

LEMHI BASIN SETTLEMENT WORKING GROUP MEETING AGENDA

August 12, 2020

1:30 PM to 5:00 PM

Idaho Department of Fish and Game Conference Room
99 Highway 93
Salmon, Idaho

1:30 – 1:45 PM	Introduction	Clive Strong Norm Semanko
1:45 – 2:30 PM	Wild & Scenic Rivers Subordination Accounting	Scott Storms
2:30 – 3:00 PM	Upper Lemhi Flushing Flow Concept	Tom Curet
3:00 – 3:45 PM	Overview of Upper Lemhi Water Development and Administration	Clive Strong Norm Semanko
3:45 – 5:00 PM	Discussion of Competing Water Supply Needs	Group
4:45 – 5:00 PM	Set Next Meeting Date and Agenda	Group
5:00 PM	Adjourn	



Idaho Department of Water Resources Salmon River Wild and Scenic Subordination Tracking Process

By Scott Storms – Water Resource Agent, Senior



Salmon River Wild and Scenic Decree and Stipulated Agreement

During the summer of 2004, the State of Idaho, the United States of America, and other interested parties signed a stipulation for settlement of objections to instream federal reserved water rights claimed pursuant to the Wild and Scenic Rivers Act (The Wild & Scenic Agreement.) Under the Wild & Scenic Agreement, the parties agreed to recognize federal reserved instream water rights on the Main Salmon, Middle Fork Salmon, Rapid, Selway, Lochsa, and Middle Fork Clearwater Wild & Scenic Rivers. The parties developed recommendations to the Snake River Basin Adjudication (SRBA) Court for those water rights and attached them to the agreement as Attachments 1 through 6. *

*IDWR Application Processing Administration Memo #70

Salmon River Wild and Scenic Decree and Stipulated Agreement

The parties to the Wild & Scenic Agreement stipulated that the Wild & Scenic Water Rights would be subordinate to existing appropriations of water and some future appropriations of water and anticipated that IDWR would perform detailed administration of existing and new water rights following execution of the agreement and issuance of the recommended partial decrees by the SRBA Court.*

*IDWR Application Processing Administration Memo #70

Salmon River Wild and Scenic Decree and Stipulated Agreement

All of the Wild & Scenic Water Rights are subordinate to eight classes of junior water rights and uses:

1. All water right claims filed in the SRBA as of September 1, 2003, if ultimately decreed in the SRBA.
2. All water right licenses, permits, and applications bearing priority dates earlier than September 1, 2003, for which proof of beneficial use was due after November 19, 1987.
3. Domestic use as defined by Idaho Code § 42-111(1)(a) and (b) and consistent with Idaho Code § 42-111(2) and (3). Multiple ownership subdivisions do not enjoy the benefits of subordination as domestic uses unless the use meets the diversion rate and volume limitations set forth in Idaho Code § 42-111(1)(b).
4. De minimis stockwater uses as defined by Idaho Code § 42-111 and Idaho Code § 42-1401A(11).*

*IDWR Application Processing Administration Memo #70

Salmon River Wild and Scenic Decree and Stipulated Agreement

All of the Wild & Scenic Water Rights are subordinate to eight classes of junior water rights and uses

5. Nonconsumptive water rights.
6. Water rights of the United States.
7. Instream flows.
8. Replacement water rights as defined in the partial decrees.*

*IDWR Application Processing Administration Memo #70

Salmon River Wild and Scenic Decree and Stipulated Agreement

Section 10.b.(6)(A) of the Salmon River Wild and Scenic decree provides that the federal reserve right will be subordinate to future development that would not otherwise enjoy the benefits of subordination under other provisions of the decree.

Salmon River Wild and Scenic Decree and Stipulated Agreement

Provisions under section 10.b.(6)(A) includes:

- (i) a total combined diversion of 150 cfs (including not more than 5,000 acres of irrigation with a maximum diversion rate of 0.02 cfs/acre), when the mean daily discharge at the Shoup gage is <1,280 cfs.
- (ii) an additional diversion of 225 cfs (including up to an additional 10,000 acres of irrigation with a maximum diversion rate of 0.02 cfs/acre) when the mean daily discharge at the Shoup gage is \geq 1,280 cfs. *

*Partial Decree for Federal Reserve Rights 75-13316 and 77-11941, Salmon Wild and Scenic River

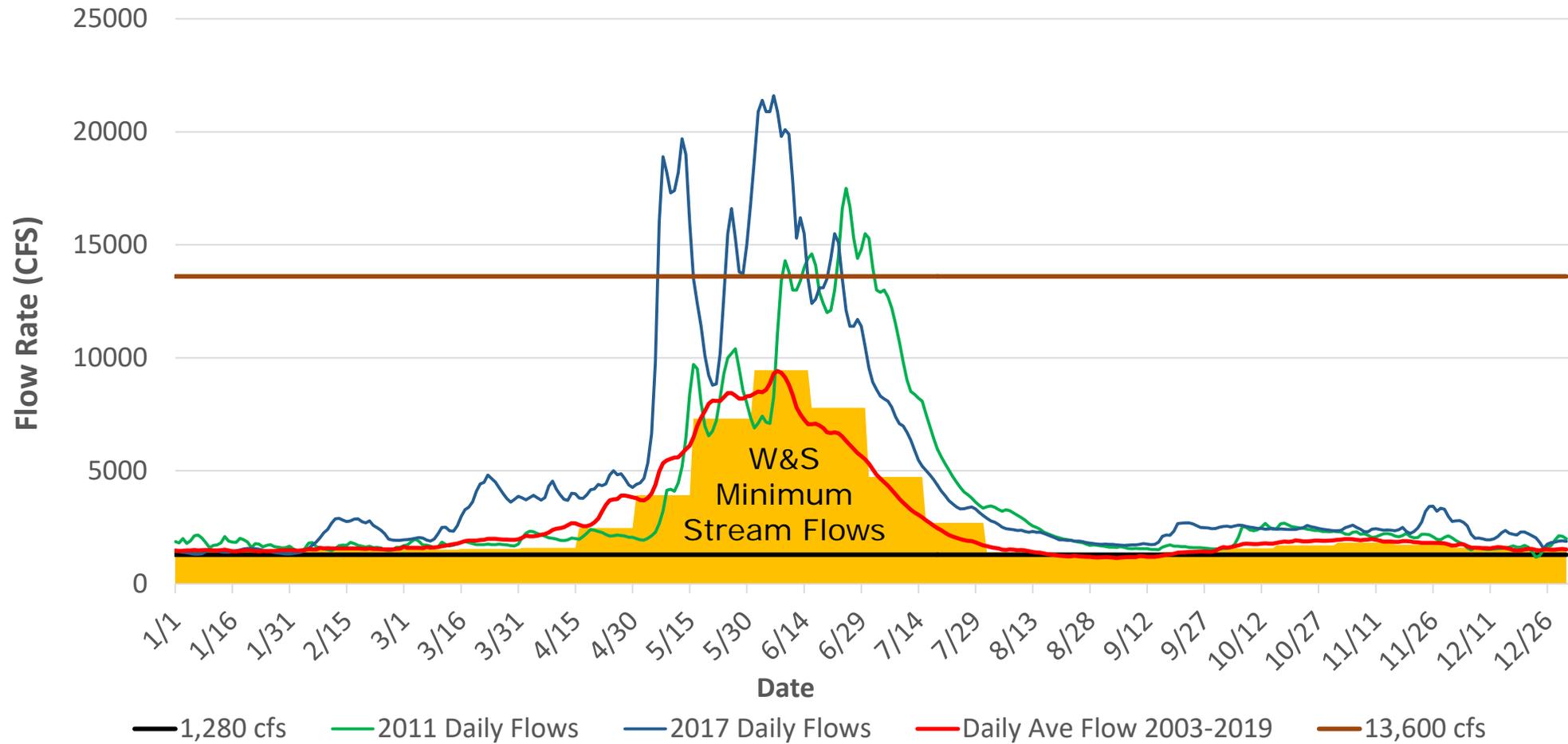
Salmon River Wild and Scenic Decree and Stipulated Agreement

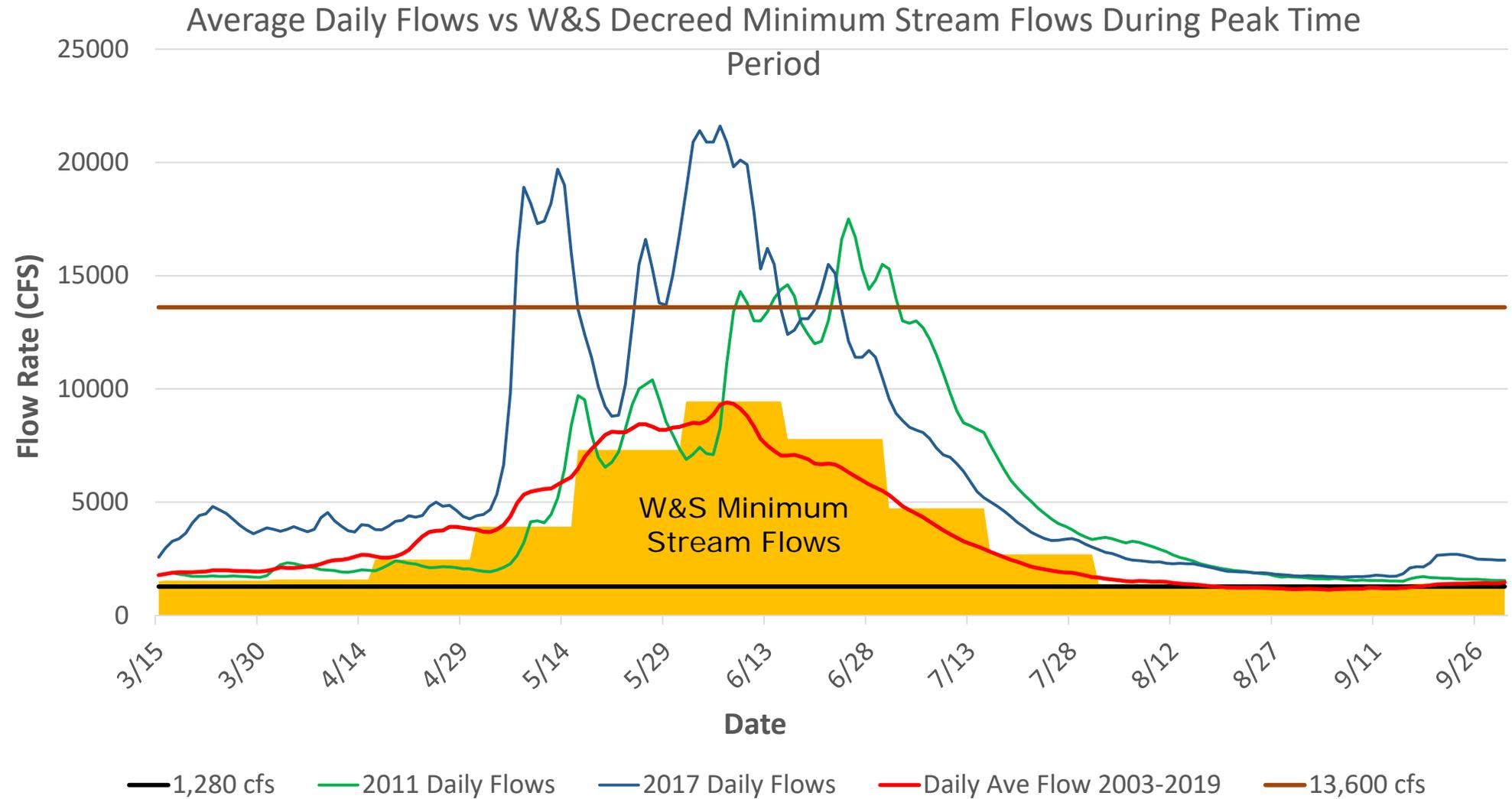
Future water rights which do not fit into any of the outlined categories and do not enjoy benefits of subordination provisions, will be subject to curtailment based on the bi-weekly graduated minimum stream flows outlined in section 3.a. of the Salmon River Wild and Scenic Decree, as well as during times when flows are between 13,600 and 28,400 cfs per section 3.b.

Salmon River Wild and Scenic Decree and Stipulated Agreement

Period of Use	Discharge (cfs)	Period of Use	Discharge (cfs)
January 1-15	1440	July 1-15	4730
January 16-31	1450	July 16-31	2700
February 1-15	1500	August 1-15	1390
February 16-28(29)	1550	August 16-31	1240
March 1-15	1510	September 1-15	1200
March 16-31	1540	September 16-30	1400
April 1-15	1590	October 1-15	1570
April 16-30	2470	October 16-31	1700
May 1-15	3920	November 1-15	1820
May 16-31	7310	November 16-30	1730
June 1-15	9450	December 1-15	1600
June 16-30	7790	December 16-31	1510

Average Daily Flows vs W&S Decreed Minimum Stream Flows





Salmon River Wild and Scenic Decree and Stipulated Agreement

Section 3 of the Wild and Scenic Stipulated Agreement describes administration of subordination provisions and assigns the following duties to IDWR:

- Accounting of diversion and acreage amounts under future use subordination provisions 10.b.(6) of the Main Salmon River decree (Sec. 3.a.)
- Diversion adjustment for forfeiture or abandonment if rights enjoying the benefit of subordination provisions 10.b.(6) of the Main Salmon River decree (Sec. 3.c)
- Maintain a publicly available water right database of the accounting outlined above (Sec. 3.d.)
- Outlines what information, in the normal course of application processing, must be identified and available for each application, permit or right that enjoys the benefit of subordination, including provisions found in 10.b.(6) of the Main Salmon River decree (Sec. 3.e.(4))

Water Right Processing – Wild and Scenic Data Entry, Tracking, and Reporting

WildScenic

File Edit References ToolBox Help

Basin Sequence: 74 14299 Go Save Changes Run Detail Report Summary Report Battle Creek Run Detail Report Owyhee Summary Report Owyhee

Wild and Scenic Data WildScenicOwyhe

Basin	Sequence	Suffix	Draft	Status	RightID	Process	RiverName	Debited Acres	Debited Rate	Reason not Subject to Curtailment	Municipal Connection > 4"
74	14299		N	Active	408751	Water Right	Salmon River	10.0	0.20	Benefiting from Subordination Provisions	

Domain:DWRPROD Server:DWRDB\INTRANET\PROD Version: 1.0.0

Salmon River

Basin	Sequence	Suffix	Basis	Status	Right ID	Priority Date	Rate (cfs)	Volume (af)	Source	Water Use(s)	Owner(s)	Process	App ID	Wild & Scenic River	Reason Not Subject to Curtailment	Municipal Connections > Four Inches	Debited Acres	Credited Acres	Debited Rate	Credited Rate
74	15066		License	Active	657983	9/22/2003	0.73	356.2	HAYDEN	FISH	STATE OF IDAHO	Water Right		Salmon River	Nonconsumptive	0	0	0	0	
74	15067		License	Active	659751	9/22/2003	0.67	286	HAYDEN	FISH	STATE OF IDAHO	Water Right		Salmon River	Nonconsumptive	0	0	0	0	
74	15070		License	Active	659764	9/22/2003	0.75	320	HAYDEN	FISH	STATE OF IDAHO	Water Right		Salmon River	Nonconsumptive	0	0	0	0	
73	11965		License	Active	619828	10/6/2003	0.02	6	SPRING	STOCKWATER, WILDLIFE	US DEPT OF INTERIOR	Water Right		Salmon River	United States Right	0	0	0	0	
75	7596		License	Active	674245	10/16/2003		1.3	SPRING	RECREATION STORAGE	CAROLYN J ROBERSON, DOROTHY SHARP, HOMER GENE BROGDEN, LEE A MARY B ROYER, THEODORE J ROYER	Water Right		Salmon River	Storage	0	0	0	0	
75	14143			Active	575399	11/24/2003	0.04		UNNAMED STREAM	DOMESTIC		Water Permit		Salmon River	Domestic Use	0	0	0	0	
75	14258			Active	601488	2/20/2004	0.02	1	SALMON RIVER	STOCKWATER, STOCKWATER STORAGE, WILDLIFE, WILDLIFE STOCKWATER	US DEPT OF INTERIOR	Water Permit		Salmon River	United States Right	0	0	0	0	
74	15211		License	Active	649461	2/23/2004	0.02		SPRING	STOCKWATER	UNITED STATES OF AMERICA	Water Right		Salmon River	United States Right	0	0	0	0	
74	15445		License	Active	619776	3/31/2004	0.02	3.1	SPRING	STOCKWATER, WILDLIFE	US DEPT OF INTERIOR	Water Right		Salmon River	United States Right	0	0	0	0	
75	14153		License	Active	619854	3/31/2004	0.02	1.6	SPRING	WILDLIFE	US DEPT OF INTERIOR	Water Right		Salmon River	United States Right	0	0	0	0	
74	15435		License	Active	619771	4/12/2004	0.02	3.1	SPRING	STOCKWATER, WILDLIFE	US DEPT OF INTERIOR	Water Right		Salmon River	United States Right	0	0	0	0	
74	15436		License	Active	619802	4/12/2004	0.02	1	SPRING	WILDLIFE DIVERSION TO STORAGE, STOCKWATER STORAGE, WILDLIFE STORAGE	US DEPT OF INTERIOR	Water Right		Salmon River	United States Right	0	0	0	0	
75	14150		License	Active	619901	4/12/2004	0.02	1	SPRING	STOCKWATER, WILDLIFE	US DEPT OF INTERIOR	Water Right		Salmon River	United States Right	0	0	0	0	
75	14151		License	Active	619844	4/12/2004	0.02	1	SPRING	STOCKWATER, WILDLIFE	US DEPT OF INTERIOR	Water Right		Salmon River	United States Right	0	0	0	0	

	A	B	C	D	E	F	G
1	Wild and Scenic Summary Report						
2	Wild & Scenic River	Future Use Subordination Account -- Acres	Acres Used	Acres Remaining	Future Use Subordination Account -- Rate	Rate Used	Rate Remaining
3	Lochsá River	500	60.6	439.4	40	1.31	38.69
4	Middle Fork Clearwater River	500	10.5	489.5	40	0.61	39.39
5	Middle Fork Salmon River	2000	2	1998	60	0.04	59.96
6	Rapid River	300	0	300	10	32	-22
7	Salmon River	5000	4030.5	969.5	150	96.09	53.91
8	Selway River	500	0	500	40	0	40
9	St. Joe River	0	0	0	5	0	5

Application Processing – Newly received Application

- Application received by IDWR personnel for initial screening
 - Screened for required information as outlined in Water Appropriation Rule 35*
 - Required application sections completed
 - Application signed
 - Map included
 - Correct fees enclosed
 - Application returned if incomplete, along with letter explaining what's missing or;
 - If application is complete, initial data entry conducted:
 - Contact information
 - WR elements applied for
 - **Status set to Active**
 - **Draft status set to No**
 - Assigned to Water Right Agent for full review and assessment

*IDAPA 37.03.08.035.03

Application Processing – Newly received Application

- Water Right Agent
 - Send Local Public Interest letter to applicant
 - **Data enter Wild and Scenic information in W&S database**
 - Initiate contact with applicant regarding questions, clarifications or additional information
 - Review and update all data entry in IDWR water right database
 - Send reviewed application on for public notice (advertising)



WR - AdHoc Work Application... (Application)Water Right # 75 14989

Select Type: **Application** | Applicant / Owners | Source & POD | Water Use & Quantity | Place Of Use | Application Comments | Reports

Miscellaneous Information

Application ID: 84201 | Application Received Date: 7/2/2020 | Mitigation Plan?: No

Application Type: New Appropriation | Proposed Priority Date: 7/2/2020 | Swan Falls Trust: [Empty]

Region Name: Eastern | Protest Deadline Date: Select a date | DLE Application Number: [Empty]

Status: Active | Carey Act Application Number: [Empty]

Draft: No | Moratorium Hold

Application Remarks

Springs always sink well before reaching Panther Creek.

Time Required

Time Required from Completion of work and application of water to proposed beneficial use in 1 Years

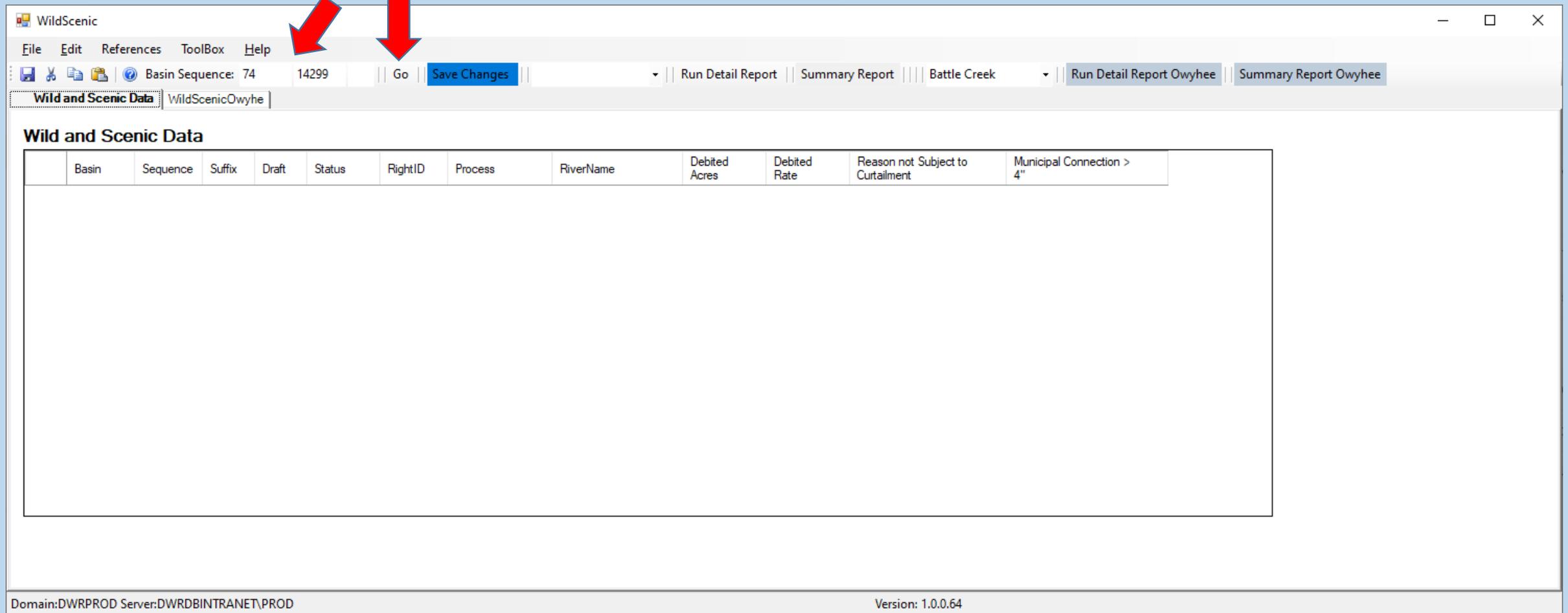
Receipt Detail

Receipt Number: C108995 | Add | Remove

Application Questions- Complete for computer generated application only

Que No	Que Part	Question Text	Answer
2	a1	Send all correspondence for this application to the representative, not to the applicant.	<input type="checkbox"/>
2	a2	Send original correspondence to the applicant and copies to the representative.	<input type="checkbox"/>
2	b1	The representative may submit information for the applicant but is not authorized to sign for the applicant.	<input type="checkbox"/>
2	b2	The representative is authorized to sign for the applicant. Attach a Power of Attorney or equivalent documentation.	<input type="checkbox"/>
8	e	Describe other proposed water uses.	[Empty]
7	e3	If an existing well, who was the well drilled for?	[Empty]
7	a4	Drilling Permit No.	[Empty]

Server: workflow | DataSource: DWRDBINTRANET\PROD | DataBase: Enterprise | Version: 1.0.0.316



The screenshot shows the WildScenic application window. The title bar reads "WildScenic". The menu bar includes "File", "Edit", "References", "ToolBox", and "Help". Two red arrows point to the "File" and "References" menus. The status bar shows "Basin Sequence: 74 14299" and a "Go" button. The main toolbar contains "Save Changes", "Run Detail Report", "Summary Report", "Battle Creek", "Run Detail Report Owyhee", and "Summary Report Owyhee". A tab labeled "Wild and Scenic Data" is active, showing a table with the following columns: Basin, Sequence, Suffix, Draft, Status, RightID, Process, RiverName, Debited Acres, Debited Rate, Reason not Subject to Curtailment, and Municipal Connection > 4". The table is currently empty. The footer displays "Domain:DWRPROD Server:DWRDBINTRANET\PROD" and "Version: 1.0.0.64".

WildScenic

File Edit References ToolBox Help

Basin Sequence: 74 14299 Go Save Changes Run Detail Report Summary Report Battle Creek Run Detail Report Owyhee Summary Report Owyhee

Wild and Scenic Data WildScenicOwyhe

Wild and Scenic Data

	Basin	Sequence	Suffix	Draft	Status	RightID	Process	RiverName	Debited Acres	Debited Rate	Reason not Subject to Curtailment	Municipal Connection >
▶	74	14299		N	Active	408751	Water Right	Salmon River	10.0	0.20	Benefiting from Subordination Provision	4"

Domain:DWRPROD Server:DWRDBINTRANET,PROD Version: 1.0.0.64

Reasons Not Subject to Curtailment

The focus of the IDWR's Wild and Scenic database entry and reporting system is to track water rights established after the Stipulation Agreement Effective Date of September 1, 2003, that enjoy some provision of subordination as outlined in section 10.b. of the Salmon Wild and Scenic River decree

Reasons Not Subject to Curtailment

Dropdown selections in the data entry tool under *Reason not Subject to Curtailment* are all directly related to one of the provisions outlined in section 10.b.as follows:

- De Minimis Stockwater – Paragraph (4)
- Domestic Use – Paragraph (3)
- Instream Flow – Paragraph (6)(C)
- Municipality – Paragraph (5)
- Nonconsumptive – Paragraph (6)(C)
- Replacement - Paragraph (6)(C)
- Storage – Paragraph (6)(A)(iii) for incidental, 24 hour fill storage
- **Benefitting from Subordination Provisions – Paragraph (6)(A)(i) & (ii)**
- United States Right – Paragraph (6)(C)

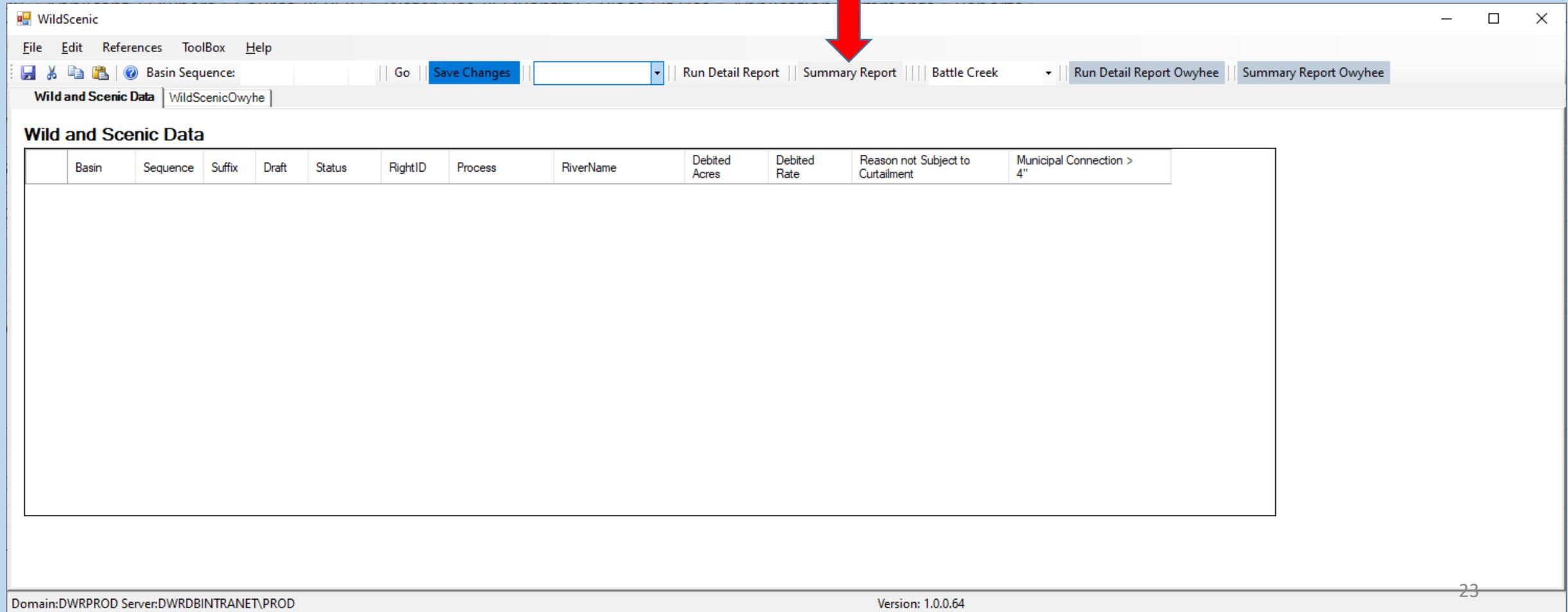
Permit and License Processing

- Water Right Agent
 - Processing agent's duty to update status of latest processing step and any rate and acreage changes in the W&S database at every stage of water right processing (application, permit, license).
 - Processing agent is responsible for updating database whenever changes occur during application and permitting process
 - Typically one agent handles processing from application to permit decision
 - W&S database only maintains one line of data for every water right number and will only report from process where status is Active, Draft: No.

Permit and License Processing

- If the status of a water right process is anything but “Active” it will not report in the W&S database and associated rate and acres will automatically be removed.
 - Examples
 - Application Status – Withdrawn, Denied, Rejected
 - Permit Status – Lapsed, Relinquished
 - Water Right Status – Abandoned, Forfeited
 - Any Water Right Process - Closed

Wild and Scenic Database Reporting

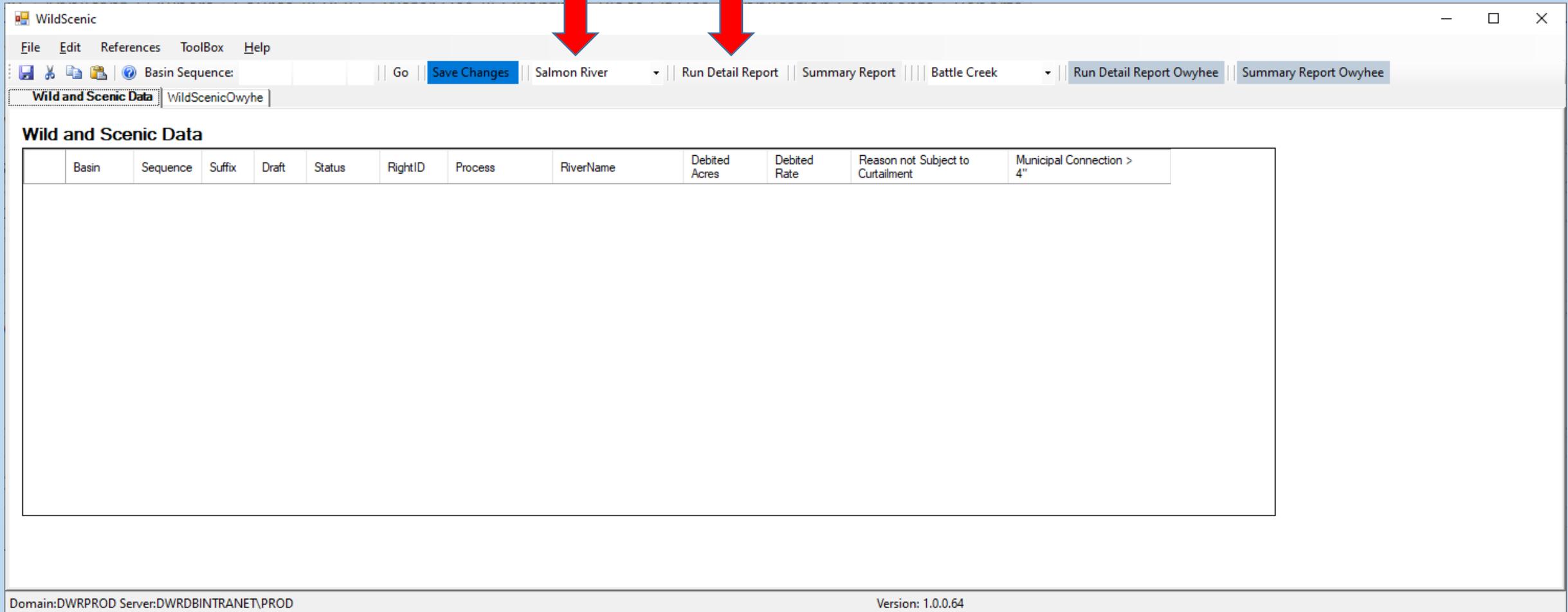


The screenshot shows the WildScenic application window. The menu bar includes File, Edit, References, ToolBox, and Help. The toolbar contains icons for file operations and a 'Basin Sequence:' dropdown. The main toolbar has buttons for 'Go', 'Save Changes', 'Run Detail Report', and 'Summary Report'. A red arrow points to the 'Summary Report' button. Below the toolbar, there are tabs for 'Wild and Scenic Data' and 'WildScenicOwyhe'. The main area displays a table titled 'Wild and Scenic Data' with the following columns: Basin, Sequence, Suffix, Draft, Status, RightID, Process, RiverName, Debited Acres, Debited Rate, Reason not Subject to Curtailment, and Municipal Connection > 4". The table is currently empty.

Basin	Sequence	Suffix	Draft	Status	RightID	Process	RiverName	Debited Acres	Debited Rate	Reason not Subject to Curtailment	Municipal Connection > 4"
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Domain:DWRPROD Server:DWRDBINTRANET\PROD Version: 1.0.0.64

	A	B			E		
1	Wild and Scenic Summary Report						
2	Wild & Scenic River	Future Use Subordination Account -- Acres	Acres Used	Acres Remaining	Future Use Subordination Account -- Rate	Rate Used	Rate Remaining
3	Lochsa River	500	60.6	439.4	40	1.31	38.69
4	Middle Fork Clearwater River	500	10.5	489.5	40	0.61	39.39
5	Middle Fork Salmon River	2000	2	1998	60	0.04	59.96
6	Rapid River	300	0	300	10	32	-22
7	Salmon River	5000	4030.5	969.5	150	96.09	53.91
8	Selway River	500	0	500	40	0	40
9	St. Joe River	0	0	0	5	0	5



WildScenic

File Edit References ToolBox Help

Basin Sequence: || Go || Save Changes || Salmon River || Run Detail Report || Summary Report || Battle Creek || Run Detail Report Owyhee || Summary Report Owyhee

Wild and Scenic Data WildScenicOwyhe

Wild and Scenic Data

Basin	Sequence	Suffix	Draft	Status	RightID	Process	RiverName	Debited Acres	Debited Rate	Reason not Subject to Curtailment	Municipal Connection > 4"
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Domain:DWRPROD Server:DWRDBINTRANET\PROD Version: 1.0.0.64

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U
1	Salmon River																				
2	Basin	Sequence	Suffix	Basis	Status	Right ID	Priority Date	Rate {cfs}	Volume {af}	Source	Water Use(s)	Owner(s)	Process	App ID	Wild & Scenic River	Reason Not Subject to Curtailment	Municipal Connections > Four Inches	Debited Acres	Credited Acres	Debited Rate	Credited Rate
21	74	15066		License	Active	657983	9/22/2003	0.73	356.2	HAYDEN	FISH	STATE OF IDAHO	Water Right		Salmon River	Nonconsumptive	0	0		0	
22	74	15067		License	Active	659751	9/22/2003	0.67	286	HAYDEN	FISH	STATE OF IDAHO	Water Right		Salmon River	Nonconsumptive	0	0		0	
23	74	15070		License	Active	659764	9/22/2003	0.75	320	HAYDEN	FISH	STATE OF IDAHO	Water Right		Salmon River	Nonconsumptive	0	0		0	
24	73	11965		License	Active	619828	10/6/2003	0.02	6	SPRING	STOCKWATER, WILDLIFE	US DEPT OF INTERIOR	Water Right		Salmon River	United States Right	0	0		0	
25	75	7596		License	Active	674245	10/16/2003		1.3	SPRING	RECREATION STORAGE	CAROLYN J ROBERSON, DOROTHY SHARP, HOMER GENE BROGDEN, LEE A MARY B ROYER, THEODORE J ROYER	Water Right		Salmon River	Storage	0	0		0	
26	75	14143			Active	575399	11/24/2003	0.04		UNNAMED STREAM	DOMESTIC	MARY B ROYER, THEODORE J ROYER	Water Permit		Salmon River	Domestic Use	0	0		0	
27	75	14258			Active	601488	2/20/2004	0.02	1	SALMON RIVER	STOCKWATER, STOCKWATER STORAGE, WILDLIFE, WILDLIFE STOCKWATER	US DEPT OF INTERIOR	Water Permit		Salmon River	United States Right	0	0		0	
28	74	15211		License	Active	649461	2/23/2004	0.02		SPRING	STOCKWATER	UNITED STATES OF AMERICA	Water Right		Salmon River	United States Right	0	0		0	
29	74	15445		License	Active	619776	3/31/2004	0.02	3.1	SPRING	STOCKWATER, WILDLIFE	US DEPT OF INTERIOR	Water Right		Salmon River	United States Right	0	0		0	
30	75	14153		License	Active	619854	3/31/2004	0.02	1.6	SPRING	WILDLIFE	US DEPT OF INTERIOR	Water Right		Salmon River	United States Right	0	0		0	
31	74	15435		License	Active	619771	4/12/2004	0.02	3.1	SPRING	STOCKWATER, WILDLIFE	US DEPT OF INTERIOR	Water Right		Salmon River	United States Right	0	0		0	
32	74	15436		License	Active	619802	4/12/2004	0.02	1	SPRING	DIVERSION TO STORAGE, STOCKWATER STORAGE, WILDLIFE STORAGE	US DEPT OF INTERIOR	Water Right		Salmon River	United States Right	0	0		0	
33	75	14150		License	Active	619901	4/12/2004	0.02	1	SPRING	STOCKWATER, WILDLIFE	US DEPT OF INTERIOR	Water Right		Salmon River	United States Right	0	0		0	
34	75	14151		License	Active	619844	4/12/2004	0.02	1	SPRING	STOCKWATER, WILDLIFE	US DEPT OF INTERIOR	Water Right		Salmon River	United States Right	0	0		0	
35	75	14152		License	Active	619861	4/12/2004	0.02	1	SPRING	WILDLIFE	US DEPT OF INTERIOR	Water Right		Salmon River	United States Right	0	0		0	
36	75	14156		License	Active	619871	5/25/2004	0.02	5.3	SPRING	WILDLIFE	US DEPT OF INTERIOR	Water Right		Salmon River	United States Right	0	0		0	
37	75	14166		License	Active	648914	5/28/2004	0.02	0.3	GROUND WATER	DOMESTIC	UNITED STATES OF AMERICA	Water Right		Salmon River	United States Right	0	0		0	
38	75	14158		Decreed	Active	603525	6/4/2004	0.04		GROUND WATER	DOMESTIC, STOCKWATER	CHARLES A MOZZER, JUDY L LLOYD, ROGER P DOUBLE BARREL MANAGEMENT L P, JACK P JAKOVAC	Water Right		Salmon River	Domestic Use	0	0		0	
39	74	15449		License	Active	678168	6/9/2004	0.08		SPRING	IRRIGATION, STOCKWATER	US DEPT OF INTERIOR	Water Right		Salmon River	Benefiting from Subordination Provisions	0	2.8		0.08	
40	74	15450		License	Active	657118	8/1/2004	0.02	8	NEGRO GREEN GROUND WATER	STOCKWATER, WILDLIFE	US DEPT OF INTERIOR	Water Right		Salmon River	United States Right	0	0		0	
41	74	15693		Decreed	Active	610302	9/1/2004	0.04		GROUND WATER	DOMESTIC	ALOHA PEPPER, DONALD PEPPER, EDDIE B HAMILTON, LORRAINE M HAMILTON	Water Right		Salmon River	Domestic Use	0	0		0	

IDAHO Department of Water Resources

ENHANCED BY Google



- Water Rights**
- Wells
- Streams/Dams/Floods
- Forms
- Water Data
- Maps/Spatial Data
- Legal Actions
- Water Resource Board

- About Water Rights
 - Adjudication
 - Water Districts
 - Water Measurement Districts
 - Irrigation Organizations
 - Groundwater Districts
 - Groundwater Management Areas (GWMAs)
 - Groundwater Management Districts (GWMs)
 - Critical Groundwater Areas (CGWAs)
 - Aquifer Recharge Districts (ARDs)
 - Compliance & Enforcement
- Search Water Rights
 - Map Search
 - Water Right Transfers
 - File a NIA Claim
 - Irrigation Organizations Map
 - Irrigation Rights Finder Maps
 - Federal Wild & Scenic Rivers Tributaries Water Rights**
 - Water Supply Bank
 - Certified Water Right Examiners
-

Guidelines for wearing masks and observing social distancing for an appointment.

Map & GIS Data Hub

Explore and frequently-requested maps, or view our complete map collection.

Accessed through the Open Data platform, or explore about our complete data inventory.

[Explore Map & GIS Data Hub](#)

Research Hub

Water right records, new water right applications, points of diversion, riverflow data, and more.

[Explore Research Hub](#)

Clearwater	 Lochsa River	 Clearwater, Salmon, & St. Joe Summary Report
Clearwater	 Middle Fork Clearwater River	 Clearwater, Salmon, & St. Joe Summary Report
Owyhee	 Battle Creek	 Owyhee Summary Report
Owyhee	 Big Jacks Creek	 Owyhee Summary Report
Owyhee	 Bruneau River	 Owyhee Summary Report
Owyhee	 Cottonwood Creek	 Owyhee Summary Report
Owyhee	 Deep Creek	 Owyhee Summary Report
Owyhee	 Dickshooter Creek	 Owyhee Summary Report
Owyhee	 Duncan Creek	 Owyhee Summary Report
Owyhee	 Jarbidge River	 Owyhee Summary Report
Owyhee	 Little Jacks Creek	 Owyhee Summary Report
Owyhee	 North Fork Owyhee River	 Owyhee Summary Report
Owyhee	 Owyhee River	 Owyhee Summary Report
Owyhee	 Red Canyon	 Owyhee Summary Report
Owyhee	 Sheep Creek	 Owyhee Summary Report
Owyhee	 South Fork Owyhee River	 Owyhee Summary Report
Owyhee	 West Fork Bruneau River	 Owyhee Summary Report
Owyhee	 Wickahoney Creek	 Owyhee Summary Report
Salmon	 Middle Fork Salmon River	 Clearwater, Salmon, & St. Joe Summary Report
Salmon	 Rapid River	 Clearwater, Salmon, & St. Joe Summary Report
Salmon	 Salmon River	 Clearwater, Salmon, & St. Joe Summary Report
Salmon	 Selway River	 Clearwater, Salmon, & St. Joe Summary Report
St. Joe	 St. Joe River	 Clearwater, Salmon, & St. Joe Summary Report

Showing 1 to 23 of 23 entries

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Final Points

- Current debited rate and acres reported in the tracking sheet are only related to the "*Carve Out*" acres and rate available through paragraph (6)(A)(i) – 5,000 acres and 150 cfs.
- The W&S data entry process must be completed by agents at every step of WR processing (application, permit, license, and transfers)
- Database only maintains one rate and acres per water right number
- Only the water right process with status "Active, Draft: No" will be listed in report.

Questions????

**LEGAL PRINCIPLES APPLICABLE
TO THE ALLOCATION AND ADMINISTRATION OF LEMHI HIGH FLOWS***

ISSUE: Allocation of high flows for future development, ensuring protection of historic use of high flows for existing irrigated acres and ensuring fishery flows in streams tributary to the Lemhi River. Primary focus areas are Big and Little Timber, Big Eight Mile, Mill, and Eighteen Mile Creeks.

BINDING (JUDICIAL AND STATUTORY) LEGAL PRINCIPLES:

1. **High flows are unappropriated flows.** *Memorandum Decision and Order on Challenge, Subcase 74-15051, In re SRBA Case No. 39576 at 25 (January 3, 2012)* (“Since the use of high flow water does not create a water right flows are therefore unappropriated water”).
2. **Lemhi Decree findings are binding on all water users in the basin.** “[I]t has already been judicially determined in a previous court proceeding that the high flow general provision is necessary for the efficient administration of water rights. Since the Lemhi Adjudication was a general adjudication those findings are binding on all water users within the basin at least as to pre-decree conditions.” *Memorandum Decision and Order on Challenge, Subcase 74-15051, In re SRBA Case No. 39576 at 27.*
3. **High flows are subordinate to existing and future water rights.** “[T]he ‘present administration’ of high flow water both pursuant to the Lemhi Decree and as a matter of law necessarily includes the limitation that high flow use is subordinate to future and existing water rights.” *Memorandum Decision and Order on Challenge, Subcase 74-15051, In re SRBA Case No. 39576 at 28.*
4. **High flow general provision does not create a water right.** The SRBA high flow general provision does not create a water right. *Memorandum Decision and Order on Challenge, Subcase 74-15051, In re SRBA Case No. 39576 at 9-10, 25.*
5. **Partial Decree 74- 14993 is subordinated to the high flow general provision.** Fifteen (15) cfs of the thirty-five (35) cfs [of the minimum stream flow water right at the L-6 diversion] is “subordinated to all diversions, including high water or flood water authorized under the Lemhi river basin decree.” (Lemhi County Case No. 4948).” Idaho Code § 42-1506(1).
6. **Twenty-seven tributaries to the Lemhi River are decreed as separate streams for purpose of administration.** Existing and future state granted water rights on these streams “are not considered to be subject to prior downstream rights on

* This paper is authored jointly by Co-Facilitators Clive Strong and Norm Semanko.

the Lemhi River proper.” *SRBA GP 74*. Big and Little Timber, Big Eight Mile, and Mill Creeks are decreed as separate streams. Eighteen Mile is “considered tributary to the Lemhi River for purposes of administration.” *SRBA GP 74*.

7. **Separate stream administration general provision does not apply to Wild and Scenic Rivers federal reserved water rights.** “[A]ll new water rights, [including those on separately administered streams] that are hydraulically connected with the Wild and Scenic Rivers federal reserved water right will be administered as a single source.” *Wild & Scenic Agreement*, p. 3, ¶2.a; *Memorandum Decision and Order on Challenge*, Subcase 74-15051 at 28.
8. **High flows in excess of amount required to satisfy Wild and Scenic Rivers federal reserved water rights are subject to appropriation.**
 - a. Partial decrees 75-13316 and 77-11941 do not prohibit the appropriation, diversion, and use of water within the Lemhi River basin when 1) the stream flow at the Shoup gage exceeds the flow amount listed in Section 3.a. of the partial decree, and 2) the flow at the Shoup gage is less than 13,600 cfs (as adjusted by upstream junior depletions, including depletions from water rights enjoying subordination under Section 10.b of the partial decree. 75-13316 and 77-11941 Partial Decrees, Section 3.c.
 - b. Partial Decrees 75-13316 and 77-11941 do not prohibit the appropriation, diversion, and use of water within the Lemhi River basin when the stream flow at the Shoup gage exceeds 28,400 cfs. 75-13316 and 77-11941 Partial Decrees, Section 3.b.
9. **Partial Decrees 75-13316 and 77-11941 are subordinated to a specified amount of future development.** Partial Decrees 75-13316 and 77-11941 are subordinated to applications for water rights filed after September 3, 1980, 1) with a total combined diversion rate of 150 cfs (including not more than 5,000 acres of irrigation with a maximum diversion rate of 0.02 cfs/acre), when the mean daily discharge at the Shoup gage is less than 1,280 cfs; and, 2) an additional diversion of 225cfs (including up to an additional 10,000 acres of irrigation with a maximum diversion rate of 0.02 cfs/acre) when the mean daily discharge at the Shoup gage is equal to or greater than 1,280 cfs. Partial Decrees 75-13316 and 77-11941, Section 10.b.6.
10. **Minimum Stream Flow Water Rights are established pursuant to Chapter 15, Title 42, Idaho Code.** “[M]inimum stream flow water rights may not be established under the local public interest criterion, and may only be established pursuant to chapter 15, title 42, Idaho Code.” Idaho Code §§ 42-203A(5) and 222(1).

PRECEDENTIAL (BUT NOT NECESSARILY BINDING) PRINCIPLES FROM IDWR ORDERS:

1. **It is not in the local public interest to allow a new appropriation that will result in further dewatering of a stream that would frustrate reconnection efforts.** *In the Matter of Application for Permit to Appropriate Water, Permit No. 74-15613, in the Name of F. James and Paula J. Whittaker* at 8 (May 10, 2011).
2. **It is in the public interest to allow diversion of water during high flow periods when sufficient water is flowing to satisfy the passage requirement of adult anadromous fish.** *In the Matter of Application for Permit to Appropriate Water, Permit No. 74-15613, in the Name of F. James and Paula J. Whittaker* at 8 (May 10, 2011).
3. **Application seeking an unsubordinated right to appropriate high flow is not consistent with the conservation of water resources.** *Final Order Approving in Part and Rejecting in Part Application for Permit, In the Matter of Application for Permit No. 74-16004 in the Name of Allan and/or Betty Percell* at 5 (December 31, 2015). “[I]t is contrary to the conservation of water resources to appropriate the limited supply of water available for new development from the Main Salmon River and its tributaries for . . . supplemental irrigation use . . . when existing irrigation rights already exceed 0.02 cfs per acre and such supplemental irrigation use is already authorized by a general provision. Proposals seeking an unsubordinated application for permit for increased beneficial use on existing acres must first demonstrate efficient use of water through modern irrigation practices before they can be approved.”
4. **“It is consistent with the local public interest to allow water reserved for future appropriation in the Wild and Scenic Decree to be appropriated for irrigation use to supplement an existing water supply when the existing water supply is curtailed and would otherwise require acres to be dried up.”** *Final Order Issuing Permit, In the Matter of Application for Permit No. 74-16008 in the Name of Lynn Herbst and Robin Herbst* at 17 (November 22, 2016).
5. **A supplemental water right may not be used to irrigate acres not previously irrigated.** *Final Order Issuing Permit, In the Matter of Application for Permit No. 74-16008 in the Name of Lynn Herbst and Robin Herbst* at 19 (November 22, 2016).
6. **A supplemental water right is limited to a maximum diversion rate of 0.02 cfs per acre.** *Final Order Issuing Permit, In the Matter of Application for Permit No. 74-16008 in the Name of Lynn Herbst and Robin Herbst* at 19 (November 22, 2016).

7. **Applications for supplemental water rights for existing irrigated acres are entitled to enjoy the benefits of the Section 10.b.6 subordination provisions of Partial Decrees 75-13316 and 77-11941 subject to certain conditions.** *Final Order Issuing Permit, In the Matter of Application for Permit No. 74-16008 in the Name of Lynn Herbst and Robin Herbst* at 6 (November 22, 2016). A supplemental water right may be exercised only when the base right(s) are not available or reasonably sufficient to irrigate the place of use authorized under the base right. *Id.* at 9.
8. **Supplemental water rights count against the subordination cap of partial decree 75-13316 and 77-11941.** Section 10.b(6)(C) of the partial decree states that “replacement water rights shall not be deducted from the subordination amounts identified . . . for future rights.” *Final Order Issuing Permit, In the Matter of Application for Permit No. 74-16008 in the Name of Lynn Herbst and Robin Herbst* at 17 (November 22, 2016). “To be considered a replacement water right . . . iii) the replacement water right cannot be used when water would not be legally and physically available under the original water right.” *Id.* at 18.

PRINCIPLES FROM IDWR ORDER THAT IS NOT FINAL (CURRENTLY ON APPEAL):

1. **The USBR PHABSIM Study is reliable, convincing scientific evidence establishing flow rates necessary to maintain anadromous fishery values.** *In the Matter of Application for Permit No. 74-16187 in the Name of Kurt W. Bird or Janet E. Bird* at 4 (May 21, 2020).
2. **Bypass flows are reasonable conditions for protecting the local public interest.** *In the Matter of Application for Permit No. 74-16187 in the Name of Kurt W. Bird or Janet E. Bird* at 5 (May 21, 2020).
3. **Bypass flows must be supported by technical evidence.** *In the Matter of Application for Permit No. 74-16187 in the Name of Kurt W. Bird or Janet E. Bird* at 6, 31-32 (May 21, 2020).
4. **Bypass flow conditions only affect the proposed water right and are not the equivalent of minimum flow water rights.** *In the Matter of Application for Permit No. 74-16187 in the Name of Kurt W. Bird or Janet E. Bird* at 10-11 (May 21, 2020).
5. **“The Department has a duty to allocate [the subordination protection in partial decrees 75-13316 and 77-11941] in a manner that optimizes the value of the available water supply.”** *In the Matter of Application for Permit No. 74-16187 in the Name of Kurt W. Bird or Janet E. Bird* at 28 (May 21, 2020)(“The Department should only allocate water from the 150 cfs supply (Paragraph 10(b)(6)(A)(i)) to

LEMHI BASIN SETTLEMENT WORK GROUP DOCUMENT (IRE 408 and 507)

water rights that could divert when flow at the Shoup gage is less than 1,280 cfs. . . . Allocating water from the 150 cfs pot to water rights that do not benefit from the additional protection is not consistent with the conservation of water resources within the state of Idaho.)

6. **“It is in the local public interest to reconnect Big Timber Creek to the Lemhi River and to recover fish species listed under the Endangered Species Act”** *In the Matter of Application for Permit No. 74-16187 in the Name of Kurt W. Bird or Janet E. Bird* at 36 (May 21, 2020)(“Therefore, in the absence of certain conditions which would protect the habitat and stream passage of ESA-listed fish species, the proposed permit would be denied.”).

UNRESOLVED LEGAL QUESTIONS:

1. **Who is entitled to divert high flow, and when and where may it be diverted are disputed legal questions.** IDWR declined to define the Lemhi high flow practice stating that is a question “of administration and not appropriate for resolution in a water right application proceeding.” *In the Matter of Application for Permit No. 74-16187 in the Name of Kurt W. Bird or Janet E. Bird* at 25 (May 21, 2020).
2. **Authority of the Director to impose a bypass flow condition as part of approval of a water right is a disputed legal question.** There is unresolved tension between the local public interest conditioning authority of IDWR and the limitation in Idaho Code § 42-203A(5) requiring instream flows to be created pursuant to chapter 15, title 42, Idaho Code.

SRBA LEMHI HIGH FLOW GENERAL PROVISION WHITE PAPER*

SRBA LEMHI HIGH FLOW GENERAL PROVISION

“The following general provision shall govern the use of ‘High Flow’ surface water for irrigation use within the Lemhi Basin:

The practice of diverting high flows in the Lemhi Basin, in addition to diverting decreed and future water rights that may be established pursuant to statutory procedures of the State of Idaho, is allowed provided:

- (a) the waters so diverted are applied to beneficial use.
- (b) existing decreed rights and future appropriations of water are first satisfied.”

QUESTIONS REGARDING SRBA LEMHI HIGH FLOW GENERAL PROVISION

While the SRBA decree includes a general provision authorizing the diversion of high flows, the text of the general provision does not define the term “high flow(s),” identify who is entitled to divert high flow, or define where high flows may be applied. Consequently, there are divergent interpretations of the provision.

This White Paper highlights quotes from the Lemhi Adjudication Court ‘s and SRBA District Court’s orders and memorandum decisions that bear on the interpretation of the general provision. Since interpretation of the provision rests with the Idaho Department of Water Resources and the SRBA and Idaho Supreme Court, this Paper draws no conclusions regarding how the Department, or the Courts might interpret the provision.

PROPOSED FINDINGS OF WATER RIGHTS, IN RE GENERAL DETERMINATION OF THE RIGHTS TO THE USE OF THE SURFACE WATERS AND TRIBUTARIES FROM WHATEVER SOURCE OF THE LEMHI RIVER DRAINAGE BASIN, CIVIL NO. 4948 (JANUARY 4, 1983).

1. Lemhi Decree High Flow General Provision:
“The normal irrigation season is from April 1 to November 1 of each year. The practice of diverting water during the pre-irrigation and post-irrigation season as well as diverting the so called ‘high waters or flood waters’ in addition to the quantified rights as described in the recommended decree of water rights (and future rights that may be established pursuant to statutory procedures) is allowed provided:
 - (a) the waters so diverted are applied to a beneficial use.
 - (b) the existing quantified rights (including future appropriations of water) are first satisfied.”

* Prepared jointly by Co-Facilitators Clive Strong and Norm Semanko.

Id. at 7, Conclusion of Law 6.

2. “‘High water’ or ‘flood water’ as used in the Findings of Fact, Conclusions of Law, and Decree is intended to describe a natural flow of ‘water over and above the amounts required to fulfill (1) existing quantified rights as shown in the decree of water rights and (2) any future rights that may be established pursuant to statutory procedures of the State of Idaho.’” *Id.* at 3, definition n.
3. “The Lemhi River Basin presently has almost non-existent storage facilities in which to preserve water for use later in the irrigation season when the flow in surface water sources diminishes. Water users in the basin have diverted flood flows occurring in May and June onto their lands in an effort to ‘hold or reservoir’ the water in the soil in the basin.” *Id.* at 4, Proposed Finding 7.
4. “Water has been diverted and applied to a beneficial use as described in the recommended decree of water rights. In addition, the water users in the Lemhi River Basin have historically diverted the so called ‘high water or flood water’ generally during the months of May and June.” *Id.* at 4, Finding 14.

ORDER ON MOTIONS FOR SUMMARY JUDGMENT, SUBCASE NOS. 74-15051 ET AL., IN RE SRBA CASE NO. 39576 (DECEMBER 23, 2010).

1. “Resolution of high flows issue requires this Court to determine the legal effect of the Lemhi Decree.” *Id.* at 11.
2. “Where the language of a decree or judgment is ambiguous, the court may refer to the circumstances surrounding the making of the judgment in interpreting it and may refer to the pleadings and other parts of the record in the earlier case.” *Id.*
3. “Judge Beebe’s order allowing the use of high flows is elegant in its simplicity and recognized a historical beneficial use of surface water to continue unchanged. To paraphrase the Judge’s finding of fact, diversions of high flow surface water for irrigation within the Basin (generally during the months of May and June) has the effect of augmenting or supplementing stream and river flows during the later portion of the irrigation season.” *Id.* at 12.
4. “In other words, the *Lemhi Decree* established certain irrigation water rights and then, by general provision, allowed an ancillary use of water on the same lands.” *Id.*
5. “A general provision allowing the use of high flows in the Lemhi Basin is much like a firefighting provision but tied to irrigation base rights. For

instance, the use of high flows has no intrinsic value and cannot be transferred apart from the base right.” *Id.*

6. “It would be unreasonable to conclude from the clear language of the *Lemhi Decree* that Judge Beebe contemplated the place of use to be within a digital boundary, as argued by the Lemhi Irrigation District. The places of use must correspond with ‘existing quantified rights.’” *Id.*
7. “Judge Beebe held that the use of high flows is subordinated to ‘existing decreed rights and future appropriations of water’ – period.” *Id.*
8. “The Special Master will recommend to the Presiding Judge that the high flow claims be denied and all valid rights to divert surface water for irrigation use within the Lemhi Basin be governed by the following general provision:
The practice of diverting high flows in the Lemhi Basin during the pre-irrigation and post-irrigation seasons, in addition to diverting decreed and future rights that may be established pursuant to statutory procedures of the State of Idaho, is allowed provided:
 - (a) the waters so diverted are applied to beneficial use.
 - (b) existing decreed rights and future appropriations of water are first satisfied.”

Id. at 14.

SPECIAL MASTER REPORT AND RECOMMENDATION, SUBCASE NOS. 74-15051 ET AL., IN RE SRBA CASE NO. 39576 (JANUARY 14, 2011).

1. “The [Lemhi] Decree established certain irrigation water rights and then, by general provision, allowed an ancillary use of high flows on the same lands.” *Id.* at 1.
2. “The practice of diverting high flows in the Lemhi Basin during the pre-irrigation and post-irrigation seasons, in addition to diverting decreed and future rights that may be established pursuant to statutory procedures of the State of Idaho, is allowed provided:
 - (a) the waters so diverted are applied to beneficial use.
 - (b) existing decreed rights and future appropriations of water are first satisfied.”

Id. at 3.

MEMORANDUM DECISION AND ORDER ON CHALLENGE, SUBCASE 74-15051 ET AL., IN RE SRBA CASE NO. 39576 (JANUARY 3, 2012).

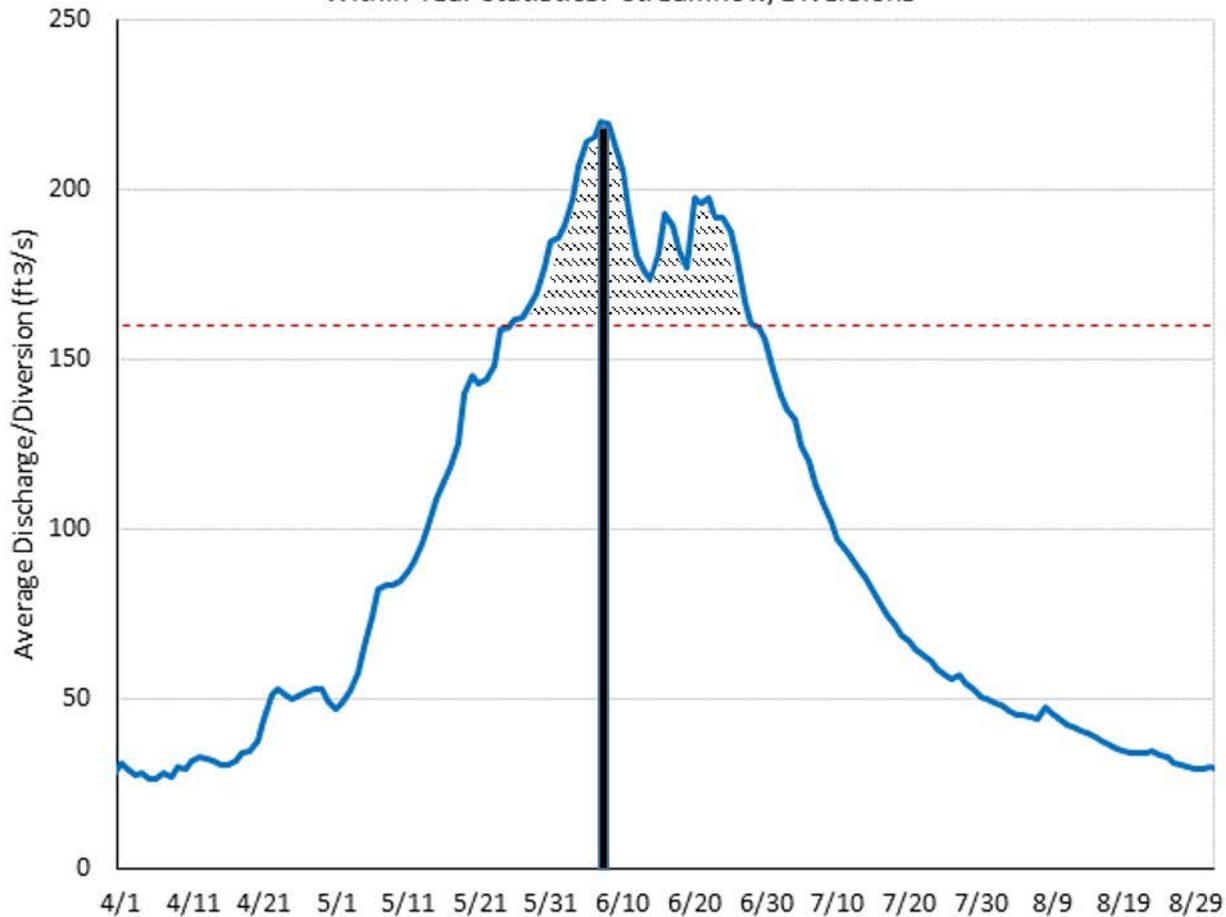
1. “On December 23, 2010, the Special Master issued his Order on Motions for Summary Judgment. The *Order* denied the various *Motions for Summary Judgment* on the grounds, among other things, that the *Lemhi*

Decree recognized a historical beneficial use of surface water to continue unchanged by establishing certain base irrigation water rights and then, by general provision, allowing an ancillary use of high flows on the same lands.” *Id.* at 3.

2. “[T]he Special Master determined to be consistent with the memorialization of the use of high flows by the Lemhi District Court in the *Lemhi Decree*:
The practice of diverting high flows in the Lemhi Basin during the pre-irrigation and post-irrigation seasons, in addition to diverting decreed and future rights that may be established pursuant to statutory procedures of the State of Idaho, is allowed provided:
 - (a) the waters so diverted are applied to beneficial use.
 - (b) existing decreed rights and future appropriations of water are first satisfied.”
Id. at 3-4.
3. “[T]he Special Master determined that the [*Lemhi*] *Decree* recognized a lesser use, stating that it ‘describe[d] high flows as an ‘ancillary use’ of water – not a water right – tied to use on irrigated lands quantified in the *Lemhi Decree* (base rights).” *Id.* at 8.
4. “[A]s a matter of law the high flow general provision does not create a water right, there would be no lawful basis for transferring the high flow use to a storage water right at some point in the future.” *Id.* at 25.
5. “[B]ased on the holding in ICL, which upheld the use of a high flow general provision authorizing the use of high flow water based on historical practices; the fact that the recommended general provision is consistent with a prior decree entered in a general adjudication; and the subordination of the high flow use protects water rights not subject to the prior decree, this Court holds the Special Master did not err in recommending a general provision authorizing the use of high flow water in conjunction with existing rights based on the *Lemhi Decree*. *Id.* at 26.
6. “[I]t has already been judicially determined in a previous court proceeding that the high flow general provision is necessary for the efficient administration of water rights. Since the Lemhi Adjudication was a general adjudication those findings are binding on all water users within the basin at least as to pre-decree conditions.” *Id.* at 27.
7. “[T]his Court finds there is sufficient evidence in the record from which to make findings of historical practice and necessity to support the inclusion of the general provision.” *Id.*

8. “The authorized use of high flow water is part of the efficient administration of the ‘base’ water rights in the Lemhi Basin.” *Id.* at 28.

Within Year Statistics: Streamflow/Divisions



— Trib Inflow - - - Full WR

— High Water Pulse Unallocated flow