

**STARTING
LEFT
SIDE OF
FILE**

State of Idaho
Department of Water Resources
Permit to Appropriate Water
NO. 83-11962

Priority: April 1, 2005

This is to certify, that IDAHO WATER RESOURCE BOARD
PO BOX 83720
BOISE ID 83720-0098

has applied for a minimum stream flow in:

Source: NORTH FORK CLEARWATER RIVER **Tributary:** CLEARWATER RIVER

and a permit is APPROVED for a minimum stream flow as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
MINIMUM STREAM FLOW	01/01 to 01/31	1,349.00 CFS
MINIMUM STREAM FLOW	02/01 to 02/28	1,838.00 CFS
MINIMUM STREAM FLOW	03/01 to 03/31	2,885.00 CFS
MINIMUM STREAM FLOW	04/01 to 04/30	5,863.00 CFS
MINIMUM STREAM FLOW	05/01 to 05/31	10,396.00 CFS
MINIMUM STREAM FLOW	06/01 to 06/30	8,470.00 CFS
MINIMUM STREAM FLOW	07/01 to 07/31	2,331.00 CFS
MINIMUM STREAM FLOW	08/01 to 08/31	1,128.00 CFS
MINIMUM STREAM FLOW	09/01 to 09/30	873.00 CFS
MINIMUM STREAM FLOW	10/01 to 10/31	828.00 CFS
MINIMUM STREAM FLOW	11/01 to 11/30	1,239.00 CFS
MINIMUM STREAM FLOW	12/01 to 12/31	1,237.00 CFS

LOCATION OF MINIMUM STREAM FLOW REACH:

NORTH FORK CLEARWATER RIVER SW¼SW¼ Sec. 18, Twp 39N, Rge 10E, B.M.
CLEARWATER County (Beginning of Reach)

NORTH FORK CLEARWATER RIVER L7 (NE¼SE¼NE¼) Sec. 6, Twp 40N, Rge 07E, B.M.
CLEARWATER County (Ending of Reach)

CONDITIONS OF APPROVAL

1. Use of water under Permit No. 83-11962 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 priority dates earlier than April 1, 2005.
2. Use of water under Permit 83-11962 shall be non-consumptive.

State of Idaho
Department of Water Resources
Permit to Appropriate Water
NO. 83-11962

CONDITIONS OF APPROVAL CONTINUED

3. Upon future finding and order of the Director that gaging stations are required to administer the approved minimum stream flows, the right holder shall permanently install and maintain gaging stations as specified by the Department.
4. 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 person 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. Permit No. 83-11962 shall be submitted to the Idaho Legislature by the fifth day of a regular legislative session and the Director's approval shall not become finally effective until approved by the legislature pursuant to Idaho Code § 42-1503.
6. This minimum stream flow provides for fish habitat.
7. The reach of minimum stream flow approved is described as follows: Beginning at the confluence with Kelly Creek in the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 18, T39N, R10E, B.M., Clearwater County, and extending downstream 44.6 river miles to the confluence with Beaver Creek in Lot 7 (NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$), Section 6, T40N, R07E, B.M.
8. The permit is subordinate to future domestic, commercial, municipal, and industrial uses.
9. This permit is subordinate to future non-DCMI development of a total flow rate equal to: (i) 74.88 cfs, or (ii) the flow rate exceeding a base flow equivalent to the unimpaired monthly eighty percent (80%) exceedence flow, whichever is less.
10. Proof of application of water to beneficial use shall be submitted on or before **April 1, 2011**.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 13th day of January, 2006.


for: KARL J DREHER, Director

BEFORE THE DEPARTMENT OF WATER RESOURCES

FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT)
TO APPROPRIATE WATER FOR A MINIMUM)
STREAMFLOW NO. 83-11962 IN THE NAME)
OF THE IDAHO WATER RESOURCE BOARD)
_____)

**AMENDED
PRELIMINARY ORDER**

On October 13, 2005, the Idaho Department of Water Resources (IDWR) conducted a hearing for application for permit to appropriate water for a minimum stream flow no. 83-11962 as required by Idaho Code § 42-1503. The Idaho Water Resource Board (the "Board") was represented by Board member Dick Wyatt. No other persons or entities were formal parties to the hearing. Representatives of the U.S. Army Corps of Engineers and a representative of the Nez Perce Tribe offered informal testimony and comment.

Following the presentation of testimony, and after considering the information in the file, the hearing officer left the record open until approximately the end of October for submittal of additional evidence. On October 27, 2005, the Board submitted a three page, untitled document discussing minimum stream flows for the North Fork of the Clearwater River. The author of the document is unknown. Jean Baldridge, an employee of an entity named ENTRIX, sent the document to Bill Graham of IDWR, who forwarded it to the hearing officer. ENTRIX is purportedly a consultant for the Nez Perce Tribe.

Based on the evidence and information available, the hearing officer finds, concludes and orders as follows:

FINDINGS OF FACT

1. On April 1, 2005, the Board filed application for permit to appropriate water no. 83-11962, seeking a minimum stream flow in the North Fork of the Clearwater River, tributary to

the Clearwater River. The following describes the components of the minimum stream flow:

PERIOD OF USE	FLOW RATE
1/1 to 1/31	1,349 cfs
2/1 to 2/28	1,838 cfs
3/1 to 3/31	2,885 cfs
4/1 to 4/30	5,863 cfs
5/1 to 5/31	10,396 cfs
6/1 to 6/30	8,470 cfs
7/1 to 7/31	2,331 cfs
8/1 to 8/31	1,128 cfs
9/1 to 9/30	873 cfs
10/1 to 10/31	828 cfs
11/1 to 11/30	1,239 cfs
12/1 to 12/31	1,237 cfs
Purpose for the minimum stream flow:	To preserve fish, wildlife, scenic and recreational values and to protect and enhance water quality.
Beginning of minimum stream flow reach:	The confluence of the North Fork of the Clearwater River with Kelly Creek in the SW1/4SW1/4, Sec. 18, T39N, R10E, Boise-Meridian
Ending reach:	The confluence of the North Fork of the Clearwater River with Beaver Creek in Lot 7 (NE1/4SE1/4NE1/4) Sec. 6, T40N, R07E, Boise-Meridian.
Length of Minimum Stream Flow Reach:	44.6 river miles
Proposed Priority Date:	April 1, 2005

2. Application to appropriate water no. 83-11962 proposes a minimum stream flow that will recognize an instream flow agreed to in the Snake River Water Rights Agreement, dated May 16, 2004 (hereafter referred to as “the Nez Perce Agreement”). The Nez Perce Agreement was a settlement of the Nez Perce Tribe’s claims to water rights in the Snake River Basin Adjudication (SRBA).

3. The following are limitations to the minimum stream flow that were recognized in the Nez Perce Agreement:

a. The water right is subordinate to future domestic, commercial, municipal, and industrial uses. These uses will be referred to hereafter as “DCMI” uses.

b. The water right is also subordinate to future non-DCMI development of a total flow rate equal to: (i) 74.88 cfs, or (ii) the flow rate exceeding a base flow equivalent to the unimpaired monthly eighty percent (80%) exceedence flow, whichever is less.

4. The minimum stream flow reach is located beginning at approximately the upper limits of the Dworshak Reservoir impoundment and extending upstream approximately forty-five miles to the mouth of Kelly Creek.

5. The proposed minimum stream flow was determined using USGS regression equations. The product of the regression equations was an “unimpaired exceedence flow,” a theoretical flow that would exist if there were no man-made impacts to or diversions from the stream.

6. The proposed minimum flow sought is the flow that would be expected to be exceeded forty-percent (40%) of the time if there were unimpaired flows in the minimum stream flow reach of the North Fork of the Clearwater River.

7. Exhibit 1(k), a hydrograph of North Fork Clearwater River flows, depicts average monthly stream flow data from 1967 to 2004 at USGS Gage No. 13340600. The USGS gage is

located near the downstream end of the proposed minimum stream flow reach. Exhibit 1(k) also depicts each monthly segment of the proposed minimum stream flow for an entire year. The hydrograph curve for the proposed minimum flows mirrors the mean monthly stream flow measured at the USGS gage. During most periods of time, however, the proposed minimum stream flow is slightly less than the mean monthly flow.

8. Documentation provided by the Board following the hearing states that the optimal monthly flow for fisheries resources is approximately the mean monthly flow. The documentation also states that minimum stream flows should be between eighty to one hundred percent (80% to 100%) of mean monthly values. The monthly minimum stream flows sought by application for minimum stream flow application no. 83-11962 fall within the range between eighty to one-hundred percent (80% to 100%) of the measured monthly flows.

9. The parties to the Nez Perce Agreement, including the Nez Perce Tribe and the State of Idaho, recognized that the minimum stream flows in the North Fork of the Clearwater River have public value.

10. The proposed minimum stream flow reach is located within the boundaries of the Clearwater National Forest.

11. The federal government or the Nez Perce Tribe hold water rights or water right claims identifying the North Fork Clearwater River as a source. Most of these water rights or claims are for instream or recreational nonconsumptive uses. A handful of small water rights authorize diversions for domestic uses from the North Fork Clearwater River or its tributaries.

CONCLUSION OF LAW

1. Idaho Code § 42-1503 states:

Upon the conclusion of the hearing and completion of any investigation conducted by the director, he shall enter his findings in writing approving the application in whole, or in part, or upon conditions or rejecting said application.

Approval of any such application must be based upon a finding that such appropriation of minimum stream flow:

(a) will not interfere with any vested water right, permit, or water right application with priority of right date earlier than the date of receipt in the office of the director of a complete application for appropriation for minimum stream flow filed under the 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 in the existing or future establishment of necessary gauging stations and benchmarks.

2. Because the minimum stream flow sought by this application is located primarily within lands owned by the federal government, and because there are no significant water rights diverted within the minimum stream flow reach, approval of a minimum stream flow for application no. 83-11962 will not interfere with any vested water rights. This minimum stream flow should be junior to all water rights bearing a priority date earlier than April 1, 2005.

3. Recognition of this minimum stream flow in the Nez Perce Agreement and the subsequent non-opposition to the minimum stream flow establishes that the minimum stream flow is in the public, as opposed to the private, interest.

4. The monthly minimum stream flows sought by application for permit no. 83-11962 are necessary for the preservation of fish habitat. No information was presented at the hearing establishing water needs for wildlife habitat, aquatic life, recreation, aesthetic beauty, navigation, transportation, or water quality of the stream.

5. Based on the documentation submitted after the hearing, the minimum stream flow is less than the optimum or most desirable flow, and is a minimum flow.

6. The stream flow records and the regression equation computations establish that the minimum stream flow is capable of being maintained.

ORDER

IT IS HEREBY ORDERED that application for permit to appropriate water no. 83-11962, seeking a minimum stream flow in the North Fork of the Clearwater River, is **Approved** subject to the following conditions:

1. Use of water under Permit No. 83-11962 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 priority dates earlier than April 1, 2005.
2. Use of water under Permit No. 83-11962 shall be nonconsumptive.
3. Upon the future finding and order of the Director that gaging stations are required to administer the approved minimum stream flows, the right holder shall permanently install and maintain gaging stations as specified by the Department.
4. The Board, upon receiving a request or upon its own initiative, may petition the Director for 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.

5. Permit No. 83-11962 shall be submitted to the Idaho Legislature by the fifth day of a regular legislative session and the Director's approval shall not become finally effective until approved by the legislature pursuant to provisions of Idaho Code § 42-1503.

6. This minimum stream flow provides for fish habitat.

7. The reach of minimum stream flow approved is described as follows:
Beginning at the confluence with Kelly Creek in the SW1/4SW1/4, Section 18, T39N, R10E, B.M., Clearwater County, and extending downstream 44.6 river miles to the confluence with Beaver Creek in Lot 7 (NE1/4SE1/4NE1/4), Section 6, T40N, R07E, B.M.

8. The permit is subordinate to future domestic, commercial, municipal, and industrial uses.

9. This permit is subordinate to future non-DCMI development of a total flow rate equal to: (i) 74.88 cfs, or (ii) the flow rate exceeding a base flow equivalent to the unimpaired monthly eighty percent (80%) exceedence flow, whichever is less.

10. Proof of beneficial use shall be submitted on or before April 1, 2011.

DATE this 13th day of January, 2006.



Gary Spackman
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of January, 2006, a true and correct copy of the above and foregoing documents described below were served on the following as noted:

Document(s) Served: Amended Preliminary Order
Explanatory Information to Accompany a Preliminary Order

IDAHO WATER RESOURCE BOARD
322 E FRONT ST 6TH FLR
PO BOX 83720
BOISE ID 83720-0098

☐ U.S. Mail, Postage Prepaid
☒ Hand Delivered
☐ Facsimile
☐ E-mail

PAUL PENCE
US ARMY CORPS OF ENGINEERS
DWORKSHAK RESERVOIR
PO BOX 48
AHSAHKA ID 83520

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
☐ E-mail

GREG HALLER
NEZ PERCE TRIBE
PO BOX 365
LAPWAI ID 83540

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
☐ E-mail


Deborah J. Gibson

BEFORE THE DEPARTMENT OF WATER RESOURCES

FOR THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT)
TO APPROPRIATE WATER FOR A MINIMUM)
STREAMFLOW NO. 83-11962 IN THE NAME)
OF THE IDAHO WATER RESOURCE BOARD)
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PRELIMINARY ORDER

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FINDINGS OF FACT

1. On April 1, 2005, the Board filed application for permit to appropriate water no. 83-11962, seeking a minimum stream flow in the North Fork of the Clearwater River, tributary to

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8. Documentation provided by the Board following the hearing states that the optimal monthly flow for fisheries resources is approximately the mean monthly flow. The documentation also states that minimum stream flows should be between eighty to one hundred percent (80% to 100%) of mean monthly values. The monthly minimum stream flows sought by application for minimum stream flow application no. 83-11962 fall within the range between eighty to one-hundred percent (80% to 100%) of the measured monthly flows.

9. The parties to the Nez Perce Agreement, including the Nez Perce Tribe and the State of Idaho, recognized that the minimum stream flows in the North Fork of the Clearwater River have public value.

10. The proposed minimum stream flow reach is located within the boundaries of the Clearwater National Forest.

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CONCLUSION OF LAW

1. Idaho Code § 42-1503 states:

Upon the conclusion of the hearing and completion of any investigation conducted by the director, he shall enter his findings in writing approving the application in whole, or in part, or upon conditions or rejecting said application.

Approval of any such application must be based upon a finding that such appropriation of minimum stream flow:

- (a) will not interfere with any vested water right, permit, or water right application with priority of right date earlier than the date of receipt in the office of the director of a complete application for appropriation for minimum stream flow filed under the 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 in the existing or future establishment of necessary gauging stations and benchmarks.

2. Because the minimum stream flow sought by this application is located primarily within lands owned by the federal government, and because there are no significant water rights diverted within the minimum stream flow reach, approval of a minimum stream flow for application no. 83-11962 will not interfere with any vested water rights. This minimum stream flow should be junior to all water rights bearing a priority date earlier than April 1, 2005.

3. Recognition of this minimum stream flow in the Nez Perce Agreement and the subsequent non-opposition to the minimum stream flow establishes that the minimum stream flow is in the public, as opposed to the private, interest.

4. The monthly minimum stream flows sought by application for permit no. 83-11962 are necessary for the preservation of fish habitat. No information was presented at the hearing establishing water needs for wildlife habitat, aquatic life, recreation, aesthetic beauty, navigation, transportation, or water quality of the stream.

5. Based on the documentation submitted after the hearing, the minimum stream flow is less than the optimum or most desirable flow, and is a minimum flow.

6. The stream flow records and the regression equation computations establish that the minimum stream flow is capable of being maintained.

ORDER

IT IS HEREBY ORDERED that application for permit to appropriate water no. 83-11962, seeking a minimum stream flow in the North Fork of the Clearwater River, is **Approved** subject to the following conditions:

1. Use of water under Permit No. 83-11962 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 priority dates earlier than April 1, 2005.
2. Use of water under Permit No. 83-11962 shall be nonconsumptive.
3. Upon the future finding and order of the Director that gaging stations are required to administer the approved minimum stream flows, the right holder shall permanently install and maintain gaging stations as specified by the Department.
4. The Board, upon receiving a request or upon its own initiative, may petition the Director for 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.

5. Permit No. 83-11962 shall be submitted to the Idaho Legislature by the fifth day of a regular legislative session and the Director's approval shall not become finally effective until approved by the legislature pursuant to provisions of Idaho Code § 42-1503.

6. This minimum stream flow provides for fish habitat.

7. The reach of minimum stream flow approved is described as follows:

Beginning at the confluence with Kelly Creek in the SE1/4NW1/4SW1/4, Section 18, T39N, R10E, B.M., Clearwater County, and extending downstream 44.6 river miles to the confluence with Beaver Creek in Lot 7 (NE1/4SE1/4NE1/4), Section 6, T40N, R04E, B.M.

8. The permit is subordinate to future domestic, commercial, municipal, and industrial uses.

9. This permit is subordinate to future non-DCMI development of a total flow rate equal to: (i) 74.88 cfs, or (ii) the flow rate exceeding a base flow equivalent to the unimpaired monthly eighty percent (80%) exceedence flow, whichever is less.

10. Proof of beneficial use shall be submitted on or before April 1, 2011.

DATE this 9th day of December, 2005.



Gary Spackman
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of December, 2005, a true and correct copy of the above and foregoing documents described below were served on the following as noted:

Document(s) Served: Preliminary Order
Explanatory Information to Accompany a Preliminary Order

IDAHO WATER RESOURCE BOARD
322 E FRONT ST 6TH FLR
PO BOX 83720
BOISE ID 83720-0098

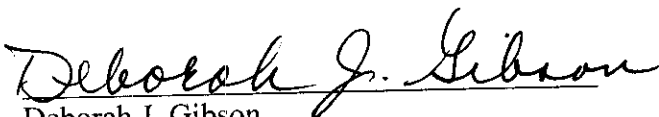
☒ U.S. Mail, Postage Prepaid
☐ Facsimile
☒ E-mail

PAUL PENCE
US ARMY CORPS OF ENGINEERS
DWORSHAK RESERVOIR
PO BOX 48
AHTAHKA ID 83520

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
☐ E-mail

GREG HALLER
NEZ PERCE TRIBE
PO BOX 365
LAPWAI ID 83540

☒ U.S. Mail, Postage Prepaid
☐ Facsimile
☐ E-mail


Deborah J. Gibson

RESPONDING TO PRELIMINARY ORDERS ISSUED BY THE IDAHO DEPARTMENT OF WATER RESOURCES

The accompanying order is a **Preliminary Order** issued by the Idaho Department of Water Resources (Department) pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department unless a party petitions for reconsideration within fourteen (14) days after issuance as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of the order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** 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 fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period 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, request for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Department 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 Director 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.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case 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 this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

RECEIVED

SEP 30 2005

Department of Water Resources

71903
RECEIVED

APR - 1 2005

Department of Water Resources

Ident No 83-11962

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

IDWR/North

APR 06 2005

RECEIVED

FORM 202
11/99
RECEIVED
SEP 06 2005
DEPARTMENT OF
WATER RESOURCES

- 1 Name of Applicant Idaho Water Resource Board Phone (208) 287-4800
Mailing address 322 E Front St. P.O. Box 83720 Boise, ID 83720-0098
- 2 Source of water supply NF Clearwater River which is a tributary of Clearwater River
- 3 Location of point of diversion is Township 40N Range 07E Sec. 6 in the NE $\frac{1}{4}$
SE $\frac{1}{4}$, NE $\frac{1}{4}$ Govt Lot 7, B.M., Clearwater (End of Rch) County: SWSW
additional points of diversion if any: 39N 10E 18 SWSW (Beginning of Reach) JK
- 4 Water will be used for the following purposes: See attachment.
- 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)
- Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
- 5 Total quantity to be appropriated is (a) 10,396 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 N/A
- 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 5 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 Minimum stream flow to preserve fish, wildlife, scenic,
and recreational values and to protect and enhance water quality
and is equivalent to the unimpaired monthly 40 percent exceedence flows.

9. Description of place of use: See attachment.

- 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	

Total number of acres to be irrigated _____

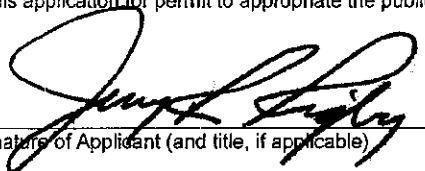
10. Describe any other water rights used for the same purposes as described above. None

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: _____

12. Remarks: See attachment.

13. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8 1/2"x11" map clearly identifying the proposed point of diversion place of use section #, township & range (A photocopy of a USGS 7 1/2 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 SW Keen Date 4/1/2005 Time 12:00 PM Preliminary check by _____
 Fee \$ NA Receipted by _____ # _____ Date _____
 Publication prepared by _____ Date _____ Published in _____
 Publication approved _____ Date _____

71903
RECEIVED

APR - 1 2005

Department of Water Resources

Ident. No.

83-11962

FORM 202

12/99

RECEIVED

SEP 06 2005

DEPARTMENT OF
WATER RESOURCES

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of Applicant Idaho Water Resource Board Phone (208) 287-4800
Mailing address 322 E Front St. P.O. Box 83720 Boise, ID 83720-0098
2. Source of water supply NF Clearwater River which is a tributary of Clearwater River
3. Location of point of diversion is Township 40N Range 07E Sec. 6 in the NE $\frac{1}{4}$,
SE $\frac{1}{4}$, NE $\frac{1}{4}$, Govt. Lot 7, B.M., Clearwater (End of Rch) County;
additional points of diversion if any: 39N 10E 18 SW SW (Beginning of Reach)
4. Water will be used for the following purposes: See attachment.
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)
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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) 10,396 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 N/A
- 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 5 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. Minimum stream flow to preserve fish, wildlife, scenic,
and recreational values and to protect and enhance water quality
and is equivalent to the unimpaired monthly 40 percent exceedence flows.

RECEIVED

APR 06 2005

IDWR/North

9. Description of place of use: See attachment.

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	

Total number of acres to be irrigated _____

10. Describe any other water rights used for the same purposes as described above. None

11. a. Who owns the property at the point of diversion? _____

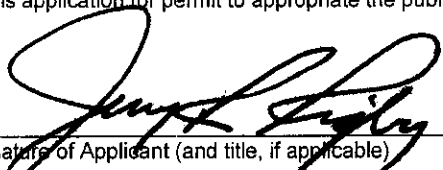
b. Who owns the land to be irrigated or place of use? _____

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: _____

12. Remarks: See attachment.

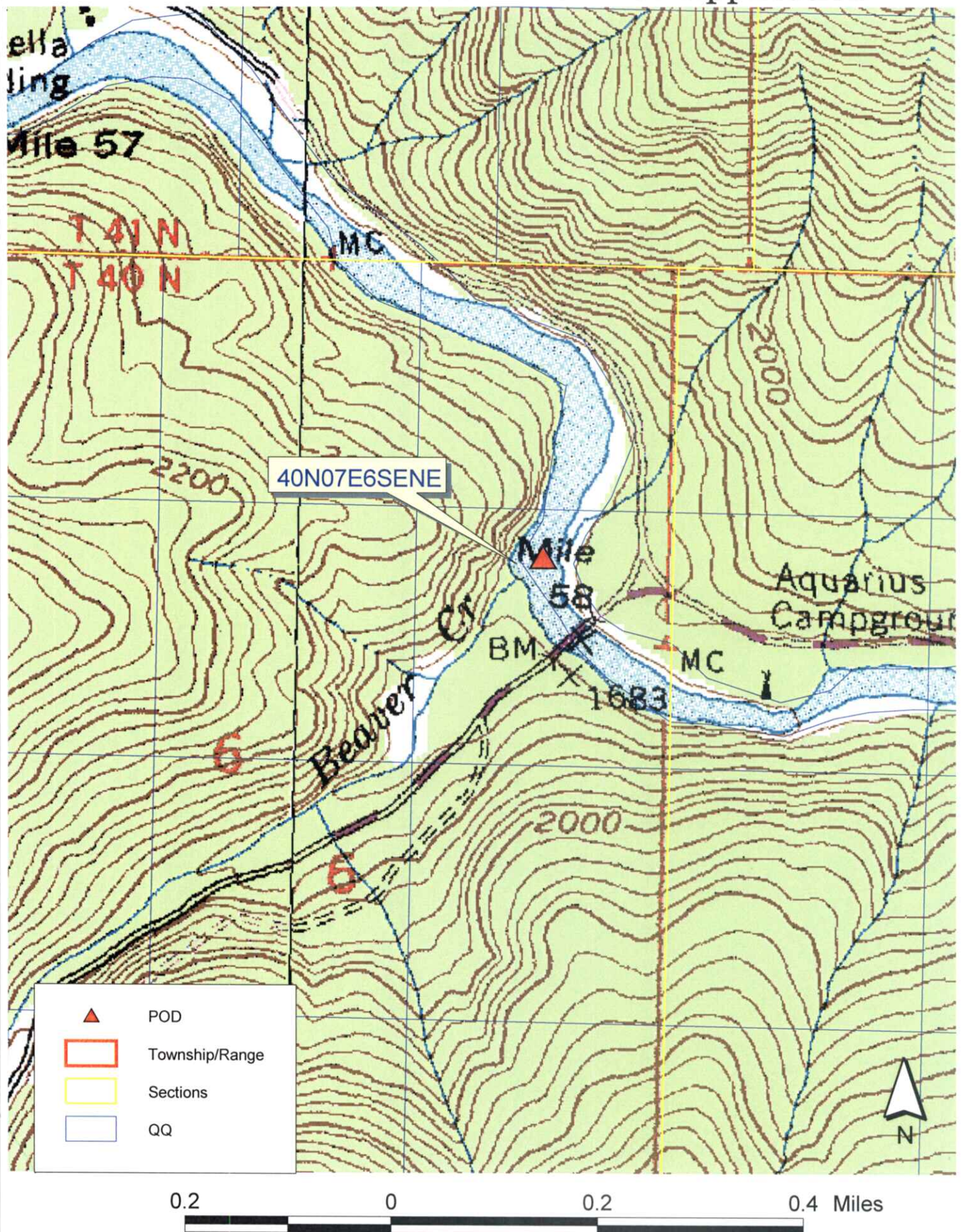
13. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

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 SW Keen Date 4/1/2005 Time 12:00pm Preliminary check by _____
Fee \$ NA Received by _____ # _____ Date _____
Publication prepared by _____ Date _____ Published in _____
Publication approved _____ Date _____

North Fork Clearwater River MSF Application



North Fork Clearwater River (Quantification Point 35)
Minimum Stream Flow Application Attachment

4. Water will be used for the following purposes:

Amount 1349 cfs for Minimum Stream Flow purposes from 1/1 to 1/31
Amount 1838 cfs for Minimum Stream Flow purposes from 2/1 to 2/28
Amount 2885 cfs for Minimum Stream Flow purposes from 3/1 to 3/31
Amount 5863 cfs for Minimum Stream Flow purposes from 4/1 to 4/30
Amount 10396 cfs for Minimum Stream Flow purposes from 5/1 to 5/31
Amount 8470 cfs for Minimum Stream Flow purposes from 6/1 to 6/30
Amount 2331 cfs for Minimum Stream Flow purposes from 7/1 to 7/31
Amount 1128 cfs for Minimum Stream Flow purposes from 8/1 to 8/31
Amount 873 cfs for Minimum Stream Flow purposes from 9/1 to 9/30
Amount 828 cfs for Minimum Stream Flow purposes from 10/1 to 10/31
Amount 1239 cfs for Minimum Stream Flow purposes from 11/1 to 11/30
Amount 1237 cfs for Minimum Stream Flow purposes from 12/1 to 12/31

9. Description of place of use: The place of use for this water right is the reach between the quantification points.

12. Remarks

This water right is subordinated to future non-Domestic-Commercial-Municipal-Industrial ("non-DCMI") development in an amount up to 74.88 cfs based on ten percent of the lowest unimpaired median monthly flow or the amount available above a base flow which is equivalent to the unimpaired monthly 80% exceedence flow, whichever is less.

The unimpaired monthly 80% exceedence flows are: January – 748 cfs, February - 880 cfs, March – 1479 cfs, April – 3080 cfs, May – 6400 cfs, June – 4100 cfs, July – 1200 cfs, August – 770 cfs, September – 603 cfs, October – 509 cfs, November – 630 cfs, and December – 640 cfs.

This water right shall be subordinated to all future DCMI uses.

Use of water under this right shall be non-consumptive.

While the instream flow and the future allocation for non-DCMI uses and base flows are to be decreed in cubic feet per second (cfs), such quantities are intended to reflect the percentages of the unimpaired exceedence flows at the quantification point described in this water right. The unimpaired exceedence flows were estimated using regional regression equations developed by the United States Geological Service. Upon further finding and order of the director that gaging stations are required to maintain the approved minimum flows under this right, such measuring devices shall be permanently installed and maintained as specified by the director. If actual flow data become available, the quantities in this water right will be adjusted as necessary to give effect to the exceedence assumption stated above. Such adjustments do not result in a material change to the water right and are not subject to the notice and hearing requirements set

North Fork Clearwater River (Quantification Point 35)
Minimum Stream Flow Application Attachment

forth in this partial decree, but shall comply with the notice and consultation requirements of Section 42-1507(4), Idaho Code.

Use of water under this right shall recognize and allow the continued beneficial diversion of water under any prior existing water right established by diversions 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 the date of priority of this right.

There are no diversions associated with this minimum stream flow water right. The quantification points for this instream flow water right are at the following locations:

T40N R07E S6 NESENE End of Stream Flow Within Clearwater County
T39N R10E S18 SENWSW Beginning of Stream Flow Within Clearwater County

The Idaho Water Resource Board, upon receiving a request, or upon its own initiative, may petition the Director for an amendment to this water right after complying with the notice and consultation procedures of Section 42-1507(4), Idaho Code. 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 notify interested parties of the proposed change, and conduct a hearing for the purpose of determining whether the water right should be amended in the public interest.

When this water right is not capable of being maintained using existing flows, Idaho Code Section 42-1507 authorizes the Idaho Water Resource Board to maintain the flow through operation of the water supply bank authorized by Section 42-1761 through 42-1765, Idaho Code, and by other available methods consistent with Idaho Law.

This instream flow water right is subordinated to all present and future operations of the Dworshak Project. Operations herein means the timing and rate of discharge, including water storage and release of stored water, from Dworshak Dam.

**NOW
STARTING
RIGHT
SIDE OF
FILE**



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov.

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

January 17, 2006

IDAHO WATER RESOURCE BOARD
PO BOX 83720
BOISE ID 83720-0098

via Hand Delivery

RE: Permit No. 83-11962

Permit Approval Notice

Dear Permit Holder:

The Department of Water Resources has prepared the enclosed the Permit to Appropriate Water in connection with the Amended Preliminary Order approving Application for Permit No. 83-11962.

A proof of beneficial use statement for the permitted minimum stream flow is due on or before April 1, 2011. The Department will send you a 'Proof Due Notice' approximately 60 days prior to the above referenced date requesting you to file either a Proof of Beneficial Use form or a Request for Extension of Time form.

If you have any questions, please contact me at 208-287-4947.

Sincerely,

A handwritten signature in black ink that reads "Shelley W. Keen". The signature is written in a cursive, flowing style.

Shelley W. Keen

Water Rights Supervisor

Enclosure

Gibson, Deborah

From: Gibson, Deborah
Sent: Wednesday, January 18, 2006 2:19 PM
To: Spackman, Gary
Subject: FW: IDWR Concurrent Resolutions

I've sent this message to Katharine Gerrity.

-----Original Message-----

From: Gibson, Deborah
Sent: Wednesday, January 18, 2006 2:15 PM
To: 'kgerrity@iso.state.id.us'
Subject: IDWR Concurrent Resolutions

Hello Katharine:

Here are the draft Concurrent Resolutions you requested in response to our letters to the legislature for approval of three applications for minimum streamflow designations on behalf of the Idaho Water Resource Board.

If you have any questions, or need assistance please call me at 287-4942. Thank you for your help in this matter.



MINFLO Concur
Resol form2.doc



MINFLO Concur
Resol form.doc

Deborah Gibson
Administrative Assistant
Water Allocation Bureau
Idaho Department of Water Resources
Phone: (208) 287-4942
Fax: (208) 287-6700

Don't
Scan -

**A CONCURRENT RESOLUTION
APPROVING APPLICATION TO APPROPRIATE WATER
FOR MINIMUM STREAMFLOW**

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, the Idaho Water Resource Board may apply for a permit to appropriate unappropriated waters of any stream to establish a minimum streamflow; and

WHEREAS, under the provisions of Section 42-1503, Idaho Code, an application approved by the Idaho Department of Water Resources shall not become finally effective until affirmatively acted upon by the Legislature, 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; and

WHEREAS, on January 13, 2006 the Department of Water Resources approved the application by issuing an Amended Preliminary Order that became a Final Order on January 28, 2006. The order approves an appropriation of water for minimum streamflow as follows:

1. Approved application to appropriate water no. 83-11962 authorizes the following:

Purpose for the minimum stream flow: To preserve fish habitat.

The minimum stream flow reach: Beginning at the confluence with Kelly Creek in the SW1/4SW1/4, Section 18, Township 39 North, Range 10 East, Boise-Meridian, Clearwater County, and extending downstream 44.6 river miles to the confluence with Beaver Creek in Lot 7 (NE1/4SE1/4NE1/4), Section 6, Township 40 North, Range 07 East, Boise-Meridian

Proposed Priority Date: April 1, 2005

<u>Period Of Use</u>	<u>Flow Rate</u>	<u>Period Of Use</u>	<u>Flow Rate</u>
1/1 to 1/31	1,349 cfs	7/1 to 7/31	2,331 cfs
2/1 to 2/29	1,838 cfs	8/1 to 8/31	1,128 cfs
3/1 to 3/31	2,885 cfs	9/1 to 9/30	873 cfs
4/1 to 4/30	5,863 cfs	10/1 to 10/31	828 cfs
5/1 to 5/31	10,396 cfs	11/1 to 11/30	1,239 cfs
6/1 to 6/30	8,470 cfs	12/1 to 12/31	1,237 cfs

Draft
Don't Scan

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Fifty-Eighth Idaho Legislature, the Senate and the House of Representatives concurring therein, that the same is hereby approved subject to the conditions and limitations contained in the Amended Preliminary Order issued by the Department of Water Resources on January 13, 2006.



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov.

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

January 13, 2006

THE HONORABLE BRUCE NEWCOMB
SPEAKER OF THE HOUSE
STATEHOUSE MAIL
BOISE ID 83720

**RE: PERMIT NO. 83-11962 TO ESTABLISH MINIMUM STREAM FLOWS ON THE
NORTH FORK OF THE CLEARWATER RIVER, TRIBUTARY TO THE
CLEARWATER RIVER**

Dear Speaker Newcomb:

Enclosed for your consideration is a copy of the above referenced permits along with an amended preliminary order approving the applications for permit.

In preparing the documents for submittal to the Legislature, Department staff discovered a minor transcription error in the legal description of the minimum streamflow reach. As a result, the hearing officer issued an amended preliminary order correcting the legal description, and the amended preliminary order is subject to challenge before the Department and the courts of the State of Idaho. The original preliminary order was executed on December 9, 2005, however, and was not challenged. Because the changes in the Amended Preliminary Order are minor, it is unlikely the order will be challenged. If it is not challenged, the order will become final on January 28, 2006.

As you know, Idaho Code, § 42-1503 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: Katharine Gerrity - Legislative Services



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov.

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

January 13, 2006

THE HONORABLE ROBERT L GEDDES
SENATE PRO TEM
STATEHOUSE MAIL
BOISE ID 83720

**RE: PERMIT NO. 83-11962 TO ESTABLISH MINIMUM STREAM FLOWS ON THE
NORTH FORK OF THE CLEARWATER RIVER, TRIBUTARY TO THE
CLEARWATER RIVER**

Dear Senator Geddes:

Enclosed for your consideration is a copy of the above referenced permits along with an amended preliminary order approving the applications for permit.

In preparing the documents for submittal to the Legislature, Department staff discovered a minor transcription error in the legal description of the minimum streamflow reach. As a result, the hearing officer issued an amended preliminary order correcting the legal description, and the amended preliminary order is subject to challenge before the Department and the courts of the State of Idaho. The original preliminary order was executed on December 9, 2005, however, and was not challenged. Because the changes in the Amended Preliminary Order are minor, it is unlikely the order will be challenged. If it is not challenged, the order will become final on January 28, 2006.

As you know, Idaho Code, § 42-1503 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: Katharine Gerrity - Legislative Services



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov.

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

January 13, 2006

IDAHO WATER RESOURCE BOARD
322 E FRONT ST 6TH FLR
PO BOX 83720
BOISE ID 83720-0098

via Hand Delivery

RE: In the Matter of Application for Permit to Appropriate Water for a Minimum
Streamflow, No. 83-11962, in the name of the Idaho Water Resource Board

Dear IWRB Members and Staff:

Enclosed is an Amended Preliminary Order issued because of an error found in the legal description of the beginning and ending reaches in the conditions of the order. This error was found by staff during review for issuance of the permit.

The Department of Water Resources (Department) has issued the enclosed **Amended Preliminary Order** pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and/or brief as described in the enclosed information sheet.**

Please note that water right owners are required to report any change of water right ownership and/or change of mailing address to the department within 120 days of the change. Contact any office of the department or visit our homepage on the Internet to obtain the proper reporting form.

If you have any questions, please do not hesitate to contact me, or Gary Spackman.

Sincerely,

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Encl.

cc: Paul Pence, US Army Corps Of Engineers
Greg Haller, Nez Perce Tribe

RESPONDING TO PRELIMINARY ORDERS ISSUED BY THE IDAHO DEPARTMENT OF WATER RESOURCES

The accompanying order is a **Preliminary Order** issued by the Idaho Department of Water Resources (Department) pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department unless a party petitions for reconsideration within fourteen (14) days after issuance as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of the order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** 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 fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period 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, request for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Department 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 Director 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.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case 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 this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

Biological justification for requested flows for instream flow water right applications 83-11962 and 83-11963

This document is being submitted with input from Idaho Department of Fish and Game and The Nez Perce Tribe.

Current IDFG management objectives and management directions:

Objectives:

Maintain and improve existing fish habitat and water quality within the basin; maintain diversity of fishing opportunities; support anadromous fish management objectives with management of storage in Dworshak Reservoir.

Management directions:

Mouth to Dworshak Dam—

Chinook salmon, steelhead are managed to maximize the returns of hatchery steelhead and spring Chinook to anglers.

Rainbow trout, mountain whitefish, kokanee are managed under general regulations.

Bull trout are closed to harvest for preservation in order to rebuild the viability of the population.

Dworshak Dam slackwater upstream—

Bull trout closed to harvest for preservation.

Cutthroat trout and rainbow trout managed for quality trout (restricted bag and size limit) to increase catch rates for larger fish.

Mountain whitefish and brook trout managed under general regulations.

The Nez Perce Tribe current management goals:

The Nez Perce Tribe is a co-manager of fisheries and fish populations in the Columbia and Snake River basins and in the North Fork Clearwater River including the area covered by these instream flows applications. The Nez Perce Tribe's management objectives for the North Fork Clearwater and Dworshak Reservoirs is to maintain and enhance the key fish and wildlife resources important to the Tribe's way of life and to

protect cultural resources that may be affected by land or water management activities by State or Federal agencies.

Background

The river above Dworshak Reservoir is currently unregulated and the hydrology and habitat conditions are representative of these unregulated flow conditions. Instream flow experts recognize that ecosystems "...include the complex of a biological community and its environment functioning together as an ecological unit in nature" (IFC 2004). The primary principle in maintaining functional ecosystems is that flow regime is the dominant variable in determining river form and function. Channel shape, habitat features, abundance and diversity of fish and other aquatic organisms, and whether populations are sustainable are directly related to flow quantity and timing (Hynes 1970; Poff et al. 1997). The Instream Flow Council (IFC 2004), an international organization of state and provincial instream flow practitioners, states the objective of an appropriate instream flow prescription should be "...to sustain, rehabilitate, or restore ecosystem processes through intra- and interannual variable flow regimes to the greatest extent possible." In other words, the ideal instream flow recommendations include flows representative of the range of flow variability.

North Fork Clearwater River Minimum Streamflows

Current populations of fish in the North Fork Clearwater River can be considered to reflect, on average, the existing flow regime and associated habitat conditions created by that flow regime over time. Mean monthly flows are representative of these average conditions. NOAA Fisheries (formerly National Marine Fisheries Service) biologists, in reviewing the relationship between stream flow and anadromous fish populations throughout the Pacific Northwest, have suggested that mean monthly flows would provide nearly optimal hydrological and habitat conditions for juvenile rearing and adult holding for anadromous salmonids (Arthaud et al. 2001), as well as suitable spawning and migration habitat. Arthaud et al. (2001) further states that 80% mean monthly flows generally provide suitable, but certainly less than optimal, habitat conditions for anadromous salmonids. When flows fall below 80% of mean monthly values, we expect to see loss of access to nearshore cover and side channel habitat, increased water temperatures, loss of food productivity, and dewatering of spawning gravels. Other researchers have also recommended minimum monthly streamflow for salmonid populations between 80 and 100% of the mean monthly flows. Much of the data collected by Hatfield and Bruce (2000) for use in their analysis was in this range.

While NOAA research was focused on anadromous fish populations, resident salmonids, like those found in the North Fork Clearwater River above and below Dworshak Dam, share similar life history characteristics, fill a similar ecological niche, and would therefore be expected to respond similarly to changing flow regimes and habitat conditions. In another study of the response to native fishes to flow, it was found that severely depleted native populations increased in vigor and reproductive capacity following the restoration of the natural flow regime (Propst and Gido 2004).

The recommended flow regimes requested in the above applications generally are less than the estimated mean monthly flows (IDWR presentation at the hearing) and thus are

expected to provide *less than optimum* habitat conditions for the affected fish communities. Idaho Department of Fish and Games Management Plan (2001-2006) identifies a number of objectives and management directions that are achievable under the existing flow regimes and based on the above, considers the recommended flows as the minimum necessary to maintain existing fish populations and meet their stated management objectives.

References:

Arthaud, D.K., Katz, K. Vandemoer, and M. Grady. 2001. Draft protocol for estimating tributary streamflow to protect salmon listed under the Endangered Species Act. National Marine Fisheries Service Habitat Conservation Diversion-NWR.

Hatfield, T. and J. Bruce. 2000. Predicting salmonid habitat-flow relationships for streams from Western North American. No. Am. Jour. Of Fish. Man. 20:1005-1015.

Hynes, H. B. 1970. The ecology of running waters. University of Toronto Press. Toronto.

Idaho Department of Fish and Game. 2001. Fish management plan 2001-2006. Boise, ID.

Instream Flow Council. 2004. Instream flows for riverine resource stewardship. Cheyenne, WY.

Poff, N. L., J. D. Allan, M. B. Bain, J.R. Karr and others. 1997. The natural flow regime: A paradigm for river conservation and restoration. Bioscience 47(11): 769-784.

Propst, D.L. and K. B. Gido. 2004. Response of native and nonnative fishes to natural flow regime management in the San Juan River. Trans. Am. Fish. Soc 133:922-931.

(a)

North Fork Clearwater River
Minimum Stream Flow
Applications 83-11962 and 83-11963
Idaho Water Resource Board

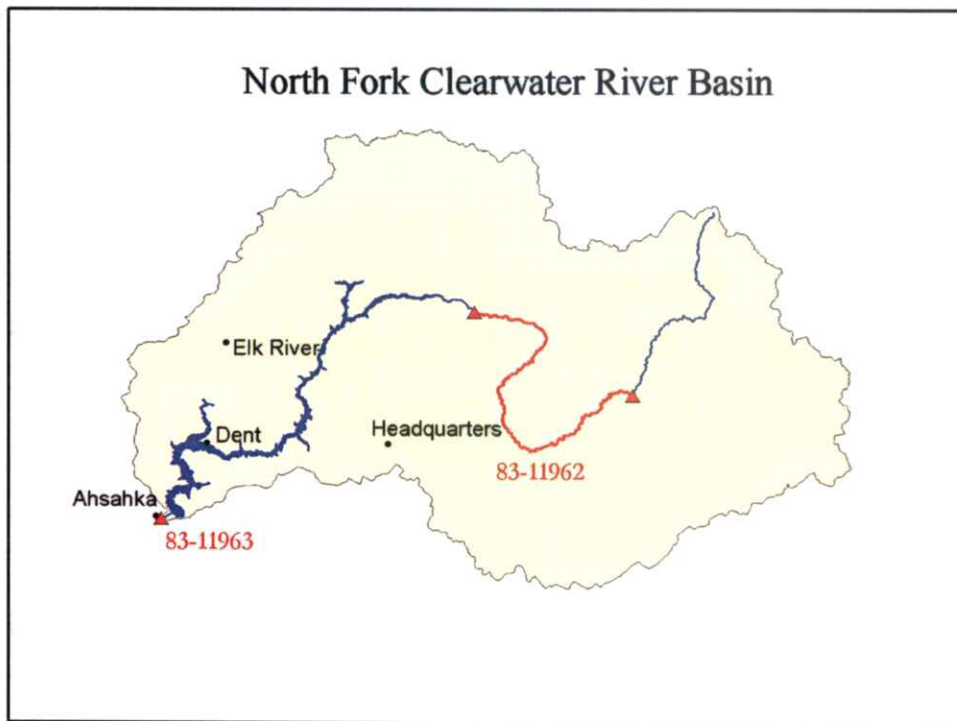


(b)

What is a Minimum Stream Flow?

- Amount of flow necessary to preserve stream values
- Stream values include fish and wildlife habitat, aquatic life, navigation and transportation, recreation, water quality, and/or aesthetic beauty
- Instream use water right held by the Idaho Water Resource Board in trust for Idaho citizens
(Chapter 15, Title 42, Idaho Code)

(c)



(d)

Background

- As part of the Snake River Water Rights Agreement, the Idaho Water Resources Board adopted on February 8, 2005, minimum stream flow water rights on 205 stream reaches in the Salmon and Clearwater River Basins.
- These minimum stream flow water rights were approved by the Idaho Legislature on March 24, 2005. 2005 Idaho Sess. L. Chap. 150.

(e)

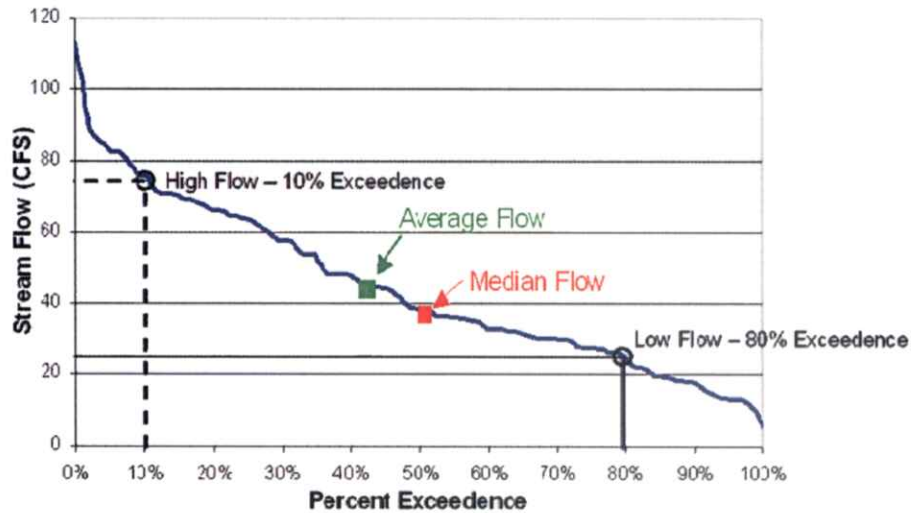
- Two MSFs were inadvertently omitted from the Board's resolution, because flow data was not provided.
- Given that the Idaho Legislature was near adjournment, State officials determined that there was insufficient time to draft and obtain passage of additional legislation establishing flows for these stream reaches.
- Therefore, the Board determined that it would utilize the normal administrative process and submit applications to the Department of Water Resources for establishment of minimum stream flows for the two reaches.
- It is the Board's intent that they would have the same status as the 205 minimum stream flow water rights established in furtherance of the Snake River Water Rights Agreement, and would be subject to the terms of that Agreement.

(f)

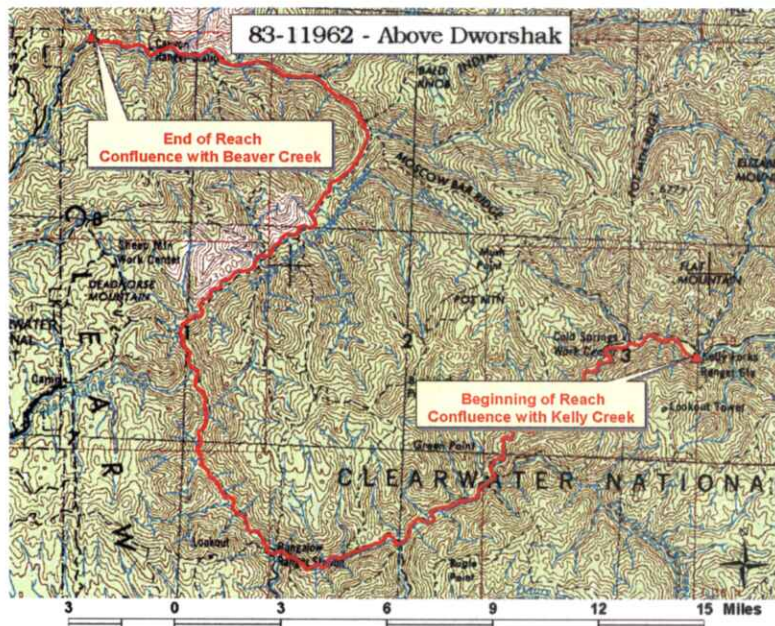
Flow Determination

- Streams were classified according to land use, and were assigned unimpaired exceedence flows based on the following categories:
 - Federal Wilderness
 - Federal non-Wilderness (83-11962)
 - State and Private (83-11963)
 - Special
- Due to the lack of uniform flow data, unimpaired exceedence flows were calculated using USGS regression equations
- If stream flow data is, or becomes available, the actual flow numbers can be adjusted to reflect accurate exceedence values.

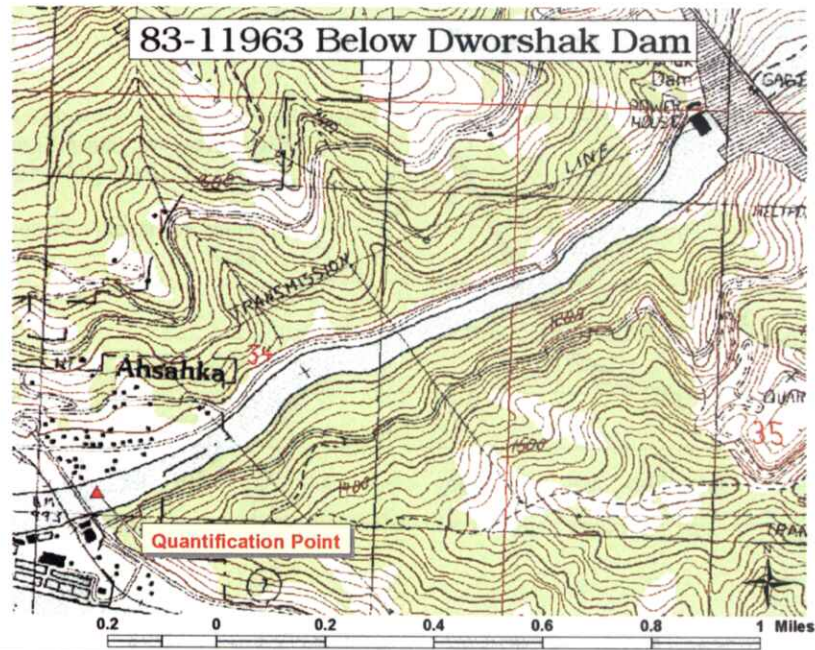
What is Exceedence?



Map of Upper Minimum Stream Flo

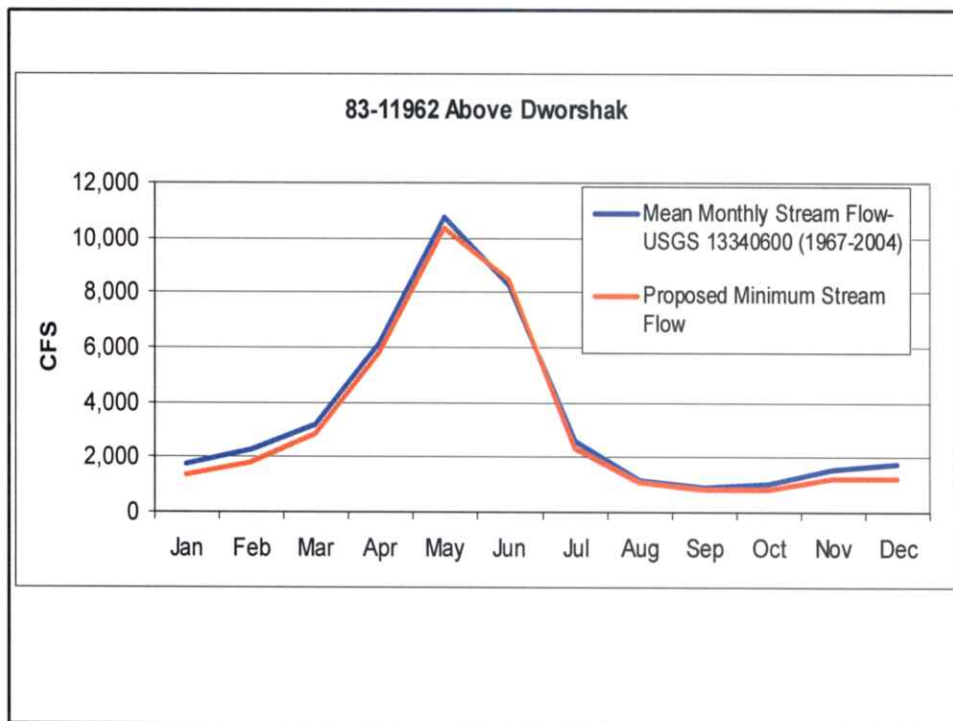


Map of Lower Minimum Stream Flow

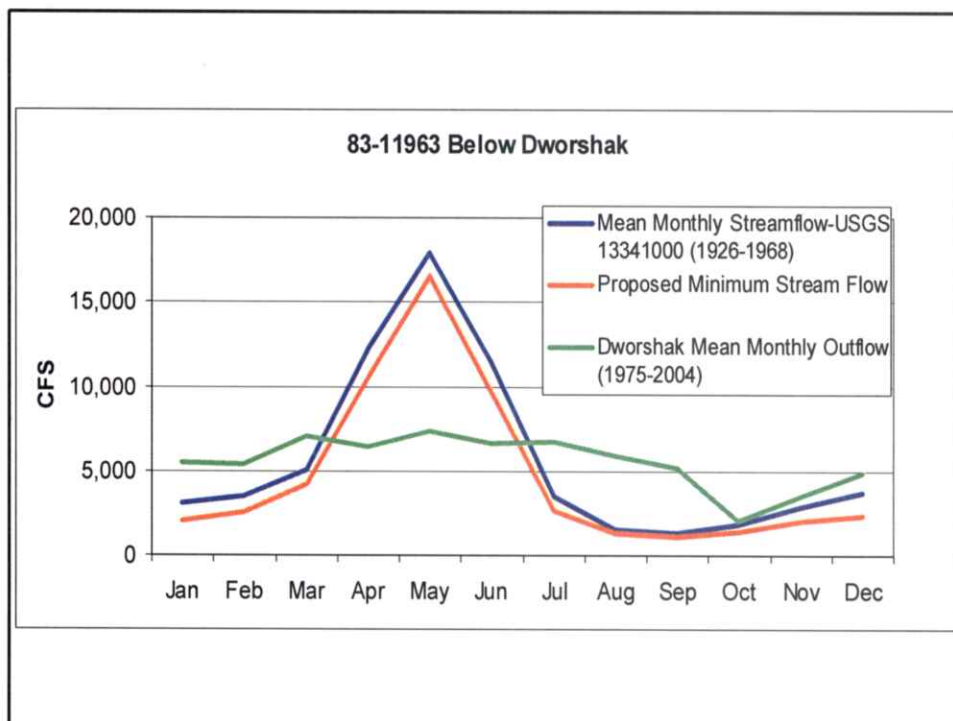


Proposed Monthly Flows	83-11962 Above Dworshak 40% Exceedence cfs	83-11963 Below Dworshak 50% Exceedence cfs
January	1349	2108
February	1838	2625
March	2885	4250
April	5863	10560
May	10396	16560
June	8470	9790
July	2331	2730
August	1128	1380
September	873	1131
October	828	1404
November	1239	2059
December	1237	2368

(k)



(L)



(m)

Conditions

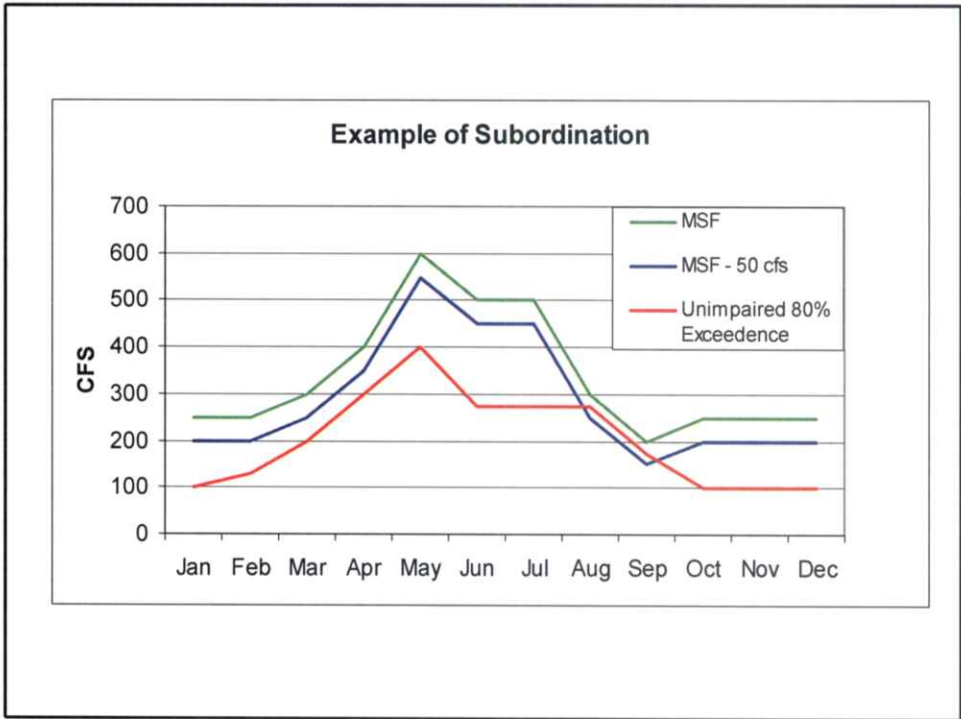
- Junior to all water rights with priority dates earlier than April 1, 2005
- Subordinated to all future DCMI uses.
- Water rights are non-consumptive.
- Subordinated to all present and future operations of the Dworshak Project.
- Subordinated to a specific amount of future non-DCMI development
- When the water right is not capable of being maintained using existing flows, the IWRB can use the water supply bank to meet the MSF

(n)

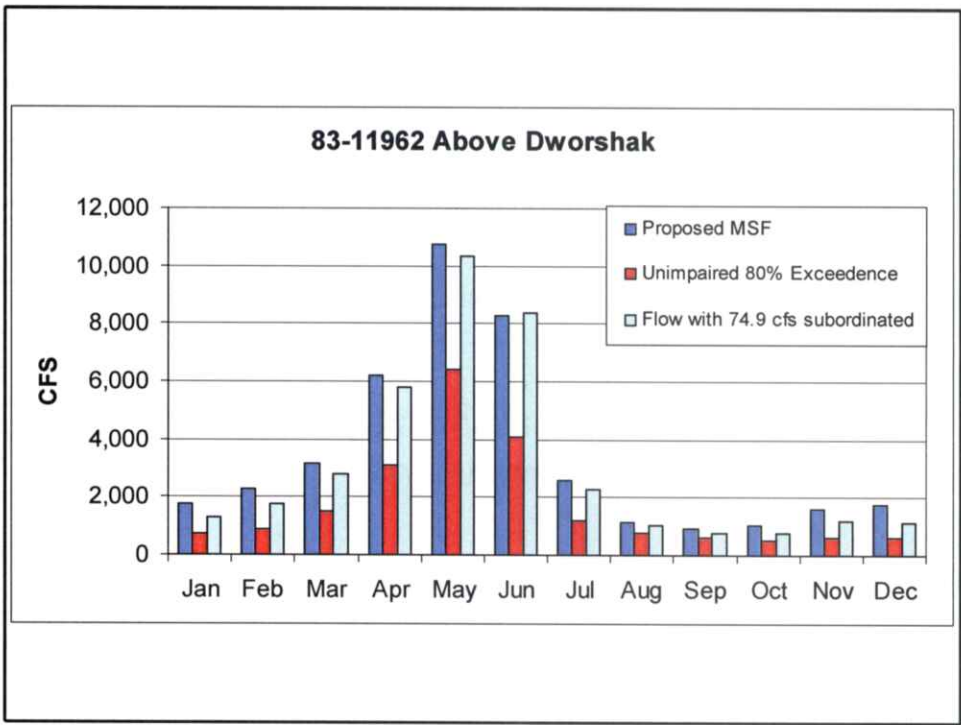
83-11962 Above Dworshak

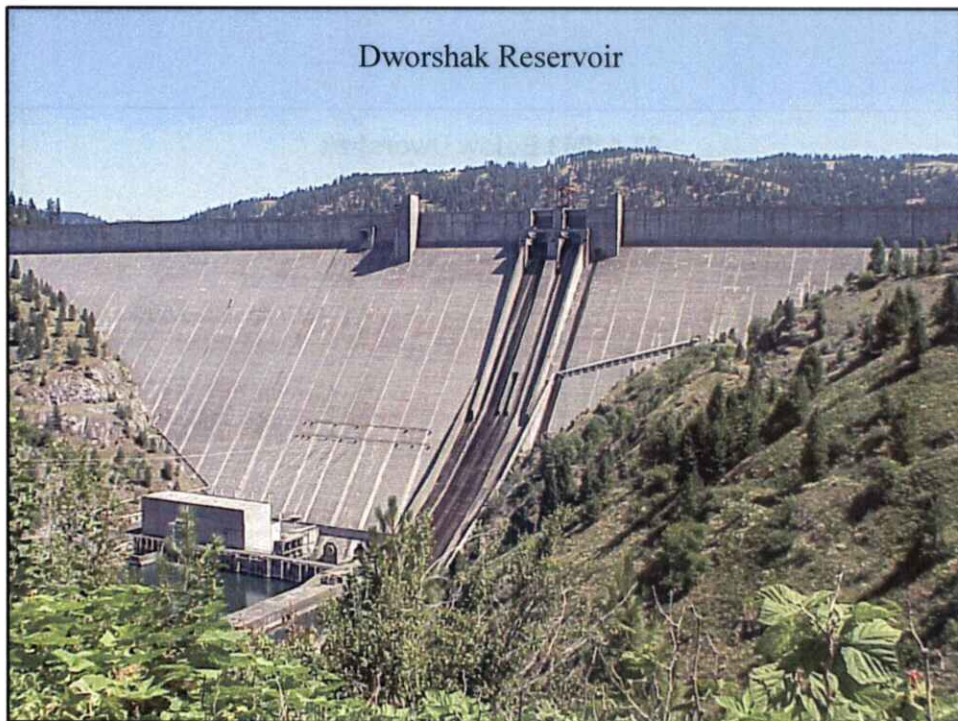
- Subordinated to future non-DCMI development in an amount up to 74.9 cfs
(10% of the lowest unimpaired median monthly flow – 749 cfs in October)
- **OR** the amount available above a base flow of an unimpaired monthly 80% exceedence flow

(0)



(P)



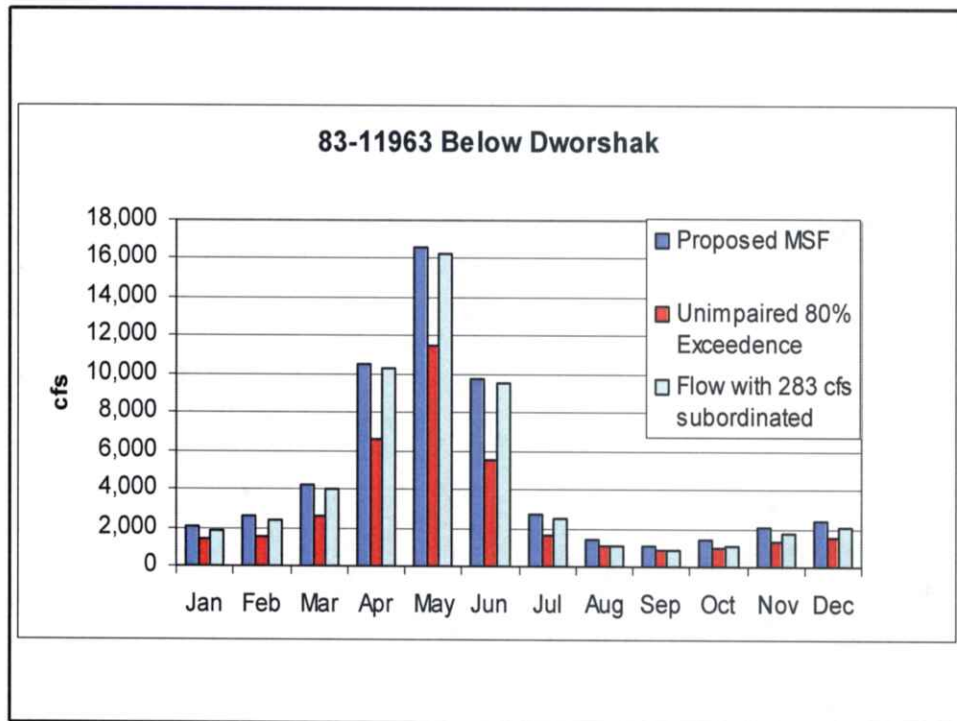


(10)

83-11963 Below Dworshak

- Subordinated to all present and future operations of the Dworshak Project
- Subordinated to future non-DCMI development in an amount up to 283 cfs (25% of the lowest unimpaired median monthly flow – 1131 cfs in September)
- **OR** the amount available above a base flow of an unimpaired monthly 80% exceedence flow

(S)



(+)

Conclusions

- MSFs junior to all current water rights
- Subordinate to operations of Dworshak
- Allow for future DCMI development and some non-DCMI development
- Anadromous and resident fish should benefit from protected flows

(u)

Questions?



Confluence of NF Clearwater and
Clearwater Rivers – 1920s



One section of a wannigan moving
down the North Fork of the
Clearwater River during the spring
log drive.

Photos from the Clearwater Historical Museum

ROSTER OF ATTENDANCE

IN THE MATTER OF APPLICATIONS FOR
MINIMUM STREAMFLOW NOS. 83-11962
& 83-11963, IN THE NAME OF THE IDAHO
WATER RESOURCE BOARD

) HEARING (Formal)
) October 13, 2:00 p.m.
)
) Conducted by Gary Spackman
) Hearing Officer

NAME

ADDRESS

REPRESENTING

Gary Spackman

Duwachuk Pan

CoE

Richard Wyatt 1422 Ethel Lewiston IWB

Greg Haller

Nez Perce Tribe

Paul Rame Duwachuk Pan

CoE

TESTIMONY LOG

IN THE MATTER OF APPLICATIONS FOR
MINIMUM STREAMFLOW NOS. 83-11962
& 83-11963, IN THE NAME OF THE IDAHO
WATER RESOURCE BOARD

) **HEARING (Formal)**
) **October 13, 2:00 p.m.**
)
) **Conducted by Gary Spackman**
) **Hearing Officer**

TAPE NUMBER _____

[illegible]

ROSTER OF ATTENDANCE

IN THE MATTER OF APPLICATIONS FOR
MINIMUM STREAMFLOW NOS. 83-11962
& 83-11963, IN THE NAME OF THE IDAHO
WATER RESOURCE BOARD

) **HEARING (Informal)**
) **October 13, 7:00 p.m.**
)
) **Conducted by Gary Spackman**
) **Hearing Officer**

NAME _____

ADDRESS

REPRESENTING

Richard Wynn H 1922 8th Ave Lew 1374 ± WR 13

NOTICE OF MINIMUM STREAM FLOW HEARING

Notice is hereby given that on April 1, 2005, the Idaho Water Resource Board filed two applications for permit with the Department of Water Resources (IDWR) to provide for a minimum streamflow in portions of the North Fork of the Clearwater River for preservation of fish, wildlife, scenic, and recreational values and to protect and enhance water quality:

Identification no: 83-11962

Source: North Fork Clearwater River tributary to Clearwater River.
Reach: Beginning at the confluence with Kelly Creek in the SW1/4SW1/4, Section 18, T39N, R10E, B.M., and extending downstream 44.6 river miles to the confluence with Beaver Creek in Lot 7 (NE1/4SE1/4NE1/4), Section 6, T40N, R07E, B.M., all in Clearwater County.

Rate of flow: Changing monthly as follows: January – 1,349 cfs; February – 1,838 cfs; March – 2885 cfs; April – 5863 cfs; May – 10,396 cfs; June – 8,470 cfs; July – 2,331 cfs; August – 1,128 cfs; September – 873 cfs; October – 828 cfs; November – 1,239 cfs; December – 1,237 cfs.

Identification no: 83-11963

Source: North Fork Clearwater River tributary to Clearwater River
Reach: A single point of reference near the confluence with the mainstem Clearwater River, below Dworshak Dam and just above the Highway 7 bridge, located approximately in the SW1/4NE1/4SW1/4, Section 34, T37N, R01E, B.M., Clearwater County.

Rate of flow: Changing monthly as follows: January – 2,108 cfs; February – 2,625 cfs; March – 4,250 cfs; April – 10,560 cfs; May – 16,560 cfs; June – 9,790 cfs; July – 2,730 cfs; August – 1,380 cfs; September – 1,131 cfs; October – 1,404 cfs; November – 2,059 cfs; December – 2,368 cfs.

Other Water Rights: The proposed minimum streamflows will be subject to all prior water rights. In addition, the minimum streamflows may be reduced by all domestic, municipal, industrial, and commercial uses and partially reduced by other uses authorized by water rights bearing priority dates later than the proposed priority dates for the minimum streamflow applications.

Dworshak releases: The proposed minimum streamflows will not alter the operations of Dworshak Dam and Reservoir.

Note: These proposed minimum streamflows were two of 207 instream flows recognized by the Nez Perce Agreement. The Idaho Legislature enacted legislation that omitted these instream flows, however. As a result, the Idaho Water Resource Board is seeking to establish these instream flows through the minimum streamflow process.

Additional Info: More information about these minimum streamflow applications can be found on IDWR's website at www.idwr.idaho.gov.

AFFIDAVITS OF PUBLICATION RE: 83-11962 & 83-11963
(IWRB's Applications for Minimum Streamflows in the Clearwater River)

DATE RECEIVED	DATES PUBLISHED	NEWSPAPER	DATE BILL FORWARDED TO BRENDA FOR PAYMENT	NOTES
9/26/2005	9/15 & 9/22/2005	Lewiston Morning Tribune/Tribune Publishing Company	9/29	\$206.31
9/27/2005	9/15 & 9/22/2005	The Idaho Statesman	9/29	\$246.50
9/27/2005	9/15 & 9/22/2005	Times-News	9/29	\$214.92
10/3/2005	9/15 & 9/22/2005	The Post Register	10/4	\$143.88
10/3/2005 (Northern received & forwarded to SO)	9/15 & 9/22/2005	Clearwater Tribune	10/12	\$349.86

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO)
) ss.
County of Clearwater)

MARCIE STANTON

being first duly sworn, on oath, deposes and says:

That I am and at all times herein mentioned have been a citizen of the United States and of the State of Idaho, over 21 years of age, and that I am not a party to nor interested in the above entitled proceeding; that I am and at all times herein mentioned have been the Editor, Foreman, of the THE CLEARWATER TRIBUNE; that said Clearwater Tribune is a newspaper of general circulation, printed and published weekly at Orofino, in the County of Clearwater and State of Idaho; that the Clearwater Tribune has been continuously and uninterruptedly published in Clearwater County, Idaho, during the period of seventy-eight consecutive weeks prior to the first publication of attached copy of:

Idaho Dept. of Water Resource

NOTICE OF MINIMUM STREAM FLOW HEARING

of which the annexed is a full, true and correct printed copy, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for a full consecutive period of two weeks, commencing on the 15th day of September 2005 and ending on the 22nd day of September 2005.

STATE OF IDAHO)
)
COUNTY OF CLEARWATER)

On this 22nd day of September in the year of 2005, before me, a Notary Public, personally appeared

Marcie Stanton

known or identified to me to be the person whose name subscribed the within instrument, and being by me duly sworn, declared that the statements therein are true, and acknowledged to me that she executed the same.

Pamela

Notary Public for Idaho
Resident at Orofino, Idaho
My commission expires: 11-20-08

RECEIVED

OCT 03 2005

IDWR/North

NOTICE OF MINIMUM STREAM FLOW HEARING

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Additional Info: More information about these minimum streamflow applications can be found on IDWR's website at www.idwr.idaho.gov.

IDWR will hold a hearing as required by Section 42-1503, Idaho Code, for the purpose of receiving evidence and testimony about the applications as follows:

Date and time: October 13, 2005, at 2:00 p.m. and 7:00 p.m.

Place: Clearwater Senior Center
930 Michigan Avenue
Orofino, Idaho 83467

The 2:00 p.m. session will be the formal hearing for participation of full parties. Beginning at 7:00 p.m., public witnesses may provide their comments in a less formal forum.

Any party who wishes to formally appear at the hearing for the purpose of presenting evidence and testimony or cross-examining witnesses should file a notice of appearance with the Idaho Dept. of Water Resources, 1215 Front Street, P.O. Box 83720, Boise, Idaho 83720-0098, Attn: Gary Spackman, at least ten (10) days prior to the hearing. Public witnesses are not required to file a notice of appearance. Informal written views and comments may also be submitted to IDWR prior to the hearing.

The hearing will be conducted in a facility that meets the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise Deborah Gibson at (208)287-4942 at least ten (10) days prior to the hearing. The hearing will be conducted by Gary Spackman, IDWR.

Karl J. Dreher, Director, IDWR

Proof of Publication The Post Register

State of Idaho
County of Bonneville

I, ~~Dan Moore~~, or James Smith, first being duly sworn, depose and say: That I am the ~~Production Manager~~, or Production Supervisor of The Post Company, a corporation of Idaho Falls, Bonneville County, Idaho, publishers of The Post Register, a newspaper of general circulation, published daily at Idaho Falls, Idaho; said Post Register being a consolidation of the Idaho Falls Times, established in the year 1890, The Idaho Register, established in the year 1880 and the Idaho Falls Post, established in 1903, such consolidation being made on the First day of November, 1931, and each of said newspapers have been published continuously and uninterruptedly, prior to consolidation, for more than twelve consecutive months and said Post Register having been published continuously and uninterruptedly from the date of such consolidation, up to and including the last publication of notice hereinafter referred to.

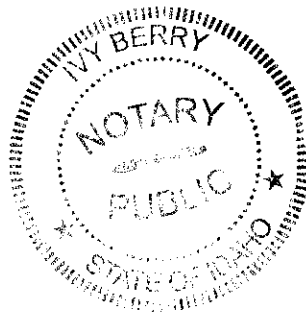
That the notice, of which a copy is hereto attached and made a part of this affidavit, was published in said Post Register for 2 consecutive (days) weeks, first publication having been made on the 15TH day of SEPTEMBER 2005, last publication having been made on the 22ND day of SEPTEMBER 2005 at the said notice was published in the regular and entire issue of said paper on the respective dates of publication, and that such notice was published in the newspaper and not in a supplement.

James B. Smith

Subscribed and sworn to before me, this 28TH day of SEPTEMBER 2005

[Signature]
Notary Public

My commission expires January 10, 2009



NOTICE OF MINIMUM STREAM FLOW HEARING

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Reach: Beginning at the confluence with Kelly Creek and extending downstream 44.6 river miles to the confluence with Beaver Creek, all in Clearwater County.

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Identification no: 83-11963

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Reach: A single point of reference near the confluence with the mainstem Clearwater River, below Dworshak Dam and just above the Highway 7 bridge in Clearwater County.

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Karl J. Dreher, Director, IDWR

Published: September 15, 22, 2005

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Karl J. Dreher, Director, IDWR

PUBLISH: September 15 and 22, 2005

on oath, depose and say that I am Legal Clerk of the

Idaho, and do solemnly swear that a copy of the notice published in the regular and entire issue of said newspaper,secutive weeks, commencing with the

ending with the issue dated 22nd day of September, 2005

idation, effective February 16, 1942, of the Idaho Evening Times, alls News, published theretofore daily except Monday, both of which r said names in said city and county continuously and uninterruptedly nd said TIMES-NEWS, since such consolidation, has been published at which time said newspaper began daily publication under said d.

tho Code, Thursday of each week has been designated as the day mpetent jurisdiction within the state of Idaho to be issued thereof be published.

Aufderheide

scribed to the within instrument, and being by me first duly knowledgeable to me that he executed the same.

nglerman

, Idaho.

6/28/07

ASK YOUR DAD IF HE WANTS
ME TO RAKE YOUR LEAVES...
HE SAYS TO COME BACK IN
A MONTH...HE'S WAITING FOR
THE LAST LEAF TO FALL

Classic Peanuts

Affidavit of Publication
STATE OF IDAHO)
COUNTY OF TWIN FALLS) SS.

I, Ruby Aufderheide, being first duly sworn upon oath, depose and say that I am Legal Clerk of the TIMES-NEWS, published daily at, Twins Falls, Idaho, and do solemnly swear that a copy of the notice of advertisement, as per clipping attached, was published in the regular and entire issue of said newspaper, and not in any supplement thereof, for two consecutive weeks, commencing with the issue dated 15th day of September, 2005 and ending with the issue dated 22nd day of September, 2005

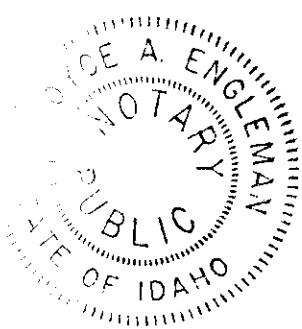
And I do further certify that said newspaper is a consolidation, effective February 16, 1942, of the Idaho Evening Times, published theretofore daily except Sunday, and the Twin Falls News, published theretofore daily except Monday, both of which newspapers prior to consolidation had been published under said names in said city and county continuously and uninterruptedly during a period of more than twelve consecutive months, and said TIMES-NEWS, since such consolidation, has been published as a daily newspaper except Saturday, until July 31, 1978, at which time said newspaper began daily publication under said name in said city and county continuously and uninterrupted.

And I further certify that pursuant to Section 60-108 Idaho Code, Thursday of each week has been designated as the day on which legal notice by law or by order of any court of competent jurisdiction within the state of Idaho to be issued thereof Thursday is announced as the day on which said legal will be published.

STATE OF IDAHO
COUNTY OF TWIN FALLS

On this 22nd day of September, 2005, before me,

a Notary Public, personally appeared Ruby Aufderheide, 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.



Joyce A. Engleman
Notary Public for Idaho
Residing at Twin Falls, Idaho.
My commission expires: 6/28/07

The Idaho Statesman

RECEIVED

SEP 27 2005

Department of Water Resources

P.O. Box 40, Boise, Idaho 83707-0040

LEGAL ADVERTISING PROOF OF PUBLICATION

Account #	DTI#	Identification	Amount:
120934	1351413	NOTICE OF APPLICATION	\$246.50
Attention:	P.O. #	Run Dates	
DEBORAH GIBSON		SEPTEMBER 15, 22, 2005	
IDAHO WATER RESOURCES / LEGAL PO BOX 83720 BOISE, ID 83720-0098			Number of Lines 2 X 69
			Affidavit 1
			Legal # 23510

LEGAL NOTICE NOTICE OF MINIMUM STREAM FLOW HEARING

Notice is hereby given that on April 1, 2005, the Idaho Water Resource Board filed two applications for permit with the Department of Water Resources (IDWR) to provide for a minimum streamflow in portions of the North Fork of the Clearwater River for preservation of fish, wildlife, scenic, and recreational values and to protect and enhance water quality:

Identification no: 83-11962

Source: North Fork Clearwater River tributary to Clearwater River.
Reach: Beginning at the confluence with Kelly Creek and extending downstream 44.6 river miles to the confluence with Beaver Creek, all in Clearwater County.

Rate of flow: Changing monthly as follows: January - 1,349 cfs; February - 1,838 cfs; March - 2,885 cfs; April - 5,863 cfs; May - 10,396 cfs; June - 8,470 cfs; July - 2,331 cfs; August - 1,128 cfs; September - 873 cfs; October - 828 cfs; November - 1,239 cfs; December - 1,237 cfs.

Identification no: 83-11963

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Other Water Rights: The proposed minimum streamflows will be subject to all prior water rights. In addition, the minimum streamflows may be reduced by all domestic, municipal, industrial, and commercial uses and partially reduced by other uses authorized by water rights bearing priority dates later than the proposed priority dates for the minimum streamflow applications.

Dworshak releases: The proposed minimum streamflows will not alter the operations of Dworshak Dam and Reservoir.

Additional Info: More information about these minimum streamflow applications can be found on IDWR's website at www.idwr.idaho.gov.

IDWR will hold a hearing as required by Section 42-1503, Idaho Code, for the purpose of receiving evidence and testimony about the applications as follows:

Date and time: October 13, 2005, at 2:00 p.m. and 7:00 p.m.

Place: Clearwater Senior Center
930 Michigan Avenue
Orofino, Idaho 83467

The 2:00 p.m. session will be the formal hearing for participation of full parties. Beginning at 7:00 p.m., public witnesses may provide their comments in a less formal forum.

Any party who wishes to formally appear in the hearing for the purpose of presenting evidence and testimony or cross-examining witnesses should file a notice of appearance with the Idaho Dept. of Water Resources, 322 East Front Street, P.O. Box 83720, Boise, Idaho 83720-0098, Attn: Gary Spackman, at least ten (10) days prior to the hearing. Public witnesses are not required to file a notice of appearance. Informal written views and comments may also be submitted to IDWR prior to the hearing.

The hearing will be conducted in a facility that satisfies the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations in order to attend, participate in or understand the hearing, please advise Deborah Gibson telephone (208)287-4942 at least (10) days prior to the hearing. The hearing will be conducted by Gary Spackman, IDWR.

Karl J. Dreher, Director, IDWR

Pub. Sept. 15,22, 2005

23510

JANICE HILDRETH, being duly sworn, deposes and says: That she is the Principal Clerk of *The Idaho Statesman*, a daily newspaper printed and published at Boise, Ada County, State of Idaho, and having a general circulation therein, and which said newspaper has been continuously and uninterruptedly published in said County during a period of twelve consecutive months prior to the first publication of the notice, a copy of which is attached hereto: that said notice was published in *The Idaho Statesman*, in conformity with Section 60-108, Idaho Code, as amended, for:

TWO

☒ consecutive weekly ☐ single
☐ consecutive daily ☐ odd skip
insertion(s)

beginning issue of: SEPTEMBER 15, 2005

ending issue of: SEPTEMBER 22, 2005

Janice Hildreth

STATE OF IDAHO)

.ss

COUNTY OF ADA)

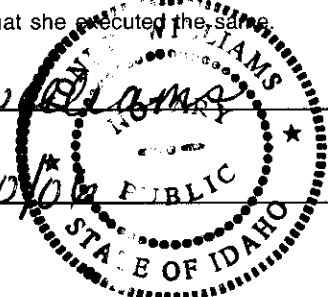
On this 22 day of SEPTEMBER in the year of 2005

before me, a Notary Public, personally appeared before me Janice Hildreth 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 she executed the same.

Notary Public for Idaho

Residing at: Boise, Idaho

My Commission expires: 5/10/06



820171664 00 KENDRA C. (F)
5190

TRIBUNE PUBLISHING COMPANY, INC.
The Lewiston Morning Tribune
505 C St., P.O. Box 957
Lewiston, Idaho 83501
(208) 743-9411

LEGAL ADVERTISING INVOICE

RECEIVED
SEP 26 2005
DEPARTMENT OF
WATER RESOURCES

Date 09/22/2005 INVOICE NO. 403759
Account No. 964770
Description 403759NOTICE OF MINIMU
Times 2 Lines 69

Tab. Lines _____

SOLD TO: ID DEPT OF WATER RESOURCES
PO BOX 83720
BOISE ID 83720

RECEIVED
SEP 26 2005

\$ 206.31

PO# _____

NOTICE: This is an invoice of Purchase made by you. Statement will be rendered the first of the month.
Please Retain This Invoice as Your Statement will Refer to Invoice by No. Only.

AFFIDAVIT OF PUBLICATION

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Note: These proposed minimum streamflows were two of 207 instream flows recognized by the Nez Perce Agreement. The Idaho Legislature enacted legislation that omitted these instream flows, however. As a result, the Idaho Water Resource Board is seeking to establish these instream flows through the minimum streamflow process.

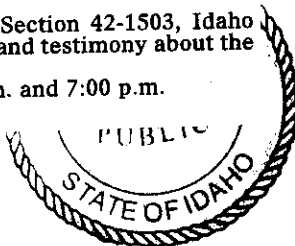
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Date and time: October 13, 2005, at 2:00 p.m. and 7:00 p.m.

Place: Clearwater Senior Center

030 Michigan Avenue



Karen Lewis, being duly sworn, deposes and says, I am the Legal Clerk of the Tribune Publishing Company, a corporation organized and existing under and by virtue of the laws of the State of Idaho and under and by virtue of the laws of the State of Washington, paper of general circulation published at Lewiston, Nez Perce County, Idaho; That the said Lewiston Morning Tribune is an established newspaper and has been published regularly and issued regularly at least once a day for more than 105 consecutive years next immediately preceding the first publication of this notice, and has been so published uninterrupted for said period; that the 403759NOTICE OF attached hereto and which is made a part of this affidavit was published in the said Lewiston Morning Tribune, 2 time(s). Publication being on 09/15, or once a WEEK for 2 consecutive WEEK, the first publication thereof being on the 09/15/2005, and the last publication thereof being on the 09/22/2005, and said 403759NOTICE OF was so published in the regular and entire issue of said newspaper and was not in a supplement thereof and was so published in every issue and number of the said paper, during the period and times of publication as set forth above.

Karen J Lewis

State of Idaho

S.S.

County of Nez Perce

On this 22 day of Sept in the year of 2005, before me, a Notary Public, personally appeared Karen J Lewis, 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.

Prunty
Notary Public in and for the State of Idaho,
residing at Lewiston, therein
Commission Expires 1/23/2010

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Karl J. Dreher, Director, IDWR



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

1118 F Street • Lewiston, Idaho 83501-1930 • (208) 799-4370

RECEIVED
JUN 10 2005
IDWR/North

Dirk Kempthorne, Governor
Toni Hardesty, Director

June 9, 2005

Robert G. Haynes, Northern Regional Manager
Idaho Department of Water Resources
920 Northwest Blvd., Suite 210
Coeur d'Alene, Idaho 83814-2615

RECEIVED
SEP 06 2005
DEPARTMENT OF
WATER RESOURCES

RE: 83-11962 and 83-11963 – Idaho Water Resources Board

Dear Mr. Haynes:

Thank you for providing us the opportunity to comment on applications for permits 83-11962 and 83-11963. The Idaho department of Environmental Quality appreciates and supports the Idaho Water Resource Board's desire to preserve minimum stream flows for the protection of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality. We believe the approval of the applications for permit 83-11962 and 83-11963 will provide such protections.

Again, we appreciate the opportunity to provide you comment on these applications.

Sincerely,

A handwritten signature in cursive script that reads "John Cardwell".

John Cardwell,
Regional Water Quality Program

JC/ba

cc: Kerby Cole, Regional Administrator

83-11962
MINIMUM STREAMFLOW APPLICATION

PROCESSING CHECKLIST

<u>Action</u>	<u>Assigned to</u>	<u>Initials/date</u>
1. Min flow app filed	IWRB	_____
2. Review app in S.O.	Permit Sec Sup	_____
3. Index app in S.O. Make copy for W.A. Bur Make copy for Wtr Plan Bur	Records Chief	_____
4. Update summary report	Records Chief	_____
5. Send orig app to region and copy to Pub. Info Off.	Records Chief	_____
6. Advise S.O. of ident no.	Region	_____ <i>RH Harper</i>
7. DEQ Send copy of app to F&G, ~~W.A. Bur~~ , Parks & Rec. (mandatory)	Region	_____ <i>5/12/05 db</i>
8. Send press release that app has been filed	PIO	_____
9. Contact riparian land owners	Requestor	_____
10. Prepare visual aids (Location, water rts, hydrol)	Wtr Plan Bur.	_____
11. Provide notice of Bd's public meeting by legal notice and press release-PIO	Wtr Plan Bur	_____
12. Send copy of press release of Bd's public meeting to: a. IDWR Board members b. Local legislators c. Watermaster d. Water right holders e. Riparian owners	Wtr Plan Bur	_____
13. Send notice to each water right holder on MSF reach of the Board's public info mtg	Wtr Plan Bur	_____
14. Hold Bd's public meeting	IWRB and Wtr Plan Bur	_____

- | | | |
|---|---------------------------|-------|
| 15. Advertise legal notice of
Director's hearing (S.O.
prepare notice, region
advertise) | Permits Sec Sup
Region | _____ |
| 16. Provide copy of press rel
to:
a. IDWR Board members
b. Local legislators
c. Watermaster
d. Water right holders
e. Riparian owners | Permits Sec Sup | _____ |
| 17. Hold hearing (mandatory) | Permits Sec Sup | _____ |
| 18. Prepare and issue Recom Order | Permits Sec Sup | _____ |
| 19. Prepare and issue Final Order | Permits Sec Sup | _____ |
| 20. Send info to legislature
by the 5th legislative day | Permits Sec Sup | _____ |
| 21. Document water right file
with legislative action | Permits Sec Sup | _____ |



June 2, 2005

DIRK KEMPTHORNE
governor

Robert L. Meinen
director

Dean Sangrey, Administrator
operations division

David Ricks, Administrator
management services division

.....
**IDAHO PARK AND
RECREATION BOARD**
.....

Steve Klatt
region one

Randal F. Rice
region two

Ernest J. Lombard
region three

Latham Williams
region four

Jean S. McDevitt
region five

Douglas A. Hancey
region six

.....
**IDAHO DEPARTMENT OF
PARKS AND RECREATION**
.....

p.o. box 83720
boise, idaho 83720-0065

(208) 334-4199

fax (208) 334-3741

tdd 1-800-377-3529

street address
5657 Warm Springs Avenue

www.parksandrecreation.idaho.gov

Robert G. Haynes
IDWR, North Region, Suite 210
1910 Northwest Boulevard
Coeur d'Alene, ID 83814-2615

Dear Mr. Haynes:

Re: IWRB applications for 83-11962 and 83-11963

We support the Water Board in their pursuit of securing instream flows for these two reaches of the North Fork Clearwater River.

Our agency has been a supporter of the instream flow program from the inception, and we appreciate the continued commitment of the Water Board to appropriations for non-consumptive uses.

Please send further correspondence on these applications to me. If you have any questions, I can be reached at 208-334-4180 X 307, or mlucachi@idpr.state.id.us.

Sincerely,

Mary Lucachick
Outdoor Recreation Analyst



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

Fax (208) 769-1454

May 17, 2005

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

IDAHO DEPT OF PARKS & RECREATION
NORTH REGION OFFICE HEADQUARTERS
2750 KATHLEEN AVE SUITE 1
COEUR D ALENE ID 83814

Re: 83-11962 and 83-11963 - Idaho Water Resource Board

The Idaho water Resource Board has filed two (2) applications for Permit with the Department of Water Resources (IDWR) to preserve minimum stream flows for the protection of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty and water quality.

Enclosed are copies of those applications..

If you have any questions or comments, please submit them to our office as soon as possible following receipt of this letter. We will appreciate receiving your views by or before June 3, 2005, if possible.

If this information needs to be sent to another regional office, will you please forward this to that office and then please advise our office. You may advise us of that by e-mailing Dianne.Ball@idwr.idaho.gov so our records can be corrected.

Thank you,

Sincerely,

Robert G. Haynes, P.E.
Regional Manager

RGH:db

Enclosures



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

Fax (208) 769-1454

May 17, 2005

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

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

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Regional Manager

RGH:db

Enclosures



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

Fax (208) 769-1454

May 17, 2005

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

IDAHO DEPT OF ENVIRONMENTAL QUALITY
1118 "F" STREET
LEWISTON, ID 83501

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RGH:db

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*Short
Version
for Times News,
Post Register &
Tribune -*

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Karl J. Dreher, Director, IDWR