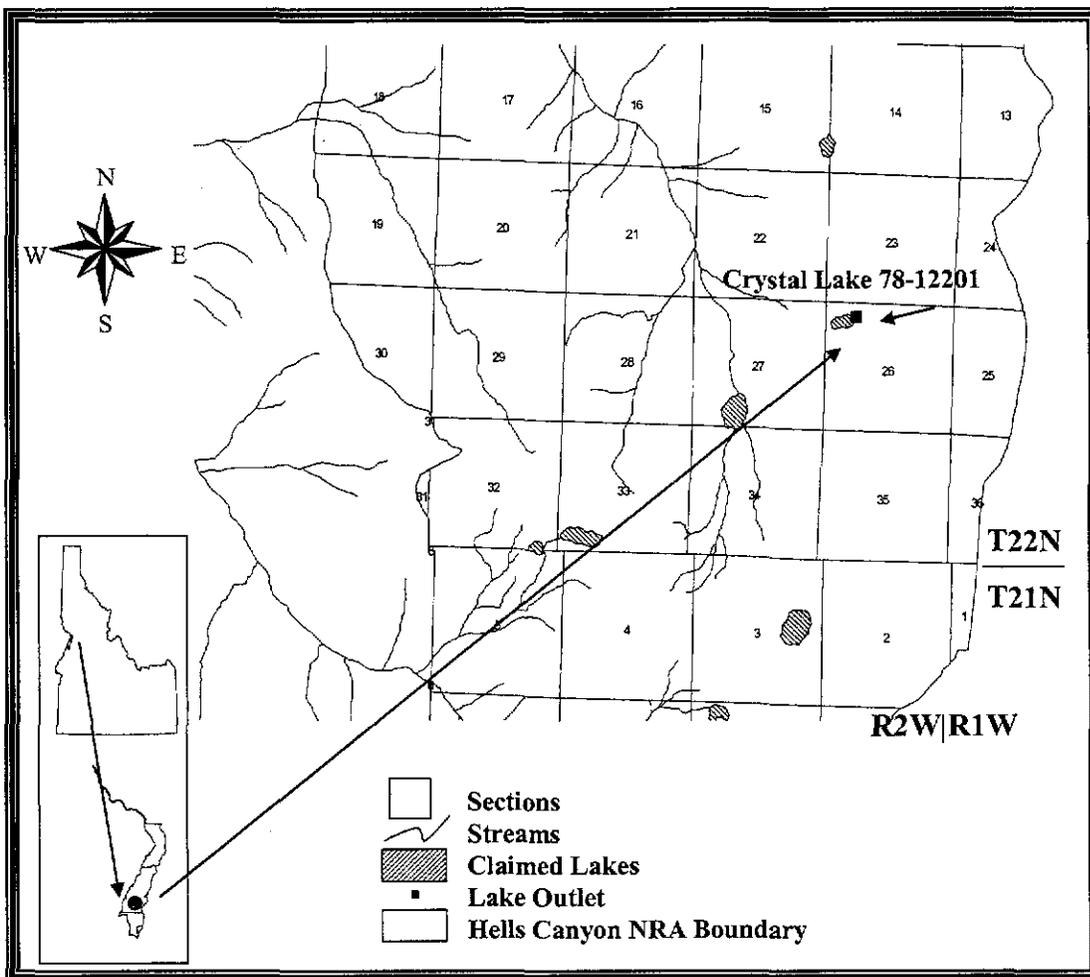
Notice is hereby given that the United States Department of Justice will represent the United States Department of Agriculture, Forest Service, in all matters pertaining to the Snake River Basin Adjudication.

All notices required by law should be mailed to the individuals at the address below:

Bruce Bernard  
US Department of Justice  
Environment and Natural Resources Division  
550 W. Fort Street, MSC 33  
Boise, ID 83724

This form is an attachment to a Standard Form 4 – Stipulated Motion to File Late Notice of Claim by the United States. The signature and affirmation on such Motion constitutes the required signature of the authorized agent representing the United States.

# Attachment A – Location for Crystal Lake – 78-12201





**ATTACHMENT 35**  
**SF-4 STIPULATED MOTION TO FILE LATE NOTICE OF CLAIM**

BRUCE D. BERNARD  
Trial Attorney, General Litigation Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
999 18th Street, Suite 945  
Denver, Colorado 80202  
(303) 312-7319

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	)	Subcase No. 78-12202
	)	(To be consolidated with Subcase No.
	)	79-13597)
	)	Hells Canyon National Recreation Area
	)	
	)	
	)	<b>STANDARD FORM 4</b>
CASE NO. 39576	)	
	)	<b>STIPULATED MOTION TO FILE:</b>
	)	<b>LATE NOTICE OF CLAIM</b>
	)	
	)	
_____	)	

**STIPULATED MOTION TO FILE LATE NOTICE OF CLAIM**

Claimant United States of America, on behalf of the United States Department of  
Agriculture, Forest Service ("United States"), by and through its undersigned attorney, and

pursuant to SRBA Administrative Order 1, Rules of Procedure, respectfully moves the Court to enter an Order granting permission to file a Late Notice of Claim in this subcase, and as grounds therefor, states:

1. The United States must file a Late Notice of Claim to the use of water in the SRBA because:

In 1993, the United States filed a Notice of Claim for all unappropriated water in the Hells Canyon National Recreation Area ("HCNRA"). The Idaho Department of Water Resources ("IDWR") assigned this claim number 79-13597 and, after objections were filed by the State of Idaho and the Idaho Power Company, the SRBA Court designated this subcase number 79-13597.

In 2000, the Idaho Supreme Court entered its opinion in *Potlatch Corporation v. United States of America*, 12 P.3d 1260 (Idaho 2000), in which it determined that the HCNRA Act, Pub. L. No. 94-199, 89 Stat. 1117 (1975 (codified at 16 U.S.C. §§ 460gg(1)-(13)), created an express federal reserved water right for water in the tributaries of the Snake River within the HCNRA. *Potlatch*, 12 P.3d at 1268-69. That decision also determined that this federal reserved water right was not for all unappropriated water in the tributaries of the Snake River within the HCNRA, but, rather, that the United States was required to quantify the minimum amount of water necessary to fulfill the purposes of the HCNRA Act. *Id.* at 1269-70.

After two years of negotiation, the United States, together with the State of Idaho and the Idaho Power Company, who constitute all the parties to Subcase No. 79-13597, have settled upon a mutually agreeable manner of quantifying the HCNRA federal reserved water right and have

entered into that certain Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees, with the effective date of September 1, 2003 ("Stipulation"). The Stipulation provides that the HCNRA water right shall be quantified at 32 separate water sources within the HCNRA. Most of these water sources, 26 streams and lakes, are located within IDWR reporting basin 79. However, six of these water sources, i.e., lakes, are located in IDWR reporting basin 78.

The United States' 1993 claim incorrectly referenced the claimed HCNRA federal reserved water right as lying in IDWR reporting basin 79. The parties to the Stipulation have therefore concluded that, in order to ensure that full and adequate notice has been provided of the quantification of the HCNRA federal reserved water right as including these six lakes in basin 78, it would be appropriate for the United States to file late Notices of Claim for the six lakes. Consequently, the United States is seeking leave to file late Notices of Claim for each of these lakes. IDWR has advised the parties that these claims will be assigned claim numbers 78-12200 through 78-12205. If the Court grants leave to file these late Notices of Claim, the parties to the Stipulation and Subcase No. 79-13597 will request the Court to consolidate these new subcases numbered 78-12200 through 78-12205 into Subcase No. 79-13597 after those late Notices of Claim have been duly noticed.

2. The State of Idaho and the Idaho Power Company have stipulated to this Motion to File Late Notice of Claim.

3. The United States is providing legal and factual documentation for its claimed use of water.

4. Counsel for the United States of America, on behalf of the United States Department of Agriculture, Forest Service, in this matter is identified below and has read SRBA Administrative Order 1, Rules of Procedure (amended October 16, 1997).

Bruce D. Bernard  
Trial Attorney, General Litigation Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
999 18th Street, Suite 945  
Denver, Colorado 80202  
(303) 312-7319

4. The Late Notice of Claim is attached to this Motion.

WHEREFORE, for good cause shown, the United States respectfully requests this Court to enter an Order granting leave to file the Late Notice of Claim herein.

Dated this \_\_\_\_\_ day of August, 2004.

Respectfully submitted,

---

BRUCE D. BERNARD  
Trial Attorney, General Litigation Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
999 18<sup>th</sup> Street, Suite 945  
Denver, Colorado 80202  
(303) 312-7319

Attorney for the United States of America, on  
behalf of the United States Department of  
Agriculture, Forest Service

**VERIFICATION**

State of Idaho        )  
County of Ada        )

Robert P. Kenworthy, being first duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this Stipulated Motion to File Late Notice of Claim, as defined by I.C. §§ 42-1401(1) and (7), and that I have read this Motion, know its contents, and believe that the statements are true to the best of my knowledge.

\_\_\_\_\_  
Robert P. Kenworthy

SWORN TO AND SUBSCRIBED BEFORE ME, in my presence, this \_\_\_\_\_ day of August, 2004, a Notary Public, Ada County, State of Idaho.

\_\_\_\_\_  
NOTARY PUBLIC  
STATE OF IDAHO

My Commission Expires:

### Certificate of Service

I certify that on August \_\_\_\_\_, 2004, I caused to be served a true and correct copy of the Stipulated Motion to File Late Notice of Claim for subcase no.78-12202 to the parties listed below:

**Original by hand delivery to:**

Clerk of the District Court  
Snake River Basin Adjudication  
P.O. Box 2707  
Twin Falls, ID 83303-2707

**Copies by hand delivery or United States Mail, postage prepaid to:**

Chief, Natural Resources Division  
Office of the Attorney General  
State of Idaho  
P.O. Box 44449  
Boise, ID 83711-4449

James C. Tucker  
Idaho Power Company  
P.O. Box 70  
Boise, ID 83707

United States Department of Justice  
Environment and Natural Resources Division  
General Litigation Section  
550 W. Fort St. MSC 033  
Boise, ID 83724

Merlyn W. Clark  
P.O. Box 1617  
Boise, ID 83701

IDWR Document Depository  
P.O. Box 83720  
Boise, ID 83720

John K. Simpson  
Barker Rosholt & Simpson LLP  
P.O. Box 2139  
Boise, ID 83701-2139

---

Bruce D. Bernard

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 SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576  
Ident. Number: 78-12202  
(To be consolidated with Subcase  
79-13597)  
Date received:  
Receipt No:

NOTICE OF CLAIM TO A WATER RIGHT  
RESERVED UNDER FEDERAL LAW

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. Priority date: December 31, 1975

3. Source of water: Dog Lake

4. Location of point of diversion:

a. Point of diversion at lake outlet:

The projection of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ , of unsurveyed Sec. 35, T23N, R2W, Boise Meridian.

b. Description of diversion works: lake level maintenance

c. Location of place of use: Note: Tracts are projections in unsurveyed sections

TWP	RGE	SEC	NE				NW				SW				SE			
			NE	NW	SW	SE												
23N	02W	34	X															
23N	02W	35						X	X									

The lake level claimed herein will be applied to beneficial use throughout the lake as identified above.

5. Period of use: 01/01 to 12/31

6. Quantity claimed:

a. This water right establishes the lake level of Dog Lake at 98.84 feet referenced to Dog BM1 (Elevation 100 feet) located at X=534951, Y=5015617 (UTM Zone 11 North NAD 83).

b. This water right precludes any diversion of water out of the watershed of Dog Lake upstream from the point of diversion, except for transfers of point of diversion from above the lake to below the lake.

7. Total consumptive use claimed for present and future use is:

This lake level claim is nonconsumptive (other than evaporation and evapotranspiration which may take place from the lake).

8. Present and future uses to which the water is or will be used:

To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

9. Attach the legal description of the reservation, and maps showing for each use the existing and proposed place of use.

The Hells Canyon National Recreation Area Act reserved the entire Hells Canyon National Recreation Area for the purposes of the Act. The legal description of the Hells Canyon National Recreation Area is filed with and is available for inspection and copying at the Idaho Department of Water Resources. The place of use of this water right is shown on the map attached hereto as Attachment A.

10. Remarks: (include a list of document(s) creating the federal reservation and/or negotiated agreement). Land and water was reserved pursuant to:

**Hells Canyon National Recreation Area Act**, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

11. Describe any other water rights used at the same place and for the same purposes as described above:

None

12. Counties within the reservation:

Idaho

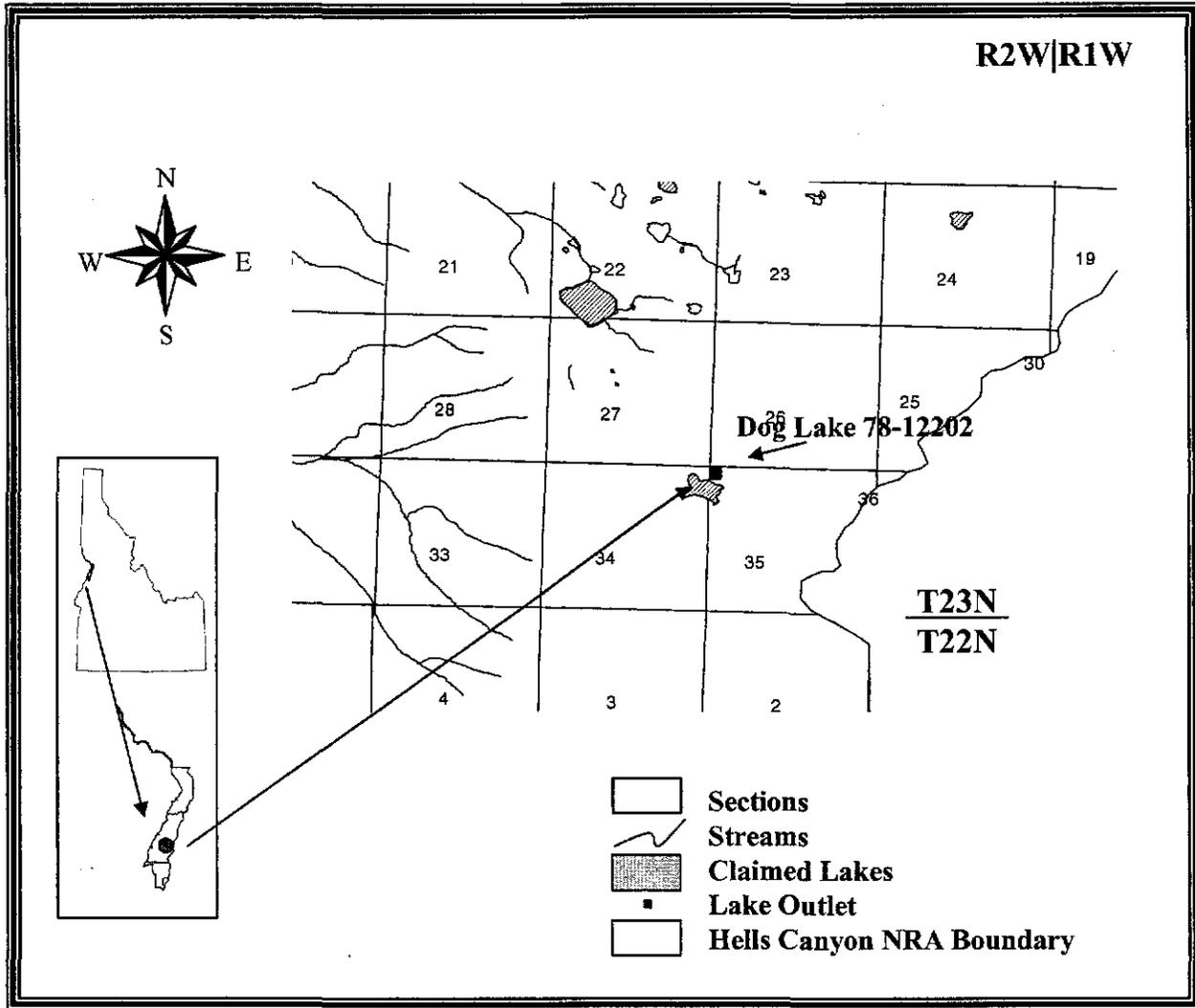
Notice is hereby given that the United States Department of Justice will represent the United States Department of Agriculture, Forest Service, in all matters pertaining to the Snake River Basin Adjudication.

All notices required by law should be mailed to the individuals at the address below:

Bruce Bernard  
US Department of Justice  
Environment and Natural Resources Division  
550 W. Fort Street, MSC 33  
Boise, ID 83724

This form is an attachment to a Standard Form 4 – Stipulated Motion to File Late Notice of Claim by the United States. The signature and affirmation on such Motion constitutes the required signature of the authorized agent representing the United States.

# Attachment A – Partial Decree for Dog Lake – 78-12202





**ATTACHMENT 36**  
**SF-4 STIPULATED MOTION TO FILE LATE NOTICE OF CLAIM**

BRUCE D. BERNARD  
Trial Attorney, General Litigation Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
999 18th Street, Suite 945  
Denver, Colorado 80202  
(303) 312-7319

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	)	Subcase No. 78-12203
	)	(To be consolidated with Subcase No.
	)	79-13597)
	)	Hells Canyon National Recreation Area
	)	
	)	
	)	<b>STANDARD FORM 4</b>
CASE NO. 39576	)	
	)	<b>STIPULATED MOTION TO FILE:</b>
	)	<b>LATE NOTICE OF CLAIM</b>
	)	
_____	)	

**STIPULATED MOTION TO FILE LATE NOTICE OF CLAIM**

Claimant United States of America, on behalf of the United States Department of  
Agriculture, Forest Service ("United States"), by and through its undersigned attorney, and

pursuant to SRBA Administrative Order 1, Rules of Procedure, respectfully moves the Court to enter an Order granting permission to file a Late Notice of Claim in this subcase, and as grounds therefor, states:

1. The United States must file a Late Notice of Claim to the use of water in the SRBA because:

In 1993, the United States filed a Notice of Claim for all unappropriated water in the Hells Canyon National Recreation Area ("HCNRA"). The Idaho Department of Water Resources ("IDWR") assigned this claim number 79-13597 and, after objections were filed by the State of Idaho and the Idaho Power Company, the SRBA Court designated this subcase number 79-13597.

In 2000, the Idaho Supreme Court entered its opinion in *Potlatch Corporation v. United States of America*, 12 P.3d 1260 (Idaho 2000), in which it determined that the HCNRA Act, Pub. L. No. 94-199, 89 Stat. 1117 (1975 (codified at 16 U.S.C. §§ 460gg(1)-(13))), created an express federal reserved water right for water in the tributaries of the Snake River within the HCNRA. *Potlatch*, 12 P.3d at 1268-69. That decision also determined that this federal reserved water right was not for all unappropriated water in the tributaries of the Snake River within the HCNRA, but, rather, that the United States was required to quantify the minimum amount of water necessary to fulfill the purposes of the HCNRA Act. *Id.* at 1269-70.

After two years of negotiation, the United States, together with the State of Idaho and the Idaho Power Company, who constitute all the parties to Subcase No. 79-13597, have settled upon a mutually agreeable manner of quantifying the HCNRA federal reserved water right and have

entered into that certain Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees, with the effective date of September 1, 2003 ("Stipulation"). The Stipulation provides that the HCNRA water right shall be quantified at 32 separate water sources within the HCNRA. Most of these water sources, 26 streams and lakes, are located within IDWR reporting basin 79. However, six of these water sources, i.e., lakes, are located in IDWR reporting basin 78.

The United States' 1993 claim incorrectly referenced the claimed HCNRA federal reserved water right as lying in IDWR reporting basin 79. The parties to the Stipulation have therefore concluded that, in order to ensure that full and adequate notice has been provided of the quantification of the HCNRA federal reserved water right as including these six lakes in basin 78, it would be appropriate for the United States to file late Notices of Claim for the six lakes. Consequently, the United States is seeking leave to file late Notices of Claim for each of these lakes. IDWR has advised the parties that these claims will be assigned claim numbers 78-12200 through 78-12205. If the Court grants leave to file these late Notices of Claim, the parties to the Stipulation and Subcase No. 79-13597 will request the Court to consolidate these new subcases numbered 78-12200 through 78-12205 into Subcase No. 79-13597 after those late Notices of Claim have been duly noticed.

2. The State of Idaho and the Idaho Power Company have stipulated to this Motion to File Late Notice of Claim.

3. The United States is providing legal and factual documentation for its claimed use of water.

4. Counsel for the United States of America, on behalf of the United States Department of Agriculture, Forest Service, in this matter is identified below and has read SRBA Administrative Order 1, Rules of Procedure (amended October 16, 1997).

Bruce D. Bernard  
Trial Attorney, General Litigation Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
999 18th Street, Suite 945  
Denver, Colorado 80202  
(303) 312-7319

4. The Late Notice of Claim is attached to this Motion.

WHEREFORE, for good cause shown, the United States respectfully requests this Court to enter an Order granting leave to file the Late Notice of Claim herein.

Dated this \_\_\_\_\_ day of August, 2004.

Respectfully submitted,

---

BRUCE D. BERNARD  
Trial Attorney, General Litigation Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
999 18<sup>th</sup> Street, Suite 945  
Denver, Colorado 80202  
(303) 312-7319

Attorney for the United States of America, on  
behalf of the United States Department of  
Agriculture, Forest Service

VERIFICATION

State of Idaho            )  
County of Ada            )

Robert P. Kenworthy, being first duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this Stipulated Motion to File Late Notice of Claim, as defined by I.C. §§ 42-1401(1) and (7), and that I have read this Motion, know its contents, and believe that the statements are true to the best of my knowledge.

\_\_\_\_\_  
Robert P. Kenworthy

SWORN TO AND SUBSCRIBED BEFORE ME, in my presence, this \_\_\_\_\_ day of August, 2004, a Notary Public, Ada County, State of Idaho.

\_\_\_\_\_  
NOTARY PUBLIC  
STATE OF IDAHO

My Commission Expires:

**Certificate of Service**

I certify that on August \_\_\_\_\_, 2004, I caused to be served a true and correct copy of the Stipulated Motion to File Late Notice of Claim for subcase no.78-12203 to the parties listed below:

**Original by hand delivery to:**

Clerk of the District Court  
Snake River Basin Adjudication  
P.O. Box 2707  
Twin Falls, ID 83303-2707

**Copies by hand delivery or United States Mail, postage prepaid to:**

Chief, Natural Resources Division  
Office of the Attorney General  
State of Idaho  
P.O. Box 44449  
Boise, ID 83711-4449

James C. Tucker  
Idaho Power Company  
P.O. Box 70  
Boise, ID 83707

United States Department of Justice  
Environment and Natural Resources Division  
General Litigation Section  
550 W. Fort St. MSC 033  
Boise, ID 83724

Merlyn W. Clark  
P.O. Box 1617  
Boise, ID 83701

IDWR Document Depository  
P.O. Box 83720  
Boise, ID 83720

John K. Simpson  
Barker Rosholt & Simpson LLP  
P.O. Box 2139  
Boise, ID 83701-2139

---

Bruce D. Bernard

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 SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576  
Ident. Number: 78-12203  
(To be consolidated with Subcase  
79-13597)  
Date received:  
Receipt No:

NOTICE OF CLAIM TO A WATER RIGHT  
RESERVED UNDER FEDERAL LAW

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. Priority date: December 31, 1975

3. Source of water: Mirror Lake

4. Location of point of diversion:

a. Point of diversion at lake outlet:

The projection of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ , in unsurveyed Sec. 13, T23N, R2W, Boise  
Meridian.

b. Description of diversion works: lake level maintenance

c. Location of place of use: Note: Tracts are projections in unsurveyed sections

TWP	RGE	SEC	NE				NW				SW				SE			
			NE	NW	SW	SE												
23N	02W	13		X	X					X								

The lake level claimed herein will be applied to beneficial use throughout the lake as  
identified above.

5. Period of use: 01/01 to 12/31

6. Quantity claimed:

a. This water right establishes the lake level of Mirror Lake 92.89 at feet referenced to Mirror BM1 (Elevation 100 feet) located at X=537342, Y=5020425 (UTM Zone 11 North NAD 83).

b. This water right precludes any diversion of water out of the watershed of Mirror Lake upstream from the point of diversion, except for transfers of point of diversion from above the lake to below the lake.

7. Total consumptive use claimed for present and future use is:

This lake level claim is nonconsumptive (other than evaporation and evapotranspiration which may take place from the lake).

8. Present and future uses to which the water is or will be used:

To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

9. Attach the legal description of the reservation, and maps showing for each use the existing and proposed place of use.

The Hells Canyon National Recreation Area Act reserved the entire Hells Canyon National Recreation Area for the purposes of the Act. The legal description of the Hells Canyon National Recreation Area is filed with and is available for inspection and copying at the Idaho Department of Water Resources. The place of use of this water right is shown on the map attached hereto as Attachment A.

10. Remarks: (include a list of document(s) creating the federal reservation and/or negotiated agreement). Land and water was reserved pursuant to:

**Hells Canyon National Recreation Area Act**, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

11. Describe any other water rights used at the same place and for the same purposes as described above:

None

12. Counties within the reservation:

Idaho



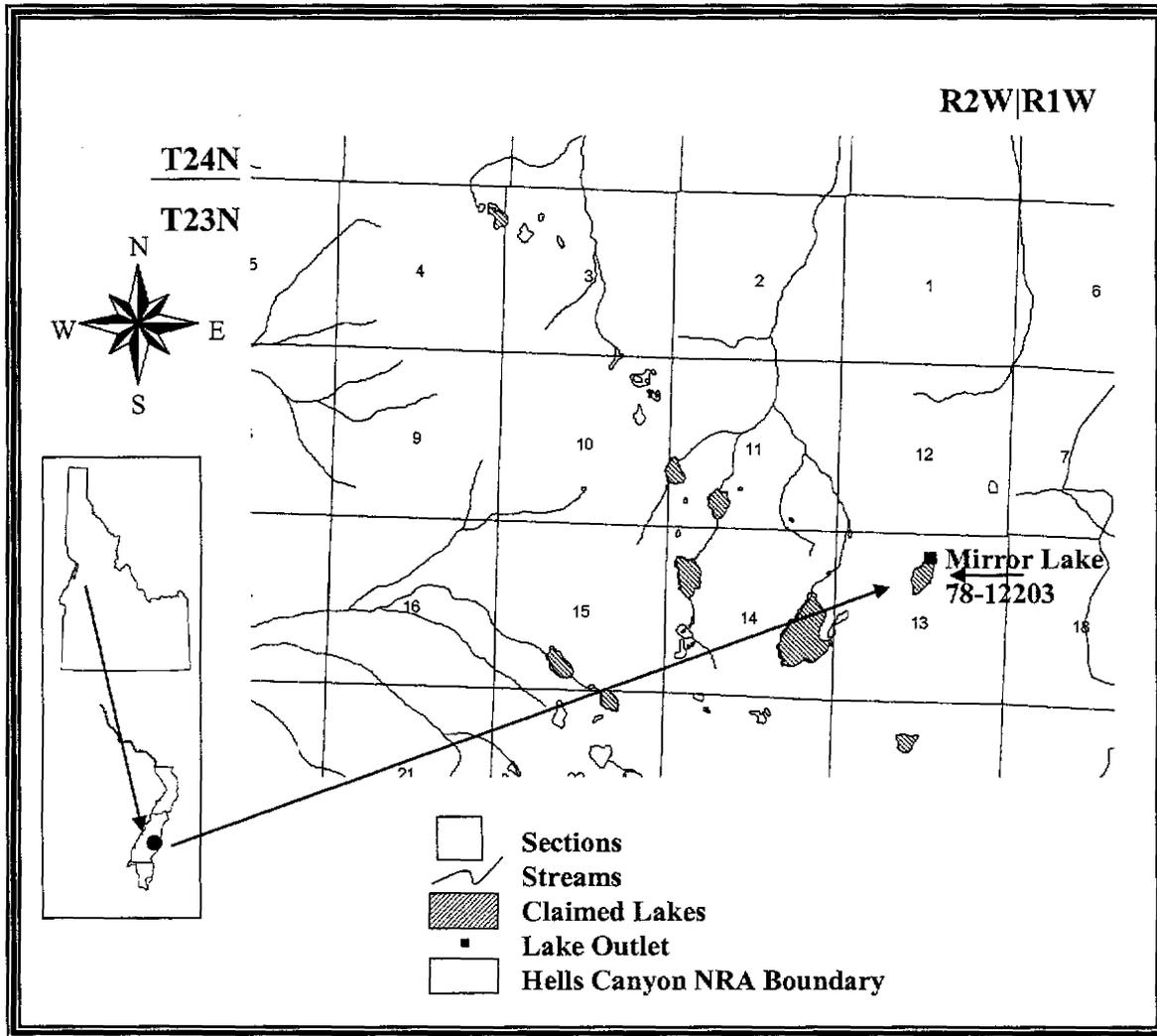
Notice is hereby given that the United States Department of Justice will represent the United States Department of Agriculture, Forest Service, in all matters pertaining to the Snake River Basin Adjudication.

All notices required by law should be mailed to the individuals at the address below:

Bruce Bernard  
US Department of Justice  
Environment and Natural Resources Division  
550 W. Fort Street, MSC 33  
Boise, ID 83724

This form is an attachment to a Standard Form 4 – Stipulated Motion to File Late Notice of Claim by the United States. The signature and affirmation on such Motion constitutes the required signature of the authorized agent representing the United States.

# Attachment A – Location for Mirror Lake – 78-12203





**ATTACHMENT 37**  
**SF-4 STIPULATED MOTION TO FILE LATE NOTICE OF CLAIM**

BRUCE D. BERNARD  
Trial Attorney, General Litigation Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
999 18th Street, Suite 945  
Denver, Colorado 80202  
(303) 312-7319

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	)	Subcase No. 78-12204
	)	(To be consolidated with Subcase No.
	)	79-13597)
	)	Hells Canyon National Recreation Area
	)	
	)	
CASE NO. 39576	)	<b>STANDARD FORM 4</b>
	)	
	)	<b>STIPULATED MOTION TO FILE:</b>
	)	<b>LATE NOTICE OF CLAIM</b>
	)	
	)	

---

**STIPULATED MOTION TO FILE LATE NOTICE OF CLAIM**

Claimant United States of America, on behalf of the United States Department of  
Agriculture, Forest Service ("United States"), by and through its undersigned attorney, and

pursuant to SRBA Administrative Order 1, Rules of Procedure, respectfully moves the Court to enter an Order granting permission to file a Late Notice of Claim in this subcase, and as grounds therefor, states:

1. The United States must file a Late Notice of Claim to the use of water in the SRBA because:

In 1993, the United States filed a Notice of Claim for all unappropriated water in the Hells Canyon National Recreation Area ("HCNRA"). The Idaho Department of Water Resources ("IDWR") assigned this claim number 79-13597 and, after objections were filed by the State of Idaho and the Idaho Power Company, the SRBA Court designated this subcase number 79-13597.

In 2000, the Idaho Supreme Court entered its opinion in *Potlatch Corporation v. United States of America*, 12 P.3d 1260 (Idaho 2000), in which it determined that the HCNRA Act, Pub. L. No. 94-199, 89 Stat. 1117 (1975 (codified at 16 U.S.C. §§ 460gg(1)-(13)), created an express federal reserved water right for water in the tributaries of the Snake River within the HCNRA. *Potlatch*, 12 P.3d at 1268-69. That decision also determined that this federal reserved water right was not for all unappropriated water in the tributaries of the Snake River within the HCNRA, but, rather, that the United States was required to quantify the minimum amount of water necessary to fulfill the purposes of the HCNRA Act. *Id.* at 1269-70.

After two years of negotiation, the United States, together with the State of Idaho and the Idaho Power Company, who constitute all the parties to Subcase No. 79-13597, have settled upon a mutually agreeable manner of quantifying the HCNRA federal reserved water right and have

entered into that certain Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees, with the effective date of September 1, 2003 ("Stipulation"). The Stipulation provides that the HCNRA water right shall be quantified at 32 separate water sources within the HCNRA. Most of these water sources, 26 streams and lakes, are located within IDWR reporting basin 79. However, six of these water sources, i.e., lakes, are located in IDWR reporting basin 78.

The United States' 1993 claim incorrectly referenced the claimed HCNRA federal reserved water right as lying in IDWR reporting basin 79. The parties to the Stipulation have therefore concluded that, in order to ensure that full and adequate notice has been provided of the quantification of the HCNRA federal reserved water right as including these six lakes in basin 78, it would be appropriate for the United States to file late Notices of Claim for the six lakes. Consequently, the United States is seeking leave to file late Notices of Claim for each of these lakes. IDWR has advised the parties that these claims will be assigned claim numbers 78-12200 through 78-12205. If the Court grants leave to file these late Notices of Claim, the parties to the Stipulation and Subcase No. 79-13597 will request the Court to consolidate these new subcases numbered 78-12200 through 78-12205 into Subcase No. 79-13597 after those late Notices of Claim have been duly noticed.

2. The State of Idaho and the Idaho Power Company have stipulated to this Motion to File Late Notice of Claim.

3. The United States is providing legal and factual documentation for its claimed use of water.

4. Counsel for the United States of America, on behalf of the United States

Department of Agriculture, Forest Service, in this matter is identified below and has read SRBA Administrative Order 1, Rules of Procedure (amended October 16, 1997).

Bruce D. Bernard  
Trial Attorney, General Litigation Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
999 18th Street, Suite 945  
Denver, Colorado 80202  
(303) 312-7319

4. The Late Notice of Claim is attached to this Motion.

WHEREFORE, for good cause shown, the United States respectfully requests this Court to enter an Order granting leave to file the Late Notice of Claim herein.

Dated this \_\_\_\_\_ day of August, 2004.

Respectfully submitted,

---

BRUCE D. BERNARD  
Trial Attorney, General Litigation Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
999 18<sup>th</sup> Street, Suite 945  
Denver, Colorado 80202  
(303) 312-7319

Attorney for the United States of America, on  
behalf of the United States Department of  
Agriculture, Forest Service

**VERIFICATION**

State of Idaho        )  
County of Ada        )

Robert P. Kenworthy, being first duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this Stipulated Motion to File Late Notice of Claim, as defined by I.C. §§ 42-1401(1) and (7), and that I have read this Motion, know its contents, and believe that the statements are true to the best of my knowledge.

\_\_\_\_\_  
Robert P. Kenworthy

SWORN TO AND SUBSCRIBED BEFORE ME, in my presence, this \_\_\_\_\_ day of August, 2004, a Notary Public, Ada County, State of Idaho.

\_\_\_\_\_  
NOTARY PUBLIC  
STATE OF IDAHO

My Commission Expires:

**Certificate of Service**

I certify that on August \_\_\_\_, 2004, I caused to be served a true and correct copy of the Stipulated Motion to File Late Notice of Claim for subcase no.78-12204 to the parties listed below:

**Original by hand delivery to:**

Clerk of the District Court  
Snake River Basin Adjudication  
P.O. Box 2707  
Twin Falls, ID 83303-2707

**Copies by hand delivery or United States Mail, postage prepaid to:**

Chief, Natural Resources Division  
Office of the Attorney General  
State of Idaho  
P.O. Box 44449  
Boise, ID 83711-4449

James C. Tucker  
Idaho Power Company  
P.O. Box 70  
Boise, ID 83707

United States Department of Justice  
Environment and Natural Resources Division  
General Litigation Section  
550 W. Fort St. MSC 033  
Boise, ID 83724

Merlyn W. Clark  
P.O. Box 1617  
Boise, ID 83701

IDWR Document Depository  
P.O. Box 83720  
Boise, ID 83720

John K. Simpson  
Barker Rosholt & Simpson LLP  
P.O. Box 2139  
Boise, ID 83701-2139

---

Bruce D. Bernard

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 SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576  
Ident. Number: 78-12204  
(To be consolidated with Subcase  
79-13597)  
Date received:  
Receipt No:

NOTICE OF CLAIM TO A WATER RIGHT  
RESERVED UNDER FEDERAL LAW

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. Priority date: December 31, 1975
  
3. Source of water: Ruth Lake
  
4. Location of point of diversion:
  - a. Point of diversion at lake outlet:  
  
SW $\frac{1}{4}$ SW $\frac{1}{4}$ , Sec. 14, T22N, R2W, Boise Meridian
  
  - b. Description of diversion works: lake level maintenance
  
  - c. Location of place of use:

TWP	RGE	SEC	NE				NW				SW				SE			
			NE	NW	SW	SE												
22N	02W	14										X	X					
22N	02W	15													X			X

The lake level claimed herein will be applied to beneficial use throughout the lake as identified above.

5. Period of use: 01/01 to 12/31

6. Quantity claimed:

a. This water right establishes the lake level of Ruth Lake at 98.38 feet referenced to Ruth BM1 (Elevation 100 feet) located at X=534948, Y=5009783 (UTM Zone 11 North NAD 83).

b. This water right precludes any diversion of water out of the watershed of Ruth Lake upstream from the point of diversion, except for transfers of point of diversion from above the lake to below the lake.

7. Total consumptive use claimed for present and future use is:

This lake level claim is nonconsumptive (other than evaporation and evapotranspiration which may take place from the lake).

8. Present and future uses to which the water is or will be used:

To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

9. Attach the legal description of the reservation, and maps showing for each use the existing and proposed place of use.

The Hells Canyon National Recreation Area Act reserved the entire Hells Canyon National Recreation Area for the purposes of the Act. The legal description of the Hells Canyon National Recreation Area is filed with and is available for inspection and copying at the Idaho Department of Water Resources. The place of use of this water right is shown on the map attached hereto as Attachment A.

10. Remarks: (include a list of document(s) creating the federal reservation and/or negotiated agreement). Land and water was reserved pursuant to:

**Hells Canyon National Recreation Area Act**, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

11. Describe any other water rights used at the same place and for the same purposes as described above:

None

12. Counties within the reservation:

Adams

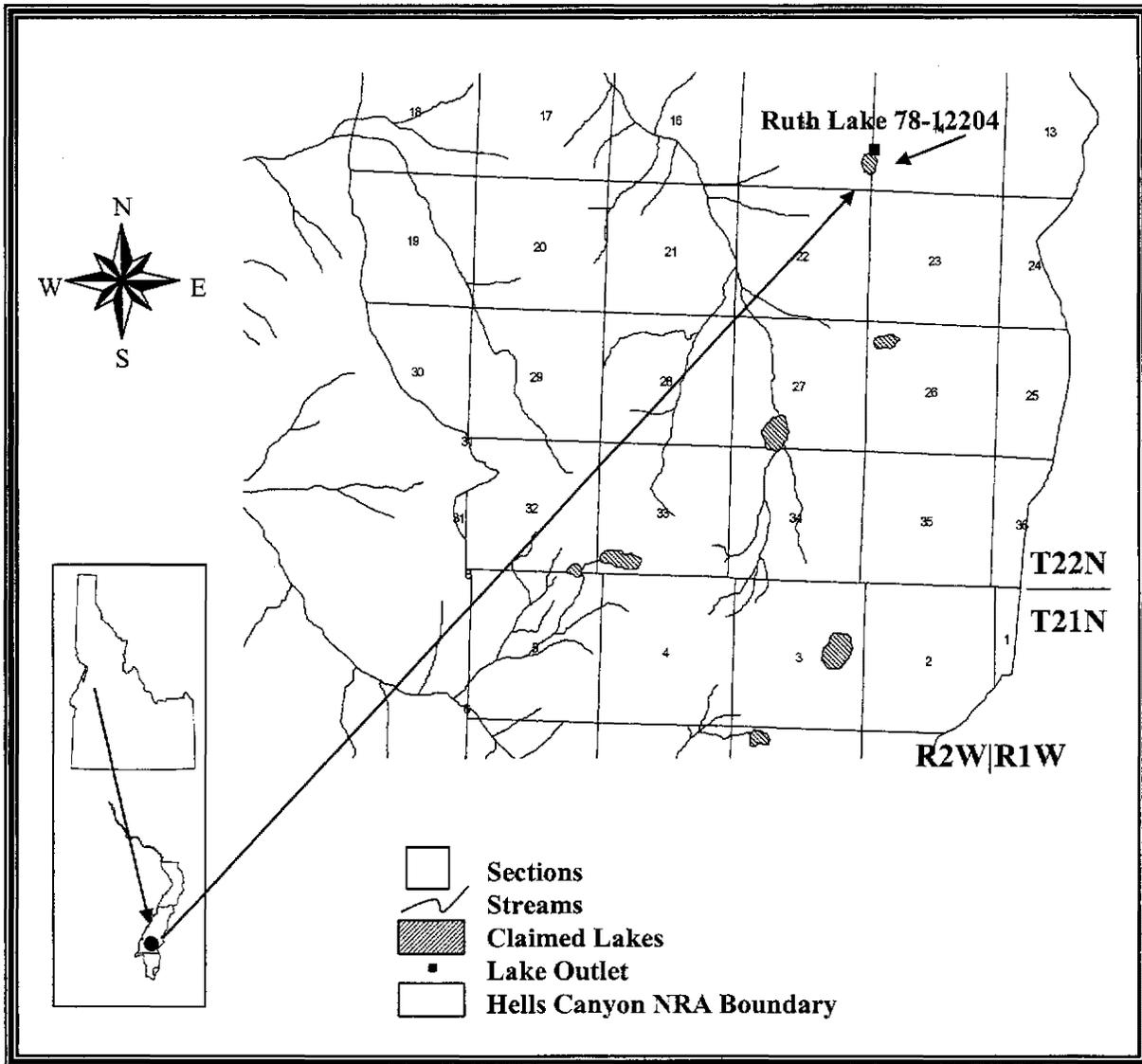
Notice is hereby given that the United States Department of Justice will represent the United States Department of Agriculture, Forest Service, in all matters pertaining to the Snake River Basin Adjudication.

All notices required by law should be mailed to the individuals at the address below:

Bruce Bernard  
US Department of Justice  
Environment and Natural Resources Division  
550 W. Fort Street, MSC 33  
Boise, ID 83724

This form is an attachment to a Standard Form 4 – Stipulated Motion to File Late Notice of Claim by the United States. The signature and affirmation on such Motion constitutes the required signature of the authorized agent representing the United States.

# Attachment A – Location for Ruth Lake – 78-12204





**ATTACHMENT 38**  
**SF-4 STIPULATED MOTION TO FILE LATE NOTICE OF CLAIM**

BRUCE D. BERNARD  
Trial Attorney, General Litigation Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
999 18th Street, Suite 945  
Denver, Colorado 80202  
(303) 312-7319

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	)	Subcase No. 78-12205
	)	(To be consolidated with Subcase No.
	)	79-13597)
	)	Hells Canyon National Recreation Area
	)	
	)	
CASE NO. 39576	)	<b>STANDARD FORM 4</b>
	)	
	)	<b>STIPULATED MOTION TO FILE:</b>
	)	<b>LATE NOTICE OF CLAIM</b>
	)	
	)	

---

**STIPULATED MOTION TO FILE LATE NOTICE OF CLAIM**

Claimant United States of America, on behalf of the United States Department of  
Agriculture, Forest Service ("United States"), by and through its undersigned attorney, and

pursuant to SRBA Administrative Order 1, Rules of Procedure, respectfully moves the Court to enter an Order granting permission to file a Late Notice of Claim in this subcase, and as grounds therefor, states:

1. The United States must file a Late Notice of Claim to the use of water in the SRBA because:

In 1993, the United States filed a Notice of Claim for all unappropriated water in the Hells Canyon National Recreation Area (“HCNRA”). The Idaho Department of Water Resources (“IDWR”) assigned this claim number 79-13597 and, after objections were filed by the State of Idaho and the Idaho Power Company, the SRBA Court designated this subcase number 79-13597.

In 2000, the Idaho Supreme Court entered its opinion in *Potlatch Corporation v. United States of America*, 12 P.3d 1260 (Idaho 2000), in which it determined that the HCNRA Act, Pub. L. No. 94-199, 89 Stat. 1117 (1975 (codified at 16 U.S.C. §§ 460gg(1)-(13))), created an express federal reserved water right for water in the tributaries of the Snake River within the HCNRA. *Potlatch*, 12 P.3d at 1268-69. That decision also determined that this federal reserved water right was not for all unappropriated water in the tributaries of the Snake River within the HCNRA, but, rather, that the United States was required to quantify the minimum amount of water necessary to fulfill the purposes of the HCNRA Act. *Id.* at 1269-70.

After two years of negotiation, the United States, together with the State of Idaho and the Idaho Power Company, who constitute all the parties to Subcase No. 79-13597, have settled upon a mutually agreeable manner of quantifying the HCNRA federal reserved water right and have

entered into that certain Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees, with the effective date of September 1, 2003 ("Stipulation"). The Stipulation provides that the HCNRA water right shall be quantified at 32 separate water sources within the HCNRA. Most of these water sources, 26 streams and lakes, are located within IDWR reporting basin 79. However, six of these water sources, i.e., lakes, are located in IDWR reporting basin 78.

The United States' 1993 claim incorrectly referenced the claimed HCNRA federal reserved water right as lying in IDWR reporting basin 79. The parties to the Stipulation have therefore concluded that, in order to ensure that full and adequate notice has been provided of the quantification of the HCNRA federal reserved water right as including these six lakes in basin 78, it would be appropriate for the United States to file late Notices of Claim for the six lakes. Consequently, the United States is seeking leave to file late Notices of Claim for each of these lakes. IDWR has advised the parties that these claims will be assigned claim numbers 78-12200 through 78-12205. If the Court grants leave to file these late Notices of Claim, the parties to the Stipulation and Subcase No. 79-13597 will request the Court to consolidate these new subcases numbered 78-12200 through 78-12205 into Subcase No. 79-13597 after those late Notices of Claim have been duly noticed.

2. The State of Idaho and the Idaho Power Company have stipulated to this Motion to File Late Notice of Claim.

3. The United States is providing legal and factual documentation for its claimed use of water.

4. Counsel for the United States of America, on behalf of the United States Department of Agriculture, Forest Service, in this matter is identified below and has read SRBA Administrative Order 1, Rules of Procedure (amended October 16, 1997).

Bruce D. Bernard  
Trial Attorney, General Litigation Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
999 18th Street, Suite 945  
Denver, Colorado 80202  
(303) 312-7319

4. The Late Notice of Claim is attached to this Motion.

WHEREFORE, for good cause shown, the United States respectfully requests this Court to enter an Order granting leave to file the Late Notice of Claim herein.

Dated this \_\_\_\_\_ day of August, 2004.

Respectfully submitted,

---

BRUCE D. BERNARD  
Trial Attorney, General Litigation Section  
Environment and Natural Resources Division  
U.S. Department of Justice  
999 18<sup>th</sup> Street, Suite 945  
Denver, Colorado 80202  
(303) 312-7319

Attorney for the United States of America, on  
behalf of the United States Department of  
Agriculture, Forest Service

**VERIFICATION**

State of Idaho        )  
County of Ada        )

Robert P. Kenworthy, being first duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this Stipulated Motion to File Late Notice of Claim, as defined by I.C. §§ 42-1401(1) and (7), and that I have read this Motion, know its contents, and believe that the statements are true to the best of my knowledge.

\_\_\_\_\_  
Robert P. Kenworthy

SWORN TO AND SUBSCRIBED BEFORE ME, in my presence, this \_\_\_\_\_ day of August, 2004, a Notary Public, Ada County, State of Idaho.

\_\_\_\_\_  
NOTARY PUBLIC  
STATE OF IDAHO

My Commission Expires:

### Certificate of Service

I certify that on August \_\_\_\_\_, 2004, I caused to be served a true and correct copy of the Stipulated Motion to File Late Notice of Claim for subcase no.78-12205 to the parties listed below:

**Original by hand delivery to:**

Clerk of the District Court  
Snake River Basin Adjudication  
P.O. Box 2707  
Twin Falls, ID 83303-2707

**Copies by hand delivery or United States Mail, postage prepaid to:**

Chief, Natural Resources Division  
Office of the Attorney General  
State of Idaho  
P.O. Box 44449  
Boise, ID 83711-4449

James C. Tucker  
Idaho Power Company  
P.O. Box 70  
Boise, ID 83707

United States Department of Justice  
Environment and Natural Resources Division  
General Litigation Section  
550 W. Fort St. MSC 033  
Boise, ID 83724

Merlyn W. Clark  
P.O. Box 1617  
Boise, ID 83701

IDWR Document Depository  
P.O. Box 83720  
Boise, ID 83720

John K. Simpson  
Barker Rosholt & Simpson LLP  
P.O. Box 2139  
Boise, ID 83701-2139

---

Bruce D. Bernard

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 SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576  
Ident. Number: 78-12205  
(To be consolidated with Subcase  
79-13597)  
Date received:  
Receipt No:

NOTICE OF CLAIM TO A WATER RIGHT  
RESERVED UNDER FEDERAL LAW

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. Priority date: December 31, 1975
  
3. Source of water: Upper Cannon Lake
  
4. Location of point of diversion:
  - a. Point of diversion at lake outlet:  
  
The projection of the NW<sup>1</sup>/<sub>4</sub>NE<sup>1</sup>/<sub>4</sub>, in unsurveyed Sec. 24, T23N, R2W, Boise  
Meridian.
  
  - b. Description of diversion works: lake level maintenance
  
  - c. Location of place of use: Note: Tracts are projections in unsurveyed sections

TWP	RGE	SEC	NE				NW				SW				SE			
			NE	NW	SW	SE												
23N	02W	24		X			X			X								

The lake level claimed herein will be applied to beneficial use throughout the lake as identified above.

5. Period of use: 01/01 to 12/31

6. Quantity claimed:

a. This water right establishes the lake level of Upper Cannon Lake at 95.82 feet referenced to Upper Cannon BM1 (Elevation 100 feet) located at X=537290, Y=5018767 (UTM Zone 11 North NAD 83).

b. This water right precludes any diversion of water out of the watershed of Upper Cannon Lake upstream from the point of diversion, except for transfers of point of diversion from above the lake to below the lake.

7. Total consumptive use claimed for present and future use is:

This lake level claim is nonconsumptive (other than evaporation and evapotranspiration which may take place from the lake).

8. Present and future uses to which the water is or will be used:

To fulfill the purposes of the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

9. Attach the legal description of the reservation, and maps showing for each use the existing and proposed place of use.

The Hells Canyon National Recreation Area Act reserved the entire Hells Canyon National Recreation Area for the purposes of the Act. The legal description of the Hells Canyon National Recreation Area is filed with and is available for inspection and copying at the Idaho Department of Water Resources. The place of use of this water right is shown on the map attached hereto as Attachment A.

10. Remarks: (include a list of document(s) creating the federal reservation and/or negotiated agreement). Land and water was reserved pursuant to:

**Hells Canyon National Recreation Area Act**, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified at 16 U.S.C. § 460gg).

11. Describe any other water rights used at the same place and for the same purposes as described above:

None

12. Counties within the reservation:

Idaho

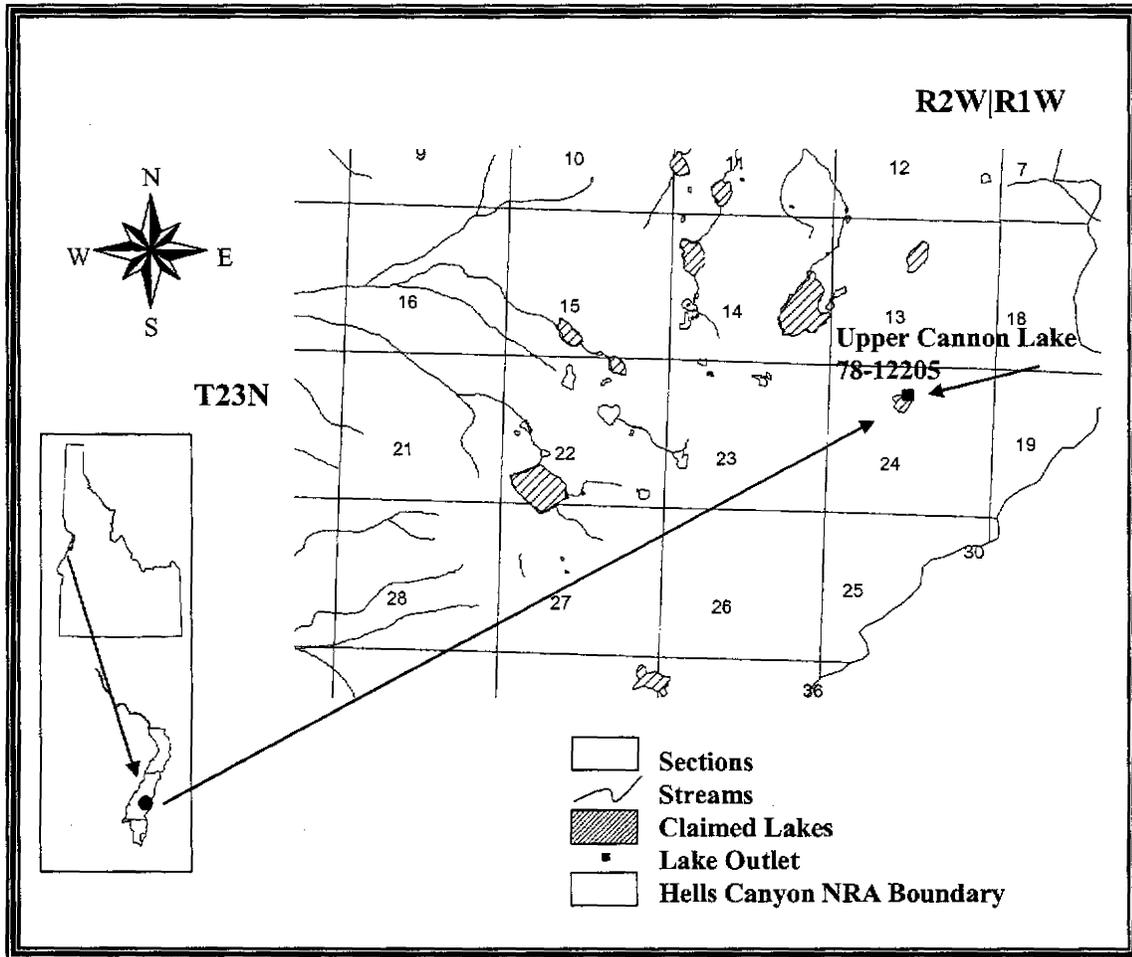
Notice is hereby given that the United States Department of Justice will represent the United States Department of Agriculture, Forest Service, in all matters pertaining to the Snake River Basin Adjudication.

All notices required by law should be mailed to the individuals at the address below:

Bruce Bernard  
US Department of Justice  
Environment and Natural Resources Division  
550 W. Fort Street, MSC 33  
Boise, ID 83724

This form is an attachment to a Standard Form 4 – Stipulated Motion to File Late Notice of Claim by the United States. The signature and affirmation on such Motion constitutes the required signature of the authorized agent representing the United States.

# Attachment A – Location of Upper Cannon Lake – 78-12205



Federal Reserved Water Right 78-12205, Upper Cannon Lake, Hells Canyon National Recreation Area - Attachment A



**ATTACHMENT 39 -- PROPOSED ORDER**

**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

)  
)  
) **Subcase No. 79-13597**  
) **Hells Canyon National Recreation Area Act**  
) **Claims (Encompassing Subcases 79-14054 through**  
) **79-14079; and to further encompass and be consolidated**  
) **with Subcases 78-12200 through 78-12205)**  
)  
)

CASE NO. 39576

) **Order Approving Stipulation and Entry of**  
) **Basin 79 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 Idaho Power Company, 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, the proposed entry of the Basin 79 and the SF-4 motions to file late notices of claim for the Basin 78 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 Basin 79 Partial

ORDER APPROVING STIPULATION AND ENTRY OF BASIN 79 PARTIAL DECREES

Decrees, the supporting affidavits and the SF-4 motions for the Basin 78 claims and 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 the portion of the Hells Canyon National Recreation Area within Idaho Department of Water Resources Administrative Basin No. 79. 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 and the SF-4 motions to file late notices of claim for the Basin 78 Partial Decrees.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All terms of the Stipulation and the Partial Decrees for the United States' Hells Canyon National Recreation Area Act federal reserved water rights within Idaho Department of Water Resources Administrative Basin No. 79, i.e., Partial Decrees numbered 79-14054 through 79-14079, are hereby ratified, confirmed and approved.
2. The SF-4 motions to file late notices of claim for the Basin 78 Partial Decrees, i.e., Partial Decrees numbered 78-12200 through 78-12205, are hereby granted. Notice of the Director's Report that includes these late notices of claim shall be provided in the SRBA Docket Sheet. The hearing on entry of those Partial Decrees is hereby set for \_\_\_\_\_.
3. 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.

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.

6. The water rights adjudicated by the Basin 79 Partial Decrees are in full satisfaction of all the United States' claims in the SRBA for the portion of the Hells Canyon National Recreation Area within Idaho Department of Water Resources Administrative Basin No. 79.

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 Hells Canyon National Recreation Area Act Claims, Consolidated Subcase 79-13597

\_\_\_\_\_  
Deputy Clerk



**ATTACHMENT 40 – PROPOSED ORDER**

**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	)	
	)	
	)	<b>Consolidated Subcase No. 79-13597</b>
	)	<b>Hells Canyon National Recreation Area Act</b>
	)	<b>Claims (Encompassing Subcases 79-14054 through</b>
	)	<b>79-14079 and Subcases 78-12200 through 78-12205)</b>
	)	
	)	
CASE NO. 39576	)	<b>Order Approving Entry of Basin 78 Partial</b>
	)	<b>Decrees</b>
	)	
_____	)	

The Court having previously approved the Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees, with the effective date of September 1, 2003 (“Stipulation”), filed herein by United States of America, the State of Idaho and Idaho Power Company; due notice of the late notices of claim for the Basin 78 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 proposed Basin 78 Partial Decrees and supporting affidavits and 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 and  
**ORDER APPROVING ENTRY OF BASIN 78 PARTIAL DECREES**

good cause has been shown for granting the requested entry of the Basin 78 Partial Decrees.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Claims numbered 78-12200 through 78-12205 are hereby consolidated into Consolidated Subcase No. 79-13597.
2. All terms of the Court's Order Approving Stipulation and Entry of Partial Decrees are incorporated herein. The Court's approval of the Stipulation applies to the Stipulation as it pertains to these Basin 78 Partial Decrees, including the Court's retained jurisdiction concerning administration of the water rights confirmed by the Basin 78 Partial Decrees.
3. The Partial Decrees for the United States' Hells Canyon National Recreation Area Act federal reserved water rights within Idaho Department of Water Resources Administrative Basin No. 78, i.e., Partial Decrees numbered 78-12200 through 78-12205, are hereby ratified, confirmed and approved.
4. The water rights adjudicated by the Basin 78 Partial Decrees are in full satisfaction of all the United States' claims in the SRBA for the portion of the Hells Canyon National Recreation Area within Idaho Department of Water Resources Administrative Basin No. 78.

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 ENTRY OF BASIN 78 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 Hells Canyon National Recreation Area Act Claims, Consolidated Subcase 79-13597

\_\_\_\_\_  
Deputy Clerk

Affidavit of Kendall  
Clark



Recreation Area ("HCNRA"). I have worked in various natural resource management positions for the Forest Service since 1988. I have a B.S. (1986) and an M.S. (1988) in wilderness management from Washington State University.

2. **Duties.** As Area Ranger for the HCNRA, I was responsible for the managing and administering the HCNRA under the mandates of the HCNRA Act. This responsibility included oversight of preparation and implementation of planning and management documents for the HCNRA. I was responsible for and familiar with the purposes for which the HCNRA was established and for which it must be administered under the HCNRA Act. I have reviewed and am familiar with the proposed Partial Decrees approving the HCNRA claim under the terms of the Stipulation between the United States and the State of Idaho and the Idaho Power Company.

3. **Purpose of affidavit.** I submit this affidavit to address the basis for each element of the United States' proposed Partial Decrees (Partial Decree Nos. 78-12200 through 78-12205 and 79-14054 through 79-14079) to nonconsumptive water rights for certain streams and lakes within the HCNRA pursuant to the HCNRA Act, Pub. L. No. 94-199, 89 Stat. 1117 (1975) (codified at 16 U.S.C. §§ 460gg(1)-(13)).

4. **Legal basis for the claimed right.** The nonconsumptive water rights claimed for the HCNRA are based on the HCNRA Act, Pub. L. No. 94-199, 89 Stat. 1117 (1975) (codified at 16 U.S.C. §§ 460gg(1)-(13)). The United States' entitlement to express federal reserved water rights to fulfill the purposes of the HCNRA was affirmed by the Idaho Supreme Court in *Potlatch v. United States*, 12 P.3d 1260, 1269 (Id. 2000).

**II. Explanation of elements of Partial Decrees.** This portion of this Affidavit addresses the basis for each element of the proposed Partial Decrees based on the elements of the claims as described in I.C. § 42-1409-1(a), (b), (c), (d), (f), (g), (h) and (k) (2002 Supp.).

**5. Name and address of owner (I.C. § 42-1409 (1)(a)).** Element 1 of each of the Partial Decrees states that the owner of the right is:

United States of America,  
on behalf of the U.S.D.A. Forest Service  
550 W. Fort Street, MSC033  
Boise, ID 83724

These federal reserved water rights claimed pursuant to the HCNRA Act will be adjudicated in the name of the United States of America. As directed in the Forest Service Manual section 2541.22b, it is the responsibility of the Forest Service to prepare the claim and to compile the necessary evidence to support it.

**6. Source of water (I.C. § 42-1409 (1)(b)).** Element 2 of each of the Partial Decrees sets forth the name of the subject stream or lake as the source of the water claimed. The source includes each identified river or lake within the HCNRA.

**7. Quantity of right (I.C. § 42-1409 (1)(c)).** Element 3 of each of the Partial Decrees identifies the quantification point and the amounts of water to be decreed for the water right. With respect to the Partial Decrees for the identified streams within the HCNRA (79-14054 through 79-14067), the quantity is set forth as an identified flow in cubic feet per second for each month. With respect to the Partial Decrees for the identified lakes within the HCNRA (Partial Decree Nos. 78-12200 through 78-12205 and 79-14068 through 79-14079), the quantity is set forth as a lake level elevation based on a referenced bench mark. The water rights to be

adjudicated by the Partial Decrees preclude the diversion of water out of the watershed of the subject stream or lake. All of these water rights are based on the quantities of water necessary to protect fisheries base flow values and that contribute to the preservation of the recreational, ecological and scenic values of the HCNRA in accordance with the purposes of the HCNRA Act.

**8. Priority date (I.C. § 42-1409 (1)(d)).** Element 4 of each of the Partial Decrees identifies the priority date as December 31, 1975, the date the HCNRA was established by Congress in enacting the HCNRA Act.

**9. Point of diversion (I. C. § 42-1409-(1)(f)).** With respect to the Partial Decrees for the identified streams within the HCNRA (79-14054 through 79-14067), element 5 of each such Partial Decree states that there is no diversion associated with the water right and identifies the locations of the beginning point and the ending point of each of the rights. With respect to the Partial Decrees for the identified lakes within the HCNRA (Partial Decree Nos. 78-12200 through 78-12205 and 79-14068 through 79-14079), element 5 of each such Partial Decree identifies the outlet of the lake as the "point of diversion." Each of these water rights applies to the entire designated stream reach or lake. The streamflow to be decreed will be used throughout the identified stream segments; the water to be decreed under the lake level elevations for the lakes will be used over the entire identified lake.

**10. Purpose of use (I. C. § 42-1409 (1)(g)).** Element 6 of each of the Partial Decrees states that the purpose of the water right to be decreed is to fulfill the purposes of the HCNRA Act. The purpose of the rights is to protect fisheries baseflows and to protect lake levels to preserve fish habitat. The water to be decreed will also contribute to the preservation of the recreational, ecological and scenic values of the HCNRA in accordance with the HCNRA Act.

**11. Period of use (I. C. § 42-1409 (1)(g)).** Element 7 of each of the Partial Decrees states that the period of use is 01-01 to 12-31. Water is necessary to fulfill the purposes of the reservation year-round and, consequently, each of the water rights is to be adjudicated for year-round use.

**12. Place of use (I. C. § 42-1409 (1)(h)).** With respect to the Partial Decrees for the identified streams within the HCNRA (79-14054 through 79-14067), element 8 of each such Partial Decree states that the instream flow water right is used throughout the entire designated stream reach within the HCNRA from the beginning point to the ending point. With respect to the Partial Decrees for the identified lakes within the HCNRA (Partial Decree Nos. 78-12200 through 78-12205 and 79-14068 through 79-14079), element 8 of each such Partial Decree identifies the quarter-quarter sections on which the lake is located. The federal reservation establishing the HCNRA, i.e., the HCNRA Act, is identified in element 10.a. of each of the Partial Decrees.

**13. Annual volume of consumptive use.** Element 9 of each of the Partial Decrees states that these instream flow water rights and lake level maintenance water rights are nonconsumptive. The instream flows and lake levels for the identified streams and lakes within the HCNRA are completely nonconsumptive (other than evaporation and evapotranspiration that may take place within each designated stream segment or lake). No consumptive volumes are included in the Partial Decrees. All natural flow remains available for appropriation and use downstream of the ending point or "point of diversion" of the Partial Decrees.

**14. Other provisions necessary for definition or administration of water right (I. C. § 42-1409(1)(h)(ii); I.C. § 42-1409(1)(k)).** Element 10.a. of each of the Partial Decrees

identifies the Act that reserved the HCNRA, i.e., the HCNRA Act. Element 10.b. identifies the subordinations that have been agreed to under the terms of the Stipulation and to which the adjudicated federal rights will be subject. These additional provisions are necessary to define the unique characteristics of these federal reserved water rights and to 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.

**III. Basis of quantification.**

**15. HCNRA Act.** The HCNRA Act provides that the HCNRA was established for the purposes of “assur[ing] that the natural beauty, and historical and archeological values of the Hells Canyon area . . . are preserved for this and future generations, and that the recreational and ecologic values and public enjoyment of the area are thereby enhanced . . . .” HCNRA Act § 1(a), 16 U.S.C. §§gg 1(a); *Potlatch v. United States*, 12 P.3d at 1269. Section 7 of the Act provides that this preservation shall be accomplished by administering the area in accordance with the following objectives:

- (1) the maintenance and protection of the free-flowing nature of the rivers within the recreation area;
- (2) conservation of scenic, wilderness, cultural, scientific, and other values contributing to the public benefit;
- (3) preservation . . . of all features and peculiarities believed to be biologically unique, including, but not limited to . . . rare combinations of aquatic, terrestrial, and atmospheric habitats, and the rare combinations of outstanding and diverse ecosystems and parts of ecosystems associated therewith;
- (4) protection and maintenance of fish and wildlife habitat . . . .

HCNRA Act § 7, 16 U.S.C. §§gg 7.

These same purposes and objectives are reflected in planning and management

documents for the HCNRA.

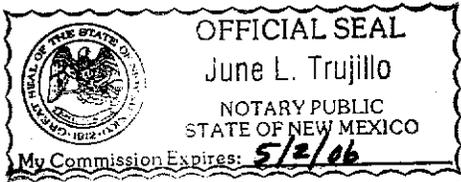
16. **Quantification of water rights.** The quantification of the water rights for the HCNRA, as set forth in the Partial Decrees, is based on protecting fisheries base flow habitat in the identified streams within the HCNRA and the lake levels necessary to protect fisheries in the identified lakes within the HCNRA, as well as the recreational, ecological and scenic values in and near these streams and lakes. Protection of these values is mandated by the HCNRA Act, as reflected in planning and management documents for the HCNRA. The quantification of the instream flows and lake levels to protect fisheries values is addressed in the *Affidavit of Dr. Thomas B. Hardy, Quantification of Hells Canyon National Recreation Area Claims*, Consolidated Subcase No. 79-13597, dated July 30, 2004, and filed concurrently with this affidavit, as well as Dr. Hardy's quantification affidavit filed in this matter on or about August 11, 2004, *Affidavit of Dr. Thomas B. Hardy, Quantification of Hells Canyon National Recreation Area Claims*, Consolidated Subcase No. 79-13597. I have reviewed the Stipulation and the Partial Decrees and have consulted with Dr. Hardy and with other Forest Service experts and employees. Based upon my understanding of the HCNRA Act and the resource values it was intended to protect, I conclude that protection of the flows and lake levels provided for in the Partial Decrees will contribute to the preservation of the recreational, ecological and scenic values of the HCNRA.

17. Further affiant sayeth nought.

Dated this 13 of August, 2004.

*Kendall Clark*  
Kendall Clark

SUBSCRIBED and SWORN to before me this 13<sup>th</sup> day of August, 2004.



*June A Trujillo*  
NOTARY PUBLIC FOR TAOS COUNTY  
Residing at: TAOS N.M.  
My Commission Expires: 5/2/06

**Certificate of Service**

I certify that on August 20, 2004, I caused to be served a true and correct copy of the **Affidavit of Kendall Clark** for subcase no. 79-13597 to the parties listed below:

**Original by hand delivery to:**

Clerk of the District Court  
Snake River Basin Adjudication  
P.O. Box 2707  
Twin Falls, ID 83303-2707

**Copies by hand delivery or United States Mail, postage prepaid to:**

Chief, Natural Resources Division  
Office of the Attorney General  
State of Idaho  
P.O. Box 44449  
Boise, ID 83711-4449

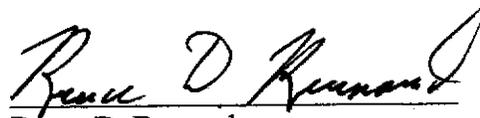
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United States Department of Justice  
Environment and Natural Resources Division  
General Litigation Section  
550 W. Fort St. MSC 033  
Boise, ID 83724

Merlyn W. Clark  
P.O. Box 1617  
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IDWR Document Depository  
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Boise, ID 83720

John K. Simpson  
Barker Rosholt & Simpson LLP  
P.O. Box 2139  
Boise, ID 83701-2139

  
Bruce D. Bernard

**Affidavit of Dr.  
Thomas B. Hardy**

BRUCE D. BERNARD  
United States Department of Justice  
Environment and Natural Resources Division  
General Litigation Section  
999 18<sup>th</sup> Street, Suite 945  
Denver, Colorado 80202  
(303) 312-7319

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                    )  
                                      )  
                                      )  
Case No. 39576                )  
                                      )  
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                                      )  
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Subcase No. 79-13597  
(Hells Canyon National Recreation Area)

**Affidavit of Dr. Thomas B. Hardy**

**AFFIDAVIT OF DR. THOMAS B. HARDY**

**QUANTIFICATION OF HELLS CANYON NATIONAL RECREATION AREA CLAIMS**

State of Utah                    )  
County of Cache                )

DR. THOMAS B. HARDY, being first duly sworn upon oath, deposes and says:

**I. Introduction.**

1. **Position.** I am a Professor of Civil and Environmental Engineering at Utah State University in the Department of Biological and Irrigation Engineering. I am also the Associate Director of the Utah Water Research Laboratory at Utah State University. I hold a Ph.D. in Civil and Environmental Engineering from Utah State University (1988) with emphasis in hydrology,

**AFFIDAVIT OF DR. THOMAS B. HARDY**

hydraulics and water resources modeling. In addition, I hold a B.S. in Secondary Education (1977) as well as B.S. and M.S. degrees in Biology (1978, 1982) from the University of Nevada at Las Vegas. I am a Certified Fisheries Scientist with the American Fisheries Society (No. 1989). I have over twenty years of professional experience in research and teaching in the field of instream flows and multidisciplinary assessments in the United States and internationally.

As Associate Director of the Utah Water Research Laboratory, I oversee multi-disciplinary research on the development of assessment methodologies applicable to impact assessments in water resource systems.

2. **Duties.** I have worked for the United States on the quantification of water rights claims in the Snake River Basin Adjudication for over ten years and have worked on the United States' claims directed at protecting fisheries habitat in the Hells Canyon National Recreation Area ("HCNRA") as designated by the HCNRA Act. I have supervised certain field investigations in the HCNRA and am familiar with the proposed Partial Decrees approving these HCNRA water rights under the terms of the Stipulation between the United States and the State of Idaho and the Idaho Power Company.

3. **Purpose of affidavit.** I submit this affidavit to address the quantification of the HCNRA water rights as set forth in the Partial Decrees.

4. **Hells Canyon National Recreation Area water rights overview.** The water rights for the HCNRA are set forth in 32 proposed Partial Decrees: 14 proposed Partial Decrees for identified streams within the HCNRA (Partial Decree Nos. 79-14054 through 79-14067); and 18 Partial Decrees for identified lakes within the HCNRA (Partial Decree Nos. 78-12200 through 78-12205 and 79-14068 through 79-14079). These water rights include:

- a. Bernard Creek – Partial Decree No. 79-14054

- b. Big Canyon Creek – Partial Decree No. 79-14055
- c. Corral Creek – Partial Decree No. 79-14056
- d. Deep Creek – Partial Decree No. 79-14057
- e. Granite Creek – Partial Decree No. 79-14058
- f. Jones Creek – Partial Decree No. 79-14059
- g. Kirby Creek – Partial Decree No. 79-14060
- h. Kirkwood Creek – Partial Decree No. 79-14061
- i. Klopton Creek – Partial Decree No. 79-14062
- j. Kurry Creek – Partial Decree No. 79-14063
- k. Oxbow Creek – Partial Decree No. 79-14064
- l. Sheep Creek – Partial Decree No. 79-14065
- m. Three Creek – Partial Decree No. 79-14066
- n. West Creek – Partial Decree No. 79-14067
- o. Baldy Lake – Partial Decree No. 79-14068
- p. Basin Lake – Partial Decree No. 79-14069
- q. Bernard Lake – Partial Decree No. 79-14070
- r. Echo Lake – Partial Decree No. 79-14071
- s. Emerald Lake – Partial Decree No. 79-14072
- t. Gem Lake – Partial Decree No. 79-14073
- u. He Devil Lake – Partial Decree No. 79-14074
- v. Six Lake Basin Lake – Partial Decree No. 79-14075
- w. Lower Six Lake Basin Lake – Partial Decree No. 79-14076
- x. Sheep Lake – Partial Decree No. 79-14077

- y. Shelf Lake – Partial Decree No. 79-14078
- z. Southwest Pyramid Lake – Partial Decree No. 79-14079
- aa. Black Lake – Partial Decree No. 78-12200
- bb. Crystal Lake – Partial Decree No. 78-12201
- cc. Dog Lake – Partial Decree No. 78-12202
- dd. Mirror Lake – Partial Decree No. 78-12203
- ee. Ruth Lake – Partial Decree No. 78-12204
- ff. Upper Cannon Lake – Partial Decree No. 78-12205

The general locations of these streams and lakes are shown in Attachment A.

## II. Quantification of water rights.

5. **Basis of quantification.** These water rights for the HCNRA were quantified based on stream flows to protect the fisheries base flow of the identified streams and lake levels to protect the fisheries of the identified lakes. The basis for each element of the Partial Decrees, the resource values the HCNRA Act was intended to protect, and the contribution of the identified flows and lake levels to preservation of resource values other than fisheries are addressed in the *Affidavit of Kendall Clark, Hells Canyon National Recreation Area Claims*, Consolidated Subcase No. 79-13597, dated August 13, 2004, and filed concurrently with this affidavit.

6. **Partial Decrees and fisheries needs.** I have reviewed the Stipulation and the Partial Decrees and have consulted with Forest Service experts and employees. Based on my review and my quantification affidavit filed in this matter on or about August 11, 2004, *Affidavit of Dr. Thomas B. Hardy, Quantification of Hells Canyon National Recreation Area Claims*, Consolidated Subcase No. 79-13597, I conclude that the stream flows and lake levels identified

in Attachments B and C and as set forth in the Partial Decrees, taking into account the depletions likely to occur under the subordinations provided for in paragraph 10.b. of the Partial Decrees, provide a sufficient variety, frequency and quantity of flows to protect fisheries base flow habitat in the identified streams and sufficient lake levels to protect the potential ability of fish to migrate into and out of the identified lakes, to maintain the fisheries in the identified lakes, and to ensure the ecological connectivity between the lakes and their outflow streams.

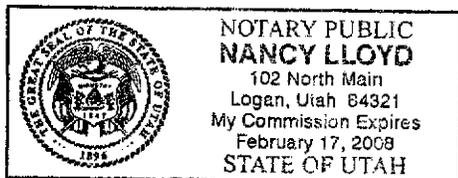
7. Further affiant sayeth nought.

Dated this 30<sup>th</sup> of July, 2004.

Thomas B. Hardy  
Thomas B. Hardy

SUBSCRIBED and SWORN to before me this 30<sup>th</sup> day of July, 2004.

Nancy Lloyd  
NOTARY PUBLIC FOR  
Residing at: Albion Utah  
My Commission Expires: Feb 17, 2008



**Certificate of Service**

I certify that on August 20, 2004, I caused to be served a true and correct copy of the Affidavit of Dr. Thomas B. Hardy for subcase no. 79-13597 to the parties listed below:

**Original by hand delivery to:**

Clerk of the District Court  
Snake River Basin Adjudication  
P.O. Box 2707  
Twin Falls, ID 83303-2707

**Copies by hand delivery or United States Mail, postage prepaid to:**

Chief, Natural Resources Division  
Office of the Attorney General  
State of Idaho  
P.O. Box 44449  
Boise, ID 83711-4449

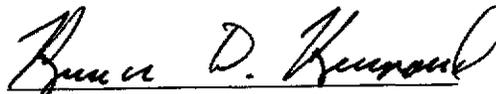
James C. Tucker  
Idaho Power Company  
P.O. Box 70  
Boise, ID 83707

United States Department of Justice  
Environment and Natural Resources Division  
General Litigation Section  
550 W. Fort St. MSC 033  
Boise, ID 83724

Merlyn W. Clark  
P.O. Box 1617  
Boise, ID 83701

IDWR Document Depository  
P.O. Box 83720  
Boise, ID 83720

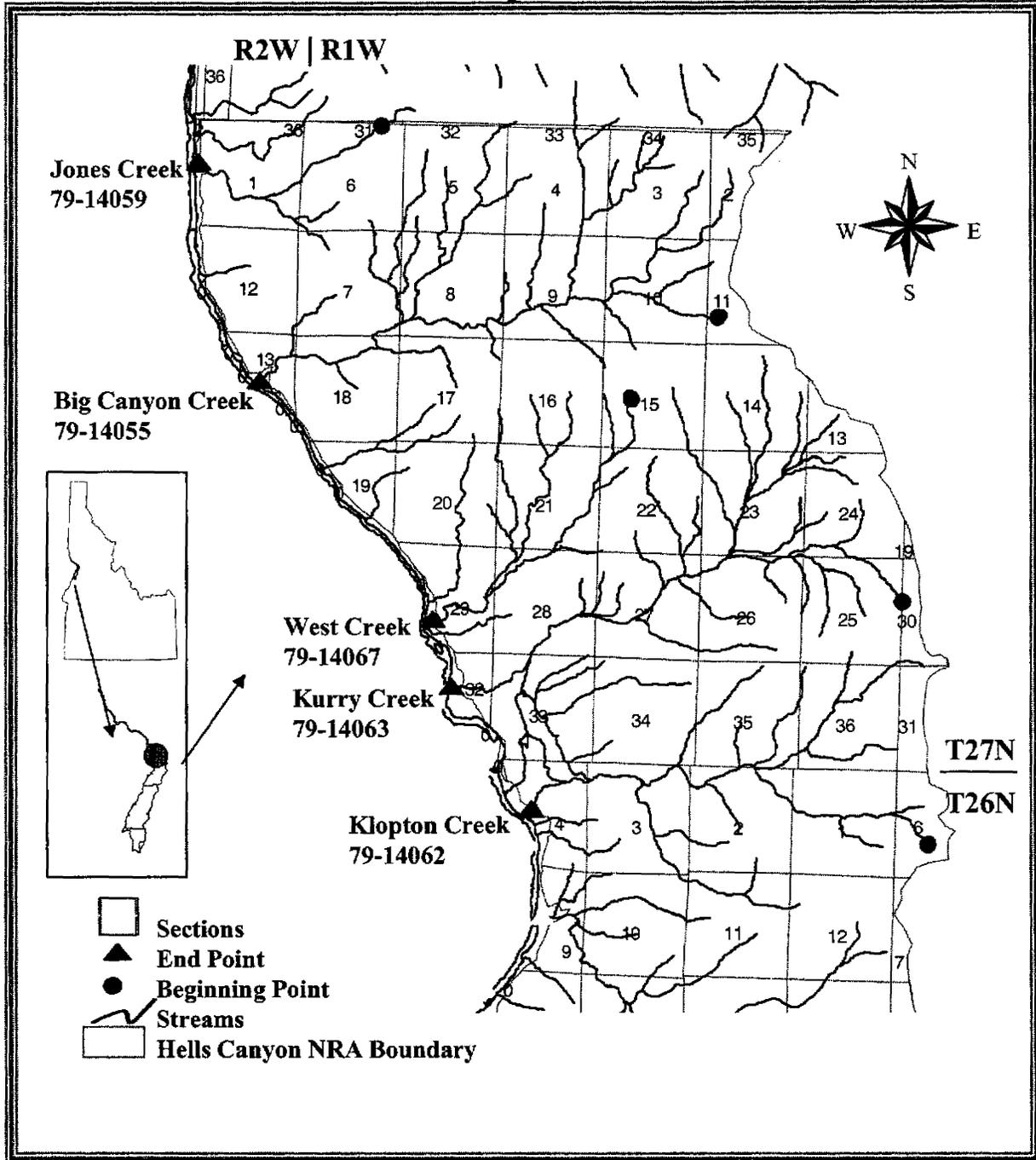
John K. Simpson  
Barker Rosholt & Simpson LLP  
P.O. Box 2139  
Boise, ID 83701-2139

  
Bruce D. Bernard

ATTACHMENT A  
AFFIDAVIT OF DR. THOMAS B. HARDY  
LOCATIONS OF STREAMS AND LAKES IN HELLS CANYON NATIONAL  
RECREATION AREA

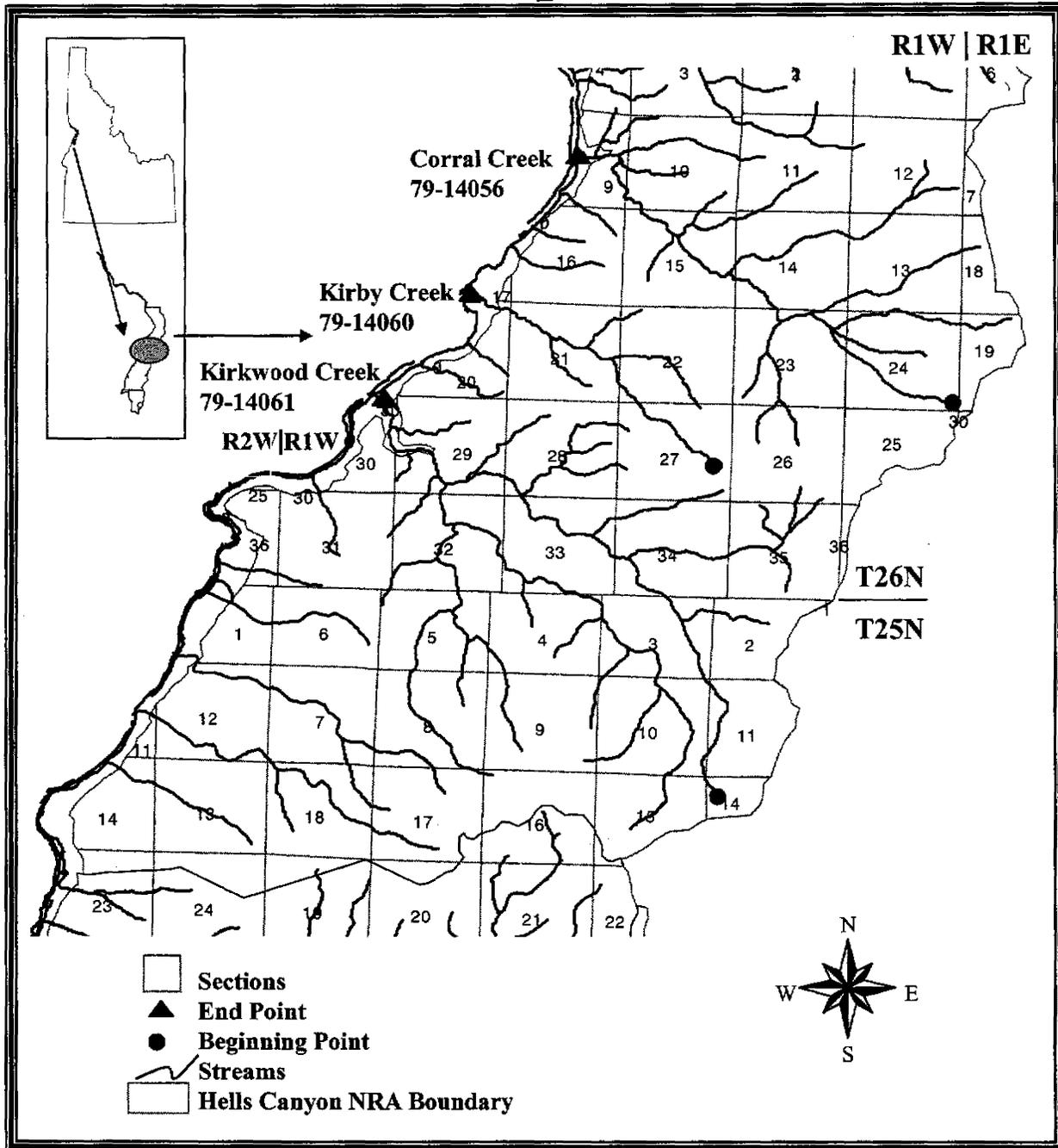
# Attachment A - HCNRA Streams

## Map 1

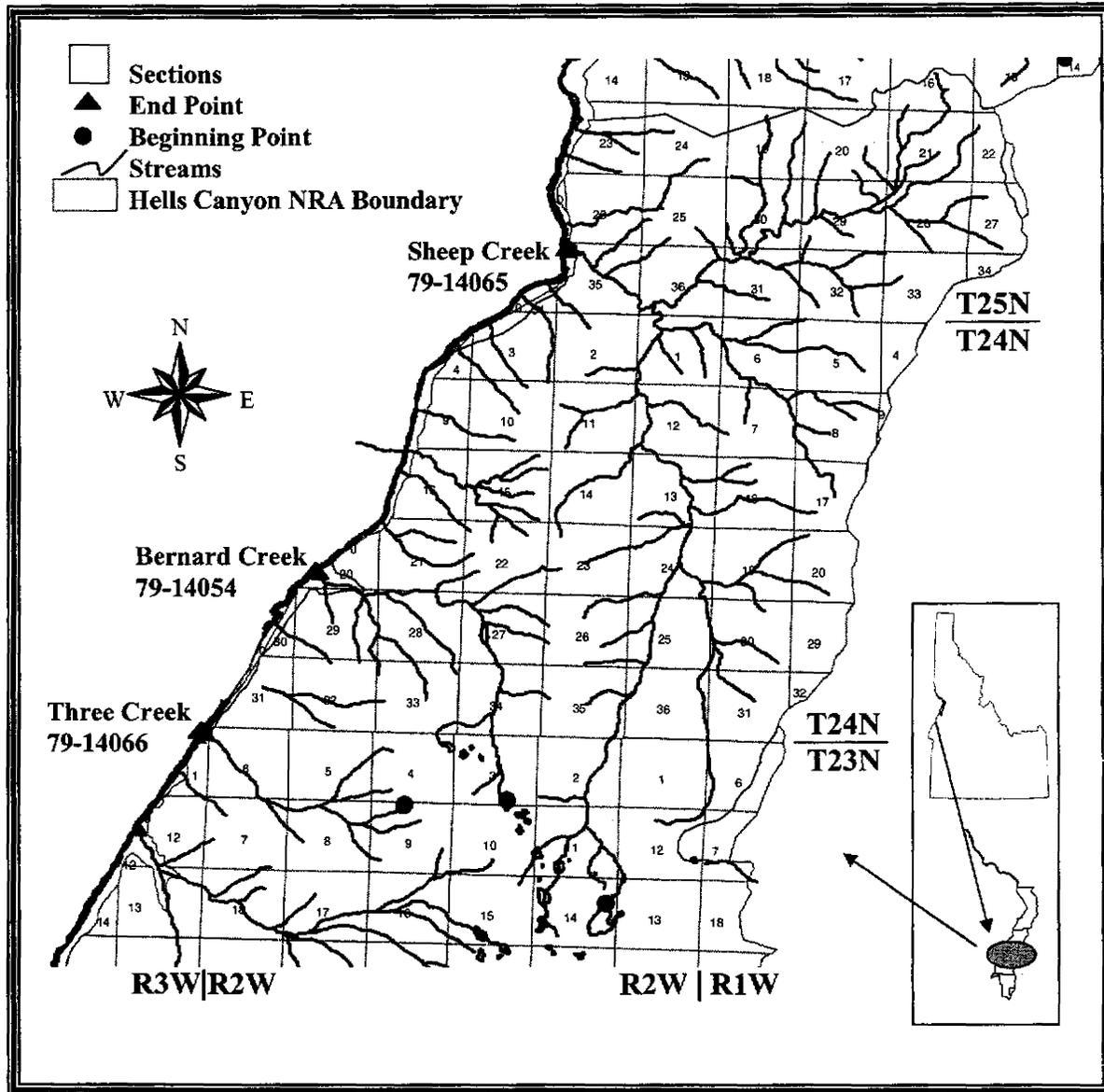


# Attachment A - HCNRA Streams

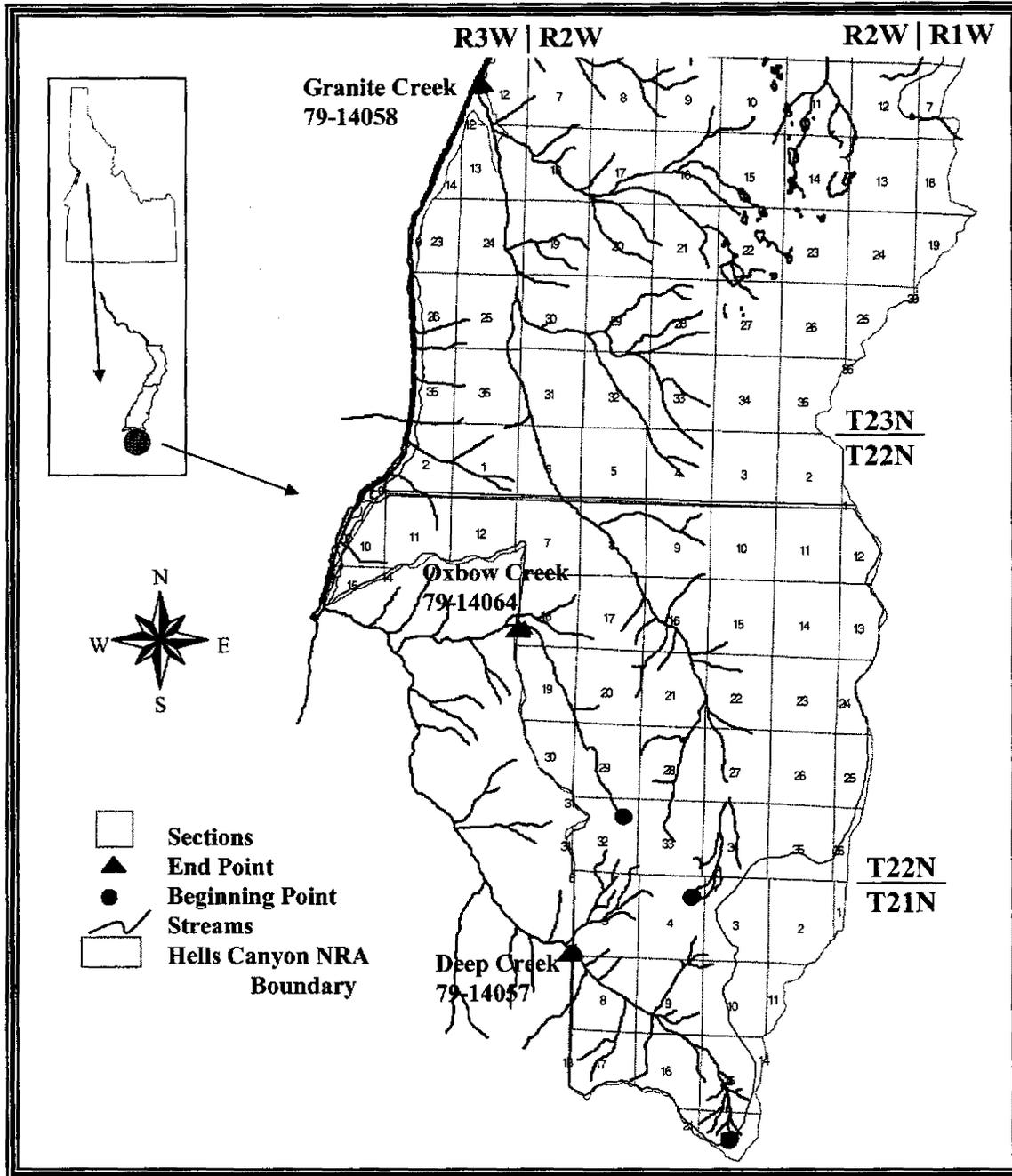
## Map 2



# Attachment A - HCNRA Streams Map 3

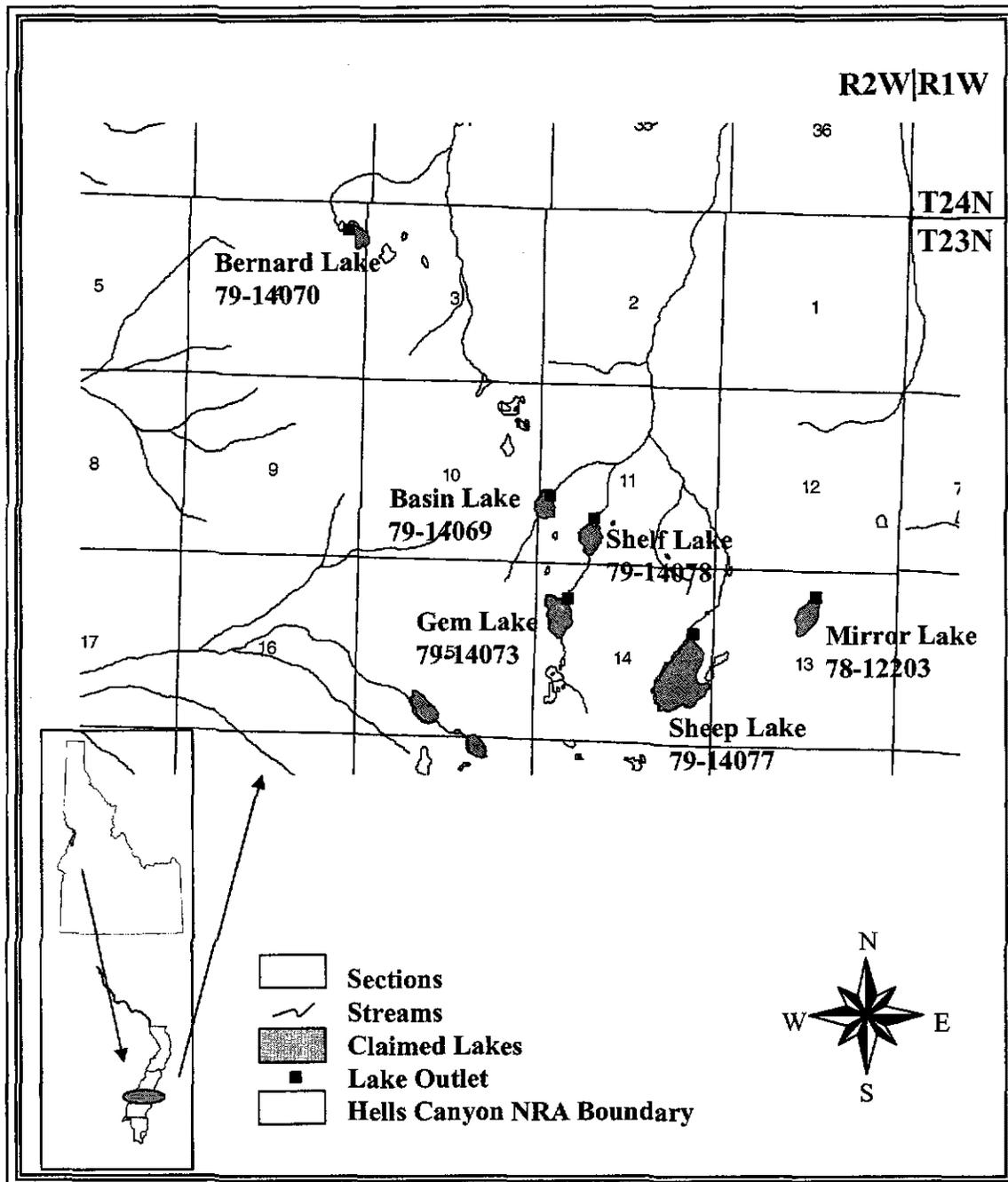


# Attachment A - HCNRA Streams Map 4



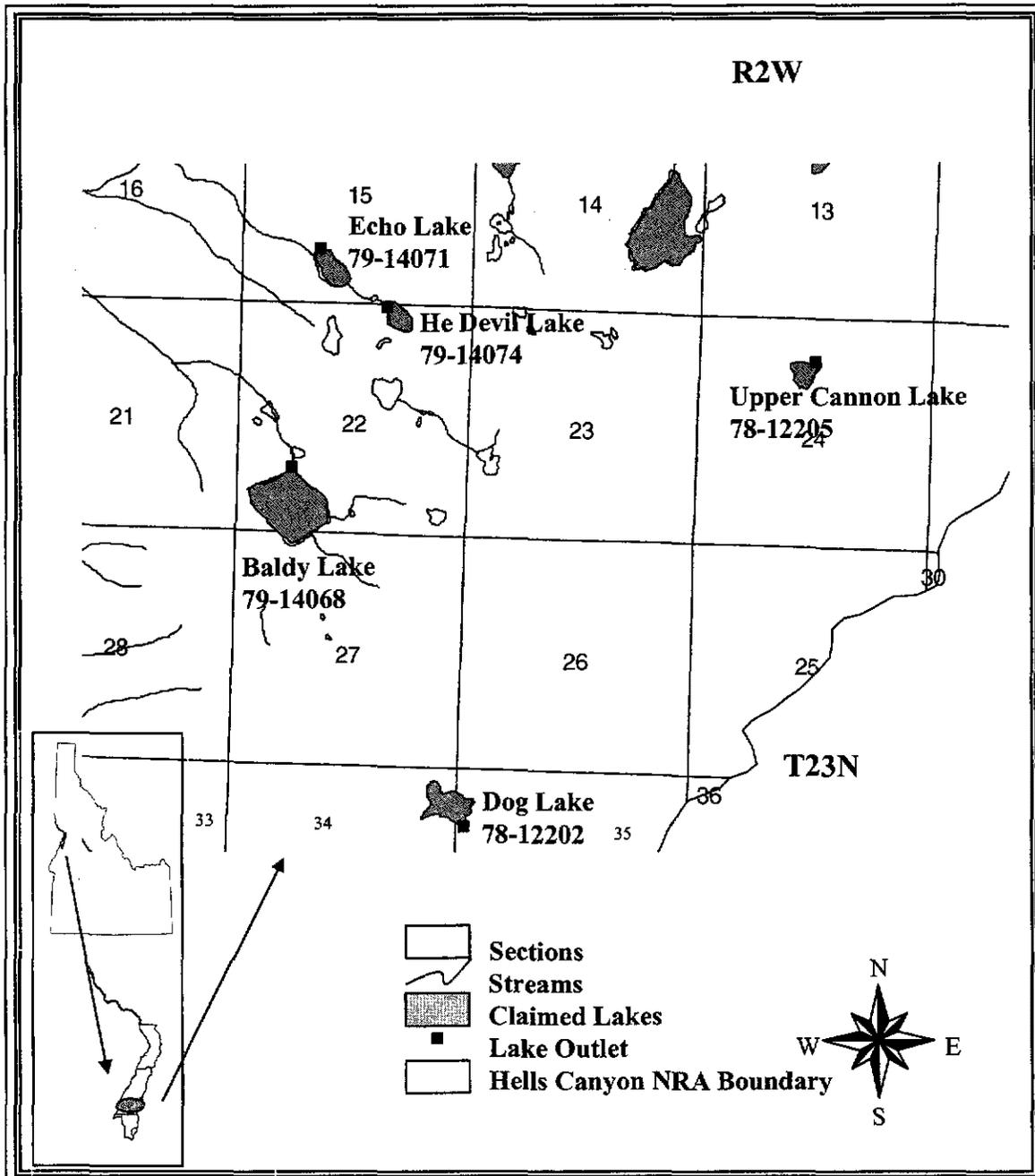
# Attachment A - HCNRA Lakes

## Map 1



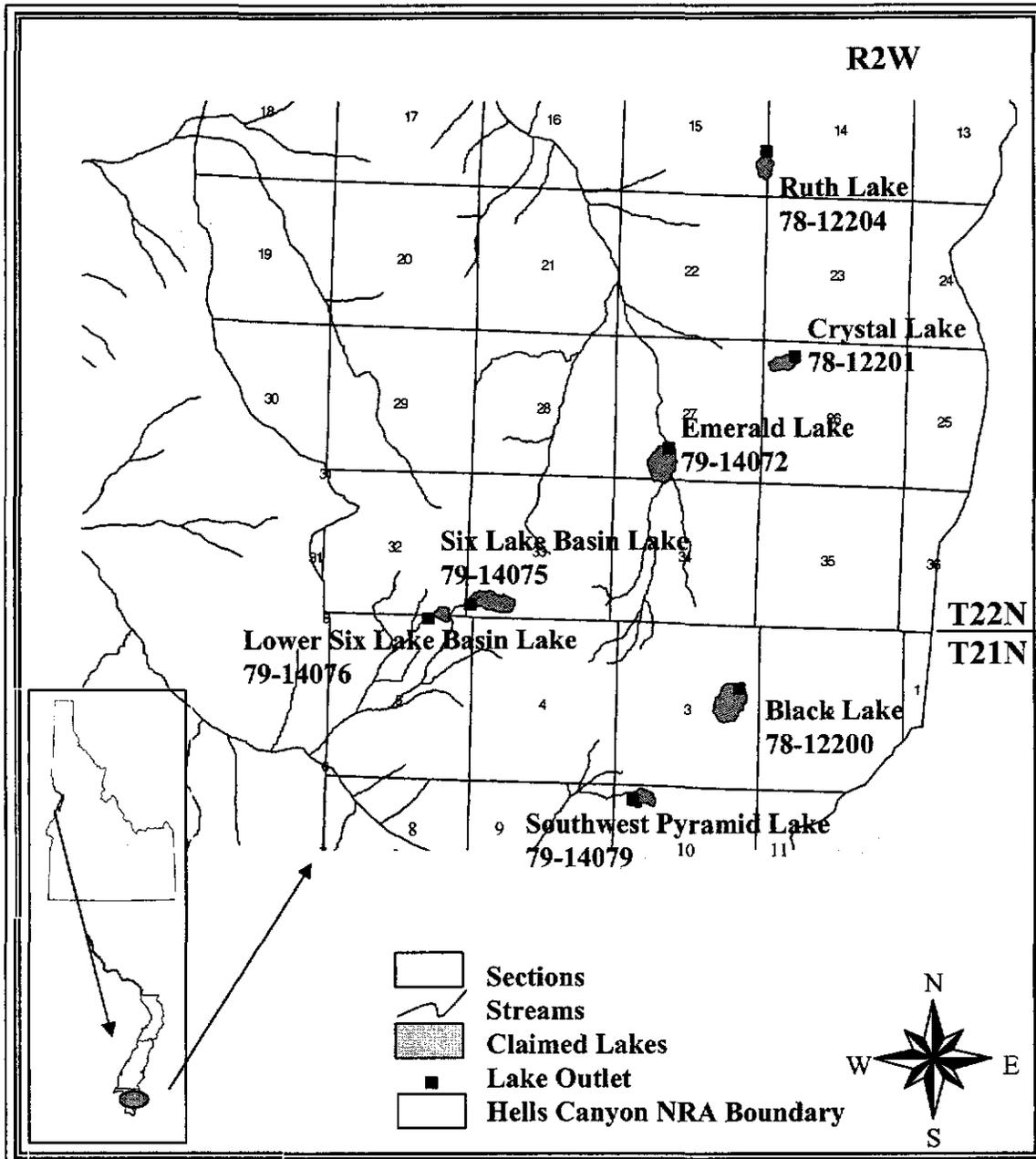
# Attachment A – HCNRA Lakes

## Map 2



# Attachment A-HCNRA Lakes

## Map 3



ATTACHMENT B  
HELLS CANYON NATIONAL RECREATION AREA  
FISHERIES HABITAT BASE FLOWS AND MONTHLY EXCEEDANCE DISCHARGES

Stream Name	IDWR File No.	Fish Habitat Base Flow Component in cfs (also 20% monthly exceedance discharges)											
		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Bernard Creek	79-14054	5.4	6.6	7.1	24	24	11	3.6	2.2	2.3	2.9	3.6	3.9
Big Canyon Creek	79-14055	9.9	18	17	22	6.3	1.1	0.29	0.81	1.0	1.4	1.6	2.1
Corral Creek	79-14056	7.1	12	15	30	15	3.4	0.87	1.1	1.2	1.6	2.0	2.7
Deep Creek	79-14057	3.2	3.3	5.0	19	35	29	13	2.9	2.6	3.1	4.3	5.0
Granite Creek	79-14058	21	24	27	92	120	74	24	11	11	14	17	18
Jones Creek	79-14059	2.2	4.9	4.1	4.3	0.62	0.05	0.01	0.07	0.1	0.16	0.17	0.24
Kirby Creek	79-14060	2.3	4.2	4.4	6.5	1.9	0.28	0.08	0.19	0.23	0.33	0.39	0.53
Kirkwood Creek	79-14061	14	20	22	50	33	10	2.8	3.0	3.1	4.1	5.1	6.0
Klopton Creek	79-14062	6.6	11	11	23	8	1.3	0.29	0.65	0.79	1.1	1.3	1.6
Kurry Creek	79-14063	8.0	16	16	18	4.5	0.69	0.18	0.54	0.67	0.95	1.1	1.5
Oxbow Creek	79-14064	1.4	1.6	1.9	8.4	12	7.5	3.0	1.0	0.99	1.3	1.6	1.8
Sheep Creek	79-14065	34	41	46	120	150	85	27	16	15	19	24	25
Three Creek	79-14066	3.2	4.3	3.7	14	9.1	2.5	0.65	0.75	0.89	1.2	1.3	1.5
West Creek	79-14067	4.0	8.9	8.0	4.6	0.7	0.08	0.03	0.15	0.2	0.29	0.33	0.47

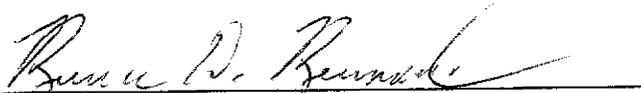
Stream Name	IDWR File No.	50 Percent Exceedance Discharges in cfs											
		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Bernard Creek	79-14054	3	4.1	4.3	12	12	6.6	2.4	1.9	1.8	2.4	2.7	3.2
Big Canyon Creek	79-14055	2.9	7.1	8.2	9.2	2.3	0.56	0.22	0.75	0.83	1.3	1.5	1.9
Corral Creek	79-14056	2.6	5	7.1	15	6.5	1.8	0.62	0.88	0.9	1.3	1.5	1.9
Deep Creek	79-14057	2.4	2.5	3	9.1	18	19	7.8	2.2	1.9	2.3	2.8	3.3
Granite Creek	79-14058	13	16	17	48	67	47	15	9.3	8.4	11	13	15
Jones Creek	79-14059	0.45	1.5	1.7	1.7	0.19	0.02	0.01	0.07	0.09	0.15	0.17	0.22
Kirby Creek	79-14060	0.66	1.6	2	2.7	0.65	0.13	0.06	0.17	0.19	0.28	0.33	0.43
Kirkwood Creek	79-14061	5.7	9.9	12	25	16	5.6	1.9	2.5	2.4	3.3	3.9	4.6
Klopton Creek	79-14062	2.1	4.7	5.4	11	3.6	0.64	0.22	0.6	0.65	0.99	1.1	1.4
Kurry Creek	79-14063	2.1	5.5	7.2	7.3	1.5	0.33	0.14	0.49	0.54	0.83	0.97	1.2
Oxbow Creek	79-14064	1	1.2	1.2	3.9	6.1	4.8	2	0.84	0.78	1	1.2	1.4
Sheep Creek	79-14065	19	26	29	63	78	52	17	13	12	15	17	19
Three Creek	79-14066	1.5	2.5	2.2	7	4.8	1.4	0.47	0.72	0.74	1.1	1.2	1.4
West Creek	79-14067	0.83	2.7	3.4	1.5	0.16	0.04	0.02	0.14	0.16	0.27	0.31	0.41

Stream Name	IDWR File No.	80 Percent Exceedance Discharges in cfs											
		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Bernard Creek	79-14054	2.3	2.9	2.6	6.3	6.8	3.7	1.5	1.5	1.6	2.1	2.4	2.4
Big Canyon Creek	79-14055	1.9	3.6	3.7	3.7	1.4	0.33	0.18	0.62	0.75	1.2	1.4	1.5
Corral Creek	79-14056	1.7	2.7	3.3	6.9	3.7	0.98	0.46	0.68	0.75	1.1	1.4	1.4
Deep Creek	79-14057	1.9	1.9	2	5.2	11	12	4.4	1.7	1.6	1.9	2.2	2.3
Granite Creek	79-14058	9.7	12	12	28	38	25	8.5	7.1	7.2	9.4	11	11
Jones Creek	79-14059	0.27	0.63	0.64	0.58	0.11	0.01	0.01	0.06	0.08	0.15	0.17	0.18
Kirby Creek	79-14060	0.42	0.79	0.84	1.1	0.38	0.08	0.05	0.14	0.17	0.27	0.31	0.33
Kirkwood Creek	79-14061	3.8	5.8	6.4	13	9.4	3.1	1.3	2	2.1	2.9	3.4	3.4
Klopton Creek	79-14062	1.4	2.5	2.5	5.1	1.9	0.34	0.17	0.49	0.59	0.92	1.1	1.1
Kurry Creek	79-14063	1.3	2.6	3	2.8	0.96	0.2	0.12	0.4	0.48	0.76	0.91	0.95
Oxbow Creek	79-14064	0.83	0.9	0.76	2.2	3.3	2.9	1.2	0.67	0.69	0.89	1	1
Sheep Creek	79-14065	14	18	19	35	47	29	9.9	9.8	9.7	12	14	14
Three Creek	79-14066	1.1	1.7	1.3	3.7	2.4	0.73	0.33	0.61	0.7	1	1.1	1.1
West Creek	79-14067	0.49	1.1	1.3	0.45	0.12	0.03	0.02	0.12	0.15	0.26	0.31	0.32

ATTACHMENT C  
HELLS CANYON NATIONAL RECREATION AREA  
LAKE LEVEL ELEVATIONS

Lake Name	IDWR File No.	Claimed Elevation (ft.)
Black Lake	78-12200	98.22
Crystal Lake	78-12201	93.86
Dog Lake	78-12202	98.84
Mirror Lake	78-12203	92.89
Ruth Lake	78-12204	98.38
Upper Cannon Lake	78-12205	95.82
Baldy Lake	79-14068	99.49
Basin Lake	79-14069	92.23
Bernard Lake	79-14070	101.19
Echo Lake	79-14071	95.77
Emerald Lake	79-14072	99.83
Gem Lake	79-14073	98.21
He Devil Lake	79-14074	99.24
Six Lake Basin Lake	79-14075	99.12
Lower Six Lake Basin Lake	79-14076	90.73
Sheep Lake	79-14077	97.63
Shelf Lake	79-14078	98.79
Southwest Pyramid Lake	79-14079	99.1

FOR THE UNITED STATES:



Date: 8/17/04

BRUCE D. BERNARD  
U.S. Department of Justice  
Environment and Natural Resources Division  
General Litigation Section  
999 18<sup>th</sup> Street, Suite 945  
Denver, Colorado 80202  
(303) 312-7319