

News Release

Water District No. 65 - Payette River System

102 N. Main St., Payette, Idaho 83661 -- Phone: (208) 642-4465 Fax: (208) 642-1042

LOWER PAYETTE RIVER FLOWS TO BE HELPED BY DONATION OF AGENCIES' STORED WATER

For Immediate Release
October 2, 1996

For Media Information:
Mark Limbaugh - 642-4465

Water levels in the Payette River downstream from Black Canyon Dam will stay at higher levels this fall, an aide to local fisheries and river health, thanks to the joint effort of four irrigation organizations and the Bureau of Reclamation.

The five organizations have donated approximately 7,000 acre feet of water presently stored in Cascade and Deadwood Reservoirs, which can be released into the river, enough water to supply the lower Payette River with an extra 100 cubic feet per second (CFS) flow for about 35 days. The extra water will be used to maintain flows below Black Canyon Dam at a minimum of 500 CFS for September and October of this year.

Historically, this time of year the river flows below Black Canyon can begin to drop dramatically due to a significant reduction in demand for irrigation water downstream. Flows typically will drop well below the 500 CFS level and do not recover until late fall or early winter.

The decision to provide the flow augmentation water came after a successful irrigation season with above normal storage water carryover levels due to excellent winter snowpacks and above average natural flows in the river.

The Payette River watermaster, Mark Limbaugh, will monitor the flows at Black Canyon Dam and has been authorized to release the extra water from Cascade and Deadwood Reservoirs to make sure flows stay at the 500 CFS minimum. During the month of

file

✓ JL

Payette River Flow Augmentation - Page 2

September, flows have been averaging at or above 500 CFS due in part to this extra water released from area reservoirs.

The four irrigation organizations include the Emmett Irrigation District, the Farmer's Co-op Irrigation Company, the Lower Payette Ditch Company and the Noble Ditch Company.

-end-

❖ Water District Update ❖

Volume 1 Issue 6 Water District No. 65 Mark Limbaugh, Watermaster Summer, 1996

Fish Flow Timing to Benefit Lower Payette River & Cascade Reservoir Water Quality

A landmark agreement between a wide range of water user groups means improved water quality, recreational opportunities and environmental support within the Payette River basin. The agreement divides the release of 145,000 acre feet of storage water from area reservoirs for salmon recovery efforts downstream into two segments, one in the summer and the second in the winter. This means more water in both Cascade Reservoir and the lower reach of the Payette River below Black Canyon Dam, which should provide an improvement to the water quality of both areas. Historically, the fish releases occurred during the summer irrigation season, which resulted in an additional drawdown to irrigation demand from Cascade Reservoir and hurt water quality in the reservoir. Last year, in an effort to protect water quality in the reservoir, the fish water was kept in Cascade Reservoir until winter and then released. This, however, created low summertime flows in the lower Payette River below Black Canyon Dam which hurt water quality in the river. Both Cascade Reservoir and the lower Payette River have been listed by the State of Idaho as high priority "water quality limited" stream segments, and Watershed Advisory Groups have been formed on both water bodies with the mission of setting Total Maximum Daily Load criteria for each segment.

The agreement to split fish releases was a result of a recent series of meetings between Water District 65, the Bureau of Reclamation, the Idaho Division of Environmental Quality, Idaho Power Company, Bonneville Power

Agreement divides the release of 145,000 AF of storage water from area reservoirs, half in summer and half in winter.

Administration, U.S. Fish and Wildlife, Idaho Fish and Game, the Cascade Reservoir Coordinating Council, and the Lower Payette River Watershed Advisory Group (WAG). This series of meetings were the first time representatives of most of the various interests on the Payette River have met to discuss river operations to benefit a wide variety of water users. As a result, agricultural interests should benefit from this cooperative effort, since additional flow in the river when storage water is being delivered minimizes operational storage water loss and makes irrigation deliveries more consistent by absorbing any river fluctuations.

The Payette River should operate at levels 700 to 1,350 cubic feet per second higher than normal during the months of July and August. On September 1, the river will revert back to normal levels, since the first half of the fish release will be completed. The balance of the fish flows

(Continued on page 2)

Inside this Issue:

Black Canyon Dam Study Underway	Page 2
PRWUA Update	Page 3
Water Quality Update	Page 3
Nez Perce Negotiations	Page 4

Cascade Reservoir Sedimentation Survey Reduces Storage

The Bureau of Reclamation recently completed a survey of the storage capacity of Cascade Reservoir, the first such study in 47 years of reservoir operation. The survey shows a decrease in capacity of the reservoir at elevation 4828.0 (traditional full pool) of 23,041 acre feet. This loss of space in the reservoir represents a 3.26% loss in total capacity. Of the total decrease of 23,041 acre feet, 5,808 acre feet is associated with the inactive portion of the reservoir, historically calculated at about 50,216 acre feet, now re-calculated at 44,408 acre feet. The active portion of the reservoir has been reduced from 653,237 acre feet used today to 636,004 acre feet, a reduction of 17,233 acre feet. The new capacity will be used to calculate storage contract volumes beginning in 1997. All active space, contracted and uncontracted, will absorb its portion of this reduction. All told, irrigation contractors will lose about 9,000 acre feet, with the balance of the loss shared by the uncontracted storage (USBR).

The survey indicated that the difference in capacity between original and 1995 measured reservoir space is probably due to differing methods of surveying and collecting data than to actual sediment accumulation. The USBR survey utilized the latest Global Positioning System satellites interfaced with sonic depth recording equipment.

Study to Raise the Black Canyon Dam Six Inches Initiated by the Bureau of Reclamation and Water District 65

Water District 65 and the U.S. Bureau of Reclamation have entered into a contract to cost share a study examining the effects and the cost of raising the Black Canyon Dam another six inches. The dam was raised once in the early 1950's, when 8 inches was added to the drum gates, raising the crest to its present day elevation of 2,497.5 feet, which is the elevation at which the reservoir is operated during irrigation season. At the peak of irrigation delivery, Black Canyon Irrigation District's (BCID's) headgate on the dam is completely out of the water in order to deliver the maximum amount of irrigation water to the District. Consequently, even the smallest drop in the elevation of the reservoir reduces the amount of irrigation water diverted by BCID, and affects the amount of water delivered to the end of their ditch. Down-river water users are affected by fluctuations in reservoir elevations as well. In an attempt to regulate the BCID delivery, downstream deliveries absorb any changes made to the flows below the dam in order to hold the reservoir elevation steady.

Due to the problems associated with the current design, in the spring of 1995, the Idaho Department of Water Resources requested that the Bureau of Reclamation initiate a study that would examine the potential for adding storage capacity to Black Canyon Reservoir, which presently does not have any usable or active storage capacity. This storage capacity, estimated to be about 500 acre feet for a raise in elevation of six inches, would provide for improved regulation of both the BCID canal diversion and downstream releases to the Lower Payette River to satisfy irrigation demands. The Bureau asked the Water District 65 Advisory Board for possible cost share assistance in bringing this study to fruition. As a result of that request, the Advisory

Board voted unanimously to cost share 50% (\$23,500) of the cost of the study. Results of this study will be available for review by March 31, 1997, and will lay out all mitigation costs associated with the raise in elevation, as well as detailed drawings for any planned modifications and estimated costs of construction.

One major benefit to raising the dam six inches would be that the resulting increase in storage capacity would be used as a buffer to maintain BCID and downstream irrigation diversions without interruption, until storage water releases make their way down the river from the storage reservoirs. The effect would improve regulation of the river system, conserving valuable storage water (especially during drought years), without affecting irrigation water supply allocations.

Many possible effects to existing structures and surroundings will be analyzed by this study, including environmental and archeological effects, the effect on the structural integrity of the BCID canal gate, as well as on the dam itself, and the effect to the highway to the north and the railroad to the south of the reservoir. It may be years before any of these structural improvements to the dam are complete.

Fish Flows...

(Continued from page 1)

will be released during the months of December and January this winter.

Some of the other benefits derived from this split release are the increased recreational use of the Lower Payette River, as well as Cascade Reservoir and the North Fork of the Payette, due to higher volumes of water for this time of year. Also, higher power output at Black Canyon Dam due to the higher flow benefits Black Canyon and Emmett Irrigation Districts, reducing the need for outside power purchases.

1996 Water Storage and Natural Flows Look Outstanding

Another abundant water year has blessed the Payette River valley for 1996. Storage reports as of July 1 show that both Cascade and Deadwood Reservoirs were full and spilling as of that date.

Natural flows in the river supplied all water rights until July 24th, when Black Canyon Irrigation District began using storage water. On that date, water rights were cut above Letha to the 1938 date of BCID's water right. Normally, storage water would be called by BCID around July 10th, or two weeks earlier. During the 1994 water year, BCID called for storage water on June 12, 1994, and last year, the first storage water was delivered on July 28, 1995. This year is similar to last year, in that natural flows have met irrigation demand well into July.

All storage reservoirs filled this year, with Cascade, Deadwood, and the Payette Lake system easily filling from last year's record carryovers. Flood control operations this spring relieved a fast runoff, especially at Horseshoe Bend and around the Payette River bridge at Highway 95 south of Payette. On May 19th, the Payette River peaked at the Payette bridge at over 20,000 cubic feet per second (cfs). Some minor flooding and damage to a dike along the south side of the river close to the City of Fruitland sewage treatment lagoons occurred at this level of flow. Had not Cascade and Deadwood Reservoirs caught over 14,000 cfs in additional flows, the flooding would have been much worse at Horseshoe Bend, Letha, New Plymouth and the bridge at Payette. Inflow to Cascade during this time period set a new record, while unregulated flows at Horseshoe Bend were 3rd highest on record.

Payette River Water Users' Association Update

The Payette River Water Users' Association has joined with the State of Idaho in seeking to appeal a decision of the SRBA Court to the Idaho Supreme Court. Judge Hurlbutt of the SRBA Court wrote a decision on Basin Wide Issue No. 5, invalidating some of the general provisions of our water rights decreed under the Payette Decree as "not necessary". The judge indicated that fire fighting was not part of a water right, although he stated that the defense of necessity would allow the use of water for firefighting for any water right. He also rejected the general provisions dealing with early and late diversions for irrigation purposes, suggesting an alternative that the IDWR identify irrigation water rights as having an "irrigation season" to divert water for beneficial use, and allowing the flexibility we now enjoy. On the issue of utilizing "additional or excess flows" to increase the diversion rate when such increase did not affect other users and is put to the same beneficial use on the same lands pertaining to the water right, the judge stated that the "required elements" of a water right are not met in this general provision, and he rejected it as well.

The judge's actions pose a problem for water users on the Payette River, as portions of our prior Payette Decree have been invalidated by the Court. The Payette River Water Users' Board of Directors voted to file a Motion for Permissive Appeal before the SRBA Court, to ask the judge's permission to appeal his decision to the Idaho Supreme Court. This motion was denied. The Board then voted to join with the State of Idaho, which was also denied a permissive appeal, to continue this appeal directly to the Supreme Court. Currently, that motion for permission to appeal is being considered by the high court. This approach will not only attempt to protect our prior decree from being modified, it will save the Association money in attorney's fees as well.

The decision on Basin Wide Issue No. 10 was more positive for the Association's members. The judge upheld the argument that "partial forfeiture" of water rights was not a valid legal concept under current Idaho Code. This means that if a water user diverts and beneficially uses part of his water right within the prescribed five-year period, then he would be considered to have used all of his water right and would not be subject to the forfeiture provisions of Idaho Code Sec. 42-222(2). The Association was concerned that this "partial forfeiture" argument could jeopardize our storage water rights, in that, during some years, only a portion of our storage water is used on the lands intended for beneficial use, and this period of non-use could fall within a five-year period outlined in the Idaho Code. Storage water rights were never at issue nor were they discussed in the decision, therefore, we still have the argument that, if this decision is overturned by the Supreme Court, storage water rights were never contemplated as being affected by this interpretation. Currently, the Association is closely monitoring the

appeal of this decision to the Supreme Court.

Finally, the Association's Board of Directors have voted to continue to participate in the objections to the U.S. Fish and Wildlife Deer Flat Refuge instream flow claims before the SRBA Court. These claims, if allowed, would preclude water rights dated 1963 and later from diverting when certain flow targets are not met on the Snake River at Weiser, for channel maintenance and various predation claims on the islands in the Snake, part of the Deer Flat Refuge. Attempts to negotiate a settlement were not successful. Currently, we are in the process of setting timelines for interrogatories and requests for admission before the SRBA Court. Depositions will be scheduled as necessary. It is our hope that we receive discovery responses from the U.S. Fish and Wildlife Service which will enable us to successfully pursue a motion for summary judgment on whether or not the USF&WS is entitled to any instream flow water rights at all. We are working with upper Snake and Boise River water users' attorneys on this issue in order to share costs and save time and money.

Lower Payette River WAG Update

The Lower Payette River Watershed Advisory Group (WAG) met on June 27, 1996, in New Plymouth. Chairperson Nancy Hutchinson reported that the Southwest Basin Advisory Group (BAG) had run out of time to review our budget request for the coming year at the last meeting, and would take it up at their July meeting. The Lower Payette River WAG has requested \$141,430 to fund Fiscal Year 1998 activities (1997-98) associated with the setting of a Total Maximum Daily Load on the Lower Payette River below Black Canyon Dam. Of this budget total, \$80,000 is for continued drain monitoring efforts in both Gem and Payette Counties by the Idaho

State Department of Agriculture, \$11,000 for information and education programs, \$35,430 for river monitoring programs, and \$15,000 for a fish population study on the Lower Payette River. This budget may be reduced to \$112,430 if the U.S. Bureau of Reclamation donates the lab work for the river monitoring effort as planned. At its July meeting, the BAG formally approved this request for further consideration in the budgeting process.

Also presented at the meeting were the Beneficial Use Reconnaissance Program, initial results of ongoing Gem County drain monitoring by the Idaho Department of Agriculture, and an overview of current rural septic system permit and compliance processes presented by Southwest District Health.

Meeting of Experts Held in Nez Perce Negotiation Process

The experts associated with both sides of the Nez Perce Tribal instream flow claims before the SRBA held another meeting on June 26th to discuss differences of opinion and formulate possible solutions to arrive at the amount of water available from the Upper Snake River Basin for salmon flow augmentation efforts and claim settlement options. Members of the IWUA Coalition, the State of Idaho, the Nez Perce Tribe, and U.S. Fish and Wildlife were present to discuss the various alternatives to maintain or increase supplies of water for this flow augmentation effort. The alternatives discussed included current storage water rentals through local water banks, timing of flood control releases, storage space and water right purchases, water conservation, weather modification, and construction of new storage facilities

specifically for salmon flows. The lowest cost alternatives are the ones currently being utilized for flow augmentation, such as water rentals, while the highest costs are associated with purchases of water rights and storage space, water conservation practices, and new storage facilities.

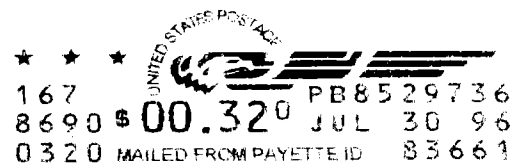
Additional information is to be exchanged between water users and the Tribal and the U.S. experts prior to a formal negotiating session where the results of these meetings will be released to the whole group. At that time, we will know more as to the effectiveness of these meetings.

In another matter, the SRBA Court in Twin Falls has accepted the request by water users, the Tribe and the United States to extend the stay of litigation set to expire on June 30, 1996. The new expiration date for this stay is October 15, 1996, an extension of 90 days.

Water users agreed to this extension in an effort to afford the Tribe, the U.S. and water users the opportunity to work out differences of opinion through the expert's meetings, and draft a settlement agreement water users could consider. Prior to the meetings of the experts, many claims and statements were made by the Tribe and the U.S. asserting that there was more water in the Upper Snake River Basin than was being offered for flow augmentation. Under the plan to extend the stay deadline, the expert's were to get together and come up with the facts on the availability of water from the Upper Snake for the entire negotiating body to consider and come to terms with. All indications are that the meetings successfully arrived at the actual amounts of water from the Upper Snake which would be available for the salmon under the various alternatives discussed. The next formal meeting is set for August 29.

Water District Update

Water District No. 65
102 N. Main St.
Payette, Idaho 83661
Mark Limbaugh, Watermaster
Phone (208) 642-4465



RECEIVED

JUL 31 1996

WATER RESOURCES
WESTERN REGION

Dave Tuthill, Jr.
Dept. of Water Resources
2735 Airport Way
Boise, Ida. 83705

Inside This Issue:

- *Fish Release Timing Aids River Quality
- *Cascade Sedimentation Survey Results
- *Black Canyon Dam Study Initiated

News Release

Payette River Water District No. 65

102 N. Main St., Payette, ID 83661; Tel (208) 642-4465; Fax (208) 642-1042; E-mail wdist65@primenet.com

For Immediate Release

Payette, ID - July 23, 1996

For More Information:

Mark Limbaugh - (208) 642-4465

A landmark agreement between a wide range of water use groups means improved water quality, recreational opportunities and environmental support within the Payette River basin, Water District 65 officials have announced.

The agreement divides the yearly release of 145,000 acre feet of salmon recovery effort water from Cascade Reservoir into two segments, one in the summer and the second in the winter. This means more water in both Cascade Reservoir and the downstream areas of the Payette River which should provide an improvement in the water quality of both areas.

Historically, the 145,000 acre feet of water had been released during the summer which drew down Cascade Reservoir and hurt water quality in the reservoir. Last year, in an effort to protect water quality in the reservoir, the water was kept in Cascade Reservoir until winter and then released. This, in turn, created especially low summer flows in the Payette River below Black Canyon Dam which hurt water quality in the river.

But this year a series of meetings between Water District 65, the Bureau of Reclamation, the Division of Environmental Quality, Idaho Power Company, U.S. Fish and Wildlife Service, Idaho Department of Fish and Game, the Cascade Reservoir Water Quality Council, the Lower Payette river Watershed Advisory Group and the Bonneville Power Administration resulted in the agreement to divide the salmon flow releases into two segments, a summer and a winter release.

Payette River-Cascade Reservoir Agreement - Page 2

The agreement means water quality in both Cascade Reservoir and the lower reaches of the Payette River can be addressed while still meeting the salmon recovery flow targets.

"In practical terms, it means we can support salmon recovery efforts and still have more water in the lower reaches of the river and a much smaller drawdown of Cascade Reservoir. It's clearly a real 'win-win' situation," said Mark Limbaugh, Payette River Watermaster.

The change means flows on the Payette River will remain from 700 to 1,350 cubic feet per second higher than normal during July and August. This should provide enhanced recreational activities such as rafting and fishing on the Payette. At the same time, Cascade Reservoir water levels will decline only by a few feet. The extra water will mean enhanced water quality in the reservoir.

River flows should return to normal levels by the end of September when the first half of the release of salmon recovery water is finished. However, irrigation interests currently are considering donating additional flows from storage water. That could keep extra water in the river, and provide higher than normal flows, through September, Limbaugh added.

The extra water also means increased power production for the Black Canyon Irrigation District and Emmett Irrigation District, more consistent irrigation water deliveries for farmers and improved fisheries and recreational opportunities on both the lower Payette river and Cascade Reservoir.

-end-end-

MAY 20 1996

Department of Water Resources

Water District Update

Volume 1 Issue 5 Water District No. 65 Mark Limbaugh, Watermaster Spring, 1996

1996 Idaho Legislature Enacts Important Legislation Benefiting All Water Users

The 1996 Idaho Legislature enacted several important pieces of legislation benefiting all water users in the State of Idaho. Legislation dealing with the protection of water users' rights to use Idaho's water resource was enacted in the form of HB794. This bill was written by our own Idaho Water Users Association, in conjunction with the Intermountain Forest Industry Association, and was aimed at limiting the use of a little used but potentially harmful Common Law doctrine known as the "Public Trust Doctrine". When Idaho became a state, the title to the beds of navigable streams and lakes was transferred to the state. These titles are held in the "public trust" for all of us to use, namely for recreation and navigation. But lately, this doctrine has been invoked in the courts by certain special interest groups as a basis for interfering with water rights issued by our state (see related article, this page). Conservation groups have even tried to use this doctrine in the Snake River Basin Adjudication to disrupt the allocation of existing water rights. What HB794 does is limit the use of this doctrine to the stream and lake beds of the State of Idaho. What this bill does not do is affect the rights of Idahoans to fish and recreate on Idaho's waters. The bill also protects the water rights issued during the past 100 years from court challenges using this obscure doctrine of Common Law (see "Public Trust" Editorial, page 2, this issue).

During this year's legislative session, HB704 passed the Idaho Legislature, allowing for the temporary release of up to 427,000 acre feet of storage water for out of basin fish flow augmentation. This

HB 794, the "Public Trust Doctrine" Bill, limits the use of this Common Law Doctrine to the beds of Idaho's streams and lakes.

bill was the result of many hours of negotiations by water users, the Bureau of Reclamation and the State Attorney General's Office. The effect of this temporary permission to allow for flow augmentation is that all of the Bureau's applications for transfer of water rights on Idaho reservoirs will be held in abeyance until the year 2000. Also, the Bureau must abide by the rules and procedures governing water user's local rental pools, including last to fill criteria. This protects in-basin use during dry years. Finally, no more than 427,000 acre feet will be flushed in any one year. This amount is spelled out in the biological opinion issued last year by National Marine Fisheries Service. HB704 states that if NMFS changes the biological opinion, then the legislation is null and void.

Other issues resolved by the 1996 Legislature include clarifications as to what constitutes an easement to maintain an

(Continued on page 2)

Inside this Issue:	
"Public Trust" Editorial	Page 2
IWUA Update	Page 3
Water Quality Update	Page 3
May 1 Snow Report	Page 4

Environmentalists Use Public Trust Doctrine on California Water Rights

by: John Briscoe of the Washburn, Briscoe & McCarthy Law Firm Located in San Francisco

Hundreds, perhaps thousands, of water rights in the San Joaquin and Russian Rivers in California, long assumed to be secure, are being attacked on the authority of a controversial 1983 California Supreme Court decision. That decision, *National Audubon Society v. Superior Court*, rested on the tidelands public trust doctrine. That doctrine traditionally held that, upon statehood, each State receives the title to the *beds*—not the *waters*—of navigable waterbodies. This 1983 decision applied the public trust doctrine not only to the *waters* of Mono Lake (a navigable body of water), but to the waters of its non-navigable tributary streams as well. Armed with this new public trust power, authorities could now override long-held water rights of the City of L.A., prevent diversions south, and thus maintain lake levels for wildlife purposes. Invoking this decision, environmentalists and others are seeking to curtail water rights in the Russian and San Joaquin Rivers. One group has threatened to sue the State for allegedly not managing the Russian River in accordance with the public trust doctrine. Another group has petitioned the State Water Resources Control Board to restore 30% of the San Joaquin's annual flow. The USBR currently diverts 98% of the annual flow for irrigation purposes at the Friant Dam under a 1959 water right. The parties are awaiting the court's decision.

Editorial: Public Trust Bill Protects Water Users

(Note: This editorial was written by Mark Limbaugh and published in the Daily Argus Observer on April 3, 1996.)

Idaho Governor Phil Batt, under intense scrutiny by environmental and sporting groups, recently signed into law HB794, a very important piece of legislation that protects the valuable water rights of all water users in our state from a little used but possibly devastating common law doctrine known as the "public-trust doctrine".

What HB794 does is statutorily recognize the public trust doctrine in the protection of the beds of navigable lakes and streams for the public use, such as fishing, floating and all other activities we Idahoans enjoy on our public waterways. But this bill also protects the rights of Idahoans to claim and use water rights on our lakes and streams which have been approved through a state process with the public interest in mind.

The use of these waters over the years has enabled our communities to grow and prosper, allowing for an agricultural economy to develop in what was once a desert. However, during the past few years, certain out-of-state special interest groups have attempted to use the public-trust doctrine as a basis for interfering with existing water rights of Idahoans. The Land and Water Fund of the Rockies and the Idaho Conservation League have tried to use this common law doctrine to intervene in the Snake River Basin Adjudication in order to restrict and reallocate existing water rights in Idaho.

HB794 limits the use of the public trust doctrine as a means of circumventing existing laws and regulations already in place, while, at the same time, statutorily protecting the inherent rights of our citizens to use Idaho's navigable streams and lakes. Idaho law expressly protects "the local public interest" in its water appropriation statutes and these statutes are not changed by HB794.

The bill also reinforces the authority of the Idaho Fish and Game Commission in administering our public

wildlife resources, and it strengthens the authority of the State Land Board in deciding whether a project on public lands or stream beds is in the public interest. The only thing altered by HB794 is the out-of-state special interest groups' use of the "public trust doctrine" in the courts to take or limit, without compensation, a water user's right to divert Idaho's waters for irrigation. The bill further protects activities on state endowment lands, as well as the private property rights of individuals, by limiting the judicial application of this doctrine to the lake and stream beds of our navigable waters.

We commend Governor Batt for signing such an important bill into law. Irrigated agriculture is our economic base, providing many jobs, and producing a multitude of commodities for the many processing and packaging businesses throughout our valley.

The tax base created by irrigated farms and ranches pays a large portion of the expense associated with the schools and community services we all enjoy. Irrigated agriculture is the lifeblood of our small communities in Southwest Idaho, and our governor's actions have proven his support for those communities and their ag economies.

1996 Legislature Enacts...

(Continued from page 1)

existing canal or ditch, the ability of water users to call in the Idaho Fish and Game Department to remove beaver dams and houses which obstruct water deliveries, and a modification to existing provisions protecting water delivery entities, such as districts or companies, when subdivisions are developed within their boundaries. If you have questions on any legislation passed this year, please contact this office.

Negotiations: Nez Perce Talks Grind On, Deadline Near

Negotiations with the Nez Perce Tribe continue at a slow pace. The deadline for the SRBA court's stay on all claim-related activity is June 30, 1996. The new case management order issued by the court has set a July 16, 1996, date to review this stay. The court will then determine whether or not the negotiations have been fruitful enough to continue the stay or proceed with litigation.

The negotiating team last met on April 15, 1996, in Boise. At that time, the Nez Perce attorneys, along with representatives of the Lewiston Orchards Irrigation District, announced a tentative plan for resolution of the on-reservation claims of the Tribe. The issue, while related to instream flow claims, is not relevant to our concerns on the Payette. It was also brought out that the "ad hoc" meetings held between the Tribe and IWUA Coalition representatives, along with representatives from the State AG's office, were working well. Scott Campbell, attorney for the Payette River Water Users Association, stated that this was not necessarily the case. "Frankly, I and the other attorneys representing the Water Users Coalition totally disagree with this statement", Scott indicated. Progress has been slow to date, although an informal discussion with the Tribe and the Federal Team has been set up through the Coalition in an attempt to educate the other side as to the unavailability of water from the Upper Snake Basin. Watermasters from the Snake, Boise, and Payette rivers, along with University of Idaho hydrologists, have been invited to present this data on May 13 - 14, 1996, in Boise.

The next formal negotiating session is to be held on May 16, 1996, in Lapwai. Mark Limbaugh is planning to attend.

WAG: Executive Board Elected

The Lower Payette River Watershed Advisory Group (LPRWAG) met on March 21, 1996, to elect an Executive Committee to lead the group in its effort to ultimately set a Total Maximum Daily Load (TMDL) on the Lower Payette River, below Black Canyon Dam to the mouth of the Snake River. The following members were elected to the Executive Committee, along with these alternates:

Agriculture	George McClelland
Alt.	Dan Gabiola
Municipalities	Chuck Baines
Alt.	Tom Hoppel
Livestock	John Kienitz
Alt.	Tom Miller
Industry	Dennis Dickinson
Alt.	Gilbert Wells
Recrea./Sportsmn.	Kirk Vickery
Alt.	Jim Schmid
Irrigation	Keith Standley
Alt.	Mark Limbaugh
Environmental	Dar Olberding
Alt.	Hank Berntsen
Government	Arnold Howard
Alt.	Evelyn Arreguy
Public at Large	Nancy Hutchison
Alt.	Karl Siller

This group was elected from the general membership of the WAG.

Also, the group was informed that there is currently a drain monitoring program underway in Gem County, administered by the Idaho Department of Agriculture. Due to insufficient data on these drains, this effort was initiated by the WAG earlier in the year. A full year of monitoring is planned before any results are analyzed.

The Executive Committee met on April 11, 1996 in Emmett to recommend bylaws to the WAG, as well as elect officers for the coming year. Nancy Hutchison, public at large, was elected Chairman of the Executive Committee, and will serve as Chairman of the WAG also. Mark Limbaugh, irrigation interests, was elected Vice Chairman, Russ Manwaring was elected Secretary/Facilitator, and Hank Berntsen, environmental interests, was

elected Treasurer.

On April 18, 1996, another LPRWAG meeting was held. At that time, the bylaws were approved as presented by the Executive Committee. These bylaws will govern the operation of the WAG as an entity in and of itself. The Gem County drain monitoring effort was reviewed, and additional sites were added by the group. The inflow to the Emmett Irrigation District main canal will be monitored as a comparison of the quality of the water before it is put to irrigation use. Also, pesticide scans were recommended during the testing to eliminate future duplications in testing for other substances. The WAG felt that the Technical Advisory Committee (TAC) of the WAG could advise the Department of Agriculture on this recommendation better than the WAG could, so the recommendation was forwarded to the TAC.

A budget is currently being formulated to allow the WAG, through the Idaho Department of Environmental Quality (DEQ), to begin to monitor the river on a consistent basis. It was brought out that the river historically has not been monitored using one comprehensive study, and that the information we have now is incomplete. This budget must be submitted to the Basin Area Group (BAG) by June, 1996, for the fiscal year 1997-98, and is currently being worked on by the Technical group, as well as the WAG itself. Funds for monitoring efforts along with public education as to the problems found with the Lower Payette River are needed from the Legislature to adequately address water quality issues.

The Technical Advisory Committee of the WAG met on May 1, 1996 in Emmett. This meeting was to set forth a final plan for the river monitoring effort submitted to DEQ, as well as elect officers for the Technical group. Chuck Baines, City of Fruitland, was selected as Chairman, with Mark Limbaugh, Water District 65, as Vice-Chairman. The next WAG meeting will be on May 29, 1996 in Payette.

Oregon and Washington Allow Development

(From the IWUA Newsletter)

While the U.S. Bureau of Reclamation and Idaho water users are scrambling to meet the requirements of the National Marine Fisheries Service (NMFS) Biological Opinion requiring 427,000 acre feet of water from the upper Snake River basin above Brownlee, and the Corps of Engineers is drafting over one million acre feet from Dworshak Reservoir, irrigation development below Lower Granite Dam continues. Recently, the State of Oregon granted Boeing Corporation an extension of time to complete development of a water permit to irrigate over 20,000 acres of new land. At the same time, the Corps has granted a permit to irrigators in Washington State to add pumps from the river for irrigation of an additional 20,000 acres of land. It is anticipated that the total consumptive use from the Columbia River system below Lower Granite Dam from these two uses alone will exceed 100,000 acre feet of water per year. This is a prime example of the lack of commitment to salmon recovery by the Corps and the states of Oregon and Washington while expecting Idaho to give up precious resources to satisfy political needs. Objections to the new diversions have been submitted by the State of Idaho and the Bureau of Reclamation, but so far the objections have been ignored.

In another matter, the Sierra Club Legal Defense Fund has filed a 60-day notice of intent to sue NMFS, the Corps, and the USBR over the 1995-98 Biological Opinion. The suit alleges that the Biological Opinion has been essentially ignored and that inadequate measures are being implemented to recover endangered Snake River salmon species. Even though environmentalists supported the 427,000 acre feet of fish flows, they still want more.

May 1 Snow Report: Good News for Irrigation and Recreation

Idaho has been blessed with an abundant snow pack for a second consecutive year. On May 1, 1996, the Payette basin snow pack registered at 118% of average, with a 133% of average precipitation to date. The higher elevations ranged from 115% to 155% of average snow pack, while the lower elevations were at 52% to 93% of average. The lack of low elevation snow is partially due to the relatively high runoff volumes earlier this year, mainly during storms and warming trends. The highest peak flows at Horseshoe Bend this year was 12,600 cubic feet per second, with 14,400 cfs at Black Canyon Dam. The weather during the past few weeks, however, has been somewhat cool to normal, with below average runoff for this time of year.

Currently, Cascade Reservoir is about 75% full, at 480,000 acre feet, while Deadwood is at 80% of capacity at

129,000 acre feet. Runoff volume forecasts, prepared by the USBR, indicate above average runoff at Horseshoe Bend, Cascade and Deadwood. The May 1 through July 31 runoff volume forecast for Horseshoe Bend is 1,442,000 acre feet, or about 109% of average. Cascade drainage shows a 105% of average runoff at 442,800 acre feet, needing only 173,200 acre feet to fill the reservoir, while Deadwood drainage is estimated at 136,500 acre feet, or 114% of average, needing only 32,900 acre feet to fill. At this point, 1996 appears to mirror the 1986 water year, with 1969 and 1976 being close comparisons as well. Compared to last year, this year's runoff volume forecast appears to be about 270,000 acre feet less at Horseshoe Bend for the period. But given the much larger carryovers in the reservoirs this year, flows at Horseshoe Bend and Emmett will be equal to

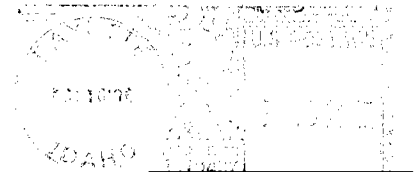
or better than 1995 flows. Also, with the higher elevations showing much of the snow pack and assuming normal temperatures, natural flows during 1996 should be excellent, allowing for conservation of storage water. These natural flows also spell good news for recreation, as Cascade and Deadwood reservoir levels should remain high for most of the summer.

As of the first week of May, 1996, flood control operations on Cascade and Deadwood are still underway. Current releases at Cascade about 2,200 cfs and Deadwood releases are at 500 cfs. Inflows to both reservoirs are similar to these rates of outflow, allowing for reservoir levels to remain static. These storage reservoirs should begin filling soon, and should be full sometime during the month of June this year. During the first week of May, river flows at Horseshoe Bend averaged about 8,500 cfs.

Water District Update

Water District No. 65
102 N. Main St.
Payette, Idaho 83661
Mark Limbaugh, Watermaster
Phone (208) 642-4465

Dave Tuthill, Jr.
 Dept. of Water Resources
 2735 Airport Way
 Boise, Ida. 83705



RECEIVED

MAY 17 1996

**WATER RESOURCES
 WESTERN REGION**

Inside This Issue:

- *1996 Idaho Legislative Report*
- *Public Trust Doctrine Explained*
- *Water Quality Update*

RECEIVED

RECEIVED
FEB 27 1996

✓ Dan Norm
Western Reg File
Shaw DBS

MAR 0 1996
WATER RESOURCES
WESTERN REGION

Department of Water Resources

Water District Update

Volume 1 Issue 4 Water District No. 65 Mark Limbaugh, Watermaster Winter, 1996

SRBA: Indian Claims for Snake River Flows Threaten Payette Water Rights

The Nez Perce Tribe has filed for a large amount of in-stream flows in the Snake River at Lewiston, claiming a "time immemorial" (before white man came to the West) priority date. They claim these flows are needed for the restoration of salmon runs on their reservation in northern Idaho. If allowed by the Snake River Basin Adjudication Court in Twin Falls, these claims would have a major impact on irrigators throughout the State of Idaho. The Idaho Water Users' Association has formed a Coalition to provide expert witnesses,

technical evidence and studies protecting irrigator's water rights in the event these claims are litigated before the Court. The Water District, at our annual meeting this year, voted to join this Coalition on behalf of all irrigators on the Payette River. Based on data obtained by the Coalition, the flows outlined in the illustration at right would be required at Weiser to meet the Nez Perce Tribe's

claims as filed. For example, the chart shows an average Snake River flow at Weiser during the month of June to be about 12,500 cubic feet per second. In most years, reservoirs are beginning to fill storage space during June; however, if these claims are allowed, in-stream flows equal to 70,000 cfs at Weiser would be required to meet the claimed flow targets. At this rate, all of Idaho's reservoirs,

If Allowed, the Nez Perce Claims Would Drain Idaho's Reservoirs and Limit Irrigation Diversions During Most Years.

including Cascade, Deadwood, and the Payette Lakes, would not be allowed to store water in order to meet flow targets on the Snake River. Also, any diversions of water from any of the tributaries to the

SNAKE RIVER would be limited or shut off to meet these flow targets.

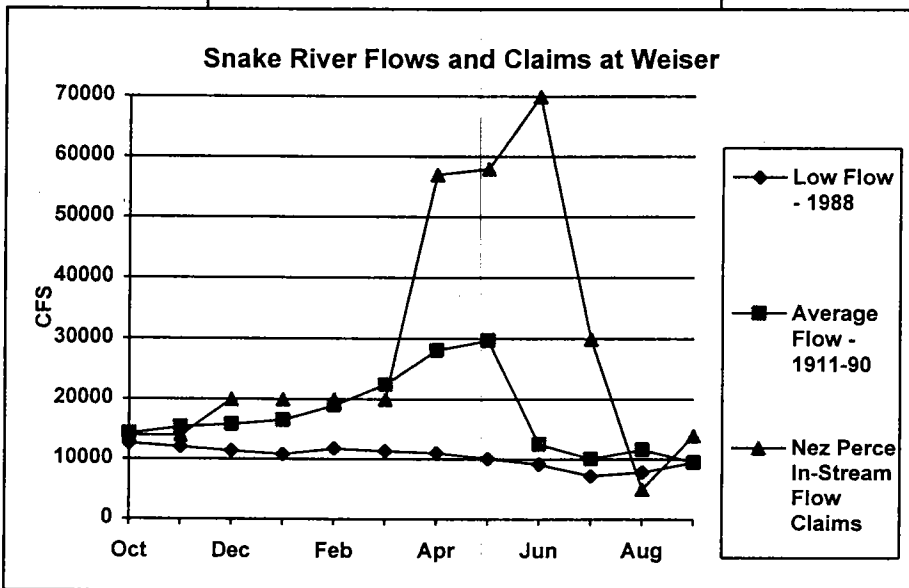
Currently, the Coalition is part of the required negotiations with the Tribe to try and work out a settlement on this issue outside the Court. Negotiations are required by the Court on any contested claims, and on these specific claims, there were approximately 37,000 protests filed with the SRBA. Any settlement reached by these negotiations must not affect existing water rights in order to be approved by the SRBA. A six-month stay was ordered by the Court for these

negotiations, and all proceedings on the Nez Perce claims have been put on hold until June.

According to Scott Campbell, attorney for Payette River Water Users' Association, these claims are off-reservation in-stream flows and historically have not been granted in other Western states. Campbell warned, however, that if water users did not

protest these claims, the chances were much greater that they might be allowed. Payette River Water Users' has filed protests on all the in-stream flow claims filed by the Tribe.

Currently, the negotiating sessions are being attended and monitored by the Watermaster. If you would like to find out more, please call Mark Limbaugh at (208) 642-4465.



Inside this Issue:

- WD65 Annual Meeting Page 2
- Water Quality Update Page 3
- 1996 Snow Report Page 3
- IWUA Convention Page 4

Water District 65 Annual Meeting Held

The annual meeting for Water District 65 was held on January 9, 1996 at the Senior Citizen's Center in New Plymouth, Idaho. Chairman Wilbur "Brick" Andrew welcomed the group attending the meeting by thanking all for their cooperation during the past year and remarked that the District now has many more statistics and records than in previous years. Chairman Andrew stated that, in his opinion, the most noteworthy accomplishment during the 1995 water year was the change in the flood control curves on Cascade and Deadwood Reservoirs. He believes the Water District helped in many ways to accomplish this feat, and commended Bob Henggeler and the Payette River Water Users' Association for their efforts in pursuing these changes.

Election of the 1996 officers of the Water District was held, with Chairman Andrew re-elected for another term as Chairman/Treasurer. Steve Dobson was elected Vice-Chairman, a new position asked for by Chairman Andrew and the Nominating Committee. Marcia Herr was re-elected for another term as Secretary for the District.

Mark Limbaugh gave the Watermaster's annual report via a slide presentation. Utilizing charts and graphs, Mark explained that 1995 was an excellent water year with above average snow pack and runoff. All reservoirs were filled during 1995, replacing all of the storage water used during the 1994 drought year. Natural flows in the river remained quite high during the early portion of the irrigation season. This meant that storage water was not needed to meet diversions from the Payette River system until July 28th. In comparison, during the 1994 water year, natural flows dropped by June 12th, requiring storage releases to meet these diversions at that time. Consequently, storage use during 1995 was below average, resulting in very

high carryovers in our storage reservoirs into 1996. This smaller demand for storage water also allowed many District spaceholders to lease some of their storage space to the rental pool.

For informational purposes, Mark stated that during the past 6 years, the Water District 65 Rental Pool has generated over \$370,000 in administrative fees for the District, and has paid over \$530,000 to leasing spaceholders. During 1995, 145,000 acre feet of storage space was rented out of basin for the fish flush, while just over 9,700 acre feet was rented for in basin use (irrigation and power production). Of course, all out of basin use will become last to fill space during the 1996 water year according to our rental pool procedures. Many issues were resolved by the Water District during 1995, mainly due to better communications with water users concerning river operations and delivery accounting. Finally, Mark outlined issues which may affect water users during 1996. Water quality issues will be a concern for all water users on the river, and Mark will keep us up to date on the Lower Payette River Watershed Advisory Group (WAG) as he is a co-facilitator of that group. Also, legislation to allow the continuation of the fish flush with rented space from the District will be coming before the Idaho Legislature this session, making sure that any out of basin flows are subject to the last to fill provisions of our rental pool rules. Finally, with above average carryovers and the higher flood control levels put into place for 1996, Mark stated that past history shows a better than 90% probability that Cascade and Deadwood Reservoirs will fill this year.

Rick Wells of the USBR then gave his report, indicating similar storage carryovers and refill potential reported by Mark. Cascade will be at 500,000 acre feet of active storage at the end of February, and Deadwood is currently at 125,000 acre feet capacity, both levels being the new flood control levels. Jerry Gregg, Area Manager for

the USBR, reported on a meeting attended by representatives of most of the interests on the Payette River, and indicated that a general operations meeting will be held this spring to communicate possible 1995 operating scenarios to all stakeholders on the river. The Watermaster will attend this meeting to outline irrigators' needs and concerns to these interest groups. More information will be communicated by the Watermaster in future newsletters.

The financial report was then given by the Water District's CPA, Rick Howard. Financial information was handed out, illustrating the position of the District. The budget for 1995 was compared to actual operating expenses, and it was shown that the District was operated about \$11,500 under budgeted amounts. Financial statements are available from the Watermaster.

The 1996 Budget was discussed and approved, allowing for a \$.40 per acre assessment for 1996, down from \$.50 per acre last year. The total budgeted expenditures approved was \$5,800 less than last year's budget.

Mark Limbaugh was nominated and was re-elected as the Watermaster for 1996. The Advisory Committee was then selected for the coming year, with the following nominated and appointed by the group: Jerry Anderson, Enterprise Ditch, Gail Springer, Bilbrey Ditch, R. Dale Krause and John Hartman (alt.), BCID, Keith Standley and Karl Siller (alt.), EID, Cecil Shurtleff, Lower Payette, Bob Henggeler, Farmer's Co-op, Marc Shigeta, Noble, Duane Van Leuven, Independent, Virgil Johnson, Independent, George Jensen, Stewart Ditch, and Bill Charters, Last Chance Canal, along with our officers as members as well.

Bob Henggeler brought before the meeting a resolution to allow for the Water District to join and fund the Idaho Water Users' Coalition, a group formed to provide expert witnesses and

(Continued on page 3)

WAG: Monitoring Funds Sought

Water quality issues on the Lower Payette River have come to the forefront during this past year. Due to the passage of SB1284 last legislative session, a Watershed Advisory Group (WAG) had to be formed to allow water quality concerns on the Lower Payette River to be addressed. The Lower Payette WAG has the directive from SB1284 to set total maximum daily loads (TMDLs) on the river. The Lower Payette River was given a "water quality limited" listing by DEQ in 1992, and a plan must be developed to result in the eventual setting of TMDLs on the reach. Our WAG is made up of representatives from agriculture, industry, municipalities, environmental, and Federal and State resource management agencies.

At a recent meeting, a Technical Advisory Committee (TAC) was set up to compile and address the amount and reliability of water quality information and data currently available on the Lower Payette. The TAC has met several times, and has concluded that, while there are some existing data on water quality for certain points on this river segment, more data are needed to determine the scope and location of additional monitoring efforts in ultimately setting TMDLs. Therefore, the TAC recommended to the WAG that funds be sought for a scoping study to assess the current water quality status of the river. The WAG has requested DEQ personnel to develop a monitoring effort for this scoping study on the Lower Payette, along with estimates of cost, to present to the Legislature. An amount of \$150,000 has been requested by the WAG for this scoping study.

The study will monitor eight (8) stations on the river segment, namely points below Black Canyon Dam, below Emmett, at the Letha Bridge, at the Highway 55 Bridge, at Faulk's Bridge, below the confluence with Willow Creek, at Highway 95 at Payette, and at the confluence with the

Snake River. These stations will be monitored for levels of nutrients, sediment, bacteria, and biological and physical attributes associated with water quality. Some of these stations have been monitored in the past, but these monitoring efforts were not coordinated nor were they consistently processed. The WAG hopes this scoping study will be a concise effort to efficiently assess the river's health.

The proposed monitoring effort has been estimated to cost about \$133,000 for the samples taken at the above sites. Another \$7,000 has been requested to study fish populations as an update to a 1974 fish study on the Lower Payette River. Finally, \$10,000 has been requested to cover administrative costs associated with the WAG currently donated by the group.

Annual Meeting (Cont.)

(Continued from page 2)

documentary evidence in the defense of our water rights before the SRBA Court, as well as fund other such actions necessary in that defense. After much discussion, the resolution passed. A motion was then introduced to fund an amount equal to \$.50 per acre for all acres of the District, out of accumulated District funds and not from assessment revenues, to join the IWUA Coalition. The motion passed, enabling Water District 65 to join the Coalition on behalf of all water users in the Water District with no additional assessment to them.

If you have any questions, or want a copy of the Watermaster's annual report or the District's Financial Report, please call the Water District office in Payette at (208) 642-4465.

February Snow Levels Promising

On February 5th, snow packs on the Payette and Weiser Basins were at 95% of their 30-year average for this date.

Meanwhile, total precipitation (snow and rain) was at 107% of average. Banner Summit, Big Creek Summit and Deadwood Summit all reported above 100% snow pack, while Brundage Reservoir, Jackson Peak, and Secesh Summit all reported slightly below 100% snow pack. The lower elevations (between 5,000 and 6,200 feet elevation) were reporting between 84% and 71% of average snow packs due to the warmer than normal winter weather experienced this year. As of this printing, snow packs continued to rise to about average levels at the higher elevations, while lower elevation snow packs continued to hold their own.

Around Idaho, the northern part of the state registered the worst snow levels at 76% for the Priest - Coeur d'Alene Basin and 94% for the Clearwater Basin, while the Upper Snake in the eastern portion of the state

continued above average with over 130% of average snow packs. The Big and Little Wood basins were at 112%, while the Big and Little Lost and Owyhee Basins reported around 105% levels. The Boise and Salmon Basins measured 110% of average.

In the Payette Basin, reservoirs were at the highest carryover levels in a decade, even after the fish water was released. At the end of February, Cascade will be at 500,000 acre feet of an active capacity of 653,190 acre feet, while Deadwood is at 125,000 acre feet of a capacity of 161,900 acre feet. At these levels, 30-years of past history indicates that there is a greater than 90% probability that the drainage will produce enough runoff to totally fill both reservoirs.

The amount of snow at the higher elevations directly affects the duration of natural flows in the river during irrigation season, barring an unseasonably warm spring. The Watermaster will continue to monitor these snow levels on the Internet and update water users in future newsletters.

Idaho Water User's Association Holds Annual Convention in Boise

Idaho Water User's Association held their annual convention on January 16 - 18, 1996 at the Red Lion - Riverside in Boise. Chairman Wilbur "Brick" Andrew, Secretary Marcia Herr, and Watermaster Mark Limbaugh attended.

Governor Phil Batt gave the keynote address, stating the importance of storage reservoirs to the State. Batt indicated his insistence on scientific evidence to prove any beneficial impact of Idaho's water used for Salmon restoration purposes, and that by providing for fish flows through temporary legislation protects our water rights. The new Commissioner of the USBR, Eluid Martinez, then spoke to the group, mentioning his prior experience with irrigation and the State of New Mexico Water Resources Dept. He stated that he was approaching his new position with an outlook toward grassroots solutions to the

tough questions facing the USBR.

The convention addressed the multitude of problems we face as water users in this state, some of which dealt with the Snake River Basin Adjudication and the various claims filed on our water, salmon restoration, energy related issues, and water quality.

IDWR Director Karl Dreher spoke of the future of water management in Idaho, stating that the SRBA will probably be completed within 10 years at an estimated cost of \$6 million per year. He also said that he believes about 15,000 water rights will be adjudicated during 1996. Other speakers discussed topics ranging from the Public Trust Doctrine, Endangered Species Act reform, and other Federal and State resource management issues.

A legislative banquet was held the final evening, hosting over half of the Idaho Legislature's members for dinner.

North/South Fork Users Added to WD65

During the 1996 water year, the North Fork, South Fork and Big Payette Lake water users, diversions of 0.10 cfs and larger, will be added to the District's water accounting system. This means that, when natural flows recede in the river, all junior water rights affected must rent storage water from the rental pool in order to continue to use water. Also, these users will be included in the assessment base of the District. The 1996 assessment has been set at \$.40 per acre, with a minimum assessment of \$10.00. Adding these users to the Water District will complete the Payette River accounting program for the entire river, which accounts for deliveries, both natural and stored flows, for each of these users.

Water District Update

Water District No. 65
102 N. Main St.
Payette, Idaho 83661
Mark Limbaugh, Watermaster
Phone (208) 642-4465

Dave Tuthill, Jr.
Dept. of Water Resources
2735 Airport Way
Boise, Ida. 83705

RECEIVED

FEB 23 1996

WATER RESOURCES
WESTERN REGION

Inside This Issue:

- *Nez Perce Tribal Claims
- *Water District Annual Meeting
- *Water Quality Update