

Amendment to the Amendment of the Owyhee Initiative Agreement signed on September 12, 2005

May 3, 2006 Version

Owyhee Initiative Wild and Scenic Rivers Act Water Rights Agreement

This Agreement is entered as of _____, 2006 by the undersigned parties, who, as the parties comprising the Owyhee Initiative (“OI”), propose that Congress designate certain river and stream segments in the basins of Jacks Creek, Owyhee River, Bruneau River, and Jarbidge River, all in Idaho’s Owyhee County as wild, scenic, or recreational under the Wild and Scenic Rivers Act. These stream segments are defined below and referred to collectively in this Agreement as the “Designated Rivers.”

The Act expressly reserves rights to unappropriated waters in such rivers in quantities no greater than necessary to accomplish the purposes of the Act and with a priority date as of the date the President signs the bill making the designation. The OI expects that the Interior Department or other appropriate federal agencies will file federal reserved water right claims in the Snake River Basin Adjudication and take such other actions necessary to assure that the reserved water rights are quantified and administered consistent with the understanding of the parties as set forth herein. Specifically, the claims will recognize that the water rights in existence when the legislation becomes effective will be senior. This means that federal reserved water rights for the Designated Rivers will be junior to and will not affect senior water rights. Nothing in this Agreement shall in any way affect, derogate or diminish existing water rights as recognized under Idaho state law at the time the rivers are designated.

At present there is very limited foreseeable opportunity for new uses of water upstream of the Designated Rivers. There are few communities, no large-scale agricultural uses, no commercial and industrial uses, and very little private land in these areas. Only a small percentage of the private land is susceptible to new irrigation. In addition, the availability of water for new uses is extremely limited because surface water sources typically are small or intermittent and private water rights already have been established in all of these basins. The parties recognize, however, that some provision must be made for a limited amount of future development. Thus, they have agreed that any reserved water right claim will contain a subordination to a specified amount of future uses.

Reserved water rights in the Designated Rivers for purposes stated in the Act will be subordinate to future uses of water under new water rights for domestic and de minimis stockwater purposes in the watersheds of the Designated Rivers in Owyhee County, either on a Designated River or on a tributary, above an ending point.

The reserved water rights established in the Designated Rivers pursuant to the OI process will be administered as junior to later-established domestic and de minimis stockwater rights having points of diversion and places of use within the basins of, and upstream from, the ending points.

The OI expects that providing for the establishment of future domestic and de minimis stockwater rights, in accordance with state law, in the watersheds upstream of the respective ending points will not impair water flows necessary to protect the values of the Designated Rivers.

In addition, it is prudent to set aside, by means of a subordination of the reserved water right, a reserve of unappropriated water in each of the watersheds containing the Designated Rivers for future in-basin irrigation, commercial, municipal, industrial and other state-recognized beneficial uses. However, in recognizing the ecological importance of stream and river flows in this arid region, and recognizing the wishes of Owyhee County residents to maintain and protect their current way and quality of life, new appropriations of unappropriated water for irrigation, commercial, municipal, industrial or other state-recognized beneficial uses made after the designation, where the point of diversion is in the watershed of a Designated River above an ending point, shall comply with Idaho law and all of the following conditions:

1. In-basin irrigation, commercial, municipal, industrial or other state-recognized water rights with priority dates after the date the Designated Rivers are established, consistent with state law and in compliance with the conditions set forth in this Agreement, will be administered as senior to the reserved water rights established in the Designated Rivers.
2. Cumulative withdrawals of water from each Designated River's principal watershed, above the respective ending points, shall be limited to a maximum instantaneous diversion rate of ten percent of the mean monthly flows, in cubic feet per second, during March, April, May, and June. Water may be diverted only during these months and may not exceed the maximum diversion rate for each individual month. The mean monthly flows will be measured at the relevant basin gages. The mean monthly flows will be determined by examining the relevant basin gage record for the period of record of the gage for the months of March through June.
3. Future withdrawals of water for irrigation, commercial, municipal, industrial or other state-recognized beneficial uses within a Designated River's principal watershed in Owyhee County shall not de-water perennial streams or prematurely de-water intermittent streams. All transfers of water rights within the watersheds of the Designated Rivers will continue to be subject to the conditions and requirements of Idaho law, including the rule that other water rights are not injured as a result of any transfer.
4. Water appropriated for storage to serve any irrigation, commercial, municipal, industrial or other state-recognized beneficial uses shall not be stored in reservoirs constructed within the bed or between the banks of any perennial stream. Rather, all such waters will be diverted to off-stream storage sites

Finally, it is recognized that the reserved water rights, once quantified, will be administered by the State of Idaho in accordance with state law.

Definitions. For purposes of this Agreement, the following terms shall have the meanings stated below, it being understood that a definition in the singular shall be interpreted also to include the plural:

“Act” means the Wild and Scenic Rivers Act, 16 U.S.C. §§ 1271, *et seq.*

“Basin gage” means the United States Geological Survey gage listed for each respective principal watershed in the ERO Report.

“De minimis stockwater” water rights, purposes, or uses shall have the same meaning, and be subject to the same limitations and conditions, as: 1) the language permitting the “use of water for . . . livestock” contained in Idaho Code § 42-111; 2) the definition of “stock watering use” in Idaho Code § 42-1401A (11); and, to the extent consistent with these two Idaho Code sections, 3) the “watering of livestock” as set forth in Idaho Code § 42-113.

“Designated River” means those streams or rivers, of segments thereof, listed in Appendix A.

“Domestic” water rights, purposes, or uses means those water rights or entitlements defined at Idaho Code § 42-111.

“Ending point” means: The lower, or downstream, terminus of a river or stream reach in which a federal reserved water right is established on a Designated River pursuant to the Wild and Scenic Rivers Act.

“Perennial stream” means a natural watercourse that, under normal meteorological conditions, contains some visible water flow during each month of the year.

“Principal watershed” means the watershed of each of the following, as measured by the respective basin gage and described in the report prepared by David Shaw and entitled *Water Supply for Non-de Minimis Water Uses From Stream Reaches Upstream from Wild and Scenic Designated Streams*, ERO Resources Corporation (September 6, 2005) (the “ERO Report”): Owyhee Basin, South Fork Owyhee Basin, Bruneau Basin, East Fork Bruneau Basin, Jarbidge Basin, and Big Jacks Basin.

“Reserved water right” or “federal reserved water right” means a water right held by the federal government and established by operation of the Act.

“Transfer” means any change in a water right’s place or time of use, point of diversion, or nature of use, actions that currently are subject to state approval under Idaho Code 42-222.

“Tributary” means any perennial or intermittent stream that supplies water during any portion of the year to a Designated River above an ending point.

“Water right” means: Any right to divert and place to beneficial waters in Idaho, and recognized by license, court decree, permit, or by the use of water for domestic or stock watering purposes as provided in Idaho Code §§ 42-111 and 113.

APPENDIX A

**Owyhee Initiative Agreement
Wild and Scenic Rivers
Boundaries and Outstandingly Remarkable Values**

Owyhee Watershed

Little Owyhee River WILD	11 miles from confluence with South Fork of the Owyhee River to the upstream boundary of the Owyhee River Wilderness. Wildlife
North Fork of the Owyhee River RECREATIONAL	5.7 miles from Idaho-Oregon border to the segment described below. Scenic, recreation (kayaking and backpacking), geologic, wildlife and vegetation (Montane Western Juniper Woodland Sublime)
North Fork of the Owyhee River WILD	15.1 miles from the western/downstream boundary of the North Fork Owyhee River Wilderness to the northern/upstream boundary of the North Fork Owyhee River Wilderness. Scenic, recreation (kayaking and backpacking), geologic, wildlife and vegetation (Montane Western Juniper Woodland Sublime)
Battle Creek WILD	23.4 miles from confluence of Owyhee River to upstream boundary of Owyhee River Wilderness. Scenic, recreation (backpacking), geologic
Camas Creek SCENIC	3.0 miles from confluence with Pole Creek to east boundary of Section 26,T10S R2W B.M. Scenic, recreation, geology, wildlife, prehistoric cultural clues
Deep Creek WILD	13.1 miles from confluence with Owyhee River to upstream boundary of Owyhee River Wilderness

	Scenic, recreation (float boating and backpacking), geologic, wildlife
Deep Creek SCENIC	26.4 miles from boundary of Owyhee River Wilderness to upstream crossing of Mud Flat Road Scenic, recreation (float boating and backpacking), geologic, wildlife
Dickshooter Creek WILD	11 miles from confluence with Deep Creek to upstream boundary of Owyhee River Wilderness Scenic, recreation, geology, wildlife, prehistoric cultural clues
South Fork of the Owyhee River WILD	31.4 miles from the confluence with the Owyhee River to the upstream boundary of the Owyhee River Wilderness at the Idaho-Nevada border. Scenic, recreation (float boating), geology, wildlife
South Fork of the Owyhee River RECREATIONAL	1.2 miles across private lands in Section 25 and 36 of T14S R5W, B/M. Scenic, recreation (float boating), geology, wildlife
Owyhee River WILD	67.3 miles from the Idaho-Oregon border to the upstream boundary of the Owyhee River Wilderness. Scenic, recreation (float boating and backpacking), geologic, wildlife, other (Tules ancient river bed)
Pole Creek SCENIC	14.3 miles from the confluence with Deep Creek upstream to the south boundary of Section 16 of T10S R2W, B.M. Scenic, recreation, geology, wildlife, prehistoric cultural clues
Red Canyon WILD	4.6 miles from confluence of the Owyhee River to the upstream boundary of the Owyhee River Wilderness. Scenic, recreational, geologic, wildlife

Big Jacks Creek Watershed

(The BLM has not completed wild and scenic river studies on these rivers. Outstandingly remarkable values have not been identified.)

Big Jacks Creek WILD	35 miles from downstream border of Big Jacks Creek Wilderness in T8S R4E Section 8 to where it enters the Northwest Quarter of Section 26 T10S R2E, B.M.
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Cottonwood Creek WILD	2.6 miles from confluence with Big Jacks Creek to upstream boundary of Big Jacks Creek Wilderness
Duncan Creek SCENIC	5.2 miles from eastern boundary of Section 18 of T10S R4E, B.M. upstream to the NW corner of Section 1 of T11S R3E, B.M.
Duncan Creek WILD	9 mile from confluence with Big Jacks Creek to the beginning of reach described above.
Little Jacks Creek WILD	13.2 miles from downstream boundary of Little Jacks Creek Wilderness, upstream to NW quarter of Section 27 of T9S R2E, B.M.
OX Prong WILD	1.3 miles from the confluence with Little Jacks Creek to the upstream boundary of the Little Jacks Creek Wilderness
Wickahoney Creek WILD	1.5 miles from confluence with Big Jacks Creek to upstream boundary of Big Jacks Creek Wilderness

Bruneau Watershed

Bruneau River WILD	39.3 miles from downstream boundary of Bruneau-Jarbidge Wilderness to upstream confluence with the West Fork Bruneau River and the Jarbidge River. Scenic, wildlife, recreation, geologic, archaeological
Bruneau River RECREATIONAL	6 mile at the Indian Hot Springs public road access. REC. Scenic, wildlife, recreation, geologic, archaeological
West Fork of the Bruneau River WILD	6.2 miles from confluence with Jarbidge River to upstream boundary of Bruneau-Jarbidge Rivers Wilderness Scenic, wildlife, recreation, geologic, archaeological
Jarbidge River WILD	28.8 miles from confluence with West Fork Bruneau River to upstream boundary of Bruneau-Jarbidge Rivers Wilderness Scenic, wildlife, recreation, geologic, archaeological
Sheep Creek WILD	25.6 miles from the confluence with the Bruneau River to the upstream boundary of the Bruneau-Jarbidge Rivers Wilderness Scenic, wildlife, recreation, geologic, archaeological

