Memorandum

To: Idaho Water Resource Board

From: Morgan Case

Date: November 18, 2013

Re: Water Transactions Program – 2014-2015 Lower Lemhi Annual Transaction

Action Item: Attached is an expenditure of funds resolution for the annual Lower Lemhi 2014-2015 agreements not to divert 15.61 cfs in order to bridge to gap between the permanent acquisitions and the flow target in the Lower Lemhi River. The agreement not to divert contracts will not exceed **$155,010** and the Water District 74 contract will not exceed **$12,800.**

Background

The Lemhi River Basin is an important basin for the spawning, migration and rearing of Chinook salmon, summer steelhead, westslope cutthroat trout, and bull trout. During the irrigation season, low flows at the L-6 diversion can cause migration barriers for out-migrating juvenile Chinook salmon and in-migrating adult Chinook salmon and steelhead. The 35 cfs flows are needed for out-migration in the spring and 25 cfs is needed for in-migrating adults in the mid- to late-summer.

The State of Idaho has committed to maintaining flows between 25 and 35 cfs at the L-6 diversion (map below) in the Lemhi Framework which was developed as part of 2004 Snake River Water Rights (Nez Perce) Agreement. The framework carries forward target goals which were included in earlier conservation agreements developed and approved by local water users, and state and federal agencies. Through enacting Idaho Code 42-1506 and 42-1765A, the Idaho Legislature directed the Board to establish a minimum streamflow water right of 35 cfs in the Lower Lemhi River to be met through water right rentals or other appropriate methods under state law.

For the past several years, the Board has been working to meet the 35 cfs target. Efforts have led to the following:

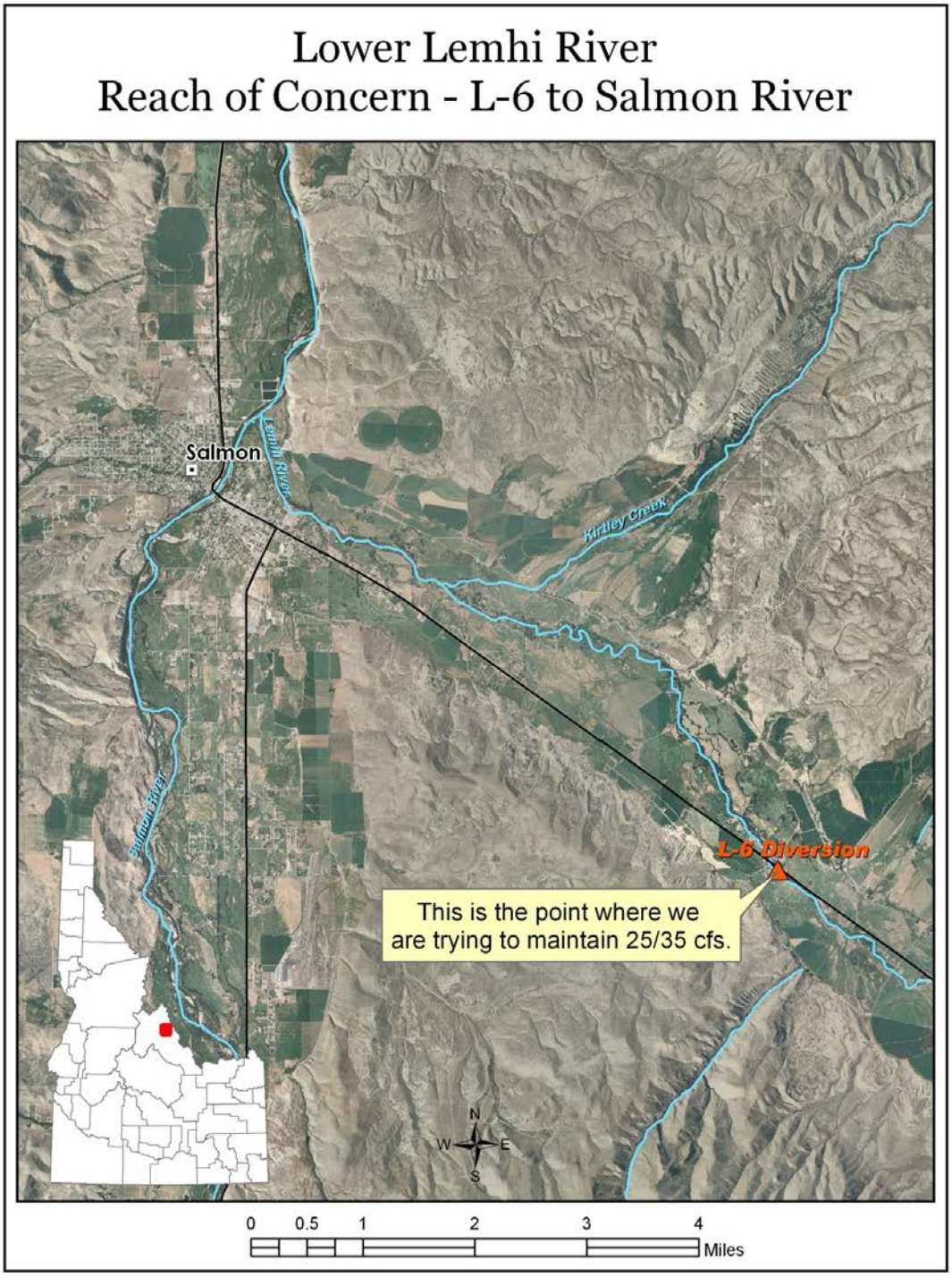
Flow Target:		**35 cfs**
Currently Protected:		
Permanent Easements	(15.53)	
Thomas Agreement	(1.14)	
TNC Donation	(0.30)	
City of Salmon	(2.42)	
Total Protected		**(19.39)**
Unmet Target		**15.61**

These agreements have been administered according to a contract between the Board and Water District 74. The annual leases have been done for several years. As permanent agreements have been acquired the amount needed from annual leases has decreased.

Staff proposes another set of agreements to meet the gap between the permanent transactions and the flow target. Funding is available through the BPA Idaho Fish Accord. The Board currently has a two-year contract to expend funds, so staff suggests entering into two-year agreements to minimize the administrative costs related to the deal.

As in previous years, payment would be based on the number of days the irrigators are turned off with compensation of $80.65/24-hour cfs. Irrigators would only be curtailed when the flow targets are not being met. Funding for administration by the WD 74 Watermaster will come from the Accord and funds placed in the Board's Revolving Development Water Transactions sub-account, in proportion to the flows secured by each method.

The Streamflow Enhancement and Minimum Stream Flow Committee was scheduled to review the transaction at the November 18, 2013 meeting and will give a recommendation to the full Board. If approved, staff will prepare contracts for the annual Lower Lemhi 2014-2015 agreements not to divert in order to bridge to gap between the permanent acquisitions and the flow target in the Lower Lemhi River. The agreement not to divert contracts will not exceed **$155,009.30** and the Water District 74 contract will not exceed **$12,800.00** annually.



BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF THE LOWER LEMHI 2014-2015 WATER RIGHT SUBORDINATION AGREEMENTS	))))	A RESOLUTION TO MAKE A FUNDING COMMITMENT

WHEREAS, Chinook salmon, steelhead, and bull trout habitat in the Lemhi River basin is limited by low flow in the Lower Lemhi River; and

WHEREAS, it is in the interest of the State of Idaho to permanently reconnect the Lower Lemhi River to encourage recovery of ESA-listed Chinook salmon, steelhead, and bull trout; and

WHEREAS, the State of Idaho committed to maintaining flows of 25 cfs to 35cfs at the L-6 Diversion on the Lower Lemhi River in the Lemhi Framework which was developed as part of the 2004 Snake River Water Rights Agreement; and

WHEREAS, the Lemhi Framework carries forward target goals which were included in earlier conservation agreements developed and approved by local water users, and state and federal agencies; and

WHEREAS, though enacting Idaho Code 42-1506 and 42-1765A, the Idaho Legislature directed the Board to establish a minimum streamflow water right of 35 cfs in the Lower Lemhi River to be met through water right rentals or other appropriate methods under state law; and WHEREAS, the Idaho Water Resource Board has the authority to enter into agreements to improve flow for anadromous and resident fish; and

WHEREAS, the Idaho Water Resource Board is authorized to expend Bonneville Power Administration funds for flow restoration through the Columbia Basin Water Transaction Program and the Bonneville Fish Accord Water Transaction Fund; and

WHEREAS, the Idaho Water Resource Board promotes water transactions that maintain the local agricultural economy by retaining irrigated agriculture; and

WHEREAS, staff has developed short-term subordination agreements to improve stream flow for anadromous and resident fish; and

WHEREAS, for all agreements, the water users have agreed to limit their diversions during times of low flow; and

WHEREAS, for all agreements, the water users will continue to irrigate their full place of use when flows exceed the flow targets; and

WHEREAS, $155,010 is available through the Idaho Fish Accord – Idaho Water transactions Fund or the Columbia Basin Water Transaction Program to fund the cost of said agreements; and

WHEREAS, the Lemhi Subordination Agreements are in the public interest and in compliance with the State Water Plan.

NOW THEREFORE BE IT RESOLVED that the IWRB authorizes the Chairman to enter two-year Subordination Agreements with lower Lemhi River irrigators to not divert out of the Lemhi River, using an amount not to exceed $155,010.

NOW THEREFORE BE IT FURTHER RESOLVED that the IWRB authorizes the Chairman to enter into contract with Water District 74 to administer said agreements and previous subordination easements using an amount not to exceed $25,600.00.

NOW THEREFORE BE IT FURTHER RESOLVED that this resolution is subject to the condition that the IWRB receives the requested funding from the Bonneville Power Administration through the Idaho Fish Accord – Idaho Water Transactions Fund or the Columbia Basin Water Transaction Program in the amount of $180,610.

DATED this 20th day of November, 2013.

_____
ROGER CHASE, Chairman
Idaho Water Resource Board

ATTEST: _____
BOB GRAHAM, Secretary

Memorandum

To: Idaho Water Resource Board

From: Morgan Case

Date: November 20, 2013

Re: Water Transactions Program – Pole Creek 2014

Action Item: A funding resolution for $60,000 to enter into a one-year minimum flow agreement to maintain 6 cfs in Pole Creek, tributary to the Salmon River. Funds will come through the Columbia Basin Water Transactions Program.

Pole Creek has been identified as a high priority stream for flow restoration efforts, to provide high quality habitat for anadromous Chinook salmon and steelhead and resident bull trout. The 2004 Snake River Water Rights ("Nez Perce") Agreement commits the state to providing incentives for improving fish habitat which includes improving or protecting flow conditions to augment stream flows.

From 2005-present, the Idaho Water Resource Board has contracted with Salmon Falls Land and Livestock to maintain a minimum flow of 5-6 cfs in Pole Creek. The Board has approved these agreements annually, although the water users and project partners are working on a long-term solution.

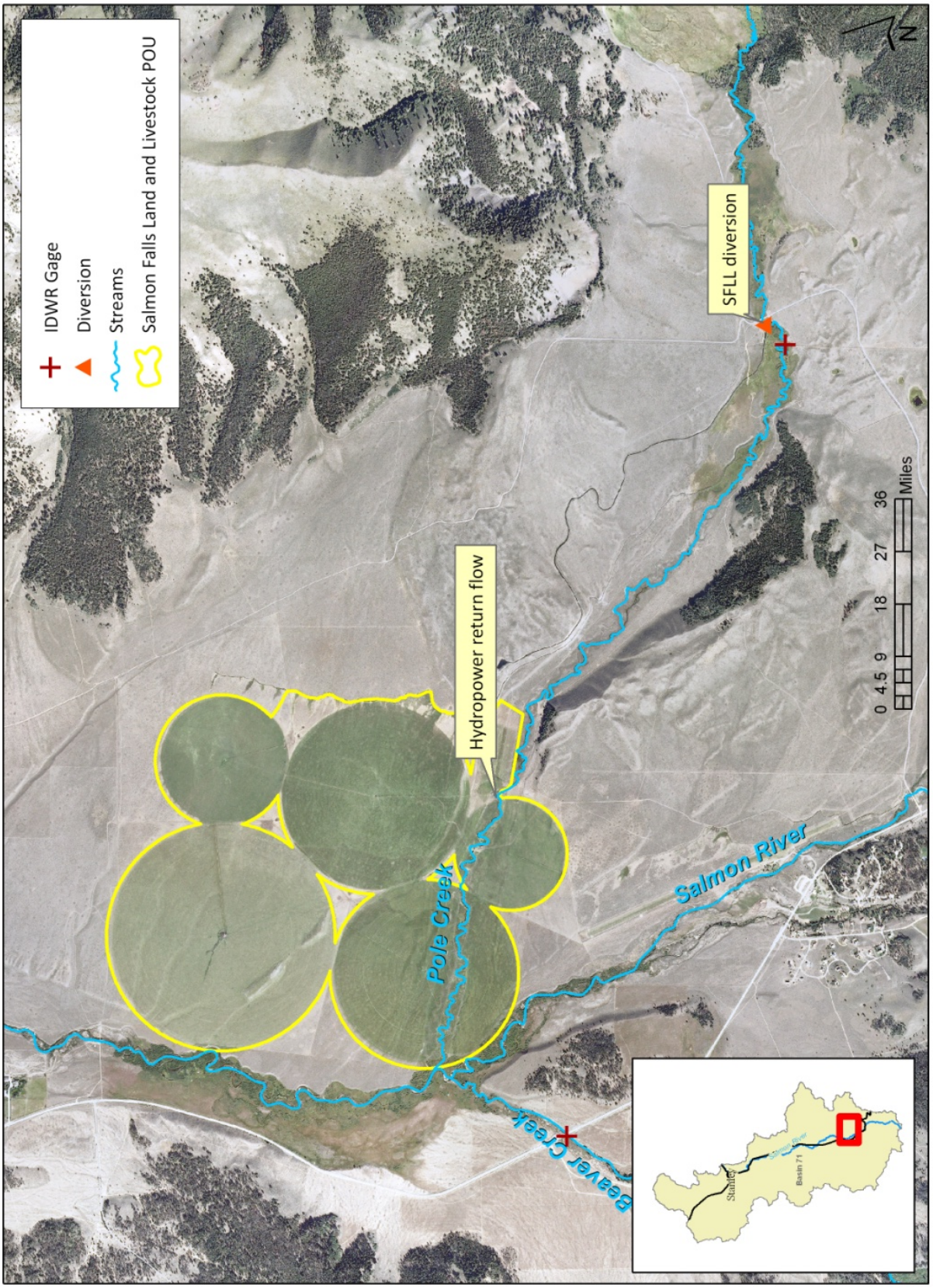
Pole Creek is a tributary to the Salmon River near the headwaters in the Sawtooth Valley. Pole Creek has the potential to provide high quality habitat for threatened Chinook salmon and bull trout. There is one active diversion on Pole Creek which can seasonally dewater a 2 mile reach of the creek. Salmon Falls Land and Livestock has irrigation and hydropower rights that can divert up to 22 cfs at that diversion. (See attached map.) Previous minimum flow agreements have compensated the water user for leaving the hydropower water right instream and using a diesel generator as needed to maintain the flow target.

Recently, the water users worked with the Sawtooth National Recreation Area (SNRA) to develop a flow and habitat restoration plan that will allow authorization of their ditch on Federal land. One of the strategies to increase streamflow is to convert some or all of the irrigation to groundwater for a portion of the irrigation season. Another is to replace the hydropower with 3-phase power. Test well pumping results indicate that the aquifer could support large irrigation wells. Project partners have been successful in securing funds for drilling a second large test well and installing of power to the irrigation system. The owners have been working with NRCS on a final irrigation system design. Once the system design is complete, staff can develop the long-term transactions that will protect the target flows instream. Current planning puts installation of the new system at the end of the irrigation season in 2014.

To maintain the current flow restoration progress in the interim, staff proposes entering into another one-year Pole Creek minimum flow agreement (to maintain 6 cfs instream) through the 2014 irrigation season. The agreement would compensate the water users for the price of diesel fuel ($5.43/gal delivered which equals $665 per day) to operate a generator when flows below the diversion drop to 6 cfs. Funding is available through the Columbia Basin Water Transactions Program.

The Streamflow Enhancement and Minimum Stream Flow Committee was scheduled to review the transaction at the November 18, 2013 meeting and will give a recommendation to the full Board. If approved, staff will prepare a funding resolution to enter into a one-year minimum flow agreement for the 2014 irrigation season. The total transaction cost will not exceed $60,000. Staff will also extend the no-cost lease to allow the water users to use the diesel generator that the Board purchased with grant funds, specifically for this project.

Pole Creek - Salmon Falls Land and Livestock Irrigation



BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF THE POLE CREEK)	A FUNDING
SALMON FALLS LAND & LIVESTOCK)	RESOLUTION
COMPANY WATER TRANSACTION)	
_____)	

WHEREAS, Chinook salmon, steelhead, and bull trout habitat in the Upper Salmon River basin is limited by seasonally disconnected tributaries; and

WHEREAS, Pole Creek has been identified as a high priority stream for flow restoration efforts, to provide high quality habitat for anadromous Chinook salmon and steelhead and resident bull trout, and the 2004 Snake River Water Rights ("Nez Perce") Agreement commits the state to providing incentives for improving fish habitat which includes improving or protecting flow conditions to augment stream flows; and

WHEREAS, it is in the interest of the State of Idaho to maintain the reconnection of Pole Creek to encourage recovery of ESA-listed Chinook salmon, steelhead, and bull trout fish; and

WHEREAS, the Idaho Water Resource Board has contracted with Salmon Falls Land and Livestock Company to maintain flows of 5-6 cfs since 2005; and

WHEREAS, there is funding available to secure an annual contract to maintain a minimum flow in Pole Creek during the 2014 irrigation season; and

WHEREAS, the water user will maintain a flow of 6 cfs in Pole Creek, as measured at the Idaho Department of Water Resources Gage, through the 2014 irrigation season; and

WHEREAS, the Board will compensate Salmon Falls Land and Livestock Company for every day that it is necessary to run a diesel generator to power the pivot irrigation system; and

WHEREAS, funds are available from the Bonneville Power Administration through the Columbia Basin Water Transaction Program; and

WHEREAS, the Pole Creek transaction is in the public interest and is consistent with the State Water Plan.

NOW THEREFORE BE IT RESOLVED that the IWRB authorizes the Chairman, or his assigns, to enter into a one-year contract with Salmon Falls Land and Livestock Company and/or subsequent owners for a minimum flow agreement in Pole Creek.

NOW THEREFORE BE IT FURTHER RESOLVED that the IWRB authorizes the Chairman to enter into a one-year, no-cost lease with Salmon Falls Land and

Livestock Co. for the use of the Board-owned diesel generator.

NOW THEREFORE BE IT FURTHER RESOLVED that this resolution is subject to the condition that the IWRB receives the requested funding from the Bonneville Power Administration through the Columbia Basin Water Transaction Program in the amount of sixty thousand dollars and no cents ($60,000).

DATED this 20th day of November, 2013.

_____
ROGER CHASE, Chairman
Idaho Water Resource Board

ATTEST: _____
BOB GRAHAM, Secretary

MEMORANDUM

To: **Idaho Water Resource Board**

From: **Sarah Rupp**

Date: **November 7, 2013**

Re: **Water Transactions Program – Teton River Basin – South Leigh Creek Transactions**

Action Item: Attached are two expenditure of fund resolutions. The first resolution authorizes the Board to expend $704.00 to pay for the application and administrative fees associated with the donation of South Leigh Creek water rights for a term of five years. The second resolution authorizes the Board to expend $3,269.00 to fund the lease/rental of a South Leigh Creek water right for a term of one year.

Background and Ecological Significance of South Leigh Creek

South Leigh Creek is a tributary to the Teton River located in the upper Teton Valley. The tributary runs from east to west, originating in the Teton Range and flowing towards the Teton River. The tributary offers excellent fish and wildlife habitat and supports a Yellowstone cutthroat trout (YCT) population.

Currently, irrigation withdraws and the natural stream hydrology result in the annual dewatering of the stream, and each year the stream is subject to the futile call doctrine. Pervasive yearly dewatering serves to restrict fish movement and migration, reduce valuable habitat, and elevate stream temperatures. Restoring flow to specific reaches in South Leigh Creek will have a positive impact on the YCT fishery in that tributary, serving to create valuable habitat, allowing for fish passage and migration, decreasing stream temperatures, and ultimately helping to encourage the recovery of YCT populations in the upper Teton Valley.

YCT are currently listed as a "species of greatest concern" for the Teton River Basin in the Idaho Comprehensive Wildlife Conservation Strategy (February 2006), and by consequence garner management priority throughout their historic range, including the Teton Basin. South Leigh Creek is incredibly valuable for YCT. The perennial, mountain section of South Leigh Creek houses a genetically pure population of YCT. (See, attached map entitled Teton Watershed E-Fishing 2005-2012.) The population has remained genetically pure because South Leigh Creek is annually dewatered, which serves to prevent non-native fish such as rainbow trout and brook trout from invading the upper reaches. (See, letter of support from IDF&G for more information.)

A great deal of effort has been committed to resorting and improving fish habitat, and preventing fish entrainment in canal diversions on South Leigh Creek. FTR has conducted three stream restoration projects on South Leigh Creek, restoring and stabilizing over 1,350 feet of stream and re-vegetating over 6,755 square feet of stream bank. Substantial stream restoration work has also been conducted by private landowners. Additionally, FTR worked with irrigators to rebuild the largest diversion on South Leigh Creek, the Hog Canal diversion. The rebuild not only incorporated modern diversion works but solar

operated fish screens. Building from the success of that project, FTR is currently working with irrigators to install fish screens on the Desert Canal, which is the last unscreened diversion on upper South Leigh Creek. The project is tentatively scheduled for construction in the fall of 2014.

South Leigh Creek is listed under Section 303(d) of the Clean Water Act. The stream has been listed for sediment and a TMDL has been developed by the Idaho Department of Environmental Quality. Stream restoration efforts have served to aid in the reduction of sediment transported instream. Additionally, IDEQ has determined that the stream does not support one of its designated beneficial uses, cold water aquatic life. Flow restoration efforts in South Leigh Creek will help decrease stream temperature and increase available habitat for aquatic species, both of which are important to ensuring that South Leigh Creek once again supports its designated beneficial uses.

Overall, the flow restoration strategy on South Leigh Creek aims to provide additional instream habitat for native YCT, as flow is the primary limiting factor preventing development of a more robust YCT population in this tributary. However, it is critically important that flow restoration efforts are conducted in such a manner, and in close coordination with IDF&G, to ensure that the genetically pure population of YCT is not jeopardized by non-native fish invasion. It is agreed that the transactions proposed below reach those goals.

Description of Proposed Transactions

A. Dan and Patti Burr

Dan and Patti Burr have two water rights that they propose donating to the Idaho Water Transactions Program for a period of 5 years. If approved, the water rights will be leased into the Idaho Water Supply Bank, to be rented by the IWRB for delivery to the Teton River minimum stream flow right. Through this transaction 6 acres of land will be fallowed throughout the five year term. This transaction will add 0.11 cfs of flow to South Leigh Creek.

These water rights have relatively junior priority dates. It is anticipated that these water rights will be in priority, and therefore deliverable to the Teton River minimum stream flow right, when South Leigh Creek is hydraulically connected to the Teton River. As a consequence, despite this being a futile call stream, leasing these water rights through the Idaho Water Transaction Program should not impact the historic delivery of other water rights on the stream or result in injury to other water right owners, and the leased rights should be conveyed to the Teton River minimum streamflow reach without issue.

A proposal to fund these donations has been submitted to the Columbia Basin Water Transaction Program in the amount of $704.00. The requested funds will be placed into the Board's revolving development water transaction subaccount to pay the fees associated with the lease/rental of water in the Idaho Water Supply Bank, as follows: Water Right Application Fee ($500.00); 10% Administrative Fee ($179.00); and Recording Fee ($25.00).

B. Osagia, LLC

Osagia, LLC has one water right that it proposes to enter into the Idaho Water Transactions Program for a period of 1 year. Through this transaction 36 acres of land will be fallowed during the one year term. This transaction will add 0.74 cfs of flow to South Leigh Creek.

The water right held by Osagia, LLC is one of 5 water rights with an April 1, 1889 priority date. These five water rights are the most senior water rights on South Leigh Creek. As mentioned above, South

Leigh Creek has historically been deemed futile on an annual basis, and is therefore subject to the futile call doctrine each year.

The Osagia, LLC water right has historically been diverted at the Desert Canal diversion, which is located near the upper end of the annually dewatered stream reach, also referred to as the futile call reach. (See, attached map entitled South Leigh Creek Transaction Map.) Because this transaction involves a water right historically diverted at the upper end of a futile call reach, it is proposed that the IWRB enter into an agreement not to divert with Osagia, LLC, as opposed to utilizing the Water Supply Bank to shepherd the water to the Teton River minimum streamflow reach. This transactional structure will ensure that the water right is legally deliverable to the historic point of diversion (the Desert Canal), regardless of whether the stream has been deemed futile or not. This structure satisfies the objectives of the Idaho Water Transactions Program by ensuring that South Leigh Creek remains wetted to the Desert Canal diversion and that the Osagia, LLC water right is left instream, serving to increase available habitat for Yellowstone cutthroat trout.

Bob Loucks valued the water right at $87.65/acre. The valuation is based upon the historical use of the water rights, which included generating one cutting of hay and then pasturing the aftermath. The valuation was presented to the water right owner and found acceptable. This is the same valuation and pricing structure utilized to value the Spring Creek water transactions and serves to keep pricing consistent in the upper Teton Valley.

A proposal to fund these transactions has been submitted to the Columbia Basin Water Transaction Program in the amount of $3,269.00. The requested funds will be placed into the Board's revolving development water transaction subaccount which will be used to compensate the water right owner and cover the recording fee, as follows: Payment to Water Right Holder ($3,244.00); and Recording Fee ($25.00).

Monitoring and Contract Compliance

Monitoring and contract compliance will be conducted by the local water district (WD 01) and Friends of the Teton River. It is anticipated that the point of diversion associated with these water rights, as well as all other diversions on the tributary, will be monitored by WD 01 on a weekly basis to ensure that the water rights remain instream. Ecological and fisheries benefits will be monitored by Friends of the Teton River, in conjunction with Idaho Fish and Game.

Letters of Support

Water District 01: The proposed transactions have been reviewed by Lyle Swank and Tony Olenichak of WD 01. No concerns have been raised with the transactions from either a water delivery or an injury perspective. Correspondence from Mr. Swank and Mr. Olenichak regarding this matter has been attached to this briefing memorandum.

Idaho Fish and Game: Each of the water transactions has been reviewed by Dan Garren, Regional Fisheries Manager for Idaho Fish and Game. Mr. Garren has submitted a letter of support which has been attached to this briefing memorandum.

Summary of the Proposed Water Transactions

Dan and Patti Burr Rights

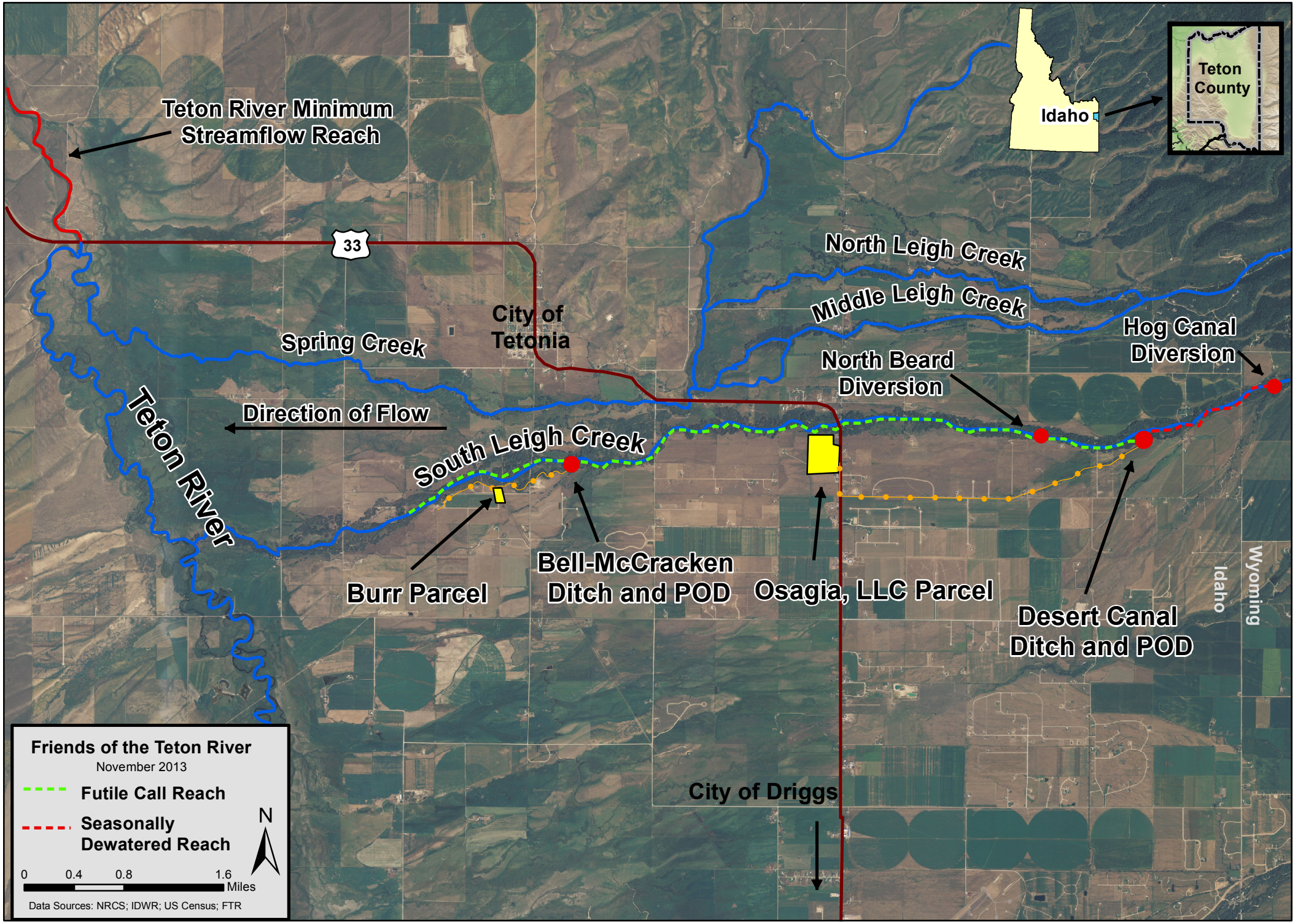
- Water Right # 22-13436
    - Quantity: 0.08 cfs
    - Tool: Donation
    - Duration: 5 years

- Water Right # 22-13437
    - Quantity: 0.03 cfs
    - Tool: Donation
    - Duration: 5 years
- Total Cost: $703.50 (Includes the following: Water Supply Bank Application Fee of $500.00; 10% Administrative Fee of $178.50; and Recording Fee of $25.00)

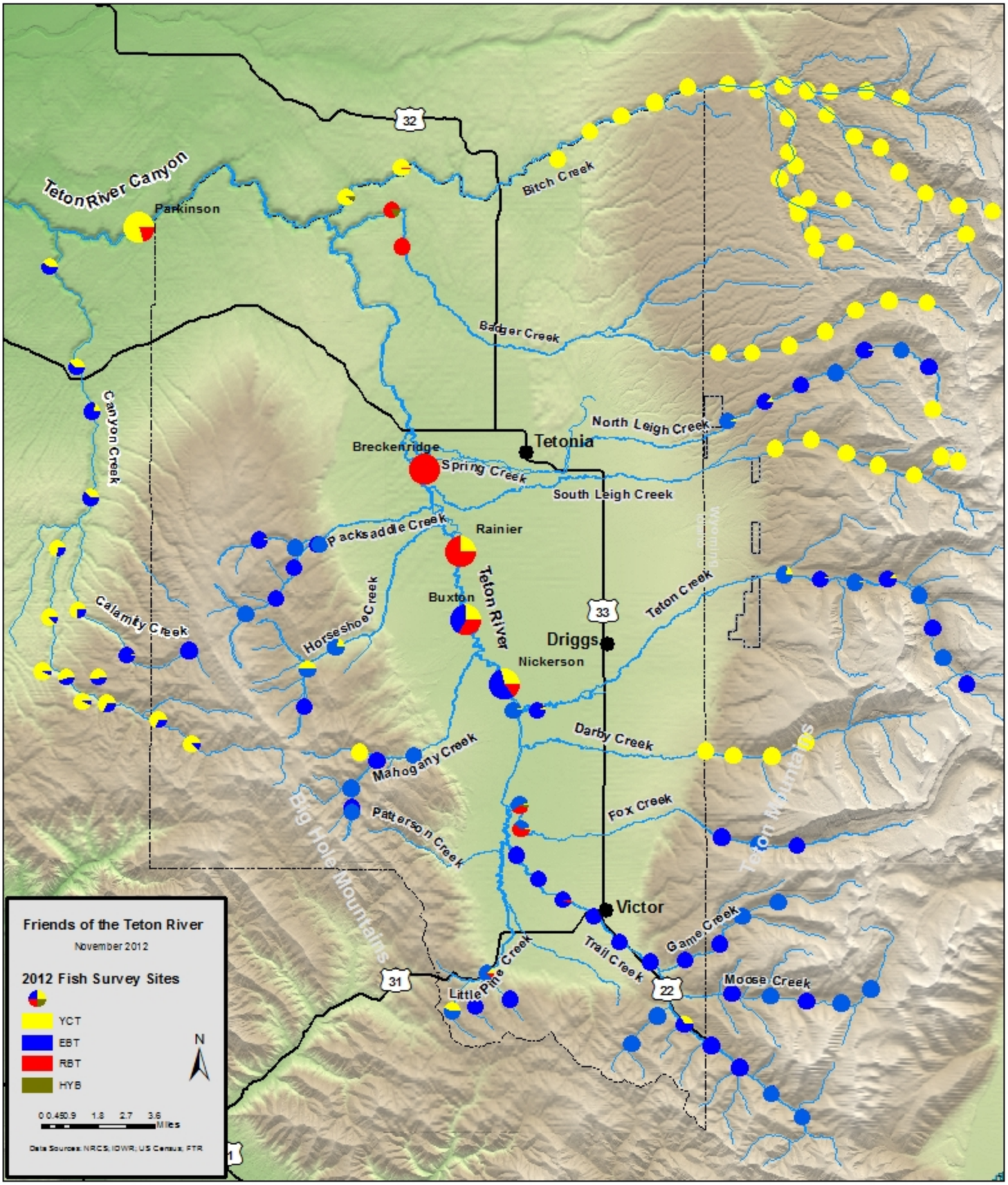
Osagia, LLC Rights

- Water Right #22-13817
    - Quantity: 0.74 cfs
    - Tool: Lease
    - Duration: 1 year
- Total Cost: $3,268.05 (Includes the following: Payment to Water Right Holder in the amount of $3,243.05; and Recording Fee of $25.00)

South Leigh Creek Transaction Map



Teton Watershed E-fishing 2005-2012



BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF THE SOUTH LEIGH CREEK WATER DONATION AGREEMENT	))))	A RESOLUTION TO MAKE A FUNDING COMMITMENT

WHEREAS, South Leigh Creek is a tributary to the Teton River that provides quality spawning and rearing habitat for Yellowstone cutthroat trout and other resident fish, but is flow and passage limited at certain times of the year; and

WHEREAS, it is in the interest of the State of Idaho to increase stream flow in the Teton River and its tributaries to encourage recovery of Yellowstone cutthroat trout, which are currently designated as an Idaho Species of Greatest Conservation Need; and

WHEREAS, staff has developed a five-year donation agreement with Dan and Patti Burr to improve stream flow for native fish in South Leigh Creek; and

WHEREAS, the donated water rights shall be leased into the Board's Idaho Water Supply Bank, to be rented by the Idaho Water Resource Board (IWRB) for the beneficial use of instream flow in the Teton River, for a period of five years; and

WHEREAS, a proposal to fund the Dan and Patti Burr donation in the amount of $704.00 has been submitted to the Columbia Basin Water Transaction Program, to be used to pay the Idaho Water Supply Bank Application Fee ($500.00), 10% Idaho Water Supply Bank Administrative Fee ($179.00), and Recording Fee ($25.00); and

WHEREAS, staff anticipates the funds being placed into the IWRB Revolving Development Account for payment to the Idaho Water Supply Bank; and

WHEREAS, the South Leigh Creek donation transaction is in the public interest and in compliance with the State Water Plan.

NOW THEREFORE BE IT RESOLVED that the IWRB authorizes the Chairman to enter into a lease/rental agreement with Dan and Patti Burr, and/or their successors for water rights 22- 13436 and 22-13437 for delivery to minimum stream flow 22-7369, using an amount not to exceed $704.00.

NOW THEREFORE BE IT FURTHER RESOLVED that this resolution is subject to the condition that the IWRB receives the requested funding from the Columbia Basin Water Transaction Program in the amount of $704.00.

DATED this 20th day of November, 2013.

_____
ROGER CHASE, Chairman
Idaho Water Resource Board

ATTEST: _____
BOB GRAHAM, Secretary

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF THE SOUTH LEIGH CREEK WATER USE AGREEMENT	))))	A RESOLUTION TO MAKE A FUNDING COMMITMENT

WHEREAS, South Leigh Creek is a tributary to the Teton River that provides quality spawning and rearing habitat for Yellowstone cutthroat trout and other resident fish, but is flow and passage limited at certain times of the year; and

WHEREAS, it is in the interest of the State of Idaho to increase stream flow in the Teton River and its tributaries to encourage recovery of Yellowstone cutthroat trout, which are currently designated as an Idaho Species of Greatest Conservation Need; and

WHEREAS, staff has developed a one-year water use agreement with Osagia, LLC to improve stream flow for native fish in South Leigh Creek; and

WHEREAS, a proposal in the amount of $3,269.00 has been submitted to the Columbia Basin Water Transaction Program to be used to fund the Osagia, LLC water use agreement, which includes the recording fee ($25.00) and payment to the water right holder ($3,244.00); and

WHEREAS, staff anticipates the funds being placed into the IWRB Revolving Development Account for payment to the water right holder; and

WHEREAS, the South Leigh Creek transaction is in the public interest and in compliance with the State Water Plan.

NOW THEREFORE BE IT RESOLVED that the IWRB authorizes the Chairman to enter into water use agreement with Osagia, LLC, and/or its successors for water right 22-13817, using an amount not to exceed $3,269.00.

NOW THEREFORE BE IT FURTHER RESOLVED that this resolution is subject to the condition that the IWRB receives the requested funding from the Columbia Basin Water Transaction Program in the amount of $3,269.00.

DATED this 20th day of November, 2013.

_____
ROGER CHASE, Chairman
Idaho Water Resource Board

ATTEST: _____
BOB GRAHAM, Secretary

IDAHO DEPARTMENT OF FISH AND GAME
UPPER SNAKE REGION
4279 Commerce Circle
Idaho Falls, Idaho 83401

C.L. "Butch" Otter / Governor
Virgil Moore / Director

November 6, 2013

Dear Sarah:

The Idaho Department of Fish and Game is charged with the Preservation, Protection, Perpetuation and Management of all of Idaho's fish and wildlife. As such, we are continually trying to increase the abundance of our fish and wildlife resources across the state. We do this through a variety of means, but one key mechanism we implement is the creation and improvement of habitat.

The water transaction project you have proposed on South Leigh Creek should result in more wetted channel within South Leigh, downstream to the Desert Canal diversion. This habitat can then be utilized by the allopatric population of native Yellowstone cutthroat trout. Because South Leigh does not connect to the Teton River consistently, the fish population in South Leigh consists only of native cutthroat trout, and they would be the species that would benefit from this increased habitat.

As your water transaction program grows in the future, it is important to keep in mind that connecting the few allopatric populations of cutthroat in the Teton drainage to the Teton River is not in the best interest of our native fish. However, in-stream programs that improve cutthroat habitat without creating additional connectivity are very worthwhile, and the Department supports additional work like you have outlined in this project.

Please contact me at 208-525-7290 if you have additional thoughts or comments on this. Thank you for your contribution to Idaho's fishery and wildlife resources.

Sincerely,

Dan Garren
Regional Fisheries Manager

Harrington, Helen

Subject: South Leigh Creek Water Transactions

From: Olenichak, Tony
Sent: Thursday, November 07, 2013 4:17 PM
To: Case, Morgan
Cc: Sarah Rupp (sarah@tetonwater.org); Swank, Lyle
Subject: RE: South Leigh Creek Water Transactions

Case,

Reviewing the information sent to me by Sarah Rupp indicates the two water rights 22-13436 and 22-13437 currently assigned to the Bell-McCracken Ditch on South Leigh Creek will be deposited into the Idaho Water Supply Bank and then rented by the IWRB for delivery to the Teton River point of diversion described in minimum stream flow right 22-7369. The intent of the transaction appears to be to increase the flow in South Leigh Creek in the reach from the Bell-McCracken Ditch on South Leigh Creek to the point(s) of diversion on the Teton River for water right 22-7369 resulting from not diverting water rights 22-13436 and 22-13437 through the Bell-McCracken Ditch for irrigation when they are in priority. It does not appear that this transaction would interfere with the delivery to other water rights on South Leigh Creek or the Teton River.

Changing the point of diversion for water rights 22-13436 and 22-13437 so that these rights are not delivered to the Bell-McCracken Ditch may result in additional water in the reach from the Bell-McCracken Ditch to the Teton River but does not necessarily guarantee this result. If the flow at the mouth of South Leigh Creek is greater or equal to the flow rates of water rights 22-13436 and 22-13437, it wouldn't be necessary for the Watermaster to curtail any other South Leigh Creek water rights to provide additional water to the lower reach on South Leigh Creek because the IWRB would be receiving its entire amount of South Leigh Creek water delivered to the Teton River for water rights 22-13436 and 22-13437, even if the South Leigh Creek channel was dry at some point between the Bell-McCracken Ditch and the mouth of South Leigh Creek.

The transaction also includes depositing water right 22-13817 into the Idaho Water Supply Bank and then rented by the IWRB for the purpose of changing the nature of use from irrigation to insteam flow without changing the point of diversion. Water right 22-13817 is for diverting South Leigh Creek water for irrigation through the Desert Ditch. The intent of the transaction is to keep the flow rate and priority for water right 22-13817 assigned to the Desert Ditch ensuring that the water right flow rate will be delivered in the South Leigh Creek channel to the point where the Desert Ditch diverts water from the creek, as it has been delivered to that point in the past for irrigation. It does not appear that this transaction would interfere with the delivery to other water rights on South Leigh Creek.

One final thought.....Because the land irrigated by water right 22-13817 is also covered by ground water right 22-13815, and the proposal indicates the owner of the water rights will not irrigate the 36 acres described in both water rights, perhaps both water rights owned by Osagia, LLC for the 36 acres should be included in the transaction.

Tony Olenichak
Program Manager
Water District #1
208-525-7171

From: Case, Morgan
Sent: Tuesday, November 05, 2013 5:13 AM

To: Olenichak, Tony
Subject: South Leigh Creek Water Transactions

Tony,

As you are aware, Friends of the Teton River has been developing water transactions in the Teton River Basin in partnership with the IWRB. Sarah Rupp will be presenting two proposed transactions on South Leigh Creek to the IWRB Streamflow Enhancement and Minimum Stream Flow Committee on November 18th. As a local expert on water administration and delivery in the Upper Snake, I would like to request your opinion on the proposed transactions. I believe that Sarah spoke to you of the transactions in detail, but to refresh your memory...

South Leigh Creek Burr - A five-year lease/rental of 0.11 cfs of water rights irrigating 5 acres.

South Leigh Creek Osagia - A one-year agreement not to divert 0.74 cfs of water rights irrigating 36 acres.

Thank you for your help.

Morgan Case