IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

IN RE SRBA	)	**PARTIAL DECREE FOR**
	)	
CASE NO. 39576	)	**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.

SCANNED
NOV 17 2004

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

SCANNED
NOV 17 2004

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 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 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

SCANNED
NOV 17 2004

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 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 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

SCANNED
NOV 17 2004

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; (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

SCANNED
NOV 17 2004

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.

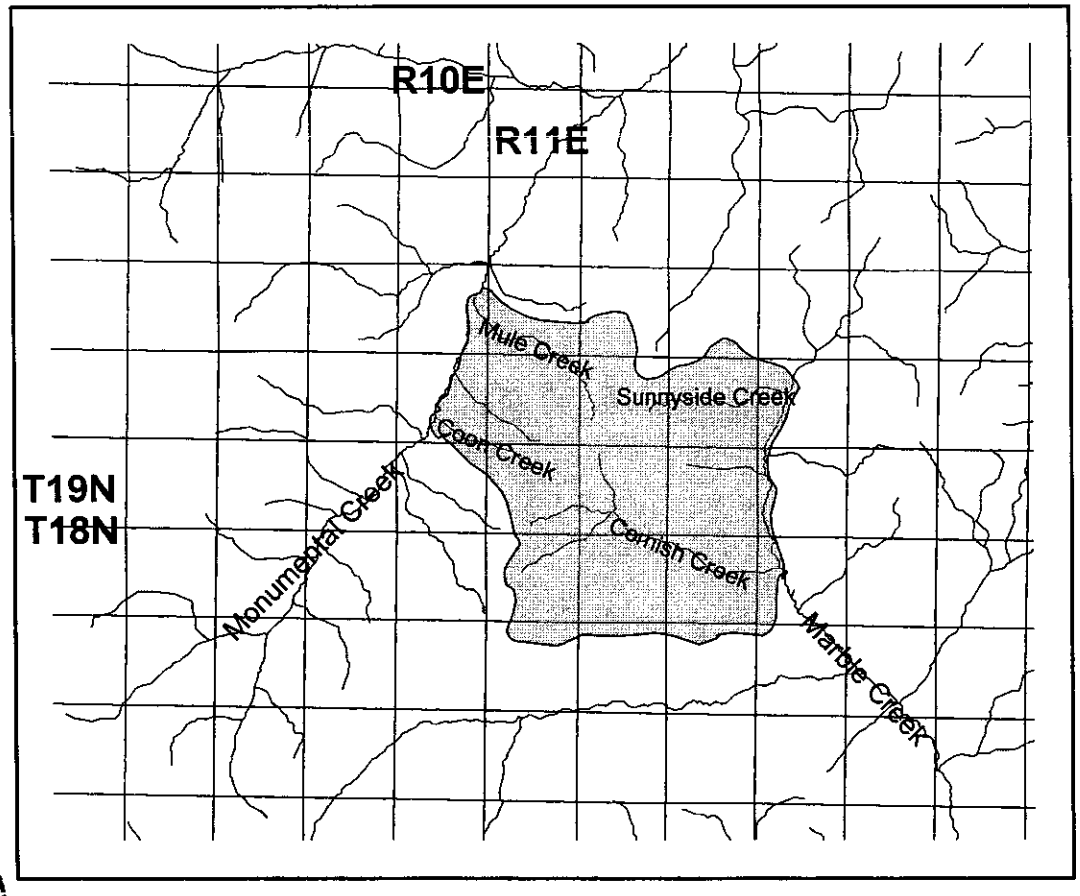
IT IS SO ORDERED.

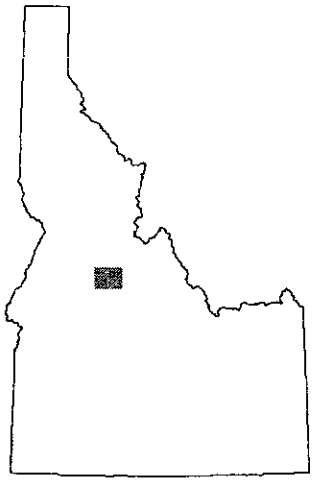
DATED November 16, 2004.

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

SCANNED
NOV 17 2004

Exhibit A
Area Pertaining to Subordinations Under Element 10.b.(5).B of Middle Fork Salmon Partial Decree 77-13844





Subordination Area
Streams
Sections

SCANNED
NOV 17 2004