

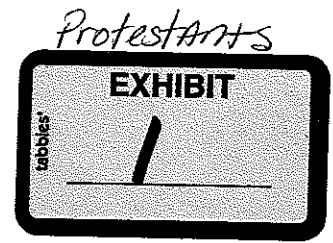
**PLEASE REFER TO FILE
FOLDER NO. 3**

**FOR THE
CONTINUATION OF THIS
WATER RIGHT FILE**

No. 74-15613

*Contents of this file consist of Protestants
Exhibits 1-10.*

Jeffrey J. Lutch
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EDUCATION

MS, Biology. Clarion University of Pennsylvania.

Clarion, PA.
1994

Area of Concentration: Fisheries.

Research/Thesis: Interactions between Native Brook Trout, Salvelinus fontinalis, and Wild Brown Trout, Salmo trutta, During Spawning

BS, Biology. University of Pittsburgh.

Pittsburgh, PA.
1990

PROFESSIONAL EXPERIENCE

IDAHO DEPARTMENT OF FISH AND GAME
Salmon Regional Office

Salmon, ID.
9/04-Present

Fishery Staff Biologist

Lead coordinator of the Lemhi Conservation Program that is being developed to conserve and enhance fishery resources in the Upper Salmon River basin. Responsibilities include developing habitat conservation plans that identify specific actions for the benefit of fish and habitat while serving the farming and ranching industry, implementing conservation actions by coordinating with landowners, state, federal, and tribal agencies, and monitoring and evaluating the effects of conservation actions for adaptive management purposes.

IDAHO DEPARTMENT OF FISH AND GAME
Nampa Research Office

Nampa, ID.
6/01-8/04

Senior Fishery Research Biologist

Project leader for a statewide cooperative research project distributed among four government and tribal agencies that is evaluating the benefits and risks of using various hatchery supplementation techniques on naturally reproducing chinook salmon. Duties include implementing all phases of research, coordinating with project researchers and outside agencies/hatchery personnel, compiling and maintaining project databases, developing additional small scale studies to meet project objectives, reporting research activities both quarterly and annually, evaluating research methods, and presenting results in public forum.

NATIONAL PARK SERVICE
Center for Aquatic Resources

Yellowstone NP, WY.
5/96-5/01

Senior Technician, Fisheries

Staff biologist responsible for program development to manage native westslope cutthroat trout and fluvial Arctic grayling that includes genetic status and distribution assessments and restoration projects within their historical ranges. Additional responsibilities include managing long term cutthroat trout monitoring programs, lake trout control program on Yellowstone Lake, annual angler statistics program, and associated data entry, summary analyses, and report preparation.

U S FISH AND WILDLIFE SERVICE
Fisheries Assistance Office

Yellowstone NP, WY.
5/95-10/95

Biological Science Technician, Fisheries

Provided technical and professional assistance in fisheries management in Yellowstone NP, which included monitoring adfluvial spawning cutthroat trout and controlling non-native lake trout from Yellowstone lake, reintroducing fluvial grayling, and sampling for the presence of whirling disease.

BUREAU OF LAND MANAGEMENT
Kobuk District Office

Fairbanks, AK
6/94-10/94

Fishery Biologist

Project biologist responsible for fisheries surveys of fluvial Arctic Grayling populations in rivers in northwest Alaska, including fish habitat evaluations in mine impacted streams. Additional duties included analyzing and summarizing data into reports, and providing logistical support for field studies.

PENNSYLVANIA DEPT. OF ENVIRONMENTAL RESOURCES

Pittsburgh, PA.

Water Management Division

5/93-10/93

Scientific Intern

Assisted regional biologists in conducting surveys of biota and characterizing aquatic habitats in area lakes and streams, requiring proficiency in sampling methods and identification of fish and invertebrates

UNIVERSITY OF PITTSBURGH

Pittsburgh, PA.

Department of Biological Sciences

8/92-1/93

Research Specialist II, Fisheries

Project leader responsible for proposing, conducting, interpreting, and publishing fisheries research on a grant titled, Interaction Between Native and Exotic Trout: Effect of Overlap in Breeding Activities on Reproductive Success, funded by the office of research, University of Pittsburgh.

UNIVERSITY OF PITTSBURGH

Pittsburgh, PA

Department of Biological Sciences

12/89-12/91

Research Specialist II, Aquatic Ecology

Performed detailed field and laboratory research on stream ecosystems, with strong emphasis in fish ecology. Performed research on the ecology of aquatic macro-invertebrates, which included collection, invertebrate sorting, taxonomic identification and image analysis of insect samples

UNIVERSITY OF PITTSBURGH

Pittsburgh, PA

Department of Biological Sciences

12/89-12/91

Teaching Assistant

Assisted the professor in teaching fishery techniques and sampling methods in Fisheries Biology. Taught students proper collection, identification, and storage of fish samples. Assisted the professor in developing, proctoring, and grading exams

JOB RELATED TRAINING/CERTIFICATION

Construction, repair, anchoring, and buoying of large and small mesh gillnets. Training workshop, Yellowstone National Park, WY, 24-29 July, 2000.

Commercial Aquatic Pesticide Applicator License. Wyoming Dept. of Agriculture and U S Environmental Protection Agency. Laramie WY, 1/6/99.

Principles and Techniques of Electrofishing. U S Fish and Wildlife Service National Conservation Training Center. Casper, WY 5/19/98

Genetics in Fishery Management. Montana Chapter AFS Continuing Education Workshop 1997. Helena, MT 2/3/98.

U. S. Dept. of Interior Motorboat Operators Certification Course Yellowstone National Park, WY 6/9/97

Introduction to ArcView 3.0 for PCs National Park Service - GIS workshop. Spatial Analysis Center, Yellowstone National Park Montana State University, Bozeman MT 2/15/98.

REPORTS/CONSERVATION DOCUMENTS

The Lemhi Conservation Plan Supporting document of the Lemhi Section 6 Agreement. *In prep*

Framework for the implementation of habitat actions in the Lemhi River basin pursuant to Section II.A.8 of the NPT Term Sheet. Snake River Basin Adjudication Court, March 2005

Lemhi Conservation Plan habitat actions table. Snake River Basin Adjudication Court, March 2005

Lutch, J, C. Beasley, and K. Steinhorst 2005. An updated study design and statistical analysis of Idaho Supplementation Studies. Bonneville Power Administration. P.O. Box 3621 Portland, OR 97283-3621. 85pp

Lutch, J, and B. Leth. Idaho supplementation studies, 1997-2001. Idaho Department of Fish and Game annual progress report to the Bonneville Power Administration

Lutch, J., C. Beasley, and K. Steinhorst. 2003. Evaluation and statistical review of Idaho supplementation studies 1991 – 2001. Bonneville Power Administration. P.O. Box 3621 Portland, OR 97283-3621. 82pp

Lutch, J. 1999. Affected Environment; Impacts to fisheries and aquatic resources. Environmental Assessment Iron Springs Creek and Old Faithful Sewage Treatment Plant Improvement. Yellowstone National Park, WY.

Lutch, J. 1999. Affected Environment; Impacts to fisheries and aquatic resources. Environmental Assessment Madison/ Norris Junction Road Improvement. Yellowstone National Park, WY.

Ruzycki J., and J. Lutch. 1999. Impacts of two-stroke engines on aquatic resources. Effects of winter recreation on wildlife of the Greater Yellowstone Area: A literature review and assessment.

Native Species Restoration and Parkwide Fishery Monitoring, Fisheries and Aquatic Management in Yellowstone Park, Yellowstone Center for Resources Annual Report 1999. Yellowstone National Park, WY.

Native Species Restoration and Parkwide Fishery Monitoring, Fisheries and Aquatic Management in Yellowstone Park, Yellowstone Center for Resources Annual Report 1998. Yellowstone National Park, WY.

Native Species Restoration, Fisheries and Aquatic Management in Yellowstone Park, Yellowstone Center for Resources Annual Report 1997. Yellowstone National Park, WY.

Parkwide Visitation and Annual Fishery Data. Fisheries and Aquatic Management, Yellowstone Center for Resources Annual Report 1997. Yellowstone National Park, WY.

Clear Creek Fish Trap and Arnica Creek, 1996. Fisheries and Aquatic Management, Yellowstone Center for Resources Annual Report 1996. Yellowstone National Park, WY.

Lutch, J. J. 1994. Interspecific interactions between native brook trout, Salvelinus fontinalis, and wild brown trout, Salmo trutta, during spawning. MS. Thesis, Dept. of Biology, Clarion University of PA.

Lutch, J. J. 1994. Assessment of Arctic Grayling populations in the Squirrel River, Alaska. Bureau of Land Management in house report. Fairbanks, Alaska.

PRESENTATIONS

Idaho Supplementation Studies: A cooperative study for evaluating supplemented populations of chinook salmon in Idaho. Western Division of the American Fisheries Society. Salt Lake City, Utah 3/1/04

Lessons in Adapting Study Designs to Evaluate the Evolving Science of Supplementation: Perspectives from the Idaho Supplementation Studies. Western Division of the American Fisheries Society. Salt Lake City, Utah 3/1/04

Idaho Supplementation Studies. A Statistical Review and Adaptive Management. IDFG Bi-annual Research Meeting. Lewiston, ID 11/5/02

Idaho Supplementation Studies: A Review for the Independent Science Advisory Board. National Marine Fishery Service, Northwest Science Center, Seattle Wa 1/23/02

Native Fishery Management in Yellowstone National Park: Westslope Cutthroat Trout. Western Division of the American Fisheries Society. Moscow, ID. 7/15/99

Yellowstone National Park Native Species Reintroduction Plan. Federation of Fly Fishers 1998 Conclave, Idaho Falls, ID. 8/15/98

Bigger is not Always Better: Lake Trout in Yellowstone Lake. 32nd annual meeting Colorado/Wyoming chapter American Fisheries Society. Cheyenne, WY 3/21/97

Interference of Brook Trout Spawning by Wild Brown Trout. The First Biennial Conference of Ecologists,

Evolutionary Biologists, and Systematists. Powdermill Nature Reserve, Rector PA

Interactions between Native and Exotic Trout: Effect of Breeding Overlap on Spawning Behavior, Habitat Use, and Reproductive Success, American Fisheries Society, Pennsylvania Chapter, Bellefonte, PA
3/24/94.

Interspecific Interactions Between Native Brook Trout and Wild Brown Trout During the Overlap in Breeding Activities,

M S thesis defense, Department of Biology, Clarion University of Pennsylvania 12/21/93.

JOB RELATED /AWARDS

Monetary Recognition Star Award, U S Dept. of Interior, National Park Service, Yellowstone NP, WY
9/5/00.

Monetary Recognition On-the-spot Award, U S Dept. of Interior, National Park Service, Yellowstone NP, WY
9/21/99.

PROFESSIONAL AFFILIATION

American Fisheries Society
North American Benthological Society

Thomas Curet
8 Rising Sun Ct.
Salmon, ID 83467
Hm: (208) 756-2037, Wk: (208) 756-2271
E-mail: tcuret@idfg.idaho.gov



EDUCATION

MS, Fisheries Resources. University of Idaho, Moscow, ID 1993

Research/Thesis: Habitat use, food habits and the influence of predation on subyearling chinook salmon in Lower Granite and Little Goose Reservoirs, Washington.

BS, Fisheries Resources. University of Idaho, Moscow, ID 1987

PROFESSIONAL EXPERIENCE

IDAHO DEPARTMENT OF FISH AND GAME
Salmon Regional Office

Salmon, ID
10/01-Present

Regional Fishery Manager

Regional contact for all fish programs occurring in the Salmon Region. Duties include evaluating and preparing fish species management plans and land-protection priorities for the region; evaluating impacts of natural or man-caused catastrophic events on fish populations and habitats and providing alternatives to avoid or mitigate negative effects; reviewing and commenting on environmental impact statements; developing and implementing data collection. Additional responsibilities include planning and conducting resident and anadromous fish spawning ground surveys, evaluating research results for planning fisheries management activities; recommending fishing seasons and regulations; directing check-station operations to gather fish harvest data; providing input into program budgets and monitoring expenditures; preparing management reports and overseeing department graduate research projects within the Region.

Additionally I also develop and implement fish stocking programs in regional waterways; inspect and report on projects affecting fisheries resources; direct fish salvages; inspect private fish ponds and occasionally assist in enforcing fish and game laws.

Responsibilities also include providing information regarding fisheries resources, regulations, and policies to various groups and the general public; providing technical information to private consulting firms on the potential impacts of proposed projects and participating in public and professional meetings

IDAHO DEPARTMENT OF FISH AND GAME
Salmon Regional Office

Salmon, ID
5/98-9/01

Regional Fishery Biologist

This position supports the Regional Fishery Managers position. Responsibilities included collecting all field data relating to life history and habitat data for various fish species; conducting spawning ground surveys; collecting harvest and biological information at fish and game check stations; and reporting management activities annually

Duties also included investigating and reporting on fish kills; conducting fish salvage and planting operations; controlling undesirable fish species; monitoring stream-channel alterations; and assisting in the enforcement of fish and game laws.

In this position I also participated in public and professional meetings; made public presentations; participated and instructed anglers in fishing activities and techniques.

IDAHO DEPARTMENT OF FISH AND GAME
Salmon Regional Office

Salmon, ID
7/93-4/98

Regional Anadromous Fishery Biologist

This position is very similar to the position mentioned above however; most of the emphasis is on anadromous (sea-going) fish and their respective habitats

UNIVERSITY OF IDAHO
Fisheries Department

Moscow, ID
3/90-9/91

Scientific Aid

Supervised research project to assess fish community activity in response to in-water disposal of dredged sediment materials in Lower Granite Reservoir. Field responsibilities included overseeing and assisting in gill netting, beach seining, surface trawling electrofishing, fish marking, stomach sampling, and larval fish collections with hand beam trawl and towed cone nets. Laboratory tasks included estimates of juvenile salmonid fish consumption through northern pikeminnow gut analysis and larval fish identification. Assisted in preparation and writing of technical reports.

UNIVERSITY OF IDAHO
Fisheries Department

Moscow, ID
1986, 1987, 1989

Fisheries Technician

Assisted University research personnel in conducting surveys to assess fish community activity in response to in-water disposal of dredged sediment materials in Lower Granite Reservoir. Field activities required proficiency in sampling using the following methods: gillnetting, beach seining, pop netting, surface trawling, snorkeling, electrofishing, purse seining, and larval fish collections.

IDAHO DEPARTMENT OF FISH AND GAME
Pocatello, Stanley, Lewiston

Various locations
1988, 1987, 1986, 1985

Biological Aide

In these positions I provided assistance in various fisheries investigations including conducting creel census surveys to determine exploitation rates on both adult and juvenile steelhead, electrofishing as part of mark re-capture studies, rotenoning to remove nuisance species, collection of tissues for disease samples, and assisting hatchery personnel with the spawning and culture of chinook and sockeye salmon.

ALASKA DEPARTMENT OF FISH AND GAME
Arctic Regional Office

Kotzebue, AK
7/84-9/84

Fisheries Technician 1

Monitored salmon escapement on the Squirrel River in northwest Alaska using a fish counting tower, gillnetted to monitor fish communities in various regional waters and collected tissue samples for disease monitoring.

JOB RELATED TRAINING/CERTIFICATION

Chinook salmon redd count training, Idaho Fish and Game, training workshop, Stanley Idaho 12-14, August 1993-2006

Stream bank stabilization using bioengineering techniques, Natural Resource Conservation Service, training workshop, Tendoy, Idaho. Spring 1996

Assessing Proper Function Condition for Lotic Areas, U. S. Forest Service and Bureau of Land Management, training workshop, Salmon, Idaho. Spring 1998.

Assessing Proper Function Condition for Lentic Riparian-Wetland Areas U. S. Forest Service and Bureau of Land Management, training workshop, Salmon, Idaho. Spring 2000

REPORTS

Curet, T. Habitat use, food habits and the influence of predation on subyearling chinook salmon in Lower Granite and Little Goose Reservoirs, Washington. 1993. College of Forestry, Wildlife and Range Sciences, University of Idaho.

Curet, T., M. Larkin, and R. Newman. Federal Aid in Fish and Wildlife Restoration. Regional Fisheries Management Investigations, Salmon Region. Mountain lake, lowland lake, river, and streams investigations including technical guidance. 2000. Idaho Department of Fish and Game. F-71-R-23

Curet, T., M. Larkin, R. Newman, S. Meyer, and S. Kish III. Federal Aid in Fish and Wildlife Restoration. Regional Fisheries Management Investigations, Salmon Region. Mountain lake, lowland lake, river, and streams investigations including technical guidance. 2000. Idaho Department of Fish and Game. F-71-R-24.

Liter, M., T. Curet, and M. Larkin. Federal Aid in Fish and Wildlife Restoration. Regional Fisheries Management Investigations, Salmon Region. Mountain lake, lowland lake, river, and streams investigations including technical guidance. 1999. Idaho Department of Fish and Game. F-71-R-19.

Liter, M., M. Larkin and T. Curet. Federal Aid in Fish and Wildlife Restoration. Regional Fisheries Management Investigations, Salmon Region. Mountain lake, lowland lake, river, and streams investigations including technical guidance. 1996. Idaho Department of Fish and Game. F-71-R-20.

Liter, M., T. Curet, and M. Larkin. Federal Aid in Fish and Wildlife Restoration. Regional Fisheries Management Investigations, Salmon Region. Mountain lake, lowland lake, river, and streams investigations including technical guidance. 2000. Idaho Department of Fish and Game. F-71-R-21.

Liter, M., T. Curet, and M. Larkin. Federal Aid in Fish and Wildlife Restoration. Regional Fisheries Management Investigations, Salmon Region. Mountain lake, lowland lake, river, and streams investigations including technical guidance. 2000. Idaho Department of Fish and Game. F-71-R-22.

Larkin, M., A. Brimmer, T. Curet, and R. Andersen. Federal Aid in Fish and Wildlife Restoration. Regional Fisheries Management Investigations, Salmon Region. Mountain lake, lowland lake, river, and streams investigations including technical guidance. 2003. Idaho Department of Fish and Game. F-71-R-25.

Brimmer A., K. Andrews, B. Esselman, and T. Curet. Federal Aid in Fish and Wildlife Restoration. Regional Fisheries Management Investigations, Salmon Region. Mountain lake, lowland lake, river, and streams investigations including technical guidance. 2003. Idaho Department of Fish and Game. F-71-R-26.

Brimmer A., T. Curet, B. Esselman, and K. Andrews. Federal Aid in Fish and Wildlife Restoration. Regional Fisheries Management Investigations, Salmon Region. Mountain lake, lowland lake, river, and streams investigations including technical guidance. 2006. Idaho Department of Fish and Game. F-71-R-27.

Brimmer A., T. Curet, B. Esselman, and K. Andrews. Federal Aid in Fish and Wildlife Restoration. Regional Fisheries Management Investigations, Salmon Region. Mountain lake, lowland lake, river, and streams investigations including technical guidance. In press. Idaho Department of Fish and Game. F-71-R-28.

Brimmer A., T. Curet, B. Esselman, and K. Andrews. Federal Aid in Fish and Wildlife Restoration. Regional Fisheries Management Investigations, Salmon Region. Mountain lake, lowland lake, river, and streams investigations including technical guidance. In press. Idaho Department of Fish and Game. F-71-R-29.

Brimmer A., T. Curet, B. Esselman, and K. Andrews. Federal Aid in Fish and Wildlife Restoration. Regional Fisheries Management Investigations, Salmon Region. Mountain lake, lowland lake, river, and streams investigations including technical guidance. In press. Idaho Department of Fish and Game. F-71-R-30.

Nemeth, D., K. Plaster, K. Apperson, J. Brostrom, T. Curet, and E. Brown. Idaho Supplementation Studies. 1996. Bonneville Power Administration. P.O. Box 3621 Portland, OR 97283-3621. Vol 107 Article 04.

Bennett, D., T. Dresser, Jr., T. Curet, K. Lepla and M. Madsen. 1993. Lower Granite Reservoir in-water disposal test: Results of the fishery, benthic and habitat monitoring program Year – 3 (1990). Completion report. U.S. Army Corps of Engineers, Walla Walla, Washington.

Bennett, D., T. Dresser, Jr., and T. Curet. 1992. Abundance of subyearling chinook salmon in Little Goose Reservoir Washington, Spring 1991. Annual Report. U.S. Army Corps of Engineers, Walla Walla, Washington.

Bennett, D., T. Curet and T. Dresser, Jr. 1991. Monitoring fish community activity at disposal and reference sites in Lower granite Reservoir, Washington, Year-3 (1991). Quarterly Reports, April-June, July-September, October. U.S. Army Corps of Engineers, Walla Walla, Washington.

PRESENTATIONS

"Upper Salmon Basin Project Restoration Initiative", Idaho Chapter of the American Fisheries Society, Boise, Idaho. February 2003

"Lemhi Conservation Agreement", Seventh Annual Natural Resource Seminar, Natural Resources Division of the Idaho Attorney General's Office, November 2004.

"Habitat use, food habits and the influence of predation on subyearling chinook salmon in Lower Granite and Little Goose Reservoirs, Washington", M. S. thesis defense, College of Forestry, Wildlife and Range Sciences, University of Idaho, December, 1993.

"The influence of predation on subyearling chinook salmon in Lower Granite Reservoir, Washington" Idaho Chapter of the American Fisheries Society, McCall, Idaho. February 1993.

"Impacts of water management on fishes in Central Idaho" Water workshop, Upper Salmon Basin Watershed Project, Salmon and Challis Idaho. April 2004

JOB RELATED /AWARDS

Fish Team Award, for contributions to Salmon Subbasin Summaries, Idaho Fish and Game In-Service Training School, May 2001.

Idaho Chapter Award of Merit for Recognition for Contributions to the Fisheries Profession and Fisheries Resources of Idaho, American Fisheries Society, Idaho Chapter Meeting, 2/27/98

PROFESSIONAL AFFILIATION

American Fisheries Society



Compendium of Documents Related to the Snake River Basin Adjudication and the Nez Perce Water Rights Settlement

April, 2005



Compendium of Documents Related to the Snake River Basin Adjudication and Nez Perce Water Rights Settlement

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 - 2.2.2. Joint Motion for Protective Order-April 17, 1988
 - 2.2.3. Protective Order-April 1998
 - 2.2.4. Joint Status Report-Mediation-August 24, 1998
 - 2.2.5. Status Conference transcript-November 10, 1998
 - 2.2.6. Status Conference transcript-December 21, 1998
 - 2.2.7. Order of Mediation and Appointment-December 22, 1998
 - 2.2.8. Protective Order for Mediation-July 21, 1999
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 - 2.2.10. Joint Status Report on Settlement Efforts and Motion to Stay-April 19, 2004
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AGREEMENT SUMMARY

May 2004

Background of the Agreement

The Snake River Basin Adjudication (SRBA) is a water rights adjudication of the Snake River within the State of Idaho. As a part of that adjudication, the Nez Perce Tribe and the United States, as trustee for the Tribe, filed a variety of claims to water rights, based on treaties entered into between the United States and the Nez Perce Tribe. Among these, water rights were claimed for instream flows to protect the Tribe's treaty-reserved fisheries. Those claims were contested by the State of Idaho and certain Idaho water users because they could have affected the rights of Idaho water users to continue to divert water. By order of the SRBA Court in 1998, the parties have been attempting to resolve the issues. Negotiations to resolve the instream flow water right claims have focused on finding ways to protect fish habitat, including both flow and non-flow related issues, while preserving existing water uses.

The claims for the Tribe include not only the instream flow water right claims, but also claims to support the Tribe's consumptive water needs and claims to springs in the area ceded by the Tribe in 1863. The proposed settlement includes provisions resolving all of the issues relating to the Tribe's water right claims.

The parties to the mediation included the United States and the Tribe as claimants, as well as parties to the SRBA who filed legal objections to the Tribal claims. These objectors include the State of Idaho, Idaho Power Company, and water users throughout the Snake River basin within Idaho. After several years of negotiations, the parties have developed a framework for a proposed settlement agreement (although not a party to the settlement, Idaho Power participated in the mediation and is expected to continue working with others on issues associated with the Hells Canyon Complex).

Specifically, the framework, or "term sheet," is divided into three separate components: (1) the Nez Perce Tribal component to resolve issues on and near lands ceded by the Tribe in the 1863 Treaty, (2) the Salmon/Clearwater component to protect flows and habitat within the Salmon and Clearwater River basins, and (3) the Snake River flow component to resolve issues involving the use of the Snake River above the Hells Canyon Complex.

The proposed settlement agreement would (1) finally and fully determine the Tribal claims to water rights, (2) set out the understandings and criteria necessary to provide long-term ESA compliance for water use in the Snake River basin in Idaho and for timber land management activities on state and private lands, and (3) protect existing water uses.

Nez Perce Tribal Component

The Tribal component resolves water and other natural resource concerns raised by the Tribe in the SRBA. These resource concerns include water rights, development of water resources, hatchery management, certain BLM lands, and fisheries habitat. In exchange for the Tribe's agreement to resolve their water right claims, as well as to resolve any other Tribal water-based claims, the United States will provide financial compensation to the Tribe. The specific provisions of this component include:

- The Tribe's multiple-use water rights will be decreed in the amount of 50,000 acre-feet per year, primarily from Clearwater River sources. Water from other sources will be decreed only to the extent water is unappropriated and existing water rights are not injured.
- The Tribe's "springs or fountains" water rights claims on federal lands within the 1863 Nez Perce Treaty ceded area will be decreed, while similar rights claimed on nonfederal lands will be waived.
- BLM lands valued at \$7 million will be transferred to the Tribe. BLM's recreational lands along the Clearwater River corridor will be excluded from this transfer.
- The United States and the Tribe will enter into agreements providing for tribal management of the Kooskia National Fish Hatchery and tribal co-management of the Dworshak National Fish Hatchery.
- The United States, the Tribe, and the State of Idaho will enter into an agreement regarding use of 200,000 acre-feet of water in Dworshak Reservoir as part of a flow augmentation plan for fish.
- The United States will establish a \$50 million water and fisheries trust fund for use by the Tribe in acquiring lands and water rights, restoring and improving fish habitat, fish production, agricultural development, cultural preservation, and water resource development.
- The United States will provide \$23 million for design and construction of sewer and water system projects for local Nez Perce tribal communities.
- In lieu of contracting 45,000 acre-feet of Payette River storage space for a 30-year rental term, the United States will pay to the Tribe the \$10.1 million rental value of that storage space.
- The agreement does not resolve, but looks to separate discussions for a potential resolution of issues relating to the Bureau of Reclamation's Lewiston Orchards Irrigation District water diversion system.

Salmon/Clearwater Component

Many of the parties believe the Salmon/Clearwater component of the agreement will provide benefits for ESA listed species in several ways: improved instream flows, habitat, and passage.

- Instream flows will be established and held by the Idaho Water Resources Board for selected streams of importance to the Nez Perce Tribe. These flows will provide for future domestic, commercial, municipal, and industrial uses and will allow for a certain level of future development of other water uses. The State will administer a cooperative agreement(s) under the Endangered Species Act to enhance riparian habitat and protect existing and future State-permitted uses.
- Under the Forestry Component of the agreement, riparian/streambank protection measures will improve habitat for aquatic species on enrolled lands. This voluntary program supplements existing Idaho Forest Practice Rules and all State and private landowners in the Salmon/Clearwater River basins will be encouraged to participate.
- A Habitat Trust Fund will be established to provide funding for habitat improvement projects under both the flow and forestry programs described above.

Snake River Flow Component

The Snake River flow component anticipates 30-year Biological Opinions (BO) from NOAA Fisheries and USFWS under the Endangered Species Act on continued operation of the Bureau of Reclamation's projects in the upper Snake River basin. These BOs would address issues relating to flows from the Snake River above Brownlee Reservoir and the use of water for flow augmentation. The significant provisions of this component include the following:

- Minimum flows defined by the Swan Falls Agreement will be decreed by the SRBA Court to the Idaho Water Resources Board.
- The State of Idaho will extend the provisions of State water law (*Idaho Code 42-1763B*) for the term of the agreement to allow Reclamation to lease up to 427,000 acre-feet of water from Idaho water banks for flow augmentation.
- Reclamation will be allowed to rent or acquire up to 60,000 acre-feet of consumptive natural flow water rights from the Snake River between Milner and Swan Falls for flow augmentation purposes. When added to the other rentals, this water may increase the total water available for flow augmentation to 487,000 acre-feet. The United States will compensate local governments for impacts caused by Reclamation's acquisition of this additional 60,000 acre-feet.



Fact Sheet on Snake River Water Agreement

May 15, 2004

- Since 1998, the Nez Perce Tribe, the United States, the State of Idaho, and local communities and water users in Idaho have engaged in mediation as part of the Snake River Basin Adjudication (SRBA) to resolve the claims of the Nez Perce Tribe in the Snake River.
- The SRBA is the legal inventory of about 150,000 water rights in 38 of Idaho's 44 counties. The Nez Perce dispute has been the biggest outstanding dispute in the Snake River Basin.
- The parties have now agreed on a "Term Sheet" that will guide the settlement of this case, and that provides the responsibilities of the parties over the 30 year term of the agreement.
- The components in the Term Sheet as follows:
 - **NEZ PERCE TRIBAL COMPONENT** which, among other things, quantifies the Tribe's on-reservation, consumptive use reserved water right at 50,000 acre feet a year with a priority date of 1855; establishes a \$50 million multiple-use water and fisheries resources trust fund; provides \$23 million for the design and construction of a water supply and sewer system on the reservation; transfers management authority of Kooskia National Fish Hatchery to the Tribe; and transfers a portion of Bureau of Land Management-administered land within the reservation valued at \$7 million to the Tribe.
 - **SALMON/CLEARWATER HABITAT MANAGEMENT AND RESTORATION INITIATIVE** which, among other things, provides that instream flows will be established and held by the Idaho Water Resources Board for selected streams of importance to the Tribe; requires the State of Idaho to administer a cooperative agreement under the Endangered Species Act; and establishes a Habitat Fund to provide funding for habitat improvement projects.
 - **SNAKE RIVER FLOW COMPONENT** which, among other things, provides that certain minimum flows will be decreed by the SRBA Court to the ID Water Resources Board; requires the State of Idaho to extend the provisions of State law for the term of the agreement to allow the Bureau of Reclamation to lease up to 427,000 acre feet of water from ID water banks for flow augmentation; and allows Reclamation to acquire up to 60,000 acre feet of consumptive natural flow water rights from the Snake River, with compensation to local communities for impacts caused by this acquisition.
- State and Federal legislation and Tribal approval will be necessary to implement the provisions of the Term Sheet. In addition, a final consent decree must be entered by the SRBA court.



2. Mediator's Term Sheet

2.1. Mediator's Term Sheet with Appendices

2.2. Documents leading to the Mediator's Term Sheet

- 2.2.1. Scheduling Order-April 22, 1997
- 2.2.2. Joint Motion for Protective Order-April 17, 1988
- 2.2.3. Protective Order-April 1998
- 2.2.4. Joint Status Report-Mediation-August 24, 1998
- 2.2.5. Status Conference transcript-November 10, 1998
- 2.2.6. Status Conference transcript-December 21, 1998
- 2.2.7. Order of Mediation and Appointment-December 22, 1998
- 2.2.8. Protective Order for Mediation-July 21, 1999
- 2.2.9. Status Conference transcript-May 21, 2002
- 2.2.10. Joint Status Report on Settlement Efforts and Motion to Stay-April 19, 2004
- 2.2.11. Joint Notice of Settlement Efforts (filed with Idaho Supreme Court)-April 20, 2004
- 2.2.12. Order Accepting Term Sheet-April 20, 2004
- 2.2.13. Order Modifying Protective Order-April 20, 2004

Mediator's Term Sheet

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MEDIATOR'S TERM SHEET

I Nez Perce Tribal Component.

- A. The Tribe's on-reservation, consumptive use reserved water right will be quantified in the amount of 50,000 AF per year, with a priority date of 1855. This water right will be established so as to allow for irrigation, DCMI, hatchery and cultural uses, at the discretion of the Tribe. The parties expect the source of most of this water right will be the Clearwater River; however, the source of some this water right may be from tributary streams adjacent to tribal lands to the extent unappropriated water is available and no injury to existing water rights will occur. The Tribe will administer the on-reservation use of this water right pursuant to the tribal water code. The Tribe may rent this water within the State of Idaho through the state water bank or water banks.
- B. The United States will establish a \$50 million multiple-use water and fisheries resource trust fund for the Tribe to use in acquiring lands and water rights, restoring/improving fish habitat, fish production, agricultural development, cultural preservation, and water resource development or fisheries-related projects.
- C. Subject to authority, the United States will enter into an agreement with the Tribe as to the use of 200 KAF in Dworshak Reservoir, which will include an operational MOA between the Tribe, Corps of Engineers (COE), National Marine Fisheries Service (NOAA Fisheries), the Bonneville Power Administration (BPA), and the State of Idaho implementing a flow augmentation plan beneficial to fish. Prior to the agreement implementing this term sheet,¹ the Tribe and the US will mutually agree that the power revenue effect of implementing this term will be either neutral or positive, or in the absence of such agreement, will revise this term so that such effect will be neutral or positive.
- D. The United States will fund the design and construction of domestic water supply and sewer systems for tribal communities on the reservation, including a water quality testing laboratory, in the total amount of \$23 million.
- E. The United States will enter into a long-term contract with the Tribe at the time of settlement, transferring management control of the federal hatchery at Kooskia to the Tribe. The United States and the Tribe will enter into an agreement for joint management of hatchery programs at the Dworshak National Hatchery.
- F. Prior to the completion of the agreement, the United States and the Tribe will agree to a quantity of BLM lands within the reservation to be transferred from the United States to the Tribe, to be selected by the Tribe from within the 11,000 acres identified as available for selection by the BLM, up to a total value of \$7 million as determined by mutual agreement or, in the absence of mutual agreement, by an independent appraisal report based upon the fair market value that is prepared in accordance with the *Uniform Standards of Professional Appraisal Practice* (USPAP) and the *Uniform Appraisal Standards for Federal Land Acquisitions*. The BLM and the Tribe, under the authority of the Federal Land Policy and

¹Implementation of this Term Sheet will involve drafting of a number of implementation documents including federal and state legislation, a consent decree, biological assessments and opinions in accordance with the Endangered Species Act, and other documents. References in this Term Sheet to "agreements" refer to those implementation documents.

Mediator's Term Sheet

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Management Act of 1976, will enter into a cooperative agreement to coordinate and cooperate in management of BLM lands within the reservation which will include a right of first refusal for the Tribe to purchase any BLM lands that the United States may choose in the future to sell, transfer, or exchange.

- G. Any non water-based claims the Tribe may have against the United States for the construction and operation of the Dworshak Dam will not be waived as a part of this agreement, nor will any compensation for such alleged claims be a part of the agreement. The United States understands that the Tribe intends to pursue such claims, moral or legal, separately from this agreement, and, without admitting any liability, agrees to meet in good faith with the Tribe to attempt to resolve such claims
- H. In lieu of contracting 45,000 AF of uncontracted storage space in the Payette River system to the Tribe, the United States will pay the Tribe the present value of \$10.1 million of the 30-year rental value of that space based on the rental charges set in section III C.8.
- I. The Tribe's treaty right of access to and use of water from springs and fountains on Federal public lands within the 1863 Nez Perce Treaty ceded area shall be recognized and established under the agreement.
- J. Lewiston Orchards Irrigation District (LOID)/City of Lewiston This term sheet does not address any of the issues surrounding the proposed transfer of the LOID/Bureau of Reclamation water diversion system to the Tribe or funding by the United States of a replacement water intake system on the Clearwater River for LOID. The intention of the parties is to allow any discussions that may take place in the future among LOID, the Tribe, the Bureau of Reclamation (BOR), the City of Lewiston, and other affected water right holders to occur separately from and unaffected by this term sheet

II. Salmon/Clearwater Component

A. Instream Flows To Be Established As Part of Settlement of Nez Perce Claims.

- 1. Idaho will establish, pursuant to state law, instream flow water rights, to be held by the Idaho Water Resource Board (IWRB), on the streams within the Salmon and Clearwater Basins listed in Appendix I, List A in accordance with the protocol set forth as part of Appendix I. Such water rights will be established by March 31, 2005.
- 2. By March 31, 2005, the IWRB will establish pursuant to state law instream flow water rights for the streams within the Salmon and Clearwater River Basins on the streams listed in Appendix I, List B, in amounts that are negotiated by the parties in consultation with local communities. In conjunction with the establishment of instream flows for the streams listed in Appendix I, List B, the parties will seek legislation from the Idaho Legislature to permit the IWRB to protect from diversion water to satisfy such instream flows, where needed, under state laws, regulations, and water bank rules. In negotiation of the quantification of instream flows, the parties will take into consideration the present hydrograph and the status of state-granted water rights on each stream.
- 3. The instream flows will be subordinated to water rights existing on or before the date of this agreement and to future domestic, commercial, industrial and municipal water rights. In issuing any new water rights for future uses that may affect the instream flows, IDWR will consider the local public interest under Idaho Code § 42-203(A)5, including but not limited to the protection of fish and wildlife habitat, aquatic life,

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- recreation, aesthetic beauty, transportation and navigation values, and water quality.
 4. The SRBA court will decree the instream flows established by the IWRB on the streams listed in Appendix I, Lists A and B. In the event the State proposes to change any instream flow listed in Appendix I, Lists A and B, the State agrees to: 1) provide 6 months advanced written notice to the parties of any proposed change, including the basis for the proposed change and an analysis of the impacts, if any, resulting from the proposed change to fish and wildlife resources; and 2) to consult with the Nez Perce Tribe on a government-to-government basis prior to making the change.
 5. Federal reserved water rights for the Selway, Lochsa, Middle Fork Clearwater, Rapid River, Main Salmon and Middle Fork Salmon River will be decreed under the Wild and Scenic Rivers Act to the United States pursuant to a separate settlement in the SRBA.
 6. Existing state instream flows on the mainstem Clearwater, the mainstem Salmon, the Lemhi and the Pahsimeroi Rivers will be maintained as presently quantified, subject to I.C. § 42-1504.
 7. The parties will study the relationship of the IWRB instream flows on the Clearwater River with the potential future operations of Dworshak Reservoir including evaluations of the existing rule curve and proposed future integrated rule curves to provide for operation of Dworshak consistent with anadromous and resident fishery objectives, and other information as appropriate. The parties will complete the study by December 31, 2004.
 8. In the Lemhi and Pahsimeroi, additional habitat actions will be developed by the Parties in consultation with the local community and stakeholder groups in the course of developing the proposed Section 6 Cooperative Agreement (see Section II.D). The Parties' anticipation is the development of the actions will be specifically directed toward (1) assembling by March 31, 2005 sufficient agreement on actions to ensure settlement of the Nez Perce instream water right claims, and (2) maximizing the consistency between those actions and all provisions of any proposed Section 6 Cooperative Agreement that may relate to the Lemhi or Pahsimeroi basins.
 9. Enforcement. In accordance with Idaho Code Title 42, Chapter 6, or other applicable law, IDWR will regulate the delivery of the instream flow water rights and protect from diversion water to satisfy such instream flows through the designated stream reaches, subject to priority and to the subordinations specified in section II.A.3.
- B. Salmon/Clearwater Habitat Management and Restoration Initiative.** The State of Idaho will implement a Salmon and Clearwater Habitat Management and Restoration Initiative for the conservation and restoration of habitat within the Salmon and Clearwater River Basins. The Initiative will consist of three components: 1) instream flow program, 2) forest practices program, and 3) a habitat restoration program.
1. Instream Flow Program.
 - a. The State will identify as part of the development of a Section 6 Cooperative Agreement(s) as provided for in Section II.D a list of streams for which it desires incidental take coverage. Within 60 days of this notice, the State will provide existing and expected future water depletions, including quantity and location (basin) for those streams that are to be included in the Section 6 Cooperative Agreement. Streams determined by the Services to be flow limited will be

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addressed in collaboration among the parties and local communities in order for the Section 6 Cooperative Agreement described in section II D to satisfy the requirements of section 7(a)(2) of the ESA. Any state instream flows established under this section will not be decreed by the SRBA court nor will such instream flows be subject to the notice and consultation process described in section II.A.4 above

- b. **Monitoring.** The parties will negotiate a monitoring plan and method for determining compliance with the instream flow program.
- c. **Enforcement.** IDWR will regulate the delivery of the instream flow water rights and protect from diversion water to satisfy such instream flows through the designated stream reaches, subject to priority and to the subordinations specified in section II.A.3 above

- 2. **Idaho Forestry Program.** [Appendix II contains the figures and other references in this section.] Owners or operators who participate in the following State of Idaho Section 6 forest practices program will receive incidental take coverage under the ESA for any incidental take that may occur of listed species covered by this Agreement due to forest practices conducted in accordance with this Agreement. The forest practice program will be based on the Idaho Forest Practices Act ("IFPA"), Idaho Code §§ 38-1301 et seq. Owners and operators participating in the forest practices program voluntarily commit to implement the following prescriptions, in addition to the IFPA, to provide additional short-term and long-term conservation benefits for listed species. The Section 6 Agreement to be negotiated by the parties will not vary materially from the following terms, but may explain and define these terms, including establishment of standards relating to subsequent administrative decisions by the Idaho Department of Lands, as mutually agreed by the parties. This forestry program is a cooperative agreement between the State and the Services pursuant to Section 6(c) of the ESA, and neither applies to Nez Perce tribal lands nor impairs Nez Perce treaty fishing, hunting, pasturing, or gathering rights.

a. **DEFINITIONS:**

- i. **Bank Full Depth:** The average depth of the stream when the flow is at the ordinary high water mark. This is used to determine the average depth of the stream for the reach adjoining management activities.
- ii. **Class I Stream:** For purposes of this Agreement, Class I streams are those that contain habitat which is used by fish at any life stage at any time of the year including potential habitat likely to be used by fish which could be recovered by restoration or management and includes off-channel habitat. Where it is unknown whether the stream may contain fish, fish habitat or potential habitat, the current IFPA rules based on upstream drainage area will be used to determine the Class I-Class II boundary. The Class I-Class II boundary may be determined from other, analytically-based or empirical methods, as approved by the IDL.
- iii. **Class II Stream:** For purposes of this Agreement, Class II streams are headwater streams or minor drainages that do not contain habitat likely to be used by fish at any life stage at any time of the year. The principle value of Class II streams lies in their influence on ecological functions, water

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- quality and water quantity downstream in Class I streams.
- iv. Cumulative Watershed Effects Process (CWE): Forest Practices Cumulative Watershed Effects Process for Idaho, as amended.
- v. Distances: All distances referenced in these supplement measures are slope distances, unless otherwise provided herein
- vi. Flood Prone Width: Flood prone width is defined as the width of the water's surface at twice the bank full depth.
- vii. Idaho Department of Lands (IDL): The administering agency of the IFPA.
- viii. Hot spot: (as defined in the Native Fish Habitat Conservation Plan (NFHCP)).
- ix. Large Woody Debris (LWD): Live or dead trees and parts or pieces of trees that are large enough or long enough or sufficiently buried in the stream bank or bed to be stable during high flows.
- x. Multiple Unconfined Channel: Valley bottom contains multiple (braided) channels that are active or relic.
- xi. Ordinary High Water Mark: That mark on all water courses in respect to vegetation, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years as to mark upon the soil a character distinct from that of the abutting upland.
- xii. Riparian Protection Zone (RPZ): The combined widths of the no harvest and buffer zones defined in these measures
- xiii. Single Confined Channel: Bank full flow is contained within a single channel and the flood prone width is less than four times the bank full channel width.
- xiv. Single Unconfined Channel: Bank full flow is contained within a single channel and the flood prone width is greater than four times the bank full channel width.
- xv. SPZ: Stream Protection Zone as defined in the IFPA.
- b. **RIPARIAN MANAGEMENT MEASURES**
 - i. Because of the diversity of terrain and forest types in Idaho, it is difficult to design a "one-size fits all" set of riparian management measures. Thus, while the supplemental measures set forth below are designed for application to all enrolled forest lands, the program to be included in the Section 6 Agreement will also provide a mechanism for enrollees to design site-specific stream protection measures that must be reviewed and approved by the IDL forest practices coordinator or designee and a fisheries biologist as appropriate prior to implementation. An approved site-specific stream protection plan shall provide for equivalent or better results than these supplemental conservation measures.
 - ii. **RIPARIAN MEASURES FOR CLASS I STREAMS.** -- On Class I streams the following measures shall apply to the RPZ.
 - (a) No Harvest Zone Measures
 - i) The No Harvest Zone is defined as:
 - a) Twenty-five (25) feet (each side) of the ordinary high

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- water mark where the stream is contained in a Single Confined Channel (Figures 1, 4)
 - b) Twenty-five (25) feet (each side) of the ordinary high water mark where the stream is contained in a Single Unconfined Channel (Figures 2, 5).
 - c) The entire flood prone width where the stream is contained in Multiple Unconfined Channels (Figures 3, 6). Where the current channel, or any relic channel is within 25 feet of the valley sidewall, the No Harvest Zone will be extended upslope twenty-five (25) feet from the ordinary high water mark of that channel
 - ii) Harvest will not occur in the No Harvest Zone unless determined by the IDL, on a site-specific basis, that harvest is necessary to maintain or improve riparian function, which may include reduction of the risk of forest fires, disease, or insect infestation. An enrollee who believes harvest is necessary to maintain or improve riparian function must submit a site-specific plan for IDL review and approval prior to implementation. Such harvest plan must describe how riparian function will be protected.
 - iii) Yarding corridors will not be placed through the No Harvest Zone unless required to minimize road construction, for operator safety, or to achieve sound forestry practices in the adjacent area. Any such yarding corridor shall be placed in a No Harvest Zone only to the minimum extent necessary, and only as approved by the IDL forest practices coordinator or designee, with advice from a fisheries biologist as appropriate. Any approved plan authorizing a yarding corridor within the No Harvest Zone must still ensure the minimum stocking levels are retained within the RPZ. Yarding corridors that affect more than ten (10) percent of the RPZ will be mitigated as approved by IDL.
 - iv) When harvesting in areas adjacent to Class I streams, LWD may be added (through active placement of LWD) from the buffer zone, in accordance with an approved site-specific plan (II.B.2.b.i). This may alter the leave tree requirements.
- (b) Buffer Zone Measures
 - i) The buffer zone is defined as:
 - a) Fifty (50) feet (each side) of the No Harvest Zone where the stream is contained in a Single Confined Channel (Figures 1, 4).
 - b) The entire flood prone width beyond the No Harvest Zone where the stream is contained in a Single Unconfined Channel (Figure 2, 5). Where the channel is within twenty-five (25) feet of the valley sidewall, the

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- buffer zone will be extended fifty (50) feet upslope of the No Harvest Zone.
- c) Where the stream is contained in Multiple Unconfined Channels, and the current channel, or any relic channel is within twenty-five (25) feet of the valley sidewall, the buffer zone will be extended fifty (50) feet upslope from the No Harvest Zone (Figures 3, 6).
- ii) During development of the section 6 agreement, the parties will work to evaluate the appropriateness of the LWD instream target and the leave trees per acre target and make revisions as mutually agreed. Absent such agreement, within the buffer zone an average of 88 trees per acre of trees larger than 8 inches diameter breast height (DBH) will be retained, selected as follows;
- a) Trees leaning toward the stream or flood plain will be favored for retention,
 - b) Trees retained will be lineally distributed along the length of the stream segment even though they may be concentrated closer to the stream,
 - c) Trees with the highest crown to height ratios (crowns from the tip to the ground) will be favored for retention to enhance stream shading,
 - d) Native species leave trees will be selected based on their suitability to survive and thrive in the RPZ.
 - e) All snags will be retained in the No Harvest Zone (where they do not interfere with logger safety), with no more than 9 snags to be included in the total tree count per acre. Snags must be over 10 feet tall to be included in the total tree count,
 - f) Trees less than 8 inches DBH and shrubs will be retained to the extent possible,
 - g) The diameter distribution of the live leave trees in the buffer zone will match a forest stand diameter distribution consistent with the age of the stand in its pre-harvest condition. The Parties envision that the section 6 agreement will include provisions that will encourage recruitment of large, older trees to the RPZ.
- iii) Because Idaho forest ecology varies tremendously from north to south, it may not be possible to maintain 88 trees per acre of trees larger than 8 inches DBH on all forest lands. Thus, in the event an enrollee demonstrates that the site productivity within the riparian zone cannot support an average of 88 trees per acre of trees larger than 8 inches DBH, then IDL will work with the enrollee(s) to determine an appropriate site-specific tree retention policy that ensures protection of riparian habitat. In

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no event will the tree retention be less than 60 trees per acre of trees larger than 8 inches DBH.

- (c) Measures Applicable to Entire Riparian Zone
 - i) Operation of ground-based equipment shall not be allowed within the RPZ.
 - ii) The outer perimeter of the RPZ will be designated on the ground/trees prior to the commencement of logging activities.
- iii. **RIPARIAN MEASURES FOR CLASS IIa STREAMS.** Class IIa streams are Class II streams that contribute surface stream flow directly into a Class I stream.
 - (a) There will be a fifty (50) foot buffer zone adjacent to the main stem of Class IIa streams. Within this zone a minimum of thirty-five (35) trees per acre larger than 8 inches DBH will be retained. This corresponds to an average thirty-five (35) foot spacing. Trees retained must be representative of the size of trees that existed in the stand prior to harvest.
 - (b) The buffer zone of perennial Class IIa streams that contribute, based on contributory acres, more than twenty (20) percent of the flow to a Class I stream will extend one-thousand (1000) feet above the confluence. Above this point, Class II SPZ requirements in the IFPA will apply.
 - (c) The buffer zone of perennial Class IIa streams that contribute, based on contributory acres, less than twenty (20) percent of a perennial Class I stream flow will extend five-hundred (500) feet above the confluence. Above this point, Class II SPZ requirements in the IFPA will apply.
 - (d) The riparian management of intermittent Class IIa streams will be covered by the IFPA Class II rules
- iv. Removal of LWD from Class I and Class IIa streams shall be prohibited unless necessary to maintain or improve riparian function, which may include reduction of the risk of forest fires, disease or insect infestation. A site-specific management plan approved by IDL will be required for the removal of any LWD prior to implementation.
- v. As part of these Supplemental Measures, participating enrollees commit to mapping all stream segments on their ownerships as Class I and Class II within 15 years from the date of enrollment. Enrollees also agree to participate in any efforts by IDL, USFWS, NOAA Fisheries, and Idaho Department of Fish and Game to update mapping of stream segments on their ownerships.
- vi. As part of these Supplemental Measures, the parties will cooperate in developing and undertaking a series of research projects designed to compare the effectiveness of these Supplemental Measures with alternative management strategies in enhancing native fish habitat and populations. These projects would include examples of active management within riparian areas.

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- c. **ROAD MANAGEMENT MEASURES.** The road management measures set forth herein will constitute the measures to be included in the Section 6 Agreement. Additional road measures may be included in the Section 6 Agreement only with the consent of all parties
- i. New Road Construction:
- (a) An attempt will be made to find a suitable alternative location for new roads that are proposed for construction on side slopes greater than sixty (60) percent and/or in unstable or erodible soils. Unstable or erodible soils are those defined as "high" in the Idaho CWE Process for Idaho (Table B-1) or other agreed upon hazard-rating analysis process. Where an alternative location is not feasible, the road will be full benched without fill slope disposal.
 - (b) Where road grades slope toward stream crossings, the enrollee will install drivable drain dips and/or ditch relief pipes at the nearest practicable location to streams so that an adequate filtration zone exists to minimize sediment delivery to streams;
 - (c) Road fills over stream crossings will be grass seeded and straw-mulched concurrent with construction. Other road cuts and fills on newly constructed roads will be seeded within one operating season. The tread on native-surface roads will also be grass seeded within one operating season following construction unless the road will be used for hauling within two (2) years of construction;
 - (d) New road construction will be minimized in stream RPZs. If road construction occurs in an RPZ, slash filter windrows or suitable alternative measures will be installed at the toe of all fill slopes;
 - (e) Fills at culvert inlets on stream crossings where the culvert is 24-inch-diameter or larger will be well-armored with rock or other erosion control measures. A flared inlet structure may be used as an alternative;
 - (f) Stream crossing culvert installations will be designed to accommodate at least the fifty (50) year peak flow as determined by U.S. Geological Survey flood magnitude prediction procedures. As an alternative, the culvert size for a fifty (50) year flow may be calculated by an IDL hydrologist based on an analysis of channel dimensions;
 - (g) New roads will be minimized where the potential for erosion is high. If roads are built in an area where soils are identified in the CWE process surface erosion hazard ratings as high (Table B-2), the road tread over stream crossings will be rocked or otherwise stabilized to prevent sediment transport.
 - (h) Road cross-drainage will be provided as frequently as necessary to control road tread erosion. On active native-surfaced roads, road drainage features will be located such that road runoff distances generally do not exceed three-hundred (300) feet (and will not exceed four-hundred (400) feet) along the road centerline. On

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erodible soil types, or on road grades steeper than eight (8) percent, this spacing will be reduced from the specifications listed above; alternatively a localized IDL approved method to adequately control road tread erosion will be applied.

- (i) Road right of way clearings will be minimized where roads cross streams.
 - (j) Seeps or springs will be avoided during road design and construction, if possible. If roads cross seeps or springs, drainage features will be installed that pass accumulated surface water across the road prism and return it to the forest floor as close to the point of origin as reasonably practicable;
 - (k) New roads will be minimized in the RPZ. Roads located in RPZs will be constructed with appropriate fill depths and will include properly sized drainage features at all active channels;
 - (l) Stream crossing culvert installations must be designed to accommodate fish passage on Class I streams (an inspection program for culvert failures following significant hydrologic events will be negotiated as a part of the Section 6 agreement);
 - (m) The enrollee will inspect roads to determine their status and condition in comparison to these supplemental measures and results will be included in the periodic update of the road database.
 - (n) Road surface drainage will keep drainage within the source watershed.
- ii. Road Reconstruction and Upgrading:
- (a) A prioritization of road upgrades will be developed through CWE and/or an enrollee inventory of roads within five years of enrollment in this program. The prioritization schedule shall set forth a time frame for upgrading roads within fifteen years of the date of enrollment to the standards listed in the Supplemental Measures below. To the extent practicable, roads that have the potential to deliver sediment to Class I and Class II streams will receive priority for upgrading.
 - i) Within an operation area (Timber Sale) when the haul routes cross Class I streams, the Class I stream crossing culverts will be upgraded to meet the Supplemental Measures listed below no later than one year after completion of harvesting operations.
 - ii) For all roads, using the data from the CWE and/or enrollee inventory, enrollees will identify "hot spots." Hot spots will be addressed within five years from the date of identification. Hot spots will be upgraded to the standards in these Supplemental Measures when indicated by the CWE and/or enrollee inventory. An incentive program to encourage early response to hot spots will be included.

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- (b) Supplemental Measures for Reconstructing and Upgrading Existing Roads:
 - i) Road Tread Erosion—Within the RPZ of Class I streams, road cross-drainage will be provided as frequently as necessary to control road tread erosion. On active native-surfaced roads, road drainage features will be located such that road runoff distances generally do not exceed three hundred (300) feet (and will not exceed four-hundred (400) feet) along the road centerline. On highly erodible soil types, or on road grades steeper than eight (8) percent, this spacing will be reduced from the specifications listed above; alternatively, a localized method to adequately control road tread erosion from providing sediment to Class I streams will be applied. Procedures for alternative methods will be agreed upon.
 - ii) Culvert Replacement and Upgrading—Where existing stream crossing culverts do not pass the fifty (50) year flow, or where blockage of fish passage is documented, replacements will be designed and constructed to carry the fifty (50) year peak flow as determined by U.S. Geological Survey flood magnitude prediction procedures (as an alternative, the culvert size for a fifty (50) year flow may be calculated by a IDL hydrologist based on an analysis of channel dimensions and/or drainage size);
 - iii) Filtration—When the outlet of road drainage features are too close to streams for effective forest-floor filtration, supplemental sediment filtration will be provided (such as slash filter windrows, straw-bales, silt fences, etc.) and/or drainage feature spacing will be decreased to minimize sediment delivery;
 - iv) Relocation—For stream-adjacent/parallel roads or where there is a high density of stream crossings, simple/inexpensive relocation will be utilized in addition to (or in lieu of) road drainage improvements where possible.
- iii. Other Road Management. Site-specific access restriction commitments currently in place in cooperation with the Idaho Department of Fish and Game and/or other cooperators will be continued (and updated as necessary for new road construction and road abandonment) to protect riparian habitats and listed species.
- iv. Road Management Database
 - (a) The enrollee will commit to tracking the status of road conditions on enrolled lands. The methods for this will be either an updateable geographic information system (GIS), or a system of hand or computer aided drawing (CAD) maps, and tabular data suitable for periodic audits. It will show the road network spatially and facilitate estimation of road miles by road class. Additionally there is a

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commitment to periodically (ten (10) year cycle) re-inspect roads that have been constructed or upgraded to the supplemental standards and to perform any maintenance necessary to preserve the upgraded function.

- (b) The inspection process will be performed using several methods including but not limited to: Forestry personnel reviewing roads for use in management activities, personnel knowledgeable about such road inspection, and through the Cumulative Watershed Effects Analysis (CWE) field review activities.
- (c) The checklist for inspection will include all the elements necessary to ensure roadbed integrity, sediment management, and drainage structure function in regard to protecting streams.

d. **VARIANCE COMMITMENTS.** All variances to these Supplemental Measures that affect fish habitat shall be reviewed by the IDL Forest Practices Coordinator or designee in consultation, as defined in the IFPA, with a fisheries biologist and approved and signed by the IDL Area Supervisor.

e. **IMPLEMENTATION MONITORING.**

- i. IDL will monitor implementation and effectiveness of the IFPA and these additional conservation measures in protecting riparian function
- ii. Implementation Monitoring Plan. Each enrollee will be monitored separately within the program. Management Responses generated by the various methods listed below will be tailored to the landowner. Standards, criteria, and methods for implementation monitoring will be agreed upon.
 - (a) Three basic methods of implementation monitoring will occur to ensure the IFPA and these supplemental conservation measures are being applied on the ground. The first will be the routine on-site inspections carried out by IDL Forest Practice Advisors in the course of their work. These inspections are reviewed by staff and trends noted and reported on a yearly basis. The second is by periodic audits of management activities by an Interdisciplinary Team to review IFPA rule implementation and effectiveness. The third is by systematic implementation of CWE, which provides a framework to assess all the elements that may affect habitat and water quality, and provide a feedback loop for implementation of corrective measures and further assessment.
 - (b) For each of these methods, a report will be generated and sent to the landowner(s) with specific corrective action options presented and a timeframe in which the action is to be completed. An Interdisciplinary team will be available for consultation in reviewing the site if necessary and offering inputs on the corrective action.
 - i) Nonperformance issues documented in yearly reports may result in an increased rate of inspection and a revision of the enrollee's implementation plan.
 - ii) Nonperformance issues identified in periodic IFPA audits and CWE analyses will lead to adjusting inspection cycles and

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- iii) frequencies and reviews of enrollee's implementation plan.
 - iii) It is the responsibility of the person seeking authorization for incidental take of listed fish to show that actions taken are in compliance with the Section 6 Agreement and the Idaho Forest Practices Act
 - f **ADAPTIVE MANAGEMENT:** The parties will implement an adaptive management plan comparable in kind to that in the NFHCP, which will include among other things the following:
 - i. Effectiveness Monitoring Plan: All of the supplemental measures in this program are expected to benefit listed fish, however, some of the commitments provide more certain benefits than others. At present, the scientific information regarding the cause-and-effect relationships between some forest management activities and aquatic resource concerns are not well understood. Thus, methods by which adaptive management strategies will investigate scientific questions on the following issues will be identified:
 - (a) Evaluation of the effects of riparian management on woody debris loads and fish habitat diversity.
 - (b) Evaluation of effectiveness of supplemental measures at minimizing stream temperature increases.
 - (c) Evaluation of the sediment inputs, including the effectiveness of road measures.
 - ii. Changed Circumstances.
 - (a) A "changed circumstance" is a change in the circumstances affecting a covered species that can be reasonably anticipated to occur during the term of the agreement. Changed circumstances include, among others:
 - i) Forest fires that are stand replacement fires 300 acres and larger or that affect more than 25 percent of the stream length within the watershed. "Stand replacement" is of sufficient intensity to kill 90 percent or more of the trees (i.e., a fire that would necessarily result in the need to establish a new stand);
 - ii) Flooding when the flood has a recurrence interval greater than 25 years based on stream gauging station data in the watershed, for 4th order watersheds and above; and
 - iii) Landslides larger than 500 cubic yards that deliver sediment to streams.
 - (b) Promptly after a changed circumstance is discovered, IDL will be notified and invited to help craft a site-specific management alternative
 - iii. Evaluation and Response Plan: Adaptive Management triggers, similar in kind to the NFHCP will be established utilizing the data from effectiveness monitoring projects, the annual and periodic reports on implementation monitoring, and independent research as applicable to watersheds covered by these Supplemental Measures. The basic response mechanism for

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instituting programmatic changes in these measures is as follows:

- (a) A trigger can be tripped by findings from any level of reporting (yearly, periodic IFPA, or CWE) or scientific study conducted as part of this program.
- (b) When a trigger is tripped, an assessment of the biological relevance of the findings between expectations and results will be performed and a determination made as to whether there is a causal linkage, or an unforeseen circumstance
- (c) Depending on the determination above, a management response will be crafted to address the issue and enrollee implementation plans will be modified accordingly

g. **ADMINISTRATION AND IMPLEMENTATION OF SECTION 6 PROGRAM**

- i. **IDL Administration:** IDL shall be responsible for administering and ensuring compliance with the Idaho Forestry Program.
- ii. **Enrollment and Commitment:** A landowner may enroll in this program by submitting a written request to IDL. IDL shall develop an enrollment form for use by landowners. The enrollment form shall require, at a minimum, that the enrollee:
 - (a) Identify all lands for which enrollment is sought;
 - (b) Agree to abide by the supplemental measures set forth in this program;
 - (c) Set forth a detailed schedule for implementation of the commitments required by these supplemental measures on the enrollee's forest lands;
 - (d) Authorize IDL access to the enrollee's land for purposes of monitoring compliance with this program;
 - (e) Provide IDL with an explanation of the landowners system for record keeping; and
 - (f) Provide a plan for how the enrollees' personnel will implement the supplemental measures and report actions to the landowner for compliance with these supplemental measures. This plan will include:
 - i) What internal auditing procedures will be used to check compliance with the supplemental measures;
 - ii) How hot-spot reporting and repair will be handled;
 - iii) How the schedule for tracking road condition and stream class will be accomplished; and
 - iv) Procedures for reporting changed circumstances.
- iii. **Noncompliance:** In the event that IDL determines that an enrollee is not in compliance with these supplemental measures, IDL shall work with the enrollee to cure any noncompliance or take action to revoke the enrollee's participation in the program.
- iv. **Administration Methods:** The IDL, as the administrator of the supplemental measures program, will undertake the following actions to

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implement this program and to ensure enrollee compliance:

- (a) **Field Manual:** The IDL will create a field implementation manual for all enrollees to the plan within 3 months.
- (b) **Participant Training:** IDL will create a standardized training workshop program, including field and office procedures, to be utilized by enrollees within 6 months of signing an enrollment agreement. This program will be utilized to certify that field personnel understand the supplemental measures and can apply them on the ground.
- (c) **Inspections:** As part of the normal process of IFPA notification and inspection, the IDL will conduct field inspections of enrollee operations. All inspection items relevant to the Supplemental Measure will be reported separately, with copies sent to the operator and landowner as standardized in the Field Manual.
- (d) **Enrollee Annual Audits:** IDL will require the enrollee to file an annual report. This report will include a summation of performance on all program activities, and progress on items such as hot-spot location and repair, stream classification and road system mapping, and road construction, upgrading, repairs and obliterations.
- (e) **IDL Annual Audit:** IDL will prepare an annual report to NOAA Fisheries and the U.S. Fish and Wildlife Service (FWS, or collectively "Services") summarizing all program activities and detailing the performance of enrollees. This report will also include all applicable data from periodic IFPA audit results and CWE report summations on conditions and trends for enrolled lands that occurred during the preceding year. Also, any final or interim results from adaptive management activities will be reported.
- (f) **IDL Five Year Audit:** Within 5 years of enrolling in the program the IDL will conduct an audit of all enrollee activities and prepare a report that documents a summary of those activities and compliance/non-compliance with the Supplemental Measure terms. This report will also state the total enrollee statistics as to acres of activity, miles of streams and roads surveyed and/or on which action has been taken. A comparison of the total acres enrolled and the trends of activity will also be included. These periodic audits will also include any accomplishments in adaptive management projects and any changes in procedures or standards brought about from adaptive management projects.

- h. **Forest Landowner Program.** The parties will explore the development of a landowners incentive program as a part of the Section 6 agreement.

- i. **General Provisions**

- i. The measures set forth in this document are the product of good faith negotiations for the purpose of resolving legal disputes, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal

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proceeding. Nothing in this document shall be read as an admission or determination by the parties that any of the actions anticipated by this document are necessarily required in order to comply with the Endangered Species Act. Nothing in this document shall be interpreted as suggesting that the FPA standards as they presently exist are insufficient to avoid take of listed species.

- ii. By entering into this Agreement, neither the State of Idaho nor the private parties to this component concede that the present FPA standards are insufficient to avoid take of listed species.

3. **Habitat Improvement Program.** The State will develop a program to provide incentives for improving fish habitat. The habitat program will include the following types of measures:
 - a. Correcting existing man-made passage barriers such as unscreened diversions, stream crossings, or instream structures;
 - b. Consolidation of diversions to minimize the number of screens and bypasses;
 - c. Development and construction of suitable alternatives to push-up dams;
 - d. Projects that will restore large organic debris (LOD) in streams and riparian zones, repair or remove structures that degrade fish habitat, stabilize or abandon roads, and other habitat improvement projects identified through the Cumulative Watershed Effects process;
 - e. Incentives to private landowners to undertake projects or implement other measures to enhance riparian habitat;
 - f. Habitat improvement or protection projects, such as land acquisition, conservation easements and the development of best management practices designed to provide for water quality for resident and anadromous fish;
 - g. Improving or protecting flow conditions to augment streamflows; and
 - h. Planning and monitoring.
4. Purpose. These measures are expected to protect and restore listed fish and their habitat in the Salmon and Clearwater basins and downstream basins.
5. Funding. Funds from the Habitat Trust Fund, in part (and without judgment or conclusion as to whether the amount available from the fund is, by itself, sufficient to adequately implement the Initiative), will be used to implement the Salmon/Clearwater Habitat Management and Restoration Initiative.

C. **Habitat Trust Fund.**

1. As part of the settlement agreement, the parties will establish a trust fund to which the United States will contribute \$38 million (in 2004 dollars) according to a schedule determined by Congress in legislation implementing this Agreement.
2. The purpose of the fund is to supplement monies otherwise available for habitat protection and restoration in the Salmon and Clearwater basins through projects, purchases, and investments such as those specified in section II.B.3 above.
3. The fund will be divided into two accounts: (1) one-third of the contribution of the United States to the fund will be placed into an account for which the Nez Perce Tribe will develop a process for administration ("tribal account"), and (2) the remainder will be placed into an account for the which primary purpose will be implementation of a

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Section 6 Cooperative Agreement(s) anticipated by this Agreement (see section II D below) ("Section 6 account"). The State will collaborate with the Nez Perce Tribe and the United States to determine how to direct use of the Section 6 account. If any part of the Section 6 account is available beyond that needed for implementation of any Section 6 Cooperative Agreement(s) anticipated by this Agreement, remaining funds may be used for other habitat purposes as directed by the State, the Nez Perce Tribe, and the United States. In administration of the Section 6 account, the State of Idaho will contribute a value of no less than 33% of the contribution of the United States (*i.e.*, Idaho and the United States will provide 25%/75% matching contributions). If any portion of the fund is used to implement a Section 6 Cooperative Agreement(s), the proportional federal contribution to that portion of the fund will be considered to be a federal contribution towards implementation of the Section 6 agreement.

D Section 6 Cooperative Agreement.

1. The State of Idaho will submit the Salmon and Clearwater Habitat Management and Restoration Initiative or components thereof to the Services as a proposed cooperative agreement(s) under Section 6 of the Endangered Species Act, 16 U.S.C. § 1535(c). The Services will enter into a Cooperative Agreement(s) with the relevant state agencies under Section 6(c) of the Endangered Species Act for the purpose of assisting the State in implementation of components of the Initiative for a thirty-year period. This Section 6 Cooperative Agreement(s) will be limited to the matters set forth in this settlement agreement. The Section 6 Cooperative Agreement(s) between the Services and the State is intended to satisfy the requirements of section 7(a)(2) of the ESA, while at the same time providing sufficient incentives to private landowners to encourage their participation in the Initiative.
2. The Parties will commit sufficient resources to complete drafting of a Section 6 Cooperative Agreement for the State Forestry Program by March 31, 2005 in accordance with the provisions of this section. The Services are committed to collaborate with the State during development of the proposal to maximize the likelihood that the submission satisfies the requirements of Section 6 and Section 7 of the ESA.
3. Federal Procedures
 - a. Endangered Species Act.
 - i. The Services will consult on any Section 6 program submitted by the State under Section 7 of the Endangered Species Act, 16 U.S.C. § 1536(a)(2), regarding the federal approval and implementation of a Section 6 Cooperative Agreement(s). Incidental take authorization shall be extended to all state-authorized diversions and uses of water that are identified and analyzed from those streams identified by the State for inclusion in the Section 6 Cooperative Agreement upon issuance of a Biological Opinion on the Section 6 Cooperative Agreement(s).
 - ii. Similarly, the owners of state and private lands in Idaho ("owners"), and those undertaking timber management activities on such lands ("operators") who enroll in the forest practices program shall be entitled to incidental take coverage upon issuance of the Biological Opinion on the Section 6 Cooperative Agreement for the State Forestry Program so long as

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such owners or operators are employing timber management practices that meet or exceed mandatory best management practices (BMPs) set forth in the Idaho Forest Practices Act (IFPA), Idaho Code §§ 38-1301 et seq. and are implementing the program.

- iii A Biological Opinion(s) on any Section 6 Agreement(s) also will provide incidental take authorization for those who participate in the habitat program when they implement measures (including some of those found in section II.B.3) in accordance with the findings that derive from an analysis in the biological opinion(s) on a Section 6 Cooperative Agreement(s).
- b National Environmental Policy Act. The Services will prepare appropriate environmental documents and comply with the procedural requirements of the National Environmental Policy Act associated with the review and approval of a Cooperative Agreement(s)
- c In issuing biological opinions on a Section 6 Cooperative Agreement(s), the federal agencies shall allow the State and the parties to this Agreement to participate in the consultation and comment on the draft biological opinion.
- d Reinitiation of consultation on the NOAA Fisheries or the FWS FCRPS or the other component biological opinions shall not automatically trigger reinitiation of consultation on any Section 6 Cooperative Agreement(s) biological opinion.
- e Consultation on a Section 6 Cooperative Agreement(s) biological opinion may be reinitiated only under the following circumstances:
 - i The State or the participants fail to comply with the terms and conditions of this agreement;
 - ii To reduce the obligations of the parties in the event the measures in the agreement are determined to no longer be necessary; or
 - iii Pursuant to 50 C.F.R. § 402.16.
- f Nothing in this section is intended to limit the use of habitat conservation plans, landowner incentives, or other habitat protection and restoration programs under the Endangered Species Act, the Fish and Wildlife Coordination Act, the Fish and Wildlife Act, or other federal or State laws.
- g The federal agencies may only seek additional Endangered Species Act measures in the Salmon and Clearwater Basins for the covered activities and covered species if:
 - i The federal agencies have implemented relevant RPA actions set forth in all other biological opinions intended to benefit Snake River Basin listed species; and
 - ii All other discretionary measures, including but not limited to, reinitiation of consultation on other relevant BiOps and the component biological opinions, that provide the reasonable potential for achieving necessary reductions in the mortality of the Snake River listed species have been implemented, to the maximum extent practicable.

- E **Termination.** If the United States reinitiates consultation on or revokes incidental take authorization, the State may terminate the Cooperative Agreement.

III. Snake River Flow Component.

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- A. General Principle: Biological Opinions will be issued for the term of this agreement which will provide incidental take coverage, if necessary, for all federal actions and related private actions including: (1) all BOR actions in the upper Snake River basin, (2) all private depletionary effects in the Snake River basin above the Hells Canyon Complex² to the extent they affect listed anadromous fish, and (3) all private depletionary effects above the Hells Canyon Complex to the extent that they are related to the federal action and affect listed resident species. These Biological Opinions shall be separate from any Federal Columbia River Power System (FCRPS) Biological Opinion. Separate biological opinions will be prepared for other components as necessary. Additionally, the parties will use their best efforts to seek enactment of state and federal legislation consistent with the terms of the general conditions to provide the necessary ESA and CWA protection for this component of the agreement and to provide statutory authority necessary to implement the agreement. The flows provided in this agreement set forth the flow contribution from the upper Snake above the Hells Canyon Complex for the benefit of listed species covered by this agreement as they travel throughout the Columbia River system, including through the FCRPS. The biological opinion on this component to be prepared by NOAA Fisheries will directly address and evaluate the expected effects of BOR's proposed operations in the Upper Snake, including any beneficial effects on anadromous fish from the flow augmentation program established in this component.
- B. Tier 1—Minimum Flow. The minimum instream flows established by the Swan Falls Agreement shall be decreed in the SRBA to the Idaho Water Resource Board (IWRB). If the Idaho Department of Water Resources fails to regulate these minimum instream flows in accordance with the Swan Falls Agreement, then any party to this agreement shall be entitled to seek injunctive relief through the state district court responsible for the SRBA.
- C. Tier 2—Flow Augmentation. The parties will establish a term-of-the-agreement flow augmentation program containing the following elements:
 - 1. All flow augmentation from waters of the State of Idaho pursuant to Idaho Code § 42-1763B shall be done in compliance with Idaho state law and regulations, existing water bank rules and existing local rental pool procedures of the appropriate local committee, including but not limited to last to fill rule and the procedures for priorities among renters and lessors, unless changes are agreed to by the spaceholders within the water district(s) in which the reservoirs are located, the State of Idaho, and BOR. Unless otherwise agreed by the parties to give effect to sections III.D and III.E, all parties agree that they will refrain from exercising the procedures for priorities among renters and lessors the specific uncontracted storage space now held by BOR assigned for flow augmentation and powerhead available for flow augmentation as shown on Appendix III as long as this agreement has not been terminated or has not expired. Except as otherwise provided, nothing in this component shall be construed or interpreted as affecting or in any way interfering with the laws of the State of Idaho relating to the control, appropriation, use, or distribution of water or any vested rights created thereunder, or as conferring new authority to, or modifying existing authority of the

² "Above the Hells Canyon Complex," when used in this term sheet, means the Snake River basin above the Complex, including any tributaries which drain into the Complex

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- federal government.
2. The flow augmentation program above the Hells Canyon Complex is designed to assist fish survival downstream of Hells Canyon Dam. The parties understand that the flow augmentation program provides maximum amounts of flow augmentation delivered from the upper Snake and that no guarantee can be provided, beyond the terms of this agreement, that any particular amount of water will be provided in any particular water year.
 3. Sources shall include, but are not limited to contracted and uncontracted storage, powerhead, Oregon natural flow water, Sho-Ban water bank water, rentals pursuant to the IWRB Water Bank, and natural flow acquisitions herein provided.
 4. Idaho Code § 42-1763B will be reenacted to authorize the rental of up to 427,000 acre-feet (AF) of water annually for flow augmentation for the term of the agreement. Reauthorization shall also provide for the rental of water from storage or natural flow sources from the Snake River and its tributaries at or above Lewiston.
 5. If necessary to implement the flow augmentation program of this section III, the BOR will negotiate a lease with Idaho Power pursuant to Idaho Code § 42-108A to rent uncontracted and powerhead space in the Boise Project, Arrowrock Division, for power production. In the event powerhead water is released pursuant to this section, it shall be the last of the last space to refill.
 6. The United States may also acquire on a permanent basis or rent up to 60,000 acre-feet of consumptive natural flow water rights diverted and consumed below Milner and above Swan Falls from the mainstem of the Snake River. The United States may rent said rights for flow augmentation through the IWRB Water Bank pursuant to the Board's water bank rules and I.C. Sec. 42-1763B as amended (to include up to 60,000 acre-feet of consumptive natural flow acquisition and to allow its use pursuant to this section). The 60,000 acre-feet may be rented through the water bank as long as the total rentals in III C 4, III C 5 and this III.C.6 do not exceed 487,000 acre-feet.
 7. Powerhead water in BOR storage facilities may be used only to increase the reliability of 427,000 acre-feet for flow augmentation and is subject to the following limitations:
 - a. After utilization by the United States of all water described in sections III.C.4 through 6, above, if the total amount of water released for flow augmentation is less than the 427,000 acre-feet, the Palisades Reservoir powerhead water may be utilized by the United States to attain 427,000 acre-feet for flow augmentation;
 - b. Use of powerhead shall not at any time interfere with the currently established minimum conservation pools or hereinafter established minimum conservation pools;
 - c. Powerhead space used for flow augmentation shall be the last space to refill after all other space in reservoirs in that water district, including other space used to provide flow augmentation, in the basin has filled;
 - d. Use of water from powerhead space shall be in compliance with state law;
 - e. Use of powerhead space shall not interfere at any time with the operating levels required for diversions of water by spaceholders in the reservoir pool, with the ability of spaceholders to refill and use active storage of the reservoir, or with the diversion of natural flow.
 8. Rental charges for stored water

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- a. A uniform rate will apply to all stored water released for flow augmentation:
 - i. \$14 per acre-foot through 2012,
 - ii. \$17 per acre-foot from 2013-2017,
 - iii. \$20 per acre-foot from 2018-2022,
 - iv. \$23 per acre-foot from 2023-2030
 - b. The above rates are comprehensive. They include administrative fees and all other charges.
 - c. The administrative fee on BOR storage will equal the administrative fee applicable to other rentals within the basin in question.
- 9. All water released from BOR projects in the irrigation season after April 10 shall be treated as releases for flow augmentation except for releases (1) for delivery to or use by spaceholders, contract holders, or rentals from the water bank for purposes other than flow augmentation; (2) pursuant to established water rights; (3) in accordance with existing project operation criteria or other subsequent project operation criteria agreed to by the spaceholders and contract holders within the water district in which the reservoirs are located, the State of Idaho, and BOR; or (4) pursuant to duly adopted flood control rule curves.
- 10. Regulation of the delivery of rental water shall be the responsibility of the IDWR and appointed state watermasters. The timing of the release of water shall be determined by a process involving the State, the spaceholders, contract holders, and the United States.
- D. Water District 01 Rental Pool. The State of Idaho, BOR, and the spaceholder contractors in Water District 01 agree, to consider changes to rental pool procedures in Water District 01 as part of the flow augmentation program outlined in section III.C above. The State and the spaceholder contractors acknowledge that BOR, in negotiating a final agreement, will require that any rental pool provide BOR with an acceptable opportunity, as determined by it, to rent water for flow augmentation.
- E. The United States shall make its Upper Snake basin uncontracted space available to irrigation delivery entities, if the United States or irrigation delivery entities obtain the rights to an equivalent amount of replacement water from subbasins within the Upper Snake to be used for flow augmentation. Details regarding the exchanges anticipated in this section will be defined in the final settlement agreement.
- F. Reclamation will make available for irrigation, subject to the triggers and conditions in this section III.F, 30,000 acre-feet of water from the Boise Project, Payette Division. This water will be from sources exclusive of the 95,000 acre-feet of storage currently used for flow augmentation.
 - 1. Triggers. Water under this section will be made available only under the following water year conditions, based on the April 1 forecast used by Reclamation of April through July runoff for the Payette River at Horseshoe Bend and the Boise River at Lucky Peak. For the Payette basin, this provision will be triggered when the April 1 forecast at Horseshoe Bend is less than 700,000 acre-feet. For the Boise basin, this provision will be triggered when the April 1 forecast at Lucky Peak is less than 570,000 acre-feet.
 - 2. Conditions of use
 - a. The maximum volume of water to be provided by Reclamation under this provision in any given water year will be 30,000 acre-feet.

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- b. Water may be used directly by Payette River water users and through exchange by Boise River water users within irrigation entities signatory to this agreement. The Boise exchange will be effected by Reclamation making water available to Boise River water users from the Boise Project in lieu of releasing that water for flow augmentation. An equivalent amount of water from the Payette storage identified above would then be released for flow augmentation.
 - c. When the Payette trigger is met, Reclamation will consign 30,000 acre-feet of Payette Division water to the Water District 65 Rental Pool, for one-year rental by irrigation water users in the Payette basin. The price for Payette rentals will be 50% of the price applicable to flow augmentation rentals or the price applicable to irrigation rentals in the basin, whichever is greater.
 - d. When the Boise trigger is met, Reclamation will consign 30,000 acre-feet of Arrowrock Division water to the Water District 63 Rental Pool, for one-year rental by irrigation water users in the Boise basin. Reclamation will then deliver a like amount of water from the Payette Division for flow augmentation, over and above the volume otherwise available from Reclamation-held storage. The price for Boise basin rentals will be the price applicable to flow augmentation rentals or the price applicable to irrigation rentals in the basin, whichever is greater.
 - e. When both triggers are met, Reclamation will consign a total of 30,000 acre-feet to be divided between Water Districts 63 and 65. Water Districts 63 and 65 will meet within 30 days of the publication of the April 1 forecasts at Lucky Peak and Horseshoe Bend, and determine how much water will be made available in each basin, with the understanding that irrigation entities in Water District 65 have the first right to rent the water consigned, up to the full amount consigned. As divided, the water rentals will be subject to the exchange conditions and prices applicable to that basin, as defined in sections c and d above. The water users will negotiate a process for implementation of this provision.
 - f. Once water is consigned to a rental pool, water users will have until July 15 to rent the water. Water not rented by July 15 will return to Reclamation.
- G. The United States will mitigate local impacts identified by the State of Idaho that may result from the rental of water for flow augmentation. The scope and amount of mitigation will be negotiated. Mitigation shall be based on the following understandings:
- 1. Powerhead: In setting rates for power and energy provided by BOR for project purposes entitled to the use of reserved power, BOR will insure that reserved power rates are neither increased nor decreased as a result of the leasing and release of water from powerhead space under the terms and conditions set forth in this agreement.
 - 2. 60,000 acre-feet: The federal legislation drafted to authorize the agreement will include a provision to authorize and seek appropriations for a one-time payment of \$2 million to the local governments in which the water rights accruing up to 60,000 acre-feet are currently used to mitigate for the change in use of the acquired water.
- H. The minimum evacuation reservoir levels for flood control shall not be altered for reasons other than flood control purposes.
- I. The Milner Agreement shall be renewed for the term of this agreement. The parties agree, however, to modify the flow limitation contained in the agreement to the extent practical to facilitate the water rental program, while still protecting the interests of the parties.

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- J. To the maximum extent practicable, the United States shall be responsible for managing water acquired or rented pursuant to this agreement to meet needs of all species covered by this agreement. To the maximum extent practicable, all water acquired or rented by the United States under this agreement shall be delivered and managed: (1) in a manner that will not result in the violation of any permit, applicable water quality rule and regulation or other requirements of the Clean Water Act; (2) in a manner that will not cause jeopardy to other species in the State of Idaho; and (3) in a manner that will not result in significant adverse impacts to recreational uses of the waters of the Snake River and its tributaries within the State of Idaho. During the development of the Biological Assessment by BOR, the parties, to ensure that all water acquired or rented by the United States under this agreement does not result in the type of impacts listed above, will address the concerns that can be identified and analyzed and will develop a mutually acceptable process to address the type of impacts listed above that arise after implementation of the agreement. The State agrees that it will not require any restriction, modification, or condition on the diversion, storage, use, discharge of water, or land use to remedy or address violations of water quality standards or other Clean Water Act requirements to the extent the use of water acquired or rented by the United States pursuant to this agreement causes the violations.
- K. The term of this component of the agreement shall be for a period of thirty (30) years with opportunity for renewal upon mutual agreement.
- L. The proposed federal action for consultation will describe the agreement, including the minimum instream flows, the water rental program, and BOR operations as of the date of the agreement and during the term of the agreement, subject to the general principle contained in the agreement. In the event that the BOR fails to describe the proposed federal action consistent with this component, or it fails to issue a Biological Assessment based upon the proposed federal action which concludes that the action is not likely to jeopardize the continued existence of any listed species addressed by this consultation nor will it result in destruction or adverse modification of the critical habitat of the species, this component of this agreement shall be terminated upon written notice by the State or private parties to this component of the agreement.
- M. Consistent with the Snake River Flow Component general principle (section III A), the Services will evaluate this component as a proposed federal action under section 7 of the Endangered Species Act, 16 U.S.C. § 1536. In the event that the Services fail to issue no jeopardy biological opinions and provide incidental take coverages as described in section III A, or if the Services require terms or conditions inconsistent with or not contained in this Upper Snake component of the agreement, this component of the agreement shall be terminated upon written notice by the State or private parties to this agreement.
- N. Reinitiation of Consultation
 - 1. If the United States is unable to rent flow augmentation water under the terms of this agreement because of a change to state law, regulations or water bank rules, or because of an arbitrary or capricious decision by the Director of IDWR or IDEQ, the United States may reinitiate consultation on this component of the agreement. If the United States reinitiates consultation, this component of the agreement may be terminated, including any necessary statutory components, at the option of the State of Idaho or the private parties to this component of the agreement.
 - 2. Reinitiation of consultation on any NOAA Fisheries or FWS FCRPS biological

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opinions (hereinafter "FCRPS BiOps"), or on the biological opinions on other components of this agreement shall not automatically trigger reinitiation of consultation on the Upper Snake BOR biological opinion. Rather, consultation on the Upper Snake BOR biological opinion may be reinitiated only a) if the State or the water users fail to comply with the terms and conditions of this agreement or the United States is unable to rent flow augmentation water under the terms of the agreement because of a change to state law, regulations, or water bank rules; b) to reduce the obligations of the parties in the event the measures in the agreement are determined to no longer be necessary for any reason, including, but not limited to, the delisting of the species; or c) pursuant to 50 C.F.R. § 402.16

3. The federal agencies which are parties to this agreement may only seek additional Endangered Species Act flow measures from the Snake River basin above the Hells Canyon Complex for the benefit of anadromous fish if: a) a jeopardy biological opinion is issued on the Upper Snake River BOR projects after utilization of all of the measures in this agreement; b) the relevant actions set forth in all other biological opinions intended to benefit Snake River basin listed species have been implemented; c) substantially all water made available under the terms and conditions of this agreement has been rented; and d) all other discretionary measures, including reinitiation of consultation on other relevant BiOps, that provide the reasonable potential for achieving necessary reductions in the mortality of the Snake River listed species have been or are being implemented, to the maximum extent practicable. In issuing any future biological opinions on Upper Snake River BOR projects, the federal agencies shall provide all parties to this agreement an opportunity to comment on the draft biological opinion. The provisions concerning reinitiation of consultation for the Upper Snake BOR projects shall remain effective so long as this component is effective.
 4. Nothing in this agreement shall be used or construed to determine or interpret in any manner what obligations, if any, the federal agencies charged with operating the FCRPS may have under the 2000 FCRPS BiOps, or other biological opinions addressing FCRPS operations or the Endangered Species Act or its implementing regulations as applied to the FCRPS, provided that no additional flows shall be required from the upper Snake above the Hells Canyon Complex except as provided for in this agreement.
- O. Subject to section IV.G of this agreement, if any party fails to implement any provision of this component, this component may be terminated at the option of any other party to this component of the agreement. By entering into this agreement, neither the State of Idaho nor the private parties to this component concede that the flows identified under section III.C benefit the listed species; that BOR operations require ESA consultations; that BOR operations are subject to modification to meet ESA requirements or concerns; or that the diversion, storage, or use of water in the State of Idaho is subject to modification to meet ESA requirements or concerns

IV. **General conditions applicable to the entire agreement and to all parties.** Unless otherwise specified, each of the following general conditions applies jointly and severally to each component of this agreement.

- A. Implementation and enforcement – There will be enactment of necessary laws by federal,

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- state, and tribal governments to effectuate and implement the settlement agreement including legislation consistent with provisions of the agreement to provide the necessary ESA and CWA protection for the State and the private parties to this agreement.
- B Mitigation of impacts caused by the management of water by the Federal agencies pursuant to this agreement on local and private interests (sideboards to be negotiated).
- C ESA and CWA Assurances – (1) The water provided under this settlement shall fully satisfy any ESA requirements for the diversion and use of water, as specifically provided in each of the components of this agreement. Compliance with this agreement satisfies all CWA obligations for flows for the benefit of such species for the term of this agreement. No party shall use, during the term of this agreement, the CWA or any other theory to seek additional flows for the benefit of such species based on reduced water quality resulting directly from flow modifications or reductions in the quantity of water available in the Snake River Basin above the Hells Canyon Complex and in the Salmon and Clearwater basins in Idaho.³ (2) The Services shall evaluate each component of this agreement as separate proposed federal actions under the Endangered Species Act, 16 U.S.C. § 1536. Term-of-the-agreement (thirty (30) years) Biological Opinions will be issued on each component of this agreement. The specific provisions relating to these Biological Opinions are contained in the respective sections of this agreement. These Biological Opinions shall be separate from the FCRPS Biological Opinion. In the event that the Services fail to issue no jeopardy biological opinions or if the Services require terms or conditions inconsistent with or not contained in the component of the agreement which corresponds to the biological opinion, that component of the agreement shall be void upon written notice by the State or private parties to this agreement. If the State or private parties do not concur with the biological assessment prepared for the consultation on a particular component, that component of the agreement shall be terminated upon written notice by the State or private parties.
- D Waivers and releases.
1. Except as otherwise provided in the Settlement Agreement, the United States, on behalf of the Nez Perce Tribe, and the Nez Perce Tribe waive and release (1) all claims for water rights within the Snake River Basin in Idaho; (2) injuries to such water rights; and (3) injuries to the Tribe's treaty rights to the extent that such injuries result or resulted from flow modifications or reductions in the quantity of water available in the Snake River Basin in Idaho that accrued at any time up to and including the effective date of the Settlement Agreement, and any continuation thereafter of any such claims, against the State of Idaho, any agency or political subdivision thereof, or any person, entity, corporation, municipal corporation, or quasi-municipal corporation. The Tribe agrees that it will not assert any claim, under any treaty theory, based on reduced water quality resulting directly from flow modifications or reductions in the quantity of water available in the Snake River Basin in Idaho, against any party to the agreement. No water rights claims the Tribe has asserted or may in the future assert outside of the Snake River Basin in Idaho shall require water to be supplied from the Snake River

³ Nothing in this agreement is intended to affect in any way the development, approval, modification, implementation, or enforcement of Clean Water Act Total Maximum Daily Load (TMDL) requirements for Brownlee Reservoir.

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- Basin in Idaho to satisfy such claims. Allottee language will be developed by the parties for inclusion in the decree to reflect the concept that the allottees' water comes from the overall tribal right
2. "Water rights" means rights under state and federal law to divert, pump, impound, use or reuse, including for instream use, or permit others to divert, pump, impound, use or reuse, including for instream use, water. This includes all water right claims filed by or on behalf of the Nez Perce Tribe in the Snake River Basin Adjudication. "Injuries to water rights" means the loss, deprivation, or diminution of water rights
 3. The Nez Perce Tribe hereby waives and releases the United States from: (1) all claims for water rights within the Snake River Basin in Idaho, injuries to such water rights, or breach of trust claims for failure to protect, acquire, or develop such water rights that accrued at any time up to and including the effective date of the Settlement Agreement; (2) all claims for injuries to the Tribe's treaty fishing rights to the extent that such injuries result or resulted from reductions in the quantity of water available in the Snake River Basin in Idaho; (3) all breach of trust claims for failure to protect Nez Perce "springs or fountains" treaty rights reserved in Article 8 of the 1863 Treaty with the Nez Perce; and (4) all breach of trust claims arising out of or resulting from the adoption of this Settlement Agreement. Provided, however, that waivers described in this section shall not be effective until all Federal funds described in the term sheet are appropriated and paid to the Nez Perce Tribe.
 4. Nothing in this agreement shall waive the Tribe's right to pursue claims against the United States relating to non-water-related injuries resulting from the construction of the Dworshak Project. Nothing in this agreement shall be interpreted to prevent the Nez Perce Tribe or the United States as trustee for the Tribe from purchasing or otherwise acquiring water rights in the future to the same extent as any other entity in accordance with Idaho state law. Nothing in this agreement shall be interpreted to impair the treaty fishing, hunting, pasturing, or gathering rights of the Nez Perce Tribe except to the extent expressly provided in this agreement. The Nez Perce Tribe shall retain all rights not specifically satisfied, waived, or released in this agreement.
 5. The waiver and releases by the federal government and the Nez Perce Tribe shall take effect and be permanent once the agreement is effective and enforceable pursuant to section IV L. Waivers, once effective, will survive any subsequent termination of any component(s) of the agreement.
- E. This agreement, the decree, and the order approving this agreement may not be modified in any manner except as herein provided or with the joint written consent of the duly authorized representatives of the parties and the consent of the court approving this agreement, which court shall have the sole jurisdiction to modify its decree. The parties further recognize that the law dealing with federal reserved Indian water rights is a subject of ongoing litigation and agree that subsequent changes, developments, or interpretations in such law shall not change the enforceability of this agreement as written in the decree relating to such rights. Nothing in this agreement shall otherwise be construed or interpreted to restrict, enlarge, or otherwise determine the subject matter jurisdiction of any state, tribal or federal court.
- F. If any party believes that another party has failed to perform or implement a provision of this agreement, the party will inform the other party, and the parties will meet to seek to resolve the dispute. If the dispute cannot be resolved, one or more parties may request that the SRBA

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- court (or any successor court) appoint a mediator, provided that the mediation will not be binding and will not be prejudicial to any jurisdictional issues raised by the dispute.
- G. A breach of one component of this agreement shall not constitute a breach of any other component of the agreement.
- H. Nothing in this agreement shall be so construed or interpreted: (1) to establish any standard to be used for the quantification of federal reserved water rights or any other Indian water claims of any other Indian Tribes in any judicial or administrative proceeding or (2) to limit in any way the rights of the parties or any person to litigate any issue or question not resolved by this agreement. This agreement has been reached in the process of good faith negotiations for the purpose of resolving legal disputes, including pending litigation, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding and nothing in this agreement shall be read as an admission or determination by the parties that any of the actions anticipated by this agreement are necessarily required under the Endangered Species Act.
- I. Implementation of this Agreement by the federal or state agencies is subject to the requirements of the Anti-Deficiency Act, 31 U.S.C. §§ 1341-1519, similar requirements of state law, and the availability of appropriated funds. Nothing in this Agreement is intended or shall be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury or the State General Fund. The Parties acknowledge that the federal or state agencies shall not be required under this Agreement to expend any appropriated funds unless and until an authorized official of the relevant agency affirmatively acts to commit to such expenditures in writing.
- J. No member of or delegate to Congress shall be entitled to any share or part of this Agreement or to any benefit that may arise from it.
- K. The parties will jointly move the Idaho Supreme Court to remand the pending appeal in Case Nos. 26042 and 26128 for entry of an order consistent with the final settlement agreement.
- L. The agreement shall be effective when all of the following have occurred prior to March 31, 2005 (this list is not intended to determine the proper sequencing of these actions):
1. Execution of the necessary component documents which will make up the agreement;
 2. Congressional approval of agreement and authorization of all federal expenditures required under agreement;
 3. State legislature approval of agreement and enactment of all required state legislation;
 4. Nez Perce Tribe approval of agreement;
 5. SRBA Court entry of judgment and decree incorporating agreement;
 6. Issuance of the Biological Opinions anticipated by the upper Snake component of this agreement

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Appendix I

This appendix to Section II of the term sheet describes an implementation plan to assign instream flows and reserve opportunities for future use in the Tribal Priority Streams in the Salmon and Clearwater Basins by March 31, 2005. All instream flow water rights established pursuant to the Agreement and this Appendix I will be junior to all existing water rights and subordinate to all future domestic, commercial, municipal, and industrial (DCMI) water rights.

The Tribal Priority Streams are listed in the attached Lists "A" and "B." Some of the streams on these lists are included in the Wild and Scenic Settlement Agreement between the State of Idaho and the U.S. Forest Service. Because this implementation plan is intended to be consistent with the Wild and Scenic federal reserved water rights, where Wild and Scenic stream reaches are involved, the plan adopts the future development subordinations in the Wild and Scenic reserved water right decrees.

The Tribal Priority Streams have been divided into "A" and "B" List groups based on the level of existing use. The "B" List streams include those streams where instream flows and other non-flow-related actions will be developed by the parties, in conjunction with local stakeholders and communities. The "A" List Tribal Priority Streams will have instream flows and future non-DCMI use levels assigned based on land classification except in those cases specifically set forth below where the parties have agreed to address certain special resource value areas, or areas of special concern relative to local uses. Land classification will be established based upon the predominant land ownership and where appropriate, federal land classification, existing in particular stream's basins.

For the "A" List Tribal Priority Streams, instream flows would be determined based on categories assigned using ownership of the lands within the basin. The ownership classification in a given basin would be recognized as falling into one of four categories: 1) State and private, 2) federal non-wilderness, 3) wilderness/Wild and Scenic, and 4) special areas as set forth below.

For each of these four categories, instream flows will be set by month based on estimated hydrology of unimpaired flows, and a reservation for future non-DCMI use equal to a percentage of the minimum monthly median flow value from the estimated hydrology.⁴ To prevent dewatering streams by future non-DCMI use, future non-DCMI use would be curtailed at a floor equivalent to the unimpaired monthly 80% exceedence flow. Consequently, the flow values for the four categories will be as follows:

1 For State and private basins, instream flows would be decreed for each month of the year at the 50% exceedence level of the estimated unimpaired flow, subordinated to a future non-DCMI use in the amount of 25% of the lowest median monthly unimpaired flow value

⁴ The algorithms proposed here for establishing instream flows, future allocations, and the floor flow are based on exceedence values. The individual instream flows will be decreed as quantities in cubic feet per second (cfs) as will the future allocation for non-DCMI uses and floor flows. The administrative provisions for these instream flows will, however, recognize they are being established based upon estimated flow. The provisions of the final decrees will provide a mechanism for changes to these decreed amounts based upon actual flows if such data become available.

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2. For federal, non-wilderness basins, instream flows would be decreed for each month of the year at the 40% exceedence level of the estimated unimpaired flow, subordinated to a future non-DCMI use in the amount of 10% of the lowest median monthly unimpaired flow value.

3. For federal wilderness and Wild and Scenic basins, instream flows would be decreed for each month of the year at the 30% exceedence level of the estimated unimpaired flow, subordinated to a future non-DCMI use in the amount of 5% of the lowest median monthly unimpaired flow value.

4. The Special Areas include watersheds that hold special values including high value habitat for fish resources, other special values, and areas where future development opportunities would be preserved. The instream flows and reservations for future non-DCMI use for the special areas differ from the land-based formula described above.

Special Areas include:

Lower Salmon River below Long Tom Bar to the mouth: Instream flows for the lower Salmon River downstream of the Wild and Scenic Reach would be consistent with the application filed for the lower Salmon River below Hammer Creek. The State application for the instream flow in the Lower Salmon addresses the reach from the mouth to Hammer Creek. The instream flows reach in the current application will be extended to include the reach of the Salmon below the Little Salmon. The instream flows in the reach between the Little Salmon and the Wild and Scenic River will be based on the downstream reach and adjusted for the inflow from the Little Salmon River. The State instream flow will be made consistent with the Wild and Scenic instream flow for the main Salmon River.

South Fork Salmon River and tributaries contained within the Tribal Priority Stream List: Instream flows would be decreed for each month of the year at the 40% exceedence level of the estimated unimpaired hydrology, subordinated to a future non-DCMI use in the amount of 5% of the lowest median monthly unimpaired flow value.

Upper Salmon: The upper Salmon basin includes a number of tributaries that meet the criteria of "B" List streams. Instream flows established for the tributaries or the mainstem Salmon will be in accord with Wild and Scenic River instream flows and future allocations, subject to the Order Approving Stipulation and Dismissing Objections in Consolidated Subcase Nos: 63-25239, 75-13316, and 75-13606, issued by Judge Daniel C. Hurlbutt, Jr., Presiding Judge, Snake River Basin Adjudication, on June 16, 1998.

Lolo Creek: Instream flows will be decreed for each month of the year at the 40% exceedence level of the estimated unimpaired hydrology, subordinated to a future non-DCMI use in the amount of 10% of the lowest median monthly unimpaired flow value.

Bedrock Creek: Instream flows will be decreed for each month of the year at the 40% exceedence level of the estimated unimpaired hydrology, subordinated to a future non-DCMI use in the amount of 10% of the lowest median monthly unimpaired flow value.

Upper North Fork Clearwater River, Breakfast Creek: Instream flows would be decreed for each month of the year at the 40% exceedence level of the estimated unimpaired hydrology, subordinated to a future

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non-DCMI use in the amount of 10% of the lowest median monthly unimpaired flow value.

Future Uses for "A" List streams

The future use allocations will provide water for non-DCMI uses. The parties will study the overlap of existing uses and future use to determine if additional criteria will assist the parties in allocating future use. The goal is to avoid reducing streamflows to a level where the unimpaired 80% exceedence value is the flow that the normally occurs in the stream due to the combination of existing and future use.

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Stream Name	Tributary to	BIA Basin Number(s)	Quantification Location(s)
Captain John Creek	Snake River	1107	1107
Clearwater River	Snake River	143, 150, 152, 155, 156, 160, 165, 167, 168, 181, 182, 196, 223, 229, 248, 260, 276, 277	182, 165
Pine Creek	Clearwater River	129	129
Bedrock Creek	Clearwater River	131	131
North Fork Clearwater	Clearwater River	42, 51, 59, 71, 73, 83, 96, 113, 118, 130, 146, 39, 31, 30, 10, 34, 35, 37, 56, 61, 66, 91, 99, 95, 70	34, 39, 146
Elk Creek	North Fork Clearwater River	75, 27	75
Skull Creek	North Fork Clearwater River	41, 22	41
Collins Creek	Skull Creek	14	14
Breakfast Creek	North Fork Clearwater River	25, 28	25
Fourth of July Creek	North Fork Clearwater River	102	102
Lake Creek	North Fork Clearwater River	40, 46	40
Little N.F. Clearwater	North Fork Clearwater River	2, 12, 17, 24	24
Canyon Creek	Little N.F. Clearwater River	4, 6	4
Foehl Creek	Little N.F. Clearwater River	9	9
Isabella Creek	North Fork Clearwater River	23	23
Weitas Creek	North Fork Clearwater River	125, 128, 140, 141, 157, 163	125, 157
Kelly Creek	North Fork Clearwater River	60, 78, 81, 87, 89	81
Cayuse Creek	Kelly Creek	94, 101, 109, 119	94
Toboggan Creek	Cayuse Creek	105	105
Vanderbilt Gulch Creek	North Fork Clearwater River	20	20
Orofino Creek	Clearwater River	144, 149, 158, 172	172
Lolo Creek	Clearwater River	186, 210, 247, 256	210
Yakus Creek	Lolo Creek	267	267
Eldorado Creek	Lolo Creek	216	216
Musselshell Creek	Lolo Creek	190	190
Yoosa Creek ¹	Lolo Creek	186	9186
Sixmile Creek	Clearwater River	244, 253	253
Effie Creek	Sixmile Creek	254	254
Fivemile Creek	Clearwater River	231	231
Unnamed Stream	Clearwater River	243	243
South Fork Clearwater	Clearwater River	306, 326, 327, 340, 357,	306, 411

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Stream Name	Tributary to	BIA Basin Number(s)	Quantification Location(s)
		363, 399, 403, 405, 409, 410, 411, 413, 416, 423	
Threemile Creek	South Fork Clearwater River	338	338
Mill Creek	South Fork Clearwater River	417	417
Meadow Creek	South Fork Clearwater River	373	373
Johns Creek	South Fork Clearwater River	419, 440	419
Cougar Creek	South Fork Clearwater River	396	396
Peasley Creek	South Fork Clearwater River	385	385
Silver Creek	South Fork Clearwater River	379	379
Tenmile Creek	South Fork Clearwater River	425	425
Newsome Creek	South Fork Clearwater River	358	358
Crooked River	South Fork Clearwater River	420	420
Red River	South Fork Clearwater River	418, 421, 422, 430	422
S. Fork Red River	Red River	444	444
American River	South Fork Clearwater River	364, 389	389
Sally Ann Creek ¹	South Fork Clearwater River	340	340
Middle Fork Clearwater	Clearwater River	287, 290, 308	290
Maggie Creek	Middle Fork Clearwater River	278	278
Clear Creek	Middle Fork Clearwater River	311, 318	311
S. Fork Clear Creek	Clear Creek	344	344
Selway River	Middle Fork Clearwater River	288, 303, 309, 310, 312, 313, 317, 329, 335, 349, 352, 365, 371, 374, 404, 406, 424, 431, 435, 447, 463, 469, 481	309, 404
Gedney Creek	Selway River	289, 300, 320	320
O'Hara Creek	Selway River	325, 346	325, 346
Hamby Fork of O'Hara Creek	O'Hara Creek	345	345
Meadow Creek	Selway River	347, 368, 391, 393, 398, 401, 415	347
Buck Lake Creek	Meadow Creek	366	366
Three Prong Creek	Meadow Creek	414	414
Mink Creek	Selway River	322	322
Marten Creek	Selway River	321	321
Moose Creek	Selway River	292	292
E. Fork Moose Cr.	Moose Creek	251, 258	258
N. Fork Moose Cr.	Moose Creek	239, 255, 272	272
West Moose Cr.	North Fork Moose Creek	227	227
Rhoda Creek	Selway River	259, 270	270

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Stream Name	Tributary to	BIA Basin Number(s)	Quantification Location(s)
Wounded Doe Cr.	Rhoda Creek	250	250
Pettibone Creek	Selway River	291	291
Bear Creek	Selway River	299, 304, 341	341
Cub Creek	Bear Creek	343, 351, 355	351
Goat Creek	Selway River	370	370
Running Creek	Selway River	386, 383	386
White Cap Creek	Selway River	367, 388, 390	388
Indian Creek	Selway River	412	412
Deep Creek	Selway River	433	433
Wilkerson Creek	Selway River	460	460
Lochsa River	Middle Fork Clearwater River	151, 161, 162, 178, 179, 183, 192, 232, 242, 252, 266, 268, 274, 284, 296	296
Pete King Creek	Lochsa River	273	273
Old Man Creek	Lochsa River	261	261
Fish Creek	Lochsa River	201, 219	201
Hungry Creek	Fish Creek	198	198
Boulder Creek	Lochsa River	237	237
Warm Springs Creek	Lochsa River	187, 209	187
Fishing Creek (Squaw Creek)	Lochsa River	135	135
Legendary Bear Creek (Papoose Creek)	Lochsa River	133	133
Walton Creek	Lochsa River	174	174
Crooked Fork	Lochsa River	84, 122, 139	139
Brushy Fork	Crooked Fork	107, 124	124
Spruce Creek	Brushy Creek	126	126
White Sand Creek	Lochsa River	154, 188, 189, 193, 203	154
Big Sand Creek	White Sand Creek	206, 222, 236	206
Big Flat Creek	White Sand Creek	208	208

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Stream Name	Tributary to	BIA Basin Number(s)	Quantification Location(s)
Salmon River	Snake River	323, 330, 331, 353, 354, 356, 369, 380, 384, 397, 432, 441, 445, 454, 458, 467, 474, 475, 486, 488, 489, 490, 494, 499, 505, 508, 511, 512, 515, 517, 520, 521, 522, 524, 525, 527, 530, 532, 535, 538, 541, 544, 545, 546, 549, 550, 551, 553, 558, 564, 570, 574, 575, 578, 580, 582, 587, 592, 604, 629, 664, 705, 717, 747, 786, 788, 831, 851, 853, 876, 916, 924, 928, 989, 1006, 1009, 1013, 1014, 1015, 1016, 1017, 1019, 1027, 1024, 1034, 1047, 1050, 1062, 1065, 1073, 1074	397, 525, 578, 664, 853, 1015
Pine Creek	Salmon River	586	586
Rice Creek	Salmon River	387	387
Rock Creek	Salmon River	372	372
Wind River	Salmon River	471, 519	519
White Bird Creek	Salmon River	408, 407, 427	407
Skookumchuck Creek	Salmon River	437	437
Slate Creek	Salmon River	442, 453, 456, 457	453
Little Slate Creek	Slate Creek	466, 478, 492	466
Sheep Creek	Salmon River	464	464
Billy Creek ¹	Snake River	91105	91105
French Creek	Salmon River	556, 624	556
South Fork Salmon River	Salmon River	583, 613, 659, 666, 695, 714, 740, 744, 752, 770, 771, 806, 823, 896, 1081, 1082	583, 752
Blackmare Creek	South Fork Salmon River	813	813
Porphyry Creek	South Fork Salmon River	610	610
Secesh River	South Fork Salmon River	588, 649, 652, 686	588, 686
Lake Creek	Secesh River	9588	9588
Lick Creek	Secesh River	700	700
E Fork S Fork Salmon	South Fork Salmon River	742, 745, 753, 756, 759, 761, 778	745
Profile Creek	E. Fork S. Fork Salmon River	723	723
Johnson Creek	E. Fork S. Fork Salmon River	765, 780, 808, 833, 883	765
Burntlog Creek	Johnson Creek	835	835

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Stream Name	Tributary to	BIA Basin Number(s)	Quantification Location(s)
Quartz Creek	E. Fork S. Fork Salmon River	720	720
Sugar Creek	E. Fork S. Fork Salmon River	757	757
Tamarack Creek	E. Fork S. Fork Salmon River	736	736
Buckhorn Creek	South Fork Salmon River	766, 783	766
Fitzum Creek	South Fork Salmon River	734	734
Warm Lake Creek	South Fork Salmon River	861	861
Bargamin Creek	Salmon River	426	426
Chamberlain Creek	Salmon River	539, 540, 543, 567, 571	540
W. Fork Chamberlain	Chamberlain Creek	526	526
Horse Creek	Salmon River	498, 495, 531, 554	554
Middle Fork Salmon River	Salmon River	631, 607, 612, 658, 711, 739, 762, 777, 794, 814, 818, 820, 839, 847, 864, 884, 894, 917, 932, 958	607, 814
Big Creek	Middle Fork Salmon River	641, 650, 651, 655, 670, 676, 681, 687, 697	655, 697
Rush Creek	Big Creek	706, 709, 713, 725	706
Monumental Creek	Big Creek	671, 701, 750	671
Smith Creek	Big Creek	639	639
Logan Creek	Big Creek	675	675
Brush Creek	Middle Fork Salmon River	751	751
Camas Creek	Middle Fork Salmon River	781, 782, 792, 815, 822, 830, 844, 848, 868	782
Silver Creek	Camas Creek	773	773
Loon Creek	Middle Fork Salmon River	824, 880, 889, 897, 901, 930, 943, 950	824
Marble Creek	Middle Fork Salmon River	758, 789, 805	805
Dynamite Creek	Marble Creek	791	791
Indian Creek	Middle Fork Salmon River	795	795
Pistol Creek	Middle Fork Salmon River	855, 858	855
Rapid River	Middle Fork Salmon River	874, 900, 920	874
Sheep Creek	Middle Fork Salmon River	775	775
Sulphur Creek	Middle Fork Salmon River	918	918
Marsh Creek	Middle Fork Salmon River	971, 981, 986	971
Bear Valley Creek	Middle Fork Salmon River	967, 987	967
Elk Creek	Bear Valley Creek	949, 963, 972	972
Panther Creek	Salmon River	593, 600, 621, 628, 645, 682, 690, 715, 718, 726, 735	600, 735
Lightning Creek	Yankee Fork	964	964
Eightmile Creek	Yankee Fork	962	962
Redfish Lake Creek	Salmon River	1036, 1040	1036
Yellow Belly Lake Cr.	Alturas Lake Creek	1066	1066

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¹ Stream is located within basin number

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Stream Name	Tributary to	BIA Basin Number(s)	Quantification Location(s)	Tributary Quantification Location(s)
Lapwai Creek and tributaries	Clearwater River	195, 197, 207, 213	195	177, 220, 225, 214, 264, 265, 238
Potlatch River and tributaries	Clearwater River	15, 43, 54, 90, 106, 108, 112, 138, 159	159	110
Cottonwood Creek	Clearwater River	170	170	N/A
Jacks Creek	Clearwater River	171	171	N/A
Big Canyon Creek and tributaries	Clearwater River	175, 185, 226, 230	175	234, 235, 180, 241, 245
Whiskey Creek	Orofino Creek	134	134	N/A
Jim Ford Creek	Clearwater River	184, 217	184	N/A
Tom Taha Creek	Clearwater River	257	257	N/A
Lawyer Creek and tributaries	Clearwater River	275, 280, 285, 298, 301	275	283, 293, 294, 302
Cottonwood Creek and tributaries	South Fork Clearwater River	307, 315, 334, 336	307	295
Rabbit Creek	South Fork Clearwater River	332	332	N/A
Big Elk Creek	American River	382	382	N/A
Little Salmon River and tributaries	Salmon River	548, 561, 581, 637, 643, 656, 693, 710, 1079, 1080	548, 693	605, 620, 638
Sheep Creek	South Fork Salmon River	719	719	N/A
Hat Creek	Salmon River	796, 802, 826	826	N/A
East Fork Salmon River and tributaries	Salmon River	1018, 1028, 1032, 1033, 1041, 1046, 1052, 1063, 1068	1018, 1052	1060, 1042, 1053
North Fork Salmon River and tributaries	Salmon River	448, 491, 506, 516, 533	533	N/A
Lemhi River and tributaries	Salmon River	640, 646, 673, 698, 729, 737, 755, 767, 776, 797, 800, 804, 846, 829	640, 800	801
Pahsimeroi River and tributaries	Salmon River	873, 908, 915, 929, 947, 956, 991, 1011, 1031	873	N/A

Mediator's Term Sheet*April 20, 2004 Final Term Sheet*

Stream Name	Tributary to	BIA Basin Number(s)	Quantification Location(s)	Tributary Quantification Location(s)
Yankee Fork	Salmon River	942, 977, 982, 992, 998, 1001	1001	N/A
Alturas Lake Creek	Salmon River	1067, 1078	1078	N/A
Valley Creek and tributaries	Salmon River	1004, 1008	1008	1021, (streams in 1004 and 1008)

**MEMORANDUM OF AGREEMENT
BETWEEN THE STATE OF IDAHO, THE NEZ PERCE TRIBE,
THE UNITED STATES FISH AND WILDLIFE SERVICE,
AND NATIONAL MARINE FISHERIES SERVICE
ESTABLISHING A COLLABORATION PROCESS FOR MAKING
RECOMMENDATIONS TO THE STATE OF IDAHO CONCERNING USE OF
THE STATE SECTION 6 ACCOUNT OF THE SNAKE RIVER BASIN
ADJUDICATION AGREEMENT OF 2004 HABITAT TRUST FUND**

This Memorandum of Agreement (MOA) is executed in counterpart by the State of Idaho (State), the Nez Perce Tribe (Tribe), the United States Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NOAA Fisheries Service) on the dates set out below. The USFWS and NOAA Fisheries Service together are referred to as "the Services". These entities are hereinafter referred to collectively as the "Parties."

I. PREAMBLE

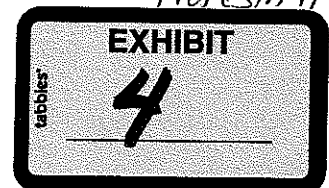
A. The Parties have entered into a comprehensive water rights settlement based on the document titled "Mediator's Term Sheet" dated April 20, 2004 and submitted to the Snake River Basin Adjudication (SRBA) Court on that date (SRBA Water Rights Agreement of 2004 hereinafter referred to as SRBA Agreement), and since ratified and approved by the 108th Congress of the United States of America, by the Legislature of the State, and by the Nez Perce Tribal Executive Committee of the Tribe

B. The SRBA Agreement provides among other things that the State will establish programs under Section 6 of the Endangered Species Act to be funded in part by the State's share of the Habitat Trust Fund (State Section 6 Account). (SRBA Agreement, Section II C.3.(2)). The Section 6 Agreements will include "habitat actions" for the B-list streams¹ under Appendix I of that agreement, habitat actions in the Lemhi River Basin under Section II A.8, and the Habitat Improvement Program described in Section II B.3, as well as the Forestry Program under II B.2. As part of the SRBA Agreement, the State will collaborate with the Nez Perce Tribe and the United States to determine how to direct use of the State Section 6 Account.

II. PURPOSE

The SRBA Agreement represents among other things the mutual interest of the Parties in implementing and funding habitat protection and restoration projects (habitat actions) in the Salmon and Clearwater river basins. By entering into this MOA, the Parties desire to establish a process for making recommendations to the State concerning the use of the State Section 6 Account to fund implementation of future cooperative agreements with the USFWS and NOAA Fisheries Service under Section 6 of the

¹ The SRBA Agreement provides for the establishment pursuant to state law of instream flow water rights to be held by the Idaho Water Resource Board for the streams included in List A and List B, respectively. Section II, A (1), (2).



Endangered Species Act, 16 U.S.C. Section 1535(c) (Section 6 Cooperative Agreements) that are consistent with Sections II.B.3, II.B.4, and II.C.2 of the SRBA Agreement and to identify potential early-action measures² that can be implemented as described in the B-list work plans for both the Clearwater and Salmon river basins, the Lemhi Framework, and the Salmon/Clearwater Habitat Management and Restoration Initiative (SRBA Agreement Section II). Under Section 6, the Services must annually confirm that any such cooperative agreement meets the requirements of the Endangered Species Act (ESA). Funding for implementation is a factor to be considered in this determination. Neither the participation of the Services as Parties to this MOA, nor any position taken by the Services on matters brought before the Parties under procedures established by this MOA, is to be understood as an indication of the position of either Service regarding its responsibility under Section 6 to confirm that any agreement meets the requirements of the ESA. The Parties also understand that funds from other sources than the State Section 6 Account may become available for implementation of habitat actions for Section 6 Cooperative Agreements. The Parties may, as appropriate, enter into agreements providing for use of the collaborative process described in this MOA for decision-making purposes related to sources of funds other than the State Section 6 Account. Written agreements related to use of other funds to implement habitat actions may be attached to this MOA as appendices when and if such documentation is appropriate.

III. INTERACTION OF PARTIES

A. **Establish Collaborative Committee:** Within three (3) months of the effective date of this MOA, the State will convene a Collaborative Committee (Committee) to begin implementation of this MOA.

B. **Purpose:** The Committee will serve as a policy level forum for making recommendations to the State regarding the prioritization and implementation of habitat actions funded through the State Section 6 Account established in the Snake River Water Rights Act of 2004 and described in Section II.C.3 (2) of the SRBA Agreement. The Committee will also serve as a forum for monitoring the progress of implementation of habitat actions funded by the State Section 6 Account, including actions that are part of Section 6 Cooperative Agreements which incorporate potential habitat actions described in the Lemhi Habitat Actions Framework (Lemhi Framework, attached as Exhibit A) and B-list watershed work plans (B-list work plans) and B-list summaries (B-list summaries, attached as Exhibit B).³ The Committee will make recommendations to the State regarding project funding, additional and cooperative funding opportunities, and revisions to habitat goals, objectives and implementation strategies where monitoring indicates that one or more habitat actions are not achieving the desired result.

² Early action measures are measures implemented in anticipation of a potential Section 6 Cooperative Agreement and included in such.

³ The B-list work plans are voluminous and are therefore incorporated herein and made part of this MOA by reference. The B-list summaries provide an overview of information contained in the B-list work plans.

C. **Membership:** The Committee will be composed of no more than two representatives from the State, two from the Tribe, and one each from the USFWS and NOAA Fisheries Service respectively. One of the State representatives will act as chairperson, prepare agendas and minutes, and conduct Committee meetings.

D. **Meetings:** The Committee will meet annually and convene additional meetings as necessary to accomplish its duties. The Committee will provide notice of its meetings to stakeholders and interested persons in the Salmon and Clearwater Basins. The Committee will establish appropriate procedures for conducting its activities including notice procedures, protocols for public involvement, and protocols and timelines for submission and circulation of written materials and reports.

E. **Funding Recommendations and Collaboration:** The collaborative process of the Committee is intended to provide meaningful and timely input to the State regarding use of the State Section 6 Account. The Parties recognize the important opportunities for habitat restoration in both the Salmon and Clearwater river basins. Accordingly, the Committee, in making funding recommendations to the State, will give due consideration to the implementation of Section 6 Cooperative Agreements, including early action measures, that incorporate habitat actions described in the B-list work plans for both the Clearwater and Salmon river basins, the Lemhi Framework, and the Habitat Improvement Program. Committee members will in good faith seek consensus on recommendations to the State. The State will give due consideration to the recommendations of the Committee in determining which habitat actions to fund and implement. Where consensus is not reached, the State will consider the views of each Committee member. The State shall make all final decisions regarding the spending of funds from the State Section 6 account.

F. **Recommendations Concerning Revisions to Habitat Goals, Objectives, and Strategies:** The State will provide to the Committee annual implementation and effectiveness monitoring reports for the habitat actions implemented under the State Section 6 Account, the recommendations of local technical and advisory teams and other stakeholders concerning the need for revision of conservation objectives and implementation strategies for Section 6 Cooperative Agreements in B-list stream basins, the State's prioritization of proposed habitat actions, and potential funding sources. In the event the Committee decides that additional technical information or opinion is required to inform its deliberations, the Committee may request further assistance from an existing technical team and/or each member may seek and provide to the Committee technical information developed by a member's technical staff or advisors. After consideration of such information, the Committee will in good faith seek consensus on recommendations to the State concerning prioritization and implementation of projects and where necessary, recommendations regarding the revision of goals, objectives, and conservation strategies. The State will make all final decisions concerning revisions to habitat goals, objectives, and conservation strategies contained in the Section 6 Cooperative Agreements and will advise the Committee in a timely manner about decisions made.

G. **Habitat Action Projects:** Initial B-list work plans evaluating limiting factors, aquatic goals, and implementation strategies for the B-list watersheds, B-list work plan summaries, and a more comprehensive framework of objectives and strategies outlined in the Lemhi Framework have been developed. The Lemhi Framework and B-list work plans and summaries are planning documents that the parties anticipate will be modified as additional data is developed and as the State implements Section 6 Cooperative Agreements in the Lemhi and B-List watersheds. When completed, the Section 6 Cooperative Agreements will be submitted to the Committee to inform the Committee about the habitat actions contemplated in those agreements. The State will continue to work with local technical teams, habitat conservation advisory groups, county, state and federal agencies, tribes, water users and landowners to identify and develop habitat action projects that are consistent with the Section 6 Cooperative Agreements.

H. **Lemhi River Basin:** The State will work with local technical teams, advisory groups, and other stakeholders to prioritize and implement the habitat actions identified in the Lemhi Framework as part of the Lemhi Section 6 Cooperative Agreement. Annual implementation and effectiveness monitoring reports will be provided to the Committee. All proposals and requests for funding from the State Section 6 Account must include recommendations regarding success criteria for each project and clearly define how the proposed habitat actions will accomplish the goals and objectives outlined in the Lemhi Framework. The Committee will review all submissions and make recommendations to the State regarding priorities, funding, and revisions to objectives and strategies if necessary.

I. **Upper Salmon River Basin:** The State and the Tribe, in consultation with local technical teams, advisory groups, and other stakeholders, have developed work plans that include initial evaluations of limiting factors, aquatic goals, and implementation strategies for habitat actions that may be funded by the State Section 6 Account as Section 6 Cooperative Agreements are developed for the Upper Salmon River Basin, Valley Creek tributaries, and the Pahsimeroi River⁴ and tributaries. As part of the Section 6 Cooperative Agreements, the State will work with local technical teams, advisory groups, and other stakeholders to develop, prioritize and implement habitat actions that are consistent with the B-list work plans. The State will submit to the Committee the recommendations for prioritizing and implementing habitat actions and provide annual implementation and effectiveness monitoring reports for habitat actions funded by the State Section 6 Account. All proposals and requests for funding from the State Section 6 Account must include recommendations regarding success criteria for each project and will clearly define how the proposed habitat actions will accomplish the biological objectives outlined in the watershed work plans. The Committee will review

⁴The SRBA Agreement provided that a Section 6 Cooperative Agreement would be developed for the Pahsimeroi River Basin. (Section II. A. 8). However, the Parties determined that additional information is needed before an agreement can be developed. The Pahsimeroi River is also listed as a B-list stream in Appendix I of the SRBA Agreement. The Parties therefore agreed to include the Pahsimeroi as a B-list stream in the development of B-list work plans and committed to developing a Section 6 Cooperative Agreement for the Pahsimeroi River and its tributaries by March of 2010.

all submissions and make recommendations to the State regarding priorities, funding, and revisions to objectives and strategies as necessary.

J. **Clearwater Basin:** The State and the Tribe, in consultation with local technical teams, advisory groups, and other stakeholders, have developed work plans that include initial evaluations of limiting factors, aquatic goals, and implementation strategies for habitat actions that may be funded by the State Section 6 Account, including Section 6 Cooperative Agreements addressing B-list watersheds. The B-list watersheds within the Clearwater Basin include: Lapwai Creek Basin, Lawyer Creek Basin, and Cottonwood Creek Basin (tributary to South Fork Clearwater River). The State and the Tribe will work with local technical teams, advisory groups, and other stakeholders to develop, prioritize, and implement habitat actions that may be funded by the State Section 6 Account. The State and the Tribe will submit to the Committee proposals and recommendations for prioritizing and implementing habitat actions funded by the State Section 6 Account and provide annual implementation and effectiveness monitoring reports. All proposals and requests for funding from the State Section 6 Account must include recommendations regarding success criteria for each project and will clearly define how the proposed habitat actions will accomplish the biological objectives outlined in the watershed work plans. The Committee will review all submissions and make recommendations to the State regarding priorities, funding, and revisions to objectives and strategies as necessary.

K. **Little Salmon River Basin:** The State and the Tribe, in consultation with other stakeholders, have developed an initial evaluation of limiting factors, aquatic goals, and implementation strategies for habitat actions that may be funded by the State Section 6 Account, including Section 6 Cooperative Agreements addressing B-list watersheds within the Little Salmon River Basin. The State and the Tribe will work with local technical teams, advisory groups, and other stakeholders to develop, prioritize, and implement habitat actions that may be funded by the State Section 6 Account. The State and the Tribe will submit to the Committee proposals and recommendations for prioritizing and implementing habitat actions in the watershed and provide annual implementation and effectiveness monitoring reports. All proposals and requests for funding from the State Section 6 Account must include recommendations for success criteria for each project and clearly define how the proposed habitat actions will accomplish the biological objectives outlined in the watershed work plans. The Committee will review all submissions and make recommendations to the State regarding priorities, funding, and revisions to objectives and strategies as necessary.

IV. DECISION CRITERIA TO PRIORITIZE HABITAT ACTIONS

When considering how to prioritize habitat actions on a per-project basis, the following decision criteria will guide the Committee.

A. **Initial Screening Criteria That Would Preclude Further Consideration of Project Proposals:**

1. **Legal or institutional obstacles** – Will existing legal obligations or prohibitions, and/or property rights clearly preclude the implementation of the project? Obstacles that are not likely to be resolved in a timely and cooperative manner among public agencies and private interests would preclude implementation.

2. **Cost feasibility** – Are the costs of the project prohibitive for the involved agencies/entities, taking into account: (1) the current financial and legal constraints facing these entities as they meet their operational costs and debt obligations; (2) the economic, legal, and political difficulties of developing additional public funds for the capital and operational costs of a project; and (3) information indicating that project costs will outweigh the expected conservation benefits.

3. **Geographic area** – Would project approval in an area where multiple habitat actions have previously been approved or implemented preclude habitat actions in areas requiring immediate attention?

B. **Ranking Considerations for Prioritization of Habitat Action Projects:** The candidate habitat action projects that satisfy the initial screening requirements will be evaluated considering the following:

Level 1	Benefit to Fishery Resources
Level 2	Success and Cost Variables
	Likelihood of Successful Implementation
	Total Cost (capital, operations, maintenance and monitoring)
	Land and Water requirements

Level one addresses the biological significance of a project relative to improving fishery resources in the target watersheds, focusing on special status fish species including Chinook Salmon, steelhead, bull trout, cutthroat trout, and redband/rainbow trout. Level two addresses the likelihood that the project will be successfully implemented and takes into consideration the technical feasibility, land and water requirements, and cost. Level one considerations will be of primary importance to ensure that projects implemented address limiting factors and conservation goals and objectives.

C. **Recommendations Concerning Revisions to Habitat Goals, Objectives, and Implementation Strategies:** Objectives, implementation strategies, and success criteria will guide the implementation of habitat actions. Annual implementation and effectiveness monitoring reports will inform the Committee's deliberations regarding prioritization, funding and the need for revisions to objectives and strategies. In addition, new or additional scientific information developed in the future may require revision of objectives, strategies, or success criteria. Finally, it will be important to take advantage of unexpected opportunities for implementation of conservation strategies. Upon review of the annual implementation and effectiveness monitoring reports the Committee may recommend, as appropriate, that the State:

1. Re-prioritize recommended projects based on the projects' expected

effectiveness in meeting objectives and success criteria.

2. Re-prioritize objectives, strategies, and success criteria based on new scientific information.
3. Re-allocate funding resources to projects where there is opportunity for immediate implementation.
4. Maintain priorities and continue project implementation accordingly.

D. **No Obligation of Funds:** Nothing herein shall obligate the State to expend funds on habitat actions except to the extent explicitly appropriated by the Idaho Legislature

E. **Consultation with Other Parties:** Nothing herein shall be construed as requiring that the Committee serve as the exclusive policy level forum for making recommendations to the State regarding the prioritization and implementation of conservation actions, nor inhibits the State from entering into similar consultation agreements with other affected Indian tribes or parties

F. **Documents Incorporated:** All exhibits and the B-list work plans referred to herein are incorporated herein and made part of this MOA

G. **Modification:** This MOA may be modified or supplemented with the unanimous written consent of the authorized representatives of the Parties.

H. **Remaining Funds:** If any part of the State Section 6 Account is available beyond that needed for implementation of any Section 6 Cooperative Agreements anticipated by this MOA, remaining funds may be used for other habitat purposes as directed by the States, the Tribe, the USFWS, and NOAA Fisheries Service pursuant to the terms of this MOA.

I. **Effective Date:** The Parties may sign this MOA in counterpart. After signature by the authorized representatives of the Parties, the effective date of this MOA will be the date on which the Secretary of the Interior causes to be published the statement of findings required by Section 10(a)(5) of the Snake River Water Rights Act of 2004 (Public Law 108-447).

AUTHORIZED APPROVALS:

STATE OF IDAHO

BY: _____

Date

effectiveness in meeting objectives and success criteria.

2. Re-prioritize objectives, strategies, and success criteria based on new scientific information.
3. Re-allocate funding resources to projects where there is opportunity for immediate implementation.
4. Maintain priorities and continue project implementation accordingly.

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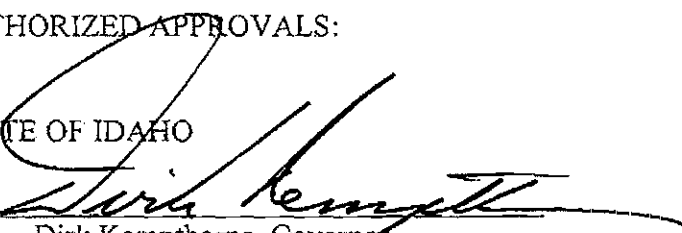
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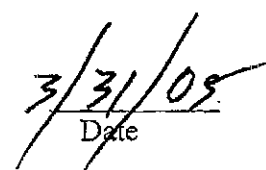
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AUTHORIZED APPROVALS:

STATE OF IDAHO

BY:


Dirk Kempthorne, Governor


Date

NEZ PERCE TRIBE

BY: Anthony D. Johnson
Anthony D. Johnson, Chairman
Nez Perce Tribal Executive Committee

3/31/05

Date

BY: Rebecca A. Miles
Rebecca A. Miles, Secretary
Nez Perce Tribal Executive Committee

3-31-05

Date

NATIONAL MARINE FISHERIES SERVICE

BY: _____

Date

U.S. FISH AND WILDLIFE SERVICE

BY: _____

Date

NEZ PERCE TRIBE

BY: _____
Anthony D. Johnson, Chairman
Nez Perce Tribal Executive Committee

Date

BY: _____
Rebecca A. Miles, Secretary
Nez Perce Tribal Executive Committee

Date

NATIONAL MARINE FISHERIES SERVICE

BY: D. Robert Lohn
D. Robert Lohn
Regional Administrator, NWR

Date

U.S. FISH AND WILDLIFE SERVICE

BY: _____
Dave Allen
Regional Director, Pacific Region

Date

NEZ PERCE TRIBE

BY: _____
Anthony D. Johnson, Chairman
Nez Perce Tribal Executive Committee

Date

BY: _____
Rebecca A. Miles, Secretary
Nez Perce Tribal Executive Committee

Date

NATIONAL MARINE FISHERIES SERVICE

BY: _____

Date

U.S. FISH AND WILDLIFE SERVICE

BY: David Walsh
ACTING Regional Director

3/31/05
Date

Framework for the Implementation of Habitat Actions in the Lemhi River Basin
Pursuant To Section II.A.8 of the Term Sheet

This Framework sets forth the goals, objectives, and conservation strategies for implementation of habitat actions in the Lemhi Basin pursuant to Section II.A.8 and Section II.C.3 (2) of the Nez Perce Mediator's Term Sheet, dated April 20, 2004, and the Memorandum of Agreement (MOA), titled "Memorandum of Agreement Between the State of Idaho, the Nez Perce Tribe, the United States Fish and Wildlife Service, and National Marine Fisheries Service Establishing a Collaboration Process for Making Recommendations to the State of Idaho Concerning Use of the State Section 6 Account of the Snake River Basin Adjudication Agreement of 2004 Habitat Trust Fund." The purpose of the Lemhi Framework is the conservation of ESA-listed and non-listed salmonid species and their habitat in the Lemhi watershed. The Framework builds upon existing conservation strategies that have been voluntarily implemented by water users and landowners in cooperation with state and federal agencies and tribes.

As Columbia River Basin anadromous fish runs began to decline, ranchers in the Lemhi Basin took action to prevent the extirpation of Lemhi salmon and steelhead runs. They sought the assistance of state and federal officials to help develop a conservation plan addressing the in-basin habitat needs of ESA-listed fish. The Northwest Power Planning Council's (NPPC's) *Strategy for Salmon* (NPPC 1992), issued a plan calling for the recovery of salmon runs in the Columbia River Basin, watershed-level planning efforts to effect that recovery, and cooperation between private landowners, government agencies, and other stakeholders in developing such efforts. These collaborative efforts led to establishment of the Model Watershed Project in Salmon, Idaho in 1993 (which has since expanded to become the Upper Salmon Basin Watershed Project); completion in 1992 of a plan by local irrigators to improve fish passage in the Lemhi River (the "Irrigator's Plan"; LID and WD74 1992); and the Model Watershed Plan (ISCC 1995), which identified a range of fish conservation actions for the Lemhi, Pahsimeroi, and East Fork Salmon River watersheds. Based on the latter plan, numerous and significant conservation projects have been voluntarily implemented in the Lemhi Basin focusing on fish passage issues, fish screen improvements, protection of riparian habitat, and consolidation or modification of irrigation diversion works. This Framework builds upon the many habitat actions implemented by local water users, landowners, tribes, state and federal agencies, and other stakeholders and identifies remaining concerns and potential strategies that address those concerns. Both in-basin and out-of-basin habitat actions are needed to protect and restore ESA-listed fish within the Lemhi Basin. Therefore, the Framework not only builds upon past conservation efforts, but is also consistent with out-of-basin habitat actions being taken to protect and restore ESA-listed fish.

Funding:

A Habitat Trust Fund will be established pursuant to the Snake River Water Rights Act of 2004 as described in Section II.C. of the Nez Perce Mediator's Term Sheet. The purpose of the Habitat Trust Fund is to supplement monies otherwise available for ESA Section 6 Agreements that include habitat protection and restoration projects in the Salmon and Clearwater basins, including habitat protection and restoration projects identified in the

Lemhi Framework. This Framework is in furtherance of the MOA for the State Section 6 Account and will be implemented subject to available funding.

Goals:

The primary goals of the Lemhi Framework are to: (1) Implement biologically sound strategies that contribute to the persistence of healthy populations of Chinook salmon, bull trout, steelhead, westslope cutthroat trout, and redband trout in the Lemhi watershed; (2) Implement restoration alternatives that have a high likelihood of success and that provide substantial value for target resources; (3) Coordinate with and support other compatible fish protection and restoration activities in the Lemhi basin to maximize total benefits to fisheries resources.

Initial Formulation of Habitat Actions in the Lemhi Basin:

The Framework represents an initial formulation of objectives and strategies that address the primary limiting factors to the persistence of healthy populations of fish in the Lemhi basin. Limiting factors, biological objectives and potential conservation strategies are outlined below and will be further revised through adaptive management as more information about limiting factors and species' needs becomes available.

Conservation Strategies by River Reach

Lemhi River – Mouth to L6 (Mouth Reach)

Objective. The objective is to provide passage conditions for juvenile and adult Chinook salmon, steelhead, and bull trout that are adequate to allow upstream and downstream movement without undue stress or delay.

- Limiting Factor(s): Dewatering below the L6 diversion (a one-mile segment) has occurred during dry years due to irrigation withdrawals beginning in April, and again in July through September following spring runoff. Two miles of the river upstream from the mouth were channelized and diked to prevent flooding, which eliminated pools and created shallow riffle reaches that can impair fish passage during low flows. Stream alterations have reduced the amount of riparian vegetation that helps reduce stream temperatures during warm summer months. As a result of these factors, adult and juvenile fish passage to and from the upper Lemhi River is at times interrupted.
- Implementation Strategy: Section II A.6. of the Mediator's Term Sheet provides that existing state instream flows on the mainstem Lemhi River will be maintained as presently quantified, subject to I.C. section 42-1504. The instream flow strategies described here and in other sections of the Framework are intended to be consistent with and not in addition to those approved by the Idaho Water Resource Board and established by Idaho Code Section 42-1506.

Various life stages and species are migrating between the mouth of the river to L6 at different times during the year. Thus, varying amounts of water are necessary to provide for migration depending on the species, life stage, and time of year. The strategy described here is intended to provide flow at the L6 diversion (measured at

the L5 gage) that meets passage requirements for adult and juvenile salmonids. During the first 10 years of the MOA, an interim strategy of 35 cfs (average daily flow) not less than 80% of the time and 25 cfs not more than 20% of the time from March 15 through June 30 will be maintained. A flow of 25 cfs will be maintained from July 1 to November 1. Historic hydrographs as measured at the L5 gage indicate that during the non-irrigation season, flows substantially exceed 35 cfs. If, during the irrigation season, adult Chinook salmon are observed stranded or unable to migrate upstream due to inadequate flow, additional strategies will be implemented to allow adults to migrate upstream. By year 10 of the MOA, the goal is to maintain a minimum stream flow of 35 cfs throughout the irrigation season. However, the State will continue to evaluate fish passage needs as other strategies designed to improve fish passage are implemented in this reach (e.g. modifications to stream channel morphology).

- The State expects to take steps to assure the delivery of nearly 24 cfs by year 10 of the MOA to reduce the water rentals needed to provide 35 cfs throughout the irrigation season. The remaining water required to meet the 35 cfs minimum flow will be provided through a voluntary water market.
- Implementation Strategy: The State will modify the stream channel morphology in critical reaches in order to consolidate flow and increase water depth. This will help meet passage criteria below L6 during low water years in several reaches identified as potential impairments to fish passage. Consultation with experts in hydrology and fluvial geomorphology will be the first step taken to implement this strategy. If determined to be feasible and effective in improving fish passage, one project will be designed and implemented by year 3 of the MOA; and monitoring will be conducted to determine the effectiveness of the project. Revisions to this strategy will be implemented as necessary through an adaptive management process. Projects designed to improve passage through the remaining critical reaches will be completed by year 15 of the MOA.
- Implementation Strategy: The State will evaluate the development of pools to create resting areas for migrating fish by year 3 of the MOA. The effectiveness of this strategy, the feasibility of implementing structures that develop and maintain pools, and the significant channelization and dike construction to prevent flooding will be considered. Specific criteria for monitoring the effectiveness of this strategy will be developed by the Upper Salmon Basin Watershed Project (USBWP) Technical Team. If it is determined that developing pools will improve fish passage in this reach, implementation will be initiated. If the initial evaluation of the effectiveness of this strategy is completed prior to year 3 of the MOA, early implementation will be considered.
- Implementation Strategy: The State will evaluate the effectiveness of protecting riparian vegetation to provide thermal benefits to migrating fish in the lower river by year 5 of the MOA. If it is determined that this strategy will reduce stream temperatures in summer and improve fish passage, some percentage of the riparian vegetation in this reach will be protected from livestock grazing and other uses. However, establishing a fully functional riparian zone may not be possible in this

reach due to the extensive amount of channelization and dike construction and the need for flood control structures.

Lemhi River – L6 to Agency Creek (Lower Reach)

Objective. The objective is to provide passage conditions for juvenile and adult Chinook salmon, steelhead, and bull trout that are adequate to allow upstream and downstream movement without undue stress or delay.

- Limiting Factor(s): Riparian function and channel morphology on the mainstem Lemhi has been compromised by road construction and floodplain development. Changes to hydrologic processes are most pronounced in the lower part of this reach. Effects from these activities include excessive sedimentation, high stream temperatures, and a limited number of pools.
- Implementation Strategy: The State will evaluate the effectiveness of protecting riparian vegetation in this reach to provide thermal benefits to migrating fish by year 5 of the MOA. The extensive stream channelization in this reach will be considered. Projects considered for implementation include fencing to exclude livestock, planned grazing rotations, developing floodplain easements, and re-vegetation of riparian areas where necessary, if it is determined that this strategy provides thermal benefits.
- Implementation Strategy: The State will evaluate the development of pools in this reach to increase resting areas for migrating fish by year 3 of the MOA. The effectiveness of this strategy, the feasibility of implementing structures that develop and maintain pools, and the extent of channelization in this reach will be considered. Specific criteria for evaluating and implementing this strategy will be developed by the USBWP Technical Team. The State will begin implementing this strategy if it is determined that additional pools will improve fish passage in this reach. Implementation may occur within the 3-year evaluation period.

Lemhi River – Agency Creek to Hayden Creek (Middle Reach)

Objective. The objective is to improve rearing conditions for salmonids.

- Limiting Factor(s): Riparian function and channel morphology on the mainstem Lemhi has been compromised by road construction and floodplain development. The effects from these activities include excessive sedimentation, high stream temperatures, and changes to hydrologic processes and are most pronounced from Agency Creek to Hayden Creek. This reach is important to rearing fish hatched in the upper Lemhi River and the lower reach of Hayden Creek; pool habitat is lacking.
- Implementation Strategy: The State will protect riparian areas to achieve 80% bank stability. As part of this strategy, the State will validate bank stability estimates completed in 1994 by year 5 of the MOA to determine the location and amount of habitat that needs to be protected. Implementation may occur within this evaluation period. Stream banks may be stabilized with a combination of riparian vegetation

and artificial material (rip rap). Riparian vegetation will be protected by excluding livestock, planning grazing rotations, developing floodplain easements, and re-vegetating riparian areas.

- Implementation Strategy: The State intends to double the amount of pool habitat in the middle reach (from 7% to 14%) by year 20 of the MOA. The effectiveness and feasibility of implementing this strategy will be investigated by year 3 of the MOA. During this investigation period, the State will implement one demonstration pool development project, and conduct follow up effectiveness monitoring. Recommendations and implementation of future pool development projects will be based on monitoring results.
- Implementation Strategy: The State will evaluate installing natural structures in pools to improve the quality of pool habitat by year 3 of the MOA. For evaluation purposes, the State will install natural structures in at least one pool during this same period. If the State determines that this strategy is both effective and feasible, additional projects will be developed and implemented by year 20 of the MOA.
- Implementation Strategy: The State will implement habitat rehabilitation projects designed to reconnect side channels and provide off channel rearing habitat. The State will implement one project to create off channel habitat by year 5 of the MOA. Other natural/historic channels and irrigation canals that do not contain fish barriers will be evaluated for implementing this strategy.

Lemhi River – Hayden Creek to Leadore (Upper Reach)

Objective. The objective in the upper reach is to maintain or improve spawning and rearing conditions for salmonids.

- Limiting Factor(s): Habitat quality in the upper Lemhi River is in fair to good condition for a number of parameters including pool habitat, spawning gravels for anadromous and resident fish, rearing habitat, riparian condition and channel sinuosity. This reach contains important spawning and rearing habitat for Chinook salmon and also supports resident coldwater fish (e.g., cutthroat trout, bull trout, rainbow/steelhead/redband trout). Riparian function and bank stability is good, but does not meet recommended objectives of 80% stability. In drought years, instream flow is significantly reduced, and as a result, stream temperatures can exceed the upper limit for cold water species.
- Implementation Strategy: The State will work to prevent future depletion of the flow regime in this reach to preserve existing spawning and rearing habitats for Chinook salmon and other salmonids. Using an adaptive management strategy, the State will identify and implement measures needed to improve juvenile survival in this reach.
- Implementation Strategy: The State will develop an adaptive management process for meeting the habitat needs of fish in the upper Lemhi River. Because this reach is clearly important to the conservation of Chinook salmon and other salmonid species in the Lemhi basin, the State will complete a rigorous evaluation of fish survival and its relationship with flow and other habitat parameters. Potential measures for improving instream habitat include increasing stream flow through this reach with

water bank rentals used to reconnect upstream tributaries and executing dry year lease options, partial and full season leases, and agreements not to divert through a voluntary water market.

- Implementation Strategy: The State will protect riparian areas to achieve 80% riparian stability in this upper reach. Bank stability will be provided exclusively by protecting naturally functioning riparian zones. As part of this strategy, the State will validate bank stability estimates completed in 1994 by year 5 of the MOA to determine the location and amount of habitat that needs to be protected. Implementation may occur within this evaluation period. Projects considered for this strategy include fencing to exclude livestock, planned grazing rotations, established easements in floodplain areas, and re-vegetation in riparian areas where necessary.
- Implementation Strategy: The State will evaluate the development of pools in this reach by year 3 of the MOA. The current ratio of pools to riffles, the effectiveness of this strategy and feasibility of implementation will be considered. Specific criteria for evaluating the likely effectiveness of providing additional pool habitat in this reach will be developed by the USBWP Technical Team. Implementation of this strategy will be based on evaluation results.
- Implementation Strategy: The State will evaluate and implement measures to reconnect side channels and provide other off channel rearing habitat. The State has identified two potential side channel reconnects in this reach: 1) Lemhi little springs Creek/Mill Creek confluence, and 2) Benedict Little Springs Creek. The State intends to reconnect these side channels by year 10 of the MOA. Other natural/historic channels and irrigation canals that do not contain fish barriers will be evaluated for implementing this strategy.

Lemhi River - Basinwide

Objective. The objective is to protect salmonids from becoming entrained in surface water diversions without exclusion from valuable side channel habitat, where it is determined to exist.

- Limiting Factor(s): Irrigation ditches, return flow ditches, and waste ways (collectively, ditches) on the mainstem entrain fish. Ditches may be screened, but juvenile salmonids may enter from the downstream end and become entrained.
- Implementation Strategy: Work with local landowners and water users to identify irrigation, return flow, and waste way ditches that have the potential to entrain salmonids within the first 5 years of the MOA. Monitoring and adaptive management strategies will play a key role in defining and developing projects to meet this objective. Projects to implement this strategy would include screening fish near the point of diversion and installing fish barriers near return flow structures. The State will work with the USBWP Technical Team on prioritization of projects and a timeline to implement these projects.

Objective. Mimic high water events to improve habitat for salmonid spawning and rearing

- Limiting Factor(s): Irrigation water use during the spring through the high water period can alter the hydrograph of the Lemhi River in the reach from Highway 29 to Hayden Creek. As a result, seasonal bank full flows that could help maintain channel function may not be available.
- Implementation Strategy: The State will work with the USBWP Technical Team and other experts to evaluate the extent to which channel maintenance flows are altered by current water management practices, the extent to which periodic channel maintenance flows would result in improvement to aquatic habitat, and the risk of flooding or other property damage. If channel maintenance flows are recommended and it is determined that such flows would not increase the risk of flooding or property damage, the State will complete a water budget for the Lemhi River and tributaries to determine the feasibility of implementing this strategy within 5 years of the MOA. If the State determines that this strategy is feasible, implementation will occur by year 10, or when high water opportunities arise.

Objective: Develop lateral stream habitats to improve conditions for fish spawning and rearing.

- Limiting Factor(s): Modifications to the historic channel have reduced the number of side channels and other off channel habitat. Surface water withdrawals have reduced flow through side channels.
- Implementation Strategy: The State will reconnect side channels and provide other off channel rearing habitat throughout the Lemhi River basin by year 20 of the MOA. Although fish passage is the primary objective in the lower river, the effectiveness of establishing side channels for rearing purposes will also be evaluated. The State has identified one site in the middle river reach and two sites in the upper river reach where there may be opportunities to implement this strategy. Other opportunities will be evaluated during the term of the MOA. Disconnected side channels that historically occurred in the Lemhi River may also be reconnected by modifying the main river channel to provide flow in these areas. Irrigation canals on the Lemhi River and tributaries that contain suitable habitat, such as a functional riparian zone, adequate flow, and substrate, may be utilized as off channel habitat by positioning fish screens and installing appropriate structures that return water to the mainstem or tributary.

Objective. Provide unimpaired fish passage throughout the Lemhi basin

- Limiting Factor(s): The demands for irrigation in the Lemhi basin required the construction of irrigation ditches and canals that withdraw water from the Lemhi River and its tributaries. Dams or other structures that were installed to divert water into canals created impassable barriers to migrating fish. The number of fish barriers and unscreened diversions in the tributaries is extensive.
- Implementation Strategy: The State will conduct an inventory throughout the Lemhi basin to identify potential fish passage barriers. Structures that impair fish passage will be evaluated to determine the feasibility and benefits of removal of the

structure. Projects will undergo a design and engineering phase prior to implementation.

Conservation Strategies for Lemhi River Tributaries

- Goal: The goal is to reconnect at least 10 tributaries with the mainstem Lemhi River during the first 20 years of the MOA to benefit both anadromous and resident salmonids by providing access to historical spawning and rearing habitat. The biological objectives and criteria for each tributary (e.g., providing the opportunity for adult Chinook salmon to use a tributary) will determine the timing and amount of flow needed to provide fish passage. Some tributaries will be reconnected for the purpose of benefiting all migratory and resident fish (Chinook salmon, steelhead/rainbow trout, bull trout, and westslope cutthroat trout). Other tributaries will be reconnected to benefit a particular life stage of anadromous or resident salmonids.
- Objective: Provide hydraulic and ecological connectivity with high quality and historic salmonid habitat for spawning and rearing between the mainstem Lemhi River and select tributaries. Both localized and basin wide benefits are expected to result from the conservation strategies associated with this objective. Restoration of a significant portion of the Lemhi watershed tributaries should result in the following benefits:
 1. Increased spatial distribution, particularly of spawning adults,
 2. Increased natural production in newly connected spawning and rearing habitats,
 3. Reduced mortality due to entrainment through irrigation withdrawal,
 4. Reduced risk of genetic isolation and extirpation of local populations,
 5. Increased survival resulting from access to thermal refugia and high quality rearing habitat,
 6. Increased flows and cold plumes through the mainstem Lemhi
- Limiting Factor(s): With the exception of Hayden Creek and Big Springs Creek, the tributaries to the Lemhi River are, in most water years, dewatered and functionally disconnected from the mainstem. A tributary may be disconnected as a result of reduced flows or dewatering and/or structural barriers i.e., push up dams, and irrigation diversion works. Reduced flows at the mouths of some tributaries effectively create either thermal or hydraulic barriers to certain life stages of fish. For resident fish, complete dewatering of some tributaries in their lower reaches has functionally isolated them from the mainstem river, limiting fish distribution and reducing opportunities for genetic interchange. Chinook salmon do not have access to historical tributary habitats that would provide good quality spawning and rearing conditions, particularly in the headwater reaches that are generally unimpaired by irrigation withdrawals and land use.
- Timeframe for Implementation: As funding is available, the State will work with local landowners and water users to reconnect ten (10) tributaries during the first

twenty years of the MOA. Four (4) tributaries will be reconnected during the first five (5) years of the MOA to provide immediate benefits to Chinook salmon, steelhead, and bull trout. The remaining six (6) tributaries will be reconnected by year twenty of the MOA, taking into consideration the biological benefits and criteria for each tributary.

The Lemhi Plan Coordinator will work with the USBWP Technical Team and other stakeholders to prioritize tributaries that should be reconnected during the first five years of the MOA and identify a timeline for the remaining six reconnects based on the following criteria:

1. Potential habitat quality and limiting factors,
2. Species present,
3. Periodicity by life stage,
4. Fish benefits,
5. Potential connectivity (size, number of diversions).

The tributaries will be functionally reconnected by providing adequate stream flow and removing obstructions to fish passage. Hayden Creek is addressed separately because this tributary remains connected throughout the irrigation season. The text below describes what is currently known about the condition and biological objectives for each tributary. More detailed information for implementation strategies and actions is provided in Table 1 (Lemhi River Habitat Actions). The information below and in Table 1 has been developed for evaluation and planning purposes. It is conceptual, incomplete, and will likely undergo revision as more focused site-specific assessments are completed and affected landowners and water users are consulted.

Based on the prioritization of tributary related strategies, the Lemhi Plan Coordinator will identify and seek funding mechanisms on an annual basis and work with the USBWP Technical Team, local water users and landowners, and other cooperators such as the USBWP Advisory Group, to complete tributary reconnect projects.

Hayden Creek

- Objective: Preserve connection to the Lemhi River to provide passage to spawning and rearing habitat for Chinook salmon, bull trout, cutthroat trout, and *O. mykiss*.
- Description and Limiting Factors: Hayden Creek is one of the largest tributaries and has the potential to influence channel dynamics of the Lemhi River. The mainstem and its tributaries (e.g. Bear Valley Creek, E.F. Hayden Creek) currently support populations of bull trout, small runs of Chinook salmon, steelhead and resident rainbow trout (referred to as *O. mykiss*), and westlope cutthroat trout. Spawning habitat is described as good to excellent in the headwater of Hayden Creek and tributaries, and Hayden Creek currently remains connected year round with the Lemhi River.

- Implementation Strategy: The State, through a voluntary water market, will provide a minimum passage flow for Chinook salmon, bull trout, cutthroat trout, and *O. mykiss* at the mouth of Hayden Creek to ensure that these species have unimpeded access to critical spawning and rearing habitat in the Hayden Creek drainage. This strategy should also offer watershed-wide protection for these habitats in Hayden Creek, but other strategies may be evaluated if this strategy proves to be ineffective at ensuring protection of spawning and rearing habitats. Since providing passage is the objective of this strategy, if, during the irrigation season, adult Chinook salmon (or *O. mykiss*, bull trout or cutthroat trout) are observed stranded or unable to migrate upstream due to inadequate flow, additional strategies will be implemented to allow adults to migrate upstream. It will be important to monitor flow and evaluate its relationship with fish passage to guide future management actions. Recommendations concerning revised flow regimes necessary to provide unimpeded access for Chinook salmon, steelhead, bull trout, rainbow trout, and cutthroat trout will be based on monitoring results. The State will also work with local water users to prevent future depletion of the flow regime. Potential implementation measures for this strategy include dry year lease options, partial and full season leases, and agreements not to divert through a voluntary water market, acquisitions, conservation easements, and consolidation of diversion points.
- Implementation Strategy: The State will protect riparian areas to achieve 80% stability of stream banks in Hayden Creek. Bank stability will be provided exclusively by protecting naturally functioning riparian zones. As part of this strategy, the State will validate bank stability estimates completed in 1994 by year 5 of the MOA to determine the location and amount of habitat that needs to be protected. Implementation may occur within this evaluation period. Projects considered for this strategy include fencing to exclude livestock, planned grazing rotations, established easements in floodplain areas, and re-vegetation in riparian areas where necessary.
- Implementation Strategy: Reduce/eliminate fish entrainment into irrigation ditches.
- Implementation Strategy: Identify and remove structural fish passage barriers.

Lower Reach Candidate Tributaries

Kenney Creek

Objective: Reconnect with the Lemhi River to provide access for juvenile fish to thermal refuge and rearing habitat.

Description and Limiting Factors: Kenney Creek is a relatively large tributary that maintains cool water temperatures and supports bull trout, rainbow trout, cutthroat trout and Chinook salmon. Irrigation diversions dewater the lower reaches, but these do not appear to be very complex. Current conservation efforts include eliminating and modifying existing diversions.

- Implementation Strategy: Provide additional flow.
- Implementation Strategy: Remove/modify structures that prevent fish passage

- Implementation Strategy: Reduce/eliminate fish entrainment into irrigation ditches.
- Implementation Strategy: Protect riparian vegetation in the lower reaches.

Pattee Creek

Objective: Reconnect with the Lemhi River to increase flow and provide access to rearing habitat.

Description and Limiting Factors: Pattee Creek is a relatively small stream that is not heavily utilized for irrigation purposes. It currently supports bull trout, cutthroat trout, Chinook salmon and *O. mykiss*. Ongoing conservation efforts include the installation of a siphon that reduces the amount of water withdrawn from this stream for irrigation purposes.

- Implementation Strategy: Provide additional flow.
- Implementation Strategy: Remove/modify structures that prevent fish passage
- Implementation Strategy: Reduce/eliminate fish entrainment into irrigation ditches.
- Implementation Strategy: Protect riparian vegetation in the lower reaches.

Wimpy Creek

Objective: Reconnect with the Lemhi River to provide access for fish to thermal refuge and rearing habitat, and some spawning habitat

Description and Limiting Factors: Habitat related issues are somewhat unique in Wimpy Creek due to out of basin water transfers with Bohannon Creek. The West Fork of Wimpy Creek serves Bohannon Creek through an irrigation diversion, which likely contributes to the intermittent nature of this stream. There is some channel recharge from irrigation from Pratt Creek in its lower reaches, and with the addition of irrigation wastewater, the lower reaches do connect with the Lemhi River. Riparian areas in Wimpy Creek are somewhat degraded. Wimpy Creek supports Chinook salmon, *O. mykiss*, bull trout, and cutthroat trout.

- Implementation Strategy: Provide additional flow.
- Implementation Strategy: Remove/modify structures that prevent fish passage.
- Implementation Strategy: Reduce/eliminate fish entrainment into irrigation ditches.
- Implementation Strategy: Protect riparian vegetation in the lower reaches.

Bohannon Creek

Objective: Reconnect with the Lemhi River to provide access for all life stages of salmonids.

Description and Limiting Factors: The mouth of Bohannon Creek is dewatered by a complex series of irrigation canals. Conservation efforts in Bohannon Creek include consolidating diversions, fish screening, and conversion of surface water to ground water use. Bohannon Creek currently contains bull trout, rainbow trout, and Chinook salmon.

- Implementation Strategy: Provide additional flow.
- Implementation Strategy: Remove/modify structures that prevent fish passage.
- Implementation Strategy: Reduce/eliminate fish entrainment into irrigation ditches.
- Implementation Strategy: Protect riparian vegetation in the lower reaches.

Geertson Creek

Objective: Reconnect to mainstem to provide rearing habitat for juvenile salmonids.

Description and Limiting Factors: Geertson Creek contains bull trout and cutthroat trout. Irrigation practices and subsequent dewatering affect this stream. There is no defined stream channel in its lower reaches, and significant improvements are required to benefit fish. Irrigation has been completely converted to sprinkler systems, which limits the amount of additional flow that can be provided.

- Implementation Strategy: Provide additional flow.
- Implementation Strategy: Remove/modify structures that prevent fish passage.
- Implementation Strategy: Reduce/eliminate fish entrainment into irrigation ditches.
- Implementation Strategy: Protect riparian vegetation in the lower reaches.

Middle Reach Candidate Tributaries

Agency Creek

Objective: Reconnect with the Lemhi River to provide access to rearing habitat

Description and Limiting Factors: Agency Creek supports *O. mykiss* and cutthroat trout. Water temperatures in Agency Creek often exceed state water quality standards, and therefore this stream would not likely support all life history stages of bull trout. Since water temperatures are generally cooler than in the mainstem Lemhi River during summer, it could serve as thermal refugia for certain species and would likely be utilized by juvenile Chinook salmon for rearing during certain times of year. Habitat is generally considered good, although certain areas could be improved.

- Implementation Strategy: Provide additional flow.
- Implementation Strategy: Remove/modify structures that prevent fish passage.
- Implementation Strategy: Reduce/eliminate fish entrainment into irrigation ditches.
- Implementation Strategy: Protect riparian vegetation in the lower reaches.

Upper Reach Candidate Tributaries

Big Timber Creek

Objective: Reconnect with the Lemhi River to provide access to spawning and rearing habitat for all salmonids in the Lemhi basin.

Description and Limiting Factors: Big Timber Creek is one of the largest tributaries to the Lemhi River and was historically an important producer of Chinook salmon, steelhead, resident and fluvial forms of bull trout, westslope cutthroat trout, and rainbow trout in the Lemhi basin. It currently supports cutthroat trout, rainbow trout, and bull trout. It has been designated critical habitat for Chinook salmon and steelhead. No anadromous fish currently use the Big Timber Creek watershed because the creek is typically dewatered prior to adult migration and spawning. Habitat conditions upstream of the dewatered segments are suitable for all species addressed by the Lemhi Framework. Currently, none of the irrigation ditches in this watershed are screened.

- Implementation Strategy: Provide additional flow.
- Implementation Strategy: Remove/modify structures that prevent fish passage
- Implementation Strategy: Reduce/eliminate fish entrainment into irrigation ditches.

Big Eightmile Creek

Objective: Reconnect with the Lemhi River to provide fish access to rearing habitat and some spawning habitat.

Description and Limiting Factors: Big Eightmile Creek is dewatered during the irrigation season near the mouth of the stream. Conditions would likely improve if irrigation diversions were modified and water was delivered more efficiently from the point of diversion to the point of use. Bull trout, cutthroat trout, Chinook salmon and *O. mykiss* currently occupy a Big Eightmile Creek. Maintaining some tributary connection would provide thermal benefits to these species for rearing, and some spawning habitat would be available for migratory adults.

- Implementation Strategy: Provide additional flow.
- Implementation Strategy: Reduce/eliminate fish entrainment into irrigation ditches.
- Implementation Strategy: Protect riparian vegetation in the lower reaches.

Little Eightmile Creek

Objective: Reconnect with the Lemhi River to provide fish access to rearing habitat.

Description and Limiting Factors: Little Eightmile Creek contains bull trout and cutthroat trout. Little Eightmile Creek does not connect with the Lemhi River, and irrigation needs are significant because of adjacent productive ground. There is some potential for this stream to provide rearing habitat for Chinook salmon.

- Implementation Strategy: Provide additional flow.
- Implementation Strategy: Reduce/eliminate fish entrainment into irrigation ditches.

Texas Creek

Objective: Reconnect with the Lemhi River to provide access for some salmonids to spawning and rearing habitats.

Description and Limiting Factors: Irrigation withdrawals dewater the lower reaches of Texas Creek. Water is diverted from Big Timber Creek to Texas Creek, but this does not functionally connect with the Lemhi River. Texas Creek contains *O. mykiss* and Chinook salmon, and would be reconnected for the purpose of benefiting adult and juvenile life stages of these species.

- Implementation Strategy: Reduce/eliminate fish entrainment into irrigation ditches.
- Implementation Strategy: Protect riparian vegetation in the lower reaches.

Hawley Creek

Objective: Reconnect with the Lemhi River to provide access to rearing and spawning habitats.

Description and Limiting Factors: A significant portion of the lower reach of Hawley Creek is dewatered. Tributary flow remains diverted from the existing channel during non-irrigation periods. Hawley Creek contains *O. mykiss*, cutthroat trout, and bull trout. Reconnecting this stream would likely provide thermal rearing and spawning benefits for all of the salmonids addressed in this Framework.

- Implementation Strategy: Provide additional flow.
- Implementation Strategy: Remove/modify structures that prevent fish passage.
- Implementation Strategy: Reduce/eliminate fish entrainment into irrigation ditches.
- Implementation Strategy: Protect riparian vegetation in the degraded riparian zones throughout the tributary.

Eighteenmile Creek

Objective: Reconnect with the Lemhi River to provide access to rearing and spawning habitats.

Description and Limiting Factors: Significant habitat issues occur in Eighteenmile Creek, even though it currently supports bull trout and *O. mykiss*. This stream is substantially dewatered, and the historical channel no longer exists in the lower reaches. Water is drawn from Eighteenmile down the Whitefish ditch, and connects with Canyon Creek. Barriers limiting fish movement also need to be removed or modified. Irrigation canals may be used for reconnecting this tributary.

- Implementation Strategy: Provide additional flow.
- Implementation Strategy: Reduce/eliminate fish entrainment into irrigation ditches.
- Implementation Strategy: Protect riparian vegetation in the degraded riparian zones throughout the tributary.

Canyon Creek

Objective: Reconnect with the Lemhi River to provide access to rearing habitat.

Description and Limiting Factors: Canyon Creek is typically dewatered by irrigation withdrawals in its lower reaches. This stream also contains structures (e.g. road culverts) that are impassable for migrating fish. Ongoing conservation measures in Canyon Creek include the conversion of surface irrigation to sprinklers and proposed riparian improvements. Chinook salmon, *O. mykiss* and cutthroat trout occur in Canyon Creek. Reconnecting this tributary would support adult and juvenile *O. mykiss* and cutthroat trout, and juvenile Chinook salmon.

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- Implementation Strategy: Provide additional flow.
- Implementation Strategy: Remove/modify structures that prevent fish passage
- Implementation Strategy: Reduce/eliminate fish entrainment into irrigation ditches.
- Implementation Strategy: Protect riparian vegetation in the lower reaches.

Mill Creek

Objective: Reconnect with the Lemhi River to provide access to rearing habitat.

Description and Limiting Factors: Mill Creek is completely dewatered in the middle reaches of the watershed through irrigation diversions. However, the channel is recharged near the confluence with the Lemhi River. Bull trout and *O. mykiss* have been identified in the upper reaches. Reconnecting Mill Creek would support most salmonid species, with the exception of spawning Chinook salmon.

- Implementation Strategy: Provide additional flow.
- Implementation Strategy: Remove/modify structures that prevent fish passage
- Implementation Strategy: Reduce/eliminate fish entrainment into irrigation ditches.
- Implementation Strategy: Protect riparian vegetation in the lower reaches

Big Springs Creek

Objective: Reduce fish entrainment and consolidate irrigation ditches to improve flow

Description and Limiting Factors: Stream flows are generally not impaired, although some habitat issues remain (e.g., excessive sedimentation, high stream temperatures, reduction in cover). Entrainment has been reduced, but fish are entering irrigation ditches from the downstream end. Bull trout, Chinook salmon, cutthroat trout, and *O. mykiss* that have been identified in Big Springs Creek would benefit from meeting the objective.

- Implementation Strategy: Reduce/eliminate fish entrainment into irrigation ditches
- Implementation Strategy: Improve substrate quality
- Implementation Strategy: Protect riparian vegetation in the upper reaches.

Lemhi Little Spring Creek

Objective: Reconnect with the Lemhi River to provide access to rearing habitat.

Description and Limiting Factors: Lemhi Little Spring Creek is typically dewatered by irrigation withdrawals. Stream temperatures can reach critical levels in summer, and fish can become entrained in irrigation ditches. Chinook salmon, *O. mykiss* and cutthroat trout are all present in this stream, and would benefit from meeting the objective.

- Implementation Strategy: Provide additional flow.
- Implementation Strategy: Reduce/eliminate fish entrainment into irrigation ditches.
- Implementation Strategy: Protect riparian vegetation in the lower reaches.

Lee Creek

Objective: Reconnect with the Lemhi River to provide access to rearing habitat.

Description and Limiting Factors: Lee Creek supports bull trout and rainbow trout. There are fish migration barriers present in Lee Creek. Dewatering of the channel occurs in the lower reaches. Reconnecting Lee Creek would support the fluvial form of bull trout, and would provide additional rearing habitat for other salmonids.

- Implementation Strategy: Provide additional flow.
- Implementation Strategy: Reduce/eliminate fish entrainment into irrigation ditches.
- Implementation Strategy: Protect riparian vegetation in the lower reaches.

Table 1 – Lemhi River Habitat Actions
Attachment to Framework for the Implementation of Habitat Actions in the Lemhi River Basin Pursuant Section II.A.8 of the Term Sheet

Table 1. Lemhi River Habitat Actions.

Lemhi River Reach/Tributary	Objective	Potential Strategies	Potential Actions
Lemhi River Mouth Reach (Mouth to L6)	Provide fish passage	1) Maintain a minimum flow of 35 cfs at L6 throughout irrigation season by Year 10 of MOA. Maintain interim flow of 35/25 cfs at L6 for first 10 years of MOA: • Mar 15-Jun 30: 35 cfs not less than 80% of the time and 25 cfs not more than 20% of the time • Jul 1-Nov 1 : minimum flow of 25 cfs maintained Adaptively manage to ensure passage objective is met (i.e., no undue delays or stress due to lack of flow) 2) Modify the stream channel to consolidate flows and increase water depth for passage 3) Evaluate pool development to create resting/staging areas for migrating fish by year 3 of MOA. 4) Protect riparian vegetation to provide thermal benefits for migrating fish. Evaluation to occur by year 5 of	• Transfer water from S14 on the Salmon River to L6 on the Lemhi River • Convert surface water to groundwater on Salmon River Golf Course and City Park • Lease water rights • Exchange surface water for groundwater/Kid's Creek and sprinklers • Donations of water rights on developed property • Complete an engineering/flow study by habitat specialists to identify specific requirements and appropriate actions • Engineer the design of appropriate structures and implement one project if study concludes feasible and effective by year 3 of MOA • Develop timeline and priority for implementation of each project. Projects designed to improve passage through the remaining critical reaches to be completed by year 15 of the MOA • Validate previous estimates of pool habitat to determine needs • Determine how pools can benefit migrating fish and evaluate risk of flooding • Implementation may occur prior to year 3 of MOA if deemed effective and feasible • Install fence to exclude livestock • Develop grazing rotations

Table 1 -- Lemhi River Habitat Actions
Attachment to Framework for the Implementation of Habitat Actions in the Lemhi River Basin Pursuant Section II.A.8 of the Term Sheet

		MOA.	• Develop conservation easements in floodplains • Re-vegetate riparian areas
Lemhi River Lower Reach (L6 to Agency Creek)	Provide fish passage	1) Protect riparian vegetation to provide thermal benefits for migrating fish. Evaluation to occur by year 5 of MOA. 2) Evaluate pool development to create resting/staging areas for migrating fish.	• Install fence to exclude livestock • Develop grazing rotations • Develop conservation easements in floodplains • Re-vegetate riparian areas • Validate previous estimates of pool habitat to determine needs, • Determine how pools can benefit migrating fish, and if they potential increase flooding. • Implementation may occur prior to year 3 of MOA if deemed effective and feasible
Lemhi River Middle Reach (Agency Creek to Hayden Creek)	Improve rearing conditions for fish	1) Protect riparian areas to provide 80% bank stability. 2) Double the amount of pools that is estimated in the middle reach (from 7% to 14%) by year 20 of MOA 3) Improve the quality of pool habitat and evaluate its effectiveness by year 3 of MOA. Additional projects to	• Validate previous bank stability estimates by year 5 of the MOA to determine the location and protection needs. Implementation may occur within this evaluation period. • Install fence to exclude livestock • Develop grazing rotations • Develop conservation easements in floodplains • Re-vegetate riparian areas • Investigate effectiveness and feasibility by year 3 of the MOA. • Implement one demonstration pool development project during investigation period • Modify stream channel and install natural structure that create pools • Evaluate fish response • Install one demonstration pool development during the 3 year evaluation phase

Table 1 – Lemhi River Habitat Actions
Attachment to Framework for the Implementation of Habitat Actions in the Lemhi River Basin Pursuant Section II.A.8 of the Term Sheet

Lemhi River Upper Reach (Hayden Creek to Leadore)	Improve spawning and rearing conditions for fish	be implemented by year 20 of MOA if found effective and feasible. 4) Provide off channel habitat that supports fish spawning and rearing.	• Consultation for design and engineering of structures • Evaluate fish response • Survey Lemhi River floodplain and irrigation ditches to identify sites • Consultation for project design and engineering • If feasible, implement one project to create off channel habitat by year 5 of the MOA. • Evaluate other natural/historic channels and irrigation canals for implementation
	1) Preserve the flow regime at the McFarland Campground stream gage. 2) Develop an adaptive management process to develop measures that meet fish needs in the upper river 3) Protect riparian areas to provide 80% riparian stability.		• Work with water users to prevent the development of future water rights that further deplete mainstem flow. • Evaluate relationship between habitat/flow and fish survival • Potential projects: • Increase stream flow utilizing water banks rentals used to reconnect upstream tributaries • Executing dry year lease options, partial and full season leases • Agreements not to divert through a voluntary water market • Validate previous bank stability estimates by year 5 of the MOA to determine the location and protection needs. Implementation may occur within this evaluation period • Install fence to exclude livestock, • Develop grazing rotations • Develop conservation easements in floodplains • Re-vegetate riparian areas

Table 1 – Lemhi River Habitat Actions
Attachment to Framework for the Implementation of Habitat Actions in the Lemhi River Basin Pursuant Section II.A.8 of the Term Sheet

		4) Evaluate the effectiveness of increasing the amount of pools by year 3 of MOA. 5) Provide off channel habitat that supports fish spawning and rearing.	• Validate previous estimates of pool habitat to determine needs, • Determine how pools can benefit fish spawning and rearing • Implement based on evaluation results • Two potential projects identified for reconnection by year 10 of MOA: 1) Lemhi Little Springs Creek/Mill Creek confluence, and 2) Benedict Little Spring Creek • Evaluate other natural/historic channels and irrigation canals for implementation	• Inventory the Lemhi basin for fish entrainment by year 5 of MOA • Consultation, project design and engineering • Develop timeline for implementing projects • Inventory the Lemhi basin to determine where backdoor issues exist by year 5 of MOA • Consultation, project design and engineering • Develop timeline for implementing projects • Develop a water budget for the upper Lemhi basin by year 5 of MOA • Consultation to determine effectiveness for improving fish habitat. • If feasible, implementation to occur by year 10 of MOA or when high water opportunities occur • Survey Lemhi River floodplain and irrigation ditches to identify sites • Consultation for project design and engineering
Lemhi River – Basinwide	Reduce fish entrainment into irrigation ditches. Improve spawning and rearing conditions for fish	1) Install fish screens into irrigation canals below the point of diversion. 2) Construct fish barriers at the ditch return to prevent fish from entering the downstream end of canals. 1) Mimic high water events by providing pulses of flow during predetermined times 2) Develop off channel habitat, either by reconnecting natural side channels or modifying irrigation canals by year 20 of MOA.		

Table 1 – Lemhi River Habitat Actions
Attachment to Framework for the Implementation of Habitat Actions in the Lemhi River Basin Pursuant Section II.A.8 of the Term Sheet

	Provide unimpaired fish passage	1) Remove structures that impair fish passage.	• Inventory the Lemhi basin for potential fish barriers • Consultation, feasibility, project design and engineering
Kenney Creek	Provide unimpaired fish passage	1) Provide additional flow	• Acquire water through permanent, seasonal, or dry year leases • Transfer points of diversions and consolidate irrigation ditches in the lower reaches of Kenney Creek to increase flow
		2) Remove/modify structures that prevent fish passage	• Modify existing irrigation structures to eliminate fish barriers
	Improve spawning and rearing conditions for fish	3) Reduce/eliminate entrapment	• Install fish screens to reduce entrainment at numerous unscreened irrigation diversions
		4) Protect riparian areas in the lower reaches of Kenney Creek	• Install fence to exclude livestock, • Develop grazing rotations, • Develop conservation easements in floodplains
Pattee Creek	Provide unimpaired fish passage	1) Provide additional flow	• Consolidate irrigation ditches in Pattee Creek to increase flow, • Acquire water through permanent, seasonal, or dry year leases
		2) Remove/modify structures that prevent fish passage	• Modify existing irrigation structures to eliminate fish barriers
	Improve spawning and rearing conditions for fish	3) Reduce/eliminate entrapment	• Install fish screens to reduce entrainment at numerous unscreened irrigation diversions
		4) Protect riparian areas in Pattee Creek	• Install fence to exclude livestock, • Develop grazing rotations, • Develop conservation easements in

Table 1 – Lemhi River Habitat Actions
Attachment to Framework for the Implementation of Habitat Actions in the Lemhi River Basin Pursuant Section II.A.8 of the Term Sheet

Wimpy Creek	Provide unimpaired fish passage	1) Provide additional flow 2) Remove/modify structures that prevent fish passage 3) Reduce/eliminate entrainment 4) Protect riparian areas in the lower reaches of Wimpy Creek	floodplains	- Consolidate irrigation ditches in the lower reaches of Wimpy Creek, and improve water conveyance from point of diversion to point of use - Modify existing irrigation structures to eliminate fish barriers - Install fish screens to reduce entrainment at numerous unscreened irrigation diversions - Install fence to exclude livestock - Develop grazing rotations - Develop conservation easements in floodplains
Bohannon Creek	Provide unimpaired fish passage	1) Provide additional flow 2) Remove/modify structures that prevent fish passage 3) Reduce/eliminate entrainment 4) Protect riparian areas in the lower reaches of Bohannon Creek		- Consolidate irrigation ditches in the lower reaches of Bohannon Creek, and improve water conveyance from point of diversion to point of use - Acquire water through permanent, seasonal, or dry year leases - Modify existing irrigation structures to eliminate fish barriers - Install fish screens to reduce entrainment at numerous unscreened irrigation diversions - Install fence to exclude livestock, Develop grazing rotations - Develop conservation easements in floodplains
Geertson Creek	Provide unimpaired fish passage	1) Provide additional flow		Consolidate irrigation ditches in the lower reaches of Geertson Creek, and improve water conveyance from point of diversion to point of use

Table 1 – Lemhi River Habitat Actions
Attachment to Framework for the Implementation of Habitat Actions in the Lemhi River Basin Pursuant Section II.A.8 of the Term Sheet

	fish passage	2) Remove/modify structures that prevent fish passage 3) Reduce/eliminate entrainment 4) Protect riparian areas in the lower reaches of Geertson Creek	reaches of Geertson Creek, and improve water conveyance from point of diversion to point of use • Acquire water through permanent, seasonal, or dry year leases • Modify existing irrigation structures to eliminate fish barriers • Install fish screens to reduce entrainment at numerous unscreened irrigation diversions • Install fence to exclude livestock, Develop grazing rotations • Develop conservation easements in floodplains
Agency Creek	Provide unimpaired fish passage Improve spawning and rearing conditions for fish	1) Provide additional flow 2) Remove/modify structures that prevent fish passage 3) Reduce/eliminate entrainment 4) Protect riparian areas in the lower reaches of Agency Creek	• Siphon L31 and L32 irrigation water that intersects Agency Creek to eliminate Agency Creek flow from being directed down these irrigation ditches • Consolidate irrigation ditches in the lower reaches of Agency Creek to increase flow, Acquire water through permanent, seasonal, or dry year leases • Modify existing irrigation structures to eliminate fish barriers • Install fish screens to reduce entrainment at numerous unscreened irrigation diversions • Install fence to exclude livestock, Develop grazing rotations, Develop conservation easements in floodplains

Table 1 – Lemhi River Habitat Actions
Attachment to Framework for the Implementation of Habitat Actions in the Lemhi River Basin Pursuant Section II.A.8 of the Term Sheet

Big Timber Creek	Provide unimpaired fish passage	1) Provide additional flow 2) Remove/modify structures that prevent fish passage 3) Reduce/eliminate entrapment	- Siphon L63 irrigation water at the L63/Big Timber Creek intersect to eliminate Big Timber Creek water from being directed down the irrigation ditch - Modify and/or consolidate existing diversion structures in the lower reaches of Big Timber Creek to maintain more flow in the stream channel - Improve conveyance of water to point of use so that less water is withdrawn and flows are increased in Big Timber Creek - Replace the highway 28 culvert with an appropriate fish passage structure - Modify diversion structures and install fish screens.
Big Eightmile Creek	Provide unimpaired fish passage Improve spawning and rearing conditions for fish	1) Provide additional flow 2) Reduce/eliminate entrapment 3) Protect riparian areas in the lower reaches of Big Eightmile Creek	- Siphon L59 irrigation water at the L59/Big Eightmile Creek intersect to eliminate Big Eightmile stream flow from being directed down the irrigation ditch - Consolidate irrigation ditches in the lower reaches and improve conveyance of water from point of diversion to point of use - Acquire water through permanent, seasonal, or dry year leases - Modify diversion structures and install fish screens - Install fence to exclude livestock, - Develop grazing rotations, - Develop conservation easements in floodplains
Little Eightmile Creek	Provide unimpaired fish passage	1) Provide additional flow	Consolidate irrigation ditches in the lower reaches and improve conveyance of water from point of diversion to point of use,

Table 1 – Lemhi River Habitat Actions
Attachment to Framework for the Implementation of Habitat Actions in the Lemhi River Basin Pursuant Section II.A.8 of the Term Sheet

		2) Reduce/eliminate entrainment	• Acquire water through permanent, seasonal, or dry year leases • Modify diversion structures and install fish screens
Texas Creek *	Provide unimpaired fish passage	1) Reduce/eliminate entrainment	• Modify the existing structure at L63 to improve fish passage for migrating fish
	Improve spawning and rearing conditions for fish	2) Protect riparian vegetation in lower reaches	• Install fence to exclude livestock • Develop grazing rotations • Develop conservation easements in floodplains
Hawley Creek	Provide unimpaired fish passage	1) Provide additional flow	• Improve conveyance of water from point of diversion to point of use • Acquire water through permanent, seasonal, or dry year leases
		2) Remove/modify structures that prevent fish passage	• Replace culverts with appropriate fish passage structures
		3) Reduce/eliminate entrainment	• Replace diversion structure and install fish screen
	Improve spawning and rearing conditions for fish	4) Protect riparian areas in the degraded riparian zones throughout the tributary	• Install fence to exclude livestock • Develop grazing rotations • Develop conservation easements in floodplains
Eighteenmile Creek	Provide unimpaired fish passage	1) Provide additional flow	• Install a structure that prevents Eighteenmile Creek flow from being transported to Canyon Creek, and directs these flows down the historical channel so that a direct connection is made with the Lemhi River
			• Eliminate diversions and other ditch structures to provide flow and reduce entrainment

Table 1 – Lemhi River Habitat Actions
Attachment to Framework for the Implementation of Habitat Actions in the Lemhi River Basin Pursuant Section II.A.8 of the Term Sheet

	Improve spawning and rearing conditions for fish	2) Reduce/eliminate entrainment 3) Protect riparian areas throughout the tributary	• Acquire water through permanent, seasonal, or dry year leases • Replace diversion structure and install fish screen • Install fence to exclude livestock, Develop grazing rotations, • Develop conservation easements in floodplains
Canyon Creek	Provide unimpaired fish passage	1) Provide additional flow 2) Remove/modify structures that prevent fish passage 3) Reduce/eliminate entrainment 4) Protect riparian areas in the lower reaches of Canyon Creek	• Improve the structure of the Whitefish ditch/Canyon Creek siphon so that it is 100% effective in separating irrigation water from Canyon Creek • Replace culverts that prevent or impair fish passage • Install fish screens in irrigation diversions to reduce fish entrainment • Install fence to exclude livestock, Develop grazing rotations, • Develop conservation easements in floodplains
Mill Creek	Provide unimpaired fish passage	1) Provide additional flow 2) Remove/modify structures that prevent fish passage 3) Reduce/eliminate entrainment	• Consolidate irrigation ditches in the lower reaches of Mill Creek (e.g. on Ferry Creek), and improve water conveyance from point of diversion to point of use • Modify existing irrigation structures to eliminate fish barriers • Install fish screens to reduce entrainment at several unscreened diversions in the lower

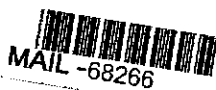
Table 1 – Lemhi River Habitat Actions
Attachment to Framework for the Implementation of Habitat Actions in the Lemhi River Basin Pursuant Section II.A.8 of the Term Sheet

	Improve spawning and rearing conditions for fish	4) Protect riparian areas in the lower reaches of Mill Creek	stream reaches
Big Springs Creek	Provide unimpaired fish passage	1) Reduce/eliminate entrainment	Install fish barriers at the lower end of screened irrigation ditches to prevent fish entrainment
	Improve spawning and rearing conditions for fish	2) Improve substrate quality	Prescribe high volume flows to maintain stream channel and remove silt and other fine sediments
		3) Protect riparian areas in the upper reaches of Big Springs Creek	- Install fence to exclude livestock - Develop grazing rotations, - Develop conservation easements in floodplains
Lemhi Little Springs Creek	Provide unimpaired fish passage	1) Provide additional flow	Modify existing irrigation structures to increase flow
		2) Reduce/eliminate entrainment	Install fish screens to reduce entrainment in unscreened irrigation diversions
	Improve spawning and rearing conditions for fish	3) Protect riparian areas in the lower reaches	- Install fence to exclude livestock, - Develop grazing rotations, - Develop conservation easements in floodplains
Lee Creek	Provide unimpaired fish passage	1) Provide additional flow	Modify existing irrigation structures to increase flow
		2) Reduce/eliminate entrainment	Install fish screens to reduce entrainment in unscreened irrigation diversions

Table 1 – Lemhi River Habitat Actions
Attachment to Framework for the Implementation of Habitat Actions in the Lemhi River Basin Pursuant Section II.A.8 of the Term Sheet

Improve spawning and rearing conditions for fish	3) Protect riparian areas	• Install fence to exclude livestock, • Develop grazing rotations, • Develop conservation easements in floodplains
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* The lower reach of Texas Creek is proposed for reconnection with the Lemhi River.



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DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

IN RE: SRBA

)
)
) **Consolidated Subcase No. 75-13316**
) **Wild & Scenic Rivers Act Claims**
) (Encompassing Subcases 75-13316, 77-11941, 77-13844
) 78-11961, 81-10472, 81-10513 and 81-10625)
)

CASE NO. 39576

) **Order Approving Stipulation and Entry of**
) **Partial Decrees**
)
)
)

_____)

The District Court of the Fifth Judicial District in and for the County of Twin Falls, having entered its Commencement Order on November 19, 1987, commencing the Snake River Basin Adjudication ("SRBA"); the United States of America, the State of Idaho and the other objectors to these consolidated subcases, through their respective counsel, having presented a Stipulation and Joint Motion for Order Approving Stipulation and Entry of Partial Decrees, with the effective date of September 1, 2003 ("Stipulation"); due notice of the requested approval of the Stipulation and the proposed entry of the Partial Decrees having been given pursuant to the Idaho Rules of Civil Procedure and the SRBA Court Administrative Order 1; the Court having reviewed the Stipulation, the proposed Partial Decrees and supporting affidavits and having heard the parties concerning these matters;

ORDER APPROVING STIPULATION AND ENTRY OF PARTIAL DECREES



THE SRBA DISTRICT COURT NOW FINDS AS FOLLOWS:

The parties have satisfied the requirements of Chapter 14, Title 42, Idaho Code, including Section 42-1411A, the Idaho Rules of Civil Procedure and SRBA Administrative Order 1. The Stipulation is a fair and equitable settlement of all the United States' claims in the SRBA for federally designated Wild and Scenic Rivers. The Stipulation does not adversely affect the interests of persons not party to the Stipulation and good cause has been shown for granting the Joint Motion for Order Approving Stipulation and Entry of Partial Decrees.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. All terms of the Stipulation and the Partial Decrees for the United States' Wild and Scenic Rivers Act federal reserved water rights claims numbered 75-13316, 77-11941, 77-13844, 78-11961, 81-10472, 81-10513 and 81-10625, as attached to the Stipulation (the "Partial Decrees"), are hereby ratified, confirmed and approved.
2. The Court shall retain jurisdiction for the purpose of resolving disputes regarding the implementation and enforcement of the Stipulation and administration of the water rights confirmed by the Partial Decrees, including, but not limited to, the relationship between these federal water rights and other water rights and administration of the subordination provisions of the Partial Decrees.
3. Pursuant to Idaho Rule of Evidence 408, nothing in the Stipulation, including the stipulated entry of Partial Decrees for these claims and any affidavits or other evidence or pleading submitted or relied upon for approval of the Stipulation, or any offers or compromises made in the course of negotiating the Stipulation, shall be construed as admissions against interest or tendered or used as evidence to support or oppose any party's claims or objections in

the SRBA or in any other adjudication involving claims for the same or similar purposes, including the quantities of water claimed, or in any other manner by any party in the SRBA in any future proceedings in the SRBA, in any appellate proceedings concerning the SRBA, or in any other proceeding, other than those for interpretation, enforcement or administration of the Stipulation or the Partial Decrees or for a purpose contemplated by Rule 408. This Order is fully in accordance with Idaho Rule of Evidence 408, as well as the policy underlying that rule and the policy of the SRBA Court directed at furthering the strong public policy favoring out-of-court settlement of disputes over litigation.

4. The water rights adjudicated by the Partial Decrees are in full satisfaction of all the United States' claims in the SRBA for federally designated Wild and Scenic Rivers.

IT IS SO ORDERED.

DATED this 16th day of November, 2004.



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER APPROVING STIPULATION AND ENTRY OF PARTIAL DECREES was mailed on November 16, 2004, with sufficient first-class postage to the following:

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

IN RE SRBA)
CASE NO. 39576)
_____)
PARTIAL DECREE FOR
Federal Reserved Water Rights 75-13316 and 77-11941
Salmon Wild and Scenic River

1. Name and address of owner: UNITED STATES OF AMERICA, on behalf of the
U.S.D.A. Forest Service
550 W. Fort Street, MSC033
Boise, ID 83724

2. Source of water: Salmon River

3. Quantity of right: a. When the stream flow at the Salmon River near Shoup
quantification site as defined in Section 3 d. below ("Shoup
gage") is less than 13,600 cfs, the United States is entitled
to the following flows:

Period of Use	Discharge (cfs)	Period of Use	Discharge (cfs)
January 1-15	1440	July 1-15	4730
January 16-31	1450	July 16-31	2700
February 1-15	1500	August 1-15	1390
February 16-28(29)	1550	August 16-31	1240
March 1-15	1510	September 1-15	1200
March 16-31	1540	September 16-30	1400
April 1-15	1590	October 1-15	1570
April 16-30	2470	October 16-31	1700
May 1-15	3920	November 1-15	1820
May 16-31	7310	November 16-30	1730
June 1-15	9450	December 1-15	1600
June 16-30	7790	December 16-31	1510

b. When the stream flow at the Shoup gage is greater than
or equal to 13,600 cfs (as adjusted by upstream junior
depletions, including depletions from water rights enjoying

the subordination provided in this right), the United States is entitled to all flows, up to 28,400 cfs.

c. This water right does not prohibit the appropriation, diversion and use of water within the Salmon River basin upstream from the ending point of the Salmon Wild and Scenic River at Long Tom Bar and excluding the Middle Fork Salmon River basin, when the stream flow at the Shoup gage exceeds the flow amount in Section 3 a. and is less than 13,600 cfs (as adjusted by upstream junior depletions, including depletions from water rights enjoying the subordination provided in this right); provided, however, that the flow amounts identified in section 3 a. are maintained between the Shoup gage and the ending point of the Salmon Wild and Scenic River at Long Tom Bar.

d. The quantification site for the flows identified above is the USGS Salmon River near Shoup gage, number 13307000, located in NE1/4SW1/4, Sec. 14, T23N, R17E, Boise Meridian; Latitude N 45° 19' 20.8", Longitude W 114° 26' 21.2".

e. Water rights within the watershed of the Salmon River Basin upstream from the ending point of the Salmon Wild and Scenic River at Long Tom Bar will be administered to ensure the satisfaction of this right throughout the Wild and Scenic reach. When the stream flow at the Shoup gage is less than the flow amounts in section 3 a. or greater than 13,600 cfs (as adjusted by upstream junior depletions, including depletions from water rights enjoying the subordination provided in this right), water shall not be diverted at any location in the Salmon River basin above such ending point, including locations downstream from the Shoup gage (but excluding the Middle Fork Salmon River basin that is subject, instead, to the Middle Fork Salmon River Partial Decree No. 77-13844), other than under water rights enjoying the subordinations provided in section 10.b. "Futile call" may not be asserted as a basis for allowing any such downstream diversions so long as there is a hydraulic connection between the Salmon River and the right to be regulated.

f. This water right precludes any diversion of water out of the watershed of the Salmon River Basin upstream from the

ending point of the Salmon Wild and Scenic River at Long Tom Bar, except for transfers of points of diversion from above the ending point to below the ending point.

4. Priority date:

July 23, 1980.

5. Point of diversion:

There is no diversion associated with this instream flow water right. The legal description of the beginning and ending points of the instream flow water right are as follows:

Beginning point: Mouth of the North Fork of the Salmon River -- SW1/4SW1/4, Sec. 16, T24N, R21E, Boise Meridian; Latitude N 45° 24' 17.6", Longitude W 113° 59' 36.7".

Ending point: Long Tom Bar -- SE1/4SE1/4, Sec. 31, T25N, R5E, Boise Meridian; Latitude N 45° 27' 35.9", Longitude W 115° 52' 48.8".

6. Purpose of use:

To fulfill the purposes of the Wild and Scenic Rivers Act, Pub.L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.), and the Central Idaho Wilderness Act of 1980, Pub.L. 96-312, 94 Stat. 948, July 23, 1980 (codified as amended at 16 U.S.C. §§ 1132, 1274, 1281).

7. Period of use:

01-01 to 12-31.

8. Place of use:

This instream flow water right is used throughout the designated Salmon Wild and Scenic River from the beginning point to the ending point as identified above.

9. Annual volume of consumptive use:

This instream flow water right is non-consumptive (other than evaporation and evapotranspiration which may take place within the designated segment).

10. Other provisions necessary for definition or administration of this water right:

a. This is a federal reserved water right based on the Wild and Scenic Rivers Act, Pub.L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.), and the Central Idaho Wilderness Act of 1980, Pub.L.

96-312, 94 Stat. 948, July 23, 1980 (codified as amended at 16 U.S.C. §§ 1132, 1274, 1281).

b. This Partial Decree is entered pursuant to that Stipulation among the United States, the State of Idaho and other objectors effective September 1, 2003 (the "Stipulation"), and pursuant to that Stipulation this water right is subordinated to the following water rights and uses that are junior to this federal reserved water right and that have points of diversion or impoundment and places of use within the Salmon River Basin upstream from the ending point, as identified in element 5 above:

(1) All water right claims filed in the Snake River Basin Adjudication (SRBA) as of the effective date of the Stipulation to the extent ultimately decreed in the SRBA.

(2) All applications for permit and permits with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation, to the extent such applications for permit or permits are ultimately licensed; and all water right licenses with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation.

(3) All domestic uses, which for purposes of this Partial Decree shall be defined as set forth at I.C. § 42-111(1)(a) & (b) to mean the use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half acre of land, if the total use is not in excess of thirteen-thousand (13,000) gallons per day or any other uses, if the total does not exceed a diversion rate of four one-hundreds (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day, provided that this domestic use subordination is limited and defined by I.C. 42-111(2), so that the subordination shall not and does not apply to multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in I.C. 42-111(1)(b) (0.04 cfs/2,500 gpd), and by I.C. 42-111(3), so that the subordination shall not and

does not apply to multiple water rights for domestic uses which satisfy a single combined water use that would not itself come within the above definition of domestic use.

(4) All de minimus stockwater uses, which for the purposes this Partial Decree shall be defined as set forth at I.C. § 42-1401A(11) to mean the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen-thousand (13,000) gallons per day. This de minimus stockwater use subordination is limited and defined by I.C. § 42-111(3), so that the subordination shall not and does not apply to multiple water rights for stockwater uses which satisfy a single combined water use that would not itself come within the above definition of stockwater use.

(5) All water rights having a priority date later than the effective date of the Stipulation and held by a municipality incorporated under Idaho Code, §§ 50-101 and -102, or an authorized franchise service provider for an incorporated municipality for use within the municipality's or provider's service area; provided, however, that any individual municipal hookup that has a manufacturer's rated maximum flow capacity of equal to or greater than 2 cfs of water on an instantaneous basis, other than capacity for fire protection, will count against the finite future subordination limit in paragraph (6) below. The phrase "municipal use" shall be defined as set forth at Idaho Code § 42-202B(5) and "service area" means that area within which a municipal provider is or becomes entitled or obligated to provide water for municipal purposes within the municipality's corporate limits or other recognized boundaries, including changes therein after a water right is developed. The service area for a municipality may also include areas outside its corporate limits, or other recognized boundaries, that are within the municipality's established planning area if the constructed delivery system for such outside areas share a common water

distribution system with lands located within the corporate limits

(6) (A) Water rights other than those described in paragraphs (3) through (5) above claimed or applied for after the effective date of the Stipulation:

(i) with a total combined diversion of 150 cfs (including not more than 5,000 acres of irrigation with a maximum diversion rate of 0.02 cfs/acre), when the mean daily discharge at the Shoup gage is $<1,280$ cfs. The specific acres to be irrigated each year will be identified to the IDWR by March 1 of each year, i.e., if a portion of the acreage permitted within this 150 cfs is to be idled for a year or more, an equal number of acres permitted for irrigation within the 225 cfs in subparagraph (ii) below can be substituted to take advantage of the subordination when the river is less than 1,280 cfs for the period of years the original acres are idled.

(ii) an additional diversion of 225 cfs (including up to an additional 10,000 acres of irrigation with a maximum diversion rate of 0.02 cfs/acre) when the mean daily discharge at the Shoup gage is $\geq 1,280$ cfs.

(iii) These subordinated amounts do not include storage, other than incidental storage, which is defined as storage of not more than a 24 hour water supply for any beneficial use.

(B) The subordinated amounts identified in subparagraph (A) above apply to all diversions in the Salmon River basin above the ending point of this federal reserved water right, including diversions downstream from the Shoup gage, but excluding diversions in the Middle Fork Salmon River basin.

(C) Water rights of the United States, instream flow water rights, nonconsumptive water rights and replacement water rights shall not be deducted from the subordination amounts identified in this paragraph (5) for future rights. Nonconsumptive water rights mean all beneficial uses of water having these characteristics: i) the use involves no diversion from the designated reach of the Wild and Scenic River as identified in this Partial Decree; ii) all return flows from the use accrue to the Wild and Scenic reach; and iii) the use does not cause a depletion or a change in timing of the flow (other than incidental evaporation or seepage) as determined at the point(s) of return, whether or not the depletion or change in timing can be measured within the designated reach. Examples of such uses include: i) run-of-the-river hydroelectric facilities; ii) fish propagation uses; and iii) other similar uses. Replacement water rights means all irrigation appropriations issued for the same purpose of use and place of use covered by an existing water right with no increase in period of use, diversion rate, and, if applicable, volume of water. To be considered a replacement water right: i) no element of the new appropriation may exceed that of the original water right; ii) only the original or the replacement water right or part of each water right may be used at the same time; and iii) the replacement water right cannot be used when water would not be legally and physically available under the original water right.

c. The administrative provisions of paragraph 3 of the Stipulation are incorporated herein by reference.

d. These additional provisions contained in element 10 do not fall within the other elements listed above and are necessary to: (1) define the unique characteristics of these federal reserved water rights; and (2) describe the rights and uses to which these federal reserved water rights are subordinated in order to provide for proper administration

of these water rights and other existing and future water rights.

IT IS SO ORDERED.

DATED November 16, 2004.



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

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

IN RE SRBA)
)
 CASE NO. 39576)
)
 _____)

PARTIAL DECREE FOR

Federal Reserved Water Right 77-13844

Middle Fork Salmon Wild and Scenic River

1. Name and address of owner: UNITED STATES OF AMERICA, on behalf of the
 U.S.D.A. Forest Service
 550 W. Fort Street, MSC033
 Boise, ID 83724

2. Source of water: Middle Fork Salmon River

3. Quantity of right: a. When the stream flow at the Middle Fork Salmon River
 quantification site as defined in Section 3 d. below
 ("Middle Fork Salmon gage") is less than 14,400 cfs the
 United States is entitled to the following flows:

Period of Use	Discharge (cfs)	Period of Use	Discharge (cfs)
January 1-15	959	July 1-15	5170
January 16-31	1010	July 16-31	2550
February 1-15	1150	August 1-15	1790
February 16-28(29)	1150	August 16-31	1530
March 1-15	1150	September 1-15	1340
March 16-31	1500	September 16-30	1470
April 1-15	1500	October 1-15	1380
April 16-30	3510	October 16-31	1330
May 1-15	5450	November 1-15	1320
May 16-31	9210	November 16-30	1340
June 1-15	10800	December 1-15	1130
June 16-30	8760	December 16-31	1190

b. When the stream flow at the Middle Fork Salmon gage
 is greater than or equal to 14,400 cfs (as adjusted by
 upstream junior depletions, including depletions from water
 rights enjoying the subordination provided in this right), the
 United States is entitled to all flows, up to 40,600 cfs.

c. This water right does not prohibit the appropriation, diversion and use of water within the Middle Fork Salmon River basin when the stream flow at the Middle Fork Salmon gage exceeds the flow amount in Section 3.a. and is less than 14,400 cfs.

d. The quantification site for the flows identified above is the USGS Middle Fork Salmon River measurement gage at the river's mouth near Shoup, gage number 13310199, located in SW1/4NE1/4, Sec. 33, T23N, R16E, Boise Meridian; Latitude N 45° 17' 38.0", Longitude W 114° 35' 43.0".

e. This water right precludes any diversion of water out of the watershed of the Middle Fork Salmon River Basin upstream from the ending point of the Middle Fork Salmon Wild and Scenic River at its confluence with the Salmon River, except for transfers of points of diversion from above the ending point to below the ending point.

4. Priority date:

October 2, 1968.

5. Point of diversion:

There is no diversion associated with this instream flow water right. The legal description of the beginning and ending points of the instream flow water right are as follows:

Beginning point: Origin of the Middle Fork Salmon River -- NW1/4NW1/4, Sec. 23, T13N, R10E, Boise Meridian; Latitude N 44° 26' 57.0", Longitude W 115° 13' 47.9".

Ending point: Confluence with Salmon River -- NE1/4NE1/4, Sec. 33, T23N, R16E, Boise Meridian; Latitude N 45° 17' 50.1", Longitude W 114° 35' 32.8".

6. Purpose of use:

To fulfill the purposes of the Wild and Scenic Rivers Act, Pub.L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.).

7. Period of use:

01-01 to 12-31.

8. Place of use:

This instream flow water right is used throughout the designated Middle Fork Salmon Wild and Scenic River

from the beginning point to the ending point as identified above.

9. Annual volume of consumptive use:

This instream flow water right is non-consumptive (other than evaporation and evapotranspiration which may take place within the designated segment).

10. Other provisions necessary for definition or administration of this water right:

a. This is a federal reserved water right based on the Wild and Scenic Rivers Act, Pub.L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.).

b. This Partial Decree is entered pursuant to that Stipulation among the United States, the State of Idaho and other objectors effective September 1, 2003 (the "Stipulation"), and pursuant to that Stipulation this water right is subordinated to the following water rights and uses that are junior to this federal reserved water right and that have points of diversion or impoundment and places of use within the Middle Fork Salmon River Basin upstream from the ending point, as identified in element 5 above:

(1) All water right claims filed in the Snake River Basin Adjudication (SRBA) as of the effective date of the Stipulation to the extent ultimately decreed in the SRBA.

(2) All applications for permit and permits with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation, to the extent such applications for permit or permits are ultimately licensed; and all water right licenses with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation.

(3) All domestic uses, which for purposes of this Partial Decree shall be defined as set forth at I.C. § 42-111(1)(a) & (b) to mean the use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half acre of land, if the total use is not in excess of thirteen-thousand (13,000) gallons per day

or any other uses, if the total does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day, provided that this domestic use subordination is limited and defined by I.C. 42-111(2), so that the subordination shall not and does not apply to multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in I.C. 42-111(1)(b) (0.04 cfs/2,500 gpd), and by I.C. 42-111(3), so that the subordination shall not and does not apply to multiple water rights for domestic uses which satisfy a single combined water use that would not itself come within the above definition of domestic use.

(4) All de minimus stockwater uses, which for the purposes this Partial Decree shall be defined as set forth at I.C. § 42-1401A(11) to mean the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen-thousand (13,000) gallons per day. This de minimus stockwater use subordination is limited and defined by I.C. § 42-111(3), so that the subordination shall not and does not apply to multiple water rights for stockwater uses which satisfy a single combined water use that would not itself come within the above definition of stockwater use.

(5) (A) Water rights other than those described in paragraphs (3) and (4) above claimed or applied for after the effective date of the Stipulation with a total combined diversion of 60 cfs, provided that this amount shall include rights for irrigation of no more than 2,000 acres of irrigation with a maximum diversion rate of 0.02 cfs/acre. This subordinated amount does not include storage, other than incidental storage, which is defined as storage of not more than a 24-hour water supply for any beneficial use.

(B) In addition to the 60 cfs of subordination specified in subparagraph (A), above, a combined

total of 5 cfs of diversions within (i) the east side of Monumental Creek basin upstream from and including the Mule Creek basin, to and including the Coon Creek basin; (ii) the west side of Marble Creek basin upstream from and including the Cornish Creek basin to and including the Sunnyside Creek basin; all as described on the map attached as Exhibit A, for any commercial or industrial uses, including storage of any portion of such 5 cfs for commercial or industrial use, provided that the total cumulative storage reservoir capacity established under the subordination described in this subparagraph (B) shall not be greater than 100 acre-feet.

(C) Water rights of the United States, instream flow water rights, nonconsumptive water rights and replacement water rights shall not be deducted from the subordination amounts identified in this paragraph (5) for future rights. Nonconsumptive water rights mean all beneficial uses of water having these characteristics: i) the use involves no diversion from the designated reach of the Wild and Scenic River as identified in this Partial Decree; ii) all return flows from the use accrue to the Wild and Scenic reach; and iii) the use does not cause a depletion or a change in timing of the flow (other than incidental evaporation or seepage) as determined at the point(s) of return, whether or not the depletion or change in timing can be measured within the designated reach. Examples of such uses include: i) run-of-the-river hydroelectric facilities; ii) fish propagation uses; and iii) other similar uses. Replacement water rights means all irrigation appropriations issued for the same purpose of use and place of use covered by an existing water right with no increase in period of use, diversion rate, and, if applicable, volume of water. To be considered a replacement water right: i) no element of the new appropriation may exceed that of the original water right; ii) only the original or the replacement water right or part of each water right may be used at the same time; and iii) the replacement water right cannot be used when water

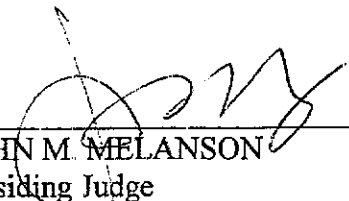
would not be legally and physically available under the original water right.

c. The administrative provisions of paragraph 3 of the Stipulation are incorporated herein by reference.

d. These additional provisions contained in element 10 do not fall within the other elements listed above and are necessary to: (1) define the unique characteristics of these federal reserved water rights; and (2) describe the rights and uses to which these federal reserved water rights are subordinated in order to provide for proper administration of these water rights and other existing and future water rights.

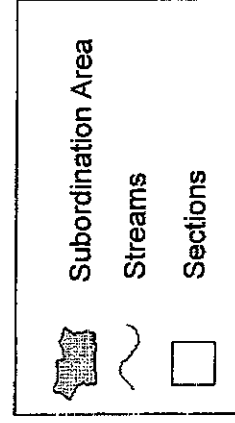
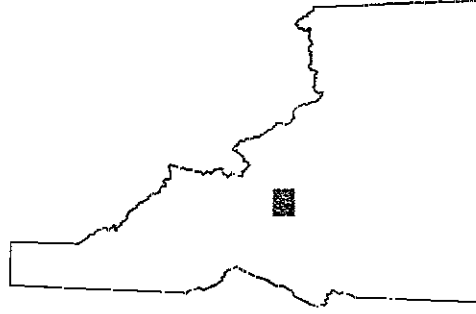
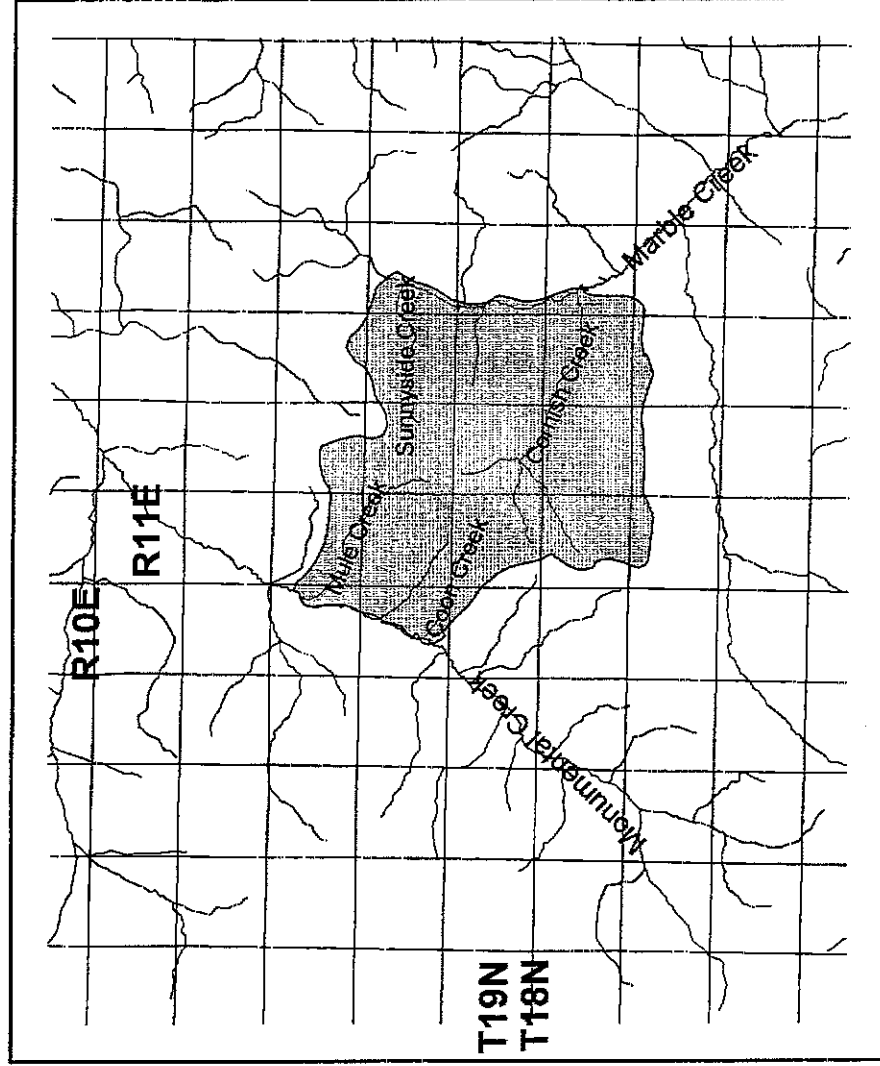
IT IS SO ORDERED.

DATED November 16, 2004.



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

Exhibit A
Area Pertaining to Subordinations Under Element
10.b.(5).B of Middle Fork Salmon Partial Decree
77-13844



IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

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STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

UNIT-SRBA
TWIN FALLS CO., IDAHO
FILED

IN RE SRBA)

CASE NO. 39576)

_____)

PARTIAL DECREE FOR

**Federal Reserved Water Rights 78-11961
Rapid Wild and Scenic River (including West
Fork)**

1. Name and address of owner: UNITED STATES OF AMERICA, on behalf of the
U.S.D.A. Forest Service
550 W. Fort Street, MSC033
Boise, ID 83724

2. Source of water: Rapid River and West Fork Rapid River

3. Quantity of right: a. When the stream flow at the Rapid River quantification
site as defined in Section 3.d. below ("Rapid River gage")
is less than 625 cfs, the United States is entitled to the
following flows:

Period of Use	Discharge (cfs)	Period of Use	Discharge (cfs)
January 1-15	73	July 1-15	281
January 16-31	73	July 16-31	175
February 1-15	66	August 1-15	160
February 16-28(29)	63	August 16-31	136
March 1-15	75	September 1-15	124
March 16-31	99	September 16-30	118
April 1-15	109	October 1-15	108
April 16-30	160	October 16-31	97
May 1-15	249	November 1-15	87
May 16-31	403	November 16-30	88
June 1-15	524	December 1-15	73
June 16-30	432	December 16-31	78

b. When the stream flow at the Rapid River gage is greater
than or equal to 625 cfs (as adjusted by upstream junior
depletions, including depletions from water rights enjoying
the subordination provided in this right), the United States
is entitled to all flows, up to 2,160 cfs.

c. This water right does not prohibit the appropriation, diversion and use of water within the Rapid River basin upstream from the ending point of the Rapid Wild and Scenic River at the National Forest Boundary when the stream flow at the Rapid River gage exceeds the flow amount in Section 3 a and is less than 625 cfs.

d. The quantification site for the flows identified above is the USDA Forest Service gage located in NE1/4NE1/4, Sec. 12, T23N, R1W, Boise Meridian; Latitude N 45° 21' 7.1", Longitude W 116° 23' 49.5".

e. This water right precludes any diversion of water out of the watershed of the Rapid Wild River Basin upstream from the ending point of the Rapid Wild and Scenic River at the National Forest boundary as described below, except for transfers of points of diversion from above the ending point to below the ending point.

4. Priority date:

December 31, 1975.

5. Point of diversion:

There is no diversion associated with this instream flow water right. The legal description of the beginning and ending points of the instream flow water right are as follows:

Main Stem Rapid River:

Beginning point: Headwaters of the main stem Rapid River -- NE1/4SW1/4, Sec. 31, T21N, R1W, Boise Meridian; Latitude N 45° 06' 49.0", Longitude W 116° 30' 23.2".

Ending point: National Forest boundary -- NE1/4NE1/4, Sec. 12, T23N, R1W, Boise Meridian; Latitude N 45° 21' 14.0", Longitude W 116° 23' 31.8".

West Fork Rapid River:

Beginning point: Wilderness boundary -- NW1/4SW1/4, Sec. 1, T22N, R2W, Boise Meridian; Latitude N 45° 16' 19.1", Longitude W 116° 32' 1.4".

Ending point: Confluence with the main stem Rapid River – SW1/4NE1/4, Sec. 26, T23N, R1W, Boise Meridian; Latitude N 45° 18' 25.0", Longitude W 116° 25' 8.4".

6. Purpose of use:

To fulfill the purposes of the Wild and Scenic Rivers Act, Pub.L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.), and the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified as amended at 16 U.S.C. §§ 460gg-469gg-13).

7. Period of use:

01-01 to 12-31.

8. Place of use:

This instream flow water right is used throughout the designated Rapid Wild and Scenic River (including West Fork) from the beginning points to the ending points as identified above.

9. Annual volume of consumptive use:

This instream flow water right is non-consumptive (other than evaporation and evapotranspiration which may take place within the designated segment).

10. Other provisions necessary for definition or administration of this water right:

a. This is a federal reserved water right based on the Wild and Scenic Rivers Act, Pub L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.), and the Hells Canyon National Recreation Area Act, Pub.L. 94-199, 89 Stat. 1117, Dec. 31, 1975 (codified as amended at 16 U.S.C. §§ 460gg-469gg-13).

b. This Partial Decree is entered pursuant to that Stipulation among the United States, the State of Idaho and other objectors effective September 1, 2003 (the "Stipulation"), and pursuant to that Stipulation this water right is subordinated to the following water rights and uses that are junior to this federal reserved water right and that have points of diversion or impoundment and places of use within the Rapid River Basin upstream from the ending point, as identified in element 5 above:

(1) All water right claims filed in the Snake River Basin Adjudication (SRBA) as of the effective date of the Stipulation to the extent ultimately decreed in the SRBA.

(2) All applications for permit and permits with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation, to the extent such applications for permit or permits are ultimately licensed; and all water right licenses with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation.

(3) All domestic uses, which for purposes of this Partial Decree shall be defined as set forth at I.C. § 42-111(1)(a) & (b) to mean the use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half acre of land, if the total use is not in excess of thirteen-thousand (13,000) gallons per day or any other uses, if the total does not exceed a diversion rate of four one-hundreds (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day, provided that this domestic use subordination is limited and defined by I.C. 42-111(2), so that the subordination shall not and does not apply to multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in I.C. 42-111(1)(b) (0.04 cfs/2,500 gpd), and by I.C. 42-111(3), so that the subordination shall not and does not apply to multiple water rights for domestic uses which satisfy a single combined water use that would not itself come within the above definition of domestic use.

(4) All de minimus stockwater uses, which for the purposes this Partial Decree shall be defined as set forth at I.C. § 42-1401A(11) to mean the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen-thousand (13,000) gallons per day. This de minimus stockwater use subordination is limited and defined by I.C. § 42-111(3), so that the subordination shall not and does not apply to multiple water rights for stockwater uses which satisfy a single combined

water use that would not itself come within the above definition of stockwater use.

(5) (A) Water rights other than those described in paragraphs (3) and (4) above claimed or applied for after the effective date of the Stipulation with a total combined diversion of 10 cfs (including not more than 300 acres of irrigation with a maximum diversion rate of 0.02 cfs/acre. This subordinated amount does not include storage, other than incidental storage, which is defined as storage of not more than a 24 hour water supply for any beneficial use.

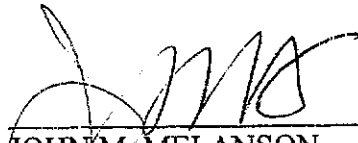
(B) Water rights of the United States, instream flow water rights, nonconsumptive water rights and replacement water rights shall not be deducted from the subordination amounts identified in this paragraph (5) for future rights. Nonconsumptive water rights mean all beneficial uses of water having these characteristics: i) the use involves no diversion from the designated reach of the Wild and Scenic River as identified in this Partial Decree; ii) all return flows from the use accrue to the Wild and Scenic reach; and iii) the use does not cause a depletion or a change in timing of the flow (other than incidental evaporation or seepage) as determined at the point(s) of return, whether or not the depletion or change in timing can be measured within the designated reach. Examples of such uses include: i) run-of-the-river hydroelectric facilities; ii) fish propagation uses; and iii) other similar uses. Replacement water rights means all irrigation appropriations issued for the same purpose of use and place of use covered by an existing water right with no increase in period of use, diversion rate, and, if applicable, volume of water. To be considered a replacement water right: i) no element of the new appropriation may exceed that of the original water right; ii) only the original or the replacement water right or part of each water right may be used at the same time; and iii) the replacement water right cannot be used when water would not be legally and physically available under the original water right.

c. The administrative provisions of paragraph 3 of the Stipulation are incorporated herein by reference.

d. These additional provisions contained in element 10 do not fall within the other elements listed above and are necessary to: (1) define the unique characteristics of these federal reserved water rights; and (2) describe the rights and uses to which these federal reserved water rights are subordinated in order to provide for proper administration of these water rights and other existing and future water rights.

IT IS SO ORDERED.

DATED November 16, 2004.



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS
TWIN FALLS CO., IDAHO
FILED

IN RE SRBA)
CASE NO. 39576)
_____)

PARTIAL DECREE FOR

Federal Reserved Water Right 81-10472

Selway Wild and Scenic River

1. Name and address of owner: UNITED STATES OF AMERICA, on behalf of the
U.S.D.A. Forest Service
550 W. Fort Street, MSC033
Boise, ID 83724

2. Source of water: Selway River

3. Quantity of right: a. When the stream flow at the Selway River quantification site as defined in Section 3.d. below ("Selway gage") is less than 23,700 cfs, the United States is entitled to the following flow:

Period of Use	Discharge (cfs)	Period of Use	Discharge (cfs)
January 1-15	1670	July 1-15	5840
January 16-31	1670	July 16-31	2490
February 1-15	1670	August 1-15	1350
February 16-28(29)	1670	August 16-31	1000
March 1-15	1670	September 1-15	852
March 16-31	2220	September 16-30	960
April 1-15	5840	October 1-15	1080
April 16-30	9470	October 16-31	1310
May 1-15	13300	November 1-15	1660
May 16-31	19400	November 16-30	1740
June 1-15	19400	December 1-15	1670
June 16-30	13300	December 16-31	1670

b. When the stream flow at the Selway gage is greater than or equal to 23,700 cfs (as adjusted by upstream junior depletions, including depletions from water rights enjoying the subordination provided in this right), the United States is entitled to all flows, up to 51,400 cfs.

c. This water right does not prohibit the appropriation, diversion and use of water within the Selway River basin when the stream flow at the Selway gage exceeds the flow amount in Section 3 a. and is less than 23,700 cfs.

d. The quantification site for the flows identified above is the USGS Selway River near Lowell gage, number 13336500, located in SE1/4NE1/4, Sec. 25, T32N, R7E, Boise Meridian; Latitude N 46° 05' 11.6", Longitude W 115° 30' 46.3".

e. This water right precludes any diversion of water out of the watershed of the Selway River Basin upstream from the ending point of the Selway Wild and Scenic River at its confluence with the Lochsa River at Lowell, except for transfers of points of diversion from above the ending point to below the ending point.

4. Priority date:

October 2, 1968.

5. Point of diversion:

There is no diversion associated with this instream flow water right. The legal description of the beginning and ending points of the instream flow water right are as follows:

Beginning point: Origin of the Selway River -- SW1/4NE1/4, Sec. 21, T25N, R14E, Boise Meridian; Latitude N 45° 29' 45.8", Longitude W 114° 44' 34.8".

Ending point: Confluence with the Lochsa River at Lowell -- NW1/4SW1/4, Sec. 4, T32N, R7E, Boise Meridian; Latitude N 46° 08' 25.0", Longitude W 115° 35' 54.8".

6. Purpose of use:

To fulfill the purposes of the Wild and Scenic Rivers Act, Pub L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.).

7. Period of use:

01-01 to 12-31.

8. Place of use:

This instream flow water right is used throughout the designated Selway Wild and Scenic River from the beginning point to the ending point as identified above.

9. Annual volume of consumptive use:

This instream flow water right is non-consumptive (other than evaporation and evapotranspiration which may take place within the designated segment).

10. Other provisions necessary for definition or administration of this water right:

a. This is a federal reserved water right based on the Wild and Scenic Rivers Act, Pub.L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.).

b. This Partial Decree is entered pursuant to that Stipulation among the United States, the State of Idaho and other objectors effective September 1, 2003 (the "Stipulation"), and pursuant to that Stipulation this water right is subordinated to the following water rights and uses that are junior to this federal reserved water right and that have points of diversion or impoundment and places of use within the Selway River Basin upstream from the ending point, as described in element 5 above:

(1) All water right claims filed in the Snake River Basin Adjudication (SRBA) as of the effective date of the Stipulation to the extent ultimately decreed in the SRBA.

(2) All applications for permit and permits with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation, to the extent such applications for permit or permits are ultimately licensed; and all water right licenses with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation.

(3) All domestic uses, which for purposes of this Partial Decree shall be defined as set forth at I.C. § 42-111(1)(a) & (b) to mean the use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half acre of land, if the total use is not in excess of thirteen-thousand (13,000) gallons per day or any other uses, if the total does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day, provided that this

domestic use subordination is limited and defined by I.C. 42-111(2), so that the subordination shall not and does not apply to multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in I.C. 42-111(1)(b) (0.04 cfs/2,500 gpd), and by I.C. 42-111(3), so that the subordination shall not and does not apply to multiple water rights for domestic uses which satisfy a single combined water use that would not itself come within the above definition of domestic use.

(4) All de minimus stockwater uses, which for the purposes this Partial Decree shall be defined as set forth at I.C. § 42-1401A(11) to mean the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen-thousand (13,000) gallons per day. This de minimus stockwater use subordination is limited and defined by I.C. § 42-111(3), so that the subordination shall not and does not apply to multiple water rights for stockwater uses which satisfy a single combined water use that would not itself come within the above definition of stockwater use.

(5) (A) Water rights other than those described in paragraphs (3) and (4) above claimed or applied for after the effective date of the Stipulation with a total combined diversion of 40 cfs (including not more than 500 acres of irrigation with a maximum diversion rate of 0.02 cfs/acre and no storage other than incidental storage). This subordinated amount does not include storage, other than incidental storage, which is defined as storage of not more than a 24 hour water supply for any beneficial use.

(B) Water rights of the United States, instream flow water rights, nonconsumptive water rights and replacement water rights shall not be deducted from the subordination amounts identified in this paragraph (5) for future rights. Nonconsumptive water rights mean all beneficial uses of water having these characteristics: i) the use involves no diversion from the designated reach of

the Wild and Scenic River as identified in this Partial Decree; ii) all return flows from the use accrue to the Wild and Scenic reach; and iii) the use does not cause a depletion or a change in timing of the flow (other than incidental evaporation or seepage) as determined at the point(s) of return, whether or not the depletion or change in timing can be measured within the designated reach. Examples of such uses include: i) run-of-the-river hydroelectric facilities; ii) fish propagation uses; and iii) other similar uses. Replacement water rights means all irrigation appropriations issued for the same purpose of use and place of use covered by an existing water right with no increase in period of use, diversion rate, and, if applicable, volume of water. To be considered a replacement water right: i) no element of the new appropriation may exceed that of the original water right; ii) only the original or the replacement water right or part of each water right may be used at the same time; and iii) the replacement water right cannot be used when water would not be legally and physically available under the original water right.

c. The administrative provisions of paragraph 3 of the Stipulation are incorporated herein by reference.

d. These additional provisions contained in element 10 do not fall within the other elements listed above and are necessary to: (1) define the unique characteristics of these federal reserved water rights; and (2) describe the rights and uses to which these federal reserved water rights are subordinated in order to provide for proper administration of these water rights and other existing and future water rights.

IT IS SO ORDERED.

DATED November 16th, 2004.



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

2011 NOV 16 PM 4:36

STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

SRBA
TWIN FALLS CO., IDAHO
FILED

IN RE SRBA

CASE NO. 39576

PARTIAL DECREE FOR

Federal Reserved Water Right 81-10513

Lochsa Wild and Scenic River

1. Name and address of owner: UNITED STATES OF AMERICA, on behalf of the
U.S.D.A. Forest Service
550 W. Fort Street, MSC033
Boise, ID 83724

2. Source of water: Lochsa River

3. Quantity of right: a. When the stream flow at the Lochsa River quantification site as defined in Section 3 d. below ("Lochsa gage") is less than 18,600 cfs, the United States is entitled to the following flow:

Period of Use	Discharge (cfs)	Period of Use	Discharge (cfs)
January 1-15	933	July 1-15	3600
January 16-31	933	July 16-31	1400
February 1-15	933	August 1-15	989
February 16-28(29)	933	August 16-31	743
March 1-15	933	September 1-15	646
March 16-31	2750	September 16-30	719
April 1-15	4620	October 1-15	855
April 16-30	8030	October 16-31	933
May 1-15	10300	November 1-15	933
May 16-31	17600	November 16-30	933
June 1-15	13600	December 1-15	933
June 16-30	8030	December 16-31	933

b. When the stream flow at the Lochsa gage is greater than or equal to 18,600 cfs (as adjusted by upstream junior depletions, including depletions from water rights enjoying the subordination provided in this right), the United States is entitled to all flows, up to 39,300 cfs.

c. This water right does not prohibit the appropriation, diversion and use of water within the Lochsa River basin when the stream flow at the Lochsa gage exceeds the flow amount in Section 3.a. and is less than 18,600 cfs.

d. The quantification site for the flows identified above is the USGS Lochsa River near Lowell gage, number 13337000, located in SW1/4SE1/4, Sec. 33, T33N, R7E, Boise Meridian; Latitude N 46° 09' 2.1", Longitude W 115° 35' 10.6".

e. This water right precludes any diversion of water out of the watershed of the Lochsa River Basin, upstream from the ending point of the Lochsa Wild and Scenic River at its confluence with the Selway River at Lowell, except for transfers of points of diversion from above the ending point to below the ending point.

4. Priority date:

October 2, 1968.

5. Point of diversion:

There is no diversion associated with this instream flow water right. The legal description of the beginning and ending points of the instream flow water right are as follows:

Beginning point: Powell Ranger Station (USDA Forest Service) -- SW1/4NW1/4, Sec. 33, T37N, R14E, Boise Meridian; Latitude N 46° 30' 33.1", Longitude W 114° 42' 43.1".

Ending point: Confluence with the Selway River at Lowell -- NW1/4SW1/4, Sec. 4, T32N, R7E, Boise Meridian; Latitude N 46° 08' 25.0", Longitude W 115° 35' 54.8".

6. Purpose of use:

To fulfill the purposes of the Wild and Scenic Rivers Act, Pub L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.).

7. Period of use:

01-01 to 12-31.

8. Place of use:

This instream flow water right is used throughout the designated Lochsa Wild and Scenic River from the beginning point to the ending point as identified above.

9. Annual volume of consumptive use:

This instream flow water right is non-consumptive (other than evaporation and evapotranspiration which may take place within the designated segment).

10. Other provisions necessary for definition or administration of this water right:

a. This is a federal reserved water right based on the Wild and Scenic Rivers Act, Pub.L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.).

b. This Partial Decree is entered pursuant to that Stipulation among the United States, the State of Idaho and other objectors effective September 1, 2003 (the "Stipulation"), and pursuant to that Stipulation this water right is subordinated to the following water rights and uses that are junior to this federal reserved water right and that have points of diversion or impoundment and places of use within the Lochsa River Basin upstream from the ending point, as identified in element 5 above:

(1) All water right claims filed in the Snake River Basin Adjudication (SRBA) as of the effective date of the Stipulation to the extent ultimately decreed in the SRBA.

(2) All applications for permit and permits with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation, to the extent such applications for permit or permits are ultimately licensed; and all water right licenses with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation.

(3) All domestic uses, which for purposes of this Partial Decree shall be defined as set forth at I.C. § 42-111(1)(a) & (b) to mean the use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half acre of land, if the total use is not in excess of thirteen-thousand (13,000) gallons per day or any other uses, if the total does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day, provided that this

domestic use subordination is limited and defined by I.C. 42-111(2), so that the subordination shall not and does not apply to multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in I.C. 42-111(1)(b) (0.04 cfs/2,500 gpd), and by I.C. 42-111(3), so that the subordination shall not and does not apply to multiple water rights for domestic uses which satisfy a single combined water use that would not itself come within the above definition of domestic use.

(4) All de minimus stockwater uses, which for the purposes this Partial Decree shall be defined as set forth at I.C. § 42-1401A(11) to mean the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen-thousand (13,000) gallons per day. This de minimus stockwater use subordination is limited and defined by I.C. § 42-111(3), so that the subordination shall not and does not apply to multiple water rights for stockwater uses which satisfy a single combined water use that would not itself come within the above definition of stockwater use.

(5) (A) Water rights other than those described in paragraphs (3) and (4) above claimed or applied for after the effective date of the Stipulation with a total combined diversion of 40 cfs (including not more than 500 acres of irrigation with a maximum diversion rate of 0.02 cfs/acre. This subordinated amount does not include storage, other than incidental storage, which is defined as storage of not more than a 24 hour water supply for any beneficial use.

(B) Water rights of the United States, instream flow water rights, nonconsumptive water rights and replacement water rights shall not be deducted from the subordination amounts identified in this paragraph (5) for future rights. Nonconsumptive water rights mean all beneficial uses of water having these characteristics: i) the use involves no diversion from the designated reach of

the Wild and Scenic River as identified in this Partial Decree; ii) all return flows from the use accrue to the Wild and Scenic reach; and iii) the use does not cause a depletion or a change in timing of the flow (other than incidental evaporation or seepage) as determined at the point(s) of return, whether or not the depletion or change in timing can be measured within the designated reach. Examples of such uses include: i) run-of-the-river hydroelectric facilities; ii) fish propagation uses; and iii) other similar uses. Replacement water rights means all irrigation appropriations issued for the same purpose of use and place of use covered by an existing water right with no increase in period of use, diversion rate, and, if applicable, volume of water. To be considered a replacement water right: i) no element of the new appropriation may exceed that of the original water right; ii) only the original or the replacement water right or part of each water right may be used at the same time; and iii) the replacement water right cannot be used when water would not be legally and physically available under the original water right.

c. The administrative provisions of paragraph 3 of the Stipulation are incorporated herein by reference.

d. These additional provisions contained in element 10 do not fall within the other elements listed above and are necessary to: (1) define the unique characteristics of these federal reserved water rights; and (2) describe the rights and uses to which these federal reserved water rights are subordinated in order to provide for proper administration of these water rights and other existing and future water rights.

IT IS SO ORDERED.

DATED November 16, 2004.



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE

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STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

KT-SRBA
TWIN FALLS CO., IDAHO
FILED

IN RE SRBA)
)
CASE NO. 39576)
)
_____)

PARTIAL DECREE FOR

Federal Reserved Water Right 81-10625

Middle Fork Clearwater Wild and Scenic River

1. Name and address of owner: UNITED STATES OF AMERICA, on behalf of the
U.S.D.A. Forest Service
550 W. Fort Street, MSC033
Boise, ID 83724

2. Source of water: Middle Fork Clearwater River

3. Quantity of right: a. When the stream flow at the Middle Fork Clearwater River quantification site as defined in Section 3.d. below ("Middle Fork Clearwater site") is less than 37,900 cfs, the United States is entitled to the following flows:

Period of Use	Discharge (cfs)	Period of Use	Discharge (cfs)
January 1-15	2070	July 1-15	6250
January 16-31	2070	July 16-31	3100
February 1-15	2070	August 1-15	2320
February 16-28(29)	2070	August 16-31	1730
March 1-15	2070	September 1-15	1480
March 16-31	4040	September 16-30	1660
April 1-15	6850	October 1-15	1920
April 16-30	12700	October 16-31	2070
May 1-15	18200	November 1-15	2070
May 16-31	25100	November 16-30	2070
June 1-15	22000	December 1-15	2070
June 16-30	13000	December 16-31	2070

b. When the stream flow at the Middle Fork Clearwater site is greater than or equal to 37,900 cfs (as adjusted by upstream junior depletions, including depletions from water rights enjoying the subordination provided in this right), the United States is entitled to all flows, up to 80,700 cfs.

c. This water right does not prohibit the appropriation, diversion and use of water within the Middle Fork Clearwater River basin upstream from the ending point of the Middle Fork Clearwater Wild and Scenic River at the town of Kooskia when the stream flow at the Middle Fork Clearwater site exceeds the flow amount in Section 3.a. and is less than 37,900 cfs.

d. The quantification site for the flows identified above is at or above the ending point described below, either: based on the sum of the discharges measured at the USGS Lochsa River near Lowell gage, number 13337000, located in SW1/4SE1/4, Sec. 33, T33N, R7E, Boise Meridian; Latitude N 46° 09' 2.1", Longitude W 115° 35' 10.6", and at the USGS Selway River near Lowell gage, number 13336500, located in SE1/4NE1/4, Sec. 25, T32N, R7E, Boise Meridian; Latitude N 46° 05' 11.6", Longitude W 115° 30' 46.3", or the discharge measured at a new stream gage to be established in the vicinity of the ending point described below.

e. This water right precludes any diversion of water out of the watershed of the Middle Fork Clearwater River Basin upstream from the ending point of the Middle Fork Clearwater Wild and Scenic River at the town of Kooskia, except for transfers of points of diversion from above the ending point to below the ending point.

4. Priority date:

October 2, 1968.

5. Point of diversion:

There is no diversion associated with this instream flow water right. The legal description of the beginning and ending points of the instream flow water right are as follows:

Beginning point: Confluence of the Lochsa and Selway Rivers at the town of Lowell, Idaho -- NW1/4SW1/4, Sec. 4, T32N, R7E, Boise Meridian; Latitude N 46° 08' 25.0", Longitude W 115° 35' 54.8".

Ending point: Town of Kooskia, Idaho -- NE1/4SW1/4, Sec. 4, T32N, R4E, Boise Meridian; Latitude N 46° 08' 26.6", Longitude W 115° 57' 54.5".

- 6. Purpose of use:** To fulfill the purposes of the Wild and Scenic Rivers Act, Pub.L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.).
- 7. Period of use:** 01-01 to 12-31.
- 8. Place of use:** This instream flow water right is used throughout the designated Middle Fork Clearwater Wild and Scenic River from the beginning point to the ending point as identified above.
- 9. Annual volume of consumptive use:** This instream flow water right is non-consumptive (other than evaporation and evapotranspiration which may take place within the designated segment).
- 10. Other provisions necessary for definition or administration of this water right:**
- a. This is a federal reserved water right based on the Wild and Scenic Rivers Act, Pub.L. 90-542, 82 Stat. 906, Oct. 2, 1968 (codified as amended at 16 U.S.C. §§ 1271, et seq.).
 - b. This Partial Decree is entered pursuant to that Stipulation among the United States, the State of Idaho and other objectors effective September 1, 2003 (the "Stipulation"), and pursuant to that Stipulation this water right is subordinated to the following water rights and uses that are junior to this federal reserved water right and that have points of diversion or impoundment and places of use within the Middle Fork Clearwater River Basin upstream from the ending point, as described in element 5 above:
 - (1) All water right claims filed in the Snake River Basin Adjudication (SRBA) as of the effective date of the Stipulation to the extent ultimately decreed in the SRBA.
 - (2) All applications for permit and permits with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation, to the extent such applications for permit or permits are ultimately licensed; and all water right licenses with proof of beneficial use due after November 19, 1987, on file with IDWR as of the effective date of the Stipulation.

(3) All domestic uses, which for purposes of this Partial Decree shall be defined as set forth at I.C. § 42-111(1)(a) & (b) to mean the use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half acre of land, if the total use is not in excess of thirteen-thousand (13,000) gallons per day or any other uses, if the total does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day, provided that this domestic use subordination is limited and defined by I.C. 42-111(2), so that the subordination shall not and does not apply to multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in I.C. 42-111(1)(b) (0.04 cfs/2,500 gpd), and by I.C. 42-111(3), so that the subordination shall not and does not apply to multiple water rights for domestic uses which satisfy a single combined water use that would not itself come within the above definition of domestic use.

(4) All de minimus stockwater uses, which for the purposes this Partial Decree shall be defined as set forth at I.C. § 42-1401A(11) to mean the use of water solely for livestock or wildlife where the total diversion is not in excess of thirteen-thousand (13,000) gallons per day. This de minimus stockwater use subordination is limited and defined by I.C. § 42-111(3), so that the subordination shall not and does not apply to multiple water rights for stockwater uses which satisfy a single combined water use that would not itself come within the above definition of stockwater use.

(5) (A) Water rights other than those described in paragraphs (3) and (4) above claimed or applied for after the effective date of the Stipulation with a total combined diversion of 40 cfs (including not more than 500 acres of irrigation with a maximum

diversion rate of 0.02 cfs/acre. The 40 cfs of diversion and not more than 500 acres of irrigation are in addition to the 40 cfs of diversion and not more than 500 acres of irrigation from each, the Selway and Lochsa Rivers upstream from their confluence with the Middle Fork Clearwater River. This subordinated amount does not include storage, other than incidental storage, which is defined as storage of not more than a 24 hour water supply for any beneficial use.

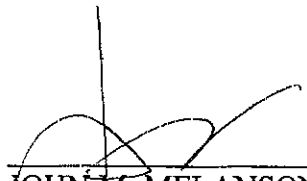
(B) Water rights of the United States, instream flow water rights, nonconsumptive water rights and replacement water rights shall not be deducted from the subordination amounts identified in this paragraph (5) for future rights. Nonconsumptive water rights mean all beneficial uses of water having these characteristics: i) the use involves no diversion from the designated reach of the Wild and Scenic River as identified in this Partial Decree; ii) all return flows from the use accrue to the Wild and Scenic reach; and iii) the use does not cause a depletion or a change in timing of the flow (other than incidental evaporation or seepage) as determined at the point(s) of return, whether or not the depletion or change in timing can be measured within the designated reach. Examples of such uses include: i) run-of-the-river hydroelectric facilities; ii) fish propagation uses; and iii) other similar uses. Replacement water rights means all irrigation appropriations issued for the same purpose of use and place of use covered by an existing water right with no increase in period of use, diversion rate, and, if applicable, volume of water. To be considered a replacement water right: i) no element of the new appropriation may exceed that of the original water right; ii) only the original or the replacement water right or part of each water right may be used at the same time; and iii) the replacement water right cannot be used when water would not be legally and physically available under the original water right.

c. The administrative provisions of paragraph 3 of the Stipulation are incorporated herein by reference.

d. These additional provisions contained in element 10 do not fall within the other elements listed above and are necessary to: (1) define the unique characteristics of these federal reserved water rights; and (2) describe the rights and uses to which these federal reserved water rights are subordinated in order to provide for proper administration of these water rights and other existing and future water rights.

IT IS SO ORDERED.

DATED November 16, 2004.



JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

IDAHO PCSRF PROPOSAL APPLICATION FORM—FY2005

PROJECT NUMBER (will be assigned by OSC): 033055A

1. Contact Information

- 1.1. Applicant name (name of organization applying for grant): Idaho Water Resource Board (Board) in cooperation with The Nature Conservancy (TNC)
<TNC will not be receiving funds from the grant, but will be facilitating this project through a separate Memorandum of Understanding with the Board.>
- 1.2. Contact person (lead person to be contacted regarding project): Bill Graham and Mark Davidson
- 1.3. Address: 322 E Front St, Box 83720, Boise, ID 83720-0098
- 1.4. Telephone: 208-287-4830
- 1.5. Fax: 208-287-6700
- 1.6. Email: bill.graham@idwr.idaho.gov

2. Project Overview

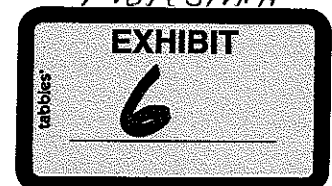
- 2.1. Project title: Lemhi Valley Water Transactions
- 2.2. Identify the 3rd field HUC(s) in which project will take place:

- ☐ Clearwater
- ☒ Salmon
- ☐ Little Salmon
- Other:

- 2.3. PCSRF objective (select one):

- ☒ Salmon habitat protection and restoration
- ☐ Watershed and subbasin planning and assessment
- ☐ Salmon research, monitoring, and evaluation
- ☐ Public outreach and education
- ☐ Salmon enhancement (supplementation)

- 2.4. Project description (provide a summary of the project including a brief explanation of current conditions and reasons the project is needed): The current draft of the Lemhi Long Term Conservation Plan calls for providing a 35 cfs minimum flow year round at the L-6 diversion, located approximately five miles upstream of the Lemhi River confluence by year 10 of the Plan. To date, prescribed minimum flows at the L-6 ranging from 25 to 35 cfs have been



maintained using a combination of agreements not to divert and water leases. The cost of obtaining water to maintain these flows varies between \$40.00/acre foot for an agreement not to divert to \$200.00/acre of land for a partial season rental from July 1 through the remainder of the irrigation season. This process can cost the entity(ies) maintaining the instream flow in excess of \$300,000 per year. A variety of permanent remedies ranging from acquiring water supplies from existing users to exchanging other surface and ground-water sources for Lemhi River water are being considered. Permanent exchanges presently envisioned account for roughly half of the 35 cfs. This proposal focuses on the acquisition of additional water needed to account for the remaining 17 cfs and additional permanent water acquisitions in the Upper Basin upstream of McFarland Campground. If these permanent water acquisitions are accomplished in the upper Basin they may also lead to tributary reconnects and will improve flow conditions in the spawning areas between Big Timber and McFarland Campground. Two strategies will be used. The primary strategy to deliver 17 cfs of water directly to the L-6 diversion will be a pool of agreements not to divert. Through this process the Board and the TNC will negotiate long term or permanent agreements not to divert with key ranchers that divert from the L-6, L-7 or L-8A diversions. Ranchers would agree to forego diversion of a specified quantity leaving it in-stream only when required to maintain the specified flow at L-6. These agreements will be developed by TNC as permanent water conservation agreements. Advantages of this strategy are: (1) Maintain 17 cfs of flow at the L-6 diversion which will contribute to other efforts in the basin to sustain 35 cfs in the lower Lemhi River; (2) Avoid fallowing existing cropland and agricultural operations by managing and/or rotating periods of non-diversion; (3) Assist the Lemhi Basin and Water District 74 in complying with the long-term Lemhi Basin Conservation Agreement; and (4) The overall cost of implementation would be considerably less than the outright purchase of land. Cost of implementing a rotational pool of agreements not to divert would be based on an acre foot of water provided; and would be based on negotiations entered into by TNC, the Board, and water users engaging in this project and paid through the Board and the Department of Water Resources. The cost of the agreements would be validated by an economic analysis. We will attempt to purchase conservation agreements for 1,700 cfs-days (amount needed to maintain a flow of 17 cfs for 100 days) at an estimated cost of \$1,147,330.00. An additional \$200,000 will be held by the Board in a management account to compensate Water District 74 on an annual basis for administration of the Agreements. Under the second strategy, TNC will assist the Board to permanently acquire water from irrigated land for stream reconnects in the Upper Lemhi River Basin. IDWR is currently working with a water user on Big Timber creek to permanently acquire 8 cfs of water available during the early part of the irrigation season for the purpose of reconnecting Big Timber Creek to the Lemhi mainstem. This strategy will provide hydraulic and ecological connectivity for migration and use of spawning and rearing habitat. Water obtained by restructuring land use and reducing the decreed amount of irrigated acreage would be placed in the Board's Water Bank. The Board will work with the water

user to maximize dry-land uses. A similar approach may be used to acquire water for other stream reconnects in the upper Lemhi Basin (see also Attachment A and Attachment B, a detailed transactions budget).

- 2.5. Identify the benefits that will be derived from this project (particularly, benefits to ESA listed steelhead or salmon): Through this project, water supplies needed to maintain a minimum stream flow at the L-6 diversion and to accomplish tributary reconnects will be obtained on a permanent or long-term basis. This will reduce or eliminate the need to acquire water through more costly annual transactions. By combining permanent water transactions with a series of exchange projects, a minimum flow of 35 cfs will be provided year-round at the L-6 diversion. This is the flow objective set forth in the current draft of the 30-year Lemhi River Conservation Plan to provide passage for in-migrating adult spring Chinook salmon and steelhead, for out-migrating salmon and steelhead smolts, and for future spawning and rearing in the lower reaches of the Lemhi River. Upper basin transactions may make additional flow available through reaches identified as providing spawning and rearing habitat, and may result in tributary reconnects. Upper basin transactions will also provide improved conditions for all life stages of bull trout and westslope cutthroat trout (see also Attachment A).
- 2.6. Summarize the monitoring and evaluation activities associated with this project (who, what, where, when and approximate costs): Watermaster records will be used to document that water acquired through permanent or long-term transactions is not diverted. Flow improvements in Lemhi River and tributary streams will also be monitored using the recently improved Lemhi River stream gaging system. Ten stream gages have been added to the Lemhi Basin through the Idaho Water Transaction program and the Optimizing Stream Flow Hydrology project. Additional gages will be added as necessary to evaluate current and future flow acquisitions. All transactions will be monitored using aerial imaging to ensure lands from which water has been severed remain dry. IDWR with work with IDFG and other fisheries experts to evaluate the effects of increased flows on listed fish populations.
- 2.7. Length of stream (.01 miles) and/or number of acres to be monitored as part of project: All transactions will be monitored and evaluated on an annual basis by the Department in cooperation with TNC. The actual number of stream miles and the acres of land will depend on the size and locations of the permanent transactions.
- 2.8. Total PCSRF funds requested: \$2,100,000.
- 2.9. Total non-federal match provided (cash and/or in-kind; note BPA funds are considered a non-federal match for the purposes of the PCSRF program—please see important attached cost share guidelines): The ability to provide 25% match for this project will depend on the actual costs of accomplishing the necessary

transactions. It is expected that BPA funds through the Columbia Basin Water Transactions Program will be used for most of the match. Match assistance may be requested from the U.S. Bureau of Reclamation and other agencies working in the Upper Salmon Basin.

2.10. Anticipated project start date: Jan 01, 2006

2.11. Anticipated project end date (project must be completed within two years of PCSRF Board approval): Dec 31, 2007

3. Project Deliverables and Estimated Timeline

3.1. Please attach, or list below, major project deliverables along with the estimated timeline for completion of each deliverable. Project deliverables will be in the form of permanent or long-term conservation agreements not to divert a quantity of water in the vicinity of the L-6 diversion, and permanent and long-term water transactions in the upper Lemhi Basin. The goal of this proposal is to acquire 17 cfs of stream flow as measured in the Lemhi River at the Lemhi L-5 stream gage. Wherever possible, flows will be acquired from the Lemhi River diversions at or near L-6 (agreements not to divert will be obtained in the lower basin), or from tributaries with high reconnect priorities (using land/water purchases). Water rights obtained to meet flow requirements and accomplish tributary reconnects within the upper Lemhi Basin will be placed in the Board's water bank, and delivered to the appropriate minimum stream flow within the Upper Salmon Basin.

4. Project Support and Relationship to Watershed/Subbasin Planning

4.1. Describe landowner support for the project: The land owners and the community recognize the importance of maintaining and enhancing flows in the Lemhi River at the L-6 diversion, and are very supportive. The community is also supportive of reconnecting high-priority tributary streams to the Lemhi River.

4.2. Assess community support for the project: See 4.1.

4.3. Does the project address prioritized objectives and/or strategies identified in the relevant watershed and/or Northwest Power and Conservation Council approved subbasin plan(s)? If so, identify relevant plan(s): This Project addresses two of the highest priorities in the Lemhi Conservation Plan: Improved Lemhi flows; and establishing ten tributary reconnects. These are also identified as high priority objectives in the NPCC Salmon Subbasin Plan.

4.4. Does the project address limiting factors identified in the relevant watershed and/or subbasin plan(s)? If so, identify relevant plan(s): The project addresses

acquisition of water supplies necessary to support anadromous fish passage and to reconnect key tributaries, as identified in the Salmon Subbasin Plan.

4.5. Has this project been reviewed, and if applicable ranked against other potential PCSRF projects, by a local technical team, scientific advisory group, or the subbasin working group? Please attach group's findings: This project has been reviewed with the Idaho Office of Species Conservation, the Upper Salmon Basin Watershed Project, and the Water District 74 Board of Directors, and has their support.

5. Permits

5.1. List all government permits known to be needed to complete project: N/A

5.2. Landowners granting access for project (please attach access agreements): N/A

6. Budget

6.1. Provide a summary of project costs including both PCSRF and non-Federal cash and/or in-kind match (attach additional budget detail if necessary):

<i>Category</i>	<i>PCSRF Funds</i>	<i>Cash Match*</i>	<i>In-Kind Match*</i>	<i>Total</i>
Salary				
Fringe				
Travel				
Supplies				
Communications/Utilities				
Training				
Lease/Rental				
Land Acquisition				
Capitalized Equipment				
Equipment O&M				
Construction				
Subcontracts				
Other	\$2,100,000	\$700,000		\$2,800,000
Indirect				
TOTAL	\$2,100,000	\$700,000		\$2,800,000

* Total 25% non-Federal cash and/or in-kind match is required. BPA funds are considered non-Federal match for purposes of Idaho's PCSRF.

7. Project Worksite Information

Complete the following information for each on-the-ground worksite where project activities will take place (e.g., if culverts will be removed from two tributaries – complete all of the following project worksite information for each tributary). Some projects may have only one worksite, while others will have many. Complete and attach additional project worksite information pages as necessary.

7.1. Worksite number 1 of 1

7.2. Worksite name: Lemhi River L-6 diversion (primary); secondary worksites throughout the Lemhi Basin.

7.3. Briefly describe, in sequential order, the project activities that will take place at this worksite: Maintain instream flows of 35 cfs between Mar 15 and June 30 at the L-6 diversion, and provide additional stream flows for ten tributary reconnects.

7.4. County where worksite is located: Lemhi

7.5. Land ownership at worksite (identify percentage):

Private: 100

State:

Federal:

7.6. Worksite location:

Is GIS data available for the worksite (e.g., ARC GIS data files):

☒ Yes

☐ No

Provide one of the following:

Latitude: IDTM 83: 2,516,060.01m

Longitude: IDTM 83: 1,547,469.93m

- Or -

Streamname: Lemhi River

Begin Ft:

End Ft:

LLID:

- Or -

Township:

Range:

Section:

- Or -

3rd Field HUC:

4th Field HUC: 17060204

5th Field HUC:

Other location notes:

7.7. Anticipated work start date at this worksite: Jan 1, 2006

7.8. Anticipated work end date at this worksite: Dec 31, 2007

7.9. List salmonids historically present at this worksite:

7.10. ESUs targeted by actions to be completed at this worksite (select all that apply):

☒ Snake River Spring/Summer-run ESU Chinook Salmon

☐ Snake River Fall-run ESU Chinook Salmon

☒ Snake River Basin ESU Steelhead

☐ Snake River ESU Sockeye Salmon

7.11. Limiting factors addressed at this worksite through project actions (check all that apply):

- ☒ Biological processes
- ☒ Channel conditions
- ☐ Estuarine and near-shore habitat
- ☐ Exotic species
- ☐ Fire regime
- ☐ Floodplain conditions
- ☐ Irrigation diversions – screens
- ☐ Lake Habitat
- ☒ Loss of access to spawning and rearing habitat
- ☒ Predator/competitor interactions
- ☐ Riparian conditions
- ☐ Streambed sediment conditions
- ☐ Temperature
- ☐ Trophic interactions
- ☐ Water quality
- ☐ Water quality (toxics)
- ☒ Water quantity

Other:

7.12. Salmon habitat protection and restoration (complete this section only for habitat protection and restoration project worksites). Complete all of the following that apply to this project worksite:

Screening

- Number of screen(s) installed:
- Flow rate of water diverted (cfs):
- Quantity of water protected by screens (duty):

Instream Habitat

- Number of miles of streambank stabilization treatment (miles to .01 miles):
- Length of instream habitat treated, except for bank stabilization (miles to .01 miles):

Instream Flow

- Amount of water returned to the stream (cfs): 35 cfs
- Start date of the return flow: Mar 15
- End date of the return flow: Nov 15
- # of water flow gauges installed: Up to 10 new gages will be installed when funded through the continuation request for the Optimizing Stream Flow Enhancement project in the Upper Salmon Basin (anticipated in 2006).

- Volume of water leased or purchased (cfs): Up to 35 cfs.

Fish Passage Improvement

- Number of fish passage blockages removed or improved:
- Length of stream made accessible by the removal of barriers other than culverts (miles to .01 miles):
- Length of stream made accessible for passage of salmon species by the improvement or removal of culverts (miles to .01 miles):

Riparian Habitat

- Length of riparian stream bank treated (miles to .01 miles):
- Amount of riparian area treated except for invasive species treatment (acres):
- Amount of riparian area treated for invasive plant species (acres):

Upland Habitat

- Amount of upland area treated (acres):
- Length of road treated (miles to .01 miles):

Wetland

- Amount of wetland treated (acres):
- Amount of artificial wetland created (acres):
- Amount of wetland area of invasive species proposed for treatment and actually treated (acres):

Land acquisition/easements/leases

- Amount of land, wetland or estuarine area protected with acquisition/easement/lease (acres):
- Length of stream bank protected through land acquisition/easement/lease (miles to .01 miles):

7.13. Watershed and subbasin planning and assessment (complete this section only for watershed and subbasin planning and assessment project worksites)

- Does the project fund operation of watershed councils or provide technical assistance to watershed councils:
- Does the project provide staff support and/or infrastructure costs directly related to assessment or recovery planning:
- Does this project support development of a plan or assessment? If, so what is the name of the plan/assessment:
- Does the plan/assessment identify/prioritize specific factors limiting the production of populations and ESUs or conservation opportunities at the

watershed scale:

- Does the plan/assessment incorporate biological goals consistent with State or Tribal conservation plans or Technical Recovery Team recommendations:
- Does the plan/assessment identify actions needed to meet goals:
- Has the plan/assessment been used by a local watershed group to guide restoration actions:
- Identify the number of stream miles surveyed for this plan/assessment that contain anadromous Pacific Salmon:
- Identify the number of stream miles surveyed for this plan/assessment that have riparian disturbance (e.g., landslide, road, parking lot, vegetation clearing):

7.14. Research, monitoring and evaluation (complete this section only for research, monitoring and evaluation project worksites)

- Is the project directly related to key salmon management questions regarding salmon recovery and/or sustainability of healthy salmon stocks:
- Number of organizations cooperating on the research, monitoring and evaluation project:
- Name of all cooperating organizations:
- Describe the research, monitoring and evaluation findings utilized in adaptive changes to salmon and watershed programs and policies:
- Stream length assessed/monitoring for habitat condition, water quality, salmonid abundance, and productivity in accordance with research, monitoring and evaluation or watershed monitoring strategy (.01 miles):
- Identify the number and type of reports that will be prepared by the project on key management or restoration data, information, and needs (e.g., progress reports, monitoring reports or final reports associated with research):

7.15. Public outreach and education (complete this section only for public outreach and education project worksites)

- How many workshops and/or training events will be completed through this project:
- How many people will participate through the workshops and/or training events completed through this project:
- How many schools or other institutions will be reached by this project:
- How many documents will be produced by this project:
- Identify any other types of activities that will be accomplished through this project and how effectiveness of those activities will be measured:

Cost Share Guidelines

The non-Federal match, whether cash or in-kind, is expected to be paid out at the same general rate as the PCSRF share. Exceptions to this requirement are discouraged, but may in select circumstances be granted by OSC (pending approval from the NOAA Grant Officer), based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or in-kind contributions.

In all cases, the subgrantee must meet their cost share commitment over the life of the award (two years or less). The same requirements that apply to the PCSRF award funds (e.g., adequacy of personnel records, inclusion of only allowable costs as defined in the applicable OMB circulars, and adequate documentation of costs), apply to the non-Federal match.

Non-Federal match used to meet Idaho's PCSRF requirements may not be included as contribution for any other Federally assisted project or program.

LEMHI VALLEY WATER TRANSACTIONS

Attachment A

Overview

The Lemhi River is a significant tributary of the Salmon River that sustains Snake River spring/summer Chinook salmon, summer steelhead, bull trout and resident fish. The State is assisting local landowners in the development of a cooperative conservation agreement (the Lemhi Conservation Plan or Plan) with NOAA-fisheries and USFWS under Section 6 of the Endangered Species Act for the benefit of ESA-listed salmonids in the Lemhi watershed. The Plan strikes a balance between maintaining continued agricultural production and providing for the conservation and protection of ESA-listed fish. It encourages participation of local landowners in implementing fish habitat conservation strategies that are compatible with farming and ranching while maintaining the economic and financial viability of the community and local businesses.

The Plan includes a suite of conservation commitments that enhance instream flow conditions, provide for fish passage, protect and restore riparian habitat and protect and improve instream habitat. A primary focus of the Plan is to provide instream flow conditions that meet passage requirements for adult and juvenile salmonids in critical reaches of the river and its tributaries. This project focuses on the development of a permanent water supply to meet identified instream flow requirements in two critical reaches of the river.

The Lower Reach of the Lemhi River

In dry years, irrigation water demands have significantly reduced the amount of water available for fish migrating through the lower Lemhi River. In order to address concerns raised under the Endangered Species Act, local landowners have been working cooperatively with the State to address this low flow situation. Idaho Code Section 42-1504 established a minimum instream flow water right in this reach of the Lemhi River and created a local water bank committee that provides a mechanism for renting water to satisfy the minimum stream flow water right held by the Idaho Water Resources Board (Board). The water right is for 35 cfs (average daily flow) not less than 80% of the time and 25 cfs not more than 20% of the time from March 15 through June 30. A flow of 25 cfs is established from July 1 through November 1. The Plan also identifies measures to provide 35 cfs throughout the irrigation season by year ten of the Section 6 Agreement. The Plan contemplates the development of a permanent water supply to satisfy the Board's instream flow right to ensure that minimum flows adequate for fish passage are provided during all years. The objective will be to develop a water supply to satisfy the instream flow while at the same time ensuring the economic viability of lands currently in production.

The Upper Reach of the Lemhi River and Tributaries

During most years, many tributaries to the Lemhi River are functionally disconnected from the mainstem. Reduced flows at the mouths of these tributaries can create either thermal or hydraulic barriers to certain life stages of fish. A Plan objective is to provide hydraulic and ecological connectivity with high quality and historic salmonid habitat for spawning and rearing between the mainstem Lemhi River and selected tributaries. Reconnection of tributaries and implementation of habitat improvement measures identified in the Plan will effectively restore a significant portion of the watershed for salmonids. The Plan calls for the reconnection of ten tributaries within ten years of its implementation with reconnection of four tributaries occurring within the first five years.

Project Elements

Implementation of the Lemhi Conservation Plan will require the acquisition of water supplies dedicated to migration flows for the benefit of ESA-listed salmonids and resident fish. In recent years, state and federal agencies have provided funds for water rentals and agreements not to divert to meet the Plan's objectives on an annual basis. Funding water rentals of 35 cfs and in adequate amounts for tributary reconnects on an annual basis will prove too costly over the long term; reliance on short term rentals must be reduced by securing water supplies dedicated to instream flows on a permanent basis. This project is an effective long-term strategy for providing adequate migration flows in the lower reach of the river and for reconnecting tributaries to the main stem river.

The Board will, in concert with other agencies and stakeholders, identify and secure permanent water supplies strategic to the lower river reach and specific tributaries. In so doing, the Board will use a range of strategies that allow for continuation of traditional uses of land and ensure that lands remain in private ownership. On a willing buyer willing seller basis, the Board will identify and purchase parcels of land and associated water rights and sell the land to private purchasers with the conveyance of conservation easements or dry year option leases to the Board. Conservation easements generally reduce the re-sale price of purchased parcels, making them affordable to neighboring landowners and ensuring lands will be integrated into ongoing agricultural operations. With this strategy, land use restrictions can be designed with the particular property owner in mind while committing new landowners to water rentals during critical flow periods. Similarly, the Board will identify and purchase conservation easements that guarantee water availability to meet specific instream flow requirements. The private owner will retain ownership of the land and the land itself is guaranteed to retain its conservation values. Lands that remain in private ownership and agricultural production will continue to support the local economy and tax base.

Project Cost

Currently, flows at the L-6 diversion are maintained through early season agreements not to divert and a late season lease program operated through the Water District 74 Rental Pool program. Through the early season agreements, water right holders and participants were paid \$80.65 per 24-hour cfs. Water District 74 was also paid a \$100.00 per day delivery fee. In 2005, the total cost of this program was \$72,256 to deliver 855 24 hr-cfs to the L-6 diversion. The program was only needed for 33 days due to spring rains in April, May and June. If this program was needed to meet required flows at the L-6 diversion for the full period (March 15 through June 30) the cost would have exceeded \$300,000.00.

Late season flows (July 1 – November 15) are obtained by leasing water through the Water District 74 Rental Pool. For the 2005 irrigation season the WD 74 leased the water from 923 acres of land at \$200.00 per acre to maintain an instream flow of 24.55 cfs at the L-6 diversion. Total cost of the lease with rental fees was \$212,290.00.

High annual costs to meet L-6 flows demonstrate the need to undertake water exchange projects along with permanent water right acquisitions to obtain a sustainable flow of 35 cfs at the L-6 diversion. The Lemhi Conservation Agreement calls for a 35 cfs to be maintained at the L-6 throughout the irrigation season. We currently anticipate that half the instream flow will be attained through exchange projects. The other half will need to be acquired through other means. Long-term conservation easements and permanent acquisition of water supplies are likely the most cost effective means of obtaining the remaining 17.5 cfs of flow. Based on the annual lease figures of 923 acres to provide a flow of 24.55 cfs, 700 acres should provide a flow of 17.5 cfs. At an estimated value of water of \$3,000/acre for permanent acquisition, the cost of obtaining 17.5 cfs would be \$2.1 million.

OPTIMIZING STREAM FLOW ENHANCEMENT

Attachment B. Lemhi Water Transactions Detailed Budget

Description	PCSRF	MATCH 1	Total
Salary	0.00	0.00	0.00
Benefits	0.00	0.00	0.00
Personnel Costs	0.00	0.00	0.00
Travel	0.00	0.00	0.00
Supplies	0.00	0.00	0.00
Training	0.00	0.00	0.00
Software	0.00	0.00	0.00
Operating Expenditures	0.00	0.00	0.00
Indirect (.3898)	0.00	0.00	0.00
Lower Lemhi Agreements 2	860,498.00	286,832.00	1,147,330.00
WD-74 Management Fund 3	150,000.00	50,000.00	200,000.00
Lemhi Water Acquisitions 4	1,089,502.00	363,168.00	1,452,670.00
TOTAL	2,100,000.00	700,000.00	2,800,000.00

1 - The primary source of matching funds is BPA. Some in-kind match may be provided through TNC and state administrative support.

2 - Lower Lemhi Rotational Pool Agreements.

3 - This fund will be managed through the Board's Water Management Account to pay WD-74 \$100.00 per day for each day the rotational pool is in used to deliver water to the L-6 diversion.

4 - Other permanent acquisitions within the Lemhi Basin to meet the tributary reconnect terms of the Conservation Agreement.

OFFICE OF SPECIES CONSERVATION

JAMES E. RISCH
Governor



P O Box 83720
Boise, Idaho 83720-0195

JAMES L. CASWELL
Administrator

300 North Sixth Street
Boise Idaho 83702

July 3, 2006

Bill Graham
Idaho Department of Water Resources
322 E. Front Street
STATEHOUSE MAIL

Dear Mr. Graham:

On December 16, 2005, the Pacific Coast Salmon Recovery Fund (PCSRF) Board conditionally approved your Lemhi Valley Water Transactions project application for the second go-around of the 2005 PCSRF grant. The conditional approval was contingent upon negotiations between the Office of Species Conservation and the Idaho Department of Water Resources to set up a process to secure an accredited appraiser to appraise the cost of water transactions and to obtain \$200,000 in advance funds by requesting an exemption from the Department of Commerce, National Oceanic and Atmospheric Association (NOAA). The advance funds would be used to establish an account of \$200,00 to compensate the Water District 74 for permanent administration of the agreements not to divert. The water appraisal process has been defined in the attached Memorandum of Agreement and the exemption has been obtained from NOAA. Therefore, the conditions have been met and the project is approved.

Your Lemhi Valley Water Transactions project, assigned the number of 03305SA, will be funded at \$2,100,000.00. As one of the conditions for receiving your award, both parties must sign two originals of a formalized Memorandum of Agreement. Said agreement has been included within this packet. In addition, please complete and sign both copies of Appendices B and C. We will return a signed original to you for your files.

Attached is a copy of the updated Idaho Pacific Coastal Salmon Recovery Fund FY04-FY05 Grant Guidelines. These guidelines will take you step-by-step through the requirements for this grant. Please keep them for your reference.

Terry McRoberts has sent you, by e-mail, the necessary forms to develop your project work agreement as well as the required reporting documents, and reimbursement forms. Please review and update the Project Work Agreement and the Project Work Agreement Budget forms and return them to Terry as soon as possible.



PCSRF 033 05 SA

July 3, 2006

Page 2 of 2

Any questions can be referred to Jeff Allen at OSC at 208 334-2189 x11 or e-mail him at jallen@osc.idaho.gov. You have our thanks and congratulations.

Sincerely,

James L. Caswell

On behalf of the PCSRF Board

/tm

Enclosures

C: Karl Dreher
Steve Huffaker
James Yost

IDAHO PCSRF PROPOSAL APPLICATION FORM—FY2005

PROJECT NUMBER (will be assigned by OSC):

1. Contact Information

- 1.1. Applicant name (name of organization applying for grant): Lemhi Soil Water Conservation District (LSWCD)
- 1.2. Contact person (lead person to be contacted regarding project): Bruce McConnell, LSWCD Chairman
- 1.3. Address: 31 Hwy 93 North, Suite D Salmon, ID 83467
- 1.4. Telephone: (208) 756-3211
- 1.5. Fax: (208) 756-4705
- 1.6. Email: lemhiscd@salmoninternet.com

Technical support provided by: Upper Salmon Basin Watershed Project (USBWP), 31 Highway 93 N., Ste B, Salmon, ID 83467; Ingrid Enschede, project planner; 208-756-6322; ienschede@idahoag.us

2. Project Overview

- 2.1 Project title: L-63/Big Timber Creek Siphon (*Phase I Big Timber Creek Reconnect*)
- 2.2 Identify the 3rd field HUC(s) in which project will take place:
- ☐ Clearwater
- ☒ Salmon
- ☐ Little Salmon
- Other:
- 2.3 PCSRF objective (select one):
- ☒ Salmon habitat protection and restoration
- ☐ Watershed and subbasin planning and assessment
- ☐ Salmon research, monitoring, and evaluation
- ☐ Public outreach and education
- ☐ Salmon enhancement (supplementation)
- 2.4 Project description (provide a summary of the project including a brief explanation of current conditions and reasons the project is needed):



Summary: This proposal is being submitted as part of the large scale Big Timber Creek reconnect project in the Lemhi basin. The objective of this project is to functionally reconnect Big Timber Creek with the Lemhi River so that anadromous (Chinook salmon and Steelhead) and resident/fluvial (bull trout, redband trout, westslope cutthroat trout) salmonids have the ability to migrate between these two watersheds. The Idaho Department of Fish and Game has worked with the Upper Salmon Basin Watershed Project (USBWP) Technical Team, and federal, state, and tribal representatives to develop an extensive reconnect plan for the Lemhi basin, a critical component of the Lemhi Conservation Plan, that identifies fish migration barriers and prescribes strategies to remove or modify these barriers. Due to the complexity involved in meeting this reconnect objective, implementation of these strategies on Big Timber Creek is proposed over several project phases. During the first phase (Phase I), strategies will remove or improve structural barriers that currently prevent fish from migrating between the Lemhi River and Big Timber Creek. Three proposals are currently being submitted to the Pacific Coastal Salmon Recovery Fund for FY2005 for this purpose: 1) a proposal submitted by the Idaho Department of Fish and Game (IDFG) to replace a road culvert at State Highway 28, 2) a proposal submitted by the Lemhi Soil and Water Conservation District (LSWCD) to modify the L63/Big Timber Creek intercept, and 3) a second proposal submitted by the LSWCD to replace the existing Big Timber 2 diversion structure with a new fish-passable structure. Implementation of these proposals will occur over the same two year period to more efficiently complete this component of the Big Timber reconnect project. See Figure 1 for project locations.

Planning has begun on subsequent project phases for the reconnection of Big Timber Creek. Phase II will focus on augmenting stream flows below the Big Timber 2 diversion, where flows are impaired due to irrigation withdrawals. Meeting Phase II objectives will include working with the Idaho Department of Water Resources Water Transactions Program and working with Water District 74W to improve water administration through improved or additional headgates and measuring devices. Phase III will address additional barriers higher in the watershed and screening.

Project Description: This proposal will remove one of the three identified fish barriers for the purpose of reconnecting Big Timber Creek with the Lemhi River. Currently, the canal from the L-63 diversion off the Lemhi River crosses the Big Timber Creek channel (see Figures 2 through 5). During irrigation season, March 15 – November 15, the entire channel is blocked off with boards, blocking passage for water and fish. This project will install a siphon to carry Lemhi River water in the L-63 ditch underneath the Big Timber Creek channel thereby removing the existing barrier and establishing a natural stream channel in its place. The siphon design will include a controllable by-pass channel to allow overflow from the ditch into the Big Timber Creek if necessary due to a high water event or to prevent ice build up under Highway 28. This by-pass channel will also serve as a fish barrier to prevent passage between lower Big Timber Creek and the L63 canal. The L-63 canal is already screened above this project site, near the L-63 diversion.

Contributors: This proposal is to request funding through the Pacific Coast Salmon Recovery Fund for materials and labor to construct a siphon. In addition, the Bonneville Power Administration will also contribute funds toward materials and labor to construct the siphon. The Bureau of Reclamation will provide survey, engineering and design, and construction inspection.

This project will be implemented in coordination with the Big Timber Creek Culvert Replacement project submitted by the Idaho Department of Fish and Game. Funding to support federal and state compliance (cultural and environmental) for this project is included in the Big Timber Creek Culvert Replacement project budget, and compliance efforts for these two projects will be combined.

Rationale: Of the 31 tributaries to the Lemhi River, all but two are functionally disconnected (i.e. fish are unable to migrate through certain tributary segments) from the mainstem during part or all of the irrigation season (generally March 15 – November 15). This usually occurs in the lower reaches of these tributaries, where stream segments are dewatered due to irrigation withdrawals and contain numerous structures that obstruct fish migration. Big Timber Creek is the largest of these disconnected tributaries, and arguably is one of the most important biologically because it would provide suitable spawning and rearing habitat for ESA listed Chinook salmon and Steelhead, and bull trout following successful reconnection. Currently, several structures impede fish migration into Big Timber Creek, regardless of the amount of flow available. Addressing these structural impediments in Phase I is a critical first step for establishing a functional reconnection.

2.5 Identify the benefits that will be derived from this project (particularly, benefits to ESA listed steelhead or salmon):

Benefits: Installing a siphon to separate Lemhi River irrigation water from Big Timber Creek will improve fish passage conditions by removing an impassable barrier for ESA listed juvenile and adult Chinook salmon, steelhead, and bull trout attempting to migrate through the lower reaches of Big Timber Creek. This project supports the tributary reconnect objective by allowing upstream and downstream movement of fish without undue stress or delay or risk of entrainment when water is available for instream flow. By providing conditions suitable for migration, Chinook salmon and steelhead populations will likely expand in range and numbers as adults and juveniles pioneer into good quality spawning and rearing habitat. For bull trout, local populations that can “share” individuals (e.g. interact with one another and exchange highly adaptive genetic traits) ensures the long-term viability of this species by reducing extinction risks and increasing trends in abundance. Connected habitats and improved rearing conditions will also expand the distribution of cutthroat trout and rainbow trout, and provide benefits similar to those seen by bull trout.

This project also provides a hydraulic benefit by creating a stream channel that will accommodate high spring flows that are proposed in the Lemhi Agreement as a conservation measure to improve stream habitat conditions in the Lemhi River.

Tributaries such as Big Timber Creek that have been historically disconnected have not provided high spring flows that are necessary to maintain and improve the river channel in the upper Lemhi River. Through agreements with irrigators not to divert water during certain times of the year, a spring “pulse” of water will be provided to the mainstem river for the purpose of removing fine sediment, re-distributing consolidated gravel to improve spawning, and creating undercut banks, pools, and side channels to improve juvenile rearing. Finally, this project will also eliminate the potential of fish accessing the L-63 canal behind the screen from the Big Timber channel.

2.6 Summarize the monitoring and evaluation activities associated with this project (who, what, where, when and approximate costs):

This project will be included on Upper Salmon Basin Watershed project (USBWP) monitoring schedule and will be monitored by the USBWP or its representatives. Monitoring points will be set up before project implementation. The project will be inspected and certified when completed if it meets the standards and specifications stated in the contract with the Lemhi Soil and Water Conservation District. Additional photopoint monitoring will occur at 5 year intervals for the life of the landowner contract. Monitoring information is collected according to the USBWP monitoring plan recorded and stored at the USBWP office in Salmon, Idaho.

2.7 Length of stream (.01 miles) and/or number of acres to be monitored as part of project: approximately 0.20 acres (the location of the siphon)

2.8 Total PCSRF funds requested: \$42,900

2.9 Total non-federal match provided (cash and/or in-kind—please see important attached cost share guidelines): \$11,000

2.10 Anticipated project start date: January 2006 (begin PCSRF portion of project)

2.11 Anticipated project end date (project must be completed within two years of PCSRF Board approval): October 2006

3. Project Deliverables and Estimated Timeline

3.1 Please attach, or list below, major project deliverables along with the estimated timeline for completion of each deliverable. Please note that use of BPA funds as cost share for this project require completion by the end of September 2006. In order to ensure completion on time, portions of this project not funded through the PCSRF and not eligible as non-federal cost share will begin fall of 2005. If consultation can not be completed in time for September 2006 completion, construction may be postponed until March 2007.

Task/Milestone (entity identified for task)	Estimated Timeline for Completion and/or Submission of Forms
Project scoping and proposal development (USBWP, IDFG, BOR)	October 2005
Survey (BOR)	November 2005
404 permit submitted (irrigator/landowner with USBWP support)	January 2006
Engineering and design (BOR)	January 2006
ESA consultation submitted: (USBWP, IDFG, and/or subcontract)	March 2006
NEPA checklist (use BPA format; USBWP)	March 2006
Cultural inventory complete (subcontract or NRCS)	May 2006
Bid development and landowner contract (LSWCD, USBWP, and BOR)	July 2006
Construction and inspection (LSWCD & BOR)	September 2006
Reporting--all monthly and final (USBWP)	October 2006

4. Project Support and Relationship to Watershed/Subbasin Planning

4.1. Describe landowner support for the project: The landowners and irrigators involved in this project have been consulted and have given their support for this project. Both landowners involved have supported and contributed to past conservation measures on their properties and have demonstrated a commitment to improving fish habitat on private lands.

4.2. Assess community support for the project: The community of landowners and irrigators in the Lemhi River watershed have demonstrated on-going support for conservation efforts and habitat improvements in the watershed. This project has also been reviewed and approved by the Lemhi Soil and Water Conservation District board of supervisors and the Upper Salmon Basin Watershed Project Advisory Committee. Both the board and the committee are comprised of community representatives and provide input to proposed projects. Finally, this project supports the tributary reconnect objectives of the Lemhi Agreement. The Lemhi Agreement is the product of a committee that includes Lemhi watershed landowners and water district 74.

4.3. Does the project address prioritized objectives and/or strategies identified in the relevant watershed and/or Northwest Power and Conservation Council approved subbasin plan(s)? If so, identify relevant plan(s): This project addresses: 1) prioritized objectives to functionally reconnect habitats and maintain metapopulations of fish, as defined in the 2004 Salmon River Sub-basin

Assessment; and 2) the recommendation to reconnect tributaries dewatered for irrigation for the Lemhi River, Hayden Creek to Leadore reach, as listed in the 2002 the USBWP Stream Habitat Inventory Report.

4.4. Does the project address limiting factors identified in the relevant watershed and/or subbasin plan(s)? If so, identify relevant plan(s): This project addresses habitat fragmentation as limiting factors for fish, as defined in the 2004 Salmon River Sub-basin Assessment and barrier free passage for adult and juvenile migration, as defined in the 1994 Model Watershed Plan.

4.5. Has this project been reviewed, and if applicable ranked against other potential PCSRF projects, by a local technical team, scientific advisory group, or the subbasin working group? Please attach group's findings: The Upper Salmon Basin Watershed Project Technical Team has reviewed and ranked the overall objective of reconnecting Big Timber Creek and supports on the ground projects necessary to accomplish reconnection. The reconnection project as a whole received a total score of 106 out of 115 possible project ranking criteria points. The Technical Team also scored this project independently with a total score of 83. Scoring is as follows:

A. Fish species that are expected to benefit from the project: (Possible Score:15) Scored 15.

B. Project is expected to protect or increase distribution and numbers of target fish species (Possible Score:20) Scored 10.

C. What is the immediacy of threatened impacts at the site? (Possible Score:10) Scored 5.

D. Long-term effectiveness of the project (Possible Score:15) Scored 15.

E. Project will benefit target fish species by protecting, restoring, or enhancing (Possible Score:15) Scored 5.

F. Expected benefit relative to cost (Possible Score:10) Scored 10.

G. Cost sharing or in-kind services (Possible Score:10) Scored 3.

H. Project compliments existing or proposed projects or land management concerns (Possible Score:10) Scored 10.

I. When will project benefits be realized? (Possible Score:10) Scored 10.

5. Permits

5.1. List all government permits known to be needed to complete project: 404 permit

5.2. Landowners granting access for project (please attach access agreements): The landowner and irrigator have given their support for this project. No other landowners are involved.

6. Budget

6.1. Provide a summary of project costs including both PCSRF and non-Federal cash and/or in-kind match (attach additional budget detail if necessary):

Project Budget Budget Categories	PCSRF Portion of Budget		Non-Federal Match (cash)		Non-Federal Match (In-Kind)		TOTAL Project Budget
	Amount	Notes	Amount	Notes	Amount	Notes	
Salary							\$0.00
Fringe							\$0.00
Travel							\$0.00
Supplies							\$0.00
Communications / Utilities							\$0.00
Training							\$0.00
Lease / Rental							\$0.00
Land Acquisition							\$0.00
Capitalized Equipment							\$0.00
Equipment Operations and Maintenance							\$0.00
Construction							\$0.00
Subcontracts	\$39,000.00	siphon (materials & labor)	\$11,000.00	siphon (BPA funded materials and labor)			\$50,000.00
Other							\$0.00
Indirect	\$3,900.00	Lemhi SWCD overhead					\$3,900.00
TOTAL	\$42,900.00		\$11,000.00		\$0.00		\$53,900.00

- Total 25% non-Federal cash and/or in-kind match is required.

7. Project Worksite Information

Complete the following information for each on-the-ground worksite where project activities will take place (e.g., if culverts will be removed from two tributaries – complete all of the following project worksite information for each tributary). Some projects may have only one worksite, while others will have many. Complete and attach additional project worksite information pages as necessary.

7.1. Worksite number 1 of 1

7.2. Worksite name: L-63 siphon

7.3. Briefly describe, in sequential order, the project activities that will take place at this worksite: Construction of a siphon. Steps and timeline outlined in 3.1 and will include: survey and design; permitting; ESA, cultural, and NEPA compliance; contracting for construction and construction; final inspection and reporting.

7.4. County where worksite is located: Lemhi

7.5. Land ownership at worksite (identify percentage):

Private: 100%

State:

Federal:

7.6. Worksite location:

Is GIS data available for the worksite (e.g., ARC GIS data files):

☒ Yes

☐ No

Provide one of the following: (NAD 1983)

Latitude: 44.69 N

Longitude: 113.37 W

- Or -

Streamname:

Begin Ft:

End Ft:

LLID:

- Or -

Township: 16N

Range: 26E

Section: 28

- Or -

3rd Field HUC:

4th Field HUC: Lemhi

5th Field HUC:

Other location notes:

7.7. Anticipated work start date at this worksite: August 2006

7.8. Anticipated work end date at this worksite: September 2006

7.9. List salmonids historically present at this worksite: Chinook salmon, steelhead trout, rainbow/redband trout, bull trout, and westslope cutthroat trout.

7.10. ESUs targeted by actions to be completed at this worksite (select all that apply):

- ☒ Snake River Spring/Summer-run ESU Chinook Salmon
- ☐ Snake River Fall-run ESU Chinook Salmon
- ☒ Snake River Basin ESU Steelhead
- ☐ Snake River ESU Sockeye Salmon

7.11. Limiting factors addressed at this worksite through project actions (check all that apply):

- ☒ Biological processes
- ☒ Channel conditions
- ☐ Estuarine and near-shore habitat
- ☐ Exotic species
- ☐ Fire regime
- ☐ Floodplain conditions
- ☐ Irrigation diversions – screens
- ☐ Lake Habitat
- ☒ Loss of access to spawning and rearing habitat
- ☐ Predator/competitor interactions
- ☐ Riparian conditions
- ☐ Streambed sediment conditions
- ☐ Temperature
- ☐ Trophic interactions
- ☐ Water quality
- ☐ Water quality (toxics)
- ☐ Water quantity

Other:

7.12. Salmon habitat protection and restoration (complete this section only for habitat protection and restoration project worksites). Complete all of the following that apply to this project worksite:

Screening

- Number of screen(s) installed:
- Flow rate of water diverted (cfs):
- Quantity of water protected by screens (duty):

Instream Habitat

- Number of miles of streambank stabilization treatment (miles to 01 miles):

- Length of instream habitat treated, except for bank stabilization (miles to .01 miles):

Instream Flow

- Amount of water returned to the stream (cfs):
- Start date of the return flow:
- End date of the return flow:
- # of water flow gauges installed:
- Volume of water leased or purchased (cfs):

Fish Passage Improvement

- Number of fish passage blockages removed or improved: 1
- Length of stream made accessible by the removal of barriers other than culverts (miles to .01 miles): approximately 60 miles of stream habitat in the Big Timber Creek watershed with the completed reconnect.
- Length of stream made accessible for passage of salmon species by the improvement or removal of culverts (miles to .01 miles):

Riparian Habitat

- Length of riparian stream bank treated (miles to .01 miles):
- Amount of riparian area treated except for invasive species treatment (acres):
- Amount of riparian area treated for invasive plant species (acres):

Upland Habitat

- Amount of upland area treated (acres):
- Length of road treated (miles to .01 miles):

Wetland

- Amount of wetland treated (acres):
- Amount of artificial wetland created (acres):
- Amount of wetland area of invasive species proposed for treatment and actually treated (acres):

Land acquisition/easements/leases

- Amount of land, wetland or estuarine area protected with acquisition/easement/lease (acres):
- Length of stream bank protected through land acquisition/easement/lease (miles to .01 miles):

7.13. Watershed and subbasin planning and assessment (complete this section only for watershed and subbasin planning and assessment project worksites)

- Does the project fund operation of watershed councils or provide technical assistance to watershed councils:
- Does the project provide staff support and/or infrastructure costs directly related to assessment or recovery planning:
- Does this project support development of a plan or assessment? If, so what is the name of the plan/assessment:
- Does the plan/assessment identify/prioritize specific factors limiting the production of populations and ESUs or conservation opportunities at the watershed scale:
- Does the plan/assessment incorporate biological goals consistent with State or Tribal conservation plans or Technical Recovery Team recommendations:
- Does the plan/assessment identify actions needed to meet goals:
- Has the plan/assessment been used by a local watershed group to guide restoration actions:
- Identify the number of stream miles surveyed for this plan/assessment that contain anadromous Pacific Salmon:
- Identify the number of stream miles surveyed for this plan/assessment that have riparian disturbance (e.g., landslide, road, parking lot, vegetation clearing):

7.14. Research, monitoring and evaluation (complete this section only for research, monitoring and evaluation project worksites)

- Is the project directly related to key salmon management questions regarding salmon recovery and/or sustainability of healthy salmon stocks:
- Number of organizations cooperating on the research, monitoring and evaluation project:
- Name of all cooperating organizations:
- Describe the research, monitoring and evaluation findings utilized in adaptive changes to salmon and watershed programs and policies:
- Stream length assessed/monitored for habitat condition, water quality, salmonid abundance, and productivity in accordance with research, monitoring and evaluation or watershed monitoring strategy (.01 miles):

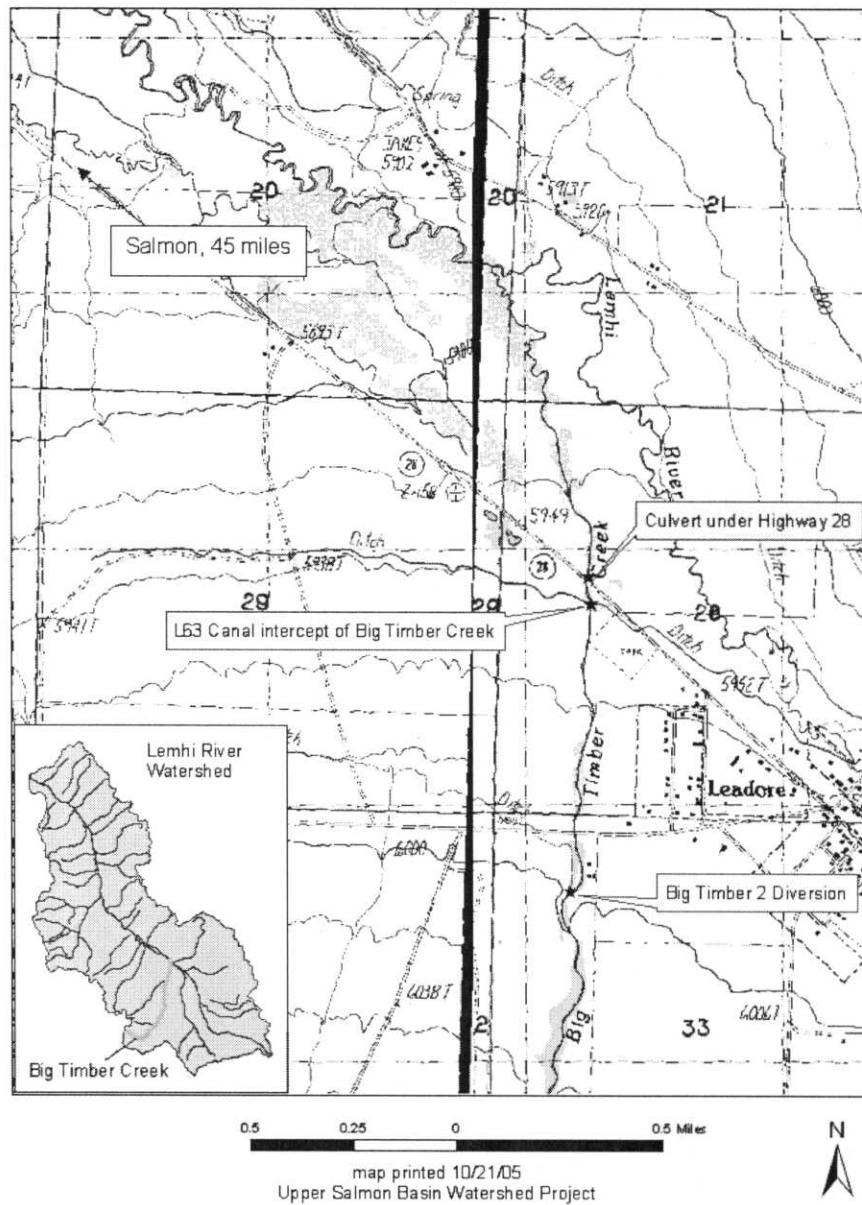
- Identify the number and type of reports that will be prepared by the project on key management or restoration data, information, and needs (e.g., progress reports, monitoring reports or final reports associated with research):

7.15. Public outreach and education (complete this section only for public outreach and education project worksites)

- How many workshops and/or training events will be completed through this project:
- How many people will participate through the workshops and/or training events completed through this project:
- How many schools or other institutions will be reached by this project:
- How many documents will be produced by this project:
- Identify any other types of activities that will be accomplished through this project and how effectiveness of those activities will be measured:

Figure 1: Project Location

Lower Big Timber Creek Project Area



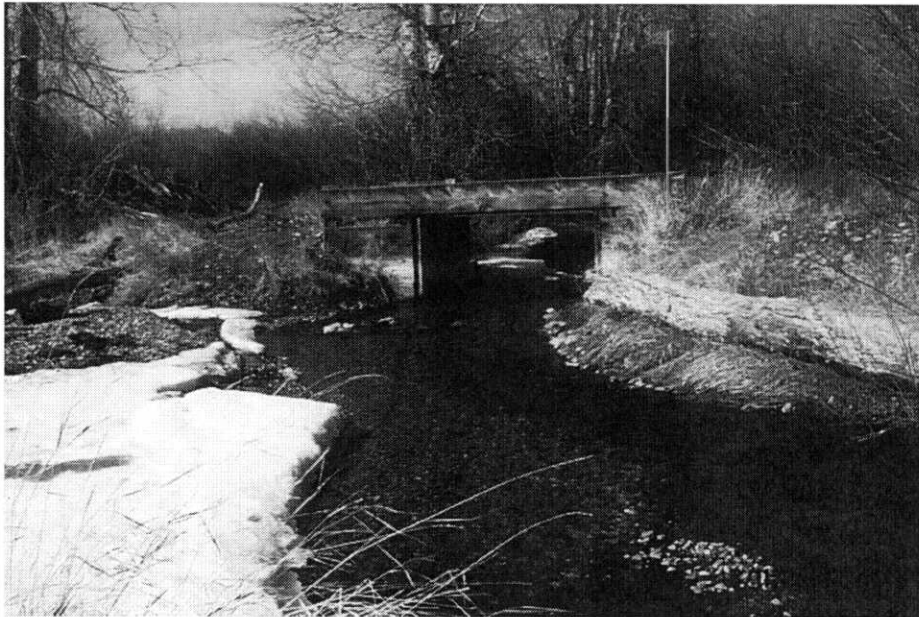


Figure 2: Intercept structure looking downstream. L-63 ditch continues to the left.



Figure 3: Looking upstream, Big Timber Creek to the upper right, L-63 ditch to the upper left.



Figure 4: back water from the L-63 ditch looking downstream 5/16/05.



Figure 5: Intercept structure looking upstream the Big Timber channel 5/16/05.

OFFICE OF SPECIES CONSERVATION

DIRK KEMPTHORNE
Governor

JAMES L. CASWELL
Administrator



P O. Box 83720
Boise, Idaho 83720-0195

300 North Sixth Street
Boise, Idaho 83702

January 3, 2006

Bruce McConnell
Lemhi Soil and Water Conservation District
31 Highway 93 N., Suite D
Salmon, ID 83467

Dear Mr. McConnell:

The members of the Pacific Coast Salmon Recovery Fund (PCSRF) Board have made their decisions concerning the applications for Idaho's portion of Round 2 of the PCSRF FY 2005 appropriation. These decisions were not made in haste or arrived at easily. Our lengthy deliberations were a result of the both the volume and quality of projects submitted.

Our appreciation goes out to all project sponsors. This year's application process raised the bar for all applicants and all applicants are to be commended for the professional manner in which they responded. The funding decisions reflect our commitment to funding projects that can get on the ground quickly and provide the greatest immediate benefit to our anadromous fish populations.

Your project, I-63/Big Timber Creek Siphon (Phase 1-Reconnect) assigned the number of 03505SA, will be funded at \$ 42,900.00. As one of the conditions for receiving your award, both parties must sign two copies of a formalized contract. Said contract has been included within this packet. In addition, please complete and sign both copies of Appendices B and C. We will return a signed original of the contract and appendices to you for your files. Because performance of this contract shall begin as of the date of this letter, said date shall be incorporated into the formal memorialized contract by reference (*See Heading 13, Term.*). Therefore, time for performance will begin on **3 January 2006**.

Attached is a copy of the updated Idaho Pacific Coastal Salmon Recovery Fund FY04-FY05 Grant Guidelines. These guidelines will take you step by step through the requirements for this grant.

You must be a registered vendor with the State of Idaho. If you are not currently listed as a vendor with the State of Idaho, have not done business with the State of Idaho in the last two years, or have had a recent change in your vendor status, please complete the enclosed Substitute W-9 and return it with your contract package. On the Substitute W-9 form, Part I (W-9 Tax Identification) is required. Parts II (Direct Deposit Authorization) and III (Remittance Advice on the Web) are optional.

If you are required to carry Workers' Compensation Insurance by the State of Idaho, you must submit a copy of your Workers' Compensation Insurance Binder to this office.



PSCRF Project # 03505SA

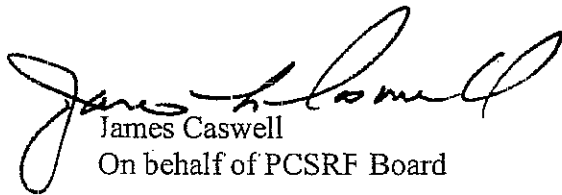
January 3, 2006

Page 2 of 2

Alison Squier, with Ziji Creative Resources, Inc., will contact you in two to three weeks. She will work with you on developing your Project Work Agreement, reporting requirements and related documentation.

Any questions can be referred to Jeff Allen at OSC at (208)-334-2189 x 11 or e-mail him at jallen@osc.idaho.gov. You have our thanks and congratulations.

Sincerely,



James Caswell
On behalf of PCSRF Board

c: Karl Dreher
Steve Huffaker
James Yost
Russell Knight

IDAHO PCSRF PROPOSAL APPLICATION FORM—FY2005

PROJECT NUMBER (will be assigned by OSC):

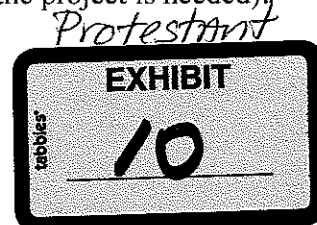
1. Contact Information

- 1.1. Applicant name (name of organization applying for grant): Lemhi Soil Water Conservation District (LSWCD)
- 1.2. Contact person (lead person to be contacted regarding project): Bruce McConnell, LSWCD Chairman
- 1.3. Address: 31 Highway 93 N. Ste D, Salmon, ID 83467
- 1.4. Telephone: (208) 756-3211
- 1.5. Fax: (208) 756-4705
- 1.6. Email: lemhiscd@salmoninternet.com

Technical support provided by: Upper Salmon Basin Watershed Project (USBWP), 31 Highway 93 N., Ste B, Salmon, ID 83467; Ingrid Enschede, project planner; 208-756-6322; ienschede@idahoag.us

2. Project Overview

- 2.1. Project title: Big Timber Creek 2 Diversion Reconstruction (*Phase I Big Timber Creek Reconnect*)
- 2.2. Identify the 3rd field HUC(s) in which project will take place:
 - ☐ Clearwater
 - ☒ Salmon
 - ☐ Little Salmon
 - Other:
- 2.3. PCSRF objective (select one):
 - ☒ Salmon habitat protection and restoration
 - ☐ Watershed and subbasin planning and assessment
 - ☐ Salmon research, monitoring, and evaluation
 - ☐ Public outreach and education
 - ☐ Salmon enhancement (supplementation)
- 2.4. Project description (provide a summary of the project including a brief explanation of current conditions and reasons the project is needed);



Summary: This proposal is being submitted as part of the large scale Big Timber Creek reconnect project in the Lemhi basin. The objective of this project is to functionally reconnect Big Timber Creek with the Lemhi River so that anadromous (Chinook salmon and Steelhead) and resident/fluviat (bull trout, redband trout, westslope cutthroat trout) salmonids have the ability to migrate between these two watersheds. The Idaho Department of Fish and Game has worked with the Upper Salmon Basin Watershed Project (USBWP) Technical Team, and federal, state, and tribal representatives to develop an extensive reconnect plan for the Lemhi basin, a critical component of the Lemhi Conservation Plan, that identifies fish migration barriers and prescribes strategies to remove or modify these barriers. Due to the complexity involved in meeting this reconnect objective, implementation of these strategies on Big Timber Creek is proposed over several project phases. During the first phase (Phase I), strategies will remove or improve structural barriers that currently prevent fish from migrating between the Lemhi River and Big Timber Creek. Three proposals are currently being submitted to the Pacific Coastal Salmon Recovery Fund for FY2005 for this purpose: 1) a proposal submitted by the Idaho Department of Fish and Game (IDFG) to replace a road culvert at State Highway 28, 2) a proposal submitted by the Lemhi Soil and Water Conservation District (LSWCD) to modify the L63/Big Timber Creek intercept, and 3) a second proposal submitted by the LSWCD to replace the existing Big Timber 2 diversion structure with a new fish-passable structure. Implementation of these proposals will occur over the same two year period to more efficiently complete this component of the Big Timber reconnect project. See Figure 1 for project locations.

Planning has begun on subsequent project phases for the reconnection of Big Timber Creek. Phase II will focus on augmenting stream flows below the Big Timber 2 diversion, where flows are impaired due to irrigation withdrawals. Meeting Phase II objectives will include working with the Idaho Department of Water Resources Water Transactions Program and working with Water District 74W to improve water administration through improved or additional headgates and measuring devices. Phase III will address additional barriers higher in the watershed and screening.

Project Description: This proposal will remove one of the three identified fish barriers for the purpose of reconnecting Big Timber Creek with the Lemhi River. The Big Timber 2 diversion structure is currently a fish passage barrier (see Figures 2 and 3). This project will replace the current structure with a fish passable diversion structure that will allow passage of water during high flows. The new structure will also require a new headgate and measuring device. The Idaho Department of Fish and Game will install a fish screen and appropriate bypass canal as part of this project to prevent migrating fish from being entrained.

Contributors. This proposal is to request funding through the Pacific Coast Salmon Recovery Fund for materials and labor to replace the existing diversion structure, cultural inventory, and biological assessment. The Natural Resources Conservation Service will provide the survey, engineering and design, and construction inspection. The Idaho

Department of Fish and Game will contribute the installation of a fish screen at this location.

Rationale: Of the 31 tributaries to the Lemhi River, all but two are functionally disconnected (i.e. fish are unable to migrate through certain tributary segments) from the mainstem during part or all of the irrigation season (generally March 15 – November 15). This usually occurs in the lower reaches of these tributaries, where stream segments are dewatered due to irrigation withdrawals and contain numerous structures that obstruct fish migration. Big Timber Creek is the largest of these disconnected tributaries, and arguably is one of the most important biologically because it would provide suitable spawning and rearing habitat for ESA listed Chinook salmon and Steelhead, and bull trout following successful reconnection. Currently, several structures impede fish migration into Big Timber Creek, regardless of the amount of flow available. Addressing these structural impediments in Phase I is a critical first step for establishing a functional reconnection.

2.5 Identify the benefits that will be derived from this project (particularly, benefits to ESA listed steelhead or salmon):

Benefits: In conjunction with the other Big Timber Phase I projects, replacing the diversion at Big Timber 2 is a necessary first step to remove an impassable barrier for ESA listed juvenile and adult Chinook salmon, steelhead, and bull trout attempting to migrate through the lower reaches of Big Timber Creek. All Phase I projects are critical in order to allow passage as instream flows are augmented in Phase II. This project supports the tributary reconnect objective by allowing upstream and downstream movement of fish without undue stress or delay or risk of entrainment when water is available for instream flow. By providing conditions suitable for migration, Chinook salmon and steelhead populations will likely expand in range and numbers as adults and juveniles pioneer into good quality spawning and rearing habitat. For bull trout, local populations that can “share” individuals (e.g. interact with one another and exchange highly adaptive genetic traits) ensures the long-term viability of this species by reducing extinction risks and increasing trends in abundance. Connected habitats and improved rearing conditions will also expand the distribution of cutthroat trout and rainbow trout, and provide benefits similar to those seen by bull trout.

A secondary benefit of this project is reduced fish mortality into the irrigation canal through the installation of fish screens and appropriate bypass canals. Hence, this project compliments the tributary reconnect objective by preventing fish that have pioneered into newly connected habitats from becoming entrained.

2.6 Summarize the monitoring and evaluation activities associated with this project (who, what, where, when and approximate costs): This project will be included on Upper Salmon Basin Watershed project (USBWP) monitoring schedule and will be monitored by the USBWP or its representatives. Monitoring points will be set up before project implementation. The project will be inspected and certified

when completed if it meets the standards and specifications stated in the contract with the Lemhi Soil and Water Conservation District. Additional photopoint monitoring will occur at 5 year intervals for the life of the landowner contract. Monitoring information is collected according to the USBWP monitoring plan recorded and stored at the USBWP office in Salmon, Idaho.

2.7 Length of stream (.01 miles) and/or number of acres to be monitored as part of project: approximately 25 acres, location of diversion

2.8 Total PCSRF funds requested: \$78,650

2.9 Total non-federal match provided (cash and/or in-kind—please see important attached cost share guidelines): \$30,000

2.10 Anticipated project start date: spring 2006

2.11 Anticipated project end date (project must be completed within two years of PCSRF Board approval): fall 2007

3 Project Deliverables and Estimated Timeline

3.6 Please attach, or list below, major project deliverables along with the estimated timeline for completion of each deliverable.

Task/Milestone (entity identified for the task)	Estimated Timeline for Completion and/or Submission of forms
Project scoping and proposal development (USBWP and Technical Team)	October 2005
Survey (NRCS)	April 2006
Engineering and design (NRCS)	June 2006
Landowner contract (LSWCD)	July 2006
404 permit submitted (irrigator with USBWP support)	August 2006
ESA consultation and cultural compliance (subcontract)	September 2006
NEPA compliance (USBWP)	September 2006
Construction bids	March 2007
Construction and inspection	October 2007
Reporting	November 2007

4 Project Support and Relationship to Watershed/Subbasin Planning

4.6 Describe landowner support for the project: The irrigator has been consulted and supports this project. Project details will be developed in cooperation with both

the landowner and the irrigator.

- 4.7 Assess community support for the project: The community of landowners and irrigators in the Lemhi River watershed have demonstrated on-going support for conservation efforts and habitat improvements in the watershed. This project has also been reviewed and approved by the Lemhi Soil and Water Conservation District board of supervisors and the Upper Salmon Basin Watershed Project Advisory Committee. Both the board and the committee are comprised of community representatives and provide input to proposed projects. Finally, this project supports the tributary reconnect objectives of the Lemhi Agreement. The Lemhi Agreement is the product of a committee that includes Lemhi watershed landowners and water district 74.
- 4.8 Does the project address prioritized objectives and/or strategies identified in the relevant watershed and/or Northwest Power and Conservation Council approved subbasin plan(s)? If so, identify relevant plan(s): This project addresses: 1) prioritized objectives to functionally reconnect habitats and maintain metapopulations of fish, as defined in the 2004 Salmon River Sub-basin Assessment; and 2) the recommendation to reconnect tributaries dewatered for irrigation for the Lemhi River, Hayden Creek to Leadore reach, as listed in the 2002 the USBWP Stream Habitat Inventory Report.
- 4.9 Does the project address limiting factors identified in the relevant watershed and/or subbasin plan(s)? If so, identify relevant plan(s): This project addresses habitat fragmentation as limiting factors for fish, as defined in the 2004 Salmon River Sub-basin Assessment and barrier free passage for adult and juvenile migration, as defined in the 1994 Model Watershed Plan.
- 4.5 Has this project been reviewed, and if applicable ranked against other potential PCSRF projects, by a local technical team, scientific advisory group, or the subbasin working group? Please attach group's findings: The Upper Salmon Basin Watershed Project Technical Team has reviewed and ranked the overall objective of reconnecting Big Timber Creek and supports on the ground projects necessary to accomplish reconnection. Reconnection received a total score of 106 out of 115 possible project ranking criteria points. Scoring is as follows:
- A. Fish species that are expected to benefit from the project: (Possible Score:15) Scored 15.
 - B. Project is expected to protect or increase distribution and numbers of target fish species (Possible Score:20) Scored 20.
 - C. What is the immediacy of threatened impacts at the site? (Possible Score:10) Scored 10.
 - D. Long-term effectiveness of the project (Possible Score:15) Scored 10.
 - E. Project will benefit target fish species by protecting, restoring, or enhancing (Possible Score:15) Scored 11.
 - F. Expected benefits relative to cost (Possible Score:10) Scored 10.
 - G. Cost sharing or in-kind services (Possible Score:10) Scored 10.
 - H. Project compliments existing or proposed projects or land management concerns (Possible Score:10) Scored 10.
 - I. When will project benefits be realized? (Possible Score:10) Scored 10.

5 Permits

5.6 List all government permits known to be needed to complete project: 404 permit

5.7 Landowners granting access for project (please attach access agreements): All work will be coordinated with the landowners involved. The irrigator holds an irrigation/ditch easement.

6 Budget

6.6 Provide a summary of project costs including both PCSRF and non-Federal cash and/or in-kind match (attach additional budget detail if necessary):

Project Budget Budget Categories	PCSRF Portion of Budget		Non-Federal Match (cash)		Non-Federal Match (In-Kind)		TOTAL Project Budget
	Amount	Notes	Amount	Notes	Amount	Notes	
Salary							\$0.00
Fringe							\$0.00
Travel							\$0.00
Supplies							\$0.00
Communications / Utilities							\$0.00
Training							\$0.00
Lease / Rental							\$0.00
Land Acquisition							\$0.00
Capitalized Equipment							\$0.00
Equipment Operations and Maintenance							\$0.00
Construction							\$0.00
Subcontracts	\$71,500.00	diversion reconstruction (\$60,000), BA (\$10,000), cultural (\$1,500)					\$71,500.00
Other			\$30,000.00	fish screen (IDFG)			\$30,000.00
Indirect	\$7,150.00	LSWCD overhead					\$7,150.00
TOTAL	\$78,650.00		\$30,000.00		\$0.00		\$108,650.00

- Total 25% non-Federal cash and/or in-kind match is required.

7 Project Worksite Information

Complete the following information for each on-the-ground worksite where project activities will take place (e.g., if culverts will be removed from two tributaries – complete all of the following project worksite information for each tributary). Some projects may have only one worksite, while others will have many. Complete and attach additional project worksite information pages as necessary.

7.6 Worksite number 1 of 1

7.7 Worksite name: Big Timber 2 Diversion

7.8 Briefly describe, in sequential order, the project activities that will take place at this worksite: Reconstruction of a diversion structure. Steps outlined in 3.1 and will include design and planning, permitting, ESA, and NEPA compliance, contracting for construction, construction with oversight, and final inspection.

7.9 County where worksite is located: Lemhi

7.10 Land ownership at worksite (identify percentage):

Private: 100%

State:

Federal:

7.11 Worksite location:

Is GIS data available for the worksite (e.g., ARC GIS data files):

☒ Yes

☐ No

Provide one of the following:

Latitude: 44.68 N (NAD 83)

Longitude: 113.37 W (NAD 83)

- Or -

Streamname:

Begin Ft:

End Ft:

LLID:

- Or -

Township: 16N

Range: 26E

Section: 33

- Or -

3rd Field HUC:

4th Field HUC: Lemhi

5th Field HUC:

Other location notes:

7.12 Anticipated work start date at this worksite: spring 2006

7.13 Anticipated work end date at this worksite: fall 2007

7.14 List salmonids historically present at this worksite:

7.15 ESUs targeted by actions to be completed at this worksite (select all that apply):

- ☒ Snake River Spring/Summer-run ESU Chinook Salmon
- ☐ Snake River Fall-run ESU Chinook Salmon
- ☒ Snake River Basin ESU Steelhead
- ☐ Snake River ESU Sockeye Salmon

7.16 Limiting factors addressed at this worksite through project actions (check all that apply):

- ☒ Biological processes
- ☒ Channel conditions
- ☐ Estuarine and near-shore habitat
- ☐ Exotic species
- ☐ Fire regime
- ☐ Floodplain conditions
- ☒ Irrigation diversions – screens
- ☐ Lake Habitat
- ☒ Loss of access to spawning and rearing habitat
- ☐ Predator/competitor interactions
- ☐ Riparian conditions
- ☐ Streambed sediment conditions
- ☐ Temperature
- ☐ Trophic interactions
- ☐ Water quality
- ☐ Water quality (toxics)
- ☐ Water quantity

Other:

7.17 Salmon habitat protection and restoration (complete this section only for habitat protection and restoration project worksites). Complete all of the following that apply to this project worksite:

Screening

- Number of screen(s) installed: 1
- Flow rate of water diverted (cfs): approximately 9 cfs
- Quantity of water protected by screens (duty): 9 cfs estimated minimum

Instream Habitat

- Number of miles of streambank stabilization treatment (miles to .01 miles):
- Length of instream habitat treated, except for bank stabilization (miles to .01 miles):

Instream Flow

- Amount of water returned to the stream (cfs):
- Start date of the return flow:
- End date of the return flow:
- # of water flow gauges installed:
- Volume of water leased or purchased (cfs):

Fish Passage Improvement

- Number of fish passage blockages removed or improved: 1
- Length of stream made accessible by the removal of barriers other than culverts (miles to .01 miles): approximately 60 miles of stream in the Big Timber Creek watershed
- Length of stream made accessible for passage of salmon species by the improvement or removal of culverts (miles to .01 miles):

Riparian Habitat

- Length of riparian stream bank treated (miles to .01 miles):
- Amount of riparian area treated except for invasive species treatment (acres):
- Amount of riparian area treated for invasive plant species (acres):

Upland Habitat

- Amount of upland area treated (acres):
- Length of road treated (miles to .01 miles):

Wetland

- Amount of wetland treated (acres):
- Amount of artificial wetland created (acres):
- Amount of wetland area of invasive species proposed for treatment and actually treated (acres):

Land acquisition/easements/leases

- Amount of land, wetland or estuarine area protected with acquisition/easement/lease (acres):
- Length of stream bank protected through land acquisition/easement/lease (miles to .01 miles):

7.18 Watershed and subbasin planning and assessment (complete this section only for watershed and subbasin planning and assessment project worksites)

- Does the project fund operation of watershed councils or provide technical assistance to watershed councils:
- Does the project provide staff support and/or infrastructure costs directly related to assessment or recovery planning:

- Does this project support development of a plan or assessment? If, so what is the name of the plan/assessment:
- Does the plan/assessment identify/prioritize specific factors limiting the production of populations and ESUs or conservation opportunities at the watershed scale:
- Does the plan/assessment incorporate biological goals consistent with State or Tribal conservation plans or Technical Recovery Team recommendations:
- Does the plan/assessment identify actions needed to meet goals:
- Has the plan/assessment been used by a local watershed group to guide restoration actions:
- Identify the number of stream miles surveyed for this plan/assessment that contain anadromous Pacific Salmon:
- Identify the number of stream miles surveyed for this plan/assessment that have riparian disturbance (e.g., landslide, road, parking lot, vegetation clearing):

7.19 Research, monitoring and evaluation (complete this section only for research, monitoring and evaluation project worksites)

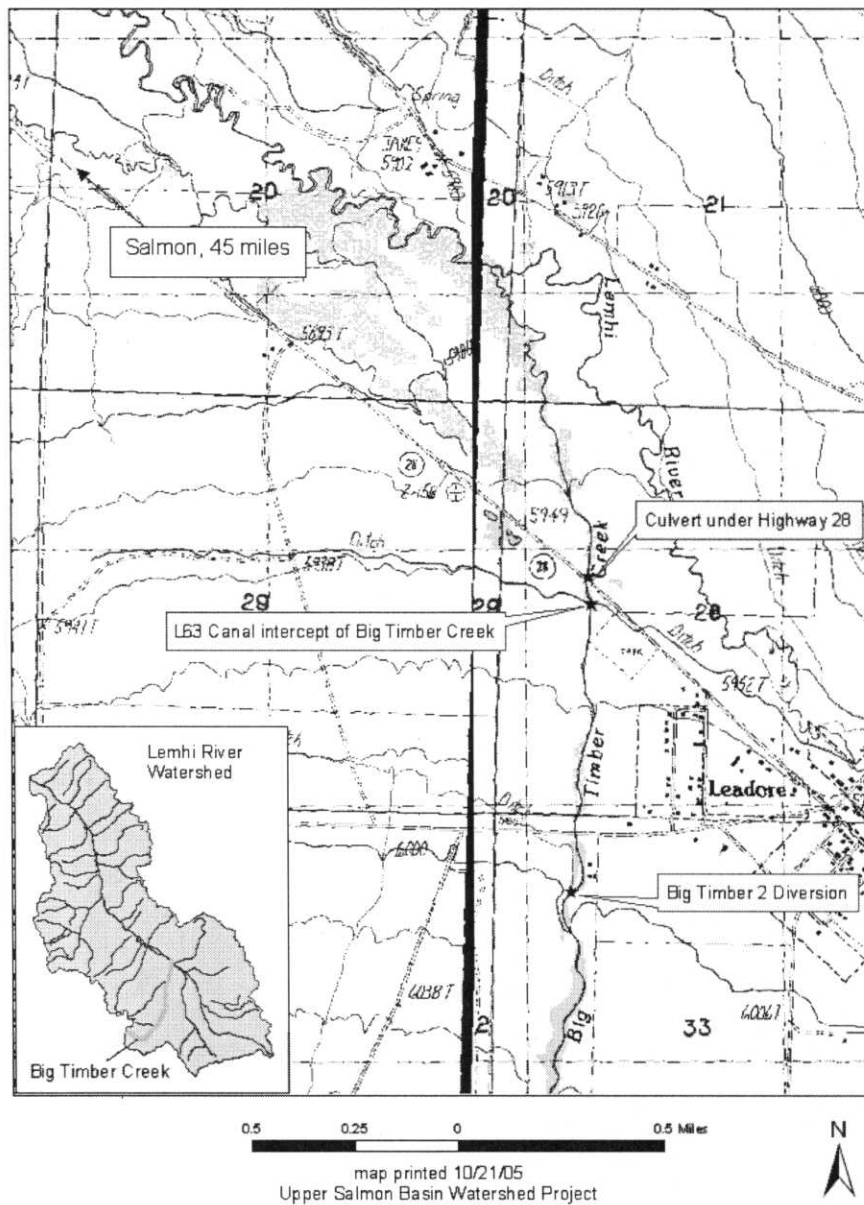
- Is the project directly related to key salmon management questions regarding salmon recovery and/or sustainability of healthy salmon stocks:
- Number of organizations cooperating on the research, monitoring and evaluation project:
- Name of all cooperating organizations:
- Describe the research, monitoring and evaluation findings utilize in adaptive changes to salmon and watershed programs and policies:
- Stream length assessed/monitoring for habitat condition, water quality, salmonid abundance, and productivity in accordance with research, monitoring and evaluation or watershed monitoring strategy (.01 miles):
- Identify the number and type of reports that will be prepared by the project on key management or restoration data, information, and needs (e.g., progress reports, monitoring reports or final reports associated with research):

7.20 Public outreach and education (complete this section only for public outreach and education project worksites)

- How many workshops and/or training events will be completed through this project:
- How many people will participate through the workshops and/or training events completed through this project:
- How many schools or other institutions will be reached by this project:
- How many documents will be produced by this project:
- Identify any other types of activities that will be accomplished through this project and how effectiveness of those activities will be measured:

Figure 1: Project Location

Lower Big Timber Creek Project Area



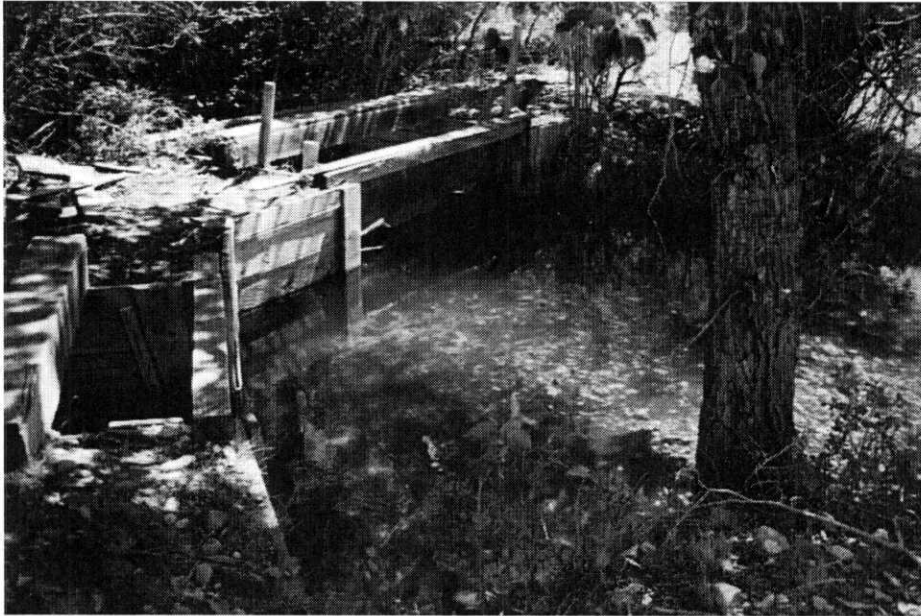


Figure 2: Big Timber 2 Diversion Structure, ditch and headgate to the left.



Figure 3: Big Timber 2 Diversion from below.