

Wild & Scenic River Water Rights Quantification Overview

Consensus Opinion (both federal and state perspective): Water rights for wild & scenic rivers can claim only the minimum or reasonable amount necessary to support the ORVs. Claims cannot automatically be for all the unappropriated flow *unless* the flows needed to support the ORVs requires all the unappropriated flow.

Examples

River: Cache La Poudre, Colorado

Agency: USFS, NPS

Length: 89 miles

Designation: 1986

ORVs: Scenic, Recreation

Water Right: All unappropriated flows were adjudicated, based on the factual situation, rather than assertion of a legal theory that all unappropriated flows are needed. USFS and NPS found that flows needed to optimize the ORVs were in excess unappropriated flow that remained in the river, because of multiple appropriations made since the 1860s.

Terms and conditions included: 1. The Wild & Scenic right is junior to all appropriations made before 1986, including conditional appropriations. 2. No bypass flows, maintenance restrictions, or other operational restrictions can be imposed on existing water structures using the wild & scenic values or water right as a justification. 3. The federal water right does not include imported water, and the water right cannot affect the management of imported water.

River: Upper Missouri, Montana

Agency: BLM

Length: 149 miles

ORVs: Scenic, Recreation, Fish, Wildlife

Designation: 1976

Water Right: Negotiators agreed that the ORVs would be supported if water development was restricted to appropriations through 1987 and if future development were limited to a “carve out.” The carve out is in excess of 1 million acre feet annually,

and domestic uses of 10 acre feet per year or less do not count as part of the carve out. Negotiators also agreed that no new impoundments on the upper Missouri upstream of the designated segment will be allowed, but impoundments on tributaries are allowed.

River: Klamath River, Oregon

Agency: BLM

Length: 11 miles

Designation: 1994

ORVs: Recreation, Wildlife, Fish, Prehistoric, Historic, Native American Traditional Uses

Water Right: BLM restricted its quantification to the fish and recreation ORVs. Fish flows are 625 cfs from April 1 to June 15, and 525 cfs from June 16 to March 31. Recreation flows are 1500 cfs from Memorial Day weekend through September 30. This reach is located downstream from a reservoir, so much higher flows than the ORV flows can be released.

River: Main Stem Salmon River, Idaho

Agency: USFS

Length: 125 miles

ORVs: Scenic, Recreation, Fish, Geology

Water Right:

USFS was adjudicated a varying percentage of flows below 13,600 cfs, and was adjudicated all flows from 13,600 cfs to 28,400 cfs. The theory was that a portion of base flows were needed for minimum maintenance of ORVs, while very large spring runoff flows are needed for channel maintenance. All of the USFS right is subject to a carve out for existing and future water development. Deminimus stockwater, domestic, and municipal uses will be allowed in the future without limit. Irrigation of up to 10,000 additional acres above the designated reach will be allowed. The settlement was also used to satisfy the USFS claim for a water right under the Central Idaho Wilderness Act.