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DEPARTMENT OF  
NATURAL RESOURCES

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

COPY

In Re SRBA ) A. Subcase 37-4151  
(Insert water right number)  
)  
Case No. 39576 )  
STANDARD FORM 1  
OBJECTION

NAME AND ADDRESS OF PERSON OBJECTING

Name: Idaho Foundation for Parks and Lands Inc.  
Address: 5657 Warm Springs Ave.  
Boise, ID 83716  
Daytime Phone: 208-344-7141

Name & Address of Attorney, if any:  
Chas F. McDevitt & Miller LLP  
McDevitt & Miller LLP  
420 W. Bannock  
P.O. Box 2564-83701  
Boise, ID 83702

CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Idaho Foundation for Parks and Lands  
Address: 5657 Warm Springs Ave.  
Boise, ID 83716

I object to the following elements as recommended in the Director's Report.

1. ☐ **Name and Address**  
Should be: \_\_\_\_\_
2. ☐ **Source**  
Should be: \_\_\_\_\_
3. ☐ **Quantity**  
Should be: \_\_\_\_\_
4. ☐ **Priority Date**  
Should be: \_\_\_\_\_
5. ☐ **Point of Diversion**  
Should be: \_\_\_\_\_
6. ☐ **Instream Flow Beginning and Ending Point**  
Should be: \_\_\_\_\_

7. X **Purpose(s) of Use**  
Should be: Wildlife Habitat
8. ☐ **Period of Year**  
Should be: \_\_\_\_\_
9. ☐ **Place of Use**  
Should be: \_\_\_\_\_
- 10 X **I object because:**  
☐ This water right Should not exist.  
X **This water right was not recommended, but Should be recommended with the elements described above.**

**REASONS SUPPORTING OBJECTIONS(S):**

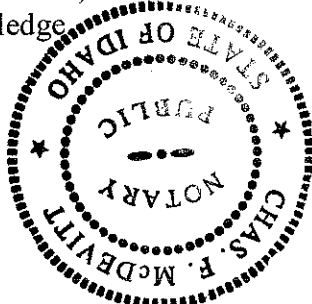
Director's Report finds "no beneficial use", this is error! Claim filed for "Wildlife Habitat". Exhibits 1, 2 & 3 show professional Hydrologist's review of "Beneficial Use" in 1991, 1994, 2004, 2007, reviewed by Water Master; all reviews show beneficial use.

**VERIFICATION**

State of Idaho                     )  
                                              )ss.  
County of Ada                    )

Sharon Hubler, duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and(6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.



Sharon Hubler  
Sharon Hubler, Executive Director  
Idaho Foundation for Parks and Lands, Inc.

Subscribed and sworn to before me on: November 09 2007

Chas F McDewitt Notary Public for Idaho  
Residing at: Bose ID  
My Commission Expires: 10/26/2010

## CERTIFICATE OF MAILING

I certify that on November 9<sup>th</sup>, 2007, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District court  
Snake River Basin Adjudication  
253 Third Avenue North  
PO Box 2707  
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: Idaho Foundation for Parks and Lands Inc.  
Address: 5657 Warm Springs Ave.  
Boise, ID 83716

3. Copies to:

IDWR Document Depository  
PO Box 83720  
Boise, ID 83720-0098

United States Department of Justice  
Environment & Nat'l Resources Div  
550 W Fort Street, MSC 033  
Boise, ID 83724

Chief, Natural Resources Division  
Office of Attorney General  
PO Box 44449  
Boise, ID 83711-4449

*Heather Houle, Legal Asst.*  
McDEVITT & MILLER LLP

Wood River - Ketchum  
Environmental Reconnaissance

December 1991

by

Karl Gebhardt P.E., Hydrologist  
Joyce Gebhardt, Wildlife Biologist

Resource Systems, Inc.  
10306 Harvester Drive  
Boise, Idaho  
(208) 376-5264

conducted as a gratis study for the  
Idaho Foundation for Parks and Lands  
1020 West Franklin  
Boise, Idaho

Wood River - Ketchum Environmental Reconnaissance  
by  
Karl Gebhardt, Hydrologist  
Joyce Gebhardt, Wildlife Biologist

### Introduction

Property owned by the Idaho Foundation for Parks and Lands (Foundation) was examined on October 4, 1991 by Karl and Joyce Gebhardt, Resource Systems Inc., for the purpose of estimating overall condition and trend of riparian vegetation, water quality, fish and wildlife, and recommending further studies. The property is located adjacent to the Lane Ranches and is considered Lot 6 of the River's Edge preliminary plat and Lot 7 of the final plat described in the Appraisal Report (R. P. Cadiente 1982). Lot 6 has been identified as a non-building lot to be used as a nature preserve.

### Methods

The property was examined by walking through and around most of the northern portion and along the eastern side slope. Photographs were taken and observations made of the resources. Findings and conclusions given are results of comparisons of similar areas based on professional experience.

### Findings

The major features of the property are described as follows:

Wood River (6 acres) - flows in a south east direction for about 2400 feet through the property. About 1000 feet of the river is enclosed on both banks by the central portion of the property. An additional 1600 feet of side channel exists in the northern part of the property. This portion supports a large (1 - 1.5 acre) open water pond.

Mountain - The eastern boundary of the property provides about 33 acres of 40 to 50 percent sloping, western exposure foothills.

Riparian/wetland - The remainder of the property supports a variety of riparian and wetland vegetation. The northern portion is approximately 11 acres and southern portion, 4 acres. The southern portion has historically been used as a grazed meadow.

Vegetation - Overall, the vegetation on the property is in good condition and can be considered a good representation of natural riparian/wetland vegetation communities along the Wood River. Typical communities can be grouped into the following general categories:

Mature Tree dominated (cottonwood)

Shrub and immature tree (willow and cottonwood)

Shrub dominated (willow)

Herbaceous bottom-land (obligate and facultative wetland vegetation)

Herbaceous and shrub upland (along eastern slope)

Emergent wetland (perimeter of river and pond, flooded areas)

Open Water, standing

Open Water, flowing

Vegetation trend appears upwards because of the large amount of young vegetation and dense ground cover. The overall health of the area is excellent, particularly in the northern portion. Much of the younger woody vegetation is attributed to the flooding of 1983 and 1984 and inundation provided by the head gate and beaver dams.

Some of the open, drier areas contain noxious weeds and probably indicate transitional change towards more healthy species.

#### Fish and Wildlife

The vegetation diversity and amounts provides a variety of wildlife habitat. The three essential requirements, food, shelter, and water, are all provided for on this property. The diversity of wildlife is limited only by their ability to get to the property from the surrounding area.

The quality of the fishery in the Wood River through the property contains reasonably good habitat although there is a lack of first class pools. Dewatering from upstream developments may be reducing the fishery if the developments are not providing adequate habitat mitigation. The property's backwater provides some quality rearing habitat that is generally limited in the Wood River system. There is a lot of potential for improving the fishery habitat.

#### Water Quality

The only water quality concern on the property has to do with the ponded water. There may be an over production of algae and aquatic vegetation in the pond due to a number of factors. The major concerns in summer conditions are elevated temperatures and creation of biochemical oxygen demand and depletion of oxygen in the pond, particularly at night. Both of these conditions could affect the fishery in the Wood River downstream from the confluence but are more likely to affect the usage of the flood channel and pond by native fishes.

## Recommendations

### Objective Setting

The Foundation should establish some clear management objectives for this property. The Foundation may also need to be involved in local city and county planning, hearings, and other affairs in order to protect the current natural resource values of the property. Much of the value of the property to wildlife, for example, may be diminished if adjacent wildlife migration corridors are eliminated. Suggested objectives are:

1. Manage the property to provide maximum vegetation health and fish and wildlife production with emphasis on a maintenance of diverse riparian, wetland, and upland habitats.
2. Recognize that management does not mean "do nothing". Some active management may be required to provide or prevent undesirable vegetation and other conditions.
3. Maximize, to the extent possible, native vegetation species and natural physical processes to accommodate habitat diversity requirements.
4. Manage the northern portion of the property to maintain between 0.7 and 1.5 acres of emergent wetland and between 0.7 and 1.5 acres of slow-moving open water.
5. Participate in local and regional planning to insure Foundation interests are adequately represented. There is concern over the amount of development around the property.
6. Excavate additional wetland and open water areas in the southern portion of the property to maximize emergent wetlands and waterfowl habitat.

### Inventory and Monitoring

Inventory determines and in most cases quantifies what you have and is the first part of a continued monitoring program.

Monitoring is conducted for the purpose of checking objectives and determining change. Monitoring should be established and conducted in reasonable frequent manner to prevent problems. A suggested inventory-monitoring program follows.

Oblique aerial photos (color) - three year intervals in late summer or more frequently depending on rate of development around the property or after a major flood event (\$ 250.00 per interval for plane and photos). Follow up with ground-truthing where necessary.

Purpose - to establish an initial quantification of vegetation and physical conditions. Major things to monitor include: area of open water, emergent vegetation, noxious weeds, spread of willow community.

On-site monitoring - Establish photo points on areas of importance (river diversions, bank erosion, vegetation areas, beaver dams). Use personal observation of bird and animal counts. Use day to day observation of dog, livestock, or people trespass. Hormel's location would be ideal for this.

Stream survey - A stream survey every 5 years would show trend within the Wood River. This probably is done by the Idaho Dept. of Fish and Game anyway.

#### Further Study

At this point in time, the only area that requires further study is the open water area in the northern portion of the property. There needs to be some water quality sampling and hydrologic measurements. The study would determine the amount of temperature and/or dissolved oxygen problem caused by the pond and would recommend mitigation to correct the problems.

#### Access Control

Access control is probably the largest concern to wildlife and riparian vegetation. There will be continuing threat from nearby residents, dogs, and perhaps trespass grazing. Access restrictions should probably make accommodations for fishing. Most of the northern portion of the site could be made mostly inaccessible with some strategically placed woody vegetation. The access road should be controlled and not eliminated since an occasional light grazing may be required to maintain or enhance some of the herbaceous and willow communities.

#### Adjacent Property

The Hormel property is being carefully developed and should actually enhance the diversity of the area. We saw no potential for impacts from the Hormel property and, as recommended above, believe that Mr. Hormel can be a valuable part of the property's management.

The Foundation should be concerned over other development in the area and should insist that the restrictions of the "Wildlife Overlay District" be enforced. Water use and instream work should be carefully watched as it has potential to adversely impact the property, particularly the northern flood channel. Channel modification on the Wood River should be challenged.



Figure 2. Overview from eastern slope overlooking property. The foreground is a pond that functions and was formed as an overflow flood channel. A control device located in the center of the left-hand photograph controls the water level in the pond. This pond is quite large compared to overflow flood channel ponds along most rivers of this size. The pond also has a very limited inflow which, with the poor shading, probably leads to water quality problems in the summer.



Figure 3. Margin of cottonwood forest and willow community. The understory is quite heavy throughout and is indicative of this type of riparian community. In many urbanized areas, cottonwood forests do not regenerate because flood control does not provide the disturbance required for cottonwood reproduction. This is not the case at this property and there are lots of younger age cottonwoods that will replace the older trees.



Figure 4. This location is at the base of the slope and shows some dead juvenile cottonwoods. This is a normal scene, particularly with the amount of beaver activity that is going on.

neg 16



Figure 16. The pond accumulates quite a lot of floating material composed of leaves and algae.

neg 14

Figure 16. A closer look at the pond reveals lots of algae and aquatic vegetation. This situation may be detrimental to the native fish in the Wood River because of diurnal dissolved oxygen deficits.



Figure 5. This photograph shows a beaver dam along one of the smaller flood channels. This is considered a fairly typical situation on the Wood River. The narrow channel provides ideal conditions for beaver and the heavy vegetation supplies abundant food, cover and shading. This type of situation would tend to provide positive lowering of water temperatures in the summer.



Figure 6. Backwater from another beaver dam. Note the clarity of the water. The floating material are leaves. This site contained numerous small fish (< 3 inches).

neg 1

Figure 14. The Hormel residence will overlook the pond and provide an opportunity for continuous monitoring of the area.

neg 11

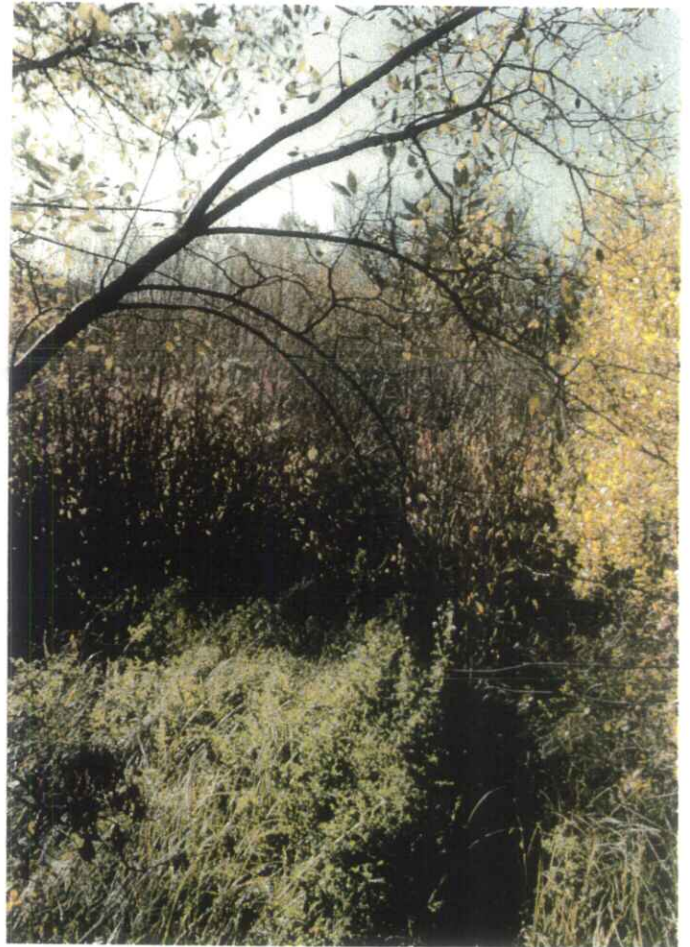
Figure 15. A view from near the Hormel residence. The appearance of the pond may not be pleasing in the summer because of algae. This will be a typical fall scene because of floating leaves.



Figures 7 and 8. This is a overflow flood channel flowing at low flow. It has generally good stability and is growing lots of young vegetation and a variety of riparian and aquatic species. The main Wood River is only a few hundred feet below this point and provides good escape and rearing habitat for fisheries. The vegetation has significantly narrowed the channel (see Figure 8) since the floods of 1983 and 1984. There is a large deposit of fine sediments at the mouth which will provide sites for aquatic and obligate wetland vegetation. During a major flood, this area is expected to be scoured, widened and changed significantly where there is no woody vegetation. The vegetation should reestablish to what is shown in the photographs provided that flooding is not significant.

neg 15

Figure 13. The open water area provides unique habitat to typical Wood River riparian ecosystem. This pond has been artificially enlarged and the water level is controlled with a head gate. The pond probably can be adjusted to provide maximum habitat for waterfowl. Its value as a fishery is uncertain at this time.



Figures 9 and 10 show the typical dense herbaceous and shrub vegetation. The steep slope to the east provides additional diversity of habitat and extended shading in the morning.

neg 3

Figure 11. One problem noted is the presence of noxious weeds. While the situation is not considered serious and is probably recovering naturally, this should be monitored.

neg 4

Figures 12 and 13. The open water area provides unique habitat to typical Wood River riparian ecosystem. This pond has been artificially enlarged and the water level is controlled with a head gate. The pond probably can be adjusted to provide maximum habitat for waterfowl. Its value as a fishery is uncertain at this time.

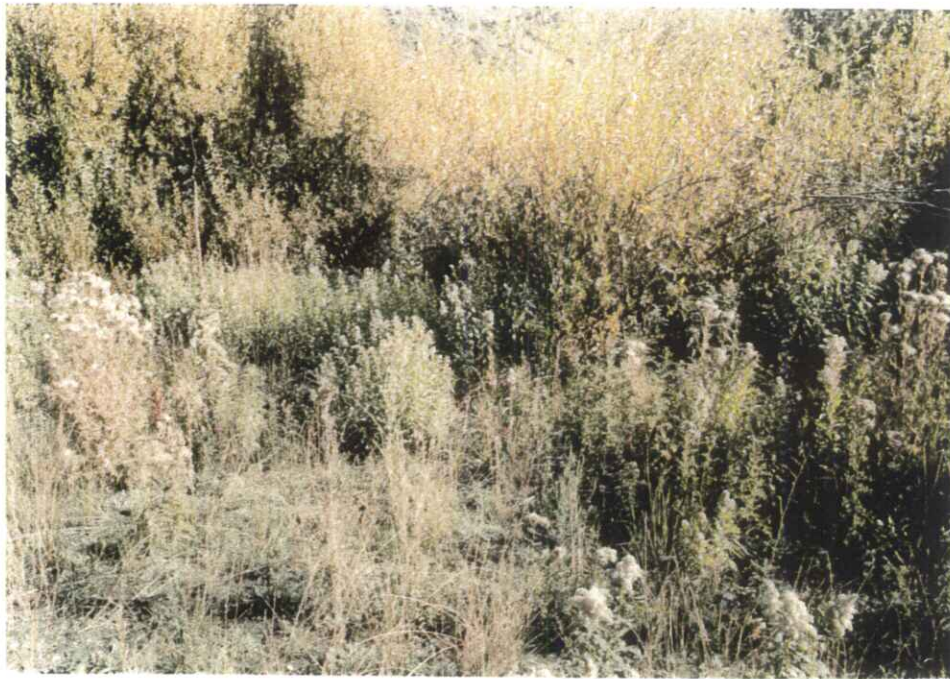
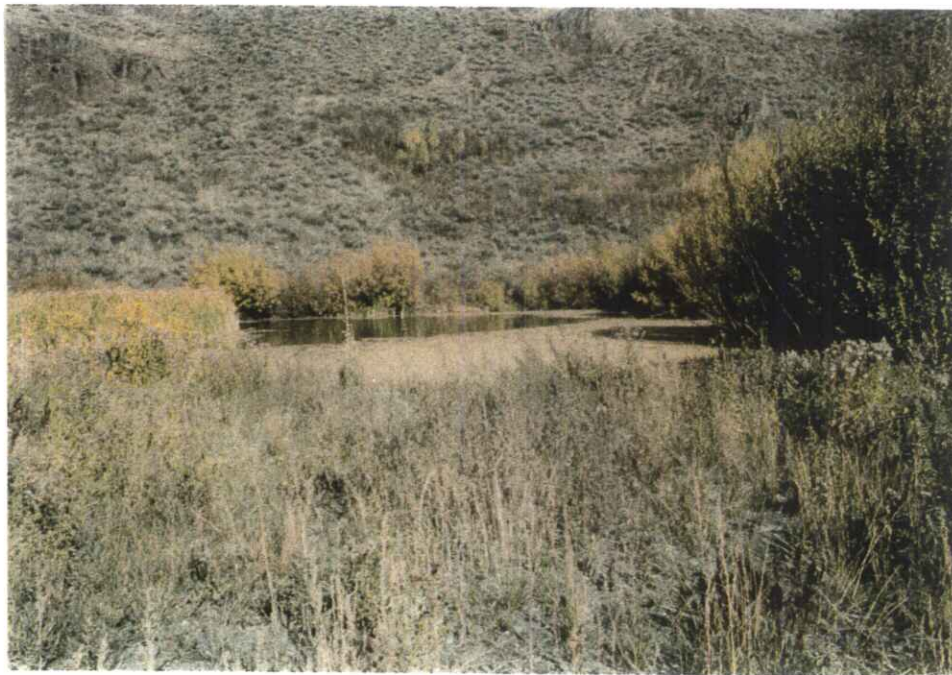


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neg 22

neg 23

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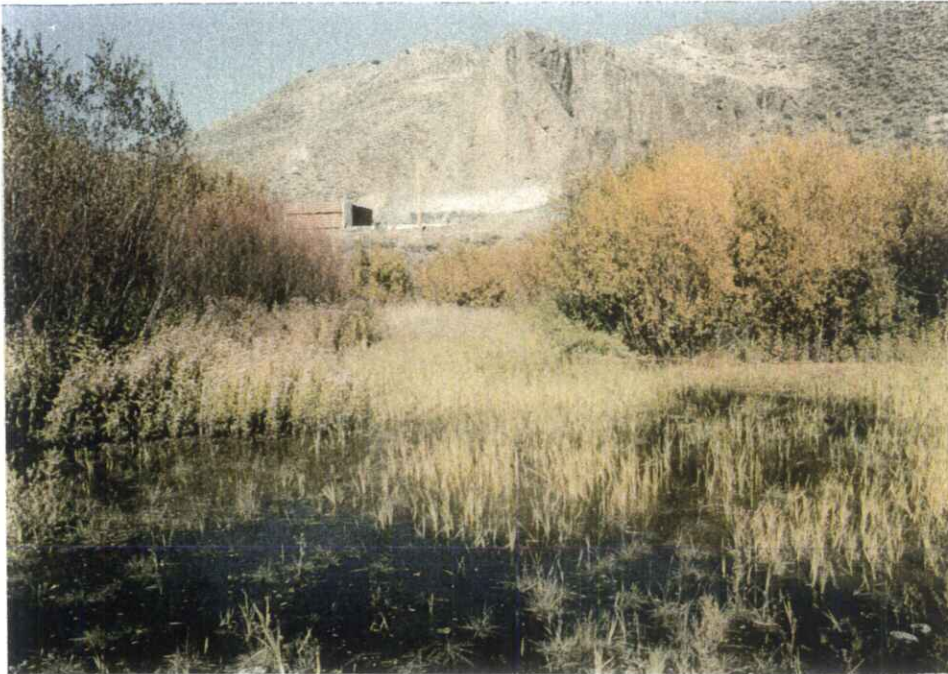


Figure 14. The Hormel residence will overlook the pond and provide an opportunity for continuous monitoring of the area.



Figure 15. A view from near the Hormel residence. The appearance of the pond may not be pleasing in the summer because of algae. This will be a typical fall scene because of floating leaves.



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Figure 16. A closer look at the pond reveals lots of algae and aquatic vegetation. This situation may be detrimental to the native fish in the Wood River because of diurnal dissolved oxygen deficits.

CINDY THIEDE  
PO Box 895, Ketchum, ID 83340, (208)788-4393

UPDATE ON THE IFPL DIVERSION DAM AND POND  
January 24, 1994

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OVERVIEW

In the spring of 1990, a diversion dam was constructed on Elkhorn Creek to reestablish a flow of water to a pond located on Idaho Foundation for Parks and Lands property (IFPL). The work was initiated and paid for by Tom Hormel who owns property adjacent to the pond. While the diversion dam was built with all the proper permits in place, a recent investigation by Cindy Thiede indicates that the water is being diverted from the creek illegally. At this time, we are looking into this situation and exploring options to remedy the problem.

BACKGROUND

For many years there was a ditch that channeled water from a spring-fed pond in the southeast portion of what is now Tom Hormel's River's Edge property to a second pond (IFPL pond) located below the Hormel home site in the northeast corner of a site now owned by IFPL. The ditch had been constructed more than thirty years ago by Bob Sherwood whose family owned both properties until the IFPL and Tom Hormel acquired their parcels in 1982 and 1989 respectively. Because the channel has been in existence for so many years, it is recognized as a historical waterway.

In 1983 a portion of that ditch was washed out when the Big Wood River changed course. As a result, between 1983 and 1990 water stopped flowing from the spring to the IFPL pond, causing it to dry up. After Tom bought his property, he became interested in restoring the pond along with a source of water to sustain it for wildlife and aesthetic purposes. The IFPL endorsed the idea and Tom Hormel assumed complete responsibility.

Because of changes in the Big Wood River, the contour of the land and the volume of water originating in the spring, it was not practical to reestablish that flow of water to the pond. Hormel's representatives instead filed permits with state and local authorities to construct a diversion dam on Elkhorn Creek. The work was approved and the dam was constructed on IFPL land in the spring of 1990.

As a result of this permitted work, the revived pond now serves to anchor Elkhorn Creek and helps maintain a thriving fishery. It is also acknowledged that the quality of Elkhorn Creek water is actually improved as it passes through the pond system and reenters the Big Wood River.

#### THE PROBLEM

A potential legal problem exists for the following reasons.

Historically, all the water in Elkhorn Creek was used for upstream irrigation. The only time water flowed through it and intersected the channel running to the IFPL pond was during spring runoff. Today, however, Elkhorn Creek is not consumed wholly for irrigation. As a result there is a fairly consistent and "new" flow of water in the channel - an increased flow that historically was not available to the IFPL pond. According to officials with the Idaho Department of Water Resources (IDWR) this new flow of water, while available for downstream use, may not be diverted from the Big Wood River without a claim or permit

Technically speaking, Tom Hormel and the IFPL are currently diverting that water illegally since it would otherwise enter the Big Wood River at the point of the manmade dam. Though the work was approved, those permits in no way validated any presumed claim to the water in Elkhorn Creek. This leaves the dam vulnerable to protest and the fate of the IFPL pond in question.

This is a concern since a local organization known as Friends of the Big Wood River, Inc. (FOBWR) has protested other water related projects on Hormel's property. FOBWR is aware of the dam, and they also know that the Lane Ranch subdivision south of Tom's property is obligated by law to measure and return 163" of Big Wood water used on their land back to the river.

To date, Lane Ranch has not installed a weir to measure this water flowing off their property and into Elkhorn Creek. Once in the creek, this 163" of water flows through the diversion dam and channels into the pond. The FOBWR have made it very clear that they do not believe the water flowing from Elkhorn Creek reenters the Big Wood river once it passes through the pond. Thiede feels certain they would file a protest if they knew they could.

#### ACTION PLAN

According to water rights adjudication lawyer Richard Simms, the fact that Elkhorn water is being channeled through the pond only becomes a significant problem if this water never makes its way back to the Big Wood River as FOBWR contends. The general feeling among IDWR officials and knowledgeable individuals is that it does. If protested, however, the burden of proof would lie with Hormel and the IFPL.

In anticipation of a protest Hormel would like to hire leading hydrologist, Dr. Chuck Brockway, to visit the site and analyze the situation. Hormel is also considering the installation of measuring weirs at the site of the diversion dam and at the outflow of the pond. Lane Ranch would be willing to share the cost of a weir installed at the dam site to fulfill their obligation of measuring the 163" of water leaving their property.

If any water loss is discovered, it may then be possible to figure spring water on the Hormel property into the equation. Tom owns the rights to the spring that historically carried water to the pond but now empties directly into the Big Wood river.

Another option to protect the supply of water to the pond is for the IFPL to file a claim on the water in question. Such a claim would undoubtedly be protested by FOBW, but depending on the findings of Dr. Brockway and the opinion of Hormel's water rights attorney, it may be a worthwhile pursuit.

From: Resource Systems  
To: ifpl@mindspring.com  
Date: 6/28/04 2:07:31 PM  
Subject: Ketchum Report

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Here you go!!

### Property Overview

Currently, the property provides a large sanctuary for terrestrial and aquatic habitats along the Big Wood River.

Large ponds (adjacent to Lane Ranches):

- Manicuring probably OK

- Watch fertilizer

- Keep pond circulation high. Right now there's at least two inflow areas that helps fight buildup.

Main Pond in preserve: Looks good. Good inflow. Could increase if bypass to river was blocked.

- What's status of water rights for non-consumptive use?

Wetlands are looking great around pond. Beaver are doing a good job spreading the water out and creating additional habitat.

Beaver Control: River is there natural environment. Many of the features in the valley wouldn't be there without the beaver. Consider controlling vegetation around the ponds nearest Lane Ranch and leave the main pond alone. If you control habitat and you will control the beaver, but you may have to change the nature of the small pond which will require thinning of vegetation and so on. You could also develop some bypass drains that would be difficult to completely plug up so the water wouldn't back up into the large ponds. You should also protect selected trees with chicken wire.

Access issues - We need to talk about this. There are a number of features already in place that could be used for access control, like the berm, river, ponds, and supply ditch to the main pond. Exactly how you control access is a big question. Perhaps a couple of parking places along with interpretive signs and privacy fence. This could really cause a lot of traffic though. Maybe some type of ordinance could be developed which would give some time limits to access. Heavy vegetative growth can also be very useful to keep people from moving anywhere they want. Some of this heavy growth runs along the ditch. More of the same idea could be used in other sections.

Tree density (conifers) are very high and not really the type of tree that would inhabit the

file:///C:/WINDOWS/TEMP/1803F52E-C90D-11D8-A70E-B1B995DBDA54/ELP6325.TMP 6/28/04

floodplain. Consider working out a line-of-sight plan with residents. Take photos from their windows and then plan which trees to thin.

Prospect: Water will help a lot. However, the soil is not the greatest and could be improved by hauling in some quality loam top soil. That would really hold the moisture better and grow vegetation. You would have to plan for some maintenance to keep out undesirable plants.

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