



State of Idaho

DEPARTMENT OF WATER RESOURCES

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Governor

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May 22, 2007

ROBERT P. KENWORTHY  
USDA FOREST SERVICE  
R-4, BIO-PHYSICAL RESOURCES  
161 EAST MALLARD DRIVE, SUITE 110  
BOISE, ID 83706

**Re: Discuss Provisions of the Wild & Scenic Stipulated Agreement and Schedule a Coordination Meeting**

Dear Mr. Kenworthy:

This letter is a follow-up to our conversation the second week of February during which you indicated that IDWR should begin corresponding with the U.S.D.A. Forest Service to begin discussing some of the provisions of the stipulated agreement approving the partial decrees for the Wild & Scenic Rivers Act federal reserved water rights (hereafter referred to as the stipulated agreement) and initiate scheduling of a coordination meeting. Although IDWR is confident the provisions of the stipulated agreement are being implemented consistent with both the spirit and the letter of the agreement, discussions and/or a meeting with the interested parties would help clarify certain provisions of the stipulated agreement and facilitate development of an approach to implementation that satisfies the interested parties. Such "periodic coordination meetings" during the first two years of water district operation are required by provision No. 2(g) of the stipulated agreement, presumably for this very purpose. IDWR proposes that such a meeting be scheduled within the next two months. The proposed coordination meeting will provide an opportunity to discuss the provisions of the stipulated agreement and ensure that those provisions are being implemented to the satisfaction of the interested parties.

As we discussed during our phone conversation, IDWR would like to initiate discussions with the interested parties regarding clarification of Provision No. 2(c) of the stipulated agreement. This provision requires IDWR to condition all new "non-de minimis" water rights to require measurement, control, and continuous data logging equipment. As IDWR has begun processing new water right applications upstream of the Salmon and other Wild & Scenic rivers, this provision has generated some discussion regarding: 1) the meaning of a "non-de minimis" right, 2) whether this provision is to be applied to all sources of water, whether or not a source is directly or immediately tributary to the Wild & Scenic River, and 3) How this provision is to be applied where new applications describe diversion from an existing canal heading.

At the heart of the need for clarification of this provision is the question of whether it is unduly burdensome to require water users to install relatively expensive measuring and logging equipment on diversions that are relatively small and/or remote and so may not provide information that is relevant to administration of the Federal reserved water rights.

Mr. Robert Kenworthy  
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Pending clarification of this provision, IDWR has begun conditioning all new permits upstream of the ending point of any wild & scenic river as shown on the attached flow chart. The current process conditions permits based on whether the appropriation is within or anticipated to be within a water district, and whether the appropriation clearly is or is not de minimis (meeting the definitions of Idaho Code §42-111). Additionally, for appropriations within a current or future water district, the process considers appropriations that may or may not be considered de minimis, and conditions them such that the Department may require measurement and data logging consistent with the outcome of the proposed discussions. The appropriations that may or may not be de minimis are those that exceed §42-111, but divert less than 0.24 cubic feet per second (cfs) and irrigate less than 5-acres. The 0.24 cfs/5-acre threshold was selected to be consistent with measuring and reporting thresholds applied elsewhere in the state, including the February 20, 2007 measurement and control order for Water District No. 170.

As we discussed on the phone, perhaps some discussion of Provision No. 2(g) and/or any other relevant topics could occur prior to a coordination meeting, but IDWR feels, and the rules require, that a coordination meeting with all interested parties be held to discuss this issue and review any other issues and management goals. Please discuss this letter with your agency and provide a response regarding how best to proceed with clarification of the provisions of the stipulated agreement and scheduling of a coordination meeting.

Thank you in advance for your attention to this matter. IDWR is committed to compliance with both the letter and the spirit of the stipulated agreement. The proposed discussions and meeting will help provide a clear path to ensure we are successful in our commitment.

Please feel free to contact me if you have further questions or concerns.

Sincerely,



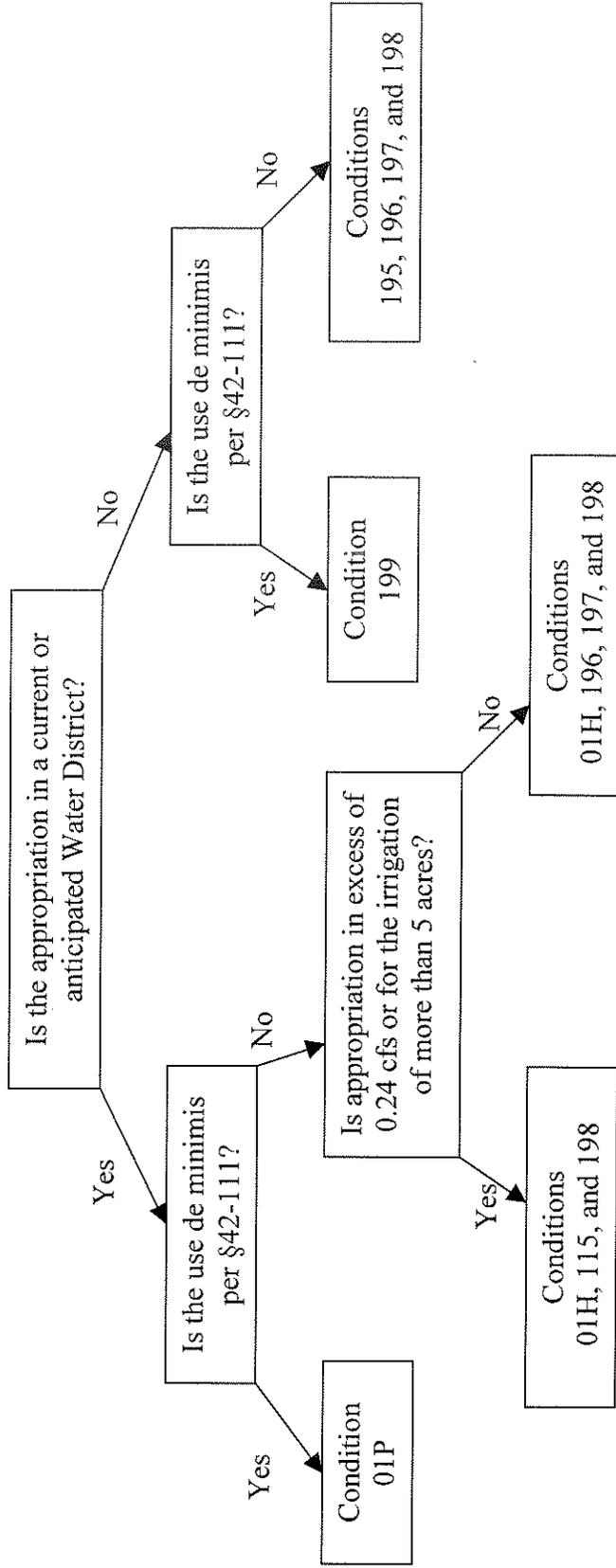
Nick Miller  
Water Distribution Section

Enclosure: *Flow Chart for Conditioning Permits Upstream of a Wild & Scenic River, IDWR 2007*

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# FLOW CHART FOR CONDITIONING PERMITS UPSTREAM OF A WILD & SCENIC RIVER

HWNR 5-23-07



- 01P -- Upon specific notification by the Department, the right holder shall install a lockable device of a type acceptable to the Department in a manner that will provide the watermaster suitable control of the diversion.
- 01H -- Prior to diversion of water under this right, the right holder shall install a lockable device, subject to the approval of the Department, in a manner that will provide the watermaster suitable control of the diversion.
- 18C -- Prior to diversion of water under this right, the right holder shall provide a means acceptable to the department to measure the amount of water entering the reservoir and the amount of water released from the reservoir.
- 115 -- Prior to the diversion and use of water under this right, the right holder shall install and maintain acceptable measuring device(s), including data logger(s), at the authorized point(s) of diversion, in accordance with Department specifications.
- 195 -- Prior to diversion of water under this right, the right holder shall install a lockable device, subject to the approval of the Department, in a manner that will provide suitable control of the diversion.
- 196 -- As part of the diversion works, the right holder shall install a straight length of conduit that will accommodate a device for measuring the entire flow of water being diverted in connection with this right. The straight length of conduit shall be at least ten times the diameter of the conduit and shall be above ground or otherwise easily accessible.
- 197 -- Upon specific notification by the Department, the right holder shall install and maintain acceptable measuring device(s), including data logger(s), at the authorized point(s) of diversion, in accordance with Department specifications.
- 198 -- When notified by the Department or by a watermaster with regulatory authority over this right, the right holder shall report the amount of water diverted in connection with this right. The report shall be submitted in the manner and frequency specified by the Department or the watermaster.
- 199 -- Upon specific notification by the Department, the right holder shall install a lockable device of a type acceptable to the Department in a manner that will provide suitable control of the diversion.