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DISTRICT COURT-SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho
JUL 24 1998
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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 Wild and Scenic Rivers Claims: 75-13316, 77-11941, 77-13844, 78-10668, 78-11961, 81-10472, 81-10513, and 81-10625	**Wild and Scenic Rivers Claims** **Consolidated Subcase 75-13316** **MEMORANDUM DECISION GRANTING, IN PART, AND DENYING, IN PART, THE UNITED STATES' MOTION FOR SUMMARY JUDGMENT ON RESERVED WATER RIGHTS CLAIMS**

Memorandum decision following a *Motion For Partial Summary Judgment on Its Claims to Federal Reserved Water Rights For Wild and Scenic Rivers.* Following briefing and oral presentations, the *Motion* is **Granted, in part, and Denied, in part.**

ATTORNEYS

Bruce D. Bernard, David W. Gehlert — *Attorneys, Environment & Natural Resources Division, United States Department of Justice,* Movant

Jeffrey C. Fereday, Christopher H. Meyer — *Givens, Pursley & Huntley,* for Potlatch Corporation, Respondent

Peter J. Ampe — *Deputy Attorney General for the State of Idaho,* Respondent

Jeffery J. Ventrella — *Elam & Burke,* for Thompson Creek Mining Company, Respondent

I.
PROCEDURAL HISTORY

The United States filed a *Motion for Partial Summary Judgment on Its Claims to Federal Reserved Water Rights for Wild and Scenic Rivers (Summary Judgment Motion)* alleging that it is entitled to federal reserved water rights under the Wild & Scenic Rivers Act, Act of 1968 82 Stat 906, 16 U.S.C. §§ 1271 (1968) et seq., for the following claims: 75-13316, 77-11941, 7713844, 78-10668, 78-11961, 81-10472, 81-10513, and 81-10625. All these claims are consolidated in subcase 75-13316.

The State of Idaho, Thompson Creek Mining Company and Potlatch Corporation filed their opposition to the *Summary Judgment Motion*. A & B Irrigation District, Burley Irrigation District, Twin Falls Canal Company, North Side Canal Company, Harrison Canal, Burgess Canal, Peoples Canal & Irrigation Co., Progressive Irrigation District, Enterprise Irrigation District, New Sweden Irrigation District, Snake River Valley Irrigation, Idaho Irrigation District, Egin Bench Canals Inc., and North Fremont Canal Systems, Inc., lodged a *Memorandum in Support of the State of Idaho's Memorandum in Opposition to the United States' Motion for Summary Judgment* on April 23, 1998.

The issues before the court are:

A. **Whether the Wild and Scenic Rivers Act entitles the United States to a federal reserved water right.**

B. **If so, is the United States entitled to all unappropriated flows in the Mainstem of the Salmon River[1] and all unappropriated flows in the Rapid River[2] under the Wild and Scenic Rivers Act?**

II.
STANDARD OF REVIEW

The standard of review on a motion for summary judgment is well established:

> In summary judgment proceedings the facts are to be liberally construed in favor of the party opposing the motion, who is also to be given the benefit of all favorable inferences which might be reasonably drawn from the evidence. Summary Judgment must be granted if the court determines that the "pleadings,

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1 Subcases 78-13313 and 78-11941

2 Subcases 78-11961 and 78-10668

depositions, and admissions on file, together with the affidavits, if any show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Strongman v. Idaho Potato Commission, 129 Idaho 766, 771, 932 P.2d 889, 894 (1997) (quoting I.R.C.P. 56(c)). "If the record supports conflicting inferences, or if reasonable minds might reach different conclusions, summary judgment must be denied." *Id.* at 771.

III.

FEDERAL RESERVED WATER RIGHTS

A state has plenary control of water located within its territory. *Kansas v. Colorado*, 206 U.S. 46 (1907). A claim to a federal reserved water right is an exception to the state's plenary control of water. *United States v. Rio Grande Dam & Irrigation Co.*, 174 U.S. 690 (1899). Reserved water rights may be express or implied. *United States v. New Mexico*, 438 U.S. 696 (1978). An express reservation of water is created by the explicit language in the act creating the reservation. *Id.* Here, the United States has claimed an express reservation of water under the Wild and Scenic Rivers Act.[3]

IV.
ANALYSIS

A. The United States is entitled to an express federal reserved water right under the Wild and Scenic Rivers Act.

In 1968 the United States Congress passed the Wild and Scenic Rivers Act. 82 Stat 906, 16 U.S.C. §§ 1271 (1968), et seq. The United States asserts that the Wild and Scenic Rivers Act created an express reservation of water. An express reservation of water is created by the explicit language in the act creating the reservation. *United States v. New Mexico*, 438 U.S. at 699. Whether the Wild and Scenic Rivers Act expressly reserves water is a matter of statutory interpretation.

Interpretation of a statute is a question of law. *In Re SRBA Case No. 39576--Basin-Wide Issue #5(A) General Provision #2--Reynolds Creek,* ___ Idaho ___, 955, P.2d 1108 (1998), *quoting State v. Hagerman Water Rights Owners, Inc.*, 130 Idaho 727, 732, 947 P.2d 400, 405

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3 Where the United States claims its water right based on an express reservation of water, it will not be reviewed under the doctrine of implied federal reserved water rights.

(1997). "If the statutory language is clear and unambiguous, the Court need merely apply the statute without engaging in any statutory construction. Statutory interpretation begins with the words of the statute, giving the language its plain and obvious meaning." *Id.* It is equally important that "every phrase of a statute [be interpreted] so that no part is rendered superfluous." *National Insulation Transp. Comm'n v. I.C.C.*, 683 F.2d 533, 537 (D.C. Cir. 1982); *Farr v. United States,* 990 F.2d 451 (9th Cir. 1993); *George W. Watkins Family v. Messenger*, 118 Idaho 537, 540, 797 P.2d 1385 (1990). *Id.* Additionally, "words and phrases are construed according to the context and approved usage of the language." *Hagerman Water Rights Owners* at 732. If the wording of a statute is vague, the court may consider legislative history to determine its meaning by giving effect to the legislative intent at the time of passage. *Blum v. Stenson*, 465 U.S. 886, 896 (1984).

Section 13(c) of the Wild and Scenic Rivers Act unambiguously expresses the intent of Congress to reserve water. That section states:

> Designation of any stream or portion thereof as a national wild, scenic or recreational river area shall not be construed as a reservation of the waters of such streams for purposes other than those specified in this Act, or in quantities greater than necessary to accomplish these purposes.

16 U.S.C. § 1284(c). Though stated in the negative, this section expresses an affirmative reservation of water in quantities necessary to accomplish the purposes of the Act, when read as a whole. Both the State of Idaho and Thompson Creek Mining Company agree that section 13(c) of the Wild and Scenic Rivers Act is an express reservation of water. *See State of Idaho's Brief in Response to the United States' Motion for Partial Summary Judgment (State of Idaho's Brief)* at 10; *Thompson Creek's Memorandum in Response to United States' Motion for Partial Summary Judgment on Its Federal Reserved Water Rights Claims for Wild and Scenic Rivers Act (Thompson Creek's Memorandum)* at 11.

Only Potlatch Corporation disputes that section 13(c) is an express reservation of water, asserting that it is only a "negative limitation with no affirmative proviso" which fails to reserve anything. *Response Brief of Potlatch Corporation* at 7. At the time of filing its brief, Potlatch Corporation was without the benefit of the Idaho Supreme Court's recent ruling on federal reserved water rights under PWR 107 in which Court held that PWR 107 constituted an "express"

reservation of water to the United States.[4] *Matter of SRBA Case No. 39576 Basin-Wide Issue 9 (PWR 107),* 1998 WL 154457 at *4. "[W]e conclude that PWR 107 evidences an express intention by Congress that reserves a water right in [sic] the United States." *Id.* Section 13(c) of the Wild and Scenic Rivers Act unambiguously expresses an affirmative intent to reserve water to the United States with far more certainty than Congress expressed in PWR 107.

Even if it is accepted that the language of section 13(c) is ambiguous, the legislative history overwhelmingly supports the conclusion that Congress intended to reserve water. The Conference Committee Report on the bill unequivocally restates Congress's intentions:

> Enactment of the Bill would reserve to the United States sufficient unappropriated water flowing through Federal lands involved to accomplish the purpose of the legislation. Specifically, only that amount of water reasonably necessary for the preservation and protection of those features for which a particular river is designated in accordance with the bill.

114 CONG. REC. 28310 (1968). Further, the "Minority Views" section of the Interior Committee's report on S. 1446 affirms that "[t]here will be a reservation of water only for the purposes outlined in the bill and only in quantities necessary to accomplish these purposes." S. Rep. No. 89-792 at 15-16. Idaho Senator Church, a sponsor, confirmed that "[t]he enactment of the bill is itself a reservation of the water needed to carry out its purposes." 112 CONG. REC. 403, 432 (1966). Therefore, Potlatch Corporation's position that section 13(c) of the Wild and Scenic Rivers Act does not establish a reservation of water is contrary to the express language of the Act, legislative history, the considered assessment of the State of Idaho and Thompson Creek Mining Co. and cannot be accepted as law.

In summary, the Wild and Scenic Rivers Act expressly reserves water for the United States.

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4 PWR 107 states:

> [I]t is hereby ordered that every smallest legal subdivision of public land surveys which is vacant, unappropriated, unreserved public land and contains a spring or water hole, and all land within one quarter of a mile of every spring or water hole located on unsurveyed public land, be and the same is hereby withdrawn from settlement, location, sale or entry, and reserved for public use in accordance with the provisions of Section 10 of the Act of December 29, 1916.

B. The United States is entitled to the minimum quantity necessary for the express reservation under the Wild and Scenic Rivers Act.

The State of Idaho correctly states that "[e]ach component of the [Wild and Scenic Rivers] system presents a separate question of fact as to which of the possible 'values' applies to that particular river and its related adjacent land area." *State of Idaho's Brief* at 22. Proving the quantity of water reserved to the United States under the Wild and Scenic Rivers Act is a two-step process. First, the United States has to establish the specific legal purposes for which a river is designated. Second, the United States must prove the minimum quantity of water necessary to fulfill those purposes.

In determining the quantification of water reserved to the United States, the court must make its determination based upon law and fact. While it may be possible to determine which purposes attach to designated rivers as a matter of law, it is concluded that such a determination is so closely related to the factual characteristics of each river that summary judgment is inappropriate at this time.

1. The United States is not entitled to all unappropriated flows in the Mainstem of the Salmon River and the Rapid River under the Wild and Scenic Rivers Act as a Matter of Law.

The United States claims all unappropriated flows for the Mainstem of the Salmon River and the Rapid River,[5] to fulfill wilderness purposes.[6] The Wild and Scenic Rivers Act does not include "wilderness" preservation as a listed value in section 1271.

The United States argues that "wilderness" preservation is included in the "similar values" provision found in section 1271 (citing the Central Idaho Wilderness Act, Pub. L. No. 96-312, 94 Stat. 948 (1980), and Act of March 14, 1984, Pub. L. No. 98-231, 98 Stat. 60 (1984) (codified at 16 U.S.C. § 1132) (CIWA), and the Hells Canyon National Recreation Act, Act of December 31, 1975, Pub. L. No. 94-199, 89 Stat. 1117 (1975) (codified at 16 U.S.C. §§ 460gg(1)-(13)) (HCNRA)). The CIWA and the HCNRA reserved certain lands for wilderness

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5 Claims 75-13316, 77-11941, 78-11961, 78-10668

6 *See Order Granting and Denying United States' Motions For Summary Judgment on Reserved Water Rights Claims* (Dec. 18, 1997)(wilderness purposes require a reservation of all unappropriated flows.)

purposes. The CIWA and the HCNRA also designated the Mainstem of the Salmon River and the Rapid River as Wild and Scenic Rivers. The United States asserts that the wilderness purposes of the CIWA and the HCNRA are to be included as purposes under the Wild and Scenic Rivers Act for the Mainstem of the Salmon River and the Rapid River.

The United States' argument fails because Congress clearly intended to designate the Mainstem of the Salmon River and the Rapid River under the Wild and Scenic Rivers Act, to the exclusion of the wilderness purposes found in the CIWA and the HCNRA. First, the CIWA specifically states that the lands designated as wilderness under the CIWA were situated north and south of the Mainstem of the Salmon River. The Wilderness Act reserved land north and south of the Mainstem of the Salmon River as wilderness, thereby reserving all unappropriated flows of water in the Mainstem.[7]

Second, Congress declared that the Mainstem of the Salmon River would be administered solely under the Wild and Scenic Rivers Act, not the Wilderness Act.

> That segment of the main Salmon River designated as a component of the Wild and Scenic Rivers System by this Act, which lies within the River of No Return Wilderness designated by Public Law 95-237, **shall be managed under the provisions of the Wild and Scenic Rivers Act**, as amended, and the regulations promulgated thereto, **notwithstanding section 10(b)** of the Wild and Scenic Rivers Act or **any provisions of the Wilderness Act to the contrary**.

Central Idaho Wilderness Act, Pub. L. No. 96-312, § 9(b), 94 Stat. 953 (1980)(emphasis added). Thompson Creek correctly states that "[i]f Congress had intended that Wilderness Act purposes would be included in the 'other similar values' language of the WSRA, it certainly would not have provided that the Main Salmon would be administered under the WSRA only." *Thompson Creek's Memorandum* at 48.

Similarly there is no support for the United States' position that the Rapid River was designated as a Wild and Scenic River for wilderness purposes. Congress intended that the Rapid River be designated for the purposes of the Wild and Scenic Rivers Act, section 1271, **except** as follows:

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7 *See Order Granting and Denying United States' Motions for Summary Judgment on Reserved Water Rights Claims* (Dec. 18, 1997) (wilderness purposes require a reservation of all unappropriated flows.)

> [T]he Secretary shall establish a corridor along the segments of the Rapid River and may not undertake or permit to be undertaken any activities on adjacent public land which would impair the water quality of the Rapid River Segment. . . .

Pub. L. No. 94-199 § 3(b). In designating the Rapid River, Congress included the preservation of water quality as a purpose. Water quality is not identified as a purpose in section 1271 of the Wild and Scenic Rivers Act. The fact that Congress cited "water quality" as a purpose to be included as a "similar value" is significant because it shows that Congress knew which purposes were authorized by the Wild and Scenic Rivers Act and, when necessary, Congress expressly provided specific additional purposes. In this case, Congress did not add wilderness preservation as a purpose for designating the Rapid River as a Wild and Scenic River.

For these reasons, it is found that in designating the Mainstem of the Salmon River and the Rapid River as Wild and Scenic Rivers Congress did not intend to include wilderness purposes. Therefore, the United States is not entitled to all unappropriated flows in the Mainstem of the Salmon River or the Rapid River as a matter of law.[8]

2. The United States is entitled to the minimum quantity necessary to fulfill the purposes of the Wild and Scenic Rivers Act which are to preserve designated rivers in their free flowing condition and to protect and preserve the characteristics for which a river is designated.

Where Congress enacts an express reservation of water and specifically delineates the quantity of water so reserved, there is no need to inquire into its purpose for doing so. However, when Congress does not quantify the amount of water it expressly reserved, as is the case here, the quantity of water reserved may only be that amount necessary to fulfill the purposes of the act. Therefore, congressional intent becomes relevant where Congress links the quantity reserved to the purposes of the act.

Beginning with the language of the Act itself, the stated purpose of the Wild and Scenic is:

> It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or

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[8] The quantity, if any, to which the United States is entitled is a matter of proof which could theoretically equal all unappropriated flows.

> other similar values, shall be preserved in free flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complimented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes.

16 U.S.C. § 1271.

The purposes of the Wild and Scenic Rivers Act are, first, to serve as a complement to the policy of dam construction by preserving designated rivers in their free-flowing condition and, second, to protect the designated rivers and their immediate environments for the benefit and enjoyment of present and future generations. The United States acknowledges that the values listed in section 1271 are stated alternatively and "not every river possesses each of these values. . . ." *United States Memorandum in Support* at 10. Any specific river may be designated to preserve any or all of the values contained in section 1271.

The Respondents argue that Congress intended solely to prevent indiscriminate dam building. *See Thompson Creek's Memorandum* at 26. While its intent in passing the Wild and Scenic Rivers Act was, in part, to complement the nation's policy of dam building by preserving the free-flowing nature of certain rivers Congress did not stop there. To hold that Congress intended nothing more, violates the principle that "every phrase of a statute [be interpreted] so that no part is rendered superfluous." *National Insulation Transp. Comm'n. v. I.C.C.*, 683 F.2d 533, 537 (D.C. Cir. 1982). The Respondents argument ignores other portions of the Wild and Scenic Rivers Act that clearly express Congress's intent to preserve rivers in their free-flowing condition and to fulfill other vital national conservation purposes.

Further, the Wild and Scenic Rivers Act directs the Forest Service to produce a River Plan for each river designated by the Act. 16 U.S.C. 1275.[9] The plans were reported to and reviewed

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[9] Section 1275 of the Wild and Scenic Rivers Act requires that for the Clearwater System and the Middle Fork of the Salmon River (rivers designated within the Wild and Scenic Rivers Act itself):

> "The President shall report to the Congress his recommendations and proposals with respect to the designations of each such river or section thereof under this chapter."

by Congress. *See, for example,* H.R. Doc. No. 91-171 (1969). The plans prepared by the Forest Service for the Clearwater System and the Middle Fork of the Salmon River demonstrate that the Wild and Scenic Rivers Act was meant to accomplish more than preserving rivers in their free-flowing nature. The River Plan for the Clearwater System (United States Exhibit 15) set out the objectives for the management of the river:

> 1. Provide the range and quality recreation opportunities most clearly characteristic of and in harmony with the special attributes of each river segment.
>
> 2. Protect and enhance aesthetic, scenic, historic, fish and wildlife and other values that will contribute to public use and enjoyment of this free-flowing river and its immediate environment.
>
> 3. Provide optimum recreational enjoyment consistent with protection of environmental quality.

Clearwater River Plan, United States Exhibit 15 at 4-5.

Similarly, the Management Plan for the Middle Fork of the Salmon River (United States Exhibit 14) also demonstrates the same intent stating:

> The Middle Fork is to be administered by the Forest Service in a manner that protects and enhances the values which caused it to be included in the National Wild and Scenic Rivers System. To accomplish this, the river will be managed to-
>
> -Maintain the natural free-flowing condition of the river.
> -Protect water quality.
> -Protect scenic, recreational, geological, fish and wildlife, historic archeological and other similar values.
> -Maintain essentially primitive conditions of shorelines.
> -Provide recreation opportunities in harmony with the wild and scenic nature of the river.

River Plan for the Middle Fork of the Salmon River, United States Exhibit 14 at 5.

The reports of the Forest Service prepared at the direction of and reviewed by Congress establish that the Wild and Scenic Rivers Act was intended to preserve two sets of values for which a river can be designated.

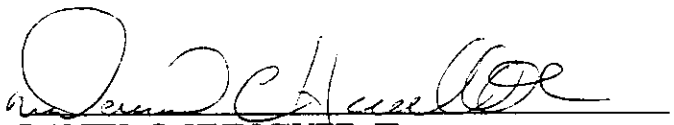
For these reasons, it is found that the purposes of the Wild and Scenic Rivers Act are to preserve designated rivers in their free-flowing condition and to protect and preserve the characteristics for which a river was designated. The United States must, therefore, prove the minimum quantity necessary to fulfill these general purposes and such specific values as were attached by each designation.

IV.
CONCLUSION

The United States is entitled to an express federal reserved water right under the Wild and Scenic Rivers Act. The United States *Summary Judgment Motion* as to entitlement is **GRANTED**. The United States *Summary Judgment Motion* requesting all unappropriated flows in the Mainstem of the Salmon and Rapid River is **DENIED**.

IT IS SO ORDERED.

DATED July 24, 1998.



DANIEL C. HURLBUTT, JR.
Presiding Judge
Snake River Basin Adjudication