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	)	**Sawtooth National Recreation Area Consolidated Subcase No. 65-20766**
Case No. 39576	)	**MEMORANDUM DECISION GRANTING, IN PART, AND DENYING, IN PART, THE UNITED STATES' MOTION FOR SUMMARY JUDGMENT ON RESERVED WATER RIGHTS CLAIMS**
Water Rights: 37-19833, 63-30428, 65-20766, 71-10761, and 72-46272	)	

Cross Motions for Summary Judgment on *Claims to Federal Reserved Water Rights for the Sawtooth National Recreation Area,* **Granted, in part, and Denied, in part.**

ATTORNEYS

Michelle Gilbert	*United States Department of Justice*, Environment & Natural Resources Division, Movant
Peter J. Ampe	*Deputy Attorney General for the State of Idaho,* Respondent and Cross-Movant
Thomas E. Root	*Root & Schindler*, for Hecla Mining Company, Respondent and Cross-Movant

I.
PROCEDURAL HISTORY

The United States filed a *Motion For Summary Judgment on Claims to Federal Reserved Water Rights for the Sawtooth National Recreation Area (United States' Motion)* alleging that it is entitled to federal reserved water rights for the Sawtooth National Recreation Area (SNRA) under the Sawtooth National Recreation Area Act. Pub. L. No. 92-400, §§ 1-15, 86 Stat. 612 (1972) 16 U.S.C. §§ 460aa-14 (1973). The *United States' Motion* relates to claims: 37-19833, 63-30428, 65-20766, 71-10761 and 72-46272 which have been consolidated into subcase 65-20766.

The State of Idaho and Hecla Mining Company each filed cross-motions for summary judgment opposing the *United States' Motion, State of Idaho's Motion for Summary Judgment (Idaho's Motion), Hecla Mining Company's Motion for Summary Judgment Denying the United States' Claims to Federal Reserved Water Rights for the Sawtooth National Recreation Area (Hecla's Motion)* and A & B Irrigation District, Burley Irrigation District, Twin Falls Canal Company, North Side Canal Company, Harrison Canal, Burgess Canal, Progressive Irrigation District, Enterprise Irrigation District, Peoples Canal & Irrigation Company, New Sweden Irrigation District, Snake River Valley Irrigation District, Idaho Irrigation District, Egin Bench Canals, Inc., and North Fremont Canal Systems, Inc. (A & B *et al.*) together filed a *Motion For Summary Judgment* opposing the United States' Motion. The United States then filed its opposition to the Objectors' *Motion For Summary Judgment*. Replies were then filed by all participating parties. The United States moved to file supplemental briefs in response to questions presented at oral argument. This *United States' Motion* was denied. ***Order Denying United States' Motion to File Supplemental Briefing*** (July 13, 1998).

The issues before the court for summary judgment are:

A. Whether the Sawtooth National Recreation Area Act entitles the United States to an implied federal reserved water right.

B. If so, is the United States entitled to all water within the Sawtooth National Recreation Area except that needed for future uses consistent with the purposes of the 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, 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 Com'n, 129 Idaho 766, 771, 932 P.2d 889, 894 (1997) (quoting I.R.C.P. 56(c)). Where the record supports conflicting inferences, or 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 a state's plenary control of water. *United States v. Rio Grande Dam and 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.* An implied reserved water right must be based on a reservation of land, *Arizona v. California*, 373 U.S. 546 (1963), and may be granted if the following three criteria are satisfied:

(1) An implied reservation of water exists only if necessary to fulfill the primary, not the secondary, purpose for which the reservation of land was created, *United States v. New Mexico*, 438 U.S. at 702;

(2) Without water, the purposes of the reservation must entirely be defeated, *Id;* and

(3) The water claimed must be the minimum amount necessary to achieve the purposes of the reservation, *Id*. at 700.

IV.
ANALYSIS

A. THE SNRA ACT ESTABLISHES TWO LAND RESERVATIONS: THE SAWTOOTH WILDERNESS AREA AND THE REMAINING SNRA.

The United States asserts entitlement to an implied federal reserved water right under the Sawtooth National Recreation Area Act. Pub. L. No. 92-400, §§ 1-15. 86 Stat. 612 (1972) 16 U.S.C. §§ 460aa-14 (1973) (SNRA Act). An implied federal reserved water right must be based upon a reservation of land. *Arizona v. California*, 373 U.S. 546 (1963). A land reservation is established where two criteria are satisfied: (1) land is withdrawn from the public domain, and (2) the withdrawn land is assigned a specific federal purpose. *United States v. City and County of Denver*, 656 P.2d 1, 5 (Colo. 1982); *United States v. Midwest Oil Co.*, 236 U.S. 459 (1915).

1. The SNRA Is Withdrawn from the Public Domain.

Public domain land includes lands open to settlement, public sale, or other disposition under the federal public land laws and which are not exclusively dedicated to any specific governmental or public purpose. *See, e.g., Federal Power Commission v. Oregon*, 349 U.S. 435 (1955); *United States v. Minnesota*, 270 U.S. 181 (1926); *City and County of Denver*, 656 P.2d 1, 5 (Colo., 1982). The lands within the SNRA were initially withdrawn from the public domain and reserved as national forests by a series of Presidential Proclamations. *See, United States' Motion* at 10, *citing* 34 Stat. 3058 (May 29, 1905). In the SNRA Act, the withdrawal of the land from the public domain was maintained; thus the SNRA remains withdrawn from the public domain.

Hecla Mining Company asserts that land may only be withdrawn from the public domain once, or to effect a re-reservation of lands the President would have to "restore" the reserved land to the public domain first and then reserve it again. *Hecla's Response* at 26. Hecla Mining Company predicates this argument on "historical land practice." However, this court previously rejected the same assertion. *See,* ***Order Granting and Denying United States' Motions For Summary Judgment on Reserved Water Rights Claims*** (Dec. 18, 1997) (***Order*** of Dec. 18, 1997).

In *Arizona v. California*, 373 U.S. 546, 601 (1963), the United States Supreme Court held that the implied reservation of water doctrine applied to a national recreation area that had been previously withdrawn and reserved as a water project. Similarly, in *United States v. City and County of Denver*, 656 P.2d 1, 30-31 (Colo., 1982), the implied reservation of water doctrine was applied to a national park that had previously been withdrawn and reserved as a national forest. Hecla Mining Company cites no authority contrary to the above case law in which previously withdrawn land was made subject to a reservation of water. Land may be withdrawn from the public domain and contemporaneously reserved for a specific federal purpose. Congress may then effectuate a new reservation of previously withdrawn and reserved land by changing the primary purpose of the reservation.

2. Congress Created Two Distinct Reservations in the SNRA By Assigning Distinct and Differing Purposes to Two Defined Areas.

Determining Congress' primary purpose for reserving the SNRA 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*, 131 Idaho 329, 955 P.2d 1108 (1998), *quoting State v. Hagerman Water Rights Owners, Inc.*, 130 Idaho 727, 732, 947 P.2d 400, 405 (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. Commission 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.* Further, "words and phrases are construed according to the context and approved usage of the language." *Hagerman Water Rights Owners*, 130 Idaho 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).

The primary purpose of the SNRA Act is stated in section 1(a) of the Act itself:

> In order to assure the preservation and protection of the natural, scenic, historic, pastoral, and fish and wildlife values and to provide for the enhancement of the recreational values associated herewith, the Sawtooth National Recreation Area is hereby established.

16 U.S.C. §§ 460aa. Congress intended to "protect" and "preserve" many of the unique features of the SNRA, while "enhancing" certain recreation values. The implied federal reservation doctrine requires a determination of precisely how Congress intended to "preserve," "protect," and "enhance" the SNRA in order to evaluate whether water is required for these purposes. It is necessary to examine other sections of the SNRA Act.

The boundaries established in the Act are indicative of Congress' intent in establishing the SNRA. First, section 1(b) of the Act entitled "Boundaries: publication in the Federal Register" states:

> The Sawtooth National Recreation Area (hereafter referred to as the "recreation area"), including the Sawtooth Wilderness Area (hereafter referred to as the "wilderness area"), shall comprise the lands generally depicted on the map entitled

> "Sawtooth National Recreation Area" dated June, 1972, which shall be on file and available for public inspection. . . ."

Congress unequivocally stated that the SNRA shall comprise two distinct areas, the Sawtooth Wilderness Area and the land existing beyond the boundaries of the wilderness area but still within the SNRA ("recreation land"). Where Congress intended to assign different purpose for each distinct area, then by law it established two land reservations.

When Congress uses the term "wilderness," it does so as a term of art. In section 2(b) of the SNRA Act, Congress states, "The lands designated as the Sawtooth Wilderness Area, which supersedes the Sawtooth Primitive Area, shall be administered in accordance with the provisions of this subchapter and the provisions of the Wilderness Act [16 U.S.C.A. § 1131 *et seq.*], whichever is more restrictive . . . ." Congress has defined wilderness to mean:

> Wilderness in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with imprint of man's work substantially unnoticeable . . . .

16 U.S.C. § 1131(c). *See,* ***Order*** of Dec. 18, 1997. Any doubt that Congress intended for the Sawtooth Wilderness Area to be reserved for the same purposes enunciated in the Wilderness Act is abrogated by section 5 of the SNRA Act which directs the Secretary to "review undeveloped and unimproved portion or portions of the recreation area as to suitability or nonsuitability for preservation as a part of the **National Wilderness Preservation System**." (Emphasis added.) Therefore, it is found that the SNRA Act reserved the Sawtooth Wilderness Area to fulfill the

purposes of the Wilderness Act of 1964 and is consistent with Section 1(a) of the SNRA Act.[1]

Congress did not intend that the entire SNRA be established for the broad stringent purposes of wilderness areas. For the "recreation area" Congress expressly indicated that the recreation area was to be administered:

> [I]n accordance with the laws, rules and regulations applicable to the national forests in such a manner as will best provide (1) the protection and conservation of the salmon and other fisheries; (2) the conservation and development of scenic, natural historic, pastoral, wildlife, and other values, contributing to and available for public recreation and enjoyment, including the preservation of sites associated with and typifying the economic and social history of the American West; and (3) the management, utilization, and disposal of natural resources on federally owned lands such as timber, grazing, and mineral resources insofar as their utilization will not substantially impair the purposes for which the recreation area is established.

16 U.S.C. § 460aa-1(a).[2] It is clear that Congress intended to reserve the "recreation area" for a different purpose than that intended for the Sawtooth Wilderness Area. Section 2(a) allows for "utilization and disposal of natural resources. . ." which would be prohibited in any wilderness area. The "recreation area" has been reserved with a primary purpose distinct from that of the wilderness area. The "recreation area" is reserved for the express purposes of section 1(a) of the SNRA Act together with the more explicit purposes set forth in section 2(a).

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[1] The Hells Canyon National Recreation Area has been granted a federal reserved water right for a specific quantity of water. ***Order*** of Dec. 18, 1997. The Hells Canyon National Recreation Area also contained a wilderness reservation and the remaining recreation area. The court did not distinguish the two reservations in the Hells Canyon Nation Recreation Area claim. This is because in establishing the Hells Canyon National Recreation Area, Congress included an express reservation of all water within the boundaries of the HCNRA, except the water in the main stem of the Snake River and all tributaries both upstream and downstream from the designated land.. Where Congress expressly reserves certain waters, a court may not inquire into Congress' purposes for doing so. The implied federal reservation doctrine's requirement that water is only reserved if necessary to fulfill the primary purposes of each reservation is inapplicable where Congress declares an express reservation. Congress has the Constitutional authority through the Supremacy Clause, the Commerce Clause and CONST. art. IV, § 3, cl. 2 to reserve any water it wishes; and it would be unconstitutional for a court to analyze Congress' intent in doing so.

[2] Analysis of how a reservation is to be administered as an aid to interpreting a reservation's purpose is appropriate and does not render the authorizing act to be "an administrative" act incapable of establishing a federal reserved water right. In determining that the national forests were reserved for two limited purposes, the United States Supreme Court cited Administrative Regulations as confirmation of Congress' purpose in establishing the Organic Act. *New Mexico,* 438 U.S. at 708. If Administrative Regulations written by an executive agency are appropriately used in ascertaining Congressional intent, then so too must be administrative directives written by Congress in the Act itself.

Because Congress established two reservations of land in the SNRA Act, each must be analyzed separately under the federal reserved water rights doctrine.

B. THE SNRA CREATES AN IMPLIED FEDERAL RESERVED WATER RIGHT FOR ALL UNAPPROPRIATED WATER IN THE SAWTOOTH WILDERNESS AREA.

This court has previously addressed whether wilderness areas require a federal reserved water right, (*See,* ***Order*** of Dec. 18, 1997) this court adheres to that prior ruling, rendering it unnecessary to reiterate the decision here.

Briefly, wilderness areas are established for the primary purpose of preserving wilderness character as defined above. Wilderness character then, is predicated on the absence of humanity's influence. Where water is naturally found in the wilderness areas, the entire amount of that water is necessary to fulfill the primary purpose of wilderness preservation. Appropriation of any water naturally found in the wilderness area, and required to remain in its natural course to maintain wilderness preservation, would entirely defeat the primary purpose of the Wilderness Act.

There being no genuine issue of material fact as to entitlement to a reserved water right for all unappropriated flows in the Sawtooth Wilderness Area created by the SNRA Act, summary judgment is entered in favor of the United States as a matter of law.

C. THE SNRA ACT CREATES AN IMPLIED FEDERAL RESERVED WATER RIGHT FOR THE REMAINING "RECREATION AREA" PORTION IN A QUANTITY TO BE PROVEN AT TRIAL.

As stated earlier, the purpose of the "recreation area" is to "assure the preservation and protection of the natural, scenic, historic, pastoral, and fish and wildlife values and to provide for the enhancement of the recreational values associated therewith." SNRA Act § 1(a). This section is to be read in conjunction with section 2(a) of the SNRA Act which states.

> The Secretary shall administer the recreation area in accordance with the laws, rules and regulations applicable to the national forests in such a manner as will best provide (1) the protection and conservation of the salmon and other fisheries; (2) the conservation and development of scenic, natural historic, pastoral, wildlife, and other values, contributing to and available for public recreation and enjoyment, including the preservation of sites associated with and typifying the economic and social history of the American West; and (3) the management, utilization, and disposal of natural resources on federally owned lands such as timber, grazing, and mineral resources insofar as their utilization will not substantially impair the purposes for which the recreation area is established.

16 U.S.C. § 460aa-1(a). It is necessary to determine if these primary purposes of the reservation would be entirely defeated without water. *United States v. New Mexico*, 438 U.S. 696, 702 (1978).[3]

The United States correctly asserts that "it cannot genuinely be debated that water is essential for the protection and maintenance of fish habitat." *United States' Motion* at 20. It is proper under I.R.E. 201(b) to take notice of the fact that fish require water in which to live. Protection of fish habitat, therefore, requires water. It is also without challenge that water is required so as not to substantially impair the area's natural values. Because water is necessary to fulfill the primary purposes of the recreation area, the United States is entitled to a federal reserved water right.

The State of Idaho argues extensively that Congress provided alternative means to fulfill the primary purposes of the SNRA and, therefore, the United States is not entitled to a federal reserved water right. This argument is inconsistent with the language of *New Mexico* which states simply, "where water is necessary to fulfill the very purposes for which the federal reservation was created, it is reasonable to conclude. . . that the United States intended to reserve the necessary water." *New Mexico* at 702.

Therefore, there being no genuine issue of material fact, the United States is entitled to summary judgment to a federal reserved water right created in the SNRA Act for the "recreation area" portion of the reservation.

The United States further asserts that, as a matter of law, it is entitled "to a decreed federal reserved water right for the entire unappropriated flow of all natural water sources within the SNRA as of August 22, 1972, except for water necessary for existing and future uses contemplated by Congress." *United States' Motion* at 26. The United States argues that:

> Requiring the United States to more specifically quantify its reserved water rights would undermine the right claimed, in contravention of *Avondale*. The Act's primary purpose - to preserve natural and historic conditions to the greatest extent possible

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[3] The United States' noted in its briefing that page 14 of the ***Order*** of Dec. 18, 1997 stated that the inquiry was whether the primary purpose of the land reservation would be "entirely defeated without a federal reserved water right." To clarify, this court has consistently analyzed federal reserved water rights under the doctrine found in *New Mexico*: The implied reservation doctrine requires the court to determine whether without water the primary purposes of the reservation would be entirely defeated, *New Mexico* at 702, as is stated in the beginning sections of the ***Order*** of Dec. 18, 1997. The ***Order*** of Dec. 18, 1997, presumed that some water was required to fulfill wilderness purposes, the court went on to further discuss the sweeping language of the Wilderness Act which not only required water but required a federal reserved water right for all the water located within the wilderness areas.

> and enhance associated recreational values, while still allowing only that use which does not interfere with such preservation - by necessity requires a quantification that starts with all unappropriated flows. The next step involves recognition that additional uses beyond those occurring at the time of creation of the SNRA were contemplated, but that the details of such uses were not specified.

Id. at 28. The court disagrees.

The State of Idaho is correct in describing the *Avondale* exception to the exact quantification of federal reserved rights as a "narrow exception." *Avondale Irrigation Dist. v. North Idaho Properties, Inc.*, 99 Idaho 30, 577 P.2d 9 (1978). The rule in *Avondale* is that a claim for "the entire natural flow" is sufficiently certain where proven necessary. *Id.* at 41. The instant claim by the United States does not sufficiently provide the certainty required by *Avondale*. It has yet to prove the necessity of any particular quantity. There remains a genuine issue of material fact with respect to quantity. The United States must prove factually the minimum amount of water that is necessary to fulfill the purposes of the SNRA Act for the "recreation area." The United States' *Motion for Summary Judgment* to the quantity of water reserved by the SNRA Act for the "recreation area" is DENIED.

V.
CONCLUSION

The primary purposes for the Sawtooth Wilderness Area require a federal reserved water right for all unappropriated water within the wilderness area with a priority date of August 22, 1972. All unappropriated water within the Sawtooth Wilderness Area is reserved for the United States. The United States' *Motion for Summary Judgment* for all unappropriated water in the Sawtooth Wilderness Area is GRANTED. Objectors' *Cross Motions for Summary Judgment* on this issue is DENIED.

The *United States' Motion for Summary Judgment* on entitlement to a federal reserved water right for the remaining "recreation area" portion is GRANTED. Objectors' *Cross Motions* on this issue are DENIED. However, the United States is not entitled to a decreed federal reserved water right for the entire unappropriated flow of all natural water sources within the SNRA "recreation area." The quantity reserved raises genuine issues of material fact requiring a denial of the United States' *Motion for Summary Judgment* to all unappropriated flows in the

"recreation area" of the SNRA. Objectors' *Cross Motions for Summary Judgment* on this issue are GRANTED.

IT IS SO ORDERED.

DATED September 16, 1998.

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

CERTIFICATE OF MAILING

I certify that true and correct copies of the **MEMORANDUM DECISION GRANTING, IN PART, AND DENYING, IN PART, THE UNITED STATES' MOTION FOR SUMMARY JUDGMENT** were mailed on September 16, 1998, by first-class mail to the following:

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All parties listed on the Certificate of Mailing for the Sawtooth National Recreation Area claims.

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Deputy Clerk