



State of Idaho

DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

June 25, 2004

Carl Rudeen
Upper Salmon Basin Watershed Project
31 Highway 93 North, Suite B
Salmon, ID 83467

Sent by U.S. Mail, and Scanned and Sent by Email to crudeen@idaho.ag.us

RE: Furey Lane Diversion Project

Dear Mr. Rudeen:

This letter is written in response to your correspondence dated June 9, 2004. In preparing this response I have conferred with Roxanne Brown, our Lead Investigator for the adjudication of the Pahsimeroi River Basin; Tim Luke, Supervisor of Water Distribution; and Chris Bromley, our Deputy Attorney General assigned to this basin.

As you are aware, the Idaho Department of Water Resources (IDWR) is presently conducting our investigation of irrigation water rights in the Pahsimeroi River Basin, with the intent of submitting a Director's Report of these water rights to the Snake River Basin Adjudication Court during the summer of 2005. Accordingly, many questions about irrigation water rights in the Pahsimeroi River Basin are still in the investigation stage. However, I will provide preliminary responses to the two issues raised in your letter.

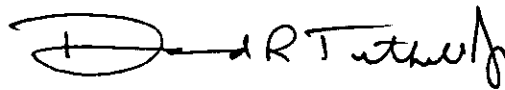
The first issue regards the point of measurement for water rights diverted at the Upper Diversion, as described in your letter and enclosed map. I understand from your description that the location of measurement has historically been at a location about a mile down the ditch from the diversion from the Pahsimeroi River. It is understandable that the most practical location for the measurement structure could be at this location. However, to be in conformance with proper delivery of water rights diverted from the Pahsimeroi River, measurement at this location should take into account the loss in the ditch between the river and the measuring device. For example, if the loss in the ditch is ten percent, the flow measured at the device should be ten percent less than the flow that is available for diversion from the river. Placing a measuring device down the ditch does not add to a water right. Even if the ditch loss has been disregarded in the past, this loss should be taken into account in the future. This guidance is consistent with the tenet that a water right provides for a rate of flow to be diverted *from the source*, not the rate to be measured at a location down the ditch.

June 25, 2004

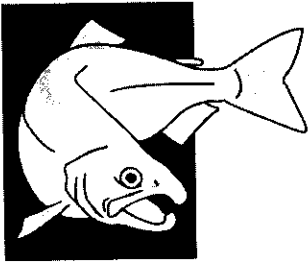
The second issue relates to a proposal by the landowners to move the point of diversion for Sulphur Creek Livestock's decreed water right no. 73-157 from the lower diversion to the upper diversion through the IDWR administrative transfer process. You indicate that the landowners desire to continue to measure the diversion at the lower diversion location. The acceptability of this proposal is difficult to pre-judge. Applications for transfer are advertised, and undergo a directed review to determine if changing points of diversion injures other water rights. Accordingly, my recommendation is to delay the construction of new diversion works until the point of diversion transfer has been approved.

If any party has information that might serve to change the responses in this letter, such information is invited. Accordingly, please feel free to contact me in this regard.

Sincerely,

A handwritten signature in black ink, appearing to read "D R Tuthill Jr", with a stylized flourish at the end.

David R. Tuthill, Jr., Ph.D., P.E.
Adjudication Bureau Chief



**Upper Salmon Basin
Watershed Project**

From the
Middle Fork to the
Headwaters of the
Salmon River Basin

Coordinated by

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Idaho Soil
Conservation
Commission

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Custer Soil & Water
Conservation
District

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Lemhi Soil & Water
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Dave Tuthill
Adjudication Section Bureau Chief
1301 N. Orchard
Boise, Id 83706

Date: June 9, 2004

Subject: Furey Lane Diversion Project

Dear Mr. Tuthill;

The Upper Salmon Basin Watershed Project (USBW) the irrigators involved with the Furey Lane Diversion Project to contact the Idaho Department of Water Resources to clarify the possibilities for this project. Two issues exist that the landowners involved with the project are uncomfortable with. The two issues involve where the point of diversion and/or the point-of-measurement for the water rights for these landowners will be after adjudication. We would like your help resolving these issues.

The Furey Lane Diversion Project will improve fish passage in the Pahsimeroi River by replacing two gravel push-up diversions with fish passable V-weir diversions, lockable headgates, and water measuring devices. The Idaho Department of Fish and Game's Anadromous Fish Screen Shop will install fish screens after fish passage is reestablished in the river. By improving these diversions the irrigators will also gain the ability to control the amount of water they divert and pass by their diversions.

The landowners feel their historical point of measurement has been established at the First Split in the Ditch, although their point of diversion is at the Upper Diversion (see attached map). The first issue is that the landowners are concerned that by installing this project IDWR will force them to move their point-of-measurement from the First Split in the Ditch to the Upper Diversion. They believe this will add an additional mile of ditch loss that wasn't incurred historically. The irrigators feel they would be best served if they can continue to divert and measure their water as they have in the past and are doing now. The water rights of concern and other associated water rights are listed in an attached summary.

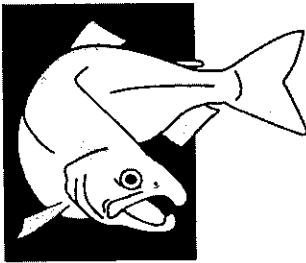
The second issue is specifically related to how the project will be designed and installed. Historically, Sulphur Creek Livestock diverted decree 73-157 at the Upper Diversion then injected it into the river after the First Split in the Ditch where it was rediverted at the Lower Diversion. The landowners propose moving Sulphur Creek Livestock's point of diversion for decreed water right number 73-157 to the Upper Diversion, through

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C. J. Deen @
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the IDWR administrative transfer process but allowing him to measure at the point of diversion (Lower Diversion) listed in the decree. Doing this would allow the water being used by the irrigators to remain in the same ditch longer and would decrease the amount lost to conveyance. If Sulphur Creek Livestock's water must be left in the river until it reaches the decreed point of diversion, the irrigators feel there would not be enough water for any of them.

The Upper Diversion is the location of the current point-of-diversion for decree numbers: 73-10061, 73-10071, 73-152A, and beneficial use claim: 73-10100. The point-of-diversion for decree number 73-157 and license number 73-2155 is currently the Lower Diversion.

Your assistance in resolving these issues would be greatly appreciated, as the project cannot continue until it is clear on how the water rights involved in the project will be administered in the future. Please respond by Wednesday, June 23.

Sincerely;

Carl Rudeen

Attached: Water Rights Summary, Map of project area

Cc: John Folsom, Ted O'Neal, Lee Watson, Royden Eaton, Jody Brostrom

31 Highway 93 North
Suite B
Salmon, Idaho 83467

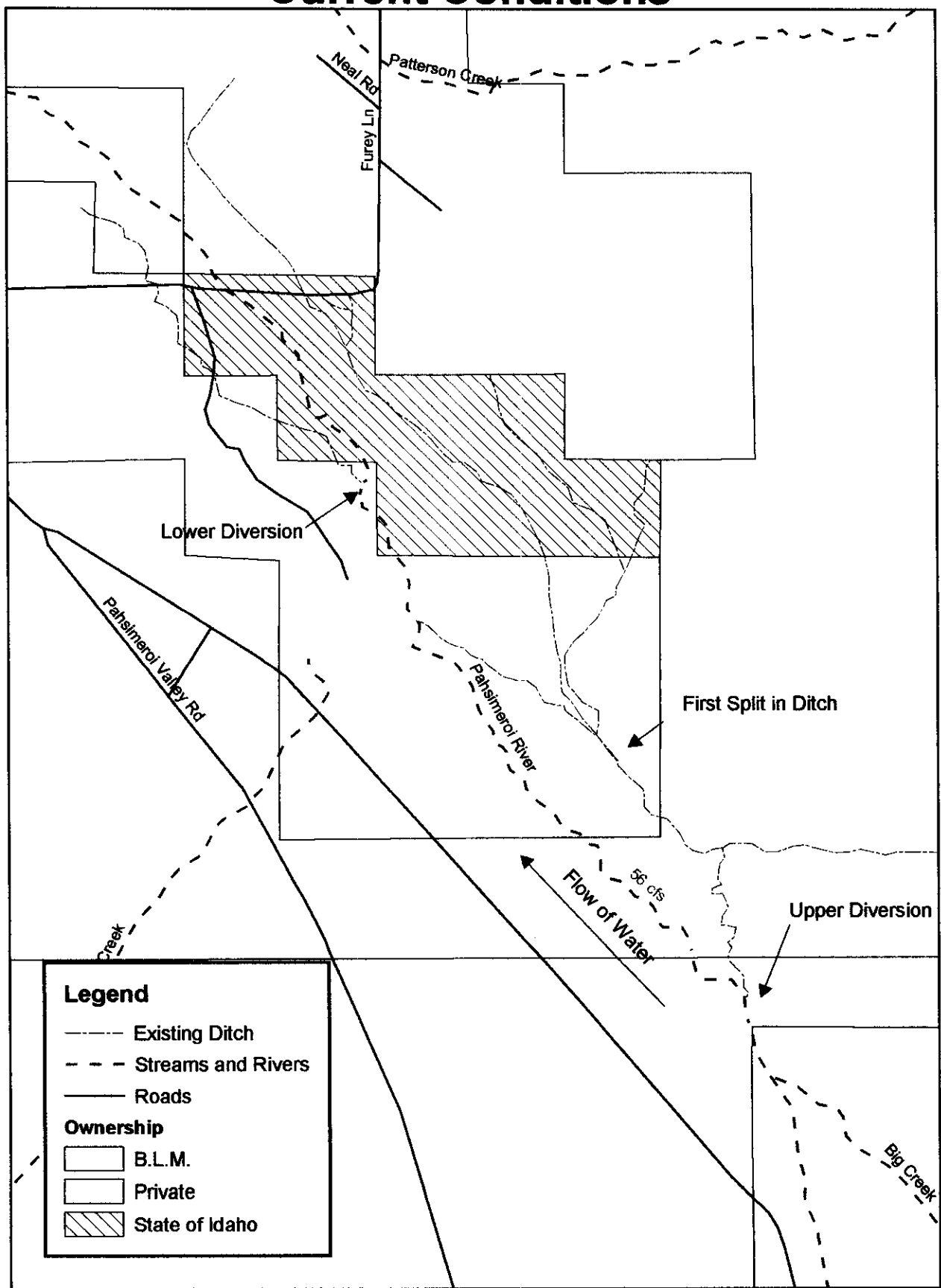
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Furey Lane Project Current Conditions



Legend

- Existing Ditch
- Streams and Rivers
- Roads

Ownership

- B.L.M.
- Private
- State of Idaho

Date Printed: June 9, 2004

1:24,000

1 inch equals 2,000 feet



0 0.25 0.5 1 Miles

HUC	BASIN	STREAM	LOCATION	DATUM	ZONE	UTM_EA	UTM_NOFDATE_	FILE_NAME	METHOD	FLOW__ OWNERSHIP	COMMENTS
17060201	Upper Salmon	Challis Creek	SChac-12 ditch	NAD 27	11	710411	4938742	7/2/2003 BHLCH1	Sontek	2 Burchill land- Van Kampe	returns to creek at blowoff
17060201	Upper Salmon	Challis Creek	SChac-15 ditch	NAD 27	11	710155	4938668	7/2/2003	weir	0 Burchill owns, operates	
17060201	Upper Salmon	Bear Creek	SChacBC-02 ditch	NAD 27	11	710668	4938947	7/2/2003 BHLBC1	Sontek	3 Burchill owns - Axline,	returns to creek at blowoff
17060201	Upper Salmon	Bear Creek	SChacBC-03 ditch	NAD 27	11	707978	4938807	7/2/2003 BC2	Sontek	0 USFS -Thomas operates	headgate only partially ope
17060201	Upper Salmon	Bear Creek	SChacBC-04 ditch	NAD 27	11	707672	4938925	7/2/2003 BC3	Sontek	2 USFS-Thomas,Urban, Dale	ditch almost full
17060203	Middle Salmon Panthe	Hat Creek	HC-D(map) ditch	NAD 27	11	703700	4966198	6/25/2003 HAT CK D ditch	Swiffer	2 Fred Crabtree owns-opera	
17060203	Middle Salmon Panthe	Panther Creek	SPaC-01 ditch	NAD 27	11	703260	4984734	6/25/2003 SPAC-01	Swiffer	6 Clay Jones	ditch over full-difficult m
17060203	Middle Salmon Panthe	Panther Creek	SPaC-02 ditch	NAD 27	11	708901	4984085	6/25/2003 SPAC-02	Swiffer	3 USFS- Jones operates	almost full ditch
17060203	Middle Salmon Panthe	Panther Creek	SPaC-03 ditch	NAD 27	11	708994	4980974	6/25/2003 SPAC-03	Swiffer	3 USFS- Jones operates	full ditch
17060203	Middle Salmon Panthe	Panther Creek	SPaC-04 ditch	NAD 27	11	709206	4980645	6/25/2003 SPAC-04	Swiffer	1 USFS- Jones operates	almost full ditch
17060203	Middle Salmon Panthe	Panther Creek	SPaC-05 ditch	NAD 27	11	711006	4976486	6/25/2003 SPAC-05	Swiffer	1 Clay Jones	almost full ditch
17060203	Middle Salmon Panthe	Panther Creek	SPaC-06 ditch	NAD 27	11	710861	4975989	6/25/2003 SPAC-06	Swiffer	1 Clay Jones	full ditch
17060203	Middle Salmon Panthe	Panther Creek	SPaC-07 ditch	NAD 27	11	711117	4975547	6/25/2003 SPAC-07	Swiffer	1 USFS- Jones operates	full ditch
17060203	Middle Salmon Panthe	Moyer Creek	SPaCMC-01 ditch	NAD 27	11	712571	4979851	6/25/2003 SPACMC-01	Swiffer	2 USFS- Jones operates	almost full ditch
17060202	Pahsimeroi	Pahsimeroi River	p-09 ditch	NAD 27	12	265674	4942208	5/16/2003 P09DCH	Swiffer	17	
17060202	Pahsimeroi	Pahsimeroi River	instream above Goldbe	NAD 27	12	288398	4909500	6/26/2003 PAHABOVE	Sontek	30 BLM	taken above highest Goldber
17060202	Pahsimeroi	Pahsimeroi River	instream below Goldbe	NAD 27	12	288560	4911819	6/26/2003 PABELO	Sontek	4 BLM	taken below lowest Goldberg
17060202	Pahsimeroi	Pahsimeroi River	instream below Goldbe	NAD 27	12	288452	4912794	6/26/2003 PAHB2	Sontek	2 BLM	taken .6 miles below lowest
17060202	Pahsimeroi	Pahsimeroi River	instream below Goldbe	NAD 27	12	287745	4914268	6/26/2003 PAHBW3	Sontek	2 BLM	taken 1.6 miles below lowes
17060202	Pahsimeroi	Pahsimeroi River	instream below Goldbe	NAD 27	12	287208	4915740	6/26/2003 PAHBW4	Sontek	0 BLM	taken 2.6 miles below lowes
17060202	Pahsimeroi	Pahsimeroi River	PGB-01 ditch	NAD 27	12	288603	4911802	5/30/2003	weir	6 BLM	just below POD
17060202	Pahsimeroi	Pahsimeroi River	PGB-02 ditch	NAD 27	12	288716	4911350	5/30/2003	Swiffer	6 BLM	just below POD
17060202	Pahsimeroi	Pahsimeroi River	PGB-03 ditch	NAD 27	12	288620	4910791	5/30/2003	Swiffer	48 BLM	just below POD
17060202	Pahsimeroi	Pahsimeroi River	PGB-04 ditch	NAD 27	12	288446	4909779	5/30/2003	Swiffer	1 BLM	just below POD
17060202	Pahsimeroi	Pahsimeroi River	PGB-01 ditch below	NAD 27	12	290168	4916061	5/30/2003 PG1	Sontek	4	at Goldberg road
17060202	Pahsimeroi	Pahsimeroi River	PGB-02 ditch below	NAD 27	12	290790	4914474	5/30/2003 PG3.2	Sontek	5	at Goldberg road
17060202	Pahsimeroi	Pahsimeroi River	PGB-03 ditch below	NAD 27	12	290298	4915759	5/30/2003 PG2	Sontek	28	at Goldberg road
17060202	Pahsimeroi	Pahsimeroi River	PGB-04 ditch below	NAD 27	12	293211	4913216	5/30/2003 DC1	Sontek	1	at Goldberg road
17060202	Pahsimeroi	Pahsimeroi River	PGBDC-01	NAD 27	12	291841	4913493	5/30/2003 PG4	Sontek	3	at Goldberg road
17060202	Pahsimeroi	Donkey Creek	instream below Robbin	NAD 27	12	275805	4930892	5/30/2003	Swiffer	56	40 yards below Robbins dive
17060202	Pahsimeroi	Pahsimeroi River	PFL-01 ditch	NAD 27	12	275849	4930892	5/30/2003 FLDT.C.2	Sontek	24	full ditch
17060202	Pahsimeroi	Pahsimeroi River	PFL-01 split west dit	NAD 27	12	275254	4932044	5/30/2003	Swiffer	14	overtopping ditch
17060202	Pahsimeroi	Pahsimeroi River	PFL-01 split center d	NAD 27	12	275254	4932044	5/30/2003 FL3WAY.2	Sontek	17	
17060202	Pahsimeroi	Pahsimeroi River	PFL-01 split east dit	NAD 27	12	275254	4932044	5/30/2003 FL3WAY.3	Sontek	10	
17060202	Pahsimeroi	Pahsimeroi River	instream- Big Creek a	NAD 27	12	275773	4931533	5/30/2003 BIGXFL	Sontek	22	
17060202	Pahsimeroi	Patterson Creek	instream above PPC-04	NAD 27	12	284916	4933236	3/28/2003 PATT.2A	Sontek	6 Bradley Mining	Big Creek dumps into Furey
17060202	Pahsimeroi	Patterson Creek	PPC-01 ditch	NAD 27	12	284606	4933199	5/16/2003 PAT01.DIT	Sontek	5 Bradley Mining owns, Zie	above highest diversion
17060202	Pahsimeroi	Patterson Creek	PPC-02 ditch	NAD 27	12	284622	4933179	5/16/2003 PAT-01.CRK	Sontek	1 Bradley Mining	
17060202	Pahsimeroi	Patterson Creek	PPC-03 ditch	NAD 27	12	284752	4933129	5/16/2003	Swiffer	6 Bradley- G.Miller operat	
17060202	Pahsimeroi	Patterson Creek	instream above PPC-0	NAD 27	12	284847	4933151	5/16/2003	Swiffer	21 Bradley- Circle Pie oper	PPC-04 (pipe diversion) not
17060202	Pahsimeroi	Patterson Creek	instream below highes	NAD 27	12	284925	4933228	5/16/2003	Swiffer	32 Bradley- R.Bergman opera	
17060202	Pahsimeroi	Little Morgan C	instream below highes	NAD 27	12	267614	4948359	3/28/2003 LM1	Sontek	7 USFS	second measurement for conf
17060202	Pahsimeroi	Little Morgan C	PLMCMNF-03 ditch	NAD 27	12	270233	4950829	6/2/2003 ULMC3	Sontek	4 BLM owns- Pat,Karen Simp	highest diversion on North
17060202	Pahsimeroi	Little Morgan-	PLMCMNF-03 ditch	NAD 27	12	270011	4950765	6/2/2003 DCHBLW	Sontek	4 BLM owns- Pat,Karen Simp	measurement taken just abov
17060202	Pahsimeroi	Little Morgan-	PLMCMNF-02 ditch	NAD 27	12	270125	4950748	6/2/2003 ULMC2	Sontek	1 Simpson owns, operates	this is alternative diversi
17060202	Pahsimeroi	Big Gulch	in stream above split	NAD 27	12	297252	4912656	6/4/2003 BG.ABV	Sontek	8	
17060202	Pahsimeroi	Big Gulch	PBG ditch split to no	NAD 27	12	297219	4912668	6/4/2003 BG1	Sontek	3	taken below split in ditch
17060202	Pahsimeroi	Big Gulch	PBG ditch split to so	NAD 27	12	297216	4912649	6/4/2003 BG2	Sontek	4	taken below split in ditch
17060204	Lemhi	Pratt Creek	LPC-05 ditch	NAD 27	12	288888	4995785	5/29/2003 PC1DTC.2	Sontek	9 Moulton owns- Snook oper	full ditch
17060204	Lemhi	Pratt Creek	LPC-07 ditch	NAD 27	12	288888	4995785	5/29/2003 PC2DTC	Sontek	12 P Moulton	ditch flow includes flow fr
17060204	Lemhi	Pratt Creek	LPC-08 ditch	NAD 27	12	288888	4995785	5/29/2003 PC2DTC.2	Sontek	7 P Moulton	taken at POD- flow actually
17060204	Lemhi	Pratt Creek	LPC-09 ditch	NAD 27	12	290505	4996214	5/29/2003 PC3DTC	Sontek	2 P Moulton	almost full ditch
17060204	Lemhi	Pratt Creek	LPC-10 ditch	NAD 27	12	290946	4996510	5/29/2003 P4DTC	Sontek	3 P Moulton	over full ditch
17060204	Lemhi	Pratt Creek	LPC-11 ditch	NAD 27	12	291262	4997045	5/28/2003 PC6DTC	Sontek	2 P Moulton	full ditch
17060204	Lemhi	Pratt Creek	LPC-13 ditch	NAD 27	12	291559	4997616	5/27/2003	Sontek	16 P Moulton	full ditch
17060204	Lemhi	Pratt Creek	LKC-14 ditch	NAD 27	12	291712	4997821	5/27/2003 P9DTC	Swiffer	17 BLM- Moulton operates	guage reading approx 15cfs
17060204	Lemhi	Kenney Creek	LKC-01 ditch	NAD 27	12	290790	4989111	5/27/2003 KC1DTC	Sontek	4 BLM- Moulton operates	full ditch
17060204	Lemhi	Kenney Creek	LKC-02 ditch	NAD 27	12	291882	4989774	5/27/2003 KC2RPT2.DTC	Sontek	2 Kenney Creek Ranch- B.An	flow includes waste water-
17060204	Lemhi	Kenney Creek	LKC-03 ditch	NAD 27	12	294138	4991133	5/27/2003 KC3DTC	Sontek	19 Kenney Creek Ranch- Don	full ditch
17060204	Lemhi	Kenney Creek	in stream below LKC-	NAD 27	12	294115	4991104	5/27/2003 KCSRML.BLW	Sontek	4 BLM- Hatch operates	over full ditch- blowoff b
17060204	Lemhi			NAD 27	12					58 BLM- Hatch operates	high water

17060204	Lemhi	Hawley Creek	LHC-01 ditch	NAD 27	12	318606	4949484	5/28/2003	HC1.DTC	Sontek	3 B.Kauer,K.Tyler operate	taking all water at POD- Ka
17060204	Lemhi	Hawley Creek	LHC-02 ditch	NAD 27	12	321576	4947847	5/28/2003	HC2.DTC	Sontek	3 BLM- Kauer operates	(McFarland,Lower Hawley dit
17060204	Lemhi	Hawley Creek	LHC-03 ditch	NAD 27	12	324362	4947269	5/28/2003	HC3.DTC	Sontek	8 BLM- Kauer operates	permanent diversion- new st
17060204	Lemhi	Hawley Creek	LHC-03 ditch	NAD 27	12	324362	4947269	5/28/2003	HC3.DTC	Sontek	9 BLM- Kauer operates	second measurement for conf
17060204	Lemhi	Hawley Creek	LHC-04 ditch	NAD 27	12	325440	4947453	5/28/2003	HC4.DTC.2	Sontek	14 BLM- Kauer operates	full ditch
17060204	Lemhi	Hawley Creek	LHC-05 ditch	NAD 27	12	329544	4948467	5/28/2003	HC5.DTC	Sontek	0 USFS- Kagel operates	
17060204	Lemhi	Lemhi River	L-03 ditch	NAD 27	12	276924	5004477	5/20/2003		Swoffer	21 L.Cockrell owns, C.Nelso	Screen Bypass
17060204	Lemhi	Lemhi River	instream above L-03	NAD 27	12	276969	5004456	5/20/2003	L03RIV2.ABV	Sontek	35	Screen Bypass
17060204	Lemhi	Lemhi River	instream below L-03	NAD 27	12	276830	5004419	5/20/2003	L03RIV.BLW	Sontek	13	Screen Bypass
17060204	Lemhi	Lemhi River	L-03A ditch	NAD 27	12	278872	5003531	5/23/2003		Swoffer	11 Fisher owns, French oper	Screen Bypass
17060204	Lemhi	Lemhi River	instream above L-03A	NAD 27	12	278880	5003413	5/23/2003	L3ARIV.ABV	Sontek	38	Screen Bypass
17060204	Lemhi	Lemhi River	instream below L-03A	NAD 27	12	278911	5003544	5/23/2003	L3ARIV2BLW	Sontek	22	Screen Bypass
17060204	Lemhi	Lemhi River	L-08A ditch	NAD 27	12	283656	4999052	5/20/2003		Swoffer	25 Eagle Valley Ranch owns,	in ditch below diversion, a
17060204	Lemhi	Lemhi River	instream above L-08A	NAD 27	12	283564	4999094	5/20/2003		Swoffer	22	in ditch below headgate/bio
17060204	Lemhi	Lemhi River	instream below L-08A	NAD 27	12	283689	4999030	5/20/2003	L8ARIV.ABV	Sontek	13	Screen Bypass
17060204	Lemhi	Lemhi River	instream above L-08A	NAD 27	12	283623	4999017	5/20/2003	L8ARIV2.BLW	Swoffer	53	Screen Bypass
17060204	Lemhi	Lemhi River	instream below L-09	NAD 27	12	283881	4998925	5/20/2003	L9RIV.ABV	Sontek	76	Screen Bypass
17060204	Lemhi	Lemhi River	instream below L-09	NAD 27	12	283808	4998976	5/20/2003	L9RIV.BLW	Sontek	62	Screen Bypass

Furey Lane Diversion Project
Water Rights Summary

June 9, 2004

Basin	Sequence	Suffix	Basis	Priority Date	Rate(cfs)	Source	Owner(s)
Upper Diversion							
73	10061		Decreed	1886-05-01	6.8	PAHSIMEROI RIVER	FOLSOM, DAVID L (Current); FOLSOM, MELINDA W (Current);
73	10071		Decreed	1886-05-01	6.4	PAHSIMEROI RIVER	O NEAL, DON M (Current); O NEAL, VIOLA M (Current)
73	152 A		Decreed	1886-05-01	7.2	PAHSIMEROI RIVER	WATSON, CATHERINE M (Current); WATSON, LEE J (Current)
73	10100		Beneficial	1886-05-01	7.2	PAHSIMEROI RIVER	WATSON, CATHERINE M (Current); WATSON, LEE J (Current)
73	157		Decreed	1886-05-01	4.4	PAHSIMEROI RIVER	SULPHUR CREEK LIVESTOCK (Current)
Lower Diversion							
73	2155		License	1963-02-27	6.4	PAHSIMEROI RIVER	SULPHUR CREEK LIVESTOCK (Current)
73	158		Decreed	1888-05-01	5.0	BIG CREEK	SULPHUR CREEK LIVESTOCK (Current)
73	2102		License	1915-07-19	2.4	BIG CREEK	SULPHUR CREEK LIVESTOCK (Current)
73	2153		License	1959-12-14	12.8	BIG CREEK	SULPHUR CREEK LIVESTOCK (Current)
Other Associated Water Rights							
73	156 A		Decreed	1888-05-01	3.0	BIG CREEK	O NEAL, DON M (Current); O NEAL, VIOLA M (Current)
73	153 A		Decreed	1886-05-01	5.0	BIG CREEK	WATSON, CATHERINE M (Current); WATSON, LEE J (Current)
73	2044		License	1910-08-16	2.4	BIG CREEK	WATSON, CATHERINE M (Current); WATSON, LEE J (Current)
73	10098		Decreed	1908-02-08	2.4	BIG CREEK	WATSON, CATHERINE M (Current); WATSON, LEE J (Current)
73	10099		Decreed	1910-08-16	0.8	BIG CREEK	WATSON, CATHERINE M (Current); WATSON, LEE J (Current)