

United States Department of the Interior

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DEPT. OF WATER RESOURCES
SOUTHERN REGION

Attn: Regional Manager
Idaho Department of Water Resources
Southern Regional Office
1341 Fillmore Street, Suite 200
Twin Falls, Idaho 83301

Subject: Water Right Applications in the Salmon and Clearwater River Basins—Salmon
and Clearwater River Basins, Idaho—Technical Assistance
913.0000 14420-2010-CPA-0118

To Whom it May Concern:

Following the recent lifting of the moratorium on processing permit applications for appropriating public waters of the State of Idaho (applications) in the Clearwater and Salmon River Basins of Idaho, the U.S. Fish and Wildlife Service (Service) has become aware of recent applications submitted to the Idaho Department of Water Resources (IDWR). We are providing comments applicable to all current and future applications in watersheds inhabited by listed species, including those associated with Thomas and Elizabeth Tierney (#71-10922, #71-10923, and Transfer #75469) and Ketchum-Long Island, L.L.C. (#71-10935). The species of primary concern is bull trout (*Salvelinus confluentus*), listed as threatened under the Endangered Species Act (Act) of 1973, as amended, and its proposed/designated critical habitat, and the potential impacts related to surface- or ground-water depletions.

Our concern regarding any applications appropriating public waters in the Clearwater and Salmon River Basins of Idaho centers on the incremental loss of water volume in the basin, the timing of that loss, and water quality implications associated with the remaining water. Water diverted for use in ponds will result in a consumptive loss, and while mitigation for this evaporative loss may be proposed, other associated impacts may not be so readily addressed. Incremental increases in water temperature will inevitably occur as this impoundment returns water to the river. Chemicals and other contaminants (e.g., algacide and landscaping fertilizers/pesticides) may more easily collect in the pond and move to the river. In addition, maintenance activities at the point of diversion may disrupt use of the river or otherwise impact habitat quality for bull trout through the release of sediment, and alterations of streambanks and river substrates. Similarly, pumping groundwater for irrigation of cropland and livestock watering may reduce cold water aquifer input into the basin (via reduced spring flows or hyporheic exchange), livestock may negatively impact riparian and riverine habitat, and chemical contaminants (herbicides, pesticides, and fertilizers) used to enhance croplands may alter water quality.

At present, water uses and their associated points of diversion in the Upper Salmon River Basin are impacting bull trout through flow reductions by hampering upstream and downstream movement, entraining and impinging individuals on and through diversion systems and their infrastructure, and by modifying water temperature and other water quality parameters. These and other impacts have led to the listing of bull trout under the Act, and are a significant factor in our current effort at designating critical habitat. Climate change and the potential for alterations in the pattern, timing, and amount of precipitation and snow melt further negatively influence habitat conditions, as these factors translate into the river flows and hydrologic processes so important to bull trout.

Through the Snake River Water Rights Act of 2004, the Congress appropriated funds to the State of Idaho that would be used to conduct habitat protection and restoration projects in the Salmon and Clearwater Basins. Since 2008 the Congress has appropriated \$5,066,666/year. These funds are expected to continue through fiscal year 2011. The State of Idaho has received a total of \$20,346,033. In addition to the appropriation of Federal dollars to the State of Idaho, the Snake River Water Rights Act of 2004 directed the Service and the National Marine Fisheries Service to work with the State of Idaho to develop a section 6 cooperative agreement for instream flows in the Salmon River Basin (Lemhi). The State of Idaho and the Federal agencies are in negotiations to complete this agreement. Additional appropriations, such as those proposed below, will only exacerbate the resource concerns identified above and move counter to the significant efforts put forward by State and Federal land and resource management agencies to improve watershed conditions for listed and sensitive aquatic species in the Salmon and Clearwater River Basins.

It is our understanding that current proposals regarding the Tierney applications include the following:

- #71-10922 Amended Application for Permit (July 22, 2010)
 - Groundwater appropriation of 0.28 cfs for irrigation from 05/01 to 10/31
- #71-10923 Amended Application for Permit (August 20, 2010)
 - Total surface water appropriation of 4.0 cfs
 - 4.0 cfs diversion for storage and aesthetic purposes from 05/01 to 07/31
 - 2.9 cfs diversion for storage and aesthetic purposes from 08/01 to 10/31
 - 4.0 acre feet of storage for 0.5 acre aesthetic pond from 01/01 to 12/31
 - 0.04 cfs for stockwater from 05/01 to 10/31
- #75469 Amended Application for Transfer of Water Right (July 22, 2010)
 - Transfer of 0.01 cfs from existing water right (#71-7169) as mitigation for above aesthetic application from 05/01 to 10/31
 - Remaining 0.99 cfs of existing water right for irrigation purposes from 05/01 to 10/31

Regarding the Ketchum-Long Island application, we understand the following:

- #71-10935 Application for Permit (August 3, 2010)
 - Total groundwater appropriation of 5.0 cfs
 - 5.0 cfs pumped/piped for irrigation purposes from 05/01 to 10/31
 - 0.033 pumped/piped for stockwater from 01/01 to 12/31

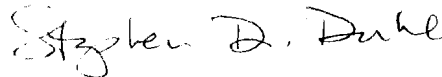
Much of the Upper Salmon River Basin in the vicinity of these two proposals is currently proposed for designation as bull trout critical habitat, and is typically used by bull trout for spawning, rearing, migration, and overwintering purposes. The mainstem Salmon River in this area is used predominantly by bull trout in the spring and fall for feeding and migration. Spawning activities are initiated and take place in many of the headwater tributaries from early summer through early fall, while overwintering typically occurs in the mainstem Salmon River farther downstream.

We urge you to carefully consider the potential impact of any water applications on bull trout and the habitat on which they depend. It is not sufficient to address these applications in a singular fashion. As inferred above, it is the cumulative impact of all these appropriations which is of greatest concern to the Service. It is necessary and appropriate for IDWR to address these and all other applications in the context of the broader situation occurring over the landscape, and evaluate the individual and cumulative effects that are impacting bull trout in the Upper Salmon River Basin.

While we have made both general and specific comments regarding potential applications and two specific applications, we wish to emphasize that these comments are generally appropriate and applicable to all current and future applications that come before the IDWR where bull trout or other species of concern reside. We ask that you consider the content of this letter and include it in the files for each application you receive for the Salmon and Clearwater River Basins. We may opt to provide additional comments for individual applications as appropriate, should site-specific information warrant further review and comment by the Service.

Thank you for the opportunity to provide comments on two specific applications, and more generally for the Salmon and Clearwater River Basins. Please contact Mark Robertson (208-378-5287) or Jeri Wood (208-378-5289) if you have questions regarding our comments, or if you would like to further discuss the issues addressed herein.

Sincerely,



Acting

Brian T. Kelly, State Supervisor
Idaho Fish and Wildlife Office

cc: IDFG, Boise (Robertson, Poole)
IDFG, Salmon (Curet)
NMFS, Boise (Mabe)
NMFS, Salmon (Fealko)
IDEQ, Idaho Falls (Saffle)
IDWR-State Office, Boise (Spackman)
IDWR-Western Regional Office, Boise (Regional Manager)
IDWR-Eastern Regional Office, Idaho Falls (Regional Manager)
IDWR-Northern Regional Office, Coeur d'Alene (Regional Manager)
FWS, Chubbuck (Laye)
Applicant-Ketchum-Long Island, LLC, Ketchum (John Miller)
Applicant-Tierney, Tustin, CA (Thomas and Elizabeth Tierney)