



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

10095 W. Emerald Street
Boise, Idaho 83704

September 14, 2010

RECEIVED
SEP 15 2010
DEPT. OF WATER RESOURCES
SOUTHERN REGION

Alan Merritt
Idaho Department of Water Resources
1241 Fillmore St, Suite 200
Twin Falls, Idaho 83301

Re: Comments on Amended Water Right Permit Applications #71-10922, #71-10923, and
Amended Water Right Transfer Application #75469.

Dear Mr. Merritt:

National Marine Fisheries Service (NMFS) staff has become aware of and reviewed the above referenced water right transfer and water right permit applications submitted by Brockway Engineering on behalf of Thomas and Elizabeth Tierney. All permit applications reviewed were referred to and presented in a July 21, 2010, letter from Brockway Engineering to Idaho Department of Water Resources (IDWR). They were also available on the IDWR website, with additional documents, as of August 25, 2010.

NMFS understands that approval of the pending applications would result in a new point of diversion (POD) from a Salmon River side channel located at Township 07N, Range 14E, SE ¼ NW ¼ SW ¼ Section 10. The new POD would divert a maximum of 4.0 cubic feet per second (cfs) to a 0.5-acre "aesthetic" pond on private property. Water would be transported from the new POD via a pipeline into a lined ditch (0.05 acres surface area) which would then feed the pond. A buried pipeline would convey water from the pond back to the Salmon River at a point approximately 950 feet downstream of the POD. Coincident with this proposal is a proposal to dry up 0.72 acres of land, currently irrigated by groundwater right #71-7169, to mitigate for evaporative losses from the proposed pond. We understand that the maximum diversion rate of 4.0 cfs would occur between May 1 and July 31, and a reduced rate of 2.9 cfs would occur from August 1 to October 31 annually. This would result in diverting 4% to 14% of the flow in the reach (USGS 139292500).

The Salmon River, including the location of the proposed POD, is Federally protected as designated critical habitat for endangered Snake River sockeye salmon, threatened Snake River spring/summer Chinook salmon, and threatened Snake River Basin steelhead under the Endangered Species Act (ESA). Chinook salmon, steelhead, and potentially sockeye salmon all utilize the project area as spawning, rearing, and/or migratory habitat. As such, preservation or improvement of existing habitat quality is required for species survival and recovery.



Removing up to 4.0 cfs from the Salmon River is likely to cause serious adverse effects to designated critical habitat in addition to causing take of individual fish listed under the ESA. NMFS does not feel these impacts are in the public's interest and urge you to give careful consideration to our concerns provided below.

Significant water withdrawals already occur upstream and downstream of this location. These withdrawals and the associated PODs cumulatively degrade habitat quantity and quality for ESA-listed fish in the Salmon River and they have been identified as limiting factors in their listing. Reducing the impacts of water diversion practices has also been identified as an action necessary for species recovery. The addition of yet another diversion will only exacerbate the current situation while presenting another impediment to species recovery. Discharge of warm water from the pond back to the Salmon River will contribute warm water to already elevated water temperatures. Reduced side channel volume downstream of the POD will allow that water to warm up faster, further contributing to water temperature impacts caused by the proposal. These impacts will be passed further downstream resulting in reduced value of available fish habitat. When considering these impacts in concert with projected impacts of climate change on late summer stream flows and temperature, impacts of this action may be even more severe.

Included in the permit applications were modeling results of post diversion water elevations and velocities in the side channel. That modeling used a trapezoidal channel located at the site of the proposed diversion to allow the authors to conclude that impacts to fish would be minimal. A proper assessment of fish passage impacts should include modeling of the affected cross sections where fish passage is most restrictive under baseline conditions. These results should then be compared to appropriate fish passage criteria to ensure all the affected species would be unaffected by the action. We recommend these steps be taken prior to further consideration of the permit applications.

Adding a new POD will again add to the number of sites where outmigrating smolts are entrained and subsequently exposed to fish screens. Even with appropriate fish screens in place, such exposure increases the injury potential of outmigrating fish and adds yet another delay in their time sensitive migration. Typical POD designs also present potential upstream fish passage problems for both adult and juvenile fish. Review of the Sawtooth National Forest's February 11, 2010, comment letter suggests the proposed site is likely to provide significant challenges to provide the necessary head to deliver water to the existing ditch. The higher the required head elevation, the more likely the diversion structure will have fish passage issues. Additional consideration of this concern should occur prior to further permit deliberation.

NMFS is also concerned that the proposed POD would occur in a side channel. Normal channel processes for this valley type dictate channels will move both laterally and vertically over time. These processes create a significant risk that the side channel or POD itself could be entirely abandoned at some future time. Following the significant financial investment required to construct the new POD and associated delivery system, it is reasonable to assume future instream modifications would be pursued to ensure a steady supply of water in the event the permits are approved. Such modifications would prevent natural channel processes from occurring at the

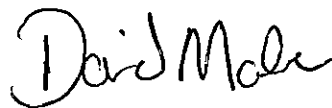
site, thereby hampering stream health as well as leading to subsequent short-term adverse impacts to ESA-listed fish and designated critical habitats caused by the modifications themselves.

A January 15, 2010, Idaho Department of Fish and Game letter regarding these applications correctly identifies potential for harm related to future aquatic vegetation control measures that are likely to be required to maintain desired pond features in this setting. Treated discharge water returning to the Salmon River poses a significant potential impact to ESA-listed fish and their food sources. Please give serious consideration of the potential pond treatments that may be required and their potential effects on aquatic resources during permit deliberation.

Finally, significant public resources are being invested in this reach of the Salmon River to improve the quantity and quality of water passing through it. That water is currently held in the public's trust by the State of Idaho Water Supply Bank. The primary intention of these investments is to improve habitat for ESA-listed species. Although the proposed permits would reduce flow in just a short reach, such a reduction would partially defeat the previous substantial efforts that are being taken for the public good and increases the work necessary to recover ESA-listed fish.

Thank you for your consideration of our concerns during your deliberations on the subject permits. Please contact Mr. Chad Fealko (208) 756-5105 should you have questions or need clarification regarding this letter.

Sincerely,

A handwritten signature in black ink that reads "David Mabe". The signature is written in a cursive, flowing style.

David Mabe
Idaho State Director

Cc: Mr. and Mrs. Tierney - Applicant
Z. Latham - Brockway Engineering
S. Baldwin - SNF
T. Curet - IDFG
R. Holder - USFWS
R. Brochu - COE
T. Saffle - IDEQ