

**STARTING
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FILE**

Ident. No. 81-11981

RECEIVED

FEB 01 2006

72233

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

RECEIVED

AUG 22 2005

DEPARTMENT OF
WATER RESOURCES

To appropriate the public waters of the State of Idaho

IDWR/North

691 9933

1. Name of Applicant FRANK CAPITO Phone 691 9933
Mailing address PO Box 2545 CDA ID 83816

2. Source of water supply Middle Fork Clearwater River which is a tributary of Clearwater River

3. Location of point of diversion is Township 32N Range 5E Sec. 6, in the SW $\frac{1}{4}$, NE $\frac{1}{4}$, Govt. Lot 7, B.M., IDAHO County;

additional points of diversion if any:

4. Water will be used for the following purposes:

Amount 12 cfs for IRRIGATION purposes from 3/15 to 11/15 (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)
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)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)

5. Total quantity to be appropriated is (a) 12 cfs and/or (b) _____
cubic feet per second acre feet per annum

6. Proposed diverting works: _____

a. Describe type and size of devices used to divert water from the source 5 HP Goulds River Pump

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

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

d. Is ground water with a temperature of greater than 85°F being sought? _____

e. If well is already drilled, when? _____; Drilling firm _____

Well was drilled for (well owner) _____; Drilling Permit No. _____

7. Time required for completion of works and application of water to proposed beneficial use is 2 years (minimum 1 year)

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

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. _____

d. Domestic; show number of households. _____

e. Other; describe fully. _____

9. Description of place of use:

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

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
32N	5E	6			6														6

Total number of acres to be irrigated 6

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

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

12. Remarks: _____

13. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

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

Signature of Applicant (and title, if applicable)

Received by AT Date 8-22-05 Time 10:06 Preliminary check by AT
 Fee \$ 100.00 Received by AT # N017125 Date 8-22-05
 Publication prepared by Φ Date 12/31/05 Published in Idaho Falls News 1/4+11/06
 Publication approved Φ Date 1/17/06

Comment Report

81-11981

1. gtaylor 8/30/2005 7:38:08 AM Special Administration Area Notes
Comment: Special Administration Areas : Salmon-Clearwater (Moratorium Area)
Exempt: N
Reason:
Doc Attached:
Explanation:

Special Administration Areas : Mid Fk Clearwater R (Wild and Scenic Watershed)
Exempt: N
Reason:
Doc Attached:
Explanation:

2. gtaylor 8/30/2005 7:39:50 AM Additional Information Supporting Application
Comment: Residency affidavit for hydropower development: N/A
Additional hydropower project information: N/A
Additional fish propagation project information: N/A
Appropriation Rule 40.05.c information: N/A
Evidence of Pre-1987 development: N/A

Capito

T32N R5E Section 6



Place of Use



Point of Diversion

N



**NOW
STARTING
RIGHT
SIDE OF
FILE**

MEMORANDUM

Date: February 02, 2006
To: Water Right File 81-11981
From: eretelle
Re: permit review

No WD
Wild & Scenic area

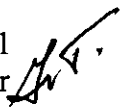
No overlap or protest
Comment from F&G

POD falls within the Minimum Streamflow of the Clearwater River, Middle (81-07162)

Recommend approval as suggested by IDWR Northern.

MEMO

To: File #81-11981

From: Greg Taylor 

Date: 1/26/06

Re: Fish & Game Letter

Recommend that this Permit be conditioned to take into account the IDFG screening and velocity concerns.

Instream water rights are subordinate to some future appropriations according to the Wild and Scenic Agreement and this permit is being tracked and quantified as required by the Agreement.

Recommend this Permit be **Approved**.



IDAHO FISH & GAME

CLEARWATER REGION
1540 Warner Avenue
Lewiston, Idaho 83501-5699

Dirk Kempthorne / Governor
Steven M. Huffaker / Director

January 17, 2006

RECEIVED

JAN 19 2006

IDWR/North

Mr. Robert Haynes
Idaho Department of Water Resources
Northern Region
1910 Northwest Blvd, S 210
Coeur d'Alene, ID 83814

*Go on computer
1/19/06*

Dear Mr. Haynes:

REFERENCE: #81-11981 CAPITO WATER RIGHT APPLICATION

Frank Capito has requested 0.12 cfs for irrigation from Middle Fork Clearwater River. We have no objection to issuing this water right as long as your calculations have determined that this withdrawal, alone or in combination with other permitted withdrawals, will not reduce flows below those needed to support fish and other aquatic species and to support riparian habitat in the Middle Fork Clearwater. As you are aware, the Middle Fork Clearwater is migration, spawning and rearing habitat for federally ESA-listed steelhead and Chinook salmon, provides habitat for listed bull trout, and is an important Westslope cutthroat trout stream. Water right allocations for the Middle Fork and any tributaries should be calculated to ensure that adequate flows will be maintained for those and other fish that occupy the Middle Fork.

Water intakes for the diversion should be screened to prevent entrainment or impingement of fish. The maximum screen mesh size should be 0.25 inches; approach velocities should not exceed 0.5 ft/second to prevent losses of juvenile fish.

Thank you for the opportunity to comment.

Sincerely,

Cal Groen
Clearwater Regional Supervisor

CG/rh/ss

c: Tracey Trent

F | CEIVED

JAN 12 2006

IDWR/North

AFFIDAVIT OF PUBLICATION

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

81-7171

WILLIAM R EVANS
JEANNE D EVANS
RT 1 BOX 36 F
KOOSKIA ID 83539
Point(s) of Diversion NENW SENW
S8 T31N R05E IDAHO County
Source CLEAR CREEK - Tributary To
Middle Fk. CLEARWATER RIVER
Use: IRRIGATION 03/15 To 11/15
0.08 CFS
Total Diversion: 0.08 CFS
Date Filed: - 09/06/1995
Place Of Use: IRRIGATION
T31N R05E S8 NENW NWNW
SEW
Number of Acres 4

81-11981

FRANK CAPITO
PO BOX 2545
COEUR D'ALENE ID 83816
Point(s) of Diversion L7 (SWNE) S6
T32N R05E IDAHO County
Source MIDDLE FORK CLEARWA-
TER RIVER - Tributary To CLEARWA-
TER RIVER
Use: IRRIGATION 03/15 To 11/15
0.12 CFS
Total Diversion: 0.12 CFS
Date Filed: - 08/22/2005
Place Of Use: IRRIGATION
T32N R05E S6 SWNE Lot 7
Number of Acres 6
Remark: This application proposes the
diversion and use of water from the Mid-
dle Fork Clearwater Wild & Scenic
River. The decreed minimum stream
flow rights for the federal Wild & Scenic
Rivers are subordinate to certain cate-
gories of water use and to specific
amounts of water use established after
the minimum stream flow. The water
use proposed in this application will
benefit from the subordination provision
because the .12 cfs diversion rate and 6
acres will be applied to the subordina-
tion amounts specified in the decree for
the Wild & Scenic River listed above.

85-7578

CITY OF KOOSKIA
PO BOX 126
KOOSKIA ID 83539-0126

Point(s) of Diversion SESWE S5
T32N R04E IDAHO County
Source SOUTH FORK CLEARWATER
RIVER Tributary To MIDDLE FORK
CLEARWATER RIVER
Use: IRRIGATION 3/15 To 10/15
0.2 CFS

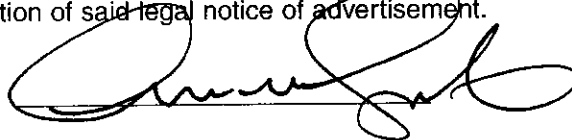
Total Diversion: 0.2 CFS
Date Filed: - 10/01/1992
Place Of Use: IRRIGATION
T32N R04E S5 SWSE
Number of Acres 10
Permits will be subject to all prior water
rights. Protests may be submitted based
on the criteria of Sec 42-203A, Idaho
Code.

Any protest against the approval of this
application must be filed with the Direc-
tor, Dept. of Water Resource, Northern
Region, 1910 Northwest Blvd, Suite
210, Coeur D' Alene ID 83814 together
with a protest fee of \$25.00 for each ap-
plication on or before 01/23/2006. The
protestant must also send a copy of the
protest to the applicant.
KARL J DREHER, Director Published
01/04 & 01/11/2006

J4-11

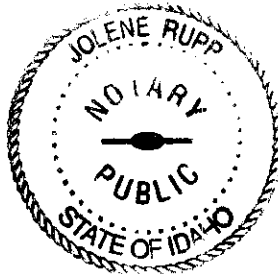
STATE OF IDAHO
County of Idaho - ss.

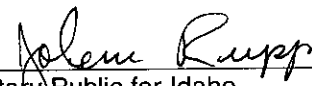
Andrew J. McNab, being first duly sworn, says he is the
publisher of the IDAHO COUNTY FREE PRESS, a weekly news-
paper published and issued weekly at Grangeville, Idaho County,
State of Idaho, and is of general circulation in said county and
state, that the said legal notice, of which the one hereto attached
a true copy, was published in said paper for two weeks, being
published two times, the first publication being on the 4th
day of January, 2006; and the last publication on the 11th day
of January, 2006; and that the said legal notice was published in
a newspaper proper and not a supplement; that said newspa-
per has been continuously and uninterruptedly published in said
county during a period of seventy-eight consecutive weeks prior
to the publication of said legal notice of advertisement.



STATE OF IDAHO)
COUNTY OF IDAHO)

On this 11th day of January in the year of 2006, before me a
Notary Public personally appeared Andrew J. McNab, known or
identified to me to be the person whose name subscribed to the
within instrument, and being by me first duly sworn, declared that
the statements therein are true, and acknowledged to me that he
executed the same.




Notary Public for Idaho
Residing at Grangeville, ID
My commission expires: 1-29-07

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

81-7171

WILLIAM R EVANS

JEANNE D EVANS

RT 1 BOX 36 F

KOOSKIA ID 83539

Point(s) of Diversion NENW SENW S8 T31N R05E IDAHO County

Source CLEAR CREEK - Tributary To MIDDLE FK.CLEARWATER RIVER

Use: IRRIGATION 03/15 To 11/15 0.08 CFS

Total Diversion: 0.08 CFS

Date Filed: - 09/06/1995

Place Of Use: IRRIGATION

T31N R05E S8 NENW NWNW SENW

Number of Acres 4

81-11981

FRANK CAPITO

PO BOX 2545

COEUR D'ALENE ID 83816

Point(s) of Diversion L7 (SWNE) S6 T32N R05E IDAHO County

Source MIDDLE FORK CLEARWATER RIVER - Tributary To CLEARWATER RIVER

Use: IRRIGATION 03/15 To 11/15 0.12 CFS

Total Diversion: 0.12 CFS

Date Filed: - 08/22/2005

Place Of Use: IRRIGATION

T32N R05E S6 SWNE Lot 7

Number of Acres 6

Remark: This application proposes the diversion and use of water from the Middle Fork Clearwater Wild & Scenic River. The decreed minimum stream flow rights for the federal Wild & Scenic Rivers are subordinate to certain categories of water use and to specific amounts of water use established after the minimum stream flow. The water use proposed in this application will benefit from the subordination provision because the .12 cfs diversion rate and 6 acres will be applied to the subordination amounts specified in the decree for the Wild & Scenic River listed above.

85-7578

CITY OF KOOSKIA

PO BOX 126

KOOSKIA ID 83539-0126

Point(s) of Diversion SESWSE S5 T32N R04E IDAHO County

Source SOUTH FORK CLEARWATER RIVER Tributary To MIDDLE FORK CLEARWATER RIVER

Use: IRRIGATION 3/15 To 10/15 0.2 CFS

Total Diversion: 0.2 CFS

Date Filed: - 10/01/1992

Place Of Use: IRRIGATION

T32N R04E S5 SWSE

Number of Acres 10

Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec 42-203A, Idaho Code.

Any protest against the approval of this application must be filed with the Director, Dept. of Water Resource, Northern Region, 1910 Northwest Blvd, Suite 210, Coeur D'Alene ID 83814 together with a protest fee of \$25.00 for each application on or before 01/23/2006. The protestant must also send a copy of the protest to the applicant.

KARL J DREHER, Director Published 01/04 & 01/11/2006



State of Idaho

DEPARTMENT OF WATER RESOURCES

NORTHERN REGION, Suite No. 210 • 1910 Northwest Blvd. • Coeur d'Alene, Idaho 83814-2615
(208) 769-1450

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

December 28, 2005

NONA DONALDSON
LEGAL NOTICE DEPARTMENT
IDAHO COUNTY FREE PRESS
PO BOX 690
GRANGEVILLE ID 83530

e-mailed to Nona 12/28/05

Please FAX proof copy before publication, to 208-769-1454
Thanks, Dianne

RE: Application for Permit No. 81-7171, 81-11981, and 85-7578.

Dear LEGAL NOTICE DEPARTMENT:

Enclosed you will find a legal notice which we wish to have published in your newspaper on the dates indicated, January 4 and 11, 2006, (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before 01/23/2006. Your cooperation is VERY GREATLY appreciated, as always.

Sincerely

Dianne

Dianne Ball
Administrative Assistant

DEPARTMENT OF WATER RESOURCES
1910 NORTHWEST BLVD., SUITE 210
COEUR D'ALENE ID 83814
Phone 208-769-1450 - FAX - 208-769-1454

Ball, Dianne

From: Ball, Dianne
Sent: Wednesday, December 28, 2005 11:12 AM
To: Legal Notices-ID CO Free Press (E-mail)
Subject: Legal Notice for publication on January 4 and 11, 2006 for Water Right Applications 81-7171, 81-11981 & 85-7578

Good morning, Nona,

Attached is our cover letter requesting publication on January 4 and 11, 2006, of a legal notice - also attached.

If you have ANY questions, please call me at 208-769-1450, or e-mail me at <mailto:Dianne.Ball@idwr.idaho.gov>

Also, PLEASE FAX a proof copy prior to publication, to 208-769-1454.

Thank you very much - it is always a pleasure to work with you.

I trust your Christmas was a blessed one, and here's wishing you a marvelous New Year.

Dianne

*Dianne Ball
Administrative Assistant
Idaho Dept of Water Resources
1910 Northwest Blvd., Suite 210
Coeur d'Alene, ID 83814
Phone (208)769-1450 FAX (208)769-1454*



CoverLetter
12-28-05 IC e-mail..



LegalNotice
12-28-05 IC e-mail..



State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region, 1910 Northwest Blvd. Suite 210, Coeur d'Alene, Idaho 83814-2615

Phone: (208) 769-1450

Fax: (208) 769-1454

Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

December 28, 2005

FRANK CAPITO
PO BOX 2545
COEUR D ALENE ID 83816

RE: Application for Permit No 81-11981

Dear Applicant(s):

The Department of Water Resources acknowledges receipt of your water right application. Please refer to the above referenced number in all future correspondence regarding this application.

A legal notice of the application has been prepared and is scheduled for publication in the Idaho County Free Press on January 4 and 11, 2006. Submittal of protests to this application will be allowed for a period ending ten days after the second publication.

If the application is protested you will be sent a copy of the protest(s). All protests must be resolved before the application can be considered for approval. If the protest(s) cannot be resolved voluntarily, the Department will conduct a conference and/or hearing on the matter.

If the application is not protested, it will be forwarded to our State Office in Boise for final processing. The State Office will notify you of any action taken on the application and will send you a copy of the permit if approved. A typical processing time for an unprotested application is about eight and twelve weeks.

Please feel free to contact this office if you have any questions.

Sincerely,

Gregory J. Taylor
Senior Water Resource Agent

Comment Report

81-11981

3. gtaylor 12/15/2005 Legal Notice Remarks

Comment: This application proposes the diversion and use of water from the Middle Fork Clearwater Wild & Scenic River. The decreed minimum stream flow rights for the federal Wild & Scenic Rivers are subordinate to certain categories of water use and to specific amounts of water use established after the minimum stream flow. The water use proposed in this application will benefit from the subordination provision because the .12 cfs diversion rate and 6 acres will be applied to the subordination amounts specified in the decree for the Wild & Scenic River listed above.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region, 1910 Northwest Blvd. Suite 210, Coeur d'Alene, Idaho 83814-2615

Phone: (208) 769-1450

Fax: (208) 769-1454

Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

December 20, 2005

RAY HENNEKEY
IDAHO DEPARTMENT OF FISH & GAME
1540 WARNER
LEWISTON, ID 83501

FAXED TO RAY 12/20/05
4 paged total

Re: Water Permit Application No. 81-11981

Dear Ray:

The Department of Water Resources is seeking written comment and/or recommendations from your agency regarding the above referenced water right application. A copy of the application follows for your reference.

We are sending this to you for your comments, and would appreciate receiving your comments by no later than **January 20, 2006**. If we do not hear from you by that date, we will assume that no comment from you means you have no objection to, concerns about, or conditions pertaining to the issuance of this permit.

You may send comments by regular mail to the address above, by FAX to 769-1454, or by e-mail to Dianne.Ball@idwr.idaho.gov.

Please contact this office if you have any questions regarding the application.

Sincerely,

Dianne Ball
Administrative Assistant



State of Idaho

DEPARTMENT OF WATER RESOURCES

Northern Region, 1910 Northwest Blvd. Suite 210, Coeur d'Alene, Idaho 83814-2615

Phone: (208) 769-1450

Fax: (208) 769-1454

Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

December 20, 2005

IDAHO DEPARTMENT OF LANDS
3706 INDUSTRIAL AVE S
COEUR D ALENE ID 83815

FAXED TO LANDS 12/20/05

4 pages total

Re: Water Permit Application No. 81-11981

The Department of Water Resources is seeking written comment and/or recommendations from your agency regarding the above referenced water right application. A copy of the application follows for your reference.

We are sending this to you for your comments, and would appreciate receiving your comments by no later than **January 20, 2006**. If we do not hear from you by that date, we will assume that no comment from you means you have no objection to, concerns about, or conditions pertaining to the issuance of this permit.

You may send comments by regular mail to the address above, by FAX to 769-1454, or by e-mail to Dianne.Ball@idwr.idaho.gov.

Please contact this office if you have any questions regarding the application.

Sincerely,

Dianne Ball
Administrative Assistant

N

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DEC 06 2005

DEPARTMENT OF
WATER RESOURCES

11/29/05

State of Idaho
Dept. of Water Resources
322 East Front St.
PO Box 83720
Boise, ID 83720-0098

RECEIVED
DEC 12 2005
IDWR/North

Attn: Gary Spackman

Re: Application to appropriate Water no. 81-11981

Dear Gary,

This letter is in response to your recent letter, and in regards to our continued interest in filing for a water right. We are still very much interested in doing so, as we have dug a large stock pond for our animals to drink from, and would like to fill that as soon as possible.

Please let us know if you need any further information, and we will provide it for you.
Thank you so much for your consideration.

Sincerely,

Frank & Debi Capito
PO Box 2545
Coeur d'Alene, ID 83814
Phones: 208-691-9933
208-691-4661

November 21, 2005

RECEIVED
DEC 12 2005
IDWR/North

FRANK CAPITO
PO BOX 2545
COEUR D ALENE ID 83816

Re: Application to Appropriate Water no. 81-11981

Dear Applicant:

The records of the Idaho Department of Water Resources (the Department) show that you filed an application to appropriate water no. 81-11981 with the Department proposing diversion of water from a water source in the Salmon River Basin or the Clearwater River Basin. In April 1993, a moratorium order signed by the Director of the Department prohibited processing and approval of most new permits to appropriate water proposing to divert and use water from surface water sources in the Salmon River and Clearwater River Basins. In October 1999, a second moratorium order signed by the Director of the Department prohibited processing and approval of most new permits to appropriate water proposing to divert and use water from surface water and ground water sources within and upstream of designated wilderness areas in the Salmon River and Clearwater River Basins. Recently, the Director of the Department issued an order rescinding both moratoriums.

Enclosed is the order titled *Order Rescinding Salmon-Clearwater Basin Moratorium and Wilderness Moratorium*. The order directs Department staff to begin processing applications to appropriate water that were held during the moratoriums. Applications will be processed in the approximate order of the Department's receipt of the applications. A reasonable number of applications will be processed each month considering other duties assigned to Department staff. A document attached to the order titled "Statement of Available Procedures and Applicable Time Limits" explains possible actions you might take should you disagree with the order.

Because of the passage of time since you filed your application for permit to appropriate water, ownership of land, desire to use water, or other circumstances may have changed. **This letter requests that you inform the Department in writing, at the address in the letterhead, of your continuing interest in applying for a permit to appropriate water. This letter is a request for additional information under Idaho Code § 42-204. If the requested written statement of continuing interest is not received by the Department within thirty (30) days of the date of this letter, the Department will assume you are no longer interested in applying for a permit to appropriate water, and will void your application pursuant to**

SCANNED

DEC 14 2005

November 21, 2005

Page 2

Idaho Code § 42-204. If you wish to voluntarily withdraw your application, please complete the enclosed withdrawal form and return it to this office.

If you have questions, please call the Department at (208)287-4952.

Sincerely,

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

Gary Spackman, Chief
Water Allocations Bureau

Enclosures (2)

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

IN THE MATTER OF APPLICATIONS AND) PERMITS FOR THE DIVERSION AND USE) OF SURFACE WATER AND GROUND) WATER IN THE SALMON RIVER AND) CLEARWATER RIVER BASINS) _____)	ORDER RESCINDING SALMON - CLEARWATER BASIN MORATORIUM AND WILDERNESS MORATORIUM
--	--

FINDINGS OF FACT

Salmon - Clearwater Basin Moratorium

1. On May 15, 1992, the Director of the Department of Water Resources ("Director" or "Department") issued a *Moratorium Order* enjoining the processing of most applications to appropriate surface water sources within the Salmon and Clearwater River Basins. On April 30, 1993, the Director issued an *Amended Moratorium Order* ("Salmon - Clearwater Order"), again enjoining the processing of most applications to appropriate water.

2. The Salmon - Clearwater Order stated:

This moratorium shall be in effect on and after the date it is entered until withdrawn or modified by further order of the Director. A future decision to continue or rescind the moratorium will consider all efforts being made within the region toward the recovery of the salmon.

3. Since the issuance of the Salmon - Clearwater Order, significant efforts have been undertaken in the Salmon River and Clearwater River Basins for the recovery of salmon. These activities include:

- Protection of instream flows in streams and rivers to benefit anadromous fish habitat;
- A process for re-establishment of flows in dewatered anadromous fish streams by delivery of rented or acquired water rights to the dewatered reaches;
- Screening and control of irrigation diversions;
- Consolidation of irrigation diversions;

SCANNED
DEC 4 2006

- Riparian habitat improvement projects; and
- Administration of water rights following creation of the Upper Salmon River Water District (creation anticipated at the end of 2005).

Wilderness Moratorium

4. On October 26, 1999, the Director issued a *Moratorium Order* ("Wilderness Order") enjoining further processing and development of pending applications and permits for the diversion and use of surface and ground water in and tributary to the Selway-Bitterroot Wilderness Area, the Gospel-Hump Wilderness Area, and the Frank Church River of No Return Wilderness Area.

5. The Director issued the Wilderness Order in response to an Idaho Supreme Court decision titled *United States v. City of Challis*, 133 Idaho 525, 988 P.2d 1199 (1999). The *City of Challis* decision affirmed a 1997 Snake River Basin Adjudication (SRBA) District Court decision that the United States is entitled to reserved water rights to all unappropriated water within the Selway-Bitterroot, the Gospel-Hump, and the Frank Church River of No Return Wilderness areas. The Director determined the recognition of the federal reserved water rights to include all unappropriated water within and upstream of the wilderness areas.

6. The Wilderness Order affected all water permits and applications for permit for which proof of beneficial use had not been filed with the Department in the Salmon River Basin upstream from the location where the Salmon River leaves the Gospel-Hump Wilderness Area in Section 3, Township 24 North, Range 4 East, Boise Meridian, and in the Clearwater River Basin upstream from the location where the Selway River leaves the Selway-Bitterroot Wilderness in Section 7, Township 31 North, Range 10 East, Boise Meridian.

7. The Wilderness Order required all water permit holders to cease development authorized by the permits. Some permit holders submitted proof of beneficial use for the beneficial use completed as of the date of the Wilderness Order. Other permit holders ceased development, and the requirement for filing proof of beneficial use was stayed until the Wilderness Order was amended or lifted to allow additional development.

8. The Idaho Supreme Court granted a petition for rehearing of the *City of Challis* decision, and, on October 27, 2000, the Idaho Supreme Court issued another decision titled *Potlatch Corp. v. United States of America*, 134 Idaho 916, 12 P.3d 1260 (2000). The Court reversed its previous decision in *United States v. City of Challis* and held the Wilderness Act and associated wilderness designations did not create federal reserved water rights for the Frank Church River of No Return, the Selway-Bitterroot, and the Gospel-Hump Wilderness Areas.

Wild and Scenic Rivers

9. In the case of *Potlatch Corp. and Hecla Mining v. United States*, 134 Idaho 912, 12 P.3d 1256 (2000), the Idaho Supreme Court determined that federal designation of Wild and Scenic Rivers in Idaho reserved water rights for the federal government to satisfy the intent of the designation. The Idaho Supreme Court remanded the case to the SRBA District Court for quantification of the reserved water rights for the Wild and Scenic Rivers.

10. On November 16, 2004, the SRBA District Court entered an Amended Order Approving Stipulation and Entry of Partial Decrees in SRBA Case No. 39576 (Consolidated Subcase No. 75-13316 Wild & Scenic Act Claims). The amended order and the associated partial decrees define federal reserved water rights nos. 75-13316, 77-11941, 77-13844, 78-11961, 81-10472, 81-10513, and 81-10625 in Wild and Scenic Rivers in the Salmon and Clearwater River basins. A stipulated agreement (hereafter referred to as the "Wild & Scenic Agreement") between the United States and parties to the original subcases prior to consolidation forms the framework for the partial decrees issued by the SRBA District Court. The Wild & Scenic Agreement and the partial decrees defining the federal reserved water rights set forth subordination provisions under which the federal reserved water rights are subordinate to other existing and future water rights, describe limitations on appropriation and beneficial use under existing and future water rights to which the federal reserved water rights are subordinate, and provide specific requirements for the administration of water rights within the Salmon and Clearwater River basins.

CONCLUSIONS OF LAW

1. In issuing the Salmon - Clearwater Order and the Wilderness Order, the Director relied on Idaho Code § 42-1805(7). The subsection grants the Director the authority:

After notice, to suspend the issuance or further action on permits or applications as necessary to protect existing vested water rights or to ensure compliance with the provisions of chapter 2, title 42, Idaho Code, or to prevent violation of the minimum flow provisions of the state water plan.

2. The Salmon - Clearwater Order was issued after the Director found and concluded that further appropriations of surface water at the time would not be in the local public interest and would not be consistent with conservation of the waters of the State of Idaho.

3. Enhancements to streamflows, other improvements to anadromous fish habitat, the execution of the Wild & Scenic Rivers Agreement, and the determination of related federal reserved water rights, have addressed the underlying basis upon which the *Amended Moratorium Order* was issued.

4. The prohibition of new water right appropriations by the Director's Salmon – Clearwater Order dated April 30, 1993, can be rescinded and processing of applications to appropriate surface water in the Salmon River and Clearwater River Basins can be allowed.

5. The Wilderness Order was issued following the initial Idaho Supreme Court decision of *United States v. City of Challis*, 133 Idaho 525, 988 P.2d 1199 (1999). Based on the Court's decision, the Director determined there was no additional water available for appropriation. Upon reconsideration, the subsequent Idaho Supreme Court decision, *Potlatch Corp. v. United States of America*, 134 Idaho 916, 12 P.3d 1260 (2000), determined that the wilderness designations did not reserve water rights for the wilderness. As a result of the latest Supreme Court decision in *Potlatch*, the Wild and Scenic Rivers Agreement, and related federal reserved water rights, there is additional water available for appropriation within the limitations described by the Wild & Scenic Agreement and the partial decrees for related federal reserved water rights.

6. The prohibition of new water right appropriations and development authorized by permits to appropriate water by the Director's Wilderness Order dated October 26, 1999, can be rescinded and processing of applications to appropriate water and continued development authorized under existing permits to appropriate water can be allowed.

7. Permit holders who were prohibited from completing application of water for the beneficial use authorized under existing permits are entitled to additional time to complete application of water for beneficial use. For each permit, the additional time granted for completing development should be equal to the number of days from the date the Wilderness Order was issued to the date proof of beneficial use was originally due under the permit. The Department should issue an order subsequent to this order establishing the additional time to complete development delayed by the Wilderness Order and specifying the revised date for filing proof of beneficial use for each permit.

ORDER

IT IS HEREBY ORDERED that the *Amended Moratorium Order*, issued on April 30, 1993, prohibiting appropriations of surface water in the Salmon and Clearwater River Basins, is **RESCINDED**.

IT IS FURTHER ORDERED that the *Moratorium Order*, issued on October 26, 1999, prohibiting appropriations of surface and ground water and development of permits for the use of surface water or ground water in and tributary to the Selway-Bitterroot Wilderness Area, the Gospel-Hump Wilderness Area, and the Frank Church River of No Return Wilderness Areas, is **RESCINDED**.

IT IS FURTHER ORDERED that permit holders who were prohibited from completing beneficial use of water authorized under existing permits by the *Moratorium Order* issued on October 26, 1999, are granted additional time for completing the beneficial use authorized. For

each permit, the additional time granted for completing development shall be equal to the number of days from the date the Wilderness Order was issued to the date proof of beneficial use was originally due for the permit. The Department shall issue an order subsequent to this order allowing additional time for completion of beneficial use delayed by the Wilderness Order and specifying a date for filing proof of beneficial use for each permit.

IT IS FURTHER ORDERED that appropriations of ground water and surface water within the Salmon River Basin may resume subject to the requirements of the Wild and Scenic Agreement and the federal reserved water rights decreed in accordance with that stipulated agreement.

IT IS FURTHER ORDERED that Department staff shall process new applications to appropriate water generally in the chronological order of the receipt of the applications. Department staff shall also process a reasonable number of applications per month considering all other duties assigned to Department staff.

Dated this 9th day of November, 2005.



KARL J. DREHER
Director

**EXPLANATORY INFORMATION
TO ACCOMPANY A
FINAL ORDER**

(To be used in connection with actions when a hearing was not held)

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: The petition must be received by the Department within this fourteen (14) day period.** The department 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 67-5246(4), Idaho Code.

REQUEST FOR HEARING

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. See section 42-1701A(3), Idaho Code. **Note: The request must be received by the Department within this fifteen (15) day period.**

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

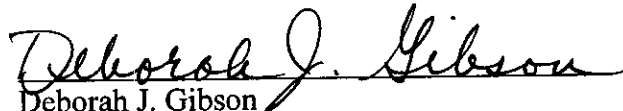
The appeal must be filed within twenty-eight (28) days of: a) the service date of the final order, b) an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of November, 2005, a true and correct copy of the above and foregoing documents described below were served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: Order Rescinding Salmon-Clearwater Basin Moratorium and Wilderness
Moratorium
Explanatory Information to Accompany a Final Order

See attached service list.


Deborah J. Gibson
Administrative Assistant

Name	Address	City	State	Postal Code
PATRICK W LEE	C/O JOHN T BROWN PO BOX 61	SUN VALLEY	ID	83353
STANLEY SEWER ASSN	PO BOX 71	STANLEY	ID	83278
SALMON RIVER HEREFORD RANCH	HC 63 BOX 1760	CHALLIS	ID	83226
ELINOR J CORRIGAN	PO BOX 569	CHALLIS	ID	83226
MOUNTAIN SPRINGS WATER INC	PO BOX 628	CHALLIS	ID	83226
US DEPT OF INTERIOR	BUREAU OF LAND MANAGEMENT SALMON DISTRICT 1206 S CHALLIS ST	SALMON	ID	83467
ROBERT A PIVA	HC 63 BOX 1641	CHALLIS	ID	83226
DANA C HURLESS	HC 67 BOX 621	CLAYTON	ID	83227
TRENT J ROMAN	HC 82 BOX 4023-4	CHALLIS	ID	83226
PARKINSON FOUNDATION SEED FARM	C/O BOB PARKINSON PO BOX 65	ELLIS	ID	83235
THOMPSON CREEK MINING CO	PO BOX 62	CLAYTON	ID	83227
CHALLIS IRRIGATION CO	PO BOX 71	CHALLIS	ID	83226
TAIT P JOHNSON	1317 N 141ST AVE	OMAHA	NE	68154
ARCHIE SHERWOOD	PO BOX 163	CLAYTON	ID	83227
L & W STONE CORP	PO BOX 789	CHALLIS	ID	83226
DON M ONEAL	8 ONEAL LN	MAY	ID	83253-2003
US DEPT OF INTERIOR	BUREAU OF LAND MANAGEMENT SALMON DISTRICT 1206 S CHALLIS ST	SALMON	ID	83467
RICHARD L TYLER	796 LEE CREEK RD	LEADORE	ID	83464
ERNEST GEORGE HOLSCHER	BOX 96	LEADORE	ID	83464
ROBERT L THOMAS	12 REBA LN	SALMON	ID	83467
EDWARD M SNOOK	1205 HWY 28	SALMON	ID	83467
STEPHANIE SNOOK	505 W WINDSOR CT	COEUR D ALENE	ID	83815
HARRY L COLEMAN	PO BOX 70	LEADORE	ID	83464-0070
SHIRLEY R COLEMAN	435 TEE CIR	ST GEORGE	UT	84770
JAMES KRUCKEBERG	411 EIGHTEEN MILE RD	LEADORE	ID	83464-5030
GERALD R MORPHEY	PO BOX 625	SALMON	ID	83467-0625
ALBERT D ANDERSON	5425 BUNDY AVE NORTH	KEISER	OR	97303
JERRY G BLACKBURN	PO BOX 41	LEADORE	ID	83464
VELMA MAHAFFEY	PO BOX 14	LEMHI	ID	83465
DALE A PETERSON	PO BOX 67	LEADORE	ID	83464
WILLIAMS LAKE RECREATIONAL WATER & SEWER DISTRICT	PO BOX 82	SALMON	ID	83467
E J SCHWARZENBERGER	PO BOX 146	UCON	ID	83454
MERRIDEE S OVERACKER	1510 HWY 93 N	SALMON	ID	83467
MICHAEL J OVERACKER	162 HIGHWAY 93 N	SALMON	ID	83467-5301
LEWIS E ROSS	HC 10 BOX 112	GIBBONSVILLE	ID	83463
THOMAS CHARLES PIKE	3478 SALMON RIVER RD	SHOUP	ID	83469-6506
J REX TOLMAN	41 CORBETT LN	SALMON	ID	83467
SALMON RIVER PROPERTIES INC	PO BOX 774	SALMON	ID	83467
DONALD L HAWKINS	14429 WATKINS DR	LA MIRADA	CA	90638
DIXIE GRAVES	PO BOX 963	SALMON	ID	83467
GUY M CARLSON	PO BOX 319	RIGGINS	ID	83549
JOE B SCOTT	380 E PARKCENTER BLVD STE 100	BOISE	ID	83706
WELLS LIVESTOCK INC	512 N BROADWAY	BUHL	ID	83316
JACK A WALKER		YELLOW PINE	ID	83677
SALMON RIVER TOURS CO	PO BOX 779	NORTH FORK	ID	83466
KENNETH D CASPER	812 7TH ST S	NAMPA	ID	83651
DALE J LACRONE	BOX 63	NEW PLYMOUTH	ID	83655
UNIVERSITY OF IDAHO REGENTS	C/O GERARD BILLINGTON FINANCE & ADMINISTRATION PO BOX 443162	MOSCOW	ID	83844-3162
BARBARA G PYLE	77 SILVER FOX TR	MC CALL	ID	83638
STEVE M WRIGHT	PO BOX 1450	MCCALL	ID	83638
RICHARD L PULLEN	STAR RT	POLLOCK	ID	83547
ROBERT J KYRK	HC75 BOX 3546	NEW MEADOWS	ID	83654
THOMAS D MEES	1882 POLE CREEK RD	COUNCIL	ID	83612
WAYNE H REDENBAUGH	PO BOX 275	POLLOCK	ID	83547
RAYMOND K STOLTEY	HC 75 BOX 3556	NEW MEADOWS	ID	83654

DELBERT M WELCH	PO BOX 962	VALDEZ	AK	99686
PAUL SAND	PO BOX 16	WHITE BIRD	ID	83554
JAMES E BONATO	PO BOX 350	LUCILE	ID	83542
BONNIE E KANNADA	PO BOX 55	WHITE BIRD	ID	83554
EUGENE H TENNIES	HCR 75 BOX 32	KOOSKIA	ID	83539
RUSSELL C TRAINOR	HCR 75 BOX 38 A	KOOSKIA	ID	83539
USDA FOREST SERVICE	NEZ PERCE NATIONAL FOREST SUPERVISORS OFFICE 1005 HIGHWAY 13	GRANGEVILLE	ID	83530
US DEPT OF AGRICULTURE	US FOREST SERVICE CLEARWATER NATIONAL FOREST 12730 HWY 12	OROFINO	ID	83544 9333
FRANK CAPITO	PO BOX 2545	COEUR D ALENE	ID	83816
GARY BOWLING	3386 N CROFT WAY	EAGLE	ID	83616
AHSAHKA WATER & SEWER DIST	PO BOX 37	AHSAHKA	ID	83520
IDAHO WATER RESOURCE BOARD	PO BOX 83720	BOISE	ID	83720-0098
DON R BERRY	PO BOX 424	LEWISTON	ID	83501
CITY OF KOOSKIA	PO BOX 126	KOOSKIA	ID	83539-0126
MARK LADOUX	PO BOX 149	PECK	ID	83545-0149
JOSEPH SCHNELL	RR 2 BOX 311A	GRANGEVILLE	ID	83530
CITY OF KENDRICK	PO BOX 195	KENDRICK	ID	83537
PORT OF LEWISTON	1626 6TH AVE N	LEWISTON	ID	83501