

12/18/2006

IDAHO DEPARTMENT OF WATER RESOURCES  
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 2-224

NAME AND ADDRESS: STATE OF IDAHO  
IDAHO WATER RESOURCE BOARD  
322 E FRONT ST  
PO BOX 83720  
BOISE ID 83720-0098

SOURCE: SNAKE RIVER TRIBUTARY: COLUMBIA RIVER

QUANTITY: 1,700.000 CFS

The quantity of this right is the average daily flow measured by the Murphy gaging station near river mile 453.5.

The rights listed below are limited to a total combined diversion rate 5,900 cfs established by the Swan Falls Agreement codified by §42-203B, Idaho Code. Combined Right Nos.: 2-100, 2-201, 2-223, 2-224, 2-4000A, 2-4001A, and 2-2032A.

PRIORITY DATE: 07/01/1985

POINT OF DIVERSION:

T01S R01W S35 NWNESE Lot 5 End of Stream Flow Within ADA County

T01S R01W S35 NWNESE Lot 5 Begin of Stream Flow Within ADA County

PURPOSE AND  
PERIOD OF USE:

| <u>PURPOSE OF USE</u>                                   | <u>PERIOD OF USE</u> | <u>QUANTITY</u> |
|---------------------------------------------------------|----------------------|-----------------|
| MINIMUM STREAM FLOW                                     | 11/01 3/31           | 1,700.000 CFS   |
| Use of water under this right shall be non-consumptive. |                      |                 |

PLACE OF USE:

Place of use is within the reach above and below benefiting from the minimum stream flow at the point of measurement for this right.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Statute

## Swan Falls Water Rights Summary Sheet

| Right No. | Priority Date | Diversion Rate | Cumulative Diversion Rate | Amount Held in Trust | Period of Use |
|-----------|---------------|----------------|---------------------------|----------------------|---------------|
| 2-100     | 1-17-1900     | 2150 cfs       | 2150 cfs                  | 0 cfs                | 1-1 to 12-31  |
| 2-4000A   | 1-17-1900     | 1840 cfs       | 3990 cfs                  | 90 cfs               | 4-1 to 10-31  |
| 2-4000A   | 1-17-1900     | 1840 cfs       | 3990 cfs                  | 0 cfs                | 11-1 to 3-31  |
| 2-4000B   | 1-17-1900     | 90 cfs         | 3990 cfs                  | 90 cfs               | 4-1 to 10-31  |
| 2-4001A   | 4-17-1900     | 1460 cfs       | 5450 cfs                  | 1460 cfs             | 4-1 to 10-31  |
| 2-4001A   | 4-17-1900     | 1460 cfs       | 5450 cfs                  | 0 cfs                | 11-1 to 3-31  |
| 2-4001B   | 4-17-1900     | 1460 cfs       | 5450 cfs                  | 1460 cfs             | 4-1 to 10-31  |
| 2-2032A   | 7-29-1919     | 2950 cfs       | 8400 cfs                  | 2950 cfs             | 4-1 to 10-31  |
| 2-2032A   | 7-29-1919     | 2950 cfs       | 8400 cfs                  | 2800 cfs             | 11-1 to 3-31  |
| 2-2032B   | 7-29-1919     | 2950 cfs       | 8400 cfs                  | 2950 cfs             | 4-1 to 10-31  |
| 2-2032B   | 7-29-1919     | 2950 cfs       | 8400 cfs                  | 2800 cfs             | 11-1 to 3-31  |

2-100            2150 cfs from 1-1 to 12-31 for Idaho Power

2-4000A        1750 cfs from 4-1 to 10-31 for Idaho Power  
1840 cfs from 11-1 to 3-31 for Idaho Power

2-4000B        90 cfs is from 4-1 to 10-31 for State of Idaho

2-4001A        1460 cfs from 11-1 to 3-31 for Idaho Power

2-4001B        1460 cfs 4-1 to 10-31 for State of Idaho

2-2032A        150 cfs 11-1 to 3-31 for Idaho Power

2-2032B        4000 cfs 4-1 to 10-31 for State of Idaho  
3850 cfs 11-1 to 3-31 for State of Idaho

**It is the policy of Idaho to quantify all federal and tribal water rights within the state.**

**Comment:** Federal agency and tribal water rights claims in Idaho must be identified and quantified to plan for continued use of existing water rights and future needs. As a part of each effort to identify and quantify federal agency and tribal water rights, the protection of existing water rights must be considered. The State should seek to negotiate these rights whenever appropriate.

Executive Order No. 91-8 designated the Idaho Water Resource Board as lead agency to coordinate state activities related to the negotiation of reserved water rights with Idaho Tribes. The successful negotiations concluded with the Shoshone-Bannock over the Fort Hall water rights serves as an example of a negotiated settlement.

#### 4K - WATER RESOURCE MANAGEMENT

**It is the policy of Idaho that the diversion and use of water occur only in accordance with water rights issued by the state and federal reserved rights established by the courts. Adjudication of water rights through the state courts should be completed where necessary to fully define and quantify the rights.****Comment:** The adjudication of water rights is often necessary to sort out overlapping or incomplete claims for the use of surface and ground water resources. These conflicts need to be resolved if the resources are to be managed effectively. Effective programs can then be applied to assure that water is diverted and used in accordance with valid rights.

### River Basins Group

The River Basins Group contains resource management policies specific to the state's three major river basin networks: the Snake River Basin, the Bear River Basin in southeast Idaho, and the northern Panhandle river basins.

#### *Snow River Basin*

#### 5A - SWAN FALLS AGREEMENT

**It is the policy of Idaho that the Swan Falls agreement between the state and Idaho Power Company establishes the framework for water management in the Snake River basin.**

**Comment:** The Swan Falls Agreement was signed in 1985 by the State of Idaho and the Idaho Power Company. The Idaho Water Resource Board is committed to continued implementation of this agreement. Minimum flows in the Snake River are crucial to the Swan Falls Agreement. During portions of low water years, river flows downstream from Milner Dam to Swan Falls Dam consist almost entirely of ground water discharge. The Eastern Snake Plain aquifer which provides this water must therefore be managed conjunctively as an integral part of the river system. This agreement also calls for the adjudication of water rights in the Snake River Basin to enhance the state's water management capabilities.

#### 5B - SNAKE RIVER MINIMUM FLOWS

**It is the policy of Idaho that minimum average daily flows at the Murphy gaging station shall meet or exceed 3,900 cfs from April 1 to October 31 and 5,600 cfs from November 1 to March 31. The average daily flow measured at the Weiser gage shall not be less than 4,750 cfs. A minimum average daily flow of 5,000 cfs at Johnson's Bar shall be maintained and an average daily flow of 13,000 cfs shall be maintained at Lime Point (river mile 172) a minimum of 95 percent of the time. The exercise of water rights above Milner Dam has and may reduce flow at the dam to zero.**

**Comment:** In licensing the Milner hydropower project, the Federal Energy Regulatory Commission (FERC) specified "target flows" for the Snake River at Milner. The target flow must be satisfied only when water in excess of prior irrigation rights is available. Water for target flows may be acquired from storage or may be leased from the Upper Snake Rental Pool. The State should seek to acquire water whenever it becomes available in order to mitigate the impacts of low flow below the Dam.

The minimum flows established for the Snake River at the Murphy and Weiser gaging stations are management and permitting constraints; they further insure that the State will be able to assure an adequate hydropower resource base and better protect other values recognized by the State such as fish propagation, recreation, and aesthetic interests, all of which would be adversely impacted by an inadequate stream flow.

The minimum flows established for Johnson's Bar and Lime Point are contained in the original Federal Power Commission (now FERC) license for the Hells Canyon hydropower complex. By adopting these flows, the Idaho Water Resource Board recognizes the importance of minimum flows to downstream uses and makes their maintenance a matter of state water policy. Lower flows may be permitted at Lime Point during the months of July, August, and September, during which time the operation of the Hells Canyon dams shall be in the best interest of power and navigation as determined by the Corps of Engineers and Idaho Power Company as owner of the Hells Canyon power facilities.

The Idaho Water Resource Board recognizes that FERC license requirements relate primarily to the provision of water for navigation and power and not to other instream uses. The Board realizes that the state has no authority to require releases of stored water by the power company, but believes the license conditions serve the public interest. When the Hells Canyon hydropower complex is relicensed, the Water Board will reevaluate the public interest.

SNAKE RIVER flows above the hydropower right at any Idaho Power facility are considered unappropriated and therefore are not held in trust by the state. This distinction is further addressed in Policy 5C.

#### 5C - SNAKE RIVER TRUST WATER

**It is the policy of Idaho that water held in trust by the state pursuant to Idaho Code 42-203B be reallocated to new uses in accordance with the criteria established by Idaho Code 42-203A and 42-203C.**

**Comment:** The agreement between the State of Idaho and Idaho Power Company dated October 25, 1984 provides that Idaho Power's claimed water right of 8,400 cubic feet per second (cfs) at the Swan Falls Dam may be reduced to either 3,900 cfs or 5,600 cfs during set periods of the year. The claimed water right of 8,400 cfs is deemed appropriated and the amount above the minimum flow established in Policy 5B up to the 8,400 cfs is held in trust by the state. The trust water area is defined by Rule 30 in the Idaho Department of Water Resources' Rules for Water Appropriation.

The agreement further provides that Idaho Power's claimed water rights at facilities upstream from Swan Falls shall be considered satisfied when the company receives the minimum flow specified in Policy 5B at the Murphy gaging station. The 8,400 cfs claim of the power company has not historically been available during summer months.

The 8,400 cfs claimed right at Swan Falls is reduced by the agreement to that flow available after satisfying all applications or claims that demonstrate water was beneficially used prior to Oct. 1, 1984, even if such uses would violate the minimum flows established in Policy 5B. Any remaining water above these minimum flows may be reallocated to new uses by the state providing such use satisfies existing Idaho law.

However, due to continued spring flow decline in the Thousand Springs area since the late 1950s, water availability to satisfy additional beneficial uses is limited. A moratorium, as defined in Idaho Code 42-

1806, on further water development has been in place since May 15, 1992.

#### 5D - SNAKE RIVER BASIN DCMI

**It is the policy of Idaho that 150 cfs of the water held in trust by the state above Swan Falls Dam pursuant to Policy 5C be reallocated to meet future domestic, commercial, municipal, and industrial consumptive uses in accordance with state law. Comment: While most DCMI (Domestic, Commercial, Municipal, and Industrial) water uses are negligibly consumptive, future growth in Idaho's population and commercial and industrial expansion will require an assured supply of water.**

A continuous flow of 150 cfs provides approximately 108,600 acre-feet of water per year. This volume of water is assigned to consumptive uses within the basin for domestic, commercial, municipal, and other industrial purposes. Industrial purposes include processing, manufacturing, research and development, and cooling.

During the ten-year period from 1985 to 1995, about 120 cfs was developed for DCMI uses within the trust water area. Adequate records should be kept and reviewed so that this allocation can be modified as necessary. Increases in the DCMI allocation, if necessary, will reduce the amount of water available for agricultural uses. The allocation will be reviewed as part of every Water Plan update.

#### 5E - SNAKE RIVER BASIN AGRICULTURE

**It is the policy of Idaho that appropriated water held in trust by the state pursuant to Policy 5C, less the amount of water necessary to provide for present and future DCMI uses as set forth in Policy 5D, shall be available for reallocation to meet new and supplemental irrigation requirements which conform to Idaho Code 42-203A, 203B, 203C, and 203D.**

**Comment:** During the ten-year period from 1985 to 1995, about 45,600 acres of new irrigation development occurred within the trust water area. Data are not available to estimate the number of acres that received supplemental water during this period.

Idaho Code Section 42-203C limits the rate of new development in the basin above the Murphy gaging

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

IN RE THE GENERAL ADJUDICATION  
OF RIGHTS TO THE USE OF WATER FROM  
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A02-00224  
Date Received: 5/22/1988  
Receipt No: C002305  
Received By: DP 8/22/88

NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW

1. Name: STATE OF IDAHO 208-334-7900  
Address: IDAHO WATER RESOURCE BOARD  
STATEHOUSE  
BOISE, ID 83720

2. Date of Priority: JUL 01, 1985

3. Source: SNAKE RIVER Trib. to: COLUMBIA RIVER

4. Point of Diversion:

| Township                                 | Range | Section | 1/4 of 1/4 of 1/4 | Lot | County |
|------------------------------------------|-------|---------|-------------------|-----|--------|
| Beginning Point of Minimum Instream Flow |       |         |                   |     |        |
| 01S                                      | 01W   | 35      | NW NE SE          | 5   | OWYHEE |
| Ending Point of Minimum Instream Flow    |       |         |                   |     |        |
| 01S                                      | 01W   | 35      | NW NE SE          | 5   | OWYHEE |

5. Description of diverting works:  
NONE

6. Water is used for the following purposes:

| Purpose               | From  | To    | C.F.S    | (or) | A.F.A. |
|-----------------------|-------|-------|----------|------|--------|
| MINIMUM INSTREAM FLOW | 11/01 | 03/31 | 1700.000 |      |        |

7. Total Quantity Appropriated is:  
1700.000 C.F.S. (and/or) A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:  
INSTREAM FLOW

A02-00224

Page 1

Date: 06/30/88

SCANNED  
AUG 22 2006

MICROFILMED  
AUG 07 1992

10. Place of Use:

| Township | Range | Section | 1/4 of 1/4 | Lot | Use | Acres |
|----------|-------|---------|------------|-----|-----|-------|
|----------|-------|---------|------------|-----|-----|-------|

11. Place of use in counties:

12. Do you own the property listed above as place of use? NO

13. Other Water Rights Used:  
02-00201, 02-00223

14. Remarks:

THE PRACTICAL EFFECT OF THE SWAN FALLS AGREEMENT SIGNED OCTOBER 24, 1984 IS TO PROVIDE MINIMUM FLOWS IN THE SNAKE RIVER MEASURED AT THE MURPHY GAGING STATION WITH A PRIORITY DATE THE SAME AS THE IDAHO POWER COMPANY'S UNSUBORDINATED WATER RIGHT AT SWAN FALLS DAM. THIS INSTREAM FLOW RIGHT DECREED BY LEGISLATIVE ADOPTION OF THE STATE WATER PLAN.

15. Basis of Claim: DECREED  
Water Right Number:  
Case Number:  
Court :  
Decree date:

---

Decree Plaintiff

vs.

---

Decree Defendant

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do \_\_\_\_\_ do not ☒ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: 0

For Organizations:

I do solemnly swear or affirm that I am Chairman of  
Title  
IWRB, that I have signed the foregoing  
Organization  
document in the space below as Chairman of  
Title  
IWRB and that the statements contained in the  
Organization  
foregoing document are true and correct.

[Signature]  
Signature of Authorized Agent  
Chairman, IWRB  
Title and Organization  
7/1/88  
Date

State of Idaho )  
County of Ada ) SS.

Subscribed and sworn (or affirmed) before me this 1 day  
of July 19 88

[Signature]  
Notary Public

Seal

Residing at Emmett  
My Commission Expires 5/30/92