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

SEP 29 2016

By _____ Clerk
Deputy Clerk

See Note at End of Partial Decree and Attachment 4 to the Final Unified Decree

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	)	**PARTIAL DECREE FOR**
Case No. 39576	)	**Federal Reserved Water Right 51-13089**
	)	**Wickahoney Creek Wild & Scenic River**

1. **Name and address of owner:**

UNITED STATES OF AMERICA, on behalf of the
Department of the Interior, Bureau of Land Management
Idaho State Office
1387 S. Vinnell Way
Boise, Idaho 83709-1657

2. **Source of water:**

Wickahoney Creek, tributary to Big Jacks Creek.

3. **Quantity of right:**

a. Stream flows at the Wickahoney Creek quantification site:

(1) When the stream flow at the Wickahoney Creek quantification site, as identified in Section 3.a.(3) below ("Wickahoney Creek quantification site"), is less than 7.53 cfs, the United States is entitled to the following flows:

Period of Use	Discharge (cfs)	Period of Use	Discharge (cfs)
January 1–15	0.12	July 1–15	1.14
January 16–31	0.18	July 16–31	0.27
February 1–15	0.19	August 1–15	0.11
February 16–28(29)	0.32	August 16–31	0.06
March 1–15	0.49	September 1–15	0.05
March 16–31	1.46	September 16–30	0.06
April 1–15	3.01	October 1–15	0.08
April 16–30	5.05	October 16–31	0.09
May 1–15	6.93	November 1–15	0.10

May 16–31	8.88	November 16–30	0.11
June 1–15	7.14	December 1–15	0.11
June 16–30	3.79	December 16–31	0.12

(2) When the stream flow at the Wickahoney Creek quantification site is greater than or equal to 7.53 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 1,720 cfs.

(3) The quantification site for the flows identified above at the Wickahoney Creek quantification site is on Wickahoney Creek located in SE1/4 SW1/4NE1/4, Sec.16, T.10S., R.04E., Boise Meridian; Latitude 42° 33' 25.878" N, Longitude 115° 59' 21.115" W (NAD 83).

b. This water right does not prohibit the appropriation, diversion and use of water within the Wickahoney Creek Basin upstream from the ending point, as identified in element 5.b. below ("Wickahoney Creek Wild and Scenic River Basin"), when the stream flow at the Wickahoney Creek quantification site exceeds the flow amount in Section 3.a.(1) and is less than 7.53 cfs, or when the stream flow at the Wickahoney Creek quantification site exceeds 1,720 cfs.

c. This water right precludes any diversion of water out of the watershed of the Wickahoney Creek Wild and Scenic River Basin.

4. Priority date:

March 30, 2009.

5. Point of diversion:

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

a. Location of beginning point:

At the point where Wickahoney Creek intersects the upstream boundary of the Big Jacks Creek Wilderness:

SW1/4SW1/4SE1/4, Sec. 09, T.10S., R.04E., Boise Meridian. Latitude 42° 33' 51.432" N, Longitude 115° 59' 27.954" W (NAD 83).

b. Location of ending point:

At the point where Wickahoney Creek intersects the confluence with Big Jacks Creek:

SW1/4SW1/4SW1/4, Sec. 04, T.10S., R.04E., Boise Meridian. Latitude 42° 34' 47.687" N, Longitude 115° 59' 51.356" W (NAD 83).

6. Purpose of use:

To fulfill the purposes of the Wild and Scenic Rivers Act, Pub. L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.), and the Omnibus Public Land Management Act of 2009, Pub. L. 111-11, 123 Stat. 991 [1037–1039], March 30, 2009 (codified as amended at 16 U.S.C. § 1274(a)(195)).

7. Period of use:

January 1–December 31.

8. Place of use:

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

9. Annual volume of consumptive use:

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

10. Other Provisions Necessary for Definition or Administration of the Water Right:

a. This is a federal reserved water right established pursuant to the Wild and Scenic Rivers Act, Pub. L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.), and the Omnibus Public Land Management Act of 2009, Pub. L. 111-11, 123 Stat. 991 [1037–1039], March 30, 2009 (codified as amended at 16 U.S.C. § 1274(a)(195)).

b. This Partial Decree is entered pursuant to the Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees entered into by and between the United States of America and the State of Idaho, effective February 2, 2016 ("Stipulation for Entry of Partial Decrees"), 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 Wickahoney Creek Basin upstream from the ending point identified in Section 5.b. above:

(1) All "*de minimis* domestic water rights" which, for purposes of this Partial Decree, shall be defined to mean (a) the use of water for homes, organization camps, public campgrounds, livestock, and for any other purpose in connection therewith, including irrigation of up to one-half (1/2) acre of land, if the total use is not in excess of thirteen-thousand (13,000) gallons per day, or (b) any other uses, if the total does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day. This subordination to *de minimis* domestic water rights does not apply to domestic purposes or domestic uses for subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in (b) above. This subordination to *de minimis* domestic purposes or domestic uses does not apply to multiple water rights for domestic uses or domestic purposes that satisfy a single combined water use or purpose that would not itself come within the definitions above. For purposes of this Partial Decree, "subdivision" is defined as set forth in Owyhee County Code Title 10: Subdivision Regulations, Section 10-2-2, which is attached as Attachment 17 to the Stipulation for Entry of Partial Decrees, and which is incorporated herein by reference.

(2) All "*de minimis* stock water rights" which, for the purposes of this Partial Decree, shall be defined to mean the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen-thousand (13,000) gallons per day. This *de minimis* stock water use subordination is further limited and defined so that the subordination shall not and does not apply to multiple water rights for stock water uses which satisfy a single combined water use that would not itself come within the above definition of *de minimis* stock water use.

(3) In-basin irrigation, commercial, municipal, industrial, and other state-recognized water rights with total combined diversions up to the amounts set forth in subsection (A) below for each semi-monthly period during March, April, May, and June, or the amount available above the base flow amount for each of those semi-monthly periods as identified in subsection (B) below, whichever is less.

(A) Subordination amounts March through June:

Period of Use	Subordination (cfs)
March 1–15	0.04
March 16–31	0.09
April 1–15	0.09
April 16–30	0.18
May 1–15	0.12
May 16–31	0.16
June 1–15	0.09
June 16–30	0.04

(B) Base flow amounts below which subordination does not apply:

Period of Use	Base Flows (cfs)
March 1–15	0.09
March 16–31	0.15
April 1–15	0.33
April 16–30	0.71
May 1–15	1.10
May 16–31	1.42
June 1–15	1.34
June 16–30	0.43

(C) Subordination limited to months of March through June:

This subordination to in-basin irrigation, commercial, municipal, industrial, and other state-recognized water rights described in this subsection 10.b.(3) applies during the months of March through June only.

(D) Certain water rights not included in subordination limits:

Water rights of the United States, instream flow water rights, non-consumptive water rights, and replacement water rights shall not be deducted from the subordination amounts identified in this subsection 10.b.(3). "Non-consumptive water rights" means all beneficial uses of water having these characteristics: i) the use involves no diversion from the designation 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. These additional provisions contained in Section 10 do not fall within the other elements listed above and are necessary to: (1) define the unique characteristics of this federal reserved water right; and (2) describe the rights and uses to which this federal reserved water right is subordinated in order to provide for proper administration of this water right and other existing and future water rights.

IT IS SO ORDERED.

DATED this 29th day of September, 2016.

ERIC J. WILDMAN
Presiding Judge of the
Snake River Basin Adjudication

This Partial Decree was entered pursuant to the [Order Approving Stipulation and Entry of Partial Decrees] dated [Date], contained in Attachment 4 to the Final Unified Decree, and is subject to the terms and conditions set forth therein.