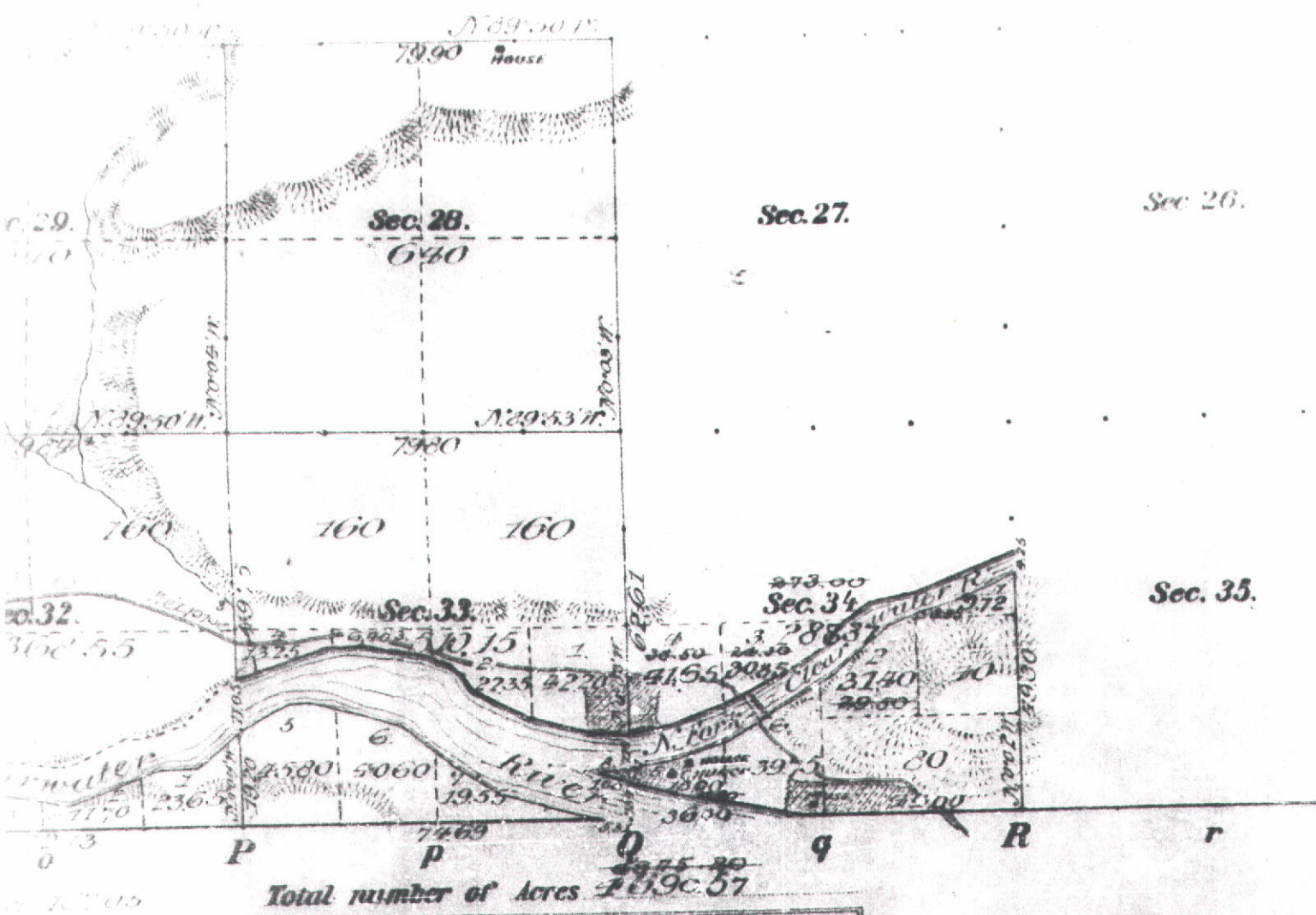




Amount of Surveys	When Surveyed			Mean Declination
	M.	Ch.	Lk.	
15	26	69	July 7 th 1872	21° 30' E.
6	50	79	" 4 th 1873	"

The above M.
Hoise
notes of the survey
Surveyor
Hoise & Co.

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State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 86-07318

Priority: 07/30/1992

Minimum Instream Flow: 5,750.00 CFS

This is to certify, that STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
STATEHOUSE MAIL
PO BOX 83720
BOISE ID 837200098

has applied for a minimum stream flow in:

CLEARWATER RIVER

Tributary: SNAKE RIVER

and a permit is APPROVED as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>MINIMUM FLOW</u>
MINIMUM INSTREAM FLOW	11/01 to 7/31	5,750.00 CFS
MINIMUM INSTREAM FLOW	8/01 to 10/31	4,350.00 CFS

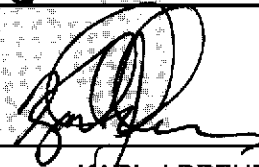
LOCATION OF POINT(S) OF DIVERSION:

Ending of Reach L13 NW¼SW¼SW¼ Sec. 7, Twp 36N, Rge 03W, B.M. NEZ PERCE County
Beginning of Reach L8 NW¼SE¼SE¼ Sec. 33, Twp 37N, Rge 01E, B.M. CLEARWATER County

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **March 1, 2006**.
2. See conditions of approval listed in Final Order dated December 21, 2001.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 7th day of January, 2002.



KARL J DREHER, Director

Scan from
this point down.

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**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION FOR)
PERMIT NOS. 85-07583, 86-07318, AND)
86-07345 (CLEARWATER RIVER), TO)
ESTABLISH MINIMUM STREAMFLOWS IN)
THE NAME OF THE IDAHO WATER)
RESOURCE BOARD)
_____)

FINAL ORDER

On December 13, 1995, the hearing officer for the Idaho Department of Water Resources ("Department") issued a Recommended Order approving the above captioned applications for permit to appropriate water, numbered in Department records as 85-07583, 86-07318, and 86-07345. The applications filed by the Idaho Water Resource Board ("Board", "IWRB" or "Applicant") provide for minimum stream flows in the Clearwater River, located in Clearwater and Nez Perce Counties. No one filed a petition for reconsideration, a brief, or exceptions to the Recommended Order.

Based on the hearing record, evidence taken, and the Director's understanding of the law, the Director issues the following findings of fact, conclusions of law, and final order.

FINDINGS OF FACT

1. Applications for Permit Nos. 85-07583, 86-07318, and 86-07345, as deemed amended by a letter from the Board described in Finding No. 16, propose establishment of minimum stream flows as follows --

85-07583

Rate of Flow:	3,515 cubic feet per second ("cfs") from December 1 through July 31; 1,836 cfs from August 1 through November 30.
Location:	Beginning at the confluence of the South Fork Clearwater River and the Middle Fork Clearwater River in Lot 7 (SW $\frac{1}{4}$ NE $\frac{1}{4}$), Section 5, T32N, R4E, B.M. and extending downstream approximately 34 miles to the confluence with North Fork Clearwater River in Lot 8 (NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$), Section 33, T37N, R1E, B.M.
Purpose:	Instream use for the protection of fish and wildlife habitat, aquatic life, and recreational uses.
Priority Date:	July 30, 1992.

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86-07318

Rate of Flow: 5,750 cfs from November 1 through July 31; 4,350 cfs from August 1 through October 31.

Location: Beginning at the confluence with the North Fork Clearwater River in Lot 8 (NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$), Section 33, T37N, R1E, B.M. and extending downstream approximately 27 miles to the confluence with the Potlatch River in Lot 13 (NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$), Section 7, T36N, R3W, B.M.

Purpose: Instream use for the protection of fish and wildlife habitat, aquatic life, and recreational uses.

Priority Date: July 30, 1992.

86-07345

Rate of Flow: 5,910 cfs from November 1 through July 31; 4,498 cfs from August 1 through October 31.

Location: Beginning at the confluence with the Potlatch River in Lot 13 (NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$), Section 7, T36N, R3W, B.M. and extending downstream approximately 13 miles to the beginning of the backwater from the reservoir behind Lower Granite Dam in Lots 1 and 2 (SW $\frac{1}{4}$ NE $\frac{1}{4}$), Section 32, T36N, R5W, B.M.

Purpose: Instream use for the protection of fish and wildlife habitat, aquatic life, and recreational uses.

Priority Date: July 30, 1992.

2. The Board requested that the Idaho Department of Fish & Game ("Fish & Game") provide specific data pertaining to the Clearwater River to determine the flow rate or rates needed for a minimum stream flow to satisfy biological and aquatic needs.

3. While Fish & Game has not specifically studied the Clearwater River to determine the minimum stream flow required to protect biological and aquatic needs, a study conducted by Donald L. Tennant ("Tennant"), a fisheries biologist employed by the U. S. Fish and Wildlife Service, concluded that based on analyzing several western streams, the percentage of the average annual flow in the stream is related to the quality of the fish and aquatic habitat and the riparian health of the stream. Tennant's study was submitted as Applicant's Exhibit No. 2. Table 1 at the top of page 3 of Exhibit No. 2 rates the stream habitat and environmental health quality at various percentages of the mean annual flow.

4. The table on page 3 of Tennant's report assigns percentages of the mean annual flow for various condition ratings. The percentage of the mean annual flow necessary to maintain a particular condition rating in the stream is different for the October through March

period than it is for the April through September period. During April through September, flows less than 40 percent of the mean annual flow would result in degradation of the fisheries and aquatic condition of the stream. In contrast, during the period of October through March, a flow equal to 40 percent of the mean annual flow is classified as an outstanding flow. A flow equal to 60 percent to 100 percent of the mean annual flow during October through March is classified as an optimum flow.

5. All three minimum stream flow applications seek minimum stream flows equal to 40 percent of the mean annual flow, except when the average monthly flow does not equal or exceed 40 percent of the mean annual flow. For all three minimum stream flows, this period occurs during the months of August through November. During the period when the average monthly flow does not equal or exceed 40 percent of the mean annual flow, the Board seeks minimum stream flows equal to the lowest average monthly flows.

6. Flow data for the Clearwater River is summarized on pages 12 through 23 of Applicant's Exhibit No. 1.

7. Flow data for the upstream reach proposed by Application for Permit No. 85-07583 are depicted on pages 20 through 23 of Applicant's Exhibit No. 1. The graphs are derived from data gathered at a gaging station located near Orofino, Idaho, for the period from 1930 through 1990. Forty percent of the mean annual flow at the Orofino gaging station is 3,515 cfs. During the month of September, however, the average monthly flow is 1,836 cfs. For the months of August through November, the application seeks this lesser flow rate. For the period of December through July, 3,515 cfs is maintainable approximately 70 percent of the time. For the period of August through November, a flow of 1,836 cfs is maintainable approximately 50 percent of the time.

8. Flow data for the reach of the Clearwater River from its confluence with the North Fork Clearwater River to its confluence with the Potlatch River, proposed by Application for Permit No. 86-07318, are depicted on pages 16 through 19 of Applicant's Exhibit No. 1. The graphs are derived from data gathered at a gaging station located near Peck, Idaho. Forty percent of the mean annual flow is 5,750 cfs. During the month of October, however, the average monthly flow is only 4,350 cfs. For the months of August through October, the application seeks this lesser flow rate. During the period of November through July, a flow of 5,750 cfs is maintainable approximately 80 percent of the time. During the period of August through October, a flow of 4,350 cfs is maintainable approximately 70 percent of the time.

9. Flow data for the reach of the Clearwater River from its confluence with the Potlatch River downstream to the beginning of the backwater from the reservoir behind Lower Granite Dam, proposed by Application for Permit No. 86-07345 as deemed amended, are represented by pages 12 through 15 of Applicant's Exhibit No. 1. The graphs are derived from data gathered at a gaging station located near Spaulding, Idaho. Forty percent of the mean annual flow is 5,910 cfs. During the month of October, however, the average monthly flow is only 4,498 cfs. As a result, the Board seeks a flow of 4,498 cfs for the months of August through October. During the period of November through July, a flow of 5,910 cfs is maintainable approximately 84 percent of the time. During the period of August through October, a flow of 4,498 cfs is maintainable approximately 60 percent of the time.

10. Fish and Game presented testimony regarding the variety of wildlife and fish along the Clearwater River. The Clearwater River provides habitat for abundant wildlife including waterfowl, songbirds, eagles, osprey, otter, beavers, deer, and moose. In addition rafters, jet boaters, swimmers, and anglers use the river. One of the river's biggest attractions is its steelhead trout. Steelhead up to 20 pounds are common in the river. The Clearwater River is also an important migration corridor not only for steelhead but also for adult and juvenile

Chinook salmon, and the Clearwater River provides spawning and rearing habitat for fall Chinook salmon, which is listed as an endangered species.

11. Applicant's Exhibit Nos. 5, 6, and 7 list junior priority ground water and surface water rights and applications within the Department's administrative basins 84, 85, and 86, with points of diversion located upstream or within the minimum stream flow reaches as originally proposed. One hundred forty-one licenses, permits, and applications bearing priorities later than July 30, 1992, authorize or propose diversions in excess of 99 cfs. Several of the filings propose or authorize diversion for municipal or domestic purposes. Several water rights with later priorities also authorize diversion for industrial, irrigation, fish propagation, recreation, aesthetics, stockwater and wildlife purposes.

12. The most significant filing, is Permit No. 86-07324, held by the City of Lewiston, which authorizes the diversion of 18.60 cfs from the Clearwater River from the lower portion of the minimum stream flow reach originally proposed by Application for Permit No. 86-07345. This permit bears a priority date later than the minimum stream flow.

13. The City of Lewiston and Potlatch Corporation both expressed concern about the minimum stream flow as originally proposed by Application for Permit No. 86-07345. A letter from Don L. Roberts, attorney for the City of Lewiston, submitted to the Department at the hearing, details the City's position and sharply criticizes the minimum stream flows as originally proposed.

14. The letter states that the minimum flows sought exceed the average total flow of the Clearwater River during the months of August, September, and October. Mr. Roberts bases his conclusion on historical records, including those for the time period prior to the construction of Dworshak Dam. Information presented by the Board witness accounted for only the years following the construction of Dworshak Dam and the resulting release of additional water during late summer and fall. The information presented by the Board is more credible regarding the flows that are expected to be available in the future during late summer and fall.

15. The letter from the City of Lewiston raises legitimate concerns about the "impact on the City's ability to grow and to attract new businesses and/or industries." These same concerns were shared by Potlatch Corporation. In addition, there are other communities upstream along the Clearwater River, which may also need additional water for future growth.

16. At the hearing, the parties discussed possible resolution of these issues by terminating the minimum stream flow reach originally proposed by Application for Permit No. 86-07345 at the beginning of the backwater from the reservoir behind Lower Granite Dam. Available evidence does not establish whether the backwater is above or below the points of diversion owned or used by the City of Lewiston and Potlatch Corporation. The backwater of Lower Granite Reservoir is defined by an agreement between the Department and the Idaho Department of Lands as beginning in the SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 32, T36N, R5W, B.M. This description coincides with Lots 1 and 6 (SW $\frac{1}{4}$ NE $\frac{1}{4}$), Section 32, T36N, R5W, B.M. The Board requested by letter dated November 28, 1995, that the downstream terminus end at this location, effectively amending its original application.

17. The letter from the Board dated November 28, 1995, also requested that any approvals of the three minimum stream flows be conditioned as follows:

This minimum stream flow shall be subject to [subordinate to] future domestic, municipal, commercial and industrial development from the Clearwater River and its tributaries, including ground water, for use within the Clearwater River Basin.

The parties were given a chance to comment regarding the letter.

18. Substantial parcels of privately-owned land parallels the Clearwater River through the proposed minimum stream flow reaches, although the surrounding terrain will not allow large-scale development of these lands.

CONCLUSIONS OF LAW

1. Section 42-1501, Idaho Code, provides that stream flow preservation for the protection of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, navigation, and water quality, when made pursuant to the minimum stream flow statutes, is in the public interest and is declared to be a beneficial use of such water.

2. Section 42-1503, Idaho Code, sets forth the criteria to be considered by the Department in reviewing an application for minimum stream flow:

Upon the conclusion of the hearings and completion of any investigation conducted by the director, he shall enter his findings in writing approving the application in full, or in part, or upon conditions or rejecting said application. Approval of any such application must be based upon the findings that such appropriation of minimum stream flow:

- (a) will not interfere with any vested right, permit, or water right application with priority of right earlier than the date of receipt in the office of the Director of a complete application for appropriation of minimum stream flow filed under provisions of this act;
- (b) is in the public, as opposed to the private interest;
- (c) is necessary for the preservation of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, navigation, transportation, or water quality of the stream;
- (d) is the minimum flow or lake level and not the ideal or most desirable flow or lake level; and
- (e) is capable of being maintained as evidenced by records of stream flows and water levels and the existing or future establishment of necessary gaging stations and bench marks.

3. Tennant's method is not an exact method for determining a minimum stream flow, but provides a reasonable estimate of the minimum flow necessary to sustain stream habitat values.

4. There is development potential for lands located upstream of the proposed minimum stream flows, particularly in the two lower reaches proposed by Applications for Permit Nos. 86-07318 and 86-07345.

5. The downstream end of the minimum stream flow proposed by Application for Permit No. 86-07345 should end at the backwater from the reservoir behind Lower Granite Dam.

Diversion from the Lower Granite Reservoir pool will not conflict with the minimum stream flow.

6. The proposed minimum stream flows should not be used to prevent reasonable and necessary appropriations for municipal purposes, particularly for culinary use, stockwater use, and irrigation of residential lots.

7. Permit No. 86-07324, held by the City of Lewiston, and other permits presently approved for municipal and domestic uses, are of sufficient importance that the development of the permits should be allowed to potentially diminish the proposed minimum stream flows.

8. The Board, as the applicant, requested that if approved the minimum stream flows be subordinate to diversions for domestic, municipal, commercial, and industrial development. The minimum stream flows should be subordinate to these uses as they are defined by the Department in its water appropriation rules.

9. The proposed minimum stream flows should not be used to restrict reasonable development of ground water.

10. The proposed minimum stream flows are necessary for the preservation of fish and wildlife habitat, aquatic life, and recreational uses.

11. The proposed minimum stream flows are the minimum flows and not the ideal or most desirable flows.

12. The proposed minimum stream flows are capable of being maintained as evidenced by flow records.

13. The proposed minimum stream flows will not interfere with any vested water right, permit, or water right application with date of priority earlier than the minimum stream flows.

14. The proposed minimum stream flows are in the public interest.

ORDER

IT IS HEREBY ORDERED that Application for Permit Nos. 85-07583, 86-07318, and 86-07345 are **APPROVED** subject to the following conditions:

1. Approval of Application for Permit Nos. 85-07583, 86-07318, and 86-07345 for minimum stream flows shall not prevent approval of applications for consumptive uses from ground water if the wells are located and constructed to prevent an immediate impact on the river, as determined by the Director.
2. The approved minimum stream flows shall be subordinate to future domestic, stockwater, municipal, commercial, and industrial development from the Clearwater River and its tributaries, including ground water, for use within the Clearwater River Basin where the domestic and stockwater uses are within the limitations of Section 42-111, Idaho Code.
3. The Board, upon receiving a request or upon its own initiative, may petition the Director for an amendment to the permit or license. The petition must set forth any significant change in circumstances and evidence of the public interest supporting the proposed amendment. The Director will notify the general public and specific persons or known interested parties of the proposed change, and conduct a hearing for the purpose of determining whether the permit or subsequent license should be amended in the public interest. The burden of proof at the hearing shall be upon the persons or parties seeking the amendment to establish that the amendment of the permit or license would be in the public interest. An amendment cannot increase the flow rate.
4. Use of water under Permit Nos. 85-07583, 86-07318, and 86-07345 shall recognize and allow the continued beneficial diversion of water under any existing water right established by diversion and application to beneficial use or by an application, permit, or license on file or issued by the Director under the provisions of Chapter 2, Title 42, Idaho Code, with a priority earlier than July 30, 1992.
5. Use of water under these permits shall be non-consumptive.
6. Upon further finding and order of the Director that gaging stations are required to maintain the approved minimum flows on the Clearwater River, such measuring devices shall be permanently installed and maintained by the Board as specified by the Director.
7. Proof of instream beneficial use of the minimum stream flow may be submitted immediately upon legislative approval of the permit, but must be submitted no later than March 1, 2006.

IT IS FURTHER ORDERED that the reach of the Clearwater River for Permit No. 85-07583 is described as follows:

Beginning at the confluence of the South Fork Clearwater and the Middle Fork Clearwater River in Lot 7 (SW $\frac{1}{4}$ NE $\frac{1}{4}$), Section 5, T32N, R4E, B.M. and extending downstream approximately 34 miles to the confluence with North Fork Clearwater River in Lot 8 (NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$), Section 33, T37N, R1E, B.M.

IT IS FURTHER ORDERED that the reach of the Clearwater River for Permit No. 86-07318 is described as follows:

Beginning at the confluence with the North Fork Clearwater River in Lot 8 (NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$), Section 33, T37N, R1E and extending downstream approximately 27 miles to the confluence with the Potlatch River in Lot 13 (NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$), Section 7, T36N, R3W, B.M.

IT IS FURTHER ORDERED that the reach of the Clearwater River for Permit No. 86-07345 is described as follows:

Beginning at the confluence with the Potlatch River in Lot 13, (NW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$), Section 7, T36N, R3W, B.M. and extending downstream approximately 13 miles to the beginning of backwater from the reservoir behind Lower Granite Dam in Lots 1 and 6 (SW $\frac{1}{4}$ NE $\frac{1}{4}$), Section 32, T36N, R5W, B.M.

Dated this 21st day of December, 2001.



KARL J. DREHER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of December, 2001, the above and foregoing **FINAL ORDER** was served upon the following by placing a copy of the same in the United States Mail, postage prepaid and properly addressed to the following:

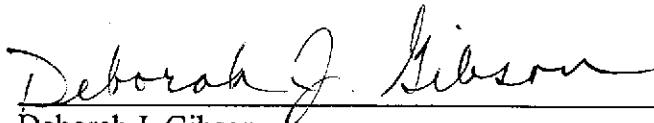
City of Lewiston
Attn: Don L. Roberts
P.O. Box 617
Lewiston, ID 83501

Potlatch Corporation
Attn: William Davis
805 Mill Rd.
Lewiston, ID 83501

Idaho Dept. of Fish & Game
Attn: Cindy Robertson
600 S. Walnut
Boise, ID 83707

Idaho Water Resource Board
Attn: Joe Jordan, Chairman
1301 N. Orchard St.
Boise, ID 83706

Port of Lewiston
Attn: David Doeringfeld
1626 6th Ave. North
Lewiston, ID 83501



Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NOS. 85-07583, 86-07318 AND)
86-07345 (CLEARWATER RIVER) TO)
ESTABLISH A MINIMUM STREAM FLOW)
IN THE NAME OF THE IDAHO WATER)
RESOURCE BOARD)

RECOMMENDED
ORDER

On October 4, 1995, the Idaho Department of Water Resources (Department) conducted a hearing to determine whether three applications for permit to appropriate water, numbered in Department records as 85-07583, 86-07318, and 86-07345, should be approved or rejected. The applications filed by the Idaho Water Resource Board (Board) seek to establish minimum stream flows in the Clearwater River, located in Clearwater and Nez Perce counties.

Notice of the applications for minimum stream flow and public hearing was printed locally in the Clearwater Tribune and statewide in newspapers published in Lewiston, Boise, Twin Falls and Idaho Falls.

Any person wanting to appear as a formal party was required to file a notice of appearance with the Department at least five (5) days prior to the hearing. The Idaho Department of Fish & Game (Fish & Game) filed a notice with the Department. In addition, at the hearing, the City of Lewiston, Potlatch Corporation, and the Port of Lewiston verbally sought permission to participate as full parties. After a discussion of the petitioners concerns, the hearing officer granted full party status to the City of Lewiston, Potlatch Corporation, and the Port of Lewiston.

The evidence having been taken, and the record having closed, the hearing officer, as a representative of the Director of the Department of Water Resources, recommends the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. Application for permit nos. 85-07583, 86-07318, and 86-07345 propose establishment of minimum stream flows as follows:

RECOMMENDED ORDER, CLEARWATER RIVER
PAGE 1

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85-07583

Rate of Flow 3,515 cubic feet per second (cfs) from December 1 through July 31; 1,836 cfs from August 1 through November 30.

Location Beginning at the confluence with the South Fork Clearwater and the Middle Fork Clearwater River in Lot 7 (SE1/4NE1/4), S5, T32N, R4E and extending downstream approximately 34 miles to the confluence with North Fork Clearwater River in Lot 8 (SE1/4SE1/4), S33, T37N, R1E.

Purpose Instream use for the protection of fish and wildlife habitat, aquatic life, and recreational values.

Priority Date July 30, 1992

86-07318

Rate of Flow 5,750 cfs from November 1 through July 31; 4,350 cfs from August 1 through October 31.

Location Beginning at the confluence with the North Fork Clearwater River in Lot 8 (SE1/4SE1/4), S33, T37N, R1E and extending downstream approximately 27 miles to the confluence with the Potlatch River in Lot 13 (NW1/4SW1/4SW1/4), S7, T36N, R3W.

Purpose Instream use for the protection of fish and wildlife habitat, aquatic life, and recreational values.

Priority Date July 30, 1992

86-07345

Rate of Flow 5,910 cfs from November 1 through July 31; 4498 cfs from August 1 through October 31.

Location Beginning at the confluence with the of the Potlatch River in Lot 13 (NW1/4SW1/4SW1/4), S7, T36N, R3W and extending downstream approximately 15 miles to the

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confluence of the Snake River and the Clearwater River in Lot 2 (NE1/4) of S36; and Lot 3 (SW1/4) S25, all in T36N, R6W.

Purpose Instream use for the protection of fish and wildlife habitat, aquatic life, and recreational values.

Priority Date July 30, 1992

2. The Board asked Fish & Game for specific data regarding the Clearwater River to determine the flow rate or rates needed for a minimum stream flow to satisfy biological and aquatic needs.

3. While Fish & Game has not specifically studied the Clearwater River to determine the minimum stream flow required to protect biological and aquatic needs, a study conducted by Donald L. Tennant, a fisheries biologist employed by the U.S. Fish and Wildlife Service, concluded, after analyzing several western streams, that the percentage of the average annual flow in the stream is related to the quality of the fish and aquatic habitat and the riparian health of the stream. Tennant's study was submitted as WRB exhibit no. 2. Table 1 at the top of page 3 of exhibit no. 2 rates the stream habitat and environmental health quality of various percentages of the mean annual flow.

4. The table on page 3 of Tennant's report assigns percentages of the mean annual flow for various condition ratings. The percentage of the mean annual flow necessary to maintain a particular condition rating in the stream is different for the October through March period than it is for the April through September period. During April through September, anything less than 40% of the mean annual flow would result in degradation of the fisheries and aquatic condition of the stream. In contrast, during the period of October through March, a flow of 40% of the mean annual flow is classified as an outstanding flow. A flow of 60% to 100% of the mean annual flow during October through March is classified as an optimum flow.

5. All three minimum stream flow applications seek a minimum stream flow of 40% of the mean annual flow, except when the average monthly flow does not equal or exceed 40% of the mean annual flow. For all three minimum stream flows, this period occurs during the months of August through November. During the period when the average monthly flow does not equal or exceed 40% of the mean annual flow, the Board requested the lowest average monthly flow.

6. Flow data for the Clearwater River is summarized on pages 12 through 23 of WRB exhibit no. 1.

7. Flow data for the upstream reach proposed by application for permit no. 85-07583 are depicted on pages 20 through 23 of WRB exhibit no. 1. The graphs are derived from data gathered at a measuring gauge located near Orofino from 1930 through 1990. Forty percent of the mean annual flow at the Orofino gage is 3,515 cfs. During the month of September, however, the average monthly flow is 1,836 cfs. For the months of August through November, the application seeks this lesser flow rate. For the period of December through July, 3,515 cfs is maintainable approximately 70% of the time. For the period of August through November, a flow of 1,836 cfs is maintainable approximately 50% of the time.

8. Flow data for the reach from the confluence with the North Fork to the confluence with the Potlatch River, sought by application for permit no. 86-07318, are depicted on pages 16 through 19 of WRB exhibit no. 1. The graphs are derived from data gathered at a measuring gauge located near Peck. Forty percent of the mean annual flow is 5,750 cfs. During the month of October, however, the average monthly flow is only 4,350 cfs. During the period of November through July, a flow of 5,750 cfs is maintainable approximately 80% of the time. During the period of August 1 through October 31, a flow of 4,350 cfs is maintainable approximately 70% of the time.

9. Flow data for the reach from confluence of the Potlatch River downstream to the confluence with the Clearwater River, sought by application for permit no. 86-07345, are represented by pages 12 through 15 of WRB Exhibit #1. The graphs are derived from data gathered at a measuring gauge located near Spaulding, Idaho. Forty percent of the mean annual flow is 5,910 cfs. During the month of October, however, the average monthly flow is only 4,498 cfs. As a result, the Board sought a flow of 4,498 cfs for the months of August, September and October. During the period of November through July, a flow of 5,910 cfs is maintainable approximately 84% of the time. During the period of August through October, a flow of 4,498 cfs is maintainable approximately 60% of the time.

10. Fish and Game presented testimony regarding the variety of wildlife and fish along the Clearwater River. It is home for abundant wildlife including waterfowl, song birds, eagles, osprey, otter, beavers, deer and moose. In addition rafters, jet boaters, swimmers and anglers use the river. Perhaps the river's biggest attraction is its steelhead trout. Steelhead up to 20 pounds are common in the river. The Clearwater River is an important migration corridor for both adult and juvenile chinook

salmon and steelhead trout and is a home for fall chinook salmon which is listed as an endangered species.

11. WRB exhibits no. 5, no. 6, and no. 7 list ground water and surface water rights with points of diversion located hydrologically upstream or within the minimum stream flow reaches. One hundred seven permits and applications bearing priorities later than July 30, 1992, authorize or propose diversions in excess of 20 cfs. Several of the filings propose or authorize diversion for municipal or domestic purposes. Several water rights with later priorities also authorize diversion for industrial, irrigation, stockwater and wildlife purposes.

12. The most significant filing, is permit no. 86-07324, owned by the City of Lewiston, which authorizes the diversion of 18.60 cfs from the Clearwater River from the lower portion of the minimum stream flow reach proposed by application no. 86-07345. This permit bears a priority date later than the minimum stream flow.

13. The City of Lewiston and Potlatch Corporation both expressed concern about the minimum stream flow proposed by application for permit no. 86-07345. A letter from Don L. Roberts, attorney for the City of Lewiston, submitted to the Department at the hearing, details the City's position, and sharply criticizes the proposed minimum flows.

14. The letter states that the minimum flows sought exceed the average total flow of the Clearwater River during the months of August, September, and October. Mr. Roberts bases his conclusion on the historical records, including those recorded prior to the construction of Dworshak Dam. Information presented by the Board witness accounted for only the years following the construction of Dworshak Dam and additional water released during late summer and fall. The information presented by the Board is more credible evidence regarding what flows may be available in the future during these periods.

15. The letter from the City of Lewiston, raises legitimate concerns about the "impact on the City's ability to grow and to attract new businesses and/or industries." These same concerns were shared by Potlatch Corporation. In addition, there are other communities upstream along the Clearwater River which may also need additional water for future growth for their municipalities.

16. At the hearing, the parties discussed possible resolution of these issues by terminating the minimum stream flow reach proposed by application no. 86-07345 at the back water caused by Lower Granite Dam. The evidence available to the

RECOMMENDED ORDER, CLEARWATER RIVER

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MICHAEL J. ...

SEP 22 2003

hearing officer does not establish whether the back water is above or below the points of diversion owned by the City of Lewiston and Potlatch Corporation. The back water of Lower Granite Reservoir is defined by an agreement between the Department and the Idaho Department of Lands as starting in the SW1/4NE1/4, S32, T36N, R5W. This description coincides with Lots 1 & 6 (SW1/4NE1/4), S32, T36N, R5W. The Board requested by letter dated November 28, 1995, that the downstream terminus end at this location.

17. The Board letter dated November 28, 1995 also requested that any approvals of the three minimum streamflows be conditioned as follows:

This minimum stream flow shall be subject to future domestic, municipal, commercial and industrial development from the Clearwater River and its tributaries, including groundwater, for use within the Clearwater River Basin.

The parties were given a chance to comment regarding the letter.

18. Substantial private land parallels the Clearwater River through the minimum stream flow reaches, although the surrounding terrain will not allow large scale development of these lands.

CONCLUSIONS OF LAW

1. Section 42-1501, Idaho Code, provides that stream flow preservation for the protection of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, navigation, and water quality, when made pursuant to the minimum stream flow statutes, is in the public interest and is declared to be a beneficial use of such water.

2. Idaho Code § 42-1503 sets forth the criteria to be considered by the Department in reviewing an application for minimum stream flow:

Upon the conclusion of the hearings and completion of any investigation conducted by the director, he shall enter his findings in writing approving the application in full, or in part, or upon conditions or rejecting said application. Approval of any such application must be based upon the findings that such appropriation of minimum stream flow:

- (a) will not interfere with any vested right, permit, or water right application with priority of right earlier than the date of receipt in the office of the Director of a complete application for appropriation of minimum stream flow filed under

RECOMMENDED ORDER, CLEARWATER RIVER

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provisions of this act;

- (b) is in the public, as opposed to the private interest;
- (c) is necessary for the preservation of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, navigation, transportation, or water quality of the stream;
- (d) is the minimum flow or lake level and not the ideal or most desirable flow of lake level; and
- (e) is capable of being maintained as evidenced by records of stream flows and water levels and the existing or future establishment of necessary gauging stations and bench marks.

3. Tennant's method is not an exact method for determining a minimum stream flow, but is an estimate of the minimum flow necessary to sustain stream habitat values.

4. There is development potential for lands located upstream hydrologically of these minimum stream flows, particularly in the two lower reaches proposed by applications 86-07318 and 86-07345.

5. The downstream end of the minimum stream flow for right no. 86-07345 should end at the back water of Lower Granite Reservoir. Diversion from the Lower Granite Reservoir pool will not conflict with the minimum stream flow.

6. These minimum stream flows should not prevent reasonable and necessary appropriations for municipal purposes, particularly for culinary use, stockwater use and irrigation of residential lots.

7. Permit no. 86-07324, owned by the City of Lewiston, and other permits presently approved for municipal and domestic use, are of sufficient importance that the development of the permits should be allowed to diminish the minimum stream flow.

8. The Board, as the applicant, requested that the minimum stream flow be subordinate to diversions for domestic, municipal, commercial and industrial development. The minimum stream flows should be subordinate to these uses as they are defined by the Department in its water appropriation rules and regulations.

9. These minimum stream flows should not restrict reasonable development of ground water.

10. These minimum stream flows are in the public interest.
11. The minimum stream flows sought are necessary for the preservation of fish and wildlife habitat, aquatic life and recreational values.
12. The minimum stream flows sought are the minimum flows and not the ideal or most desirable flows.
13. The minimum stream flows sought are capable of being maintained as evidenced by flow records.
14. The minimum stream flows sought will not interfere with any vested water right, permit or water right application with date of priority earlier than the minimum stream flows.

ORDER

IT IS HEREBY ORDERED that application for permit nos. 85-07583, 86-07318, 86-07345 are APPROVED subject to the following conditions:

1. This minimum stream flow shall be subject to future domestic and stockwater development from the Clearwater River and its tributaries including groundwater for use within the Clearwater River Basin where such domestic and stockwater use is within the limitations of § 42-111, Idaho Code.
2. Approval of the minimum flow shall not prevent approval of applications for consumptive uses from groundwater if the wells are located and constructed to prevent an immediate impact on the river, as determined by the Director.
3. This minimum stream flow shall be subject to future domestic, municipal, commercial and industrial development from the Clearwater River and its tributaries, including groundwater, for use within the Clearwater River Basin.
4. Specifically because of the generalization inherent in the application of the Tennant method, the Director retains jurisdiction, as described herein, to review and amend any and all parameters of this permit and any subsequent license. The Board, upon receiving a request, or upon its own initiative, may petition the Director for an amendment to the permit or license. The petition must set forth any significant change in circumstances and evidence of the public interest supporting the proposed amendment. The Director will notify the general public and specific persons or known interested parties of the proposed change, and conduct a hearing for the purpose of determining whether the permit or subsequent license should be amended in the public interest. The burden of proof at the hearing shall be

RECOMMENDED ORDER, CLEARWATER RIVER

PAGE 8

MOORE

SEP 22 2013

upon the persons or parties seeking the amendment to establish that the amendment of the permit or license would be in the public interest. An amendment cannot increase the flow rate.

5. Use of water under this permit shall recognize and allow the continued beneficial diversion of water under any prior existing water right established by diversion and application to beneficial use or by an application, permit, or license on file or issued by the Director under the provisions of Chapter 2, Title 42, Idaho Code, with a priority of water right date earlier than July 30, 1992, for application for permit nos. 85-07583, 86-07318, and 86-07345.

6. Use of water under these permits shall be nonconsumptive.

7. Upon further finding and order of the Director that gauging stations are required to maintain the approved minimum flows on the Clearwater River, such measuring devices shall be permanently installed and maintained as specified by the Director.

8. Proof of instream beneficial use of the minimum stream flow may be submitted immediately upon legislative approval of the permit, but shall be submitted no later than March 1, 2000.

IT IS FURTHER ORDERED that the reach of the Clearwater River for water right no. 85-07583 is described as follows:

Beginning at the confluence with the South Fork Clearwater and the Middle Fork Clearwater River in Lot 7 (SW1/4NE1/4), S5, T32N, R4E and extending downstream approximately 34 miles to the confluence with North Fork Clearwater River in Lot 8 (SE1/4SE1/4), S33, T37N, R1E.

IT IS FURTHER ORDERED that the reach of the Clearwater River for water right no. 86-07318 is described as follows:

Beginning at the confluence with the North Fork Clearwater River in Lot 8 (SE1/4SE1/4), S33, T37N, R1E and extending downstream approximately 27 miles to the confluence with the Potlatch River in Lot 13 (NW1/4SW1/4SW1/4), S7, T36N, R3W.

IT IS FURTHER ORDERED that the reach of the Clearwater River for water right no. 86-07345 is described as follows:

Beginning at the confluence with the Potlatch River in Lot 13, (NW1/4SW1/4SW1/4), S7, T36N, R3W and extending downstream approximately 13 miles to the backwater of Lower Granite Dam Reservoir, located in Lots 1 & 6 (SW1/4NE1/4), S32, T36N, R5W.

RECOMMENDED ORDER, CLEARWATER RIVER

PAGE 9

MICHAEL

SEP 22 2003

Dated this 13th day of December, 1995.

Gary Spackman
Gary Spackman
Hearing Officer

CERTIFICATE OF MAILING

I do hereby certify that on this 13th day of December, 1995, I mailed a true and correct copy, postage prepaid, of the foregoing **RECOMMENDED ORDER** to the following:

City of Lewiston
Attn: Don L Roberts
PO Box 617
Lewiston ID 83501

Idaho Department of Fish & Game
Attn: Cindy Robertson
600 S Walnut
Boise ID 83707

Port of Lewiston
Attn: David Doeringfeld
1626 6th Ave N
Lewiston ID 83501

Potlatch Corporation
Attn: William Davis
805 Mill Rd
Lewiston ID 83501

Idaho Water Resource Board
Attn: Clarence Parr
Statehouse Mail

Kris Rhodes
Kris Rhodes

MAILED

SEP 22 2003

RECEIVED

JUL 30 1992

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

Department of Water Resources To appropriate the public waters of the State of Idaho

1. Name of applicant Idaho Water Resource Board Phone 327-7910

Post office address Statehouse Mail, Boise, ID 83720

2. Source of water supply Clearwater River which is a tributary of Snake River
Instream flow from the confluence with the North Fork Clearwater River in the

3. Location of point of diversion is NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of SE $\frac{1}{4}$, Govt. Lot _____

Sec. 33 Township 37 N Range 1 E B.M. Clearwater County; additional
downstream to the confluence with the Potlatch River in the NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of SW $\frac{1}{4}$, Sec. 7,
points of diversion if any: T 36 N, R 3 W, B.M., Nez Perce County.

4. Water will be used for the following purposes:

Amount 5750 cfs for instream purposes from Nov. 1 to July 31 (both dates inclusive)
(cfs or acre-feet per annum)

Amount 4350 cfs for instream purposes from Aug. 1 to Oct. 31 (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

5. Total quantity to be appropriated is (a) 5750 and/or (b) _____
cubic feet per second acre feet per annum

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. _____

None.

b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total

reservoir capacity _____ acre-feet; period of year when water will be diverted to storage:

_____ to _____ inclusive.

c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.

d. Is ground water with a temperature of greater than 90°F being sought? _____

7. Time required for the completion of the works and application of the water to the proposed beneficial use is

5 years (minimum 1 year).

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SEP 22 2001

12. Remarks: The affected reach is approximately 27 miles long.

11. a. Who owns the property at the point of diversion? _____
b. Who owns the land to be irrigated or place of use? _____
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. _____

10. Describe any other water rights used for the same purposes as described above.

Total number of acres to be irrigated -

[illegible]

ponding place of use below. See instructions for standard symbols.

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of the use (example: *D for Domestic*) in the corresponding

9. Description of place of use:

d. Domestic; show number of households.

e. Other; describe fully. A minimum stream flow for the protection of fish and wildlife habitat, aquatic life, and recreational values.

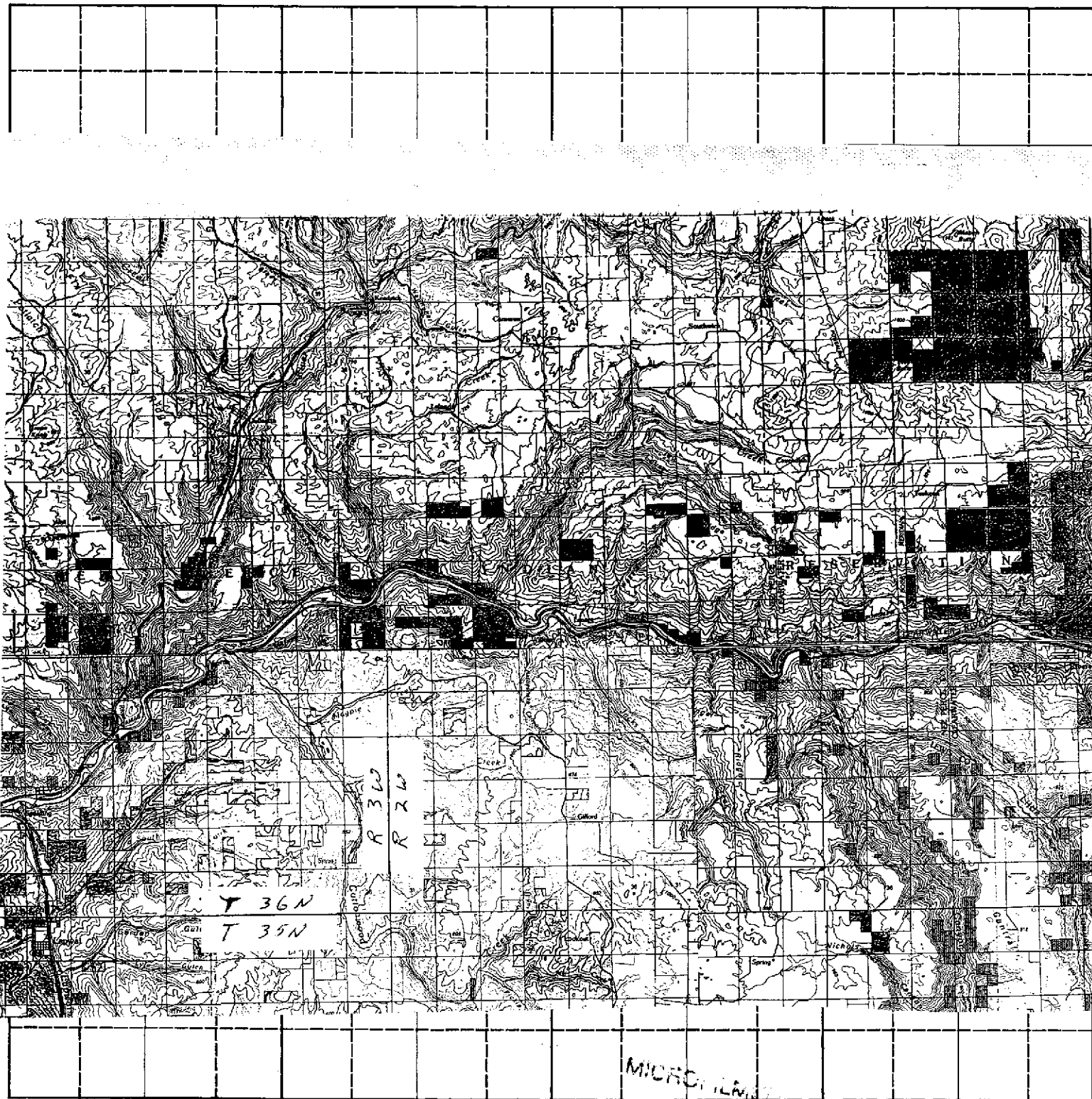
a. Hydropower; show total feet of head and proposed capacity in KW. _____

b. Stockwatering; list number and kind of livestock. _____

c. Municipal; show name of municipality. _____

8. Description of proposed uses (if irrigation only, go to item 9):

13. Map of proposed project: show clearly the proposed point of diversion, place of use, section number, township and range number.



Scale: 2 inches equal 1 mile.

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

William S. Platts
(Applicant)

APR 1 1992
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e. Other:

- d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.
- c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

_____, 19____.

b. Proof of construction of works and application of water to beneficial use shall be submitted on or before

a. SUBJECT TO ALL PRIOR WATER RIGHTS.

1. Approval of said application is subject to the following limitations and conditions:

Idaho No. _____, and said application is hereby _____.

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

Received by _____ Date 7-30-92 Time 8:33 AM
Fee \$ _____ Received by _____ # _____ Date _____
Publication prepared by _____ Date _____ Published in _____
Publication approved _____ Date _____

ATTACHMENT TO APPLICATION FOR PERMIT
TO APPROPRIATE A MINIMUM STREAM FLOW

14. Provide evidence that the appropriation will not interfere with any vested water right, permit, or water right application of earlier date of priority.

The appropriation is junior to rights, permits, or applications with earlier dates of priority. As a
nonconsumptive, instream use this appropriation can have no impact on any water user downstream
except to help insure water availability.

15. Provide evidence to show that the appropriation would be in the public interest as opposed to private interest.

The appropriation will be held by the Water Resource Board rather than a private entity. The
appropriated water will preserve river values for the benefit and enjoyment of all citizens of the state.

16. Provide evidence or justification that the appropriation is necessary for the purposes shown in Item 4.

The appropriation is for 40% of the mean annual flow for the period of November through July. The
request for the rest of the year is for the average monthly flow for October, the lowest month for the
period of record. This flow is close to 30% of the mean annual flow. These flows will provide an
"excellent" to "fair" minimum flow for fish and wildlife habitat, aquatic life, and recreational values.

17. Provide evidence that the minimum flow or lake level is minimum and not the ideal or most desirable flow or lake level.

The requested flows are based on the Montana Method which utilized field studies to identify riverine
conditions at varying flow rates. The optimum flow for fish, wildlife, recreation and related
environmental resources ranges from 60% to 100% of the mean annual flow value.

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SEP 2 2 2007

18. Provide evidence that the flow or lake level requested is capable of being maintained as evidenced by records of stream flows and water levels.

A flow of 5750 cfs is less ~~than~~^{the} average monthly flow for the requested period of use. The flow of 4350 cfs is the lowest average monthly flow of the year for the period of record.

19. Describe the location of existing gaging stations that can be used in the administration of this appropriation.

The USGS gage near Peck is located 3 miles downstream from the confluence with the North Fork Clearwater River.

20. Do you intend to install additional gaging stations? Describe the location.

No.

21. List any additional remarks related to this minimum stream flow application.

The flow request provides a "good" minimum flow for April to July, a "fair" flow for August to September, an "excellent" flow for October, and an "outstanding" flow for November to March. The flow in this reach is influenced and somewhat controlled by releases from Dworshak Reservoir. Future changes in release patterns from Dworshak, due to fish needs or other reasons, could impact water availability for this and other uses. Following consultation with the Division of Environmental Quality and Departments of Fish & Game and Parks & Recreation, the Water Resource Board may amend this application to more accurately reflect the necessary minimum flow based on new data provided by the above or other agencies.

MICHOYAN

SEP 22 AM

Table 1

Instream Flow Regimens for Fish, Wildlife, Recreation and Related
Environmental Resources

Narrative Description of Flows ^{1/}	Fisheries Classification ^{2/}	Recommended Base Flow Regimens	
		Oct.-Mar.	: Apr.-Sept.
Flushing or Maximum	--	200% of the average flow ^{3/}	
Optimum Range	--	60%-100% of the average flow ^{4/}	
Outstanding	I	40%	60%
Excellent	II	30%	50%
Good	III	20%	40%
Fair or Degrading	IV	10%	30%
Poor or Minimum	--	10%	10%
Severe Degradation	--	10% of average flow to zero flow	

^{1/}Most appropriate description of the general condition of the streamflow for all the parameters listed in the title of this paper.

^{2/}Roman numeral ratings for Fisheries Classification Systems like those developed for the States of Idaho, Montana, West Virginia, Wyoming, and the Delaware River Basin Comprehensive Study by the U.S. Fish and Wildlife Service. ^{5, 11, 14, 19, 26} The base flow regimens outlined above in columns 3 and 4 to maintain the respective designated classes, are judged to be as reliable and valid as the classification systems themselves. These recommended flows generally apply very well to both cold and warm water streams. Regimens should be reversed or altered to fit different hydrologic cycles, like the Salmonid streams on the West Coast, or to favor species like the fall spawning brown trout. Flows may be refined further by specifically matching them to vital periods of the life cycle of fishes, like migration, spawning, incubation, growth, etc. Use of the Montana Method on spring creeks or streams that have a very uniform flow year-around may provide unprecedented low-flow regimens at the minimum or base flow levels.

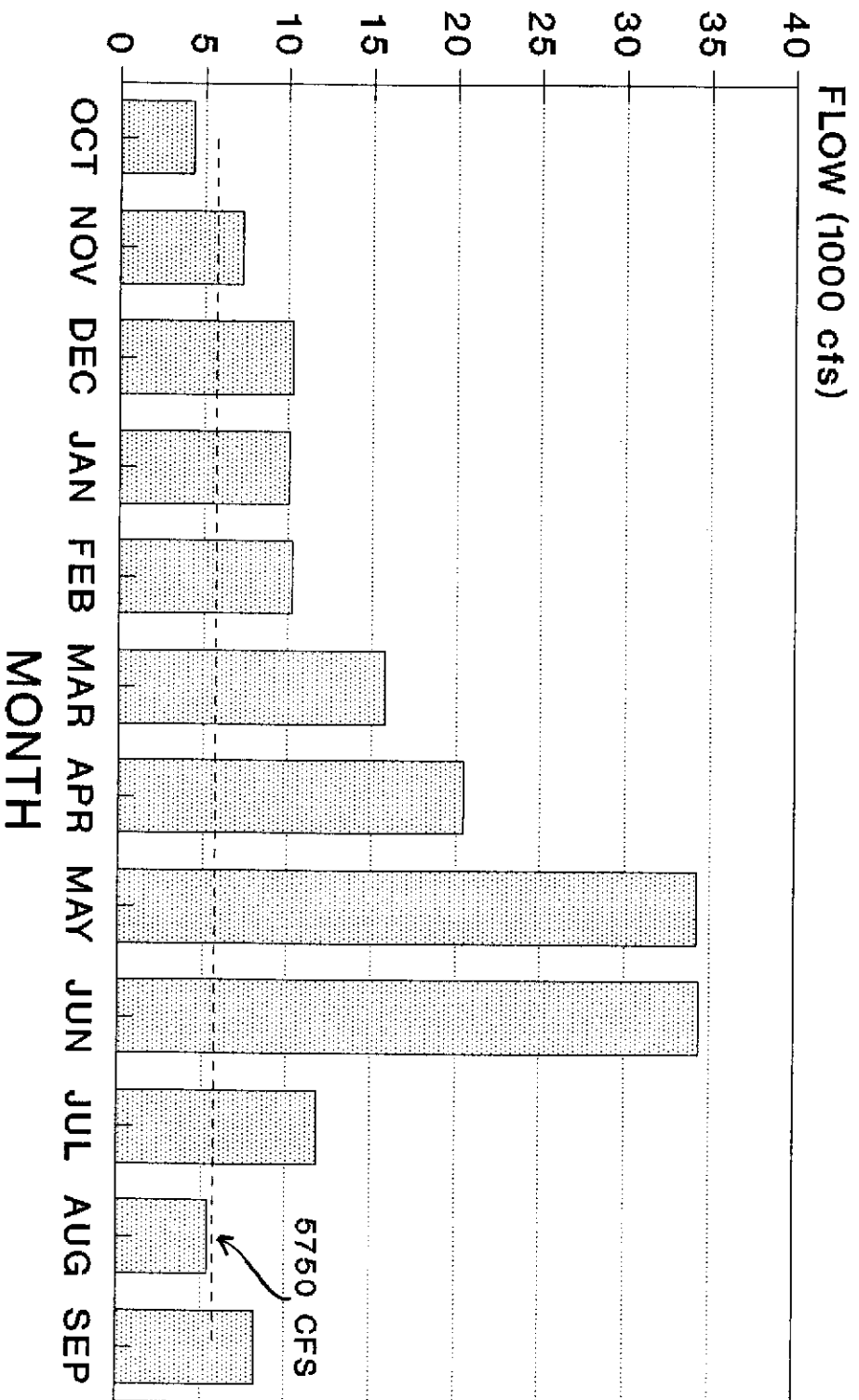
^{3/}The average flow will usually fill the active stream channel approximately 1/3 full or to the line of permanent terrestrial vegetation, while 3 times the average flow will often fill the active channel approximately to the point of spilling out on the first bench of the flood plain. ¹⁵ Twice the average flow will produce effective depths and velocities within the stream channel for moving silt, sediment and other bed load material without doing extensive damage to the banks and riparian vegetation. Twice the average flow is a good maximum flow recommendation as well as a good flushing flow (Fig. 1).

^{4/}Optimum is a nebulous term; however, this flow range covers that definition best for all the parameters of this paper collectively.

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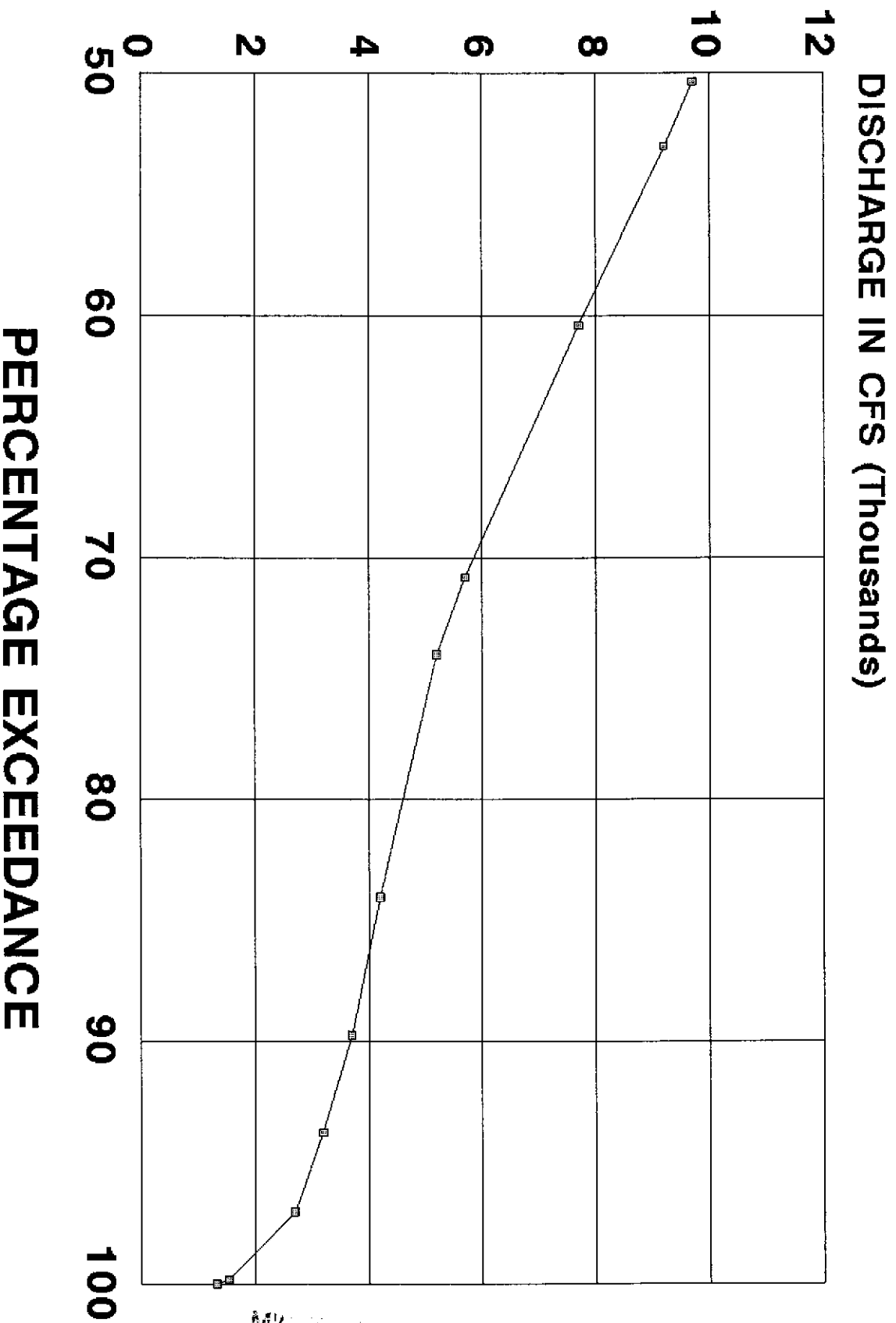
3 SEP 22 2003

CLEARWATER RIVER AT PECK (1972-90)



MICROMETER
SEP 22 1989

FLOW DURATION CURVE CLEARWATER RIVER AT PECK



PERIOD 1972-90

MICHAEL L. LARSEN
SEP 22 2008

FLOW DURATION TABLE FOR STATION 13341050

FLOW	PERCENT = / +	FLOW	PERCENT = / +	FLOW	PERCENT = / +	FLOW	PERCENT = / +	FLOW	PERCENT = / +
22700.	19.71	21700.	20.68	20700.	21.71	19700.	23.04	18700.	24.41
17200.	27.16	16700.	28.13	16200.	28.98	15700.	30.00	15200.	30.68
14200.	32.06	13700.	32.95	13200.	34.25	12700.	35.79	12200.	38.32
11200.	43.60	10700.	45.96	10200.	48.26	9700.	50.36	9200.	53.03
8200.	58.00	7700.	60.40	7200.	62.92	6700.	65.73	6200.	68.03
5200.	74.02	4700.	78.62	4200.	84.03	3700.	89.74	3200.	93.77
2600.	97.44	2500.	98.04	2400.	98.47	2300.	98.73	2200.	98.98
2000.	99.29	1900.	99.42	1800.	99.58	1700.	99.69	1680.	99.69
1640.	99.72	1620.	99.74	1600.	99.74	1580.	99.75	1560.	99.77
1520.	99.84	1500.	99.87	1480.	99.90	1460.	99.91	1440.	99.94
1400.	99.97	1380.	99.97	1360.	99.97	1340.	99.99	1320.	100.00
1280.	100.00	1260.	100.00	1240.	100.00	1220.	100.00	1200.	100.00
1160.	100.00	1140.	100.00	1120.	100.00	1100.	100.00		
								17700.	26.23
								14700.	31.32
								11700.	40.95
								8700.	55.55
								5700.	70.83
								2700.	97.05
								2100.	99.18
								1600.	99.69
								1540.	99.81
								1420.	99.96
								1300.	100.00
								1180.	100.00

MICHAEL J. DILL
SEP 22 1993

ANALYSIS SHEET FOR PROOF OF BENEFICIAL USE

Permit No.: 86-7318

Reviewed By: dgibson

Date: February 9, 2006

	<u>Yes</u>	<u>No</u>		<u>Yes</u>	<u>No</u>
Proof received timely?	X		Drilling permit required?		X
License examination fee required?		X	Drilling permit No.:		
Appropriate fee submitted?	X		Drilling permit upgrade needed?		
Receipt No.:			Well driller's report filed?		
Additional Amount Due:			Measuring device required?		X
Name and address same as permit?	X		Measuring device installed?		
Are the water uses correct?	X		Measure device waiver requested?		

Priority Calculation

Date proof received		01/25/2006
Date proof due	-	03/01/2006
Lapse notice sent	-	
No. of days late	=	0
Holiday allowance	+	
Priority date	+	07/30/1992
New priority date	=	07/30/1992

Deficiencies of Actions Items

Acknowledge proof.

MEMORANDUM

To: Files 86-07318, 86-07345 and 85-07583

From: L. Glen Saxton *LS*

RE: **STATUS OF MINIMUM STREAM FLOW PERMITS 86-07318, 86-07345 AND 85-07583**

Date: March 22, 2002

On January 4, 2002, the Recommended Order issued by the Department in connection with the three (3) minimum streamflow water rights on the Clearwater Rivers became a Final Order since none of the parties filed a petition for reconsideration of the Recommended Order.

As required in Section 42-1503, Idaho Code, the Department submitted the applications to the legislature in January 2002 by the fifth legislative day of the session. The legislature did not adopt a concurrent resolution affirmatively acting on the applications during the legislative session, but the applications are considered approved, since the legislature failed to act prior to the end of the session.

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SEP 22 2000

*Scan from
this point down.*



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

January 28, 2002

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
STATEHOUSE MAIL
PO BOX 83720
BOISE ID 83720-0098

RE: Order In the Matter of Permits 85-7583, 86-7318, 86-7345

Dear Permit Holder(s):

Enclosed please find the permit documents issued in connection with the final orders of December 21, 2001 in reference to the above listed information.

If you have any questions regarding this matter, please call me at 327-7940.

Sincerely,


for Jeff Peppersack, Manager
Water Right Permits Section

JP:klt

Enclosures

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SEP 22 2003



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

January 7, 2002

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

The Honorable Bruce Newcomb
Speaker of the House
Statehouse Mail
Boise, ID 83720

*See 85-07583
for Enclosures.*

**RE: Applications for Permit Nos. 74-14993, 85-07583, ~~86-07318~~ and 86-07345 to
Establish Minimum Stream Flows on the Lemhi River and Clearwater River**

Dear Speaker Newcomb:

Enclosed for your consideration is a copy of the above referenced applications for permit along with a preliminary order for the Lemhi River application and a final order for the Clearwater River applications that conclude administrative processing of these applications. The 2001 legislature enacted Sections 42-1506 and 42-1765A, Idaho Code, which authorized the minimum stream flow appropriation and set up a local committee to facilitate operation of a water supply bank on the Lemhi River. The preliminary order for the Lemhi River application has become a final order without further department action, since no objections to the order were filed. The final order for the Clearwater River applications was issued on December 21, 2001. No one has sought changes to the order by filing a petition for reconsideration that was due on or before January 4, 2002.

As you know, Section 42-1503, Idaho Code, requires that the applications be reviewed by the legislature. As defined by statute, an application "(i) shall not become finally effective until affirmatively acted upon by concurrent resolution of the Idaho Legislature; or (ii) except that if the legislature fails to act prior to the end of the regular session to which the application was submitted, the application shall be considered approved."

This letter, together with its enclosures, constitutes submittal of the application to the legislature for approval. Please advise if you would like further information or would like to discuss the nature of the applications.

Sincerely,

Karl J. Dreher
Director

Enclosures
c: Mike Nugent

MICROFILMED
SEP 22 2003



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

January 7, 2002

The Honorable Robert L. Geddes
Senate Pro Tem
Statehouse Mail
Boise, ID 83720

**RE: Applications for Permit Nos. 74-14993, 85-07583, 86-07318 and 86-07345 to
Establish Minimum Stream Flows on the Lemhi River and Clearwater River**

Dear Senator Geddes:

Enclosed for your consideration is a copy of the above referenced applications for permit along with a preliminary order for the Lemhi River application and a final order for the Clearwater River applications that conclude administrative processing of these applications. The 2001 legislature enacted Sections 42-1506 and 42-1765A, Idaho Code, which authorized the minimum stream flow appropriation and set up a local committee to facilitate operation of a water supply bank on the Lemhi River. The preliminary order for the Lemhi River application has become a final order without further department action, since no objections to the order were filed. The final order for the Clearwater River applications was issued on December 21, 2001. No one has sought changes to the order by filing a petition for reconsideration that was due on or before January 4, 2002.

As you know, Section 42-1503, Idaho Code, requires that the applications be reviewed by the legislature. As defined by statute, an application "(i) shall not become finally effective until affirmatively acted upon by concurrent resolution of the Idaho Legislature; or (ii) except that if the legislature fails to act prior to the end of the regular session to which the application was submitted, the application shall be considered approved."

This letter, together with its enclosures, constitutes submittal of the application to the legislature for approval. Please advise if you would like further information or would like to discuss the nature of the applications.

Sincerely,

Karl J. Dreher
Director

Enclosures

c: Mike Nugent

MICROMETER

SEP 22 2002

MEMORANDUM

DATE: July 8, 1997

TO: Water Right Files 85-07583, 86-07318, and 86-07345

FROM: Shelley W. Keen *SK*

RE: Status of Applications

Although a recommended order has been issued for the Applications for Permit listed above, a final order is required before these applications can be considered to have been approved.

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SEP 22 2003



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

December 29, 1995

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

Mr. Erv Ballou
1301 N. Orchard
Boise, Idaho 83706

Re: Lower Granite Reservoir Pool - Clearwater River

Dear Erv:

Several weeks ago we discussed the location of the boundary between the Lower Granite Dam Reservoir Pool and the free flowing Clearwater River. You indicated that the boundary set by Idaho Department of Lands and Water Resources for administration of the Stream Channel Alteration Act is the SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 32, Township 36 North, Range 5 West, B.M. This is approximately 2.5 miles upstream of the confluence of the Clearwater and Snake rivers at Lewiston.

Gary Spackman, as hearing officer and as recommended by the Idaho Water Resource Board, used this location as the proposed downstream end of minimum stream flow water right application no. 86-07384 in the Recommended Order. Mr. William Davis of Potlatch Corporation suggested that we change our pool/free-flowing boundary to match that used by the Corps of Engineers. Mr. Ed Kim of the Corps of Engineers informed me that they consider the pool to extend up the Clearwater River to river mile 4.6. Mr. Kim could not translate this to a Section, Township, and Range description. I reviewed the Corps maps and the Quadrangle maps and it appears mile 4.6 would be in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 27, Township 36 North, Range 5 West, B.M. This is approximately 2 miles upstream of the location used by Lands and Water Resources.

To avoid confusion, it would be better for the State agencies and the Corps to use the same location for defining the pool/free-flowing boundary. Please let me know what you decide to do in this matter.

If you need additional information, contact me.

Sincerely,

John Beal
Water Planning Section

cc: William F. Davis, Potlatch Corp.
Ed Kim, Corps of Engineers
Will Pitman, Idaho Department of Lands
Gary Spackman, Water Resources
Bob Haynes, Water Resources
Ken Knoblock, Water Resources

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State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

December 13, 1995

RE: In the matter of Application for Permit Nos. 85-07583, 86-07318 and 86-07345 (Clearwater River) to establish a Minimum Stream Flow in the name of the Idaho Water Resource Board

Dear Interested Party:

The accompanying order is a "recommended order" issued by the department pursuant to Section 67-5243, Idaho Code. The provisions of this order will not become effective until the Director issues a final order in this matter.

Each party to these proceedings who appeared at the hearing may file a petition for reconsideration, briefs and exceptions to the recommended order and may request oral argument before the Director of the department as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a recommended order with the hearing officer issuing the order within fourteen (14) days of the service date of the order. The hearing officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code.

EXCEPTIONS AND BRIEFS

Within twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of a recommended order and may file briefs in support of the party's position on any issue in the proceeding. Written briefs in support of or taking exceptions to the recommended order shall be filed with the Director. Opposing parties shall have twenty-one (21) days to respond.

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ORAL ARGUMENT

The Director may schedule oral argument in the matter before issuing a final order. Oral argument on exceptions to a recommended order shall be heard at the discretion of the Director. If oral arguments are to be heard, the Director will, within a reasonable time, notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the recommended order shall be served on all other parties to these proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The agency may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

APPEAL OF FINAL ORDER TO DISTRICT COURT

A party aggrieved by a final order of the Director is entitled to judicial review in compliance with sections 67-5271 through 67-5279, Idaho Code.

Sincerely,



L. GLEN SAXTON
Chief, Water Allocation Bureau

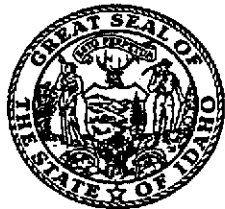
Enclosure

cc: IDWR - Region

Pg 2

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SEP 22 2003



STATE OF IDAHO

IDAHO WATER RESOURCE BOARD

Clarence Parr
Chairman
Heyburn

November 28, 1995

F. Dave Rydalch
Vice Chairman
St. Anthony

Mr. Gary Spackman
Idaho Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706

J. David Erickson
Secretary
Buhl

Re: Minimum Stream Flows on the Clearwater River

Joseph L. Jordan
Fruitvale

Dear Mr. Spackman:

Erval Rainey
Sandpoint

The Idaho Water Resource Board is requesting that you include the following condition on the permit approvals for the three minimum stream flow applications on the main Clearwater River (rights 85-07583, 86-07319 and 86-07345).

Jerry R. Rigby
Rexburg

- This minimum stream flow shall be subject to future domestic, municipal, commercial and industrial development from the Clearwater and its tributaries, including groundwater, for use within the Clearwater River Basin.

Robert Graham
Bonners Ferry

Terry T. Uhling
Boise

This condition is intended to satisfy the needs and concerns of the City of Lewiston, Potlatch Corporation and the Clearwater Coalition.

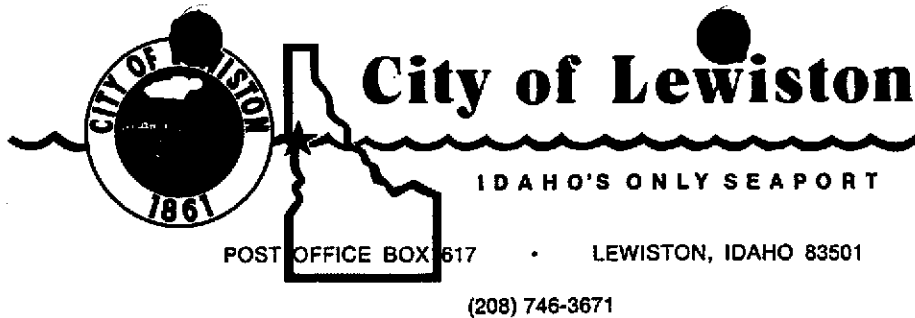
The Board further recommends that the downstream terminus of the downstream minimum stream flow (right 86-07345) be changed to the SW1/4 of the NE1/4 of Section 32, Township 36 North, Range 5 West. This is the junction of the free flowing Clearwater and the backwater of Lower Granite Reservoir as defined by an agreement between IDWR and the Idaho Department of Lands. While this is more of a housekeeping change, it makes the ending description consistent with other minimum stream flow rights that end in reservoirs and lakes.

Sincerely,

CLARENCE PARR
Chairman

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SEP 22 2003



October 03, 1995

**Idaho Department of Water Resources
Statehouse Mail
Boise, Idaho 83720**

**Re: Idaho Water Resource Board Application 86-07345,
Minimum Stream flow Clearwater River**

Dear Board,

This claim of 5910 cfs from October 1 through July 31 and 4498 cfs from August 8 through October 31 equals or exceeds the average total flow of the Clearwater River during the months of August, September and October. The amount of this claim would also equal at least one-half of the total flow of the Clearwater for the months of January, February, July, November and December. While the City of Lewiston currently diverts only 35 cfs from the Clearwater and this new claim will have a priority date of 1992, this claim would essentially preclude the City of Lewiston from seeking additional water rights. This would have a serious and significant impact on the city's ability to grow and to attract new businesses and or industry. In my opinion, granting this water right would end all growth and economic development for the City of Lewiston.

At a time when all local governments are fighting federal and tribal minimum stream flows claims, we had hoped we could depend on the state government to be helpful in protecting the traditional domestic water rights. This claim clearly indicates the Department of Water Resources is not an ally of local governments and is endangering the continued economic vitality of the citizens of Idaho.

Sincerely,

Don L. Roberts
City Attorney

c: Jan Vassar, City Manger

SEP 22 2003

MEMORANDUM

TO: Files 86-07318 & 86-07345

FROM: Sharla

DATE: January 2, 1996

RE: Hearing Information

All information concerning the public hearings held on October 4, 1995, including exhibits, can be found in File No. 85-07583.

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IDAHO FISH & GAME

600 South Walnut / Box 25
Boise, Idaho 83707-0025

Phil Batt / Governor
Jerry M. Conley / Director

September 27, 1995

RECEIVED

SEP 27 1995

Department of Water Resources

Mr. Karl Dreher, Director
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83706

Re: Notice of appearance for public hearings regarding minimum streamflow filings on Priest River and Clearwater River (97-07330, 85-07583, 86-07318, and 86-07345)

Dear Mr. Dreher:

The Idaho Department of Fish and Game (Department) wishes to file a notice of appearance for the above-referenced public hearings scheduled for October 4 and 5 in Lewiston, Orofino, and Priest River. Department personnel will be presenting testimony in support of the filings at the hearings. If you or your staff have any questions, please contact me at 334-2597.

Sincerely,

Cindy Robertson

Cindy Robertson
Fishery Staff Biologist

CR:tlv

cc: Gary Spackman, IDWR
Chip Corsi, Panhandle Region
Tim Cochnauer, Clearwater Region

MICHO...

SEP 27 1995

Keeping Idaho's Wildlife Heritage
An Equal Opportunity Employer

IDAHO RIVERS
UNITED

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SEP 26 1995

Department of Water Resources

September 25, 1995

John Beal
Idaho Dept. of Water Resources
1301 N. Orchard
Boise, ID 83706

Dear Mr. Beal:

Idaho Rivers United wishes to express its support for the creation of four minimum streamflow water rights in North Idaho.

We fully support the proposed minimum flow of 688 cfs from October 1 through July 31, and 418 cfs from August 1 through September 30 for the Priest River, water right No. 97-07330.. The affected river reach is about 21 miles, starting at the river's confluence with the East River and extending downstream to its confluence with the Pend Oreille River.

We also support minimum streamflow water right requests for the Clearwater River at three distinct locations. Those water right applications are 85-07583 for 1315 cfs from December 1 to July 31 and 1836 cfs from August 1 to November 30; 86-07318 for 5750 cfs from November 1 to July 31 and 4350 cfs from August 1 to October 31; and 86-07345 for 5910 cfs from October 1 to July 31 and 4498 cfs from August 1 through October 31.

The proposed minimum streamflows will protect fish and wildlife habitat and recreational values of the river. However, it should be noted that the proposed flows are actually inadequate for recreational float boating in most cases. If the Idaho Water Resource Board wants to protect these stream segments for minimal float boating flows, supplemental appropriations will need to be applied for.

Idaho Rivers United does not support the addition of a subordination clause to any of the above referenced water right applications. The use of subordination clauses on minimum streamflow rights is unnecessary and relegates them to second-class status. Considering the scrutiny these rights must go through,

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(public information meetings, hearings, possible protests, and even legislative approval, not to mention the paperwork to support the request) subordination clauses are an insult to the integrity of the right under the prior appropriation doctrine, as well as conjunctive management.

We appreciate the opportunity to submit comments for the hearing record regarding these water right applications.

Sincerely,

Marti L. Bridges

Marti L. Bridges
Water Policy Director

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SEP 22 2003

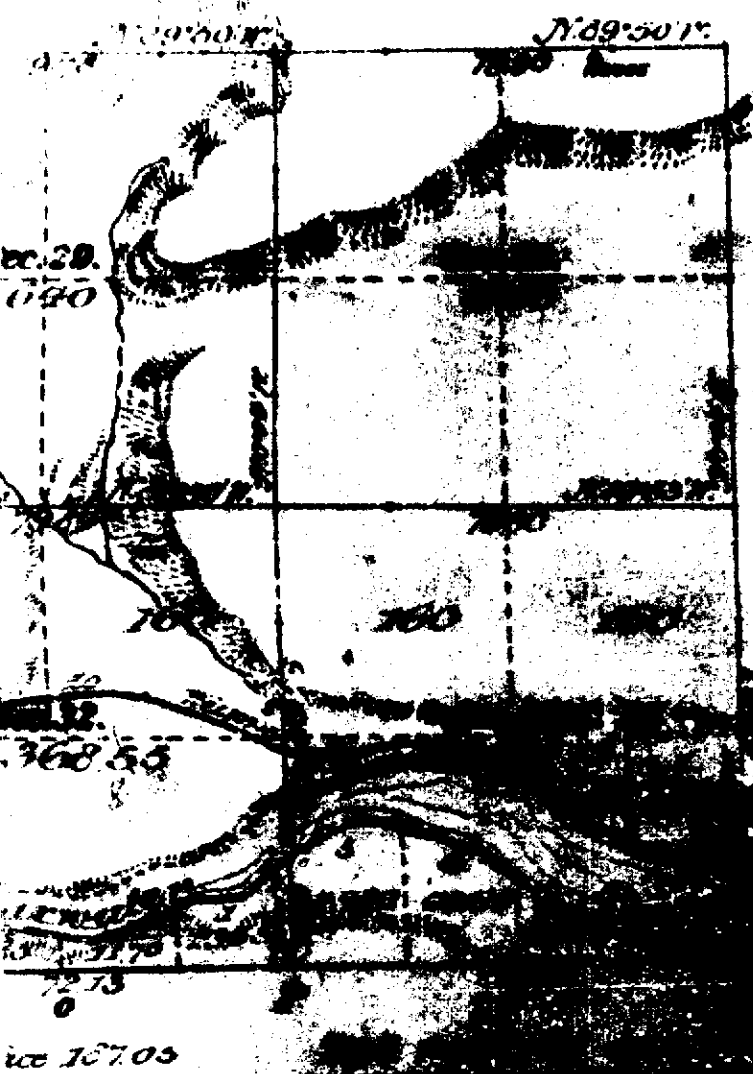
MEMORANDUM

TO: Files 86-07318 & 86-07345
FROM: Sharla
DATE: September 5, 1995
RE: Newspaper Ads and Notices of Hearings

See File 85-07583 for all correspondence regarding newspaper advertising and mailings of the notice of hearings.

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SEP 22 2003



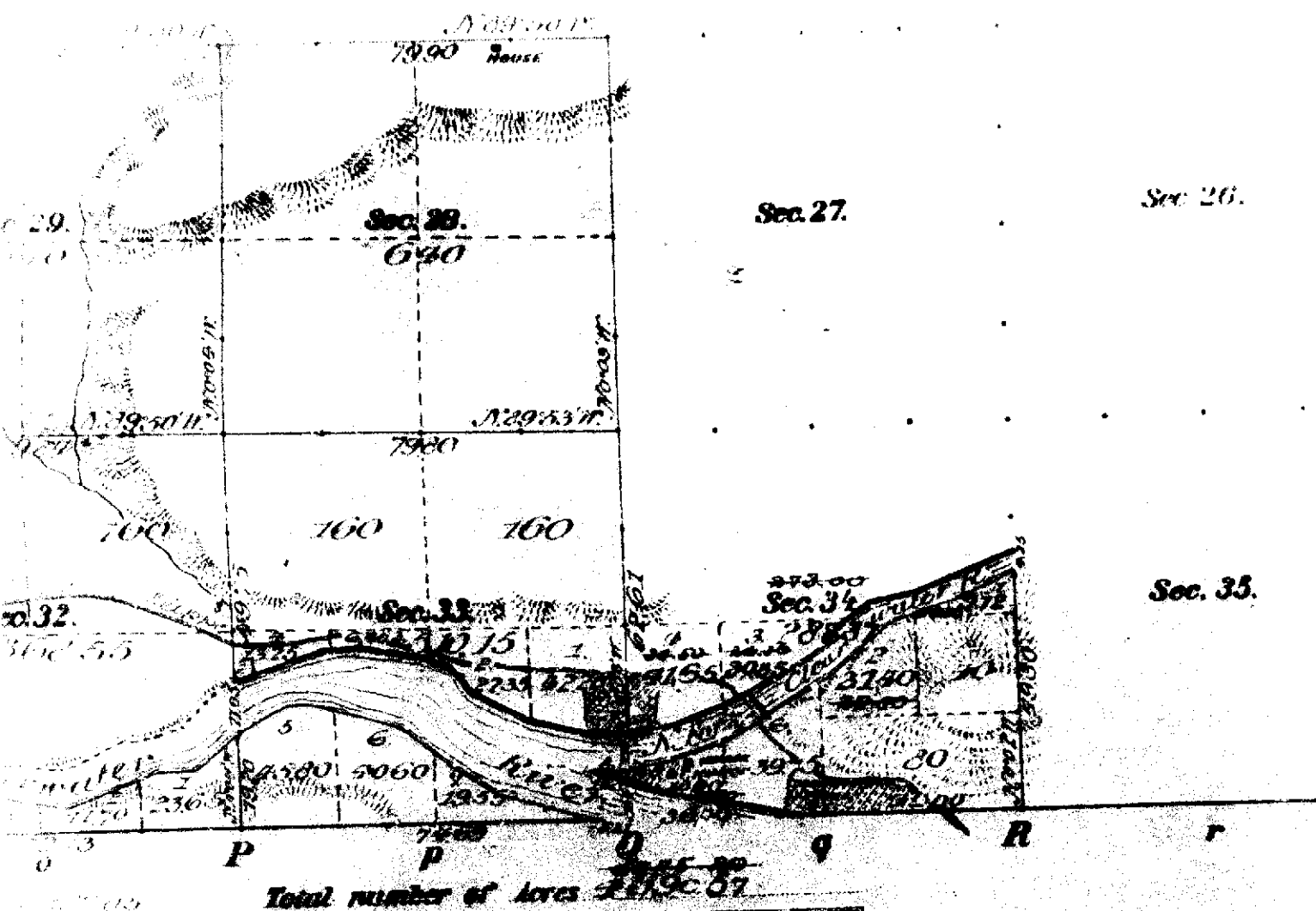
Sec. 27

Sec. 26.

Survey	Point	Elevation
13	16	80
6	50	78

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SEP 22 1963



Amount of Survey	When Surveyed	Mean Declination
M. Ch. Lk.		
15 26 69	July 1 st 1882	2730E.
6 50 79		

The above is
Boise
notes of the survey
Garrison
Boise Co.

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