

MEMO

To: IWRB Salmon River, Big Wood River, and Southwestern Idaho
Minimum Stream Flow Subcommittee

From: Morgan Case

Date: May 29, 2009

Re: Big Wood River Minimum Stream Flows

The Idaho Water Resource Board holds three minimum stream flow water rights on the Big Wood River (see attached map). The first water right, 37-7919, was requested by IDFG to protect trout fisheries from the confluence with Warm Springs Creek to the Bellevue Canal. It has a priority date of June 19, 1981 and protects 70 cfs. That flow was based upon methodology from the 1970s. A condition on the right allows the Director of IDWR to consider changes to the right, but the burden of proof that changes are needed rests on the party requesting the changes.

The second and third rights, 37-8258 and 37-8307, were requested by the Blaine County Planning and Zoning Commission to maintain fish and wildlife habitat, water quality, aesthetics, and recreation. Water right 37-8258 protects 150-200 cfs from the boundary with the Sawtooth National Recreation Area to the confluence with Warm Springs Creek and has a priority date of January 16, 1986. The response to the minimum stream flow supplemental question 15 – Provide evidence that the flow or lake level requested is capable of being maintained as evidenced by records of stream flows and water levels is as follows:

Records show that a flow of 200 cfs is maintained 50.7% of the time. The purpose is not to maintain it 100%, but to prevent dewatering by later rights during periods of low flow.

Right 37-8258 was recommended as 200 cfs between April and August based on the hearing officer's conclusion that it is capable of being maintained. He recommended 150 cfs between September and March based on the maximum flow at the upper gage near Ketchum plus 25% to account for inflows from the North Fork Big Wood River.

Water right 37-8307 protects an additional 119 cfs in the same reach as 37-7919 with a priority of October 16, 1987. The hearing office approved the additional 119 cfs based on flow records that showed "flows in the Big Wood River with sufficient frequency during all months of the year." Both 37-8258 and 37-8307 are subordinate to domestic and municipal groundwater rights as allowed through the groundwater management plan.

The IDWR Southern Regional office has several transfer applications that propose moving ground water or surface water from the minimum flow reach to points upstream. The issue has been raised whether there is injury to these minimum stream flow rights, and whether the Board's intent was to prevent such transfers. Attached is a letter from Jim Speck regarding proposed transfers on the Big Wood River.

Also attached are a map of the minimum stream flow reaches and frequency analysis curves. Please note that the frequency analysis for 37-8258 reflects the gaged amount plus an additional 25% to account for inflows from the North Fork Big Wood River. The frequency analysis for 37-7919 and 37-8307 are shown as the cumulative 189 cfs as administered.

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March 16, 2009

Mr. David Tuthill *DT*
Idaho Department of Water Resources
322 E. Front Street
P. O. Box 83720
Boise ID 83720-0098

RE: South County Estates Water Rights / Transfers Upstream on Big Wood River

Dear Dave:

I represent three clients who are under contract to purchase water rights from South County Estates to irrigate their properties north of Ketchum, Idaho. The South County Estates Big Wood River water rights, as you know, are currently diverted through the District 45 Canal to the South County Estates property south of Bellevue, Idaho. I have had several discussions with Allen Merritt and Chuck Brockway about the issues raised by the water right transfer applications necessary to successfully close the purchase transactions. However, I want to let you know directly of my firm's involvement.

I understand that, for the first time since the several minimum stream flow water rights acquired by the Idaho Water Resource Board flows in the Big Wood river, the question has been asked as to whether or not upstream transfers of senior irrigation water rights might cause injury to the junior minimum stream flow water rights. This is an extremely significant issue for my clients and for options to resolve future water right issues in our basin. Those options, as you know, are reduced by the lack of any upstream storage facility. I have taken a quick look at the water right licenses for the three relevant minimum stream flow water rights. All three contain the condition that "this right is subject to all prior water rights." They also include a condition that reads:

Use of water under this right shall recognize and allow the continued beneficial diversion of water under any prior existing water right established by diversion and application to beneficial use or by an application, permit, or license on file issued by the Director under provisions of Chapter 2, Title 42, Idaho Code, with the priority for the water right dated earlier than [the priority date of the minimum stream flow water right].

Mr. David Tuthill
Idaho Department of Water Resources
March 16, 2009

This additional, more detailed condition must mean something different than the general "subject to" condition described above. Last, Water Right License No. 37-7919 includes a condition that reads:

This minimum stream flow right shall be considered in the evaluation of applications for permit to appropriate waters from the Big Wood River and tributaries filed after 6/19/81.

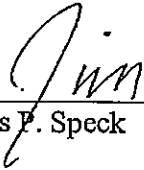
It seems significant that this last condition did not mention applications for transfer of existing water rights. I certainly believe that these conditions, read together, can lead to the conclusion that the minimum stream flow water rights are not meant to prevent transfer of points of diversion and places of use of senior irrigation water rights within the basin. I also understand there are other possible interpretations!

Will you please keep me apprised of the status of the Department's evaluation of this issue and any input it may receive from the Idaho Water Resource Board which might clarify its understanding of the intent of these provisions? I look forward to hearing from you and greatly appreciate your hard work on these matters as our basin moves toward the conclusion of the SRBA proceedings and the complete management of all of our important and valuable water resources.

Thank you.

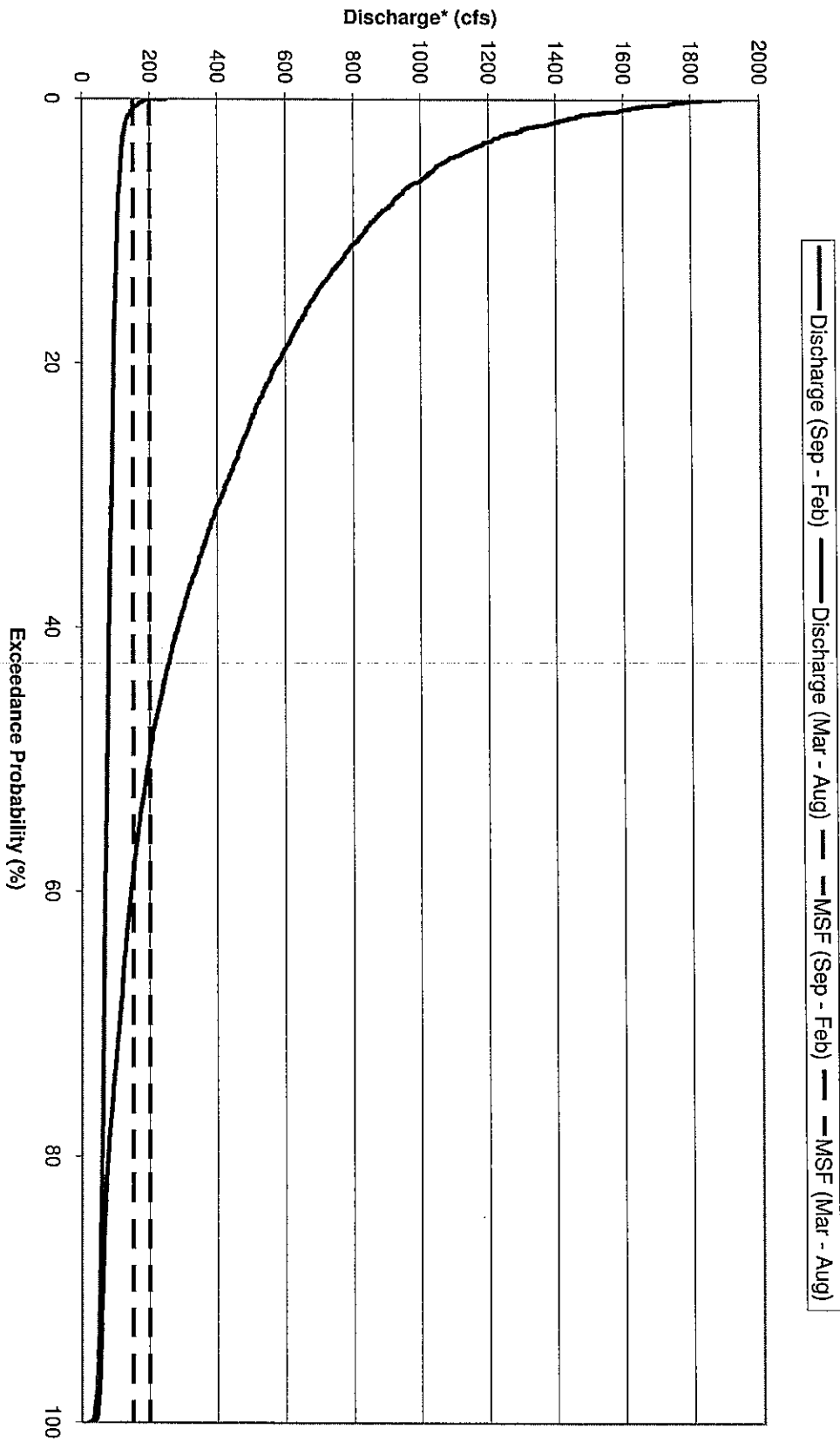
Sincerely yours,

SPECK & AANESTAD
A Professional Corporation

By: 
James P. Speck

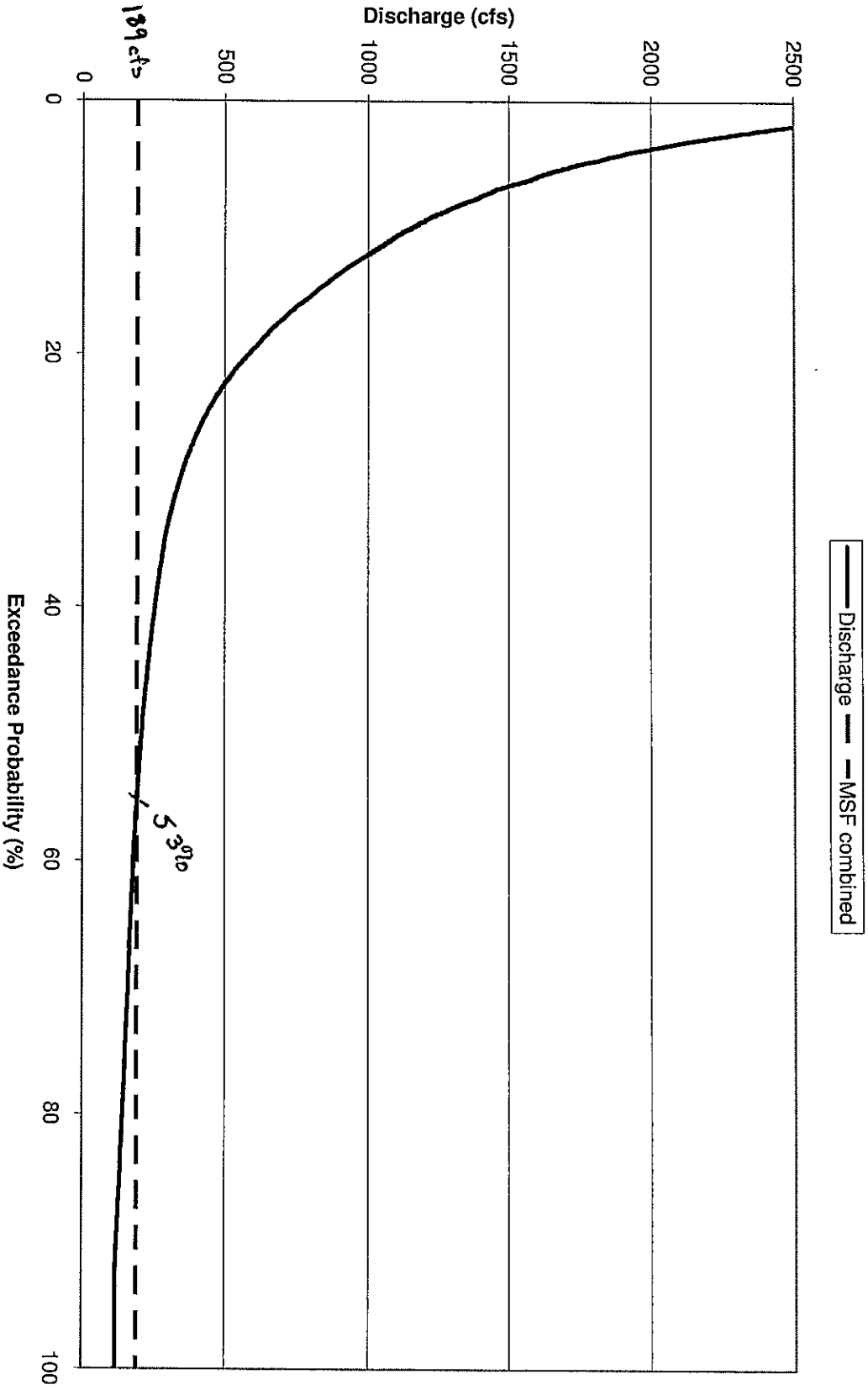
cc: Allen Merritt
Chuck Brockway, Jr.
Mike Creamer
Clients

Big Wood River: 37-8258



* Period of record 1948 - 1971
 * values include an additional 25% to account for unmeasured tributary inflow

Big Wood River: 37-7919 and 37-8307



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