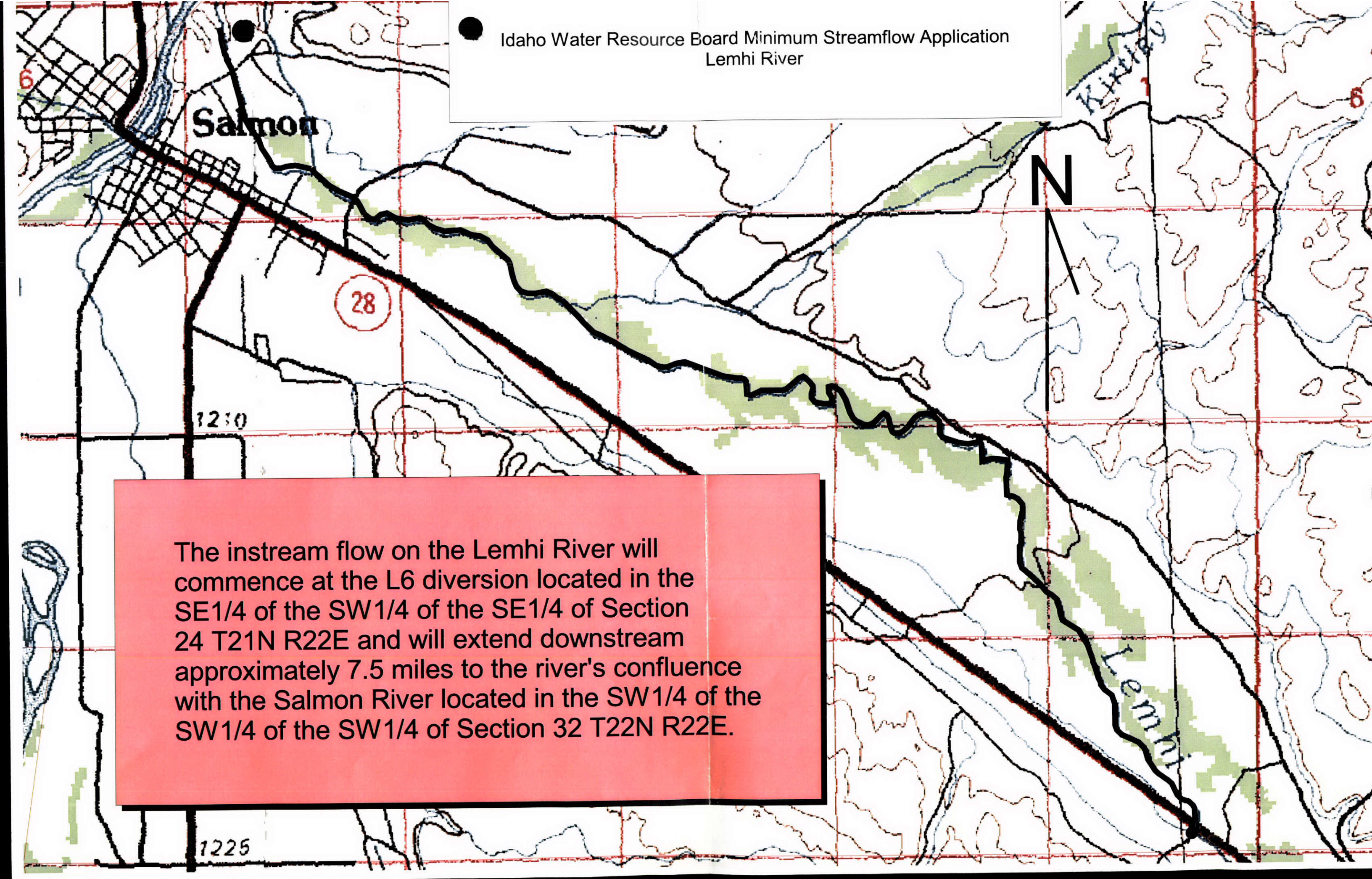




Idaho Water Resource Board Minimum Streamflow Application
Lemhi River

The instream flow on the Lemhi River will commence at the L6 diversion located in the SE1/4 of the SW1/4 of the SE1/4 of Section 24 T21N R22E and will extend downstream approximately 7.5 miles to the river's confluence with the Salmon River located in the SW1/4 of the SW1/4 of Section 32 T22N R22E.

Idaho Water Resource Board Minimum Streamflow Application
Lemhi River

Salmon

28

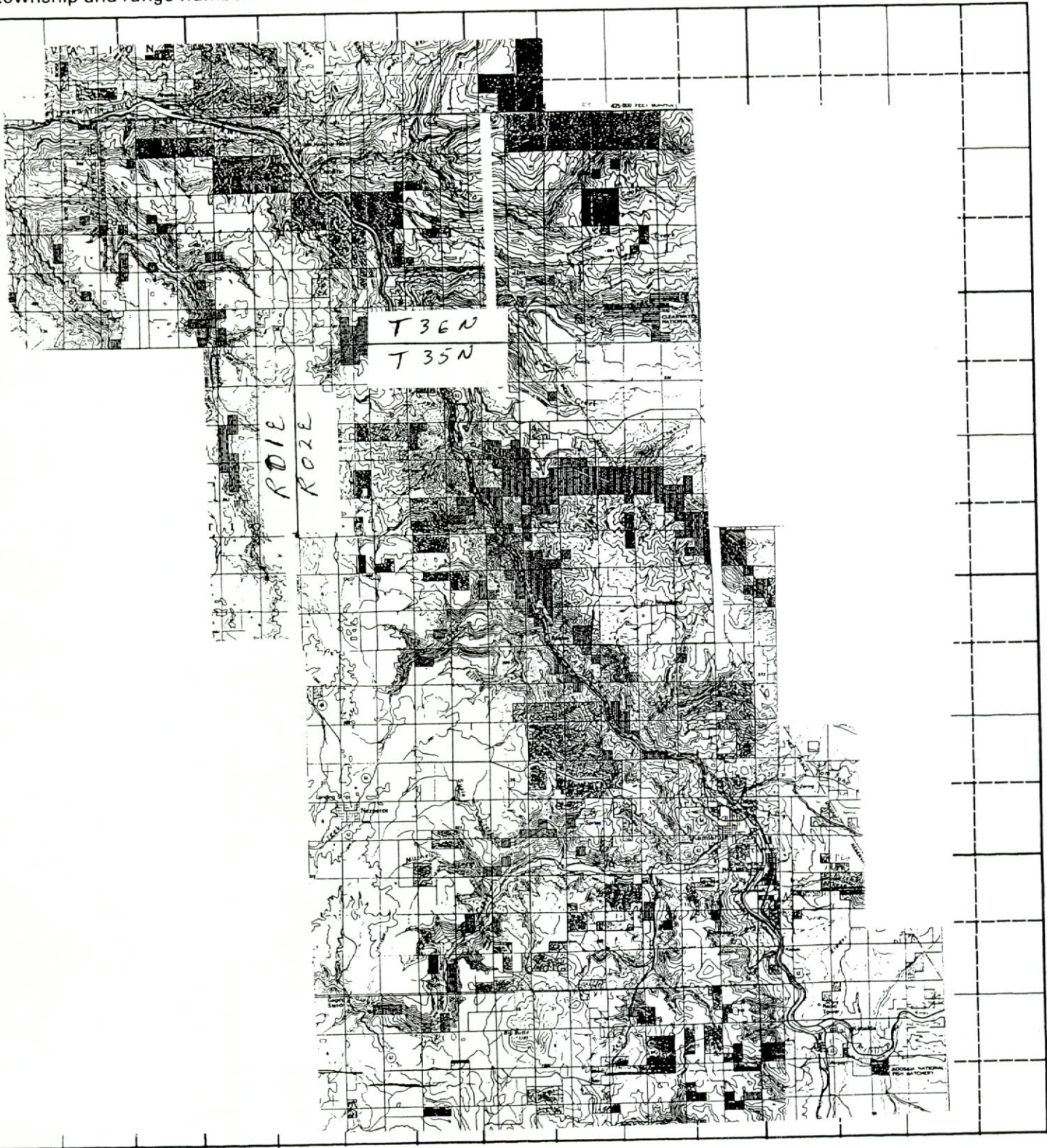
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N

Flow on the Lemhi River will
be maintained at the 1.6 diversion located in the
SW 1/4 of the SE 1/4 of Section
32 T22E and will extend downstream
7.5 miles to the river's confluence
with the Salmon River located in the SW 1/4 of the
SW 1/4 of Section 32 T22N R22E.

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JAN 24 2001

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



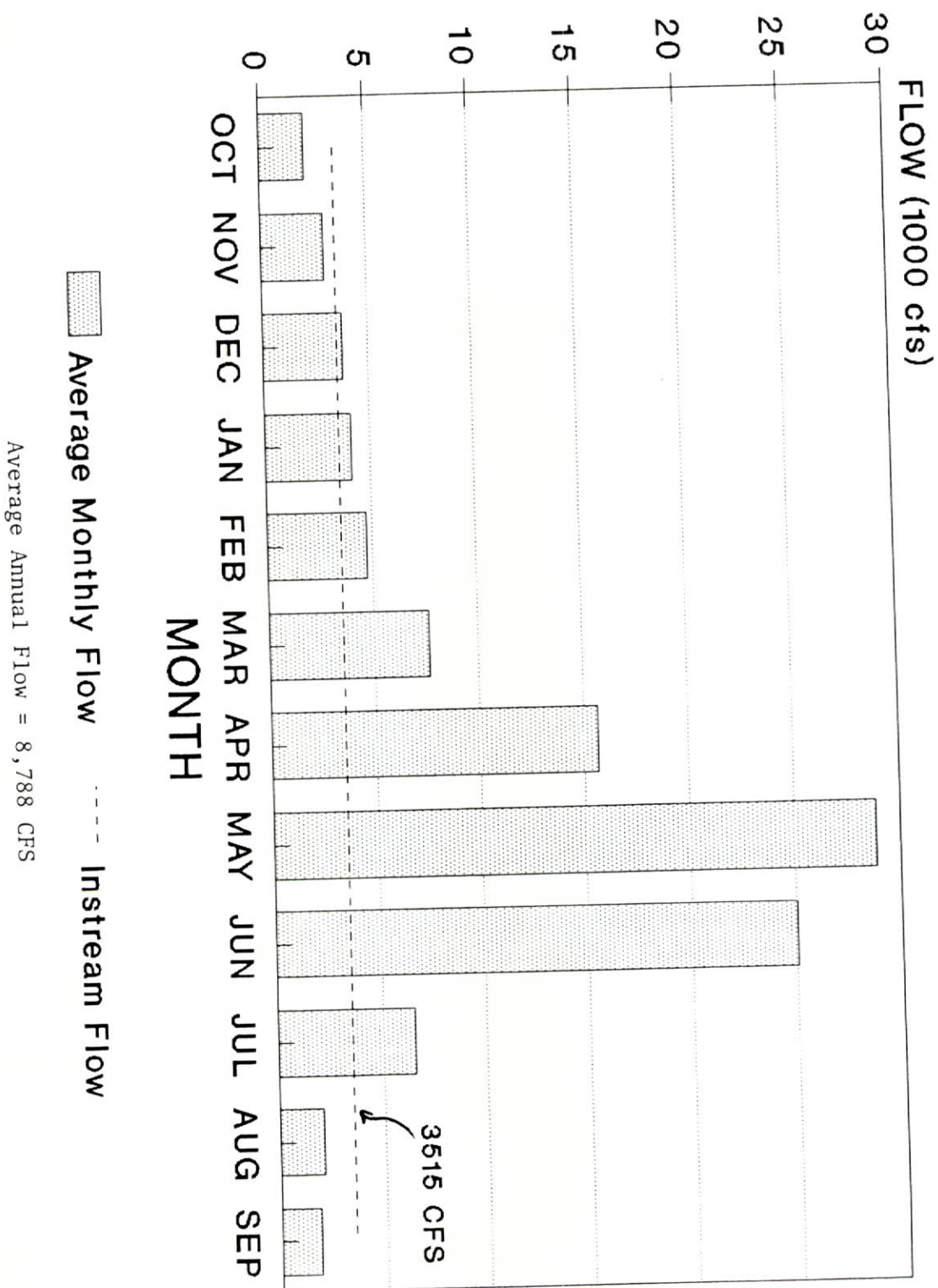
Scale: 2 inches equal 1 mile.

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

JAN 2 1984

William S. Platts
(Applicant)

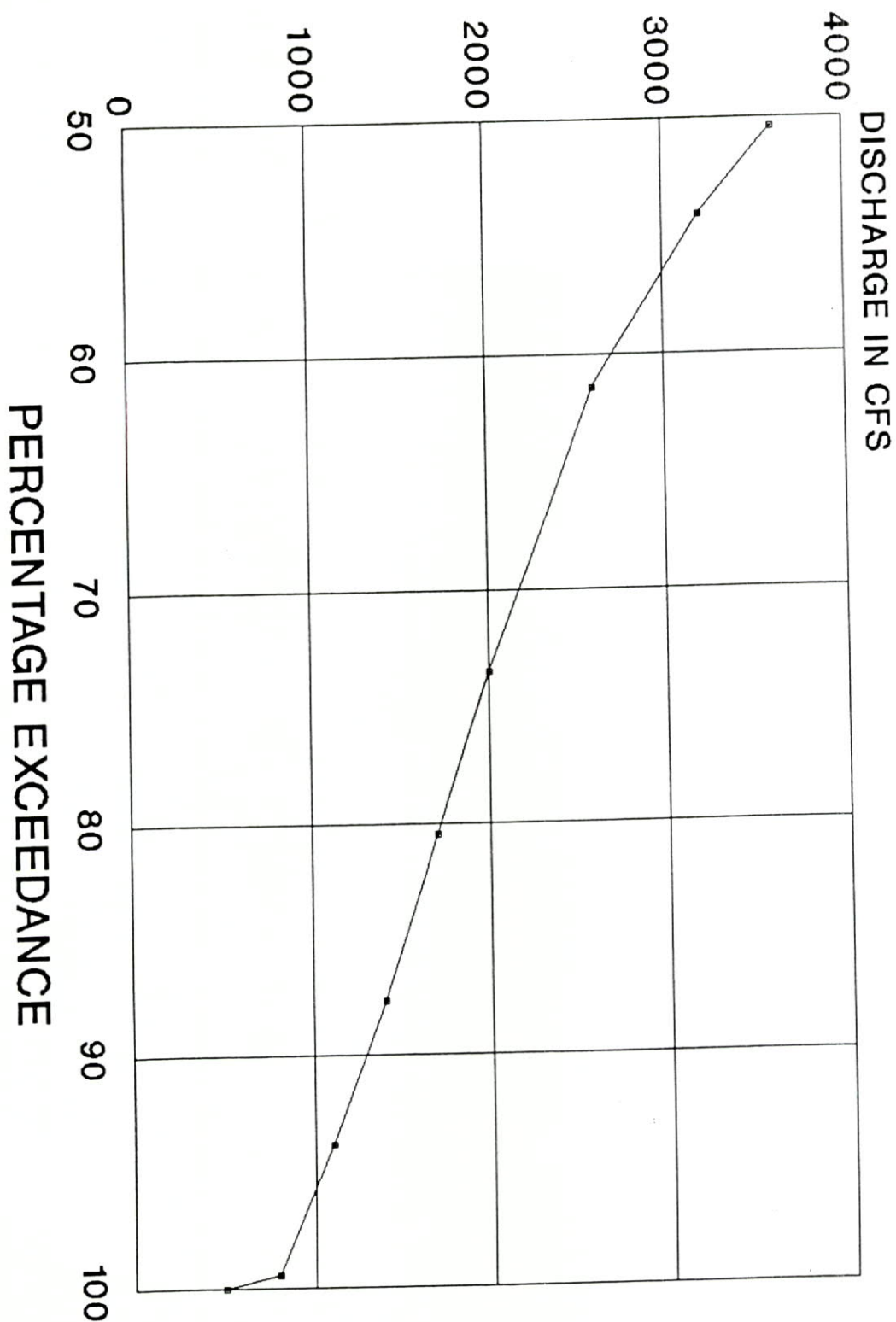
CLEARWATER RIVER AT OROFINO (1930-90)



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JAN 24 2002

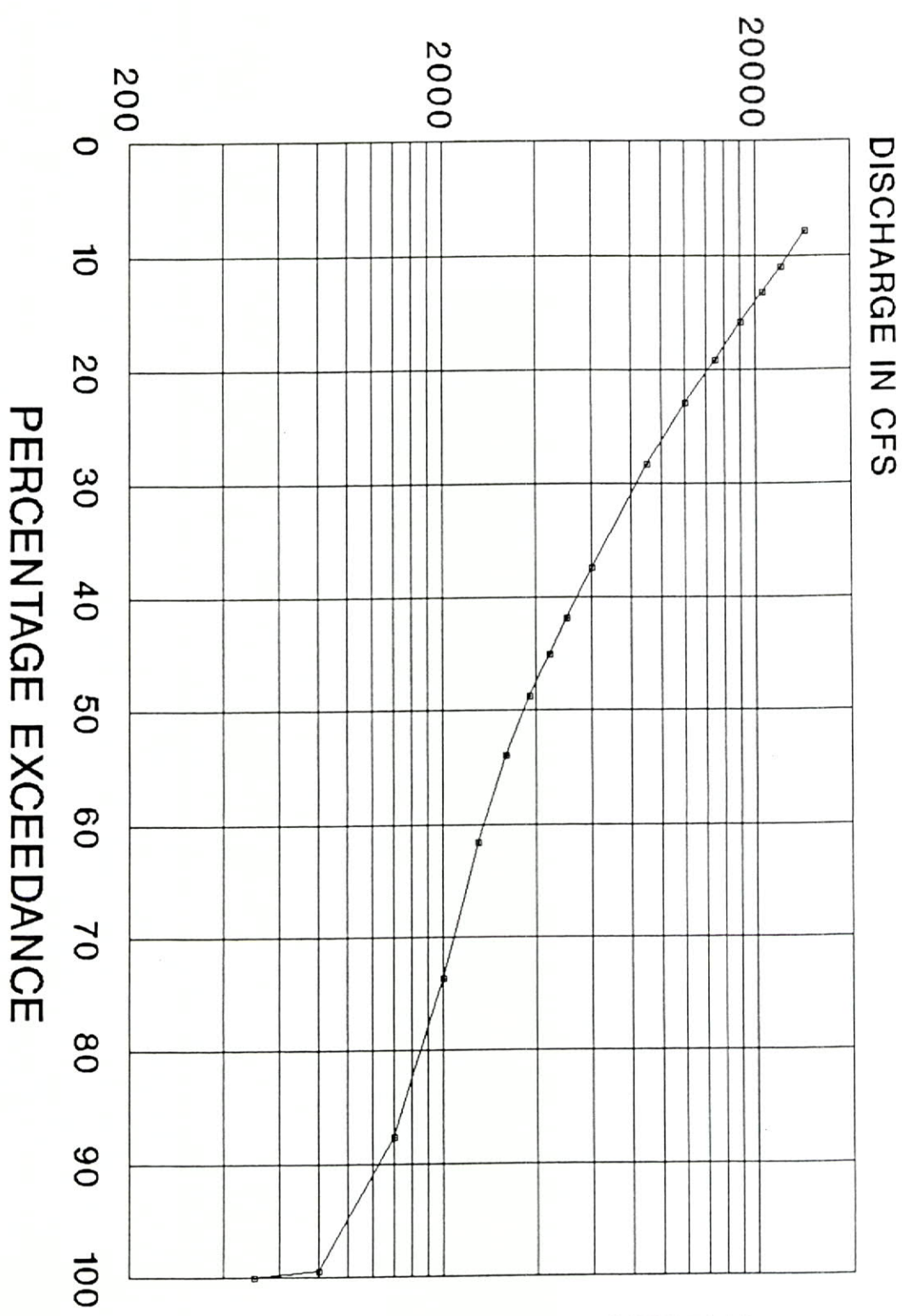
FLOW DURATION CURVE
CLEARWATER RIVER AT OROFINO



PERIOD 1930-90

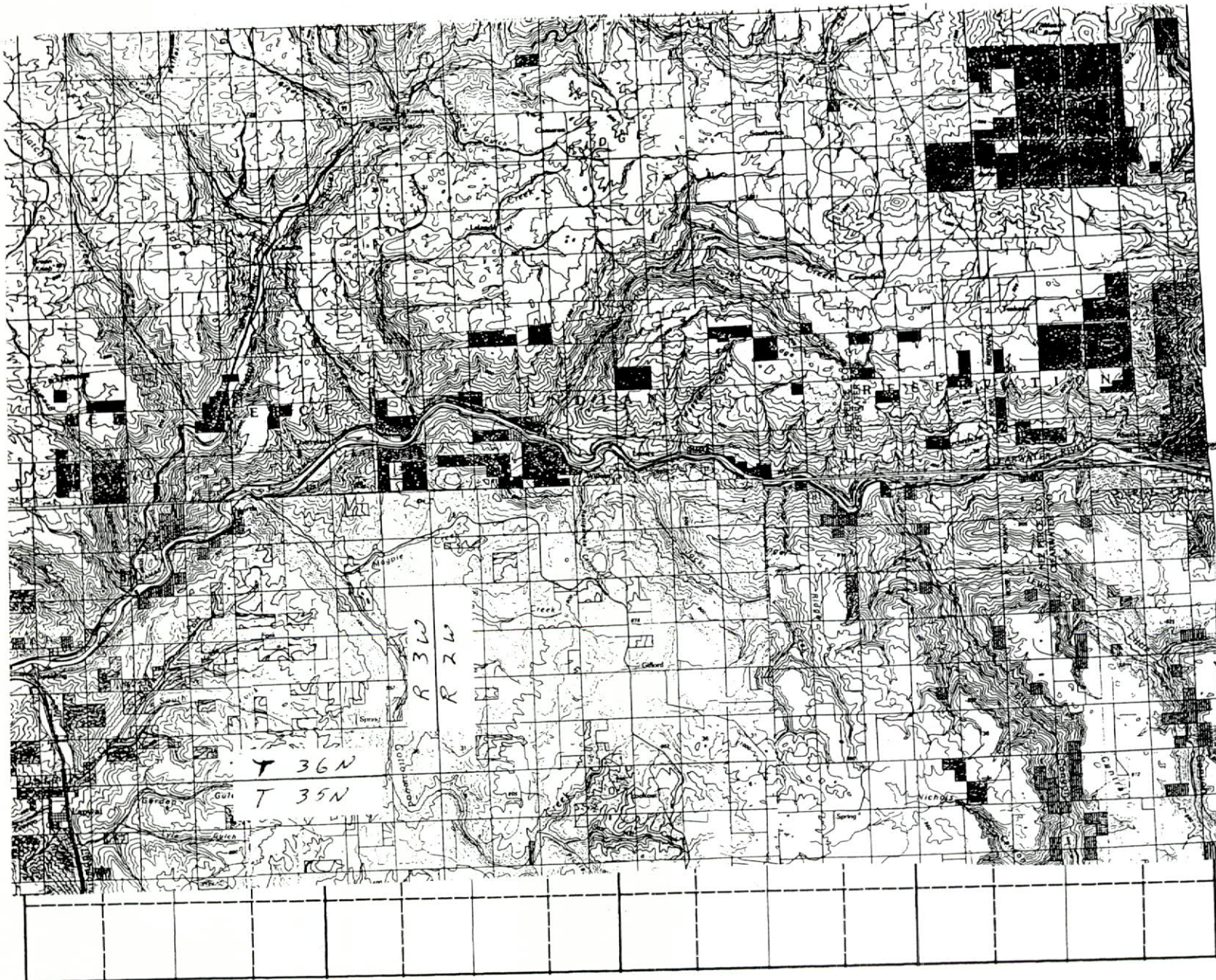
MICROFILMED
JAN 24 2002

FLOW DURATION CURVE CLEARWATER RIVER AT OROFINO



MICROFILMED
JAN 24 2002

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



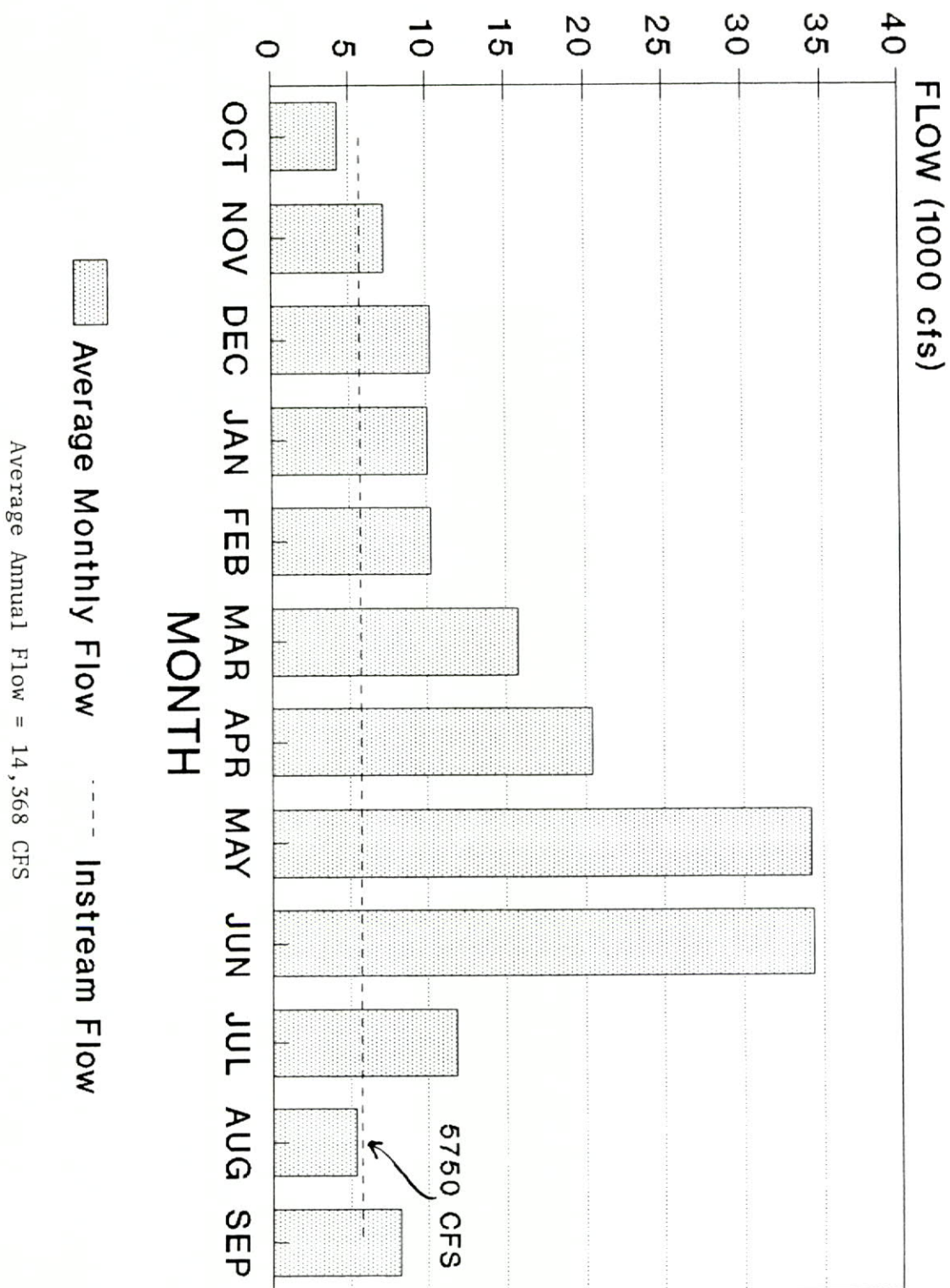
Scale: 2 inches equal 1 mile.

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

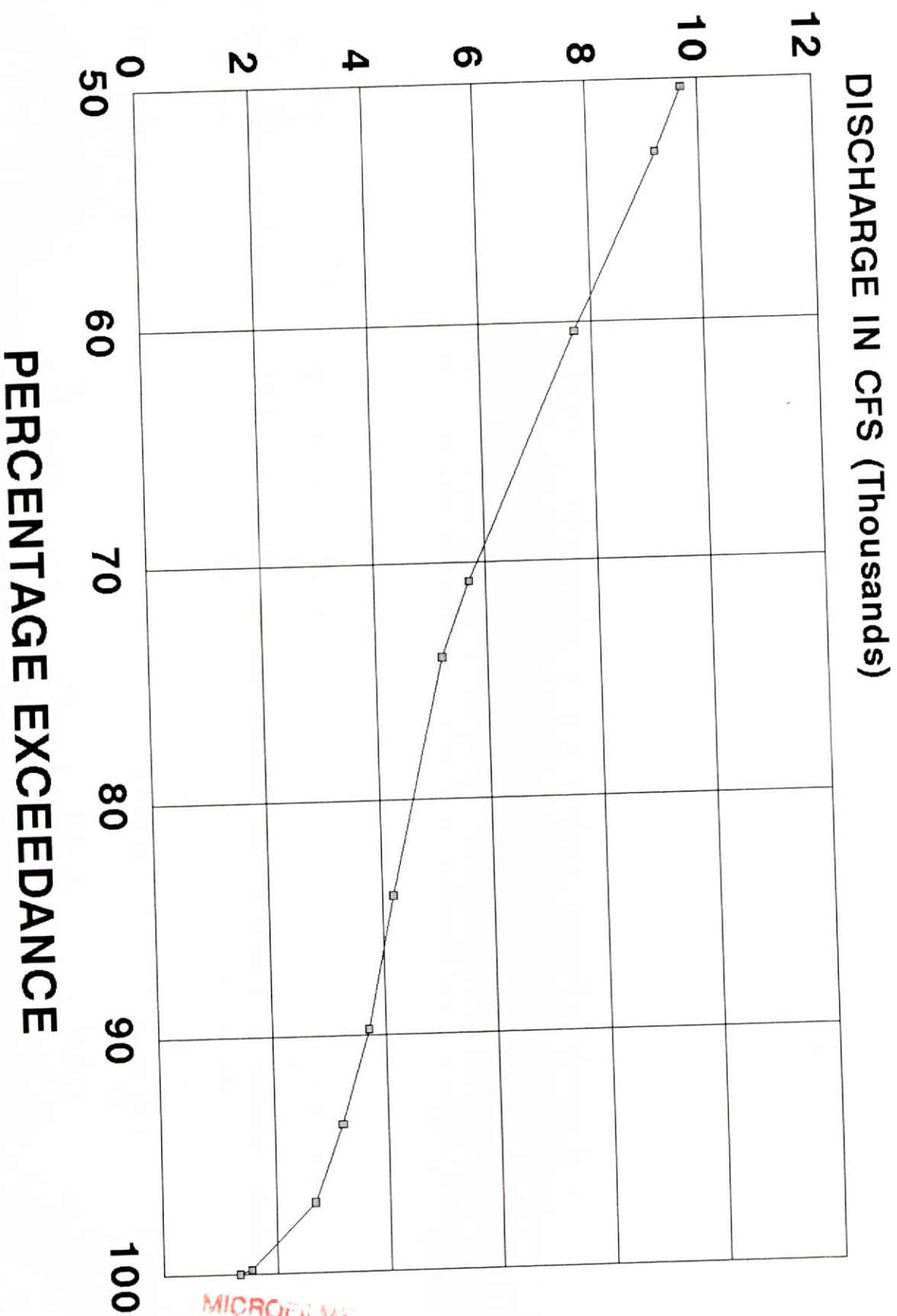
JAN 24 2002

William S. Platts
(Applicant)

CLEARWATER RIVER AT PECK (1972-90)

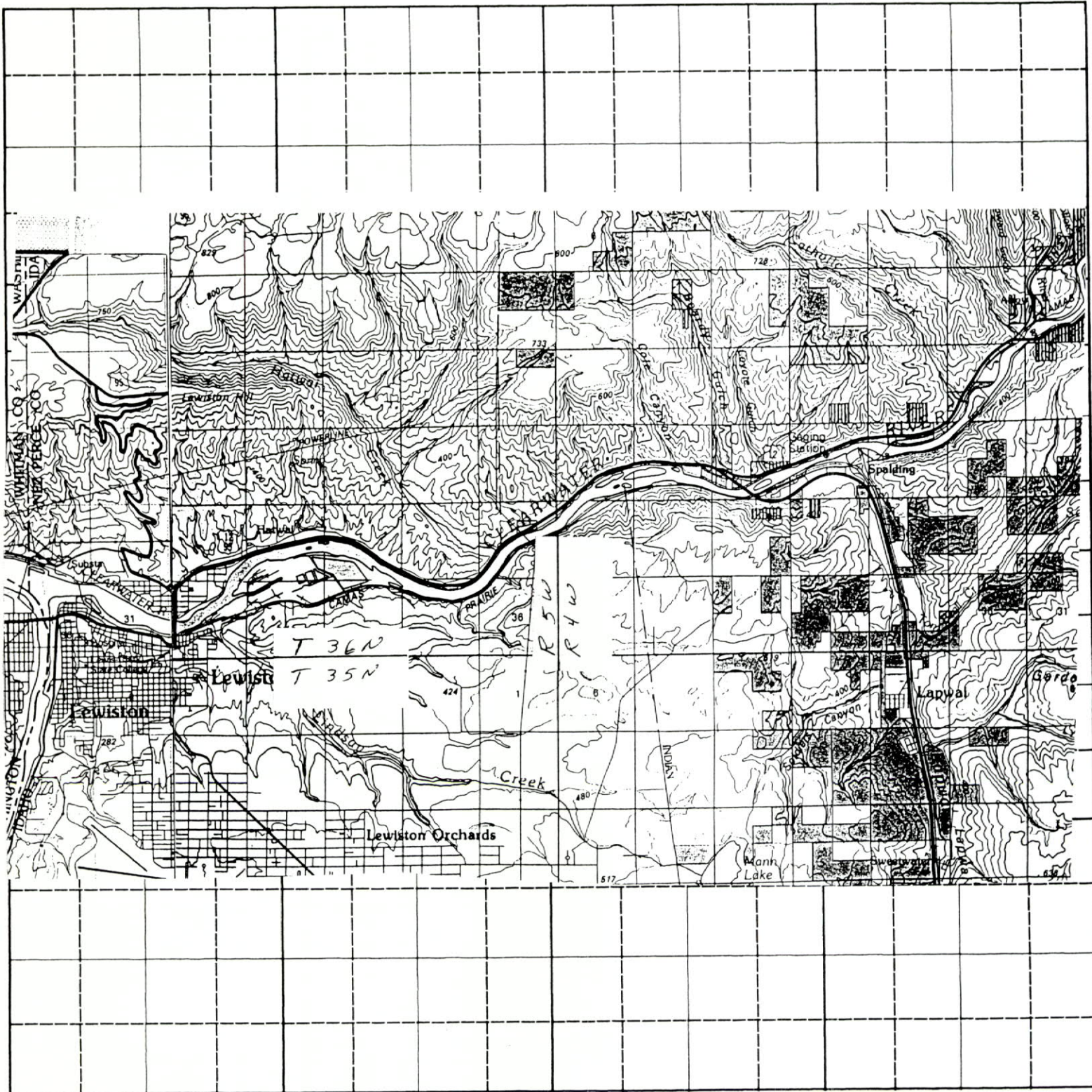


FLOW DURATION CURVE CLEARWATER RIVER AT PECK



MICROFILMED
JAN 24 2002

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



Scale: 2 inches equal 1 mile.

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

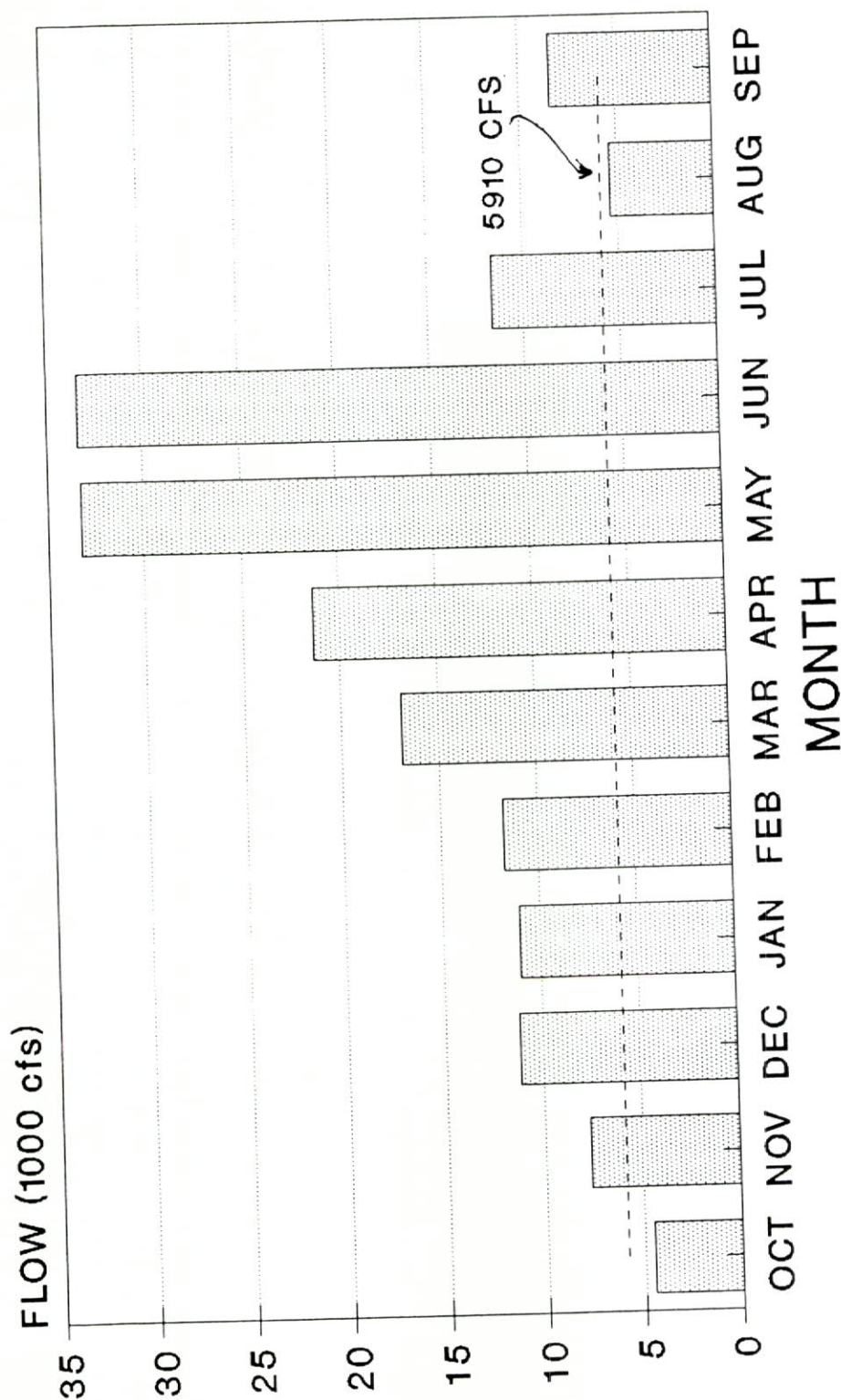
MICROFILMED

JAN 24 2002

William S. Platts

(Applicant)

CLEARWATER RIVER AT SPALDING (1972-90)



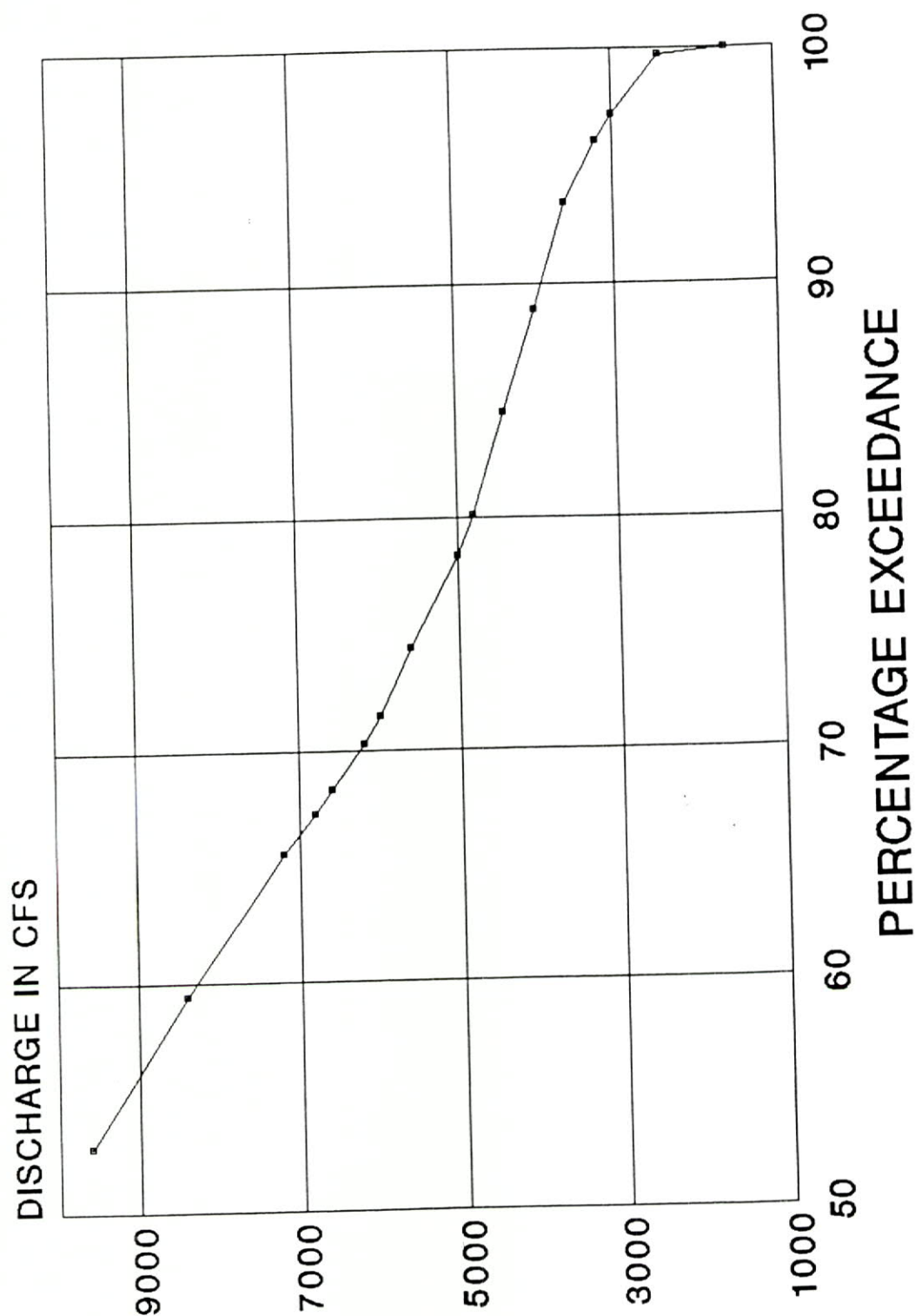
Legend: Average Monthly Flow (dashed line), Instream Flow (stippled bar)

Average Annual Flow = 14,777 CFS

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JAN 24 2002

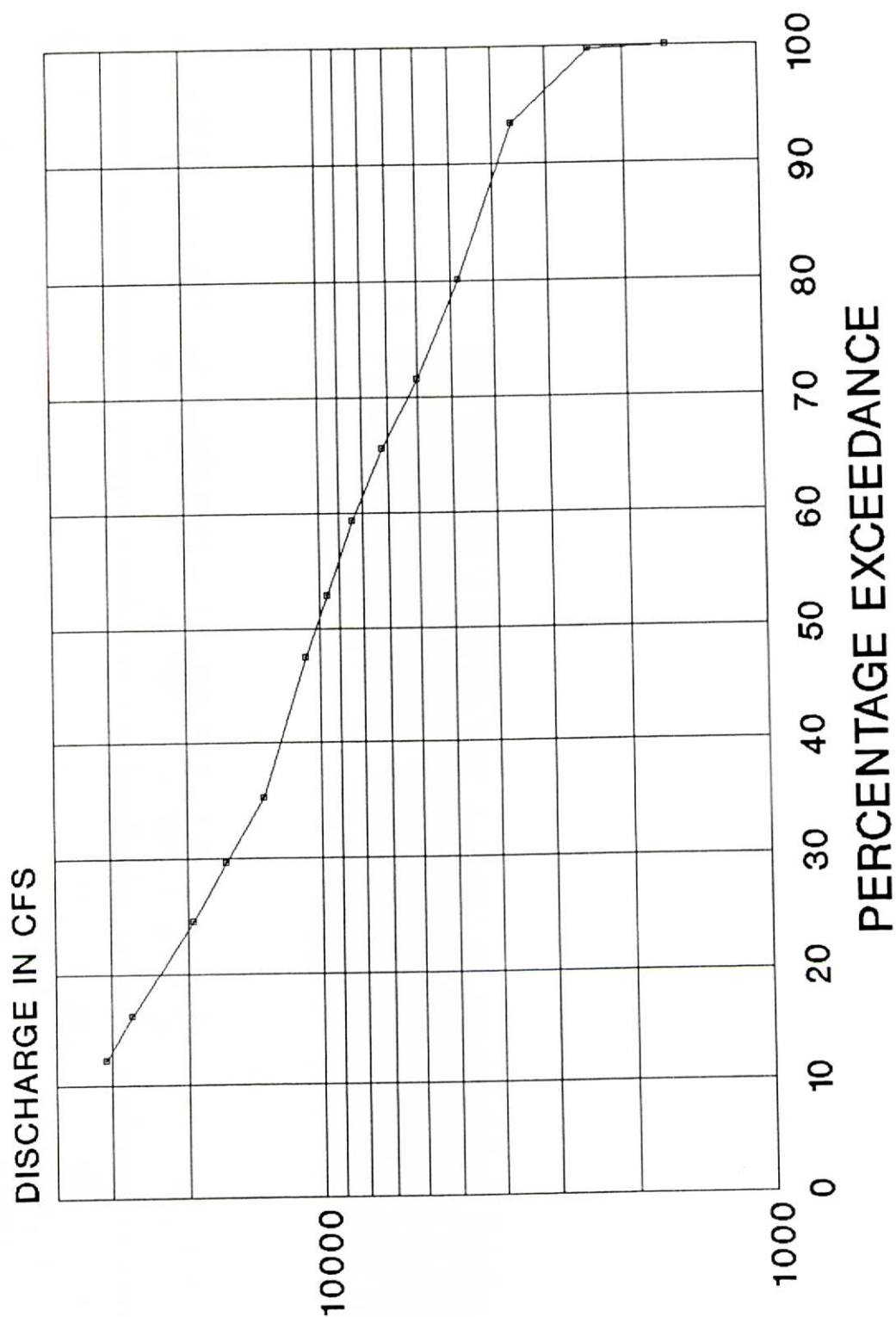
FLOW DURATION CURVE
CLEARWATER RIVER AT SPALDING



PERIOD 1972-90

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JAN 24 2002

FLOW DURATION CURVE CLEARWATER RIVER AT SPALDING



PERIOD 1972-90

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JAN 24 2002

NOTICE OF MINIMUM STREAM FLOW HEARING

Notice is hereby given that on April 12, 2001, the Idaho Water Resource Board filed an application for permit with the Department of Water Resources (IDWR) to provide for a minimum streamflow in a portion of the Lemhi River to enhance passage of anadromous fish as follows:

Identification no. 74-14993

Source: Lemhi River tributary to Salmon River 7.5 miles beginning at Lemhi River diversion L-6 in the SE 1/4 Section 24, T21N, R22E, B.M., Lemhi County, downstream to the mouth of Lemhi River located near the SW corner of Section 32, T22N, R22E, B.M.

Rate of flow: 35 cubic feet per second ("cfs") year-round. 15 cfs shall be subordinate to all diversions, including high waters or flood waters authorized under the Lemhi River basin decree.

Note: the legislature has authorized the establishment of a water supply bank operated by local committee that will allow owners of water rights to lease their rights to other users. For more information, call 1-800-368-6666 or visit our website at www.waterbank.com.

DEER PROBLEMS? Protect your property with DEER-D-FENCE(tm) system. We sell direct to other areas. Free 1-866-966-9333. Call for information of dealer near you. We are a family owned business. Email: info@deerdfence.com

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Affidavit of Publication

STATE OF IDAHO }
County of Lemhi } ss.

RICKY G. HODGES being first duly sworn, deposes and says he is one of the publishers (printers) of The Recorder Herald, a newspaper published weekly at Salmon, Lemhi County, Idaho, and of general circulation therein. That the **NOTICE OF MINIMUM STREAM**, a true printed copy of which is attached to the margin hereof, has been and was correctly printed and published in the regular and entire issue of every number of said newspaper and not in any supplement thereof thereto for **TWO(2)** consecutive issue(s), commencing with the issue dated **08-30-2001** and ending with the issue dated **09-06-2001**.

STATE OF IDAHO }
County of Lemhi } ss.

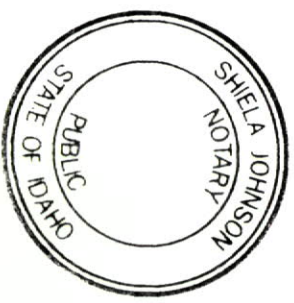
On this **19th day of September** in this year of 2001 before me, A Notary Public, personally appeared RICKY G. HODGES, known or identified to me to be the person whose name subscribed to the within instrument, and being by me first duly sworn, declared that the statements therein are true, and acknowledged to me that he executed the same.

Residing At Salmon, Idaho

My Commission expires: 01-02-2007

Sheila Johnson
Notary Public for Idaho

Publication Fee \$110.88



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Department of Water Resources
Eastern Region
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JAN 24 2002

SEP 28 2001



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

DIRK KEMPTHORNE
Governor

September 27, 2001

KARL J. DREHER
Director

Re: Application for Permit No. 74-14993, in the name of the Idaho Water
Resource Board

Dear Interested Parties:

The Department of Water Resources (department) has issued the enclosed **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. Failure to report these changes could result in a \$100 late filing fee. 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 call me at (208) 327-7953.

Sincerely,

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Enclosures

c: IDWR - Regional Offices (Eastern & Salmon)

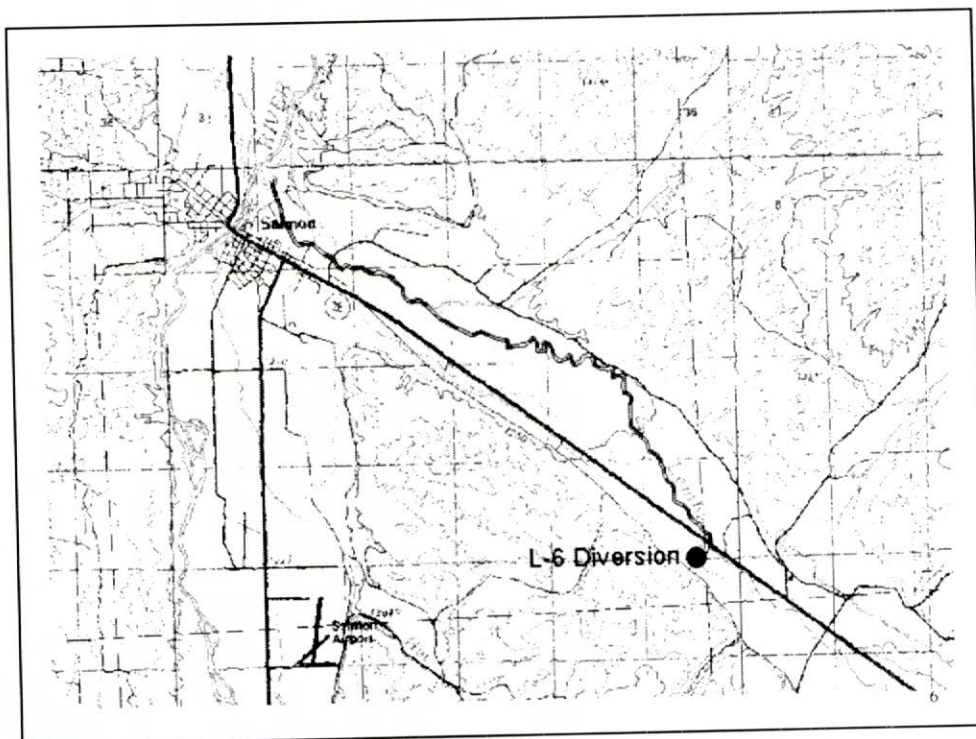
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Minimum Instream Flow Reach:

Begins at the L6 diversion on the Lemhi River and extends downstream approximately 7 1/2 miles to the confluence of the Lemhi with the Salmon River.

5



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Rate of Flow:

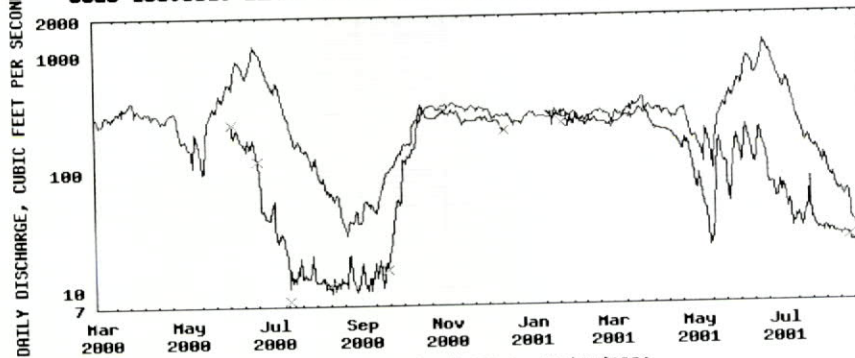
35 cfs

Provided that 15 cfs shall be subordinated to all diversions, including high waters or flood waters, authorized under the Lemhi Decree.

7



USGS 13305310 LEMHI RIVER BELOW L5 DIVERSION NEAR SALMON, ID



EXPLANATION
— DAILY MEAN DISCHARGE
- - - MEDIAN DAILY STREAMFLOW BASED ON 7 YEARS OF RECORD
x MEASURED DISCHARGE

Provisional Data Subject to Revision

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JAN 24 2002

AFFIDAVIT OF PUBLICATION

State of Idaho, County of Custer, ss:

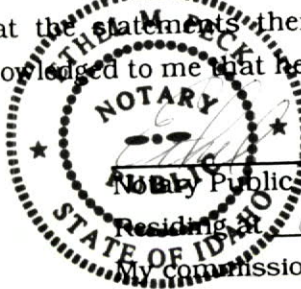
I, Ruth E. Burchill, representing the Challis Messenger, a weekly newspaper, published at Challis, Idaho, do solemnly swear that the notice hereto attached and made a part hereof, was published in the regular and entire issue of the Challis Messenger for 2 consecutive weeks, commencing with the issue dated Aug 30 2001 and ending with the issue dated Sept 6 2001.

Ruth E Burchill

STATE OF IDAHO

COUNTY OF CUSTER

On this 6th day of Sept in the year of 2001 before me, a Notary Public, personally appeared Ruth E. Burchill 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.



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SEP 10 2001

ACCTS PAYABLE

NOTICE OF MINIMUM STREAM FLOW HEARING

Notice is hereby given that on April 12, 2001, the Idaho Water Resource Board filed an application for permit with the Department of Water Resources (IDWR) to provide for a minimum streamflow in a portion of the Lemhi River to enhance passage of anadromous fish as follows:

Identification no: 74-14993

Source: Lemhi River tributary to Salmon River

Reach: 7.5 miles beginning at Lemhi River diversion L-6 in the SE1/4 Section 24, T21N, R22E, B.M., Lemhi County, downstream to the mouth of Lemhi River located near the SW corner of Section 32, T22N, R22E, B.M. Rate of flow: 35 cubic feet per second ("cfs") year-round. 15 cfs shall be subordinate to all diversions, including high waters or flood waters authorized under the Lemhi River basin decree.

Note: The legislature has authorized the establishment of a water supply bank operated by a local committee that will allow owners of water rights to lease the rights to the bank to provide water for the minimum streamflow.

IDWR will hold a public hearing as required in Section 42-1503, Idaho Code, for the purpose of receiving evidence and testimony in regard to the application as follows:

Date and time: September 12, 2001, at 2:00 p.m. and 7:00 p.m.

Place: Salmon Valley Center, 200 Main St., Salmon, Idaho 83467

The 2:00 p.m. hearing 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 Director of IDWR, Statehouse Mail, Boise, Idaho 83720, Attn: L. Glen Saxton, at least seven (7) 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 IDWR at least (10) days prior to the hearing. The hearing will be conducted by L. Glen Saxton, IDWR, Statehouse Mail, Boise, ID 83720, telephone (208) 327-7900. If issued, this permit will be subject to all prior water rights.

Karl J. Dreher, Director, IDWR
Published August 30 and September 6, 2001

Idaho Water Resource Board Minimum Streamflow Application
Lemhi River

Salmon

28

12:0

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The instream flow on the Lemhi River will commence at the L6 diversion located in the SE1/4 of the SW1/4 of the SE1/4 of Section 24 T21N R22E and will extend downstream approximately 7.5 miles to the river's confluence with the Salmon River located in the SW1/4 of the SW1/4 of the SW1/4 of Section 32 T22N R22E.

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JAN 24 2012

State of Idaho
Department of Water Resources
Permit to Appropriate Water

NO. 74-14993

Priority: 04/12/2001

Maximum Diversion Rate: 35.00 CFS

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

has applied for a permit to appropriate water from:

Source: LEMHI RIVER

Tributary: SALMON RIVER

and a permit is APPROVED for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
MINIMUM INSTREAM FLOW	01/01 to 12/31	35.00 CFS

LOCATION OF POINT(S) OF DIVERSION:

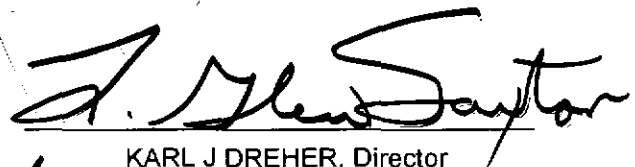
LEMHI RIVER SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 24, Twp 21N, Rge 22E, B.M. LEMHI County
(Beginning of Reach)

LEMHI RIVER SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 32, Twp 22N, Rge 22E, B.M. LEMHI County
(Ending of Reach)

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **April 1, 2004**.
2. Subject to all prior water rights.
3. Subject to all conditions listed in the Preliminary Order dated September 27, 2001.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 18th day of October, 2001.


for KARL J DREHER, Director

MICROFILMED
JAN 24 2002

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

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 74-14993 IN THE)
NAME OF THE IDAHO WATER)
RESOURCE BOARD)
_____)

PRELIMINARY ORDER

This matter having come before the Idaho Department of Water Resources ("Department") and the Department having held a hearing in the matter, the hearing officer enters the following Findings of Fact, Conclusions of Law and Preliminary Order:

FINDINGS OF FACT

1. On April 12, 2001, the Idaho Water Resource Board ("Board" or "applicant") filed the above captioned application for permit with the Department seeking to establish a minimum stream flow on a reach of the Lemhi River tributary to the Salmon River in Lemhi County, Idaho. The application was filed pursuant to Chapter 15, Title 42, Idaho Code. The reach is further described as follows:

Beginning at water diversion L-6 on the Lemhi River in the southeast quarter (1/4) of section twenty-four (24), township twenty-one (21) north, range twenty-two (22) east of the Boise Meridian, and ending at the confluence of the Lemhi River with the Salmon River near the southwest corner of section thirty-two (32), township twenty-two (22) north, range twenty-two (22) east of the Boise Meridian, in Lemhi County, said reach being approximately 7.5 miles long.

The minimum flow sought is thirty-five (35) cubic feet per second ("cfs") year-round to provide anadromous fish passage in the Lemhi River from diversion L-6 to the mouth of the Lemhi River. The application provided that fifteen (15) cfs of the thirty-five (35) cfs be subordinated to all diversions, including high water or flood water authorized under the Lemhi River basin decree (Lemhi County Case No. 4948).

2. The Department provided notice of the application describing the proposed appropriation and setting the time and place for hearing on the application. Notice was published on August 30, 2001 and September 6, 2001, in the Recorder Herald, Salmon, Idaho and in the Challis Messenger, Challis, Idaho.

3. On September 12, 2001, the Department conducted a public hearing in Salmon, Idaho for the purpose of eliciting testimony regarding the application. The applicant appeared in a formal capacity at the hearing. There were no other full parties or public witnesses.

4. Applicant's Exhibit 1 was offered and accepted as a part of the hearing record. The exhibit shows the location of the minimum streamflow reach and historic Lemhi River flows measured by the US Geological Survey below Lemhi River Diversion L-5 near Salmon, Idaho. The flows were measured as low as approximately 10 cfs during the summer of 2000, but with augmented flow authorized by this minimum streamflow application, were stabilized at more than 20 cfs during the summer of 2001.

5. Sections 42-1506 and 42-1765A, Idaho Code, were enacted by the Idaho legislature authorizing the minimum stream flow appropriation and setting up a local committee to facilitate operation of a water supply bank in the Lemhi River basin.

6. All rights acquired under the application are for instream non-consumptive use and are subject to all vested water rights, permits or applications for permit having a date of priority earlier than April 12, 2001.

7. There was no opposition at the hearing or submitted in writing to approval of the application.

CONCLUSIONS OF LAW

1. Chapter 15, Title 42, Idaho Code, provides that stream flow preservation for the protection of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, navigation and water quality, when made pursuant to this statute, is in the public interest and is declared to be a beneficial use of such water.

2. Section 42-1506, Idaho Code, specifically authorizes the Board to file an application to establish a minimum stream flow on the Lemhi River.

3. The proposed minimum stream flow in the application will not interfere with any vested water right, permit, or application for permit having a priority date earlier than April 12, 2001.

4. The flow requested in the application is the minimum flow required to provide anadromous fish passage, and is not the ideal or most desirable flow that could be utilized for this purpose.

5. The proposed minimum stream flow is in the public, as opposed to private, interest.

6. The minimum stream flow proposed in the application is necessary to provide for anadromous fish passage in the river reach.

7. Section 42-1506, Idaho Code, provides that the Board is not required to show that the appropriation is capable of being maintained because it is anticipated that the water right will be maintained through operation of the water supply bank within the

Lemhi River basin consistent with provisions of section 42-1756A, Idaho Code.

8. The Department should approve the application with certain conditions and should issue a permit.

ORDER

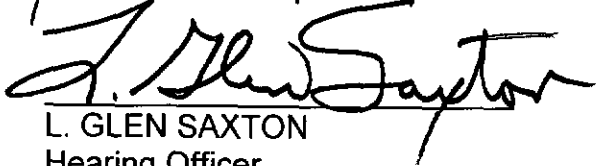
IT IS, THEREFORE, HEREBY ORDERED That Application for Permit No. 74-14993 in the name of the Idaho Water Resource Board is **APPROVED** subject to the following conditions:

1. Use of water under the permit shall recognize and allow the continued beneficial diversion of water under any prior existing water right established by diversion and application of water to beneficial use or by an application, permit, or license on file or issued by the Director under provisions of Chapter 2, Title 42, Idaho Code, with a priority of use earlier than April 12, 2001.
2. Fifteen (15) cfs of the thirty-five (35) cfs is subordinated to all diversions, including high water or flood water authorized under the Lemhi River basin decree (Lemhi County Case No. 4948).
3. Use of water under the permit shall be non-consumptive.
4. Upon the future finding and order of the Director that gaging stations are required to maintain the approved minimum stream flow, the right holder shall permanently install and maintain gaging stations as specified by the Department.
5. The purpose of this minimum stream flow is to provide for the passage of anadromous fish in the authorized river reach.
6. The river reach approved is described in Finding of Fact 1 and begins at water diversion L-6 on the Lemhi River in the southeast quarter (1/4) of section twenty-four (24), township twenty-one (21) north, range twenty-two (22) east of the Boise Meridian, and ends at the confluence of the Lemhi River with the Salmon River near the southwest corner of section thirty-two (32), township twenty-two (22) north, range twenty-two (22) east of the Boise Meridian, Lemhi County.
7. The Board, upon receiving a request, or upon its own initiative, may petition the Director for an amendment to the right. 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 right 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 right would be in the public interest.

8. The application hereby approved by the Director shall be submitted to the Idaho Legislature by the fifth day of the next regular legislative session. The Director's approval shall not become finally effective until approved by the legislature pursuant to provisions of Section 42-1503, Idaho Code.
9. Use of water under this right is subject to the control of the watermaster of Water District 74, Lemhi River and tributaries.
10. The right holder shall submit to the Department proof of instream beneficial use of the minimum flow on or before **April 1, 2004**.

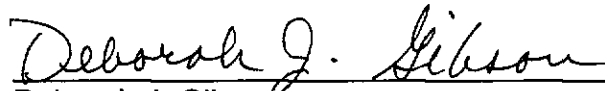
Dated this 27th day of September, 2001.


L. GLEN SAXTON
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of September, 2001, the above and foregoing document was served upon the following by hand delivering a copy of the same to the following:

Idaho Water Resource Board
c/o Bill Graham
Idaho Dept. of Water Resources
Statehouse Mail
Boise, ID 83720-0098



Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Ident. No. 74-14993

App ID. 69028

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

RECEIVED

APR 12 2001

To appropriate the public waters of the State of Idaho

Department of Water Resources

1. Name of Applicant **Idaho Water Resource Board** Phone (208) 327 7900

Mailing address **Statehouse**

2. Source of water supply **Lemhi River** which is a tributary of **Salmon River**

3. Location of point of diversion is Township _____ Range _____ Sec. _____, in the _____
_____ 1/4, _____ 1/4, Govt. Lot _____, B.M., _____ County; additional points of diversion if any:

4. Water will be used for the following purposes:

Amount **35 cfs** for **instream flow** purposes from **Jan. 1** to **Dec. 31** (both dates inclusive)

(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)

(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)

(cfs or acre-feet per annum)

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) **35 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

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 _____ 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 will be from the L6 Diversion to the confluence with the Salmon River to provide anadromous fish passage in the Lemhi River.

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JAN 24 2002

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APR 12 2001

9. Description of place of use: See Attachment

Department of Water Resources

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 N/A

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 This instream flow right is filed in accordance with House Bill No. 358 of the 2001 Idaho Legislature. HB 358 creates a voluntary mechanism for providing additional flows in the Lemhi River to benefit anadromous fish species. The minimum stream flow appropriation in the designated reach shall be in the amount of thirty-five (35) cfs from January 1 through December 31, provided that fifteen (15) cfs of the appropriation shall be subordinated to all diversions, including high waters or flood waters, authorized under the Lemhi river basin decree (Lemhi County Case No. 4948).

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 Q. Gu Date 4/12/01 Time 10:30 AM Preliminary check by S. Keen
 Fee \$ N/A Receipted by _____ # _____ Date _____
 Publication prepared by _____ Date _____ Published in _____
 Publication approved _____ Date _____

MICROFILMED

JAN 24 2002

ATTACHMENT TO APPLICATION FOR PERMIT
TO APPROPRIATE A MINIMUM STREAMFLOW

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

This application is subordinate to all diversions, including high waters or flood waters, authorized in the Lemhi River Basin Decree, and will not interfere with them.

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

The requested flows are nonconsumptive for instream purposes to provide fish passage for anadromous fish.

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

These flows are essential for the passage of anadromous fish past the L-6 diversion.

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

The requested flows are necessary to maintain sufficient flow for fish passage.

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

The requested minimum streamflows will be maintained through the Lemhi River Basin Water Supply Bank.

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

USGS stream gage no. 13305310, located below the L-5 diversion on the Lemhi River may be used in the administration of this water right.

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

Additional flow measurements would not be made unless required as a condition of approval.

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JAN 24 2002

21. List any additional remarks to this minimum streamflow application.

This minimum streamflow application is filed under the authority of Idaho Code Sections 42-1506 and 42-1765A, as set forth in House Bill 358 by the 56th Idaho Legislature.

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JAN 24 2002

Idaho Water Resource Board Minimum Streamflow Application
Lemhi River

Salmon

28

1210

The instream flow on the Lemhi River will commence at the L6 diversion located in the SE1/4 of the SW1/4 of the SE1/4 of Section 24 T21N R22E and will extend downstream approximately 7.5 miles to the river's confluence with the Salmon River located in the SW1/4 of the SW1/4 of the SW1/4 of Section 32 T22N R22E.

1225



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

January 7, 2002

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

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

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

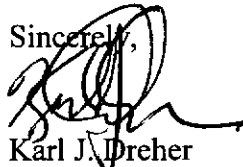
Dear Speaker Newcomb:

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

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

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

Sincerely,



Karl J. Dreher
Director

Enclosures

c: Mike Nugent

MICROFILMED
JAN 24 2002



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

January 7, 2002

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

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

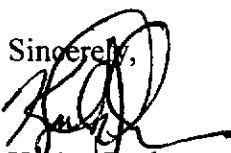
**RE: Applications for Permit Nos. 74-14993, 85-07583, 86-07318 and 86-07345 to
Establish Minimum Stream Flows on the Lemhi River and Clearwater River**

Dear Senator Geddes:

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Sincerely,

Karl J. Dreher
Director

Enclosures
c: Mike Nugent

MICROFILMED
JAN 24 2002

OFFICE OF SPECIES CONSERVATION



FACSIMILE TRANSMITTAL SHEET

TO:	Bill Graham	FROM:	Terry A. McRoberts
COMPANY:	Water Resources	DATE:	3/6/2003
FAX NUMBER:	327 7866	TOTAL NO. OF PAGES INCLUDING COVER:	11
PHONE NUMBER:		SENDER'S PHONE NUMBER:	208 334-2189
RE:	Conservation Agreement - Lemhi	YOUR REFERENCE NUMBER:	

URGENT ☒ FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

Bill,

Here is the 2001 Conservation Agreement in the Lemhi River Basin document that we discussed over the phone.

300 N SIXTH STREET
PO BOX 83720
BOISE, IDAHO 83720-0195

2001 CONSERVATION AGREEMENT IN THE LEMHI RIVER BASIN

SIGNATORIES

Idaho Office of Species Conservation
Idaho Department of Water Resources
Idaho Department of Fish and Game
Upper Salmon Basin Watershed Project

Lemhi Irrigation District
Water District 74
National Marine Fisheries Service
U.S. Fish and Wildlife Service

INTRODUCTION

The National Marine Fisheries Service (NMFS), the U.S. Fish and Wildlife Service (Service) and various Idaho parties have been working to agree on and implement long-term conservation actions needed to minimize the "take" of Endangered Species Act (ESA) listed salmon, bulltrout and steelhead in the Lemhi River. Efforts leading to the appropriate ESA authorization of incidental take continue. Given the forecasted drought year conditions in 2001 and the absence of a long-term agreement, the parties have settled on interim flows and other actions that demonstrate both commitment and good faith progress toward reaching the long-term objectives. This agreement is organized around three implementation tiers. Tier I includes past actions taken to conserve species in the Lemhi River Basin. Tier II lists actions that will be taken in 2001. Tier III identifies actions to further improve flow and habitat conditions in 2002 and establish a long-term plan.

AGREEMENT

I. Tier 1: Measures That Have Been Completed To Date

- A. In the mainstem Lemhi River, the Upper Salmon Basin Watershed Project ("Project"), the Idaho Department of Fish and Game ("IDFG"), and cooperating water users have eliminated 17 diversions through consolidation. In the Hayden Creek tributary, these groups have eliminated 3 diversions through consolidation.
- B. Using IDFG's fish screen development shop and NMFS's screening criteria for the last decade, the Project and IDFG have installed new screens or replaced outdated screens for 65 diversions in the mainstem Lemhi River, 7 diversions in Big Springs Creek tributary, and 12 diversions in Hayden Creek tributary. Additionally, the Project and IDFG have installed new screens on 21 pumps in the Lemhi River Basin.
- C. Throughout the Lemhi River Basin, the Project and IDFG have eliminated 19 push-up dams and improved 4 others to allow fish passage.

- D. The Project has installed over 30 miles of fence in the Lemhi River Basin, for two types of projects: (1) riparian grazing systems, which seasonally protect spawning and rearing habitat, and (2) corridor fencing, which provides year-around protection for riparian habitat.
- E. The Project and IDFG have developed passage and rearing habitat for use by resident and anadromous fish by reconnecting Canyon Creek and Pattee Creek tributaries to the Lemhi River and improving access to Agency Creek tributary.
- F. Idaho Department of Environmental Quality ("IDEQ") has developed Total Maximum Daily Loads ("TMDLs") for the Lemhi River Basin.
- G. In June 2000, the Project, IDFG, Idaho Department of Water Resources ("IDWR"), Lemhi Irrigation District and Water District 74 signed a Memorandum of Understanding ("MOU") to provide water flows for passage of anadromous fish in the Lemhi River between the L-6 diversion and the confluence with the Salmon River. Throughout the 2000 irrigation season, the MOU promised to provide for an instream flow of 10 cubic feet per second ("cfs") to aid downstream migration of juvenile fish as well as "fish flushes" of 35 cfs to aid upstream migration of adult fish. The MOU further directed IDFG to carefully monitor water flows and fish movement to determine when water flushes are needed for fish passage in the lower reaches of the Lemhi River. Finally, the MOU embodied a commitment of the Lemhi water users and state resource agencies to establish a long-term agreement to address fish flow management.

II. Tler 2: Habitat Measures For 2001 and 2002

- A. Enhance Instream Flow in the Lemhi River and Hayden Creek
 - 1. Throughout the 2001 irrigation season, the non-Federal parties will provide rental water pursuant to Idaho Code § 42-1765A to maintain an instantaneous 20 cfs flow in the Lemhi River from the mouth to one mile below the Leadore Bridge and will maintain an instantaneous flow of 8 cfs in Hayden Creek. The parties recognize that some fluctuation in flows may occur due to daily management and thus the 20 cfs and 8 cfs figures represent daily averages; however, the parties will avoid such fluctuations below 18 cfs in the Lemhi River or 6 cfs in Hayden Creek.
 - 2. The parties will establish a water rental bank through the Idaho Water Resources Board. The purpose of the water bank will be to accept on a short or long-term basis leases of natural flow water rights to augment the flow of the Lemhi River and its tributaries. Any rental of water rights will be on a willing lessor basis under state laws and water bank rules.
 - 3. Water District 74 will implement a Spring 2001 turn-on agreement to prevent dewatering when Lemhi water users begin diversions.
 - 4. IDWR and Water District 74 will regulate water diversions during the irrigation season to maintain fish passage flows.
 - 5. The parties will seek funding in 2001 to accomplish the following measures by the 2002 irrigation season:
 - a. Implement water saving mechanisms in the mainstem Lemhi River below L7, such as conversions from gravity to sprinkler irrigation

systems and from surface to groundwater diversion systems, in a manner that will not negatively impact Lemhi River return flows.

- b. Change points of diversion for approximately 16.5 cfs from the lower Lemhi River to S-14 diversion on the Salmon River, allowing the previously diverted Lemhi River flow to satisfy the instream flow created by Idaho Code § 42-1506.
- c. Hire a ditch manager on the Town (L7) and Andrews and Slough (L6) Canals to negotiate water rotation agreements for the purpose of leasing additional fish passage water flow at L6 and L7.
- d. Reprogram the L6 and L7 diversion control structures to ensure proper spill of passage flow through fishways.

B. Other Enhancement Measures

- 1. The parties will identify irrigation ditches where the fish screen is a significant distance below the headworks, causing a risk that fish can be stranded when water to the ditches is suddenly shut off.
- 2. The parties will assess each ditch identified above to determine whether (1) the diversion system will be redesigned; or (2) ramp down procedures will be implemented (i.e. gradually shut off water to ditch, leaving a survival flow determined by screen bypass size; if fish are still present after 1 week, IDFG will implement a fish salvage operation). The parties will remedy the stranding problem at the HC 11 ditch in 2001 and will remedy any other identified problem ditches by the 2002 irrigation season.
- 3. IDFG will screen the one remaining unscreened diversion on the East Fork Hayden Creek if NMFS and Service permitting is provided.
- 4. The parties will investigate re-creating a more natural stream morphology in the Lemhi River between the L3A and L6 diversions.
- 5. The parties will seek funding and begin planning in 2001 to accomplish the following measures by the 2002 irrigation season:
 - a. IDFG will replace screen on L43C and will identify and design appropriate diversion structure for L13 and L35A.
 - b. IDFG will update the diversion on LBSC 1.
 - c. The parties will develop and construct alternatives to push-up dams.

C. Planning and Monitoring

- 1. The parties will implement the 2001 Monitoring Plan, attached hereto.
- 2. The parties will ensure that all instream structures, such as diversions, road crossings, berms and dams will be designed, constructed and operated so that they are passable by upstream and downstream migrating fish, and screens will be installed, all consistent with the following NMFS criteria:
 - a. Artificial structures will include passage notches, flumes, ladders, or bypasses with individual steps not less than 3 feet in length, 1 foot in depth, 1½ foot in width, and a vertical fall not more than 1 foot in height; water velocities should not exceed 8 feet/second;
 - b. Fishways will be located in or near the thalweg (deepest and primary portion of streamflow) and should include approach and exit water depths of 1 foot or more;

- c. Berms and dams will generally be the lowest in height and shortest in span to reasonably divert the amount of water claimed at that point;
 - d. The frequency, duration, and amount of instream construction and maintenance work will generally be minimized to reduce streambed disturbance;
 - e. Diversions and intakes will be screened to current NMFS criteria;
 - f. At all times during diversion, juvenile bypass pipes will remain open and flowing to NMFS criteria by engineered design; and
 - g. Bypass outfalls will not exceed 1 foot in height or fall into less than 0.8 foot of water.
- D. The parties will implement a dispute resolution process. This requirement shall be satisfied when, upon notification that a dispute exists, representatives from each party meet promptly and attempt to resolve the dispute.

III. Tier 3: Long Term Conservation Agreement

- A. The parties commit to participate in the negotiation of a long-term agreement for the conservation of ESA-listed fish species in the Lemhi River Basin prior to December 31, 2002, consistent with the framework set forth below. Measures included in Tier 3 may be completed prior to negotiation of a long-term agreement, should the opportunity arise. The long-term agreement is intended to establish a process for voluntary compliance with the ESA, resulting in appropriate incidental take authorization. Such agreement will address, but not be limited to, the following subjects:
- 1. Enhancing Instream Flows
 - a. Through the water bank and other mechanisms, the parties will seek to provide sufficient water for flows for appropriate life stages in the Lemhi River Basin.
 - b. The parties will identify and implement projects to improve migration, restore connectivity and increase spawning and rearing habitat in the Lemhi River Basin. The projects may include the following:
 - (1) Installation and renovation of fish screens;
 - (2) Construction or replacement of diversion works;
 - (3) Consolidation of diversion works that will enhance flows through stretches of streams that are prone to dewatering or flows insufficient for fish passage;
 - (4) Elimination or modification of upstream and downstream passage obstacles;
 - (5) Conservation easements to reduce water usage, reduce fish loss to diversion, enhance riparian or flood plain values or other purposes; funding will only be used for those projects that will not result in a reduction of the summer flows of the Lemhi River;

- (6) Negotiation of water sharing and conservation agreements;
 - (7) Seeking legislation to encourage more efficient water diversion practices where such practices will enhance the flow of the Lemhi River.
- 2. Other Enhancement Measures
 - a. Restore/enhance riparian vegetation.
 - b. Install riparian fencing and/or special grazing systems for critical riparian habitat.
 - c. Utilize water gaps or off-stream watering to distribute livestock use.
 - d. Identify and replace the headgates and diversion structures as needed.
 - e. Pursue implementation of TMDLs with Idaho Soil Conservation Commission, IDEQ, and other responsible agencies.
 - f. Investigate projects to reestablish more natural stream morphology, such as: connecting streams to their floodplains; re-opening previously closed flood channels; and allowing natural stream-shaping functions to occur where practicable.
- 3. Planning and Monitoring
 - a. Monitor instream passage effectiveness, including whether negotiated flow targets and habitat improvement measures are achieved.
 - b. Continue ongoing watershed planning.
 - c. Provide funding for adult passage monitoring (perhaps with new technology) in lower Lemhi River.
 - d. Insure water rights are being diverted in accordance with the Lemhi Decree.
 - e. Sampling regimes and monitoring stations will be designed and maintained to research and validate flow, habitat, and fish survival relationships and the success of protection measures.
- B. The parties will conduct the following analysis to the extent necessary to support development of the long-term agreement:
 - 1. Hydrological analysis (water quantity and quality, water use, data gaps).
 - 2. Fish habitat assessment.
 - 3. Fish passage barrier assessment.
 - 4. Fish screen and passage assessment.
 - 5. Instream flow requirements.
 - 6. Identify and prioritize critical low water areas related to water diversion.
 - 7. Fish population response.
- C. The parties will develop the following processes to the extent necessary to support development of the long-term agreement:
 - 1. Schedule and work plan for Lemhi River Basin planning.
 - 2. Composition and procedures of committee that develops the agreement/plan and technical groups.
 - 3. Process to allow participation by interest groups.
 - 4. Dispute resolution mechanisms.

IV. PROSECUTORIAL DISCRETION. It is the responsibility of the Service, and the National Oceanic and Atmospheric Administration ("NOAA") and NMFS to investigate and take appropriate enforcement action with respect to potential violations of the ESA. Based on the commitments described in this memorandum, including the parties' commitment to secure appropriate authorization for incidental take of ESA-listed species, enforcement action is not the preferred course in this instance. However, if water use or any other activity intended to be covered by this memorandum results in a potential "take" of listed species, the Service and NMFS will investigate and document the apparent violation.

The Service and NOAA and NMFS will exercise their enforcement discretion relative to initiating prosecution in 2001 if measures identified in Tier 2 are implemented as discussed in this memorandum. This exercise of enforcement discretion will apply only to the diversion activities of water users exercising otherwise lawful rights within the boundaries of the Lemhi Water District 74, and shall not apply to any intentional "take" of ESA-listed species.

SIGNATURES


Idaho Office of Species Conservation


Lemhi Irrigation District


Idaho Department of Water Resources


Water District 74


Idaho Department of Fish and Game


National Marine Fisheries Service


Upper Salmon Basin Watershed Project


U.S. Fish and Wildlife Service

Date of last signature: 7/18/01

Idaho Department of Water Resources

Idaho Department of Fish and Game

Upper Salmon Basin Watershed Project

Lemhi Irrigation District

Water District 74

National Marine Fisheries Service



National Oceanic & Atmospheric Administration

U.S. Fish and Wildlife Service

Date of last signature: 7/18/01

2001 Lemhi River Monitoring Plan

Purpose: Monitor the implementation and effectiveness of proposed flows to provide passage for adult and juvenile chinook salmon. Sampling regimes and monitoring stations will be designed and maintained to research and validate flow, habitat, and fish passage relationships and the efficacy of existing and proposed protection measures. Information gathered will help ongoing watershed planning efforts.

Implementation Monitoring—to determine how frequently flow targets are achieved. Responsibility for this phase of monitoring belongs to IDWR, Water District 74, BOR, IDFG, NMFS, and the Model Watershed Project (MWP) staff. Responsible parties in parentheses.

1. Determine if proposed flow targets are met. Data from existing gages (L-1, L-5, and near Lemhi) will be checked on a regular basis. Additional instantaneous water measurements will be made at critical passage locations when juvenile and adult chinook are migrating (IDWR, WD 74, BOR, MWP, IDFG, NMFS).
2. Determine if diversion structures constructed by IDFG meet NMFS passage criteria for adult chinook salmon (IDFG).
3. Determine if diversion structures constructed by parties other than IDFG meet NMFS passage criteria for adult chinook salmon (NMFS).
4. Determine if screens constructed by IDFG meet NMFS bypass criteria for juvenile chinook salmon (IDFG).
5. Develop and implement appropriate ramp down procedures to reduce stranding of juvenile chinook in irrigation ditches as flow are reduced or shut off. Obtain NMFS authorization to conduct "salvage" of fish (IDFG, NMFS).
6. Replace/modify/ install new screens at locations identified in the Conservation Agreement. Obtain NMFS authorization (IDFG, NMFS).

Effectiveness Monitoring—to determine if fish are able to migrate past critical passage barriers at the proposed flows. Responsibility for this phase of the monitoring plan belongs to IDFG, NMFS, and MWP, as noted in parentheses.

Staging Monitoring—determine where fish are holding and how long they stage prior to migration.

Data collection:

1. Monitor PIT tag data from Lower Granite Dam to determine approximate timing of the chinook run into the Lemhi River (IDFG).
2. Snorkeling and underwater videography will be used after spring runoff/high flows to determine the presence of migrating adult chinook. Snorkeling will be conducted

once per week and as needed as flows drop below 35 cfs during the migration season (IDFG).

Fish Movement Monitoring—to determine if adult fish are moving past critical diversions and riffles at proposed flows.

Data collection:

1. Underwater video camera at the L-6 diversion (IDFG).
2. Direct visual methods—
 - a. Snorkeling—as noted above and in response to rising or falling river levels to determine influence of the hydrograph on fish movement. Monitoring should occur above and below potential barriers (e.g. diversion structures and shallow riffles) throughout the river (IDFG).
 - b. Continue annual redd counts (IDFG).
 - c. Conduct carcass surveys (IDFG, NMFS, MWP).
 - d. Monitor irrigation diversions for fish stranding problems and coordinate with NMFS if fish salvage is necessary (IDFG, MWP, NMFS).

Physical Habitat Monitoring

1. Collect data on site depth, width and length, measure water velocity, and estimate discharge at each snorkeling site, diversion structure, and critical riffle whenever snorkeling occurs (IDFG, NMFS).
2. Site location should be documented using GPS for future monitoring purposes (IDFG, NMFS).

Temperature/DO Monitoring

1. Review existing Forest Service temperature data for locations, frequency, and trends of data collection. Coordinate with Forest Service on data collection in 2001. Collect additional temperature data at NMFS 2000 sites (site 640, L-5 gage, and below Hayden Creek) and L-1 and Lemhi gage. Use HOBO recorders or similar temperature recording devices. Follow DEQ monitoring protocol for placement and retrieval of temperature monitoring devices (IDFG).
2. Collect periodic instantaneous dissolved oxygen measurements at all temperature-monitoring sites (IDFG).
3. Collect periodic instantaneous discharge measurements at all temperature monitoring sites (IDFG).

Idaho Department of Fish and Game and the Office of Species Conservation will provide approximately \$25,000 to fund a Fishery Research Technician to collect and analyze the fish and habitat data proposed in this plan. Fish and Game will be responsible for coordinating data collection activities with the other responsible entities identified in this plan and reporting the results of the data collection and analysis at the end of the field season. Reports will be made available to interested parties

Ident. No. 74-14993
App. ID. 69028

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

RECEIVED

APR 12 2001

Department of Water Resources

To appropriate the public waters of the State of Idaho

1. Name of Applicant **Idaho Water Resource Board** Phone (208) 327 7900

Mailing address **Statehouse**

2. Source of water supply **Lemhi River** which is a tributary of **Salmon River**

3. Location of point of diversion is Township _____ Range _____ Sec. _____, in the _____
_____ 1/4, _____ 1/4, Govt. Lot _____, B.M., _____ County; additional points of diversion if any:

4. Water will be used for the following purposes:

Amount **35 cfs** for **instream flow** purposes from **Jan. 1** to **Dec. 31** (both dates inclusive)
(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)

(cfs or acre-feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)

(cfs or acre-feet per annum)

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) **35 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

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 _____ 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 will be from the L6 Diversion to the confluence with the Salmon
River to provide anadromous fish passage in the Lemhi River.

MICROFILMED
JAN 24 2002

RECEIVED

APR 12 2001

Department of Water Resources

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 N/A

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?

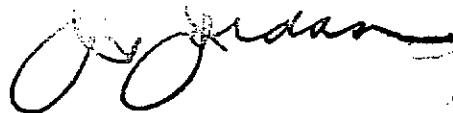
b. Who owns the land to be irrigated or place of use?

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 This instream flow right is filed in accordance with House Bill No. 358 of the 2001 Idaho Legislature. HB 358 creates a voluntary mechanism for providing additional flows in the Lemhi River to benefit anadromous fish species. The minimum stream flow appropriation in the designated reach shall be in the amount of thirty-five (35) cfs from January 1 through December 31, provided that fifteen (15) cfs of the appropriation shall be subordinated to all diversions, including high waters or flood waters, authorized under the Lemhi river basin decree (Lemhi County Case No. 4948).

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 Q. C. M. Date 4/12/01 Time 10:30 AM Preliminary check by S. Keen
 Fee \$ N/A Received by _____ # _____ Date _____
 Publication prepared by _____ Date _____ Published in _____
 Publication approved _____ Date _____

MICROFILMED

APR 24 2001

ATTACHMENT TO APPLICATION FOR PERMIT
TO APPROPRIATE A MINIMUM STREAMFLOW

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

This application is subordinate to all diversions, including high waters or flood waters, authorized in the Lemhi River Basin Decree, and will not interfere with them.

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

The requested flows are nonconsumptive for instream purposes to provide fish passage for anadromous fish.

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

These flows are essential for the passage of anadromous fish past the L-6 diversion.

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

The requested flows are necessary to maintain sufficient flow for fish passage.

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

The requested minimum streamflows will be maintained through the Lemhi River Basin Water Supply Bank.

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

USGS stream gage no. 13305310, located below the L-5 diversion on the Lemhi River may be used in the administration of this water right.

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

Additional flow measurements would not be made unless required as a condition of approval.

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JAN 24 2002

21. List any additional remarks to this minimum streamflow application.

This minimum streamflow application is filed under the authority of Idaho Code Sections 42-1506 and 42-1765A, as set forth in House Bill 358 by the 56th Idaho Legislature.

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JAN 24 2002

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JUL 30 1992

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT

Ident. No. 85-7583

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

1. Name of applicant Idaho Water Resource Board Phone 327-7910
Post office address Statehouse Mail, Boise, ID 83720
2. Source of water supply Clearwater River which is a tributary of Snake River
Instream flow from the confluence of the South Fork Clearwater and the Middle Fk. Clearwater
3. Location of point of diversion is in the 1/4 of SW 1/4 of NE 1/4, Govt. Lot _____
Sec. 5 Township 32 N Range 4 E B.M. Idaho County; ~~additional~~
downstream to the confluence with North Fork Clearwater River in the NW 1/4 of SE 1/4 of
points of diversion if any: SE 1/4, Sec 33, T 37 N, R 1 E, B.M., Clearwater County
4. Water will be used for the following purposes:
Amount 3515 cfs for instream purposes from Dec. 1 to July 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount 1836 cfs for instream purposes from Aug. 1 to Nov. 30 (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) 3515 and/or (b) _____
cubic feet per second acre feet per annum
6. Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc. _____
None.
b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total
reservoir capacity _____ acre-feet; period of year when water will be diverted to storage:
_____ to _____ inclusive.
c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
d. Is ground water with a temperature of greater than 90°F being sought? _____
7. Time required for the completion of the works and application of the water to the proposed beneficial use is
5 years (minimum 1 year)

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JAN 24 2002

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

- Hydropower; show total feet of head and proposed capacity in KW. _____
- Stockwatering; list number and kind of livestock. _____
- Municipal; show name of municipality. _____
- Domestic; show number of households. _____
- Other; describe fully. A minimum stream flow for the protection of fish and wildlife habitat, aquatic life and recreational values.

9. Description of place of use:

- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- 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	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

Total number of acres to be irrigated _____

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

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

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

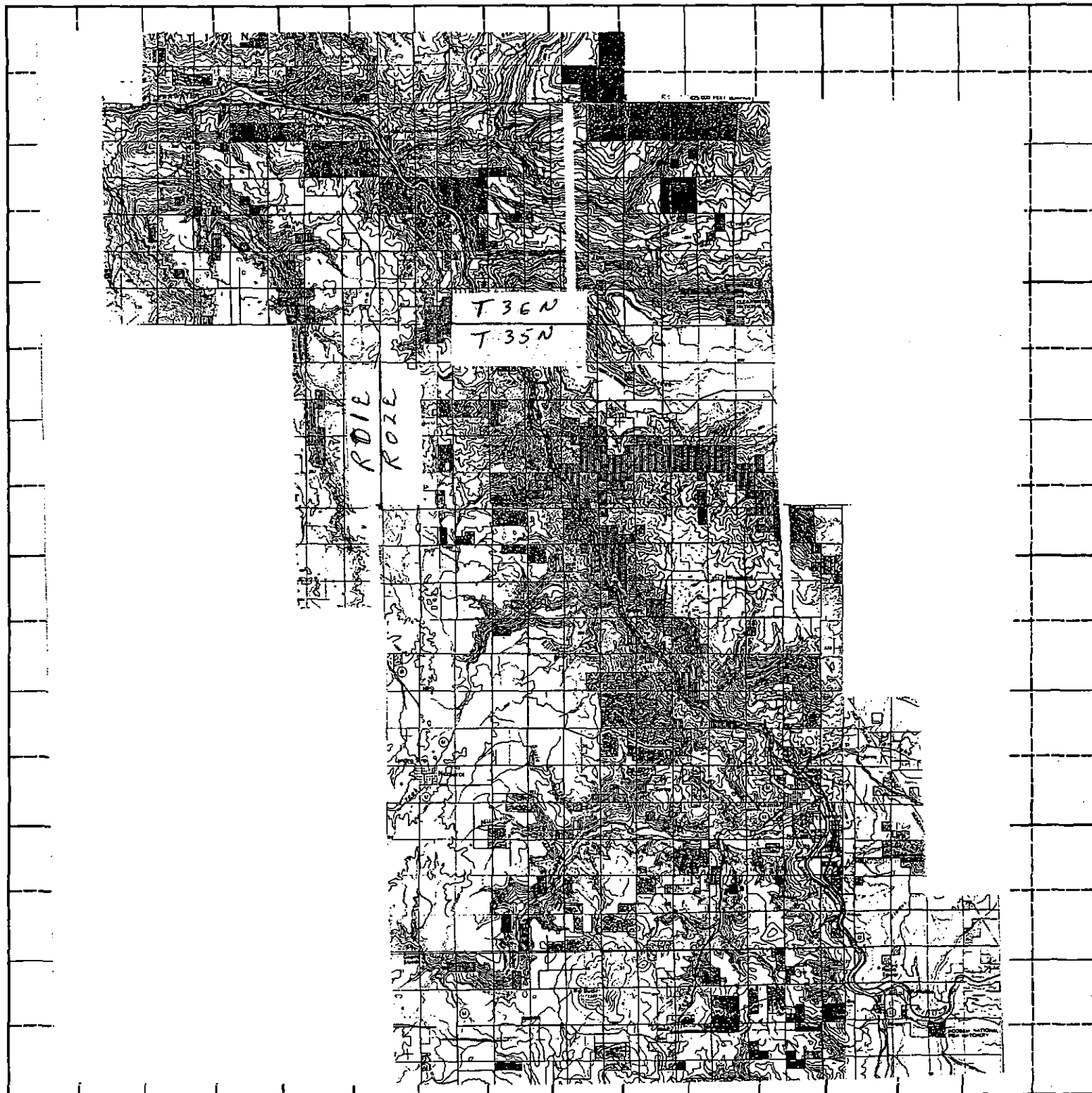
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. _____

12. Remarks: The affected reach is approximately 34 miles.

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JAN 24 2002

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



Scale: 2 inches equal 1 mile.

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

JAN 2 1902

William S. Platts
(Applicant)

Received by [Signature] Date 7-30-92 Time 8:33 AM Preliminary check by _____

Fee \$ _____ Received by _____ # _____ Date _____

Publication prepared by _____ Date _____ Published in _____

Publication approved _____ Date _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. _____, and said application is hereby _____.

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

a. SUBJECT TO ALL PRIOR WATER RIGHTS.

b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____, 19 ____.

c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

e. Other:

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24 2002

ATTACHMENT TO APPLICATION FOR PERMIT
TO APPROPRIATE A MINIMUM STREAM FLOW

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

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

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

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

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

The appropriation is for 40% of the mean annual flow for the period of December through July. The
request for the rest of the year is for the average monthly flow for August, the lowest month for the
period of record. This flow is close to 20% of the mean annual flow.

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

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

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

A flow of 3515 is less than the average monthly flow for the requested period of use. The flow of 1836 cfs is the lowest average monthly flow of the year for the period of record.

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

The USGS gage at Orofino is 50 feet upstream from State Highway 7 bridge at Orofino.

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

No.

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

The flow request provides a "good" minimum flow for April to July, a "fair to poor" flow for August to September, a "good" flow for October and November, and an "outstanding" flow for December to March. Following consultation with the Division of Environmental Quality and Departments of Fish & Game and Parks & Recreation, the Water Resource Board may amend this application to more accurately reflect the necessary minimum flow based on new data provided by the above or other agencies.

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Table 1

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

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

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

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

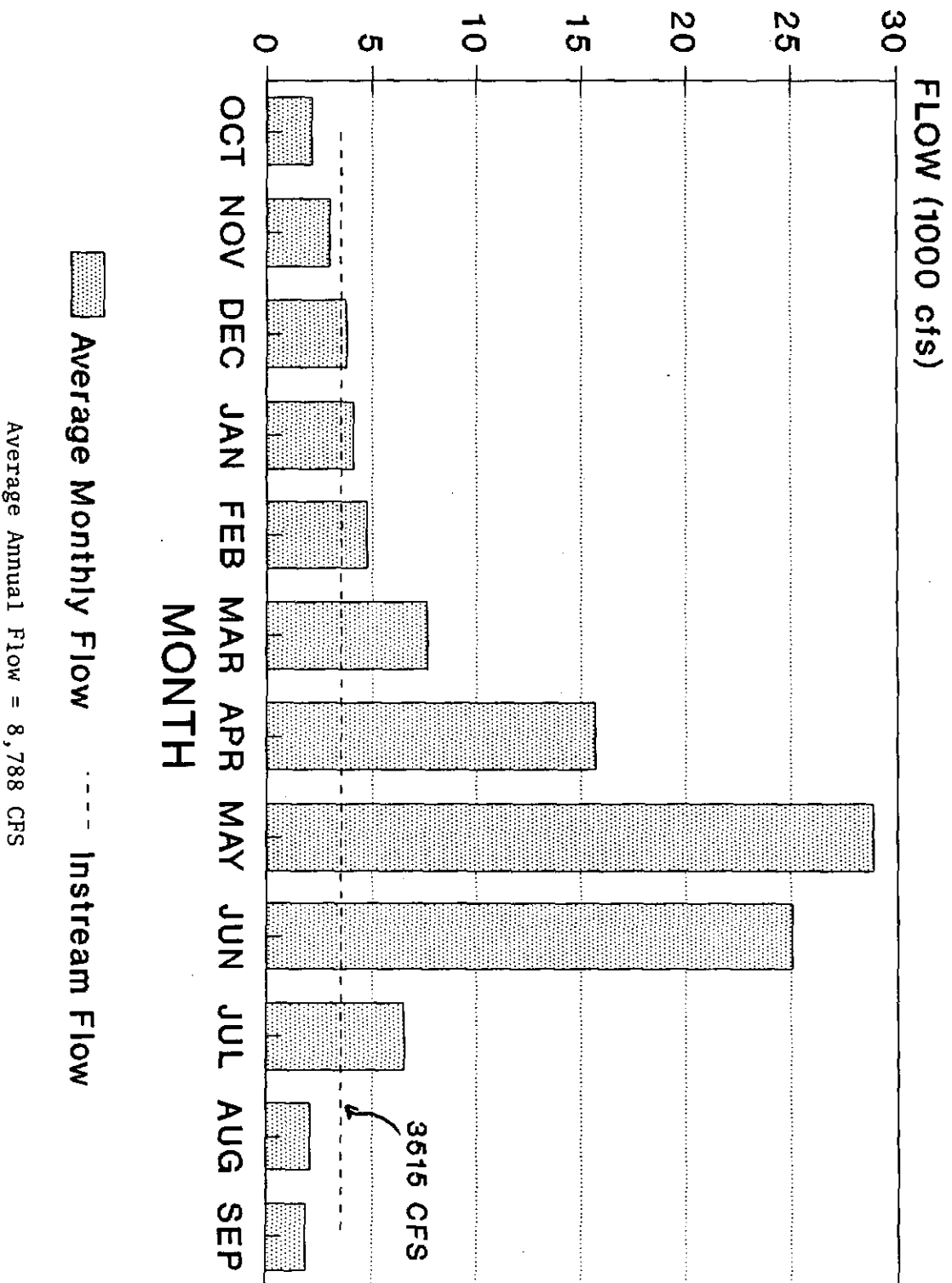
^{3/}The average flow will usually fill the active stream channel approximately 1/3 full or to the line of permanent terrestrial vegetation, while 3 times the average flow will often fill the active channel approximately to the point of spilling out on the first bench of the flood plain.¹⁵ Twice the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

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

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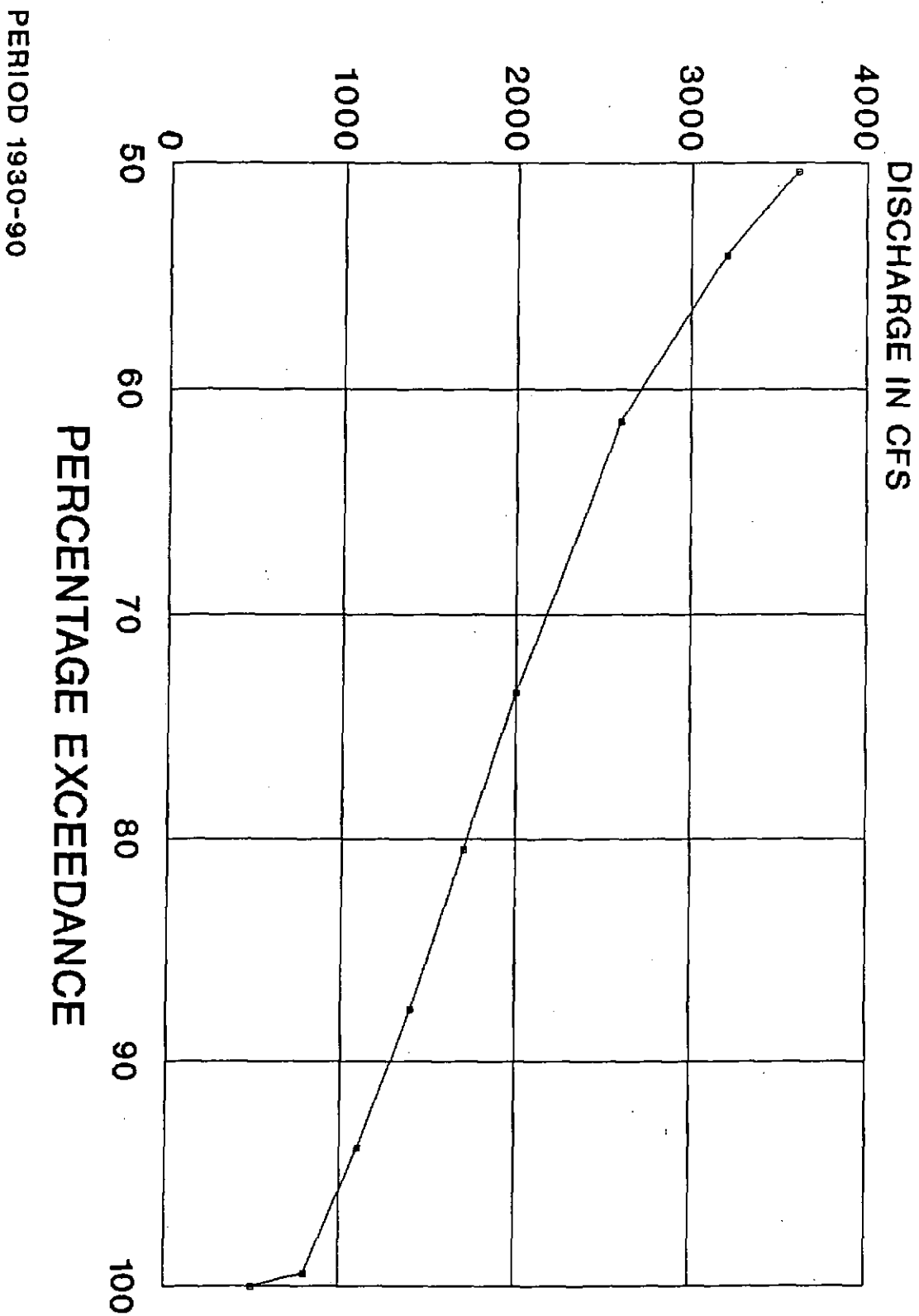
CLEARWATER RIVER AT OROFINO (1930-90)



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JAN 24 2002

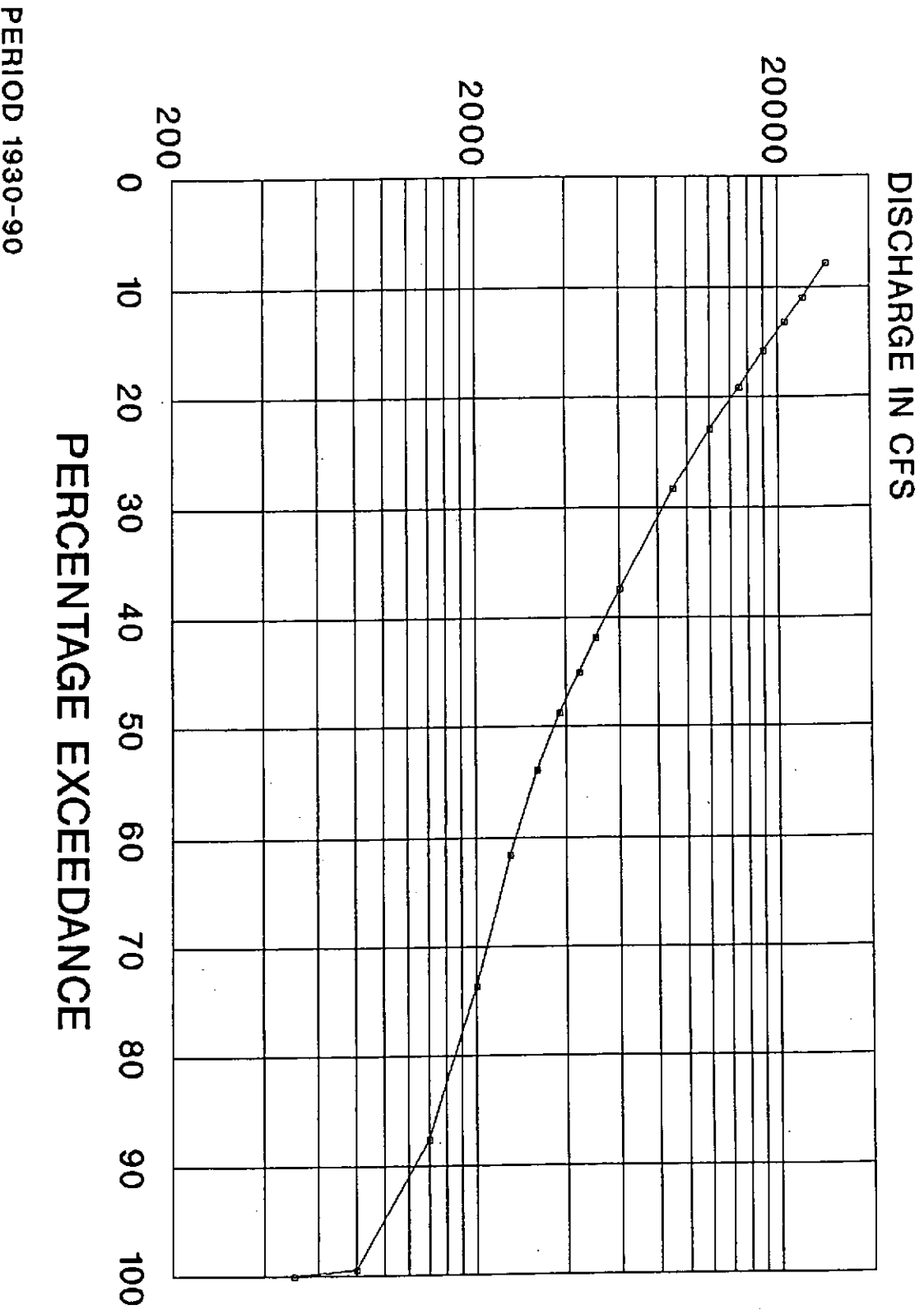
FLOW DURATION CURVE CLEARWATER RIVER AT OROFINO



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JAN 24 2002

FLOW DURATION CURVE CLEARWATER RIVER AT OROFINO



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IDAHO DEPARTMENT OF WATER RESOURCES
CLEARWATER RIVER AT OROFINO

SUMMARY HYDROGRAPH DATA
13340000

PAGE 11

FLOW DURATION TABLE FOR STATION 13340000

FLOW	PERCENT = / +	FLOW	PERCENT = / +	FLOW	PERCENT = / +	FLOW	PERCENT = / +	FLOW	PERCENT = / +
34500.	4.74	33500.	5.16	32500.	5.56	31500.	6.02	30500.	6.52
28500.	7.77	27500.	8.48	26500.	9.08	25500.	9.79	25000.	10.18
24000.	10.98	23500.	11.23	23000.	11.57	22500.	12.02	22000.	12.40
21000.	13.22	20500.	13.67	20000.	14.08	19500.	14.38	19000.	14.84
18000.	15.77	17500.	16.26	17000.	16.75	16500.	17.40	16000.	17.87
15000.	19.08	14500.	19.83	14000.	20.49	13500.	20.96	13000.	21.60
12000.	22.88	11500.	23.70	11000.	24.65	10500.	25.26	10000.	26.10
9000.	28.24	8500.	29.51	8000.	30.99	7500.	32.53	7000.	34.12
6000.	37.39	5500.	39.34	5400.	39.93	5300.	40.38	5200.	41.01
5000.	41.80	4900.	42.37	4800.	42.74	4700.	43.35	4600.	43.83
4400.	45.06	4300.	45.57	4200.	46.14	4100.	46.74	4000.	47.29
3800.	48.77	3700.	49.57	3600.	50.38	3500.	51.35	3400.	52.05
3200.	53.98	3100.	55.21	3000.	56.16	2900.	57.41	2800.	58.41
2600.	61.41	2500.	63.10	2400.	65.00	2300.	67.01	2200.	69.17
2000.	73.50	1900.	75.74	1800.	78.18	1700.	80.46	1600.	82.97
1400.	87.66	1300.	89.80	1200.	91.71	1100.	93.88	1000.	96.06
800.	99.43	700.	99.77	600.	99.90	500.	99.97		

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JAN 24 2002

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
RECEIVED
JUL 30 1992
APPLICATION FOR PERMIT

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

1. Name of applicant Idaho Water Resource Board Phone 327-7910
Post office address Statehouse Mail, Boise, ID 83720

2. Source of water supply Clearwater River which is a tributary of Snake River
Instream flow from the confluence with the North Fork Clearwater River in the
3. Location of point of diversion is NW 1/4 of SE 1/4 of SE 1/4, Govt. Lot

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

4. Water will be used for the following purposes:

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

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

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

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

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

6. Proposed diverting works:

a. Description of ditches, flumes, pumps, headgates, etc. _____
None.

b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total
reservoir capacity _____ acre-feet; period of year when water will be diverted to storage:
_____ to _____ inclusive.

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

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

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

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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. A minimum stream flow for the protection of fish and wildlife habitat, aquatic life, and recreational values.

9. Description of place of use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- b. If water is used for other purposes, place a symbol of the use (example: *D* for *Domestic*) in the corresponding place of use below. See instructions for standard symbols.

TWP	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

Total number of acres to be irrigated _____

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

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

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

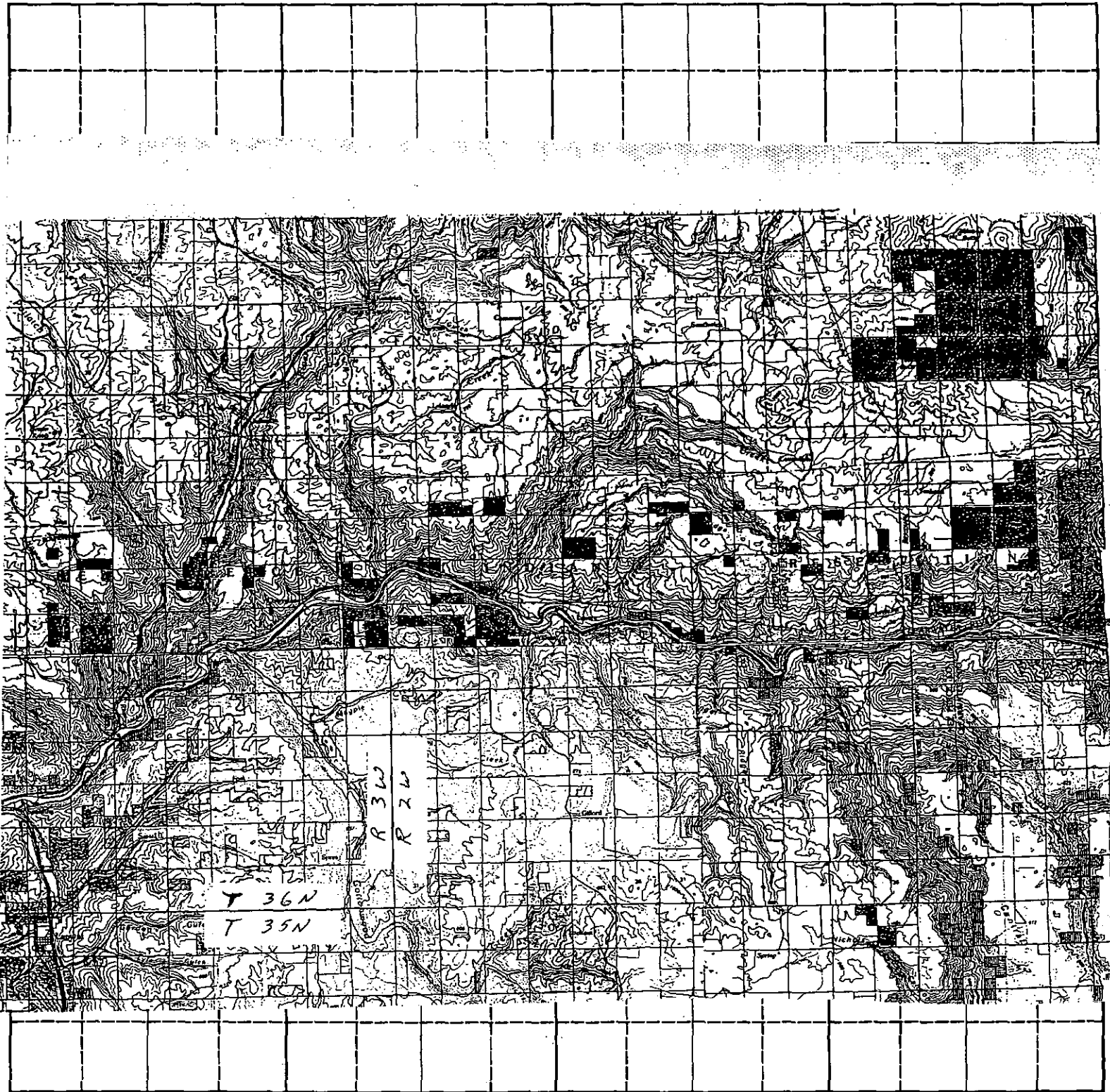
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. _____

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

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JAN 24 2002

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



Scale: 2 inches equal 1 mile.

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

MICROFILM
JAN 24 2002

William S. Platts
(Applicant)

Received by [Signature] Date 1-30-92 Time 8:33 PM Preliminary check by _____
Fee \$ _____ Received by _____ # _____ Date _____
Publication prepared by _____ Date _____ Published in _____
Publication approved _____ Date _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. _____, and said application is hereby _____.

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

a. SUBJECT TO ALL PRIOR WATER RIGHTS.

b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____, 19 _____.

c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

e. Other:

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JAN 24 2002

ATTACHMENT TO APPLICATION FOR PERMIT
TO APPROPRIATE A MINIMUM STREAM FLOW

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

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

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

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

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

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

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

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

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

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

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

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

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

No.

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

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

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JAN 24 2002

Table 1

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

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

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

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

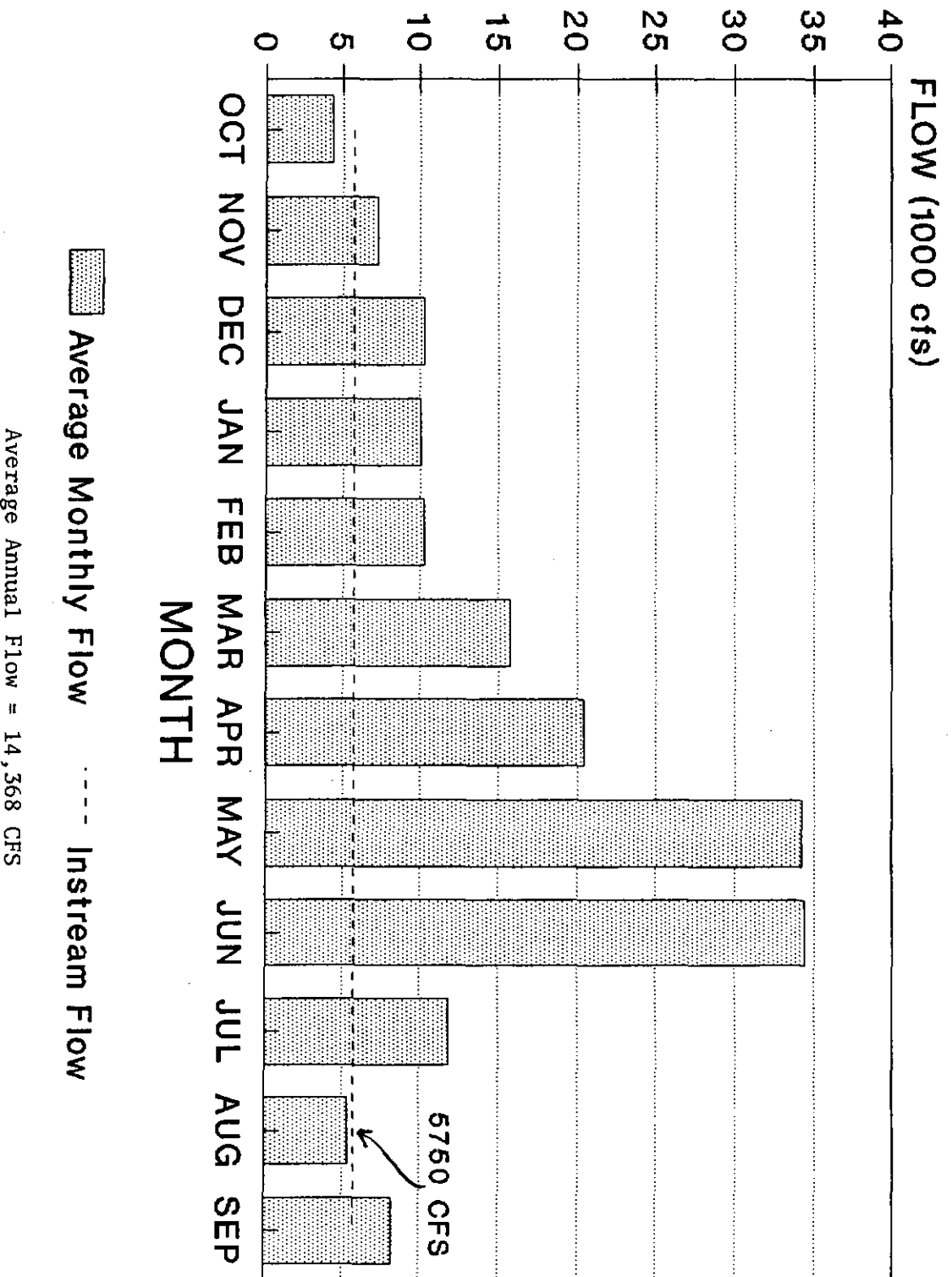
^{3/}The average flow will usually fill the active stream channel approximately 1/3 full or to the line of permanent terrestrial vegetation, while 3 times the average flow will often fill the active channel approximately to the point of spilling out on the first bench of the flood plain.¹⁵ Twice the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

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

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JAN 24 2002

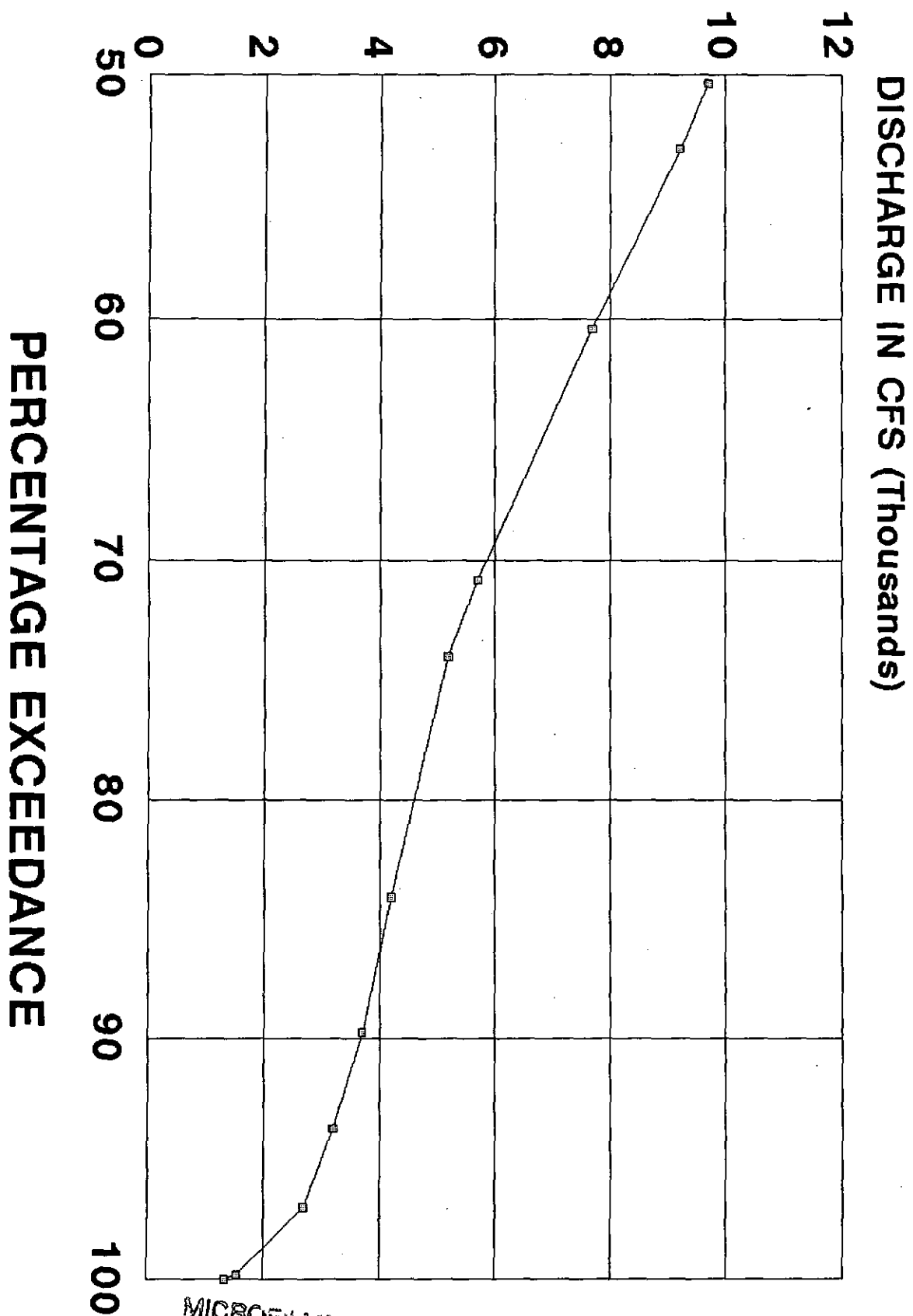
CLEARWATER RIVER AT PECK (1972-90)



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18M 2 4 2002

FLOW DURATION CURVE CLEARWATER RIVER AT PECK



MICROFILMED
JAN 24 2002

FLOW DURATION TABLE FOR STATION 13341050

FLOW	PERCENT = / +	FLOW	PERCENT = / +	FLOW	PERCENT = / +	FLOW	PERCENT = / +	FLOW	PERCENT = / +	FLOW	PERCENT = / +	FLOW	PERCENT = / +
22700.	19.71	21700.	20.68	20700.	21.71	19700.	23.04	18700.	24.41	17700.	26.23		
17200.	27.16	16700.	28.13	16200.	28.98	15700.	30.00	15200.	30.68	14700.	31.32		
14200.	32.06	13700.	32.95	13200.	34.25	12700.	35.79	12200.	38.32	11700.	40.95		
11200.	43.60	10700.	45.96	10200.	48.26	9700.	50.36	9200.	53.03	8700.	55.55		
8200.	58.00	7700.	60.40	7200.	62.92	6700.	65.73	6200.	68.03	5700.	70.83		
5200.	74.02	4700.	78.62	4200.	84.03	3700.	89.74	3200.	93.77	2700.	97.05		
2600.	97.44	2500.	98.04	2400.	98.47	2300.	98.75	2200.	98.98	2100.	99.18		
2000.	99.29	1900.	99.42	1800.	99.58	1700.	99.69	1680.	99.69	1660.	99.69		
1640.	99.72	1620.	99.74	1600.	99.74	1580.	99.75	1560.	99.77	1540.	99.81		
1520.	99.84	1500.	99.87	1480.	99.90	1460.	99.91	1440.	99.94	1420.	99.96		
1400.	99.97	1380.	99.97	1360.	99.97	1340.	99.99	1320.	100.00	1300.	100.00		
1280.	100.00	1260.	100.00	1240.	100.00	1220.	100.00	1200.	100.00	1180.	100.00		
1160.	100.00	1140.	100.00	1120.	100.00	1100.	100.00						

MICROFILMED
JAN 24 2002

STATE OF IDAHO

Ident. No. 85-7582
86-07345

RECEIVED DEPARTMENT OF WATER RESOURCES

JUL 30 1992 APPLICATION FOR PERMIT

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

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

Post office address Statehouse Mail, Boise, ID 83720

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

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

Sec. 7 Township 36N Range 3W B.M. Nez Perce County; additional
downstream to the mouth in the SE $\frac{1}{4}$
~~points of diversion if any:~~ of NW $\frac{1}{4}$ of NW $\frac{1}{4}$, Sec 36, T 36 N, R 6 W, B.M.

4. Water will be used for the following purposes:

Amount 5910 for instream purposes from Nov. 1 to July 31 (both dates inclusive)
(cfs or acre-feet per annum)

Amount 4498 for instream purposes from Aug. 1 to Oct. 31 (both dates inclusive)
(cfs or acre-feet per annum)

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

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

5. Total quantity to be appropriated is (a) 5910 and/or (b) _____
cubic feet per second acre feet per annum

6. Proposed diverting works:

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

None

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

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

_____ to _____ inclusive.

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

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

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

5 years Minimum 1 year.

JAN 24 2002

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

- Hydropower; show total feet of head and proposed capacity in KW. _____
- Stockwatering; list number and kind of livestock. _____
- Municipal; show name of municipality. _____
- Domestic; show number of households. _____
- Other; describe fully. A minimum stream flow for the protection of fish and wildlife habitat, aquatic life, and recreational values.

9. Description of place of use:

- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- 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	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

Total number of acres to be irrigated _____

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

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

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

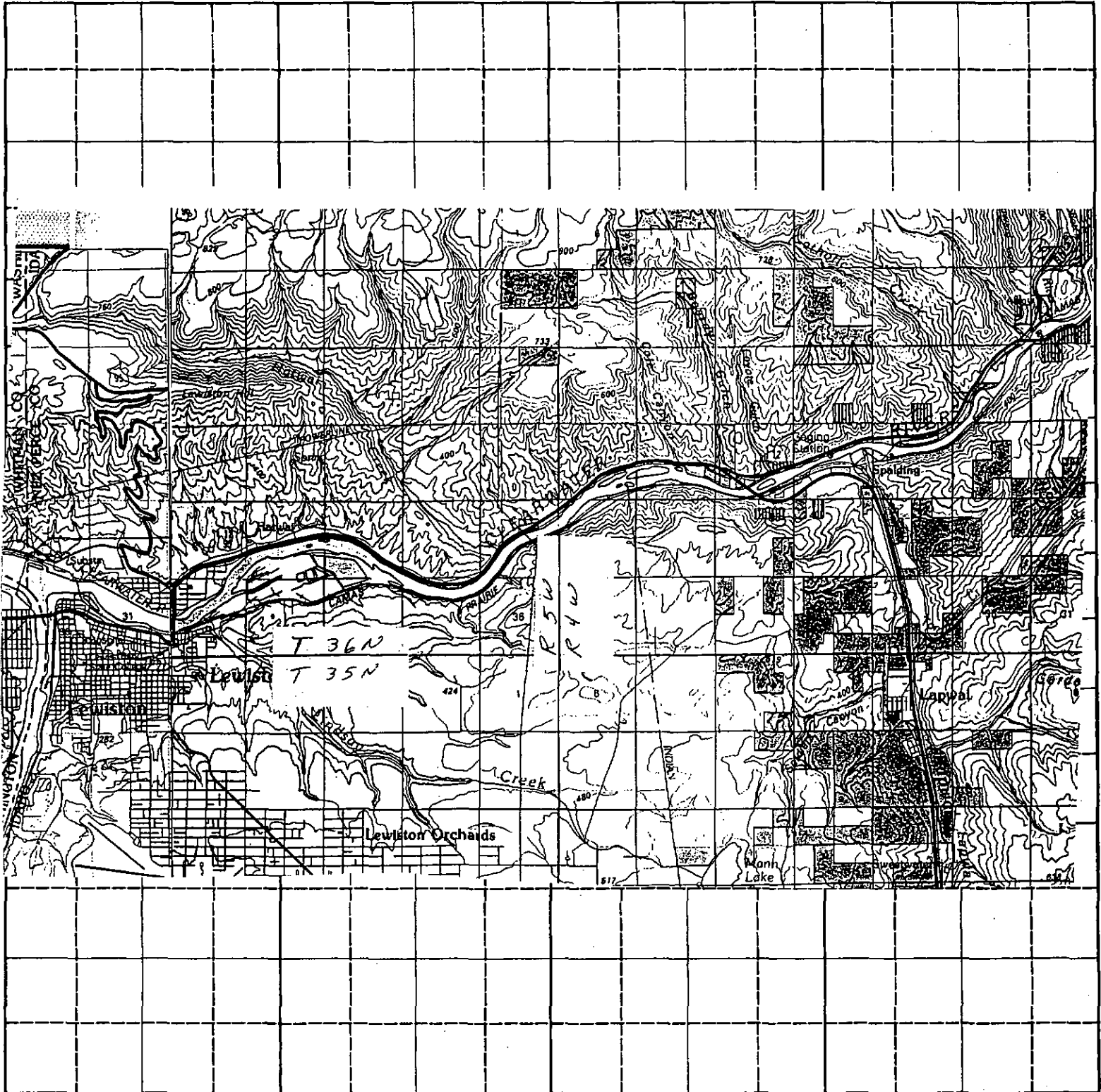
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing. _____

12. Remarks: The affected reach is approximately 15.2 miles long.

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



Scale: 2 inches equal 1 mile.

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

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JAN 24 2002

William S. Platts
(Applicant)

Received by [Signature] Date 8/3/92 Time 12:30 PM Preliminary check by _____
Fee \$ _____ Received by _____ # _____ Date _____
Publication prepared by _____ Date _____ Published in _____
Publication approved _____ Date _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. _____, and said application is hereby _____.

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

a. SUBJECT TO ALL PRIOR WATER RIGHTS.

b. Proof of construction of works and application of water to beneficial use shall be submitted on or before _____, 19 ____.

c. The rate of diversion, if water is to be used for irrigation under this permit, when combined with all other water rights for the same land shall not exceed 0.02 cubic feet per second for each acre of land.

d. The water right acquired under this permit if for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against any future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit.

e. Other:

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ATTACHMENT TO APPLICATION FOR PERMIT
TO APPROPRIATE A MINIMUM STREAM FLOW

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

The appropriation is junior to rights, permits, or applications with earlier dates of priority.

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

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

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

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

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

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

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

A flow of 5910 cfs is less than average monthly flow for the requested period of use. The flow of 4498 cfs is the lowest average monthly flow of the year for the period of record.

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

The USGS gage at Spalding is located 0.9 miles upstream of the U.S. Highway 95 bridge.

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

No.

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

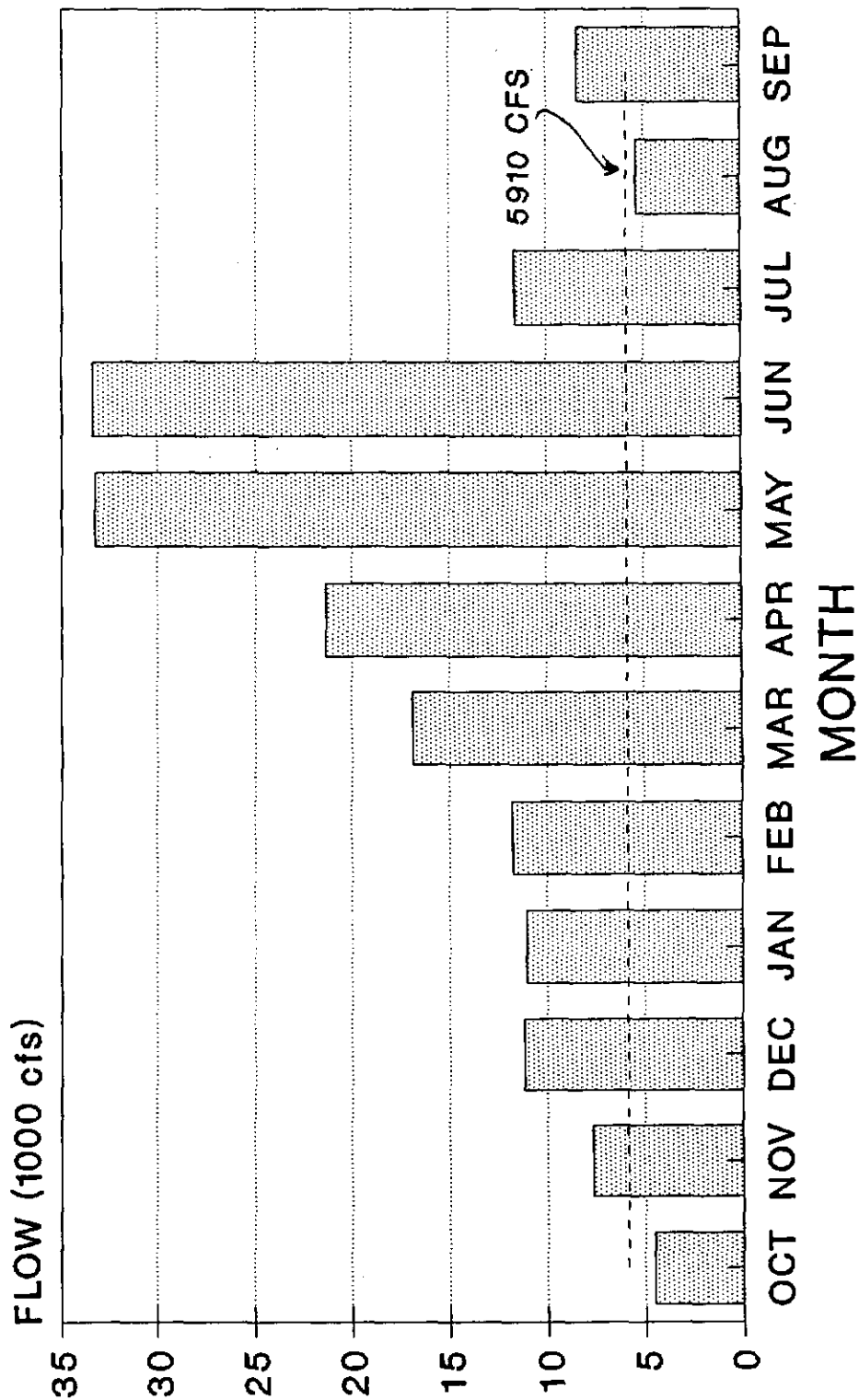
The flow request provides a "good" minimum flow for April to July, a "fair" flow for August to September, an "excellent" flow for October, and an "outstanding" flow for November to March.

The flow in this reach is influenced and somewhat controlled by release from Dworshak Reservoir. Future changes in release patterns from Dworshak, due to fish needs or other reasons, could impact water availability for this and other uses. Following consultation with the Division of Environmental Quality and Departments of Fish & Game and Parks & Recreation, the Water Resource Board may amend this application to more accurately reflect the necessary minimum flow based on new data provided by the above or other agencies.

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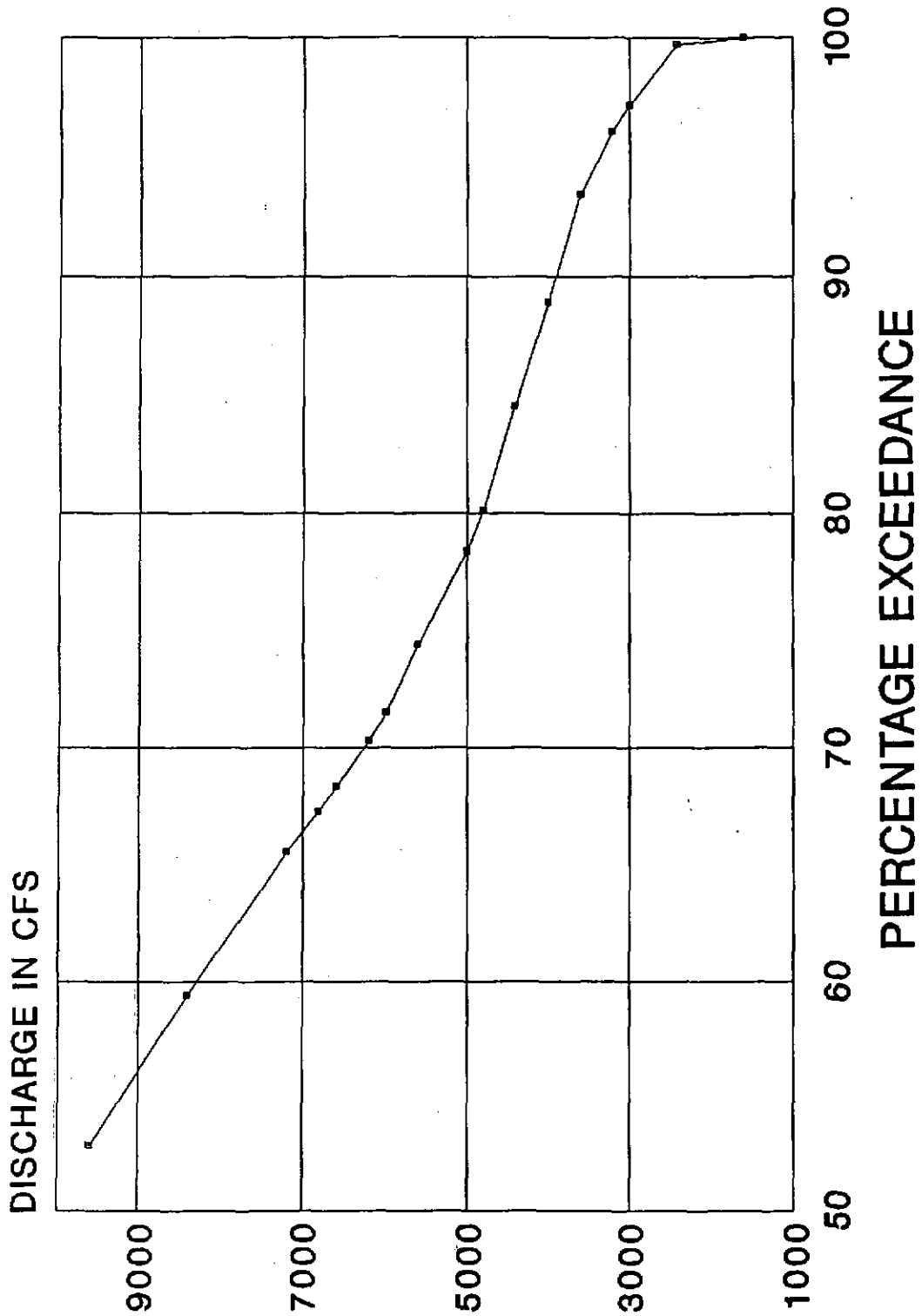
JAN 24 2002

CLEARWATER RIVER AT SPALDING (1972-90)



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FLOW DURATION CURVE
CLEARWATER RIVER AT SPALDING

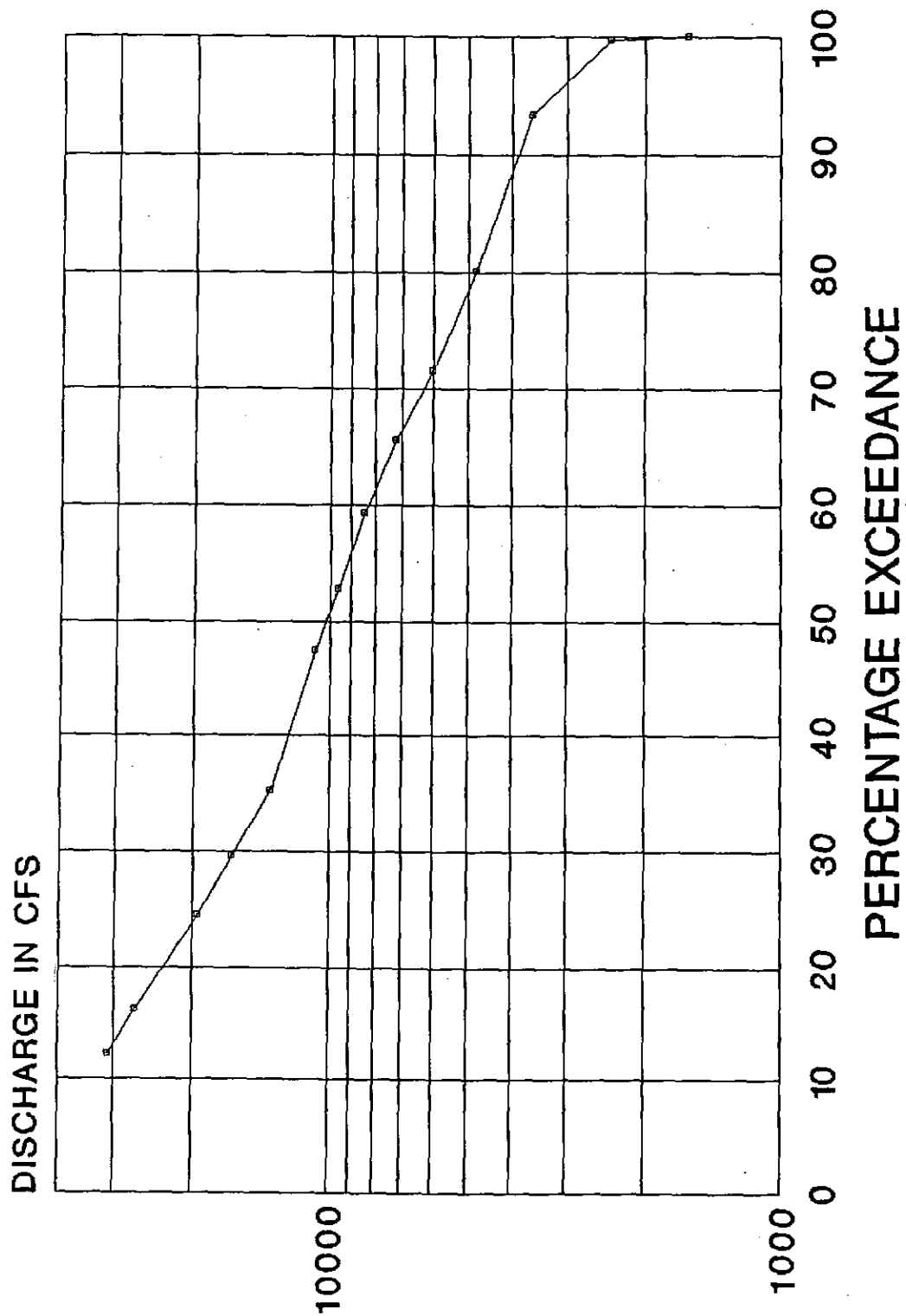


PERIOD 1972-90

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FLOW DURATION CURVE CLEARWATER RIVER AT SPALDING



PERIOD 1972-90

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[illegible]

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Table 1

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

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

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

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

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

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

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

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 74-14993 IN THE)
NAME OF THE IDAHO WATER)
RESOURCE BOARD)
_____)

PRELIMINARY ORDER

This matter having come before the Idaho Department of Water Resources ("Department") and the Department having held a hearing in the matter, the hearing officer enters the following Findings of Fact, Conclusions of Law and Preliminary Order:

FINDINGS OF FACT

1. On April 12, 2001, the Idaho Water Resource Board ("Board" or "applicant") filed the above captioned application for permit with the Department seeking to establish a minimum stream flow on a reach of the Lemhi River tributary to the Salmon River in Lemhi County, Idaho. The application was filed pursuant to Chapter 15, Title 42, Idaho Code. The reach is further described as follows:

Beginning at water diversion L-6 on the Lemhi River in the southeast quarter (1/4) of section twenty-four (24), township twenty-one (21) north, range twenty-two (22) east of the Boise Meridian, and ending at the confluence of the Lemhi River with the Salmon River near the southwest corner of section thirty-two (32), township twenty-two (22) north, range twenty-two (22) east of the Boise Meridian, in Lemhi County, said reach being approximately 7.5 miles long.

The minimum flow sought is thirty-five (35) cubic feet per second ("cfs") year-round to provide anadromous fish passage in the Lemhi River from diversion L-6 to the mouth of the Lemhi River. The application provided that fifteen (15) cfs of the thirty-five (35) cfs be subordinated to all diversions, including high water or flood water authorized under the Lemhi River basin decree (Lemhi County Case No. 4948).

2. The Department provided notice of the application describing the proposed appropriation and setting the time and place for hearing on the application. Notice was published on August 30, 2001 and September 6, 2001, in the Recorder Herald, Salmon, Idaho and in the Challis Messenger, Challis, Idaho.

3. On September 12, 2001, the Department conducted a public hearing in Salmon, Idaho for the purpose of eliciting testimony regarding the application. The applicant appeared in a formal capacity at the hearing. There were no other full parties or public witnesses.

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4. Applicant's Exhibit 1 was offered and accepted as a part of the hearing record. The exhibit shows the location of the minimum streamflow reach and historic Lemhi River flows measured by the US Geological Survey below Lemhi River Diversion L-5 near Salmon, Idaho. The flows were measured as low as approximately 10 cfs during the summer of 2000, but with augmented flow authorized by this minimum streamflow application, were stabilized at more than 20 cfs during the summer of 2001.

5. Sections 42-1506 and 42-1765A, Idaho Code, were enacted by the Idaho legislature authorizing the minimum stream flow appropriation and setting up a local committee to facilitate operation of a water supply bank in the Lemhi River basin.

6. All rights acquired under the application are for instream non-consumptive use and are subject to all vested water rights, permits or applications for permit having a date of priority earlier than April 12, 2001.

7. There was no opposition at the hearing or submitted in writing to approval of the application.

CONCLUSIONS OF LAW

1. Chapter 15, Title 42, Idaho Code, provides that stream flow preservation for the protection of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, navigation and water quality, when made pursuant to this statute, is in the public interest and is declared to be a beneficial use of such water.

2. Section 42-1506, Idaho Code, specifically authorizes the Board to file an application to establish a minimum stream flow on the Lemhi River.

3. The proposed minimum stream flow in the application will not interfere with any vested water right, permit, or application for permit having a priority date earlier than April 12, 2001.

4. The flow requested in the application is the minimum flow required to provide anadromous fish passage, and is not the ideal or most desirable flow that could be utilized for this purpose.

5. The proposed minimum stream flow is in the public, as opposed to private, interest.

6. The minimum stream flow proposed in the application is necessary to provide for anadromous fish passage in the river reach.

7. Section 42-1506, Idaho Code, provides that the Board is not required to show that the appropriation is capable of being maintained because it is anticipated that the water right will be maintained through operation of the water supply bank within the

Lemhi River basin consistent with provisions of section 42-1756A, Idaho Code.

8. The Department should approve the application with certain conditions and should issue a permit.

ORDER

IT IS, THEREFORE, HEREBY ORDERED That Application for Permit No. 74-14993 in the name of the Idaho Water Resource Board is **APPROVED** subject to the following conditions:

1. Use of water under the permit shall recognize and allow the continued beneficial diversion of water under any prior existing water right established by diversion and application of water to beneficial use or by an application, permit, or license on file or issued by the Director under provisions of Chapter 2, Title 42, Idaho Code, with a priority of use earlier than April 12, 2001.
2. Fifteen (15) cfs of the thirty-five (35) cfs is subordinated to all diversions, including high water or flood water authorized under the Lemhi River basin decree (Lemhi County Case No. 4948).
3. Use of water under the permit shall be non-consumptive.
4. Upon the future finding and order of the Director that gaging stations are required to maintain the approved minimum stream flow, the right holder shall permanently install and maintain gaging stations as specified by the Department.
5. The purpose of this minimum stream flow is to provide for the passage of anadromous fish in the authorized river reach.
6. The river reach approved is described in Finding of Fact 1 and begins at water diversion L-6 on the Lemhi River in the southeast quarter (1/4) of section twenty-four (24), township twenty-one (21) north, range twenty-two (22) east of the Boise Meridian, and ends at the confluence of the Lemhi River with the Salmon River near the southwest corner of section thirty-two (32), township twenty-two (22) north, range twenty-two (22) east of the Boise Meridian, Lemhi County.
7. The Board, upon receiving a request, or upon its own initiative, may petition the Director for an amendment to the right. 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 right 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 right would be in the public interest.

8. The application hereby approved by the Director shall be submitted to the Idaho Legislature by the fifth day of the next regular legislative session. The Director's approval shall not become finally effective until approved by the legislature pursuant to provisions of Section 42-1503, Idaho Code.
9. Use of water under this right is subject to the control of the watermaster of Water District 74, Lemhi River and tributaries.
10. The right holder shall submit to the Department proof of instream beneficial use of the minimum flow on or before **April 1, 2004**.

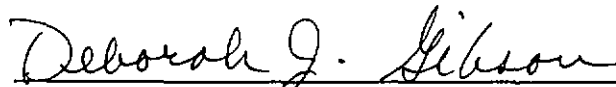
Dated this 27th day of September, 2001.


L. GLEN SAXTON
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of September, 2001, the above and foregoing document was served upon the following by hand delivering a copy of the same to the following:

Idaho Water Resource Board
c/o Bill Graham
Idaho Dept. of Water Resources
Statehouse Mail
Boise, ID 83720-0098



Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

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

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

FINAL ORDER

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

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

FINDINGS OF FACT

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

85-07583

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

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86-07318

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

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

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

Priority Date: July 30, 1992.

86-07345

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

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

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

Priority Date: July 30, 1992.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ORDER

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

1. Approval of Application for Permit Nos. 85-07583, 86-07318, and 86-07345 for minimum stream flows shall not prevent approval of applications for consumptive uses from ground water if the wells are located and constructed to prevent an immediate impact on the river, as determined by the Director.

2. The approved minimum stream flows shall be subordinate to future domestic, stockwater, municipal, commercial, and industrial development from the Clearwater River and its tributaries, including ground water, for use within the Clearwater River Basin where the domestic and stockwater uses are within the limitations of Section 42-111, Idaho Code.

3. The Board, upon receiving a request or upon its own initiative, may petition the Director for an amendment to the permit or license. The petition must set forth any significant change in circumstances and evidence of the public interest supporting the proposed amendment. The Director will notify the general public and specific persons or known interested parties of the proposed change, and conduct a hearing for the purpose of determining whether the permit or subsequent license should be amended in the public interest. The burden of proof at the hearing shall be upon the persons or parties seeking the amendment to establish that the amendment of the permit or license would be in the public interest. An amendment cannot increase the flow rate.

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

5. Use of water under these permits shall be non-consumptive.

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

7. Proof of instream beneficial use of the minimum stream flow may be submitted immediately upon legislative approval of the permit, but must be submitted no later than March 1, 2006.

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

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

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

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

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

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

Dated this 21st day of December, 2001.



KARL J. GREHER
Director

CERTIFICATE OF SERVICE

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

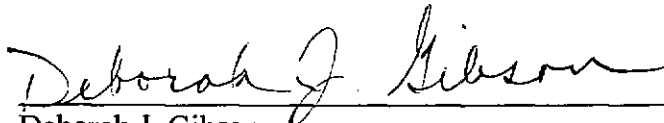
City of Lewiston
Attn: Don L. Roberts
P.O. Box 617
Lewiston, ID 83501

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

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

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

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



Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

October 24, 2001

STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
STATEHOUSE MAIL
BOISE ID 83720

RE: Permit No. 74-14993

Permit Approval Notice

Dear Permit Holder:

The Department of Water Resources has issued the enclosed permit authorizing you to establish a new water right. Please be sure to thoroughly review the conditions of approval and remarks listed on your permit.

The permit is a PRELIMINARY ORDER issued by the Department pursuant to Section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

As a permit owner you must commence the excavation or construction of the diverting works within one year of the date the permit was issued, and you must proceed diligently until the project is completed. The date shown under condition no. 1 is the date when the project must be completed.

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.

Please note that a separate stream channel alteration permit must be obtained from the Department prior to any activity in the stream channel other than construction or maintenance of the diversion structure for your water right(s). Applications for stream channel alteration permits must be filed a least sixty days prior to the commencement of work in the stream.

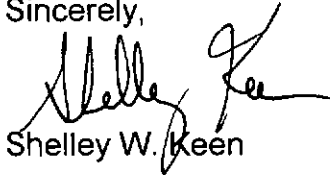
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JAN 24 2002

Also, please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at 208-327-7946.

Sincerely,

A handwritten signature in black ink, appearing to read "Shelley W. Keen". The signature is fluid and cursive, with the first name "Shelley" being more prominent.

Shelley W. Keen

Water Rights Supervisor

SWK:klt

Enclosure(s)

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JAN 24 2002

CERTIFICATE OF MAILING

I hereby certify that on October 24, 2001 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved Permit) to the person(s) listed below:

RE: WATER RIGHT NO. 74-14993

**STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
STATEHOUSE MAIL.
BOISE ID 83720**

A handwritten signature in black ink, reading "Kari Lynn Townsend", written over a horizontal line.

**Kari Lynn Townsend
Secretary**

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JAN 24 2002

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources (department) unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(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 with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the department or the Idaho Water Resource Board (Board) is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

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, requests 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 IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

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JAN 24 2002

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The 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 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.

NOTICE OF MINIMUM STREAM
FLOW HEARING

Notice is hereby given that on April 12, 2001, the Idaho Water Resource Board filed an application for permit with the Department of Water Resources (IDWR) to provide for a minimum streamflow in a portion of the Lemhi River to enhance passage of anadromous fish as follows:

Identification no. 74-14993

Source: Lemhi River tributary to Salmon River 7.5 miles beginning at Lemhi River diversion L-6 in the SE ¼ Section 24, T21N, R22E, B.M., Lemhi County, downstream to the mouth of Lemhi River located near the SW corner of Section 32, T22N, R22E, B.M.

Rate of flow: 35 cubic feet per second ("cfs") year-round. 15 cfs shall be subordinate to all diversions, including high waters or flood waters authorized under the Lemhi River basin decree.

Note: the legislature has authorized the establishment of a water supply bank operated by local committee that will allow owners of water rights to lease the rights to the bank to provide water for the minimum streamflow.

IDWR will hold a public hearing as required in Section 42-1503, Idaho Code, for the purpose of receiving evidence and testimony in regard to the application as follows:

Date and time: September 12, 2001, at 2:00 p.m. and 7:00 p.m.

Place: Salmon Valley Center, 200 Main St., Salmon, Idaho 83467

The 2:00 p.m. hearing 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 Director of IDWR, Statehouse Mail, Boise, Idaho 83720, Attn: L. Glen Saxton, at least seven (7) 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 will be conducted by L. Glen Saxton, IDWR, Statehouse Mail, Boise, ID 83720, Telephone (208) 327-7900.

If issued, this permit will be subject to all prior water rights.

Karl J. Dreher, Director, IDWR
08-30-2tc

Affidavit of Publication

STATE OF IDAHO }
County of Lemhi }

ss.

RICKY G. HODGES being first duly sworn, deposes and says he is one of the publishers (printers) of The Recorder Herald, a newspaper published weekly at Salmon, Lemhi County, Idaho, and of general circulation therein. That the **NOTICE OF MINIMUM STREAM**, a true printed copy of which is attached to the margin hereof, has been and was correctly printed and published in the regular and entire issue of every number of said newspaper and not in any supplement thereof or thereto for **TWO(2)** consecutive issue(s), commencing with the issue dated **08-30-2001** and ending with the issue dated **09-06-2001**.

STATE OF IDAHO }
County of Lemhi }

ss.

On this **19th day of September** in this year of 2001 before me, A Notary Public, personally appeared RICKY G. HODGES, 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.

Shiela Johnson

Notary Public for Idaho

Residing At Salmon, Idaho

My Commission expires: 01-02-2007

Publication Fee \$110.88

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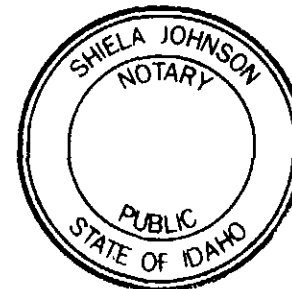
SEP 24 2001

Department of Water Resources
Eastern Region
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SEP 28 2001

Department of Water Resources

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JAN 24 2002





State of Idaho

DEPARTMENT OF WATER RESOURCES

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

September 27, 2001

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

Re: Application for Permit No. 74-14993, in the name of the Idaho Water
Resource Board

Dear Interested Parties:

The Department of Water Resources (department) has issued the enclosed **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. Failure to report these changes could result in a \$100 late filing fee. 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 call me at (208) 327-7953.

Sincerely,

Deborah J. Gibson
Administrative Assistant
Water Allocation Bureau

Enclosures

c: IDWR - Regional Offices (Eastern & Salmon)

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JAN 24 2002

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 this order. The hearing officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within 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.

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JAN 24 2002

CERTIFICATE OF SERVICE

All exceptions, briefs, requests 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 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.

State of Idaho
Department of Water Resources

- ROSTER OF ATTENDANCE -

Pg. _____

RE: PUBLIC HEARING - IN THE MATTER OF APPLICATION FOR PERMIT
NO. 74-14993 IN THE NAME OF THE IDAHO WATER RESOURCE BOARD

Date: September 12, 2001
Time: 2:00 p.m. and 7:00 p.m.
Place: Salmon Valley Center
200 Main St.
Salmon, ID

Hearing Officer: L. Glen Saxton

Do you wish to testify as a
Full party (show "FP")
or
Public witness (show "PW")
or
Not testify (Leave blank)

Name and Address Representing

** Please Print **

JAMES WHITTAKER NO. 240 bendale ⁸³⁴⁶⁴ _____

(Also see next page)

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JAN 24 2002

- ROSTER OF ATTENDANCE -

Pg. ____

Do you wish to testify as a
Full party (show "FP")
or
Public witness (show "PW")
or
Not testify (Leave blank)

Name and Address Representing

** Please Print **

Paul Fisher - Water User _____

RT Smith water user _____

John Tolson USBWP _____

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JAN 24 2002

Exhibit 1

Date Admitted 9-12-01

[Handwritten signature]

LEMHI RIVER Minimum Instream Flow

1

Application Data:

Water Right Number: 74-14993

Source: Lemhi River

Applicant: Idaho Water Resource Board

Requested by:

Idaho Legislature (HB 358)

Date Filed: April 12, 2001

2

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JAN 24 2002

House Bill 358 (A)

- ➔ Adds a new section (42-1506) to the Minimum Stream Flow Chapter of the Idaho Code.
 - ⇒ Authorizes and directs the Board to appropriate a minimum stream flow on the Lemhi River.
 - ⇒ Allows the water right to be maintained through operation of the Lemhi River water supply bank.
 - ⇒ Authorizes the Director to distribute water on an interim basis under this filing.

3

House Bill 358 (B)

- ➔ Adds a new section (42-1765A) to the Water Rental Pool Statutes.
 - ⇒ Authorizes the Board to appoint a local rental pool committee, and to make the Board's water supply bank rules applicable.
 - ⇒ Allows the Committee to rent natural flow water rights between willing owners and renters.
 - ⇒ Provides that water rights for a portion of the period of use may be accepted into the bank, provided the owner demonstrates an equivalent reduction of beneficial use.

4

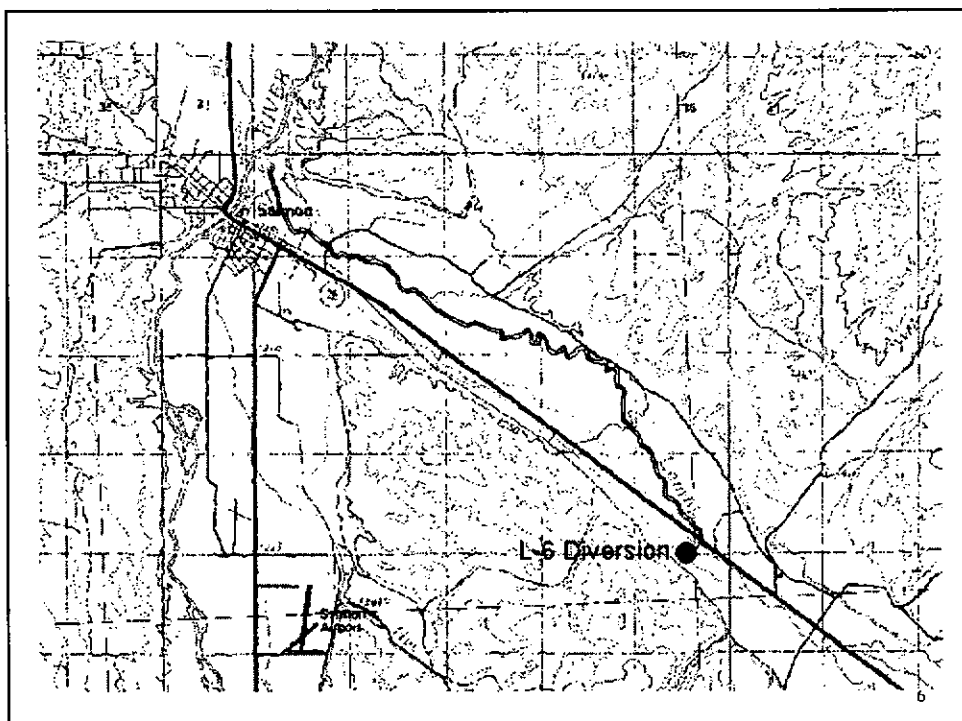
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Minimum Instream Flow Reach:

Begins at the L6 diversion on the Lemhi River and extends downstream approximately 7 1/2 miles to the confluence of the Lemhi with the Salmon River.

5



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Rate of Flow:

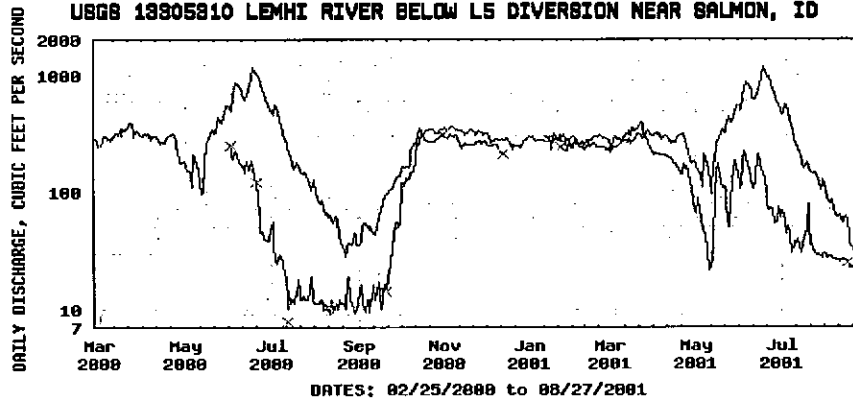
35 cfs

Provided that 15 cfs shall be subordinated to all diversions, including high waters or flood waters, authorized under the Lemhi Decree.

7



USGS 13305810 LEMHI RIVER BELOW L5 DIVERSION NEAR SALMON, ID



EXPLANATION

- DAILY MEAN DISCHARGE
- - - MEDIAN DAILY STREAMFLOW BASED ON 7 YEARS OF RECORD
- x MEASURED DISCHARGE

Provisional Data Subject to Revision

MICROFILMED

JAN 24 2002

Period of Use:

January 1 – December 31

Purpose:

To provide necessary flows for
anadromous fish passage.

9

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JAN 24 2002



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

MEMORANDUM

To: L. Glen Saxton

From: Karl J. Dreher 

RE: **APPOINTMENT AS HEARING OFFICER - PROCEDURE RULE 410**

Date: August 30, 2001

You are hereby appointed as hearing officer and are authorized to represent the department as provided by IDAPA Rule 37.01.01410 (Procedure Rule 410) in the following matter:

**IN THE MATTER OF APPLICATION FOR PERMIT 74-14993 FILED IN THE
NAME OF IDAHO WATER RESOURCE BOARD**

Date: September 12, 2001

Time: 2:00 p.m. and 7:00 p.m.

Location: Salmon Valley Center
200 Main St.
Salmon, ID 83647

MICROFILMED

JAN 24 2002

AFFIDAVIT OF PUBLICATION

State of Idaho, County of Custer, ss:

I, Ruth E. Burchill, representing the Challis Messenger, a weekly newspaper, published at Challis, Idaho, do solemnly swear that the notice hereto attached and made a part hereof, was published in the regular and entire issue of the Challis Messenger for 2 consecutive weeks, commencing with the issue dated Aug 30 2001 and ending with the issue dated Sept 6 2001.

Ruth E Burchill

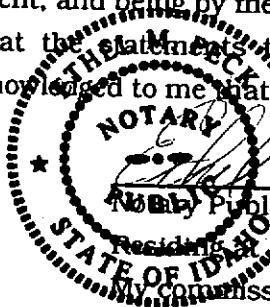
STATE OF IDAHO

RECEIVED

COUNTY OF CUSTER

SEP 10 2001

On this 6th day of ACCTS PAYABLE in the year of 2001 before me, a Notary Public, personally appeared Ruth E. Burchill 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.



Michael M. Peck
Notary Public for Idaho
Residing in Challis
My commission expires: 3-19-2004

NOTICE OF MINIMUM STREAM FLOW HEARING

Notice is hereby given that on April 12, 2001, the Idaho Water Resource Board filed an application for permit with the Department of Water Resources (IDWR) to provide for a minimum streamflow in a portion of the Lemhi River to enhance passage of anadromous fish as follows:

Identification no: 74-14993

Source: Lemhi River tributary to Salmon River

Reach: 7.5 miles beginning at Lemhi River diversion L-6 in the SE1/4 Section 24, T21N, R22E, B.M., Lemhi County, downstream to the mouth of Lemhi River located near the SW corner of Section 32, T22N, R22E, B.M. Rate of flow: 35 cubic feet per second ("cfs") year-round. 15-cfs shall be subordinate to all diversions, including high waters or flood waters authorized under the Lemhi River basin decree.

Note: The legislature has authorized the establishment of a water supply bank operated by a local committee that will allow owners of water rights to lease the rights to the bank to provide water for the minimum streamflow.

IDWR will hold a public hearing as required in Section 42-1503, Idaho Code, for the purpose of receiving evidence and testimony in regard to the application as follows:

Date and time: September 12, 2001, at 2:00 p.m. and 7:00 p.m.

Place: Salmon Valley Center, 200 Main St., Salmon, Idaho 83467

The 2:00 p.m. hearing 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 Director of IDWR, Statehouse Mail, Boise, Idaho 83720, Attn: L. Glen Saxton, at least seven (7) 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 IDWR at least (10) days prior to the hearing. The hearing will be conducted by L. Glen Saxton, IDWR, Statehouse Mail, Boise, ID 83720, telephone (208) 327-7900.

If issued, this permit will be subject to all prior water rights.

Karl J. Dreher, Director, IDWR
Published August 30 and September 6, 2001

Gibson, Deborah

From: Gibson, Deborah
Sent: Thursday, August 23, 2001 8:11 AM
To: Jordan, Joseph (IWRB Member); Chamberlain, Gary (IWRB Member)
Cc: Graham, Bill; Jones, Harold (Skip)
Subject: APPLICATION FOR MINIMUM STREAM FLOW NO. 74-14993 IN THE NAME OF THE IDAHO WATER RESOURCE BOARD

Attached is a copy of a legal notice that announces a planned public hearing in connection with the above referenced application to establish a minimum stream flow on the Lemhi River. Hopefully the information in the notice is clear and will provide sufficient information for you. A copy of the application is on file and available for review at the department's regional office in Idaho Falls and the State Office in Boise.

Please feel free to contact the department if you have questions or want additional information. My direct phone number in Boise is (208) 327-7955 and the phone number of the Eastern regional office is (208) 525-7161

Sincerely,

L. Glen Saxton, Chief
Water Allocation Bureau



Lemhi MinFlo
Notice.doc

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JAN 24 2002



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

August 22, 2001

SENATOR DON M BURTENSHAW
1603 N 1000 E
TERRETON ID 83450-5033

**RE: APPLICATION FOR MINIMUM STREAM FLOW NO. 74-14993 IN THE NAME
OF THE IDAHO WATER RESOURCE BOARD**

Dear Senator Burtenshaw:

Enclosed is a copy of a legal notice that announces a planned public hearing in connection with the above referenced application to establish a minimum stream flow on the Lemhi River. Hopefully the information in the notice is clear and will provide sufficient information for you. A copy of the application is on file and available for review at the department's regional office in Idaho Falls and the State Office in Boise.

Please feel free to contact the department if you have questions or want additional information. My direct phone number in Boise is (208) 327-7955 and the phone number of the Eastern regional office is (208) 525-7161

Sincerely,

L. Glen Saxton, Chief
Water Allocation Bureau

Enclosure

Cc: Eastern Region

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JAN 24 2002



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

August 22, 2001

SENATOR LAIRD NOH
3442 ADDISON AVE E
KIMBERLY ID 83341

**RE: APPLICATION FOR MINIMUM STREAM FLOW NO. 74-14993 IN THE NAME
OF THE IDAHO WATER RESOURCE BOARD**

Dear Senator Noh:

Enclosed is a copy of a legal notice that announces a planned public hearing in connection with the above referenced application to establish a minimum stream flow on the Lemhi River. Hopefully the information in the notice is clear and will provide sufficient information for you. A copy of the application is on file and available for review at the department's regional office in Idaho Falls and the State Office in Boise.

Please feel free to contact the department if you have questions or want additional information. My direct phone number in Boise is (208) 327-7955 and the phone number of the Eastern regional office is (208) 525-7161

Sincerely,

L. Glen Saxton, Chief
Water Allocation Bureau

Enclosure

Cc: Eastern Region

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JAN 24 2002



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

August 22, 2001

REPRESENTATIVE LENORE HARDY BARRETT
143 W PLEASANT
PO BOX 347
CHALLIS ID 83226

**RE: APPLICATION FOR MINIMUM STREAM FLOW NO. 74-14993 IN THE NAME
OF THE IDAHO WATER RESOURCE BOARD**

Dear Representative Barrett:

Enclosed is a copy of a legal notice that announces a planned public hearing in connection with the above referenced application to establish a minimum stream flow on the Lemhi River. Hopefully the information in the notice is clear and will provide sufficient information for you. A copy of the application is on file and available for review at the department's regional office in Idaho Falls and the State Office in Boise.

Please feel free to contact the department if you have questions or want additional information. My direct phone number in Boise is (208) 327-7955 and the phone number of the Eastern regional office is (208) 525-7161

Sincerely,

L. Glen Saxton, Chief
Water Allocation Bureau

Enclosure

Cc: Eastern Region

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JAN 24 2002



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

August 22, 2001

REPRESENTATIVE JO AN WOOD
3778 E 500 N
RIGBY ID 83442

**RE: APPLICATION FOR MINIMUM STREAM FLOW NO. 74-14993 IN THE NAME
OF THE IDAHO WATER RESOURCE BOARD**

Dear Representative Wood:

Enclosed is a copy of a legal notice that announces a planned public hearing in connection with the above referenced application to establish a minimum stream flow on the Lemhi River. Hopefully the information in the notice is clear and will provide sufficient information for you. A copy of the application is on file and available for review at the department's regional office in Idaho Falls and the State Office in Boise.

Please feel free to contact the department if you have questions or want additional information. My direct phone number in Boise is (208) 327-7955 and the phone number of the Eastern regional office is (208) 525-7161

Sincerely,



L. Glen Saxton, Chief
Water Allocation Bureau

Enclosure

Cc: Eastern Region

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JAN 24 2002



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

TRANSMITTAL COVER SHEET

FAX NUMBER: (208) 327-5400

DATE: Aug. 21, 2001

TO: Ship Jones
Eastern

FROM: Glen Saxton

DOCUMENT DESCRIPTION: Application for Permit
No. 74-14993.

COVER SHEET + 6 PAGES

CONTACT: Debbie Gibson IF YOU DO NOT RECEIVE ALL THE PAGES.
208)327-7953

THANK YOU!

Done 4/28 pm

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JAN 24 2002

Idaho Water Resource Board Minimum Streamflow Application
Lemhi River

Salmon

28

N

The instream flow on the Lemhi River will commence at the L6 diversion located in the SE1/4 of the SW1/4 of the SE1/4 of Section 24 T21N R22E and will extend downstream approximately 7.5 miles to the river's confluence with the Salmon River located in the SW1/4 of the SW1/4 of the SW1/4 of Section 32 T22N R22E.

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1225

Gibson, Deborah

From: Gibson, Deborah
Sent: Tuesday, August 21, 2001 2:57 PM
To: Challis Messenger (E-mail)
Subject: Notice of Minimum Stream Flow Hearing

Please publish the attached Notice in your newspaper beginning on Thurs., August 30th, 2001 and publish for two consecutive weeks. Please send me your Affidavit of Publication and a statement by September 14, 2001. If you have any questions, or problems, please don't hesitate to contact me. Thank you for your help in this matter!!!



Lemhi MinFlo
Notice.doc

Deborah J. Gibson
Idaho Department of Water Resources
1301 N. Orchard St.
Boise, ID 83706
Phone: (208)327-7953
Fax: (208)327-7866
email: dgibson@idwr.state.id.us

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JAN 24 2002

Gibson, Deborah

From: Gibson, Deborah
Sent: Tuesday, August 21, 2001 2:52 PM
To: Recorder Herald (E-mail)
Subject: Attn: Sheila - Notice of Minimum Stream Flow Hearing

Please publish the attached Notice in your newspaper beginning on Thurs., August 30th, 2001 and publish for two consecutive weeks. Please send me your Affidavit of Publication and a statement by September 14, 2001. If you have any questions, or problems, please don't hesitate to contact me. Thank you for your help in this matter!!!



Lemhi MinFlo
Notice.doc

Deborah J. Gibson
Idaho Department of Water Resources
1301 N. Orchard St.
Boise, ID 83706
Phone: (208)327-7953
Fax: (208)327-7866
email: dgibson@idwr.state.id.us

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JAN 24 2002

NOTICE OF MINIMUM STREAM FLOW HEARING

Notice is hereby given that on April 12, 2001, the Idaho Water Resource Board filed an application for permit with the Department of Water Resources (IDWR) to provide for a minimum streamflow in a portion of the Lemhi River to enhance passage of anadromous fish as follows:

Identification no: 74-14993
Source: Lemhi River tributary to Salmon River
Reach: 7.5 miles beginning at Lemhi River diversion L-6 in the SE1/4 Section 24, T21N, R22E, B.M., Lemhi County, downstream to the mouth of Lemhi River located near the SW corner of Section 32, T22N, R22E, B.M.
Rate of flow: 35 cubic feet per second ("cfs") year-round. 15 cfs shall be subordinate to all diversions, including high waters or flood waters authorized under the Lemhi River basin decree.
Note: The legislature has authorized the establishment of a water supply bank operated by a local committee that will allow owners of water rights to lease the rights to the bank to provide water for the minimum streamflow.

IDWR will hold a public hearing as required in Section 42-1503, Idaho Code, for the purpose of receiving evidence and testimony in regard to the application as follows:

Date and time: September 12, 2001, at 2:00 p.m. and 7:00 p.m.
Place: Salmon Valley Center
200 Main St.
Salmon, Idaho 83467

The 2:00 p.m. hearing 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 Director of IDWR, Statehouse Mail, Boise, Idaho 83720, Attn: L. Glen Saxton, at least seven (7) 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 IDWR at least (10) days prior to the hearing. The hearing will be conducted by L. Glen Saxton, IDWR, Statehouse Mail, Boise, ID 83720, telephone (208) 327-7900

If issued, this permit will be subject to all prior water rights.

Karl J. Dreher, Director, IDWR

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JAN 24 2002



RECEIVED

APR 26 2001

Department of Water Resources

IDAHO FISH & GAME

600 South Walnut
P.O. Box 25
Boise, Idaho 83707-0025

Dirk Kempthorne / Governor
Rod Sando / Director

April 25, 2001

Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83706

RE: Application for Permit 74-14933

Dear Mr. ~~Keen~~ *Shelley*:

We have reviewed the above-referenced application for permit for the proposed instream flow water right on the Lemhi River and support approval of the application. Thank you for the opportunity to comment.

Sincerely,

Cindy Robertson

Cindy Robertson
Fishery Staff Biologist

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JAN 24 2002

Keeping Idaho's Wildlife Heritage

Keen, Shelley

From: Saxton, Glen
Sent: Tuesday, April 24, 2001 10:21 AM
To: Keen, Shelley; Peppersack, Jeff
Cc: Graham, Bill; Young, Norm; Foster, Bob; Jones, Harold (Skip)
Subject: LEMHI RIVER MINIMIM STREAM FLOW HEARING - Application 74-14993 - FYI

Jeff and Shelley,

I plan to schedule and hold the Director's required hearing in the above referenced matter this fall in Salmon, ID. The week of September 10, 2001 is the tentative target week for now. The date, of course, could change.

By copy of this memo, I am asking Bill to check the tentative schedule with the Board members who may want to be present at the Director's hearing. lgs

Keen, Shelley

From: Keen, Shelley
Sent: Thursday, April 19, 2001 2:04 PM
To: Larsen, Dick
Cc: Graham, Bill
Subject: Lemhi Min. Streamflow



Doc1.doc



HOUSE BILL NO_
358 - Minimum s...

Dick,

Please prepare a press release publicizing the filing of a minimum instream flow application for the Lemhi River by the Idaho Water Resource Board. The application (Doc1.doc, attached) was filed pursuant to House Bill 358 (HOUSE BILL NO_358, attached). Please route the draft press release to Norm Young for review before sending it out.

Thanks.

Shelley Keen



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

April 19, 2001

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

STATE OF IDAHO
DEPARTMENT OF FISH & GAME
600 S WALNUT ST
BOISE ID 83707

RE: Application for Permit 74-14993

Dear Interested Parties:

On April 12, 2001, the Department of Water Resources received an Application for Permit from the Idaho Water Resource Board to establish a minimum instream flow in the Lemhi River. The application was filed in accordance with House Bill No. 358, which was approved by the legislature and signed by the governor in March. In accordance with Section 42-1503, *Idaho Code*, a copy of the application for permit is enclosed for your information.

Your comments on this application are welcome at this time. A notice of public hearing will be published at a later date.

If you have any questions regarding this matter, please call me at 208-327-7946.

Sincerely,

A handwritten signature in black ink, appearing to read 'Shelley W. Keen', is written over a horizontal line.

Shelley W. Keen
Water Rights Supervisor

SWK:kit

Enclosure

cc: Bob Foster, Salmon office
Eastern Region Office

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JAN 24 2002



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

April 19, 2001

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

STATE OF IDAHO
DEPARTMENT OF ENVIRONMENTAL QUALITY
1410 N HILTON
BOISE ID 83706-1255

RE: Application for Permit 74-14993

Dear Interested Parties:

On April 12, 2001, the Department of Water Resources received an Application for Permit from the Idaho Water Resource Board to establish a minimum instream flow in the Lemhi River. The application was filed in accordance with House Bill No. 358, which was approved by the legislature and signed by the governor in March. In accordance with Section 42-1503, *Idaho Code*, a copy of the application for permit is enclosed for your information.

Your comments on this application are welcome at this time. A notice of public hearing will be published at a later date.

If you have any questions regarding this matter, please call me at 208-327-7946.

Sincerely,

Shelley W. Keen
Water Rights Supervisor

SWK:klt

Enclosure

cc: Bob Foster, Salmon office
Eastern Region Office

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JAN 24 2002



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

April 19, 2001

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

STATE OF IDAHO
DEPARTMENT OF PARKS & RECREATION
5657 WARM SPRINGS AVE
BOISE ID 83716

RE: Application for Permit 74-14993

Dear Interested Parties:

On April 12, 2001, the Department of Water Resources received an Application for Permit from the Idaho Water Resource Board to establish a minimum instream flow in the Lemhi River. The application was filed in accordance with House Bill No. 358, which was approved by the legislature and signed by the governor in March. In accordance with Section 42-1503, *Idaho Code*, a copy of the application for permit is enclosed for your information.

Your comments on this application are welcome at this time. A notice of public hearing will be published at a later date.

If you have any questions regarding this matter, please call me at 208-327-7946.

Sincerely,

Shelley W. Keen
Water Rights Supervisor

SWK:klt

Enclosure

cc: Bob Foster, Salmon office
Eastern Region Office

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JAN 24 2002

From Glen
12/10/97

MINIMUM STREAMFLOW APPLICATION

PROCESSING CHECKLIST

Action	Assigned to	Initials/date
1. Min flow app filed	IWRB	SWK 4/13/01
2. Review app in S.O.	Permit Sec Sup	SWK 4/13/01
3. Index app in S.O. Make copy for W.A. Bur Make copy for Wtr Plan Bur	Records Chief Data Entry	SWK 4/13/01
4. Update summary report	Records Chief	
5. Send orig app to region and copy to Pub. Info Off.	Records Chief	N/A
6. Advise S.O. of ident no.	Region	N/A
7. Send copy of app to F&G, ~~H&W~~ , Parks & Reg. (mandatory) <i>Bob Foster & E. Region</i>	Region	KLT 4/19/01
8. Send press release that app has been filed	PIO	
9. Contact riparian land owners	Requestor	N/A
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	

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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:

Permits Sec Sup

- a. IDWR Board members
- b. Local legislators
- c. Watermaster
- d. Water right holders
- e. Riparian owners

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

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

SECTION 1. That Chapter 15, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 42-1506, Idaho Code, and to read as follows:

42-1506. LEMHI RIVER -- MINIMUM STREAM FLOW APPROPRIATION. (1) The water resource board is hereby authorized and directed to appropriate and hold in trust for the people of the state of Idaho a minimum stream flow water right in a designated reach of the Lemhi river in accordance with the provisions of this section. The minimum stream flow appropriation in the designated reach shall be in the amount of thirty-five (35) cfs from January 1 through December 31, provided that fifteen (15) cfs of the appropriation shall be subordinated to all diversions, including high waters or flood waters, authorized under the Lemhi river basin decree (Lemhi County Case No. 4948). The designated reach begins at water diversion L-6 located on the Lemhi river in the southeast quarter (1/4) of section twenty-four (24), township twenty-one (21) north, range twenty-two (22) east of the Boise meridian, and ends at the confluence of the Lemhi river with the Salmon river near the southwest corner of section thirty-two (32), township twenty-two (22) north, range twenty-two (22) east of the Boise meridian, Lemhi county.

(2) The water resource board shall appropriate the minimum stream flow water right authorized under this section in accordance with the provisions of section 42-1503, Idaho Code. In acting upon the application for permit, the director of the department of water resources need not determine that the appropriation is capable of being maintained based upon records of existing stream flows because it is anticipated that the water right will be maintained through operation of the water supply bank within the Lemhi river basin consistent with the provisions of section 42-1765A, Idaho Code.

(3) Upon the board's filing of an application for permit to appropriate water as directed by this section, the director of the department of water resources is authorized and directed, on an interim basis pending final action on the application for permit, to distribute water under the filing in accordance with the doctrine of prior appropriation using a priority date as of the filing of the application for permit.

2

SECTION 2. That Chapter 17, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 42-1765A, Idaho Code, and to read as follows:

42-1765A. LEMHI RIVER BASIN -- LOCAL RENTAL COMMITTEE. (1) The water resource board will appoint a local rental committee to facilitate operation of the water supply bank within the Lemhi river basin comprised of the Lemhi river and all tributary water sources. Section 42-1765, Idaho Code, and the board's water supply bank rules applicable to the operation of a storage water rental pool shall apply to the operation of the water supply bank in the Lemhi river basin, except as inconsistent with this section.

(2) When so appointed, the local rental committee for the Lemhi river basin shall have authority to rent natural flow water rights between consenting owners and consenting renters.

(3) Rights to the use of water for a portion of the approved period of use under a water right may be accepted into the water supply bank and rented out to satisfy the board's minimum stream flow water right authorized under section 42-1506, Idaho Code, provided the owner demonstrates to the satisfaction of the director that there will be an equivalent reduction in the extent

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JAN 24 2002

19 of beneficial use made under the right.

20 SECTION 3. An emergency existing therefor, which emergency is hereby
21 declared to exist, this act shall be in full force and effect on and after its
22 passage and approval.

Statement of Purpose / Fiscal Impact

STATEMENT OF PURPOSE RS 11250

In the early 1900's, anadromous fish were extirpated from the Lemhi River as a result of the construction of a hydroelectric dam. After the removal of the dam, efforts were undertaken to restore anadromous fish to the Lemhi Basin. Through the combined efforts of Lemhi water users, the Lemhi Model Watershed Project, and state and federal agencies, numerous projects have been completed for the benefit of anadromous fish. This legislation is in furtherance of those efforts. The legislation would create a voluntary mechanism for providing additional flows in the lower Lemhi River during time of low flow.

The legislation would authorize the Idaho Water Resource Board to apply for an instream flow in the Lemhi River from the L-6 diversion to the mouth of the river pursuant to Chapter 15, Title 42, Idaho Code. The Director, however, would be relieved of the duty to find that the appropriation is capable of being maintained. Instead, the water necessary to maintain the water right would be obtained through the Idaho Water Resource Board's water supply bank.

The legislation would authorize the Idaho Water Resource Board to appoint a local rental committee to facilitate operation of the water supply bank within the Lemhi River basin comprised of the Lemhi River and all tributary water sources. The purpose for creation of the local rental committee is to provide for local decision making regarding the operation of the water supply bank.

Natural flow rights could be rented for less than the entire season to the extent that the owner demonstrates an equivalent reduction in the extent of beneficial use made under the right. The legislation includes an emergency clause because of the need to have statutory authority to address this issue during the 2001 irrigation season.

This voluntary market based mechanism will help to resolve local water related issues and will minimize potential impacts on the local economy.

FISCAL IMPACT

Additional appropriations from the General Account are not required if this bill is enacted.

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