

May 5, 2010

Chairman Chamberlain,

During its last meeting on April 27, I informed your subcommittee that the Idaho Water Users Association has concerns with proposed 2010 policies 1C (Transferability of Use) and 2C (Instream Flow), particularly regarding proposed amendments to the transfer statutes, and that I planned to report back to the subcommittee at its next meeting. You asked that if IWUA opposed the proposed policies that we provide our reasoning.

IWUA's Board of Director's discussed this topic at its April 28 meeting in Jerome and a motion was approved to oppose any policy proposing to authorize permanent conversion of consumptive use water rights to instream flow purposes. The reason is that other methods have been created to meet instream flow needs in the state and they have worked, without large scale, permanent conversions and the resulting economic and social upheaval that could result.

IWUA has played a cooperative role in promoting successful legislative mechanisms (e.g., the Lemhi Model (2001), the Nez Perce Agreement (2005), and the Wood River Enhancement Project (2008)) which utilize the State Water Supply Bank, local rental pools and minimum stream flow water rights, in tandem. These were true compromises which accommodated instream flow goals without radically altering Idaho water law. We believe these mechanisms, which include a considerable role for the local public through advisory committees, should continue to be utilized and built upon, as necessary. By contrast, previous legislative proposals to amend the transfer statutes to provide for permanent conversions have failed to garner support in the Idaho State Legislature in 1991 (S. 1087), 1992 (S. 1328), and 1995 (H. 72); we do not foresee such efforts being productive and request that they not be incorporated into the State Water Plan.

I will be prepared to discuss this further at the subcommittee meeting on May 10 and to answer any questions that you or the other subcommittee members may have.

Thank you.

Norm Semanko
Executive Director & General Counsel
Idaho Water Users Association

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AUG 20 2012

DEPARTMENT OF
WATER RESOURCES

August 18, 2012

TO IDAHO WATER BOARD ON MOODY CREEK

I understand that the board desires public input regarding your current policies. The public wishes enforcement of present water laws.

In 1971 Moody Creek in Madison County became protected from dewatering by the law of minimum flow through Idaho Code 42:3801- 3806, also known as the Stream Channel Protection Act of 1971. This Act requires that streams and their environments be guarded against alteration for the protection of fish and wildlife habitat, that a permit is issued to alter a stream, and that those Water Rights that existed before 1971 be immune to the Act. Protection of fish requires a minimum flow in a stream. Furthermore, no existing right killed fish in the creek.

Transfer Water Rights 22-265E and 22-594 were issued to Jeppesens at a point of diversion in upper Moody Creek beginning in 1977, contrary to this Act. By approval of the transfers, the Director of Water Resources allowed a rate of diversion that dewateres the creek. This Act prohibits approval of such transfers. Paradoxically, the Legislature charged the Director of Water Resources to enforce this Act.

Starting in 2001, Jeppesens dewatered an 8 mile segment of the creek, destroying a prime cutthroat trout habitat. The Idaho Water Board is asked to correct this injustice.

George Brown, M.D.
George Brown, M.D.
1439 Cambridge Drive
Idaho Falls, ID. 83401

Harrington, Helen

From: Kahle Becker [kahle@kahlebeckerlaw.com]
Sent: Monday, August 27, 2012 5:44 PM
To: SWP
Subject: Kahle Comments Proposed State Water Plan Public Comments

As an avid hunter and fisherman, I would like the State Water Plan to focus on conservation efforts. First, I would like to say that I am not opposed to new dams where appropriate, the Weiser River is a prime example. However, I see a tremendous waste of the water that is currently allocated. Subdivisions use of water as a fountain at their entry way simply to preserve their spot in line is not a "beneficial use" when faced with short sighted proposals to place additional dams on the Boise River. Likewise, flood irrigation where not agriculturally necessary, is also a huge waste of resources that also pollutes rivers downstream with nutrient laden return flows. Even worse, obsolete and ramshackle diversions often result in people taking significantly more water than they are allocated or water simply flowing down a road only to evaporate away for the benefit of no one. If we have laws on the books and invested millions in the SRBA & aquifer recharge, as a state we must follow through and ensure that over allocation does not occur as the expense of the public resources of our fish and wildlife.

IDWR should work with IDFG to determine where changes in water allocation could result in increased recreational opportunities. The Teton, Weiser, Pahsimeroi, Lemhi, and the Lost River watersheds come to mind. By keeping more water in the river through conservation efforts that still ensure water user's needs are met, jobs in the recreational industries could be created to help support the economies of many areas of rural Idaho.

Thank you for the opportunity to comment on the State Water Plan.

J. Kahle Becker
The Alaska Center
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Harrington, Helen

From: KIRK IRICK [kmranching@msn.com]
Sent: Friday, September 07, 2012 3:09 PM
To: SWP
Subject: Irick SWP Comments

Honorable State Water Board Members:

I hope to impress the importance of the agriculture industry in Idaho as being the number one leading economic support for the State of Idaho. The products produced within Idaho gives our Governor a wealth of opportunities to use Governor Mandate Powers to support hunger and disaster relief through food banks and welfare opportunities by using the agriculture based economy within our state. Yes tourism plays a part in the states economy but it does not grow products that feed our families. In your new State Water Plan you have mentioned improving transferability of water to other beneficial uses with no changes to the decree other than the beneficial. This would be an error in judgment as their can be extenuating circumstances the will injure senior decree water users. Here is just such a circumstance; Chesterfield Reservoir is owned and operated by Portneuf Marsh Valley Canal Company or in short PMVCC for future reference. PMVCC decree has a free transport clause that entitles them to transport water for twenty eight miles downstream in the Portneuf River water channel. Any HYDROLOGIST WILL ADMIT IF PUT ON THE STAND THAT THERE ARE WATER LOSS IMPLICATIONS WITH SUCH A PROCESS OF DELIVERY WITHIN A NATURAL RIVER WATER CHANNEL. This having been covered the City of Pocatello approached PMVCC about buying 3100 acre feet of water of storage water to be used as they needed it for mitigating the problem of water temperature in Portneuf River stream flows so that Pocatello City Treated Sewage Water could be released within the EPA directives maintaining temperatures within in stream Portneuf River Flows. Simply put more river water flow introduces an environment that allows more treated city water releases within parameter. Pocatello City proposed this purchase by working with PMVCC through an NRCS grant procedure that would have installed pipe for the PMVCC irrigation waters with the City of Pocatello picking up the tab for the match monies required by the grant. With this process the City of Pocatello would receive 3100 acre feet of the 1912 decree PMVCC storage water. Now to the point 1. THIS WOULD HAVE ADDED ANOTHER WATER USER by split decree TO AN ALREADY OVER DECREED WATER BASIN as Pocatello City could call for water releases on top of past historical release by PMVCC. 2 Senior water users should have the right to challenge shrink free delivery portion of the decree when there is a change in the beneficial use especially with an overajudicated water basin. 3 City of Pocatello filed multiple beneficial uses that included, leasing the water downstream to ag users, watering park lawns, drinking water, deep well injection to two wells they applied for such use and to go along with the sewage mitigation needs. Municipalities and the Water Recreations are hungry for water; I respectfully request and hope for your sound judgment in your venture to strengthen conjunctive management of the waters of the State of Idaho. We are fortunate to be an Agricultural State may we strive to keep food on the table without having to rely on imports that put us in a position of compromises.

Cities should have to recycle their waters for park watering and even non public lawns and gardens before buying up ag based waters.

Deep Well injection is only a trade off of surface waters risen from ground water and snow pac so therefore a mute point in aquifer replenishment as there is to many conflicting parameters that affect the outcome.

A better means of aquifer replenishment would be to install water water meters on all ground water ag pumping systems and mandate by statute a 28% reduction in decreed flows, also place a 28% mandated shrink statute on all surface ag water decrees along with 28% mandated shrink statute on all storage water releases. Mandate by statute that all industrial and municipalities recycle their water back into their systems This would decrease the demand on the aquifer, increase surface water flow and replenish downstream reservoir storage waters.

IF THIS STATE WATER PLAN IS TRULY ONLY A DIRECTIVE / GUIDELINE THEN WHY DOES IDAHO CODE 42-1734A(1) LEAD TO POWERS AND DUTIES THAT REQUIRES THE DIRECTOR OF THE IDWR TO ASSIST THE BOARD OF DIRECTORS BY MEANS OF ASSIGNMENT BY THE BOARD OF DIRECTORS TO CARRY OUT THEIR POWERS. ALSO IDAHO CODE 42-1779 PURSUANT TO ITS CONSTITUTIONAL AND STATUTORY AUTHORITIES, THE BOARD (1) Formulates, Adopts, and Implements the State Water Plan, River Basin Plans, and Comprehensive Aquifer Management Plans. IT IS THROUGH THESE TWO IDAHO CODES THAT THE BOARD OF DIRECTORS MAKE STATUTORY LAWS EMULATED AT THE HANDS OF THE STATE WATER PLAN. WE NEED TO MAKE SURE WE TAKE NOTHING AWAY FROM IDAHO WATER LAW AS IT WAS ORIGINALLY DRAFTED BE MEANS OF STATE WATER PLAN MANIPULATING!

When the water is dropping if you want to replenish it you use less of it.

Cordially Kirk Irick



CLEAR
SPRINGS
FOODS®

JOHN R. MACMILLAN
VICE PRESIDENT

CLEAR SPRINGS FOODS, INC.
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Fax 208 543-4146

September 10, 2012

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SEP 13 2012

Idaho Water Resource Board
ATTN: SWP
PO Box 83720-0098
Boise, Idaho 83720-0098

DEPARTMENT OF
WATER RESOURCES

RE: Comment on Proposed Revisions to Idaho Comprehensive State Water Plan

Clear Springs Foods appreciates the opportunity to provide comment on the proposed Idaho State Water Plan. Clear Springs Foods is located in Buhl, Idaho and is a seafood company with non-consumptive surface water rights in excess of 1000 cfs. Most of the water used at Clear Springs Foods is for fish propagation and originates from the Eastern Snake Plain Aquifer (ESPA). It is Clear Springs Foods belief that since our spring flows continue to decline well below our senior water rights, the ESPA is fully if not over-appropriated.

Clear Springs Foods applauds the IDWR Board for a much improved State Water Plan. For the first time actual implementation strategies and milestones are identified. And, for the first time there is recognition (pg. 10: Conjunctive Management) that interconnected waters must be managed to ensure a "sustainable water supply in accordance with the prior appropriation doctrine." The identified goal of conjunctive management of ground and surface water is first and foremost then to "protect the holder of senior water rights." Further, in section 1I (page 14: Aquifer Recharge) there is recognition of the importance of aquifer "recovery to avoid injury to existing water rights." It is unfortunate such needs were not identified 30 years ago when surface water-ground water right conflicts were just beginning to arise. To the States credit, the plan now proposes that an "Aquifer Storage and Recovery Task Force" be created presumably to focus on aquifer health. **We recommend the Recovery Task Force address recharge in both confined and unconfined aquifers.** The plan also specifically addresses conjunctive management of the ESPA and Snake River (4D: page 49-52). We applaud the State for their continued efforts to implement strategies identified in the ESPA CAMP. Enhancing aquifer levels and spring flows in the ESPA is critical to Clear Springs and all senior water right holders in the ESPA.

Whether the State is actually serious or committed to these various admirable goals is a pertinent question. Unfortunately, the plan is short on specific actions that would actually achieve aquifer recovery or the protection of senior water rights. Policies are stated, discussed and then very weak implementation strategies and milestones identified. The plan proposes "optimum development" without defining what optimum development is (page 10). The lack of definition creates confusion and uncertainty. In the Conjunctive Management section (1E: page 10-11) none of the implementation strategies actually identify how protection of senior water rights will

be ensured or a sustainable water supply established. The strategies are almost exclusively monitoring with no projects identified. Because the timing of various implementation strategies across policies is not identified, and the impact of those actions may not be evident for several years, it is possible some policies and strategies could actually be at cross-purposes, e.g. optimal development and protection of senior water rights. The plan does not propose a mechanism to ensure senior rights are first protected before so called “optimal development” or further development occurs. It is clear that if further water resource development were permitted in the ESPA, senior water rights would continue to be injured and as further depletion occurred, progressively more senior water rights would be injured. If the State were to allow further ESPA water appropriation then the ESPA CAMP is defeated. **We suggest the plan clearly identify priorities, provide a definition of optimal development and then explain how protection of senior water rights will be accomplished while pursuing optimal development.**

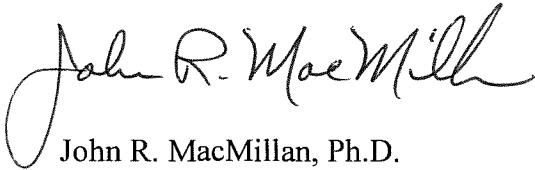
The plan does acknowledge the potential for some State water resources to be fully appropriated (Water Supply Bank; page 9). We suggest that is certainly true for the ESPA since most water conflicts in the State have occurred in this region. **The plan should specifically identify those water resources that are fully appropriated. Such definition would inform the public as to which water resources demand focused attention and resources.**

The ESPA CAMP (4D) implementation strategies and milestones are consistent with the ESPA CAMP. **We suggest the ESPA CAMP hydrologic conjunctive management targets be specifically identified in the State Plan.** We remain very disappointed that the Plan does not specifically identify how the state will implement actions delineated in the ESPA CAMP. We remain deeply concerned that in the next five years resources devoted to implementation of the ESPA CAMP will be minimal resulting in further decline of the ESPA. **The plan should specify that at least in the ESPA, efforts to fully implement the ESPA CAMP will be revitalized and identify how this will be accomplished.** We encourage the plan to include specific aquifer recovery targets with a timeline for implementation of specific actions as identified in the plan. Spring flows in the ESPA have declined 20- 30 % or more over the past 30-50 years. According to the States own experts, the ESPA has been depleted by nearly 6 million ac-ft. of water just over the past 20 years. If such depletion continues, ground water levels and spring flows will continue their decline. **We recommend the plan include specific ESPA aquifer recovery targets. Because the ESPA is very large, we suggest regional approaches to aquifer recovery be considered with an initial focus on those areas experiencing the greatest spring flow declines.**

The State Water Plan, in conformance with Idaho Code § 42-1734A, focuses on the conservation, development, management and optimum use of all **unappropriated** water resources. Yet, as stated in the introduction (page 5), the Comprehensive State Water Plan represents the state’s position on water development, allocation, and conservation. Since 1974, the State has developed and appropriated much of its water resources. As stated in the Plan, many of the State’s water resources may be fully or nearly fully appropriated. **We suggest the Plan should now be expanded to identify water resource sustainability as a fundamental effort of the State.**

Clear Springs Foods appreciates the opportunity to provide comment.

Sincerely,

A handwritten signature in black ink that reads "John R. MacMillan". The signature is fluid and cursive, with the first name "John" and last name "MacMillan" clearly legible.

John R. MacMillan, Ph.D.
Vice President



Greater Yellowstone Coalition

People protecting the lands, waters, and wildlife of the Greater Yellowstone Ecosystem, now and for future generations.

BOZEMAN P.O. Box 1874 Bozeman, Montana 59771 (406) 586-1593	CODY 1285 Sheridan Ave., Suite 215 Cody, Wyoming 82414 (307) 527-6233	IDAHO FALLS 162 N. Woodruff Ave. Idaho Falls, Idaho 83401 (208) 522-7927	JACKSON P.O. Box 4857 Jackson, Wyoming 83001 (307) 734-6004
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www.greateryellowstone.org

September 13, 2012

Idaho Water Resource Board
Attn: Helen Harrington
PO Box 83720
Boise, ID 83720-0098
Fax: (208) 287-6700
E-mail: iwrb-info@idwr.idaho.gov

To the Idaho Water Resource Board:

The following are the comments of the Greater Yellowstone Coalition ("GYC") regarding the proposed Idaho State Water Plan available for public comment. GYC has a strong interest in the management of Idaho waters and their associated wildlife and recreational resources. GYC's members regularly use and enjoy Idaho waters for activities such as fishing, hiking, boating, hunting, wildlife viewing, spiritual renewal, biological and botanical research, photography, and other pursuits. GYC's members' use and enjoyment of Idaho waters may be substantially impacted by approval of the Idaho State Water Plan ("Plan").

1. Objectives

We are generally concerned with the objectives laid out by the Plan. The objectives undoubtedly favor economic development over environmental considerations, which must only be given "due consideration." Plan 5-6. Although we agree that economic development is an important aspect of this Plan and is important for economic growth and development in Idaho, we believe that environmental considerations such as fish, wildlife, and recreation warrants more than "due consideration," and economic development should not be favored over environmental issues. In fact, there are situations where environmental considerations should be favored over economic development, and the Plan should recognize that. For example, this may be the case where economic development would potentially adversely affect the populations or habitat of a federally-listed species under the Endangered Species Act, or a state-listed Sensitive Species. Additionally, there may be instances where cumulative impacts to a waterway would harm the water quality or quantity, and thus environmental considerations may be adversely affected by additional economic development. The Plan should thus

make clear that economic development will not take precedence over environmental considerations. We do support the Plan's objective to "initiate state protection of waterways or water bodies with outstanding fish and wildlife, recreation, geologic or aesthetic values" where appropriate. Plan at 6.

2. Beneficial Uses

We agree with the State's policy that the term "beneficial use" must evolve with society to include uses beyond those constitutionally protected, which is limited to domestic, agricultural, manufacturing and mining uses. Beneficial use should also include protection of fish and wildlife habitat, aquatic life, recreation, aesthetics, water quality, water quantity, and other uses that may be recognized as beneficial to the public. We agree that it is an evolving concept and that outlook must remain clear in the Plan. We further recognize that all beneficial uses should be considered in appropriating state water, including surface and ground water resources.

3. Water Quality

GYC agrees that it is a priority to maintain and where necessary improve water quality in order to meet required water quality standards. Antidegradation laws require that the State maintain water quality at its current level and does not allow it to worsen, and this should be spelled out in the Plan. Additionally, the Plan states that "[when water quality fails to meet state standards, DEQ works with communities, industry, agricultural interests, state and federal agencies, and other stakeholders to develop water quality improvement plans. These plans outline actions needed to restore impaired water bodies so that they support designated uses." GYC finds this statement concerning for two reasons. First, it must be made clear that when water quality fails to meet water quality standards, even if the waterbody supports designated uses, DEQ must nevertheless ensure that the water quality standards are met. Simply ensuring the waterbody supports designated uses does not always satisfy this requirement. Second, the Clean Water Act requires DEQ to set Total Maximum Daily Loads ("TMDLs") for impaired waterbodies not meeting water quality standards. This legal requirement should be laid out and plan for how to formulate, implement, and fund TDMLs should be included in the Plan.

4. Introduction or Reintroduction of Federally Listed Species

The Plan notes as a major policy point that "any reintroduction or introduction of federally listed species where the species enters waters of the State is against the policy of the State of Idaho absent the express approval of the State of Idaho." Plan at 23. The Endangered Species Act grants the Fish and Wildlife Service the authority to reintroduce "experimental populations" of species outside of the species' current range in order to further the conservation of the species. 16 U.S.C. § 1539(j). No state has the right to limit this federal authority. The Supremacy Clause of the United States directs that when a state law conflicts with federal law, the federal law rules. This policy, therefore, runs in contradiction to federal law and federal authority and must be deleted from this Plan in its entirety.

5. Climate Change

Although at some points the Plan recognizes that climate change is a real and scientifically-proven phenomenon that will present increasing challenges to water management, in most other instances the Plan seems to skirt around the idea of climate change by coining its own term for the Earth's warming climate – "climate variability." See Plan at Section 3G (discussing how to deal with "climate variability"); see also Plan at 40 (must develop adaptive strategies to respond to impacts of "climate variability"). But compare Plan at 20 (recognizing a "changing climate" will present increased challenges). It is unclear why the State is masking this issue and creating its own terminology for "climate change," a socially and scientifically accepted characterization of the Earth's warming climate. Climate change is a real and accepted challenge that the State must face head on, not in a manner that unnecessarily recharacterizes it.

6. Snake River Tributaries

The Plan's section focusing on the Snake River Basin is bare bones in that it fails to recognize and discuss the importance of numerous tributaries that must be managed in an appropriate manner, especially to protect significant environmental resources. Such tributaries include the Henry's Fork, South Fork of the Snake, Blackfoot, Portneuf, Big and Little Wood Rivers, Boise, and Bruneau. There is very little recognition of the importance of these tributaries and no direction on how to best manage these waters. While management of the main stem of the Snake River is important and will affect these tributaries, the Plan itself should also broaden its discussion of the Snake River Basin to specifically include management of these important tributaries.

7. Bear River Basin

The Plan's discussion of the Bear River Basin fails to discuss environmental considerations, including the need to protect and restore Bonneville cutthroat trout to the Bear River and its tributaries. The Bear River and its tributaries are vitally important to Bonneville cutthroat trout survival in southeast Idaho, providing some of the last remaining habitat for this imperiled fish. GYC has been involved in efforts to restore healthy populations of Bonneville cutthroat trout to southeast Idaho, and specifically to the Bear River, for over a decade. In 1996, GYC engaged in settlement talks with PacifiCorp and a number of federal and state agencies, conservation organizations, recreation organizations, and local tribes to discuss how to mitigate negative impacts from PacifiCorp's Bear River dams. Those negotiations concluded in 2002 with the signing of a Settlement Agreement between the parties. One of the major concerns under discussion was impacts to struggling populations of Bonneville cutthroat trout. The Settlement Agreement resulted in PacifiCorp establishing a \$16 million dollar fund to restore and enhance Bonneville cutthroat trout in the Bear River and its tributaries. Expenditure of the funds is jointly agreed upon by the signatories of the agreement, known collectively as the Environmental Coordination Committee (ECC). Between 2005 and 2010, the ECC has allocated more than \$1.5 million for 57 individual projects to enhance and restore fish habitat in the Bear River and its tributaries. Projects range in type from fish screens, fish passage around dams and diversions, and riparian fencing,

to spring/stream and wetland/riparian restoration projects. At the same time, almost \$1 million more has been spent to protect nearly 1,000 acres of important riverine habitat via conservation easements and fee purchases. One of the most notable projects funded by the ECC was the removal of PacifiCorp's Cove hydroelectric dam at the mouth of Black Canyon, resulting in the reconnection of a 13 mile stretch of the Bear River. The Plan should discuss and manage for the importance of conserving and restoring habitat for Bonneville cutthroat trout in the Bear River Basin.

Thank you for the opportunity to comment.

Sincerely,

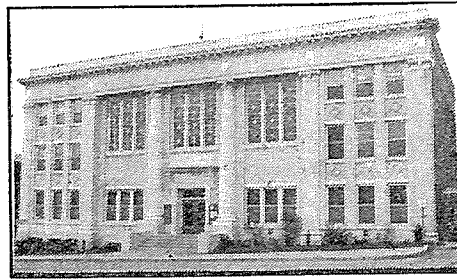
A handwritten signature in black ink that reads "Andrea Santarsiere". The script is cursive and fluid, with the first letter 'A' being particularly large and stylized.

Andrea Santarsiere

Board of
County Commissioners
245-2234

Clerk District Court
Auditor and Recorder
245-3212

Treasurer and
Tax Collector
245-2421



County of Benewah
701 W. College Avenue
St. Maries, Idaho 83861

Prosecuting Attorney
245-2564

Assessor
245-2821

Sheriff
245-2555

Coroner
245-2611

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SEP 13 2012

DEPARTMENT OF
WATER RESOURCES

September 9, 2012

Idaho Water Resources Board
P.O. Box 83720-0098
Boise, ID 83720-0098

RE: Idaho State Water Plan Revisions

To Whom It May Concern:

We have reviewed the revisions to the current State Water Plan and offer the following comments. First and foremost, we applaud your statement on Page 7, "All waters, whether surface or ground waters are owned by the state as public property and the state asserts its sovereign right to regulate all waters within the state of Idaho for the benefit of its citizens. Thus, the state opposes any attempt by the federal government or other states, or any other entity to usurp the state's control over Idaho's water resources." Water is a very valuable resource and as the population expands in the state, it is wise to anticipate and prepare for that growth.

You state on Page 31, "Presently, there is no state agency that is authorized to regulate levees for the protection of public health or safety. The construction, maintenance, and safety of those levees, is for the most part, left to the local entities. The Idaho Water Resource Board (IWRB) supports the development of a comprehensive state program governing the design, construction, and maintenance of new flood reduction levees, and the periodic safety inspection of existing levees."

Benewah County has experienced numerous floods over the years and works closely with the U. S. Army Corp of Engineers to continually fortify our existing (dikes) levees. We feel if this becomes a State driven program it would duplicate the efforts of the U. S. Army Corp of Engineers as well as escalate the cost passed on to the taxpayers.

We have maintained our (dikes) levees for many years and if a flood is imminent, it is comforting to know we have control over the situation at the county level.

On Page 76 your plan states, "Population growth and new water demands may increase the need to obtain additional minimum stream flows in the Panhandle region. The establishment and use of local water supply banks and rental pools should be considered as a strategy for addressing the need for meeting minimum stream flow water rights or new rights in the Panhandle region, including minimum lake levels for the protection of navigation and transportation, fish and aquatic resources and aesthetic and recreational values."

We recognize with the increase in population, additional demands will be placed on water consumption; however, development of water supply banks and rental pools would pose serious flooding issues if implemented on many portions of the St. Maries, St. Joe and Coeur d' Alene Rivers.

Over the years many governing agencies have become involved in managing the resources of the state and county. In an effort to maintain our voice at the county level, the Benewah County Commissioners passed a resolution on October 15, 2009 (see enclosed copy) asserting legal standing and formally implementing coordination with all Federal and State Agencies maintaining jurisdiction over lands and/or resources located within Benewah County.

We thank you for the opportunity to comment and look forward to working together to continue to preserve water rights for all of Idaho.

Sincerely,

A handwritten signature in black ink, reading "Jack A. Buell". The signature is written in a cursive, flowing style. The first name "Jack" is written with a large, prominent "J". The middle initial "A" is smaller and written between the first and last names. The last name "Buell" is written with a large, prominent "B" and a long, sweeping tail that extends to the right.

Jack A. Buell, Chairman

Benewah County Commissioners

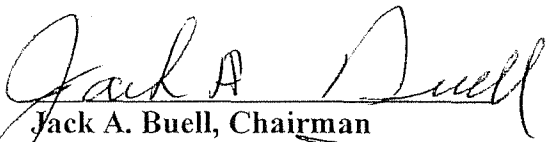
Enclosure

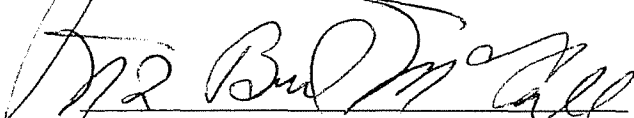
BENEWAH COUNTY RESOLUTION #2009-15
BENEWAH COUNTY NATURAL RESOURCE PLAN

NOW, THEREFORE, BE IT RESOLVED;

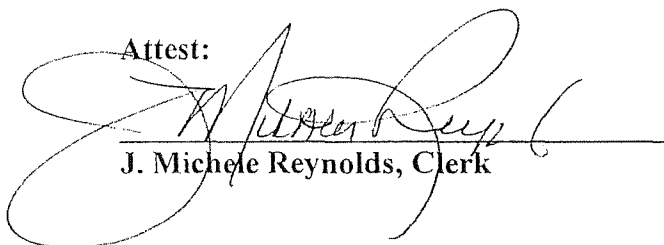
That the board hereby adopts the Benewah County Natural Resource Plan as official policy of Benewah County, and hereby requires that all Federal and State planning and actions affecting Benewah County, its citizens or natural resources be coordinated with the County, and consistent with its plans, resolutions and ordinances to the extent required by the respective Federal or State legislation which granted the power to take the action, and any other Federal or State law, regulation or policy which is applicable to the planning or action.

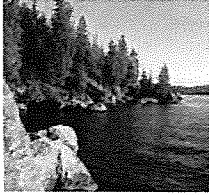
PASSED AND ADOPTED this 13th day of October, 2009.


Jack A. Buell, Chairman


N.L. "Bud" McCall


Terry Doupe

Attest:

J. Michele Reynolds, Clerk



Kootenai
Environmental
Alliance

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SEP 17 2012

DEPARTMENT OF
WATER RESOURCES

September 12, 2012

Idaho Water Resource Board
ATTN: SWP
PO Box 83720
Boise, ID 83720-0098
Fax: (208) 287-6700

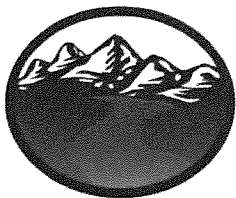
We do feel that the Idaho State Water plan correctly recognizes the many beneficial uses of Idaho's water and the need to protect and enhance those uses, including protecting fish, wildlife, water quality and recreational uses.

However, the plan is overly reliant on the construction of dams to meet future water needs. The construction of new dams is expensive, damaging to the environment and provides no guarantee of additional water. More emphasis should instead be placed on the conservation and more efficient use of this limited resource.

We hope that you will take our comments into consideration as you review the revisions suggested to the Idaho State Water Plan.

Looking forward,

Adrienne Cronebaugh
Executive Director



Idaho Soil & Water Conservation Commission

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www.swc.idaho.gov

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SEP 21 2012

DEPARTMENT OF
WATER RESOURCES

Chairman Terry Uhling
Idaho Water Resource Board
ATTN: SWP
PO Box 83720
Boise, ID 83720-0098

Re: Comments on State Water Plan Update

Dear Chairman Uhling:

The Conservation Commission appreciates the opportunity to provide input to the Subcommittee. To provide context for our comments below it will be helpful to the Committee to refer to Idaho Code § 22-27. Within that Section, the Legislature stated that it's in the best interest of the state of Idaho:

"(3)(c) That soil conservation districts, as governmental subdivisions, and the state soil and water conservation commission, as a state agency, are the primary entities to provide assistance to private landowners and land users in the conservation, sustainment, improvement and enhancement of Idaho's natural resources; ... and

(e) That soil conservation districts and the state soil and water conservation commission lead non-regulatory efforts to conserve, sustain, improve and enhance Idaho's private and state lands and to provide assistance to private landowners and land users to plan, develop and implement conservation plans addressing soil, water, air, plant and animal resources..."

It appears that portions of the draft are inconsistent with Idaho Code § 22-27. Since Idaho Code requires that all state agencies' policies and activities related to the water resources of the State are consistent with the State Water Plan, it is important that our statutory authorities be documented within the Draft Water Plan.

Specifically, we request that the Plan be amended to include recognition of the Conservation Commission's and local Soil Conservation Districts' statutory authorities, including our responsibility to lead non-regulatory efforts as stated above, and to coordinate voluntary conservation programs including the Conservation Reserve Enhancement Program (CREP), the Rangeland Conservation Resource Development Program, Total Maximum Daily Load Program, and other conservation strategies.

Further, consideration of the following specific changes to the draft Water Plan is requested:

POLICY 1J – WATER QUALITY

Implementation Strategies:

- ~~Participate~~ Coordinate with DEQ, the Idaho Soil and Water Conservation Commission, and other state agencies to integrate water management programs and policies.

POLICY 2A – WATER USE EFFICIENCY

- Insert the following statement after the third sentence of the Discussion section:

"The Soil and Water Conservation Commission and local conservation districts have been granted the power to lead non-regulatory water conservation works by developing comprehensive plans and



Idaho Soil & Water Conservation Commission

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carrying on works of improvement for the conservation, development, utilization, and disposal of water within the district (Idaho Code §§ 22-2718 and 22-2722)."

- Include the RCRDP as an implementation strategy, perhaps including the number of loans funded as a milestone. The Legislature provides funds for low interest loans for equipment and projects which have conservation benefits via the Resource Conservation and Rangeland Development Program (RCRDP) administered by the Conservation Commission.

The fifth sentence of the Discussion section states "As water efficiencies increase, conserved water may be available to supply existing uses, new demands, or improve instream flows". This appears to contradict Idaho Code § 42-223 and needs clarification. Given that Idaho Code provides that no water right shall be lost or forfeited for nonuse resulting from water conservation practices, how can conserved water be available for new demands? Further discussion is needed to clarify how conserved water can be used to address existing and future needs without forfeiture.

POLICY 2B – FEDERALLY LISTED SPECIES AND STATE SPECIES OF GREATEST CONSERVATION NEED

- Revise the last sentence of the Discussion to state: "It is in the interest of the public for the Idaho Water Resource Board to coordinate its planning with the development of local and regional conservation strategies..."
- Include the following with the bulleted list of Implementation Strategies:

"Coordinate with the Office of Species Conservation and with the Soil and Water Conservation Commission and local conservation districts—the state entities which have been granted primary responsibility for providing assistance to private landowners and land users in the conservation of Idaho's natural resources (Idaho Code § 22-2716)—to develop and implement integrated water, soil, habitat, and species conservation plans."

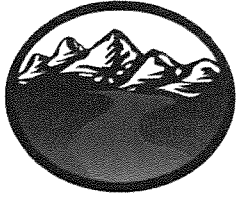
POLICY 2D – STATE PROTECTED RIVER SYSTEM

- Revise the first sentence of the second paragraph to read: "Although rivers can be protected under the federal Wild and Scenic Rivers Act, it is the policy of the Idaho Water Resource Board to protect streams and rivers through the Comprehensive State Water Planning process..." This wording will provide IDWR with better negotiating ability with the federal agencies via the coordination process.
- Under Implementation Strategies: "Coordinate with state and federal agencies, local governments, and stakeholders to identify potential minimum stream flow needs."

POLICY 2E – RIPARIAN HABITAT AND WETLANDS

- Insert the following after the last sentence of the second paragraph of the Discussion section:

"The Soil and Water Conservation Commission is the designated agency for the planning and implementation of treatments to protect and improve water quality in watersheds impacted by agricultural and grazing activities (Idaho Code § 39-3601 et. seq.). The Soil and Water Conservation Commission and local conservation districts are the State entities with authority to develop and implement comprehensive, non-regulatory, locally-led conservation strategies to maintain, improve, and



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enhance Idaho's riparian habitats and wetlands (Idaho Code § 22-2716)."

2F – STREAM CHANNEL REHABILITATION

- Add the following statement to the Discussion section:

"The Soil and Water Conservation Commission and local conservation districts are the primary entities for planning and implementing voluntary, non-regulatory practices to remediate past stream channel damage and to prevent further damage caused by agricultural or grazing activities (Idaho Code § 22-2716)."

- Add the following bullet to Implementation Strategies:

"Coordinate planning (including inventory and analyses), prioritization, and implementation activities with local soil conservation districts and the Soil and Water Conservation Commission."

2H – FLOOD HAZARD AREAS

- Insert the following statement after the fifth sentence of the Discussion section:

"Watershed Improvement Districts have authority to develop comprehensive plans, levy assessments and construct, operate, and maintain structures for the prevention of flood damage and the conservation, development, utilization and disposal of water in the watersheds of this state (Idaho Code § 42-3701, et. seq.). The Soil and Water Conservation Commission is the designated agency to oversee creation of Watershed Improvement Districts throughout the state (Idaho Code § 42-3705)."

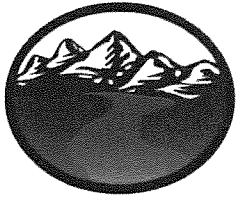
2I- FLOOD DAMAGE REDUCTION LEVEE REGULATION

Idaho Code § 22-2722 grants Soil Conservation Districts the power to:

- Carry out preventive and control measures and works of improvement for flood prevention on any lands within the district upon obtaining the consent of the owner of such lands, and on lands owned or controlled by the state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof (§ 22-2722(3));
- Construct, improve, operate and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter (§ 22-2722(7));
- Develop comprehensive plans for flood protection (§ 22-2722(8)), and to;
- Takeover, by purchase, lease, or otherwise, and to administer any flood prevention located within its boundaries, to manage any flood prevention project within its boundaries, and to act as agent for this state or any of its agencies in connection with the acquisition, construction, operation, or administration of any flood prevention project within its boundaries (§ 22-2722(9)).

Idaho Code § 22-2718 confers upon the Soil and Water Conservation Commission the responsibility to:

- Offer appropriate assistance to the supervisors of conservation districts in the carrying out of any of their powers (§ 22-2718(4)(a)), and to;
- Secure the cooperation and assistance of the United States and any of its agencies, and of the agencies of this state, in the work of such districts (§ 22-2718(4)(d)).



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Idaho Code § 22-2716(3) states that it is in the best interest of the state of Idaho to establish policies for cooperative working relationships between local soil conservation districts, the state Soil and Water Conservation Commission, local, state and federal agencies and public and private groups to plan, develop and implement conservation goals and initiatives.

- Add the following statement to the list of Implementation Strategies:

"Coordinate with the Soil and Water Conservation Commission and local conservation districts during development of a state levee safety program in order to provide that local economic, social and environmental concerns are addressed during safety program development."

6A – HABITAT CONSERVATION PLANS

- Add the following implementation strategy:

"Coordinate with the Soil and Water Conservation Commission and local conservation districts during the development and implementation of habitat conservation projects and plans."

Again, the Conservation Commission thanks the State Water Board for the opportunity to provide input on the update to the State Water Plan. Please do not hesitate to contact me if you have questions.

Sincerely,

TERI A. MURRISON
Administrator

Cc: Harriet Hensley, Deputy Attorney General

Harrington, Helen

From: Chandra Player [cplayer@sapidyne.com]
Sent: Wednesday, September 19, 2012 4:44 PM
To: SWP
Subject: RE: Proposed State Water Plan Public Comments

Please consider water conservation instead of building more dams. In my opinion we need to REMOVE all the dams. It is not just about the money it is about the Earth and ALL BEINGS. Think about the repercussions of building more dams.

--

Chandra Player
Sapidyne Instruments Inc
700 W. Diamond Street
Boise, ID 83705

208-345-3400 ext. 12

IDAHO GROUND WATER APPROPRIATORS, INC.

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Members:

American Falls-Aberdeen GW District
Bingham GW District
Bonneville-Jefferson GW District
Jefferson-Clark GW District
Madison GW District
Magic Valley GW District
North Snake GW District
Southwest Irrigation District
Busch Agricultural Resources, Inc.
Jerome Cheese
United Water, Inc.
City of American Falls
City of Blackfoot
City of Chubbuck
City of Heyburn
City of Jerome
City of Paul
City of Post Falls
City of Rupert

September 20, 2012

Idaho Water Resource Board
Attn: SWP
P.O. Box 83720
Boise, ID 83720-0098
Sent via email: SWP@idwr.idaho.gov

Re: IGWA's Comments on Proposed State Water Plan

Dear Helen,

Thank you for the significant commitment of time and effort that you and the Idaho Water Resource Board (IWRB) have put into the new State Water Plan. Idaho Ground Water Appropriators (IGWA) and its member groundwater districts are very appreciative of the effort and recognize important improvements to the Plan. The following is a list of items that IGWA respectfully asks the IWRB to give particular attention to before finalizing the Plan.

- 1. Public Interest Policy.** Every State Water Plan to date has included a specific "Public Interest" policy (policy 1 of the 1977 and 1982 Plans; policy 1B of the 1986, 1992, and 1996 Plans). This policy has been removed from the proposed Plan, which IGWA finds very troubling. While page 6 of the proposed Plan does contain a sentence stating that the policies enumerated in the Plan are intended to be in the public interest, that is different than having a discrete policy that requires the public interest to be taken into account in water allocation and management decisions.

In the current State Water Plan, the "Public Interest" policy states that, "It is the policy of

Idaho that water be managed with due regard for the public interest as established by state law,” and that, “Water allocation and management decisions must consider the public interest as established by state law.” The removal of this important policy at least suggests that water allocation and management decisions need no longer consider the public interest. Given the Idaho Supreme Court’s reliance on the State Water Plan in recent water management cases, including the public interest policy in particular, IGWA urges the IWRB to reinsert a distinct “Public Interest” policy into the proposed Plan, including the language from the 1996 Plan stating that water allocation and management decisions must consider the public interest.

2. **Policy 1E - Conjunctive Management.** The draft Plan adds the phrase “including spring flow” to the definition of “surface water.” This additional phrase, which is not included in the 1996 Plan, is redundant since spring flows normally consist of water flowing on the surface. While some may view this redundancy as harmless, IGWA is convinced otherwise. There are a few water users whose water supplies derive from underground excavations that could be characterized either as groundwater or springs. In fact, IGWA expects that the Director of the IDWR and potentially judges will be called upon to address this very question in the near future. The addition of the phrase “including spring flow” may be an opportunistic attempt to influence that decision. Therefore, IGWA asks that this phrase be removed from the Plan, and that the current language distinguishing only between groundwater and surface water be maintained, thereby avoiding the potential dispute that may arise as a result of the IWRB’s conspicuous addition of this term into the Plan.
3. **Policy 1F - Ground Water Withdrawal.** IGWA is very concerned with a change to the second sentence in the discussion of this policy. In the current Plan, the second sentence reads, “The Director of the Department of Water Resources can establish reasonable ground water pumping levels when necessary to protect prior appropriations of ground water.” In contrast, the draft Plan replaces that sentence with the following: “Declining ground water levels, however, may result in insufficient water supplies to satisfy beneficial uses, impaired economic development, water quality problems, and conflicts between water users.” IGWA is, of course, as concerned as anyone about declining groundwater levels, yet is troubled by this substitution of language because it suggests that groundwater should be managed to maintain peak groundwater levels as opposed to reasonable groundwater levels. Therefore, IGWA urges the IWRB to retain the language contained in the current Plan.
4. **Policies 4A, 4B, and 4C Regarding Snake River Minimum Stream Flows and the Swan Falls Agreement.** IGWA strongly supports the explanation of the history and meaning of the Snake River minimum stream flows, Milner zero flow, “two rivers” doctrine, and reallocation of trust water, and Swan Falls Agreement that is included in the proposed Plan. As the IWRB knows, the passage of time since these matters were first implemented, combined with the lack of a centralized, comprehensive explanation of their meaning, led in recent years to substantial litigation. The explanatory materials contained in policies 4A,

4B, and 4C are an important addition to the Plan that should help ensure that such disputes are not repeated.

5. **Reservoir Operation Advisory Sub-Committee.** Page 46 of the proposed Plan provides for implementation of a standing advisory subcommittee to address water management and reservoir operations. The Plan indicates that the subcommittee should include representatives from Idaho Power Company, the Committee of Nine, and the Bureau of Reclamation. IGWA respectfully asks to be included on the subcommittee. While IGWA does not currently hold storage in the reservoir system, IGWA is one of the most active renters of storage water. Further, the operation of the reservoir system can significantly affect the amount of water available for use within the upper Snake River Basin by IGWA's members. Disagreements over the operation of the reservoir system has been a source of some contention in years past, and IGWA believes that these types of disputes can be avoided by the transparency that would result from allowing IGWA to participate in the subcommittee.
6. **Policy 4D - Conjunctive Management of the ESPA and Snake River.** The first three paragraphs in the discussion of this policy explain that spring flows have declined since the 1950s. These paragraphs are misleading because they fail to acknowledge that spring flows increased dramatically during the first half of the 20th century and still remain above historic levels. Therefore, IGWA asks that the first three paragraphs in the discussion of this policy be revised as follows:

The Eastern Snake Plane Aquifer (ESPA) is an underground reservoir approximately the size of Lake Erie that underlies more than 10,800 square miles of southern and south eastern Idaho, stretching from St. Anthony to King Hill. It is one of the largest and most productive aquifers in the world, estimated to contain 1 billion acre feet of water.

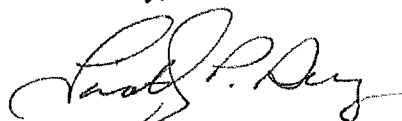
The volume of water stored in the ESPA derives from natural inputs (precipitation, tributary underflow, seepage from rivers) and from irrigation-related inputs (seepage from canals and farm fields). The volume of water stored in the ESPA increased dramatically during the first half of the 20th century as large irrigation canals transported millions of acre-feet of water from the Snake River out on to the Eastern Snake River Plane. Crops were irrigated by flood irrigation then, and the majority of the water percolated into the ESPA as "incidental recharge." As a result, the groundwater table rose across the ESPA—often by 30-50 feet and in some places by as much as 200 feet. ESPA overflow from springs near American Falls and in the Thousand Springs area followed suit, rising dramatically.

The amount of water stored in the ESPA, and spring discharges from the ESPA, peaked in the late 1950s. Since then there has been a decline in spring flows due to more efficient surface water irrigation practices, the termination of winter canal flows, ground water pumping, and drought. Spring flows in the Thousand Springs reach of the Snake River have declined from about 4.9 MAF/year (6,800 cfs) in the early 1950s to about 3.8 MAF (5,200 cfs) currently—a decline of just over 20% over the past sixty years. It appears that the aquifer level is now at or near equilibrium. While current spring discharges from the ESPA remain well above historic, pre-irrigation levels (4,200 cfs), the decline from peak levels has created conflicts between surface and groundwater users, and in some instances between senior and junior groundwater users.

7. **Policy 4D - Implementation Strategies.** The fourth bullet in this section of the Plan includes a strategy to “Revise part B of the State Water Plan to further develop the conjunctive management objective set forth in the State Water plan.” IGWA does not know what is intended or anticipated by this and asks that it be removed or clarified with an opportunity to comment on it.

Thank you for your consideration of these comments. These are items of serious concern to IGWA and its members, who are very hopeful that the IWRB will make the changes proposed therein. Should you have any questions regarding these or other matters, please feel free to give me a call at any time.

Sincerely,



TIM DEEG,
President

cc: Lynn Tominaga
Board of Directors
Randall C. Budge
Candice McHugh
T.J. Budge



IDAHO FARM BUREAU[®] FEDERATION

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September 21, 2012

Idaho Water Resource Board
Attn: SWP
P.O. Box 83720
Boise, ID 83720-0098

Re: Comments on Draft State Water Plan

Dear Board Members:

The Idaho Farm Bureau Federation appreciates this opportunity to comment on the proposed revisions to the Idaho State Water Plan. The Idaho Farm Bureau Federation, which represents more than 66,000 member families, is the largest general agricultural organization in the state.

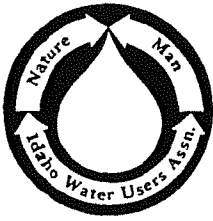
We would like to focus our comments on the proposed "implementation strategy" outlined on page 26, calling for changes in Idaho code that would authorize the Water Resource Board to permanently transfer acquired water rights to minimum stream flow water rights.

The Idaho Farm Bureau Federation opposes this strategy because it could harm economic development and agricultural production, the stabilizing force in our state's economy. We agree with the Idaho Water Users Association's statement that large-scale permanent conversions are not necessary because other methods have been created to meet instream flow needs.

We respectfully urge you to strike this potentially detrimental provision and the language accompanying it. Thank you for this opportunity to comment.

Sincerely,

Frank Priestley, President
Idaho Farm Bureau Federation



Idaho Water Users Association, Inc.

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General Counsel

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Hazelton - District 17

DEAN STEVENSON

Paul - District 18

SCOTT BREEDING

Hazelton - At-Large

BILLY R. THOMPSON

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DAVE SHAW

Boise - Associate

ROGER WARNER

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NWRA Director

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NWRA Director

JOHN SIMPSON

Policy Committee

September 21, 2012

Idaho Water Resource Board

Attn: State Water Plan

P.O. Box 83720

Boise, ID 83720-0098

SWP@idwr.idaho.gov

Re: Comments on Proposed Idaho State Water Plan

Dear Members of the Idaho Water Resource Board:

These comments are submitted on behalf of the Idaho Water Users Association, Inc. (IWUA) regarding the proposed Idaho Comprehensive State Water Plan (May 2012). We appreciate the opportunity to comment.

IWUA is a non-profit corporation, with a membership of more than 300 canal companies, irrigation districts, water districts, municipalities, public water suppliers, hydropower producers, aquaculture interests, agri-businesses, professional firms, and individuals, all dedicated to the wise and efficient use of our water resources. IWUA members deliver irrigation water to more than 2 million acres of Idaho farmland. IWUA has followed the State Water Plan process closely, including attendance at various subcommittee meetings and public hearing over the past few years.

During the process, IWUA testified at the April 27, 2010 subcommittee meeting and also submitted written comments to the subcommittee chairman on May 5, 2010, regarding the transferability of existing water rights to instream flow purposes. IWUA's Board of Directors discussed this topic at its April 28, 2010 meeting in Jerome and a motion was approved to oppose any policy proposing to authorize permanent conversion of consumptive use water rights to instream flow purposes.

At the July 18, 2012 hearing in Twin Falls, IWUA testified with regard to our continued opposition to portions of Policy 2C – Instream Flow, on pp. 25-26 of the proposed State Water Plan. The reason is that other methods have been created to meet instream flow needs in the state and they have worked, without large scale, permanent conversions and the resulting economic and social upheaval that could result.

IWUA has played a cooperative role in promoting successful legislative mechanisms (e.g., the Lemhi Model (2001), the Nez Perce Agreement (2005), and the Wood River Enhancement Project (2008)) which utilize the State Water Supply Bank, local rental pools and minimum stream flow water rights, in tandem. These were true compromises which accommodated instream flow goals without radically altering Idaho water law. We believe these mechanisms, which include a considerable role for the local public through advisory committees, should continue to be utilized and built upon, as necessary. By contrast, previous legislative proposals to amend the transfer statutes to provide for permanent conversions have failed to garner support in the Idaho State Legislature in 1991 (S. 1087), 1992 (S. 1328) and 1995 (H. 72). Since the last Water Plan was adopted in 1996, not a single bill on this topic has been pursued, while the Lemhi Model (2001), Nez Perce Agreement (2005) and Wood River Enhancement (2008) legislation, utilizing the Water Bank, local rental pools and minimum stream flow water rights, were all approved and signed into law. We do not foresee attempts to allow permanent conversions being productive and request that they be eliminated from the State Water Plan.

During IWUA's testimony at the July 18, 2012 hearing in Twin Falls, Idaho Water Resource Board Member Leonard Beck asked the Association to provide changes that would address its concerns. Accordingly, to address IWUA's concerns, we suggest that the following language be deleted from the proposed Plan:

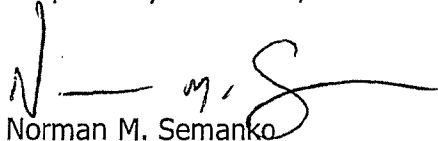
On p. 25 "Discussion" delete: "As recognized in the 1996 State Water Plan, statutory changes are also needed to authorize the Idaho Water Resource Board to apply for a change in the nature of use of an acquired right, where it has been determined that a minimum stream flow water right is in the best interest of the state. Idaho Code Secs. 42-108 and 42-222 contain provisions that protect other water users, the agricultural base of an area, and the local public interest. Priority dates are retained only if other water rights holders are not injured."

On p. 26 "Implementation Strategies" delete fifth (last) bullet: "Revise chapter 15, title 42 to authorize the Idaho Water Resource Board to transfer acquired water rights to minimum stream flow water rights."

On p. 26 "Milestones" delete fourth (last) bullet: "Statutory changes authorize the Idaho Water Resource Board to transfer acquired water rights to minimum stream flow water rights."

We appreciate your attention to this matter and look forward to the requested changes being made to the proposed Plan.

Respectfully submitted,



Norman M. Semanko
Executive Director & General Counsel

Harrington, Helen

From: Norm Semanko [norm@iwua.org]
Sent: Friday, September 21, 2012 11:18 AM
To: SWP
Subject: Comments on State Water Plan - IWUA Member Hayden Lake Irrigation District

Please find below comments on the proposed State Water Plan received from IWUA member Hayden Lake Irrigation District. Thank you.

Norm Semanko
Idaho Water Users Association

Norm,

Given the caveat I've not read the whole plan; at first blush I'd like to see minor strengthening of: 1G Interstate Aquifers (pg 13) by inclusion/modification of language such as under Implementation bullet #2 change 'address' to 'preserve' or 'protect' Idaho's water supply needs. Protect may have damaging implications, so may be too strong. I'm looking for the reader to take away the sense that Idaho's needs come first, with a strong desire to work with neighboring states, but to keep the message clear. Possible to simply refer the reader, by use of the word, to section 1A State Sovereignty (pg7) which provides a clear message.

Sec 1J Water Quality I'd like to see some language strengthening the idea of fostering increased cooperation between IDWR and IDEQ on water quality concerns, and to keep a proactive approach to water quality rather than a reactive such as the statement 'When water quality fails to meet state standards, DEQ works with...' perhaps there is a way to state this in an overall message that prevention is far better than clean up, economically, environmentally, etc. Some suggestions: Under Discussion para1 replace 'essential' with 'vital' 'critical' or 'imperative'. Water quality hasn't historically been IDWR's mission and while I know they care and understand its importance, some stronger language to protect existing quality, promote improving quality, and force the two agencies to cooperate/coordinate on this mission might begin a process benefiting Idaho's citizens. It's not that they can't get along, but it doesn't seem like the two agencies actively embrace each others mission, when perhaps they should.

I'll read the conservation and Panhandle River Basins sections skim the others and provide comment if any by the end of the week. I'm encouraged this plan is, by page count, 19 pages shorter than the current (1996) plan! Thanks for asking us northerners, and the opportunity to give input.

Alan Miller, P.E.
Administrator
Hayden Lake Irrigation District
(208) 772-2612
alan@haydenirrigation.com

Norm,

This is continuation of my earlier partial reply. These are comments regarding Conservation, Climate Variability and the Panhandle region. I limited my read to those areas affecting my District.

Conservation: Well written; I believe this addresses the need without dictating a method or magnitude of change in use expectation. Important to keep the retention of full rights if conservation results in 'surplus' water. That was good to see.

Climate Variability: They captured this, important, topic well.

Panhandle Region:

- May consider a change from 'abundant' (1st para) to something more like stable or similar term. The current term may invite criticism of Idaho's view as it relates to water. Abundant is not incorrect especially when considering the size and number of lakes and rivers. This is a minor suggestion.

- Palouse Basin Aquifers section: (Para 2) Consider changing the completion date of the adjudication from 2012 to the currently anticipated date. I appreciate truth in reporting but it may again invite criticism when the report is also 2012.
- Should 'Adjudication' be a separate heading?
- The Minimum Instream Flow (7B) and Navaigation (7C) sections read well to me.

Overall each section I read seemed well thought-out, presented and covered the topics. Again, thank you for the opportunity and request for our input.

Alan Miller, P.E.

Administrator

Hayden Lake Irrigation District

(208) 772-2612

alan@haydenirrigation.com

Harrington, Helen

From: Buddy Paul [bpaul@ewinganderson.com]
Sent: Friday, September 21, 2012 10:30 AM
To: SWP
Cc: Marie Callaway
Subject: RE: Proposed State Water Plan Public Comments

I am past president of the Coeur d'Alene Lakeshore Property Owners and Past Chair of the Citizen's Advisory Committee to the CdA Basin Restoration Project. As such, I have been very involved in water issues here in the Panhandle. We are lucky to have an emerging economy built on tourism and recreation. I also spend a lot of time in the Wood River Valley, which is one of the most treasured resorts in the world. We need to keep water in our lakes and rivers or that economy will evaporate, not to mention the quality of life we all treasure and which is the reason we are able to recruit non tourist businesses to Idaho.

So, how do we do that without starving other important segments such as agriculture? The easiest was is by making sure our use of water is both smart and efficient. The electric power companies are good examples. They do free energy audits of homes and businesses and have saved enough electricity to equal the need for new dams. I would encourage a similar program for water use. Locate waste, install computerized diversion equipment that both regulates and measures use. If we can identify ways to save water there will more to use for all purposes, including protecting in stream flows, fish and game habitat, and future development. We end up joining the Power Companies in avoiding the need for new dams.

We like to say, Lake Coeur d'Alene is a lake, not a reservoir. Similarly, our Rivers are Rivers, not ditches. Please do all you can, including getting help from the legislature to keep them that way by guaranteeing adequate flows.

Buddy Paul

Sent from my iPad

Harrington, Helen

From: Louis Kins [louiswildhare@gmail.com]
Sent: Friday, September 21, 2012 7:03 AM
To: SWP
Subject: Idaho State Water Plan proposed May 2012

Gentlemen, After going through portions of your proposed new water plan I find it necessary to remark relative to the section on page 9, 1D-Water Supply Bank. The concept of sharing water in order to keep one's water allocation intact and not reduced in times when the water isn't needed has much merit, but the sale of the water does not! Having been on a water board for almost twenty years, it was pounded into me that we could only sell the service of filtering and distributing the water, but never the water itself! What you have set up is the ability for the state to come in at a later date and charge the citizens of Idaho for the water they drink, irrigate with or use for their stock. Since when did the State of Idaho create this water??? To manage it in such a way so as to not over allocate it is necessary, but to place the citizens in a situation to where the State would be selling them their own water is absurd!

On page 37,3F-Water Rights Adjudication, I also have issue. Ever since our benevolent governor Kempthorne set up this 'New World Order'/one world government scheme called adjudication using the basin wide approach which invoked the McClarren Act, we've been loosing the control of our water. Understanding agriculture, upon which this state has been blessed with financial return, I find it difficult to see where the federal government and the native Indian tribes were able to acquire the water rights they have when the concept of beneficial use appears to be seriously stretched to accomplish such? The thought of the federal government coming into our state and demanding water rights by itself is a threat to our state sovereignty, and I fear that the State Water Board has been used as a scape goat by politicians to achieve their agenda of complying with Agenda 21 and the concept of sustainability put forth in it. It may be wise for each of you to read up on Agenda 21 and the master plan that has been set in place for Idaho, as we will eventually cease to exist and become a wild life corridor. Water is the very means to accomplish this and it will become more precious than gold, therefore the task before you is not an easy one!

*Respectfully, Louis Kins
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louiswildhare@gmail.com*



UPPER SNAKE RIVER TRIBES FOUNDATION, INC.

950 W. Bannock Street, Suite 1100, Boise, Idaho 83702

Tel (208) 608-4131 Fax (208) 319-3501

September 21, 2012

Idaho Water Resource Board
ATTN: SWP
P.O. Box 83720
Boise, ID 83720-6700

**RE: Comments from the Upper Snake River Tribes Foundation Regarding the May 2012
Proposed Revisions to the Idaho State Water Plan**

Dear Idaho Water Resource Board:

Four federally recognized Tribes of the Upper Snake River region in Idaho, Nevada, and Oregon, the Burns Paiute Tribe, Ft. McDermitt Paiute-Shoshone Tribe, Shoshone-Bannock Tribes of the Fort Hall Reservation, and Shoshone-Paiute Tribes of the Duck Valley Reservation, realized well over a decade ago that they have common vested interests to protect those rights reserved through Treaty and Executive Orders. In 2007 they came together to form the Compact of the Upper Snake River Tribes (USRT) and established a 501(c)(3) non-profit corporation, USRT Foundation, Inc., and opened headquarters in Boise, Idaho. Through their charter, pursuant to the Motherhood Document, USRT pursues, promotes, and initiates efforts to restore the Upper Snake River Basin and its affected tributaries and lands to a natural condition. USRT works to ensure the protection, enhancement, and restoration of the Tribes' rights, resources, and activities that are reserved by Treaties and Executive Orders, protected by federal laws and agreements, or are the subject of aboriginal claims asserted by the Tribes. These include but are not limited to hunting, fishing, gathering, and subsistence uses.

USRT members have for centuries depended on the waters of Idaho for both sustenance and the fulfillment of cultural, religious, and spiritual ceremonies. Anthropogenic alterations to the Columbia and Snake River systems by European settlers have severely impacted the long-standing customs and culture of USRT members. Across the member Tribes, an entire generation or more has lost the opportunity to partake in fishing and gathering traditions and ceremonies that are essential communal experiences. This loss has had myriad injurious effects to USRT members and communities. One of many goals in USRT's Charter is to work arduously for "an expanded tribally-defined definition of cultural resources, which includes tribal language, cultural, and traditional values." Federally listed aquatic species including but not limited to bull trout, Chinook salmon, sockeye salmon, and steelhead are a significant element of a cultural resources definition. To that end, USRT is gravely concerned about draft language proposed to

be inserted in the 2012 Idaho State Water Plan (ISWP).

Policy 2B – Federally Listed Species and State Species of Greatest Conservation Need

On May 18, 2012, Mr. Terry Uhling, Chairman of the Idaho Water Resource Board (IWRB), signed a resolution proposing to add the following language to the ISWP:

Reintroduction or introduction of federally listed species into Idaho waters may impact existing uses and the preservation, sustainability and future allocation of Idaho water resources. Accordingly any reintroduction or introduction of federally listed species where the species enters waters of the State is against the policy of the State of Idaho absent the express approval of the State of Idaho.

USRT and its member Tribes adamantly reject the proposed language and find it an affront to their cultural, religious/spiritual, and traditional pursuits. A component of reversing the loss of cultural, religious, and spiritual ceremonies and traditions by USRT members is to advocate for and pursue the reintroduction of native, federally-listed species to Idaho waters where they have been either extirpated or reduced from historic population levels by anthropogenic practices. As such, USRT and its member Tribes recommend that the IWRB shall not include the proposed language into the finalized ISWP.

Further, not only is the language proposed to be included as a portion of Policy 2B in opposition to the needs, wants, and pursuits of USRT and its member, but it is inconsistent with the intent of the ISWP. The draft 2012 ISWP elucidates throughout the responsibilities (under such acts as the Endangered Species Act and the Snake River Water Rights Settlement Act of 2004) of the State of Idaho to adequately address and to balance the needs of threatened and endangered species with other water users and uses. There is an explicit commitment in the proposed ISWP to collaborate with “local landowners and water users, affected Indian tribes, and state and federal natural resource agencies (pg. 24)” to facilitate the recovery of federally listed species.

Dams and other diversion structures, misallocation and over-allocation of water, state and federal government refusal to work with Indian tribes in any meaningful manner over a sustained period of time, and habitat degradation, to mention only a few factors, have all worked in combination leading to the federal listing of species native to Idaho. Because of these and other past/present actions, and the inability of federally listed species native to Idaho waters to recover naturally to historic population levels, collaborative efforts with local landowners and water users, Indian tribes, and state and federal natural resource agencies now and in the future will most likely include the reintroduction of federally listed species into Idaho waterways as one of many strategies that USRT believes will lead to delisting of these populations.

Idaho Constitution and Indian Religious Freedom and Title to Lands

Article XXI (Schedule and Ordinance), Section 19 (Religious Freedom Guaranteed – Disclaimer of Title to Indian Lands) of the Idaho Constitution ensures the religious freedom of Indians and Indian Tribes in the State of Idaho. Federally listed aquatic species including but not limited to bull trout, Chinook salmon, sockeye salmon, and steelhead reside in Idaho waters are of extreme religious importance to USRT members. Fish and other aquatic species, federally listed or not, are integral to the practice of an Indian’s religion. The Constitution of Idaho avows that “perfect toleration of religious sentiment shall be

secured, and no inhabitant of said state shall ever be molested in person or property on account of his or her mode of religious worship (Article XXI, Section 19).” A loss of aquatic species to anthropogenic factors, due in no part to Indians of Idaho or elsewhere, has critically impacted the ability of Indians and tribes to partake in religious activities. Reintroduction is absolutely necessary to restore and improve the ability to practice religious activities that incorporate federally listed species. USRT asserts that it is therefore a clear violation of the Idaho Constitution to make it policy that reintroduction of federally listed populations must be expressly approved by the State of Idaho. No one, Indian or otherwise, as worded in the State of Idaho Constitution, should have to request approval from the State to practice his or her religion as they see fit.

Decidedly different, but equally important to the right to religious freedom is the following passage in Article XXI, Section 19:

And the people of the state of Idaho do agree and declare that we forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indians or Indian tribes; and until the title thereto shall have been extinguished by the United States, the same shall be subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States;

The title of unappropriated public lands lying within the boundaries of Idaho and those owned or held by Indians of Idaho have not been extinguished by the United States. Thus, the State of Idaho, as provided by the Constitution, has no right or title over those lands. The State of Idaho cannot erode the sovereignty of tribes on unappropriated public lands or those owned or held by Indians by instituting an unconstitutional provision in the IWRP. The United States government and Indian tribes have a sovereign-to-sovereign relationship and the federal government has a trust responsibility to tribes. By disallowing without express approval of the State the reintroduction of federally listed species, the State of Idaho is effectively moving to nullify the federal-tribe relationship, which is clearly out of the purview of Idaho or any state. USRT members reserve in perpetuity the right to reintroduce native, federally listed species on unappropriated public lands and those owned or held by Indians within the boundaries of Idaho.

Impacts of Reintroduction

USRT and its members agree that reintroduction of federally listed species “may impact existing uses and the preservation, sustainability and future allocation of Idaho water resources.” However, converse to the IWRB proposed language, USRT believes impacts to Idaho water resources from reintroduction of federally listed species will be positive and beneficial for Idaho’s natural resources and to a wide variety of stakeholders for the long term. Reintroduction of federally listed species will allow for the continuation, and in many cases, the renewed ability for USRT members to partake in cultural, religious, and spiritual ceremonies and traditions that date back millennia. Additionally, reintroduction of federally listed species will be a boon to the State’s recreation and tourism industry, allow for innovative partnerships, facilitate balance and collaboration amongst stakeholders, and restore Idaho waterways to a more natural condition. The Upper Salmon Basin Watershed Program (USBWP) (www.modelwatershed.org) is a prime example, and often touted as such by the State of Idaho and

participating agencies, of multiple and diverse users sharing water resources to the benefit of all. The USBWP included 23 partners working together to improve fish and wildlife habitat and to preserve agricultural water uses. As stated on the Program's website:

Founded in 1992, the Upper Salmon Basin Watershed Program is a community-driven partnership. Landowners voluntarily work together with local, state, and federal partners who share a vision for common-sense, scientifically sound protection and restoration of our waters. We collaborate to improve habitat for salmon and resident fish while respecting and balancing the needs of irrigated agriculture and strengthening the local economy.

Reintroduction of federally listed species should not be framed in the pejorative and restricted by an exclusive State of Idaho approval mechanism. While the USBWP did not include reintroduction strategies, similar projects may and should be implemented throughout Idaho that includes reintroduction. What the USBWP does prove, however, is that federally listed species and other water users cannot only coexist, but can work together to find a balanced approach and thrive and spark economic and natural resource benefits. The IWRB must strike the proposed language from the finalized IWRP to continue and encourage future collaborative projects with a resulting balanced set of social, economic, and ecological benefits.

Policy and Politics vs. Management and Science

Reintroduction of federally listed species is a strategy for consideration by land managers who incorporate best available science into their management decisions. Conversely, the proposed language is clearly based on a faulty set of political assumptions designed to address solely the interests of a small minority of water users in the State. Idaho tribes are vital co-managers of the State's natural resources, collaboratively working with local, state, and federal government agencies and private individuals and organizations. If the proposed language is adopted where does that leave natural resource managers in the State of Idaho? Will any proposed project by tribal, state, and/or the federal government that includes reintroduction be held hostage by a political process that requires additional and unnecessary hurdles to gain State approval or will those decisions be left to natural resource managers, in consultation with all affected user groups and organizations? USRT fears the former is inevitable if this proposed draft language is accepted into the ISWP; it will undermine the management authority of tribes and state and federal agencies. Reintroduction of federally listed species is not a decision to be made hastily by the IWRB, but one to be considered carefully and fully by tribal, state, and federal land managers, in consultation with all affected entities.

The Proposed Language Lacks Clarity

USRT has thoroughly and carefully reviewed the proposed language to be included in Policy 2B. While clearly the policy is narrowly-focused to address certain issues that are erroneously perceived to negatively impact Idaho's vocal water user minority, the terms are not defined to any degree where meaning can be derived. For instance, the IWRB must define "introduction." Does introduction mean placing aquatic species into Idaho waters that have no historic tie to that waterbody or the introduction of native species back into a system historically used by a species? Further, the IWRB must define "express approval of the State of Idaho." Is State of Idaho approval a single stroke of the pen by the governor or

does approval require agency and legislative action? The proposed language appears to be hastily crafted policy lacking thoughtfulness and cogent, meaningful input from all affected parties.

Policy 2C – Instream Flow

With appreciation USRT notes that the IWRB states that fish and wildlife habitat, aquatic life, recreation and aesthetic values, and water quality are nonconsumptive, beneficial uses. Where USRT takes exception with Policy 2C is that minimum instream flows are not always defined as being in the public interest. Fish and wildlife habitat, aquatic life, recreation and aesthetic values, and water quality necessitate minimum instream flows and preferably greater. As noted in the draft IWRP (pg. 25), nonconsumptive, beneficial uses “contribute to Idaho’s economy and the well-being of its citizens.” Minimum instream flows are always in the public interest. As noted in the draft IWRP, obtainment of minimum stream flow water rights lies with the IWRB (pg. 25):

The ability to obtain state-based minimum stream flow water rights in Idaho lies exclusively with the Idaho Water Resource Board. Chapter 15, title 42, authorizes the Idaho Water Resource Board to appropriate the minimum flow of water required to protect designated uses if the appropriation is in the public interest and will not interfere with any vested water right, permit, or water right application with a senior priority.

Counter to the passage above, USRT argues that the IWRB should explore a policy of obtaining state-based minimum instream flow water rights on all waterbodies that protect and enhance nonconsumptive, beneficial uses including fish and wildlife habitat, aquatic life, recreation and aesthetic values, and water quality. These uses are legitimately in the public interest and the State of Idaho must recognize such. The interests of the Idaho citizenry, and its natural resources, should not be dominated or controlled by a single minority group of users that hold considerable water rights that allow public water resources to be drawn down below minimum instream flows to the detriment of nonconsumptive users and public uses.

A lack of adequate instream flow in many of Idaho waters is the primary limiting factor in preventing the recovery of federally listed species (e.g. bull trout, Chinook salmon, sockeye salmon, and steelhead reside). To realize recovery of these species to viable/harvestable population numbers there must be a procedural framework beyond voluntary retirement of water rights. Such a voluntary system is flawed, is not in the public interest, and has proven inadequate to increase instream flows. Plainly stated the State of Idaho has willingly and unlawfully over-allocated water for decades, leading in part to the decline and federal listing of salmon and steelhead. At present the State of Idaho is still over-appropriating water in most or all of Idaho’s river systems, which is an affront to tribal religious rights granted under the State constitution, not in the public interest, and ignores nonconsumptive, beneficial uses.

Summary Statement

Inclusion of nebulous and controversial language that asserts that reintroduction of federally listed species is against the policy of the State of Idaho is flawed because it is: 1) dismissive of tribal cultural, religious, and spiritual ceremonies and traditions, 2) unconstitutional, 3) short-sighted, 4) uncompromising, 5) inconsistent with other policies included in the IWRP, 6) anachronistic, 7) a rejection of best available science and management in favor of short-term, unbalanced, single user group political considerations, and 8) poorly defined and worded. Members of USRT strive to collaborate with all parties including

federal, state, and private stakeholders guided by the principle of restoring species to a sustainable population level that makes federal listing unnecessary. Delisting of federal species should be a goal of all those who are impacted by listing, whether it be for cultural or economic reasons. Making it illegal to reintroduce federally listed species in Idaho waterways does not contribute to delisting these populations. There are a number of viable strategies to obtain delisting, including reintroduction measures. It is an inappropriate and non-collaborative maneuver by the IWRB to include such divisive and controversial language in the State's IWRP and to purposefully propose to eliminate a strategy such as reintroduction from consideration without State approval.

Additionally, USRT fundamentally believes that nonconsumptive, beneficial uses including fish and wildlife habitat, aquatic life, recreation and aesthetic values, and improved water quality are always in the public interest and the IWRB should be diligent in obtaining water rights throughout the State to protect those uses. The State of Idaho must abandon its ineffective system of voluntary retirement of water rights and cease immediately its policy of over-allocating water to the detriment of nonconsumptive, beneficial uses.

Due to the reasons outlined in this letter, USRT firmly recommends that the proposed draft language shall not be integrated into the finalized IWRP and that additional collaborative efforts be made to protect nonconsumptive and beneficial public water uses. If, after reviewing this comment letter you have any questions or would like to conduct additional follow-up, please contact me at your convenience at (208) 608-4131 or at heather.ray@uppersnakerivertribes.org. USRT appreciates your consideration of these critically important issues.

Sincerely,



Heather Ray
USRT Executive Director



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PO Box 768
Driggs, Idaho 83422

Idaho Water Resource Board
ATTN: SWP
P.O. Box 83720-0098
Boise, ID 83720-0098

September 21, 2012

Re: Comments on Revisions to the Idaho Comprehensive State Water Plan

Please accept the following comments prepared by Friends of the Teton River (“FTR”), on the revisions to the Idaho Comprehensive State Water Plan. FTR is a nonprofit organization dedicated to understanding and improving surface and ground water resources in the Teton Basin, including the Teton River, its tributaries and wetlands. FTR furthers its mission by conducting scientific research about the Teton Watershed, using this research to enhance and protect local water resources, and communicating this information to the public.

The importance of the State Water Plan (“SWP”) cannot be understated. It sets the tone and direction for water policy and water management throughout the State of Idaho. Through these comments FTR is interested in ensuring that the SWP reflects strong policy to ensure water is available for existing and future agricultural, industrial, and municipal water needs, as well as strong policy which ensures that water is available for existing and future environmental water needs. The comments, below, center around the policies and actions expressed in the SWP relative to three specific issues: 1) Surface Water Supply Enhancement; 2) Reintroduction of Federally Listed Species; and 3) Snake River Policies.

1) Surface Water Supply Enhancement

- a) Section 1L of the SWP states that surface water supply enhancement (the construction of new reservoirs, enlargement of existing reservoirs, and the development of off-stream storage sites) “could increase water supplies necessary to meet increased demand.” (SWP, pg. 17-18). This is factually untrue. Surface water supply enhancement alternatives simply alter the timing of water delivery, which may lend more flexibility to the system. The construction of a new dam or off-stream reservoir does not, however, have the ability to physically increase water supply. This reality must be reconciled within the SWP, such that the limits and realities of surface water supply enhancement are identified and incorporated into long-term water supply planning.
- b) Surface water supply enhancement projects are one tool, of many, that can be used to address existing and future water supply needs. FTR is concerned about the cornerstone role that surface water supply enhancement has come to play in the policies perpetuated within the SWP and the subsequent management actions derived from the SWP. Rather than simply assume that surface

water supply enhancement projects are the answer, a more prudent approach may seek to link demonstrated water needs with a variety of available water supply strategies. Through this exercise it may become evident that surface water enhancement projects are *not* the preferred mechanism for addressing water demand in all situations, as these projects have significant limitations. For example, in some regions of the State, surface water enhancement projects are physically unable to address water demand, due to the proximity and location of the demand to the project site. Additionally, the overall utility of surface water supply enhancement projects decline dramatically in a series of drought years, when reservoirs are unable to be filled. What happens to those water users reliant on storage water in years 3-7 of a drought year, when the reservoir upon which they rely is nothing more than a large mud pit? Towards this end, FTR suggests that the policy set forth in section 1L of the SWP be revised, seeking to institute policy which ultimately harmonizes demand with supply, rather than promising the creation and development of expensive projects which are useful only when water is abundant.

- c) Table 1, on page 19 of the SWP, lists reservoir sites with apparent high potential for development, along with the respective reservoir capacity for each. FTR is unaware of any studies that would substantiate the reservoir capacity listed alongside Teton. Based upon review of the technical memorandum distributed by the Bureau of Reclamation in connection with the Henrys Fork Basin Study, no proposed storage project exceeds a capacity of 100,000 acre feet.¹ Further, there are real and substantive issues with each of the projects being evaluated in the Henrys Fork Basin Study – including fill rate probabilities, cost, and impact on native Yellowstone cutthroat trout.² As such, FTR suggests that it is not reasonable, realistic, or prudent, given the myriad of factors that must be considered when selecting, identifying and implementing a surface water enhancement project to list a specific expected reservoir capacity, and therefore recommends that the reservoir capacity numbers listed in Table 1 be removed.
- d) The SWP sets forth the following Implementation Strategy relative to surface water enhancement:

Concentrate assessment and evaluation of potential storage facilities on project with the highest potential for development. Major consideration in defining high-potential projects are: cost per unit of storage, extent of public support, environmental considerations, adequacy of existing information and studies, extent and availability of funding sources for evaluation and assessment, and expected benefits that would accrue from the construction and operation of the facility. (SWP, pg. 18).

Given the challenges associated with actually bringing a new storage project to fruition and the developing need to gain broad based support from a variety of constituents, FTR suggests that the assessment and evaluation of potential storage facilities should incorporate a clear expectation for the use of collaboration and stakeholder involvement. Also, FTR suggests that additional evaluation criteria be added including the following: (1) environmental impacts; (2) fishery and wildlife impacts; (3) impact on hydrologic function; and (4) demonstration of why a surface water

¹ This is the listed storage capacity for one of the Teton Dam rebuild alternatives, currently referred to as Teton Small Dam B.

² Historic Yellowstone cutthroat trout ("YCT") distribution extended from central Wyoming and Montana, southwest through the Snake River watershed, downstream to Shoshone Falls in Idaho. Like many other native western trout, YCT have experienced declines in abundance and distribution due to hybridization or competition with nonnative trout, habitat alteration, and over-exploitation. YCT are currently designated as an Idaho *Species of Greatest Conservation Need* (see <http://fishandgame.idaho.gov/public/wildlife/cwcs/>) and garner management priority within their native habitat in drainages across the eastern portion of the state. Idaho's YCT stronghold is the Upper Snake Region. The aquatic systems most important for regional persistence of YCT include the Teton River, particularly the canyon reach and its tributary Bitch Creek; and the South Fork of the Snake River from Palisades Dam to the confluence with the Henrys Fork River. Research has determined that the success of YCT in these areas is directly connected to the flow regime present in these portions of the Henry's Fork Basin.

supply enhancement project was selected as the best way to address the identified demand for water.

- e) The SWP sets forth the following Milestone relative to surface water enhancement:

Initiate construction of additional storage facility for approximately 600,000 acre-feet by 2025. (SWP, pg. 18).

FTR is unaware of any studies, technical memorandum, or substantiated needs assessment which would call for the construction of a storage facility, or series of facilities, capable of impounding 600,000 acre-feet of water. Even the ESPA CAMP need is not harmonized with this milestone. As stated later in the SWP, “[t]he overall goal of the ESPA CAMP is to effectuate a net annual ESPA water budget change of 600 thousand acre-feet (kaf) by the year 2030.” (SWP, pg. 51). However, the CAMP sets forth, very clearly, that this will be achieved not only through the construction of new storage but through the use of recharge, demand reduction, and cloud seeding, among other things. Therefore it is recommended that this milestone be revised, removing the quantity figure of 600,000 acre-feet.

Recommendations

- **It is recommended that the SWP, section 1L, be revised to clarify that the development of surface water supply enhancement facilities do not actually increase water supply, but rather alter the timing of water delivery.**
- **It is recommended that the SWP, section 1L, be revised such that the focus rests upon linking demonstrated water needs with a variety of available water supply strategies, rather than simply assuming that surface water supply enhancement projects will address demand.**
- **It is recommended that Table 1 of the SWP be revised, removing the reservoir capacity numbers associated with each reservoir site, particularly as that pertains to the Teton.**
- **It is recommended that the Implementation Strategy on page 18 and discussed above, be revised to include the following considerations: collaboration & involvement with stakeholder groups; environmental impacts; fishery and wildlife impacts; hydrologic impacts; and demonstration of why a surface water supply enhancement project was selected as the best way to address the identified demand for water.**
- **It is recommended that the Milestone on page 18 and discussed above, be revised to remove the storage capacity number of 600,000 acre feet.**

2) Reintroduction of Federally Listed Species

- a) The primary policy statement listed under section 2B of the revised SWP states as follows:

Voluntary community-based conservation programs that benefit species listed under the Endangered Species Act and Species of Greatest Conservation Need and resolve water resource issues should be the primary strategy for achieving species protection and recovery. *Reintroduction or introduction of federally listed species into Idaho waters may impact existing uses and the preservation, sustainability and future allocation of Idaho water resources. Accordingly any*

reintroduction or introduction of federally listed species where the species enters waters of the State is against the policy of the State of Idaho absent the express approval of the State of Idaho. (SWP, pg. 23, emphasis added).

That portion of the policy statement represented in italics must be reconsidered. This policy, as written, is directly in contravention with Federal law. Section 10 of the Endangered Species Act authorizes the Secretary of the Department of the Interior to reintroduce “experimental populations” of species outside the species’ current range. 16 U.S.C. § 153(j). Reintroductions aid in the recovery of threatened or endangered species, and are used when a species’ range has been severely reduced or a significant population extirpated, and it is deemed that the species needs a wider distribution than the current one to achieve the long-term resilience and persistence necessary for recovery and delisting. The Supremacy Clause of the United States prevents this law from being usurped by conflicting state law and policy. Therefore, to the extent that the policy set in section 2B of the SWP is in conflict with Federal Law, it is rendered without effect and should be removed from the SWP.

Recommendations

- **It is recommended that the primary policy statement set forth in section 2B of the SWP be revised, removing that language which directly conflicts with portions of the Endangered Species Act.**

3) Snake River Policies

It is challenging to provide comment to section 4 of the SWP, which pertains to the Snake River Basin. This is due, primarily, to the fact that this portion of the SWP is quite expansive, and yet it does not appear to acknowledge several significant issues contributing to the water policy and management decisions which are played out in the Snake River Basin. The comments below attempt to capture some of the perceived shortcomings.

- a) First, as a general concern, section 4 of the SWP fails to acknowledge the existence, let alone the importance, of many rivers which feed the Snake River, including the Teton River, the Henrys Fork, and the Fall River. This is important because the water policy used to guide management decisions in these tributary systems may no longer be in harmony with the overarching theme of the Snake River as a “working river.” Historically, farms and fish were pitted against each other, each perceived as threatening the interests and values of the other. As such, it was common, and in some instances necessary, to define the purpose of a river for one particular use. But that is no longer the case. Since the first SWP was drafted, it has become clear that one cannot be pursued to the detriment of the other; communities cannot trade agriculture for conservation, or conservation for agriculture. Instead, we must support agricultural producers while enhancing conservation values. The failure to recognize the recreational, scenic, wildlife and fishery values associated with many of the Snake River tributary systems, and managing those systems with those values in mind, will ultimately impinge water usage across the board.
- b) Section 4A, entitled “Snake River Minimum Stream Flows” and section 4J, entitled “Snake River Fish, Wildlife, Recreation, and Scenic Resources,” only portrays part of the story relative to minimum stream flows in the Snake River Basin. The minimum stream flows set forth on page 41 of the SWP certainly dictate certain water policy and management actions which are critical to satisfying future water demand. However, there are several other minimum stream flow reaches on tributaries to the Snake River which are critically integrated into water policy and management

decisions in those sub-basins (some of which are discussed on pages 61-63 of the SWP). This comes as recognition that some of the Snake River tributaries must be managed not only for their economic development values, but also for their recreational, scenic, fishery, and wildlife values. This is important because these types of policies promote balance in the Snake River Basin, serving to preserve water quality and prevent additional species from being listed under the Endangered Species Act. The SWP promotes the establishment and protection of minimum stream flow and lake level water rights for the purpose of “preserving the scenic and recreational water bodies in the Panhandle river basins.” (SWP, pg. 75). FTR suggests that a similar policy be integrated into section 4, such that the implementation strategies and milestones call for the evaluation and establishment of additional minimum stream flow rights in the Snake River Basin, where appropriate.

- c) Many of the comments and concerns articulated above, under the heading Surface Water Supply Enhancement, are applicable to the overarching policies expressed in sections 4E, entitled “Snake River Basin New Storage,” and 4F, entitled “Snake River Basin Agriculture.” In short, FTR is concerned about the role that new storage is taking as a way to address existing and future water demand.
- d) The SWP sets forth the following Milestone relative to section 4E, entitled “Snake River Basin New Storage:”

Actions taken to defer or move forward with storage development. (SWP, pg. 55).

Through the process of conducting studies and analysis on potential new storage facilities, it is likely that several potential projects will evidence fatal flaws which prevent them from being advanced. FTR suggests that the aforementioned Milestone be revised, to incorporate the active removal of fatally flawed projects from future consideration. This will prevent future duplication of effort and waste of financial resources.

- e) Finally, but quite importantly, FTR is concerned about the failure to outline any information, policy or management strategy for promoting the instream flow program in the Snake River Basin, specifically in the Teton Basin. On November 2, 2011, the Idaho Water Resource Board unanimously voted to expand Idaho’s Water Transaction Program to the Teton Basin. Since that time FTR has worked in close partnership with the Board’s staff to promote and identify potential transactions in the Teton Basin. Section 6 of the SWP sets forth discussion and policy in regard to the instream flow program as applied in the Salmon and Clearwater Basins. (SWP, pg. 71-72). FTR suggests that a similar policy be integrated into section 4, outlining similar implementation strategies and milestones for the Teton Basin, where appropriate.

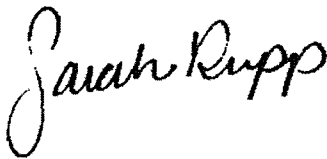
Recommendations

- **Many of the recommendations outlined under part 1) of this document address the concerns outlined in part 3). As such, please reference the above section.**
- **It is recommended that the SWP integrate a policy which promotes the establishment and protection of minimum stream flow and lake level water rights for the purpose of preserving the scenic and recreational water bodies in the Snake River Basin, similar to the policy expressed in section 7 relative to the Panhandle river basins.**

- **It is recommended that the Milestone on page 55 and discussed above, be revised to include removal of fatally flawed projects from future consideration.**
- **It is recommended that the SWP integrate a policy which outlines information, policy and/or management strategy for promoting the instream flow program in the Teton Basin, similar to the policy expressed in section 6 relative to the Salmon and Clearwater Basins.**

Thank you for providing FTR with the opportunity to submit comments on the proposed revisions to the SWP. FTR appreciates the opportunity to be involved. As these comments are reviewed, please do not hesitate to contact me if any additional questions or clarification is needed. I can be reached by phone at (208) 354-3871, ext. 3 or by e-mail at sarah@tetonwater.org.

Respectfully,

A handwritten signature in black ink that reads "Sarah Rupp". The signature is written in a cursive, flowing style.

Sarah Rupp, Water Resources Director
Friends of the Teton River

IDAHO GROUND WATER APPROPRIATORS, INC.

P.O. Box 2624, Boise, ID 83701

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GWD Members:

Aberdeen American Falls GWD
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Madison GWD
Magic Valley GWD
North Snake GWD
South West ID
Clark Jefferson GWD
Goose Creek ID
Fremont Madison ID

City Members:

City of American Falls
City of Blackfoot
City of Chubbuck
City of Heyburn
City of Jerome
City of Paul
City of Rexburg
City of Rupert

Business Members:

Busch Agricultural
United Water of Idaho

Mr. Terry Uhling, Chairman
Idaho Water Resource Board
322 East Front Street,
P.O. Box 83720
Boise, Idaho 83720-0098

Re: State Water Plan Comments

Dear Mr. Uhling:

The Idaho Ground Water Appropriators (IGWA) is a statewide association of ground water users comprised of ten ground water districts, two irrigation districts, and a number of municipal, commercial and industrial ground water purveyors. Formed in 1994 to provide ground water users with a common voice and representation on legal, technical, and governmental issues, IGWA's members irrigate over one million acres of agricultural land and provide municipal water supplies to over 100,000 businesses and households.

IGWA would like to thank the Idaho Water Resource Board for this opportunity to comment on the 2012 State Water Plan. The overall document and its new format are well done but we would like to comment on a few of the policies which we think should be modified to better reflect the actual conditions and policies which are in the best interest of state of Idaho. Further comments will be submitted by our attorneys on the Eastern Snake Plain Aquifer (ESPA) and the two rivers concept.

Privileged and Confidential Client Work Product

First, IGWA would like to thank the State Water Plan subcommittee and staff for all its hard work over the many months and years. IGWA would also like to thank current board and former board member Gary Chamberlain for their work and dedication for helping create the new format for the State Water Plan. We believe it helps clarify the Plan and shows the progress of the policies as it relates to implementation of those policies.

IGWA's first comment is on **Policy 1B: The concept of beneficial use must necessarily evolve with changing conditions.** I suggest that the board consider clarifying the language in the narrative that reads, "Except for the constitutionally protected beneficial uses which are domestic, agricultural, manufacturing, and mining, the concept of what constitutes a beneficial use of water has evolved over time based upon societal needs." The narrative appears to imply that constitutionally protected beneficial uses are the superior right; but does not specify a priority of beneficial use when two protected rights are in conflict.

Policy 1F: Average withdrawals from an aquifer should not exceed the reasonably anticipated rate of future natural recharge to that aquifer. IGWA agrees with this policy statement. However, the narrative discusses critical ground water areas and ground water management areas. IGWA would like to recommend that a code change be given to critical ground water areas under Idaho Code 42-1614 B(3) to allow more than four years after the completion of an adjudication be allowed for those areas so designated to develop a water budget plan. Many of those critical ground water areas have advisory committees in place who lack the authority or financial resources to accomplish a water balancing plan in the timeframe outlined in Idaho Code.

Policy 1J: The citizens of Idaho will be best served by a cooperative effort involving public and private entities to assure that the state's surface and ground water sources meet state water quality standards and maintain designated beneficial uses. IGWA agrees with the policy, but suggest that either the policy or the narrative should state that it has been established for over 20 years that Idaho's Water Quality Standards cannot be more stringent than Federal Standards unless the state legislature approves the more stringent standard.

Policy 1K: The Idaho Water Resource Board will complete and implement comprehensive aquifer management plans to address the increasing demands on the state's water supply. IGWA supports additional state funding to complete the Comprehensive Aquifer Management Planning process (CAMP). IGWA is concerned that, without additional money to support the remaining CAMPs identified in 2007-2008, water management will come to a halt in the state. IGWA has been heavily involved in the CAMP process and recognizes its value in allowing local stakeholders to participate in the planning process. CAMP is an opportunity for water management policy to be directed by stakeholders instead of attorneys and litigation.

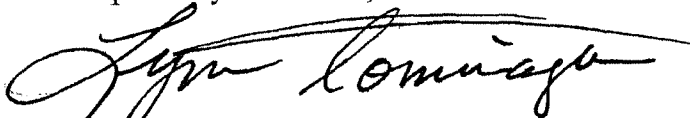
Policy 3F: Adjudication of water rights through the state courts should be completed to fully define and quantify all state, tribal and federal water rights. IGWA would like to see the policy or narrative to be changed to indicate that such an adjudication is conducted as outlined in the federal "McCarran Act." And "adjudication" should be defined as a "basin wide adjudication" that includes state, tribal and federal water rights.

Policy 4E: Development of new on-stream, off-stream, and aquifer storage is in the public interest; provided, however, applications for large surface storage projects in the Milner to Murphy reach of the Snake River should be required to mitigate their impact on hydropower generation. IGWA supports Policy 4E and has been involved with state and federal studies to acquire new storage within the Snake River Basin. IGWA has been an active participant in the **Henry's Fork Project/Teton River Basins; ESPA Managed Recharge Pilot program; Lower Boise River Interim Feasibility Study; and Weiser-Galloway Gap Analysis, Economic Evaluation and Risk-Based Cost Analysis.** The state needs added storage capacity for the state of Idaho to grow and prosper into the future. Some entities would make you believe that conservation is the only tool necessary but to have a healthy economy for Idaho-- we need water storage and water management to complete Idaho's tool box for growth.

IGWA would also like to state that we were disappointed in the timing of the public information meetings and the public comment period, both overlapping some of the busiest parts of the agricultural seasons. This timing made it difficult for individuals to participate in either process.

Again, IGWA would like to thank you for this opportunity to make comments on the State Water Plan. If you have any questions please feel free to contact me at 208-381-2094.

Respectfully Submitted,



Lynn Tominaga,
Executive Director

cc: IGWA Executive Committee
Randy Budge

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September 21, 2012

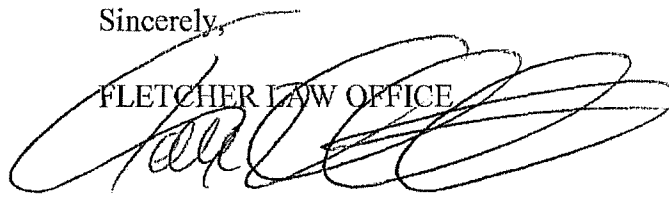
Idaho Water Resource Board
ATTN: SWP
P.O. Box 83720
Boise, Idaho 83720-0098

RE: Comments to Proposed Revised 2012 Comprehensive State Water Plan

Dear Mr. Chairman and Members of the Board:

The Minidoka Irrigation District joins in those comments submitted on the Proposed Revised Comprehensive State Water Plan by Barker, Rosholt & Simpson, LLP on behalf of Twin Falls Canal Company, North Side Canal Company, and Clear Springs Foods, Inc.

Sincerely,


FLETCHER LAW OFFICE
Kent Fletcher

KF/brd



idahoconservation.org

Idaho Conservation League

PO Box 844, Boise, ID 83701 208.345.6933 Fax 208.344.0344

September 21, 2012

Idaho Water Resource Board
Delivered via email

Re: 2012 Proposed State Water Plan

Dear Chairman Uhling and members of the Board:

Thank you for the opportunity to submit comments on the 2012 Revised State Water Plan (SWP). Since 1973, the Idaho Conservation League (ICL) has worked to protect Idaho's clean water, clean air, wilderness, and quality of life. As Idaho's largest state-based conservation organization, we represent over 20,000 supporters, many of whom have a deep personal interest in Idaho's water resources. We submit these comments in the abiding belief that Idaho's water is arguably its most precious resource, and Idaho's future depends on proactive and smart water management.

ICL commends the Idaho Water Resource Board (Board) and staff for revising our state water plan. We are generally pleased with the SWP, and believe it provides a strong guiding document for Idaho's water future. That being said, of primary concern to ICL are the focus of future demand planning, securing instream flows, and an elevated emphasis on conservation measures.

As Idaho's population grows, much land traditionally dedicated to agricultural use will fall into new uses. These land use changes will alter the use and flow patterns of our water resources. ICL submits that the SWP should prioritize future water demand research, especially as it relates to the effects of anticipated changing land uses on water and water use.

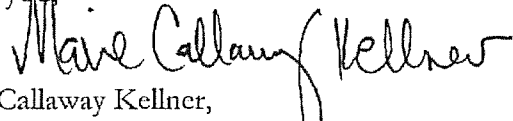
ICL strongly supports the SWP's emphasis on an increased establishment of instream flows. Among other things, instream flows support the fishing, tourism, and recreation economics of Idaho; they also support Idaho's heritage as a state with abundant wildlife and wild places. In keeping with ICL's support for instream flows, we feel the Board should have inherent authority to establish rental pools for both storage and natural flow water rights, and the ability to apply for a change in nature of use of acquired water rights.



As Idaho's primary water policy document, the SWP should adamantly promote wise use of water. ICL understands that the Board is under a legislative mandate to study potential storage reservoir sites; however, ICL strongly urges the Board to concurrently require wise use of our water resources via conservation measures and diversion automation. The SWP is an appropriate venue in which to describe such requirements.

Our detailed comments are attached to this letter. Please do not hesitate to contact me, at 208.345.6933 ext. 32 or mkellner@idahoconservation.org, to discuss any questions you may have regarding our comments.

Thank you,

A handwritten signature in black ink, reading "Marie Callaway Kellner". The signature is fluid and cursive, with the first name "Marie" being the most prominent.

Marie Callaway Kellner,
Idaho Conservation League Water Associate

Idaho Conservation League Comments on the 2012 Proposed State Water Plan

“1B-Beneficial Uses of Water” should include statutory changes to place instream beneficial uses of water on par with other beneficial uses.

The acknowledgement of the protection of fish and wildlife habitat, aquatic life, recreation, aesthetics, and water quality as beneficial uses of water is an important aspect of the State Water Plan (“SWP”).

Many of the natural amenities that Idahoans enjoy involve these beneficial uses: internationally acclaimed fishing, world-renown whitewater, and all manner of recreation activities associated with our numerous alpine & low-lying lakes. In turn, these beneficial uses provide a significant economic boon to the state. More than 46,000 Idahoans work in the tourism industry, an industry that depends on clean, accessible and consistent bodies of water.¹ These jobs create more than \$1 billion in wages and contribute approximately \$3.5 billion in revenue.²

As the Board reviews and prioritizes traditional & emerging beneficial uses of water, these instream beneficial uses should be prioritized and statutory changes should be made so that instream beneficial uses are established in the same way as other beneficial uses, properly recognizing their importance to Idaho’s economy and Idaho’s unique way of life.

“1C-Transferability of Use” should address existing, unfairly restrictive aspects of change in nature of use.

The Idaho Water Resource Board’s (“the Board”) ability to establish minimum stream flow water rights should not have to be subject to legislative approval. This aspect of the process impedes the Board’s ability to establish minimum stream flows and undermines the Board’s judgment in establishing minimum stream flows. A change in nature of use from any other beneficial use to minimum stream flows should be subject to the same standards and notice to which the other aspects of transferability are currently subject. This statutory change should become a policy priority.

In recognition of this, the State Water Plan (“SWP”) should include the following Milestone:

-Number of minimum stream flows processed.

The Board’s ability to establish “1D-Water Supply Banks” should be expanded, forfeiture should not be tolled for rights not rented from the bank, and water bank lease and rentals should be in-basin only.

Water supply banks rightly provide incentive for water right holders to implement efficiencies without risk of losing their access to water. They also provide an expedient way for water renters to seasonally access water. The Board should be endowed with the authority to expand water supply

¹ *Idaho Department of Commerce: Division of Tourism Development 2011 Report on Economic Impact Research.*

² *Idaho Department of Commerce: Division of Tourism Development 2011 Report on Economic Impact Research.*

banks in order to accommodate competing in-basin water needs and uses, including an expansion of the establishment of minimum stream flows.

Water supply banks also provide protection from forfeiture for water rights which would otherwise place forfeited water back into a basin. Currently, Idaho Code § 42-1764(2) protects a water right during the years it is in a bank even if the forfeiture clock was ticking when that right was placed in the bank and even if the water is not rented from the bank. The statute should be amended so that, if such a right is not rented during its time in the bank, the forfeiture clock continues to tick and the right may be forfeited when the five year forfeiture clock expires.

Additionally, the water supply bank statute allows that water may be rented for out-of-basin uses. Out-of-basin uses are detrimental to aquatic habitat and other instream uses, as they provide a sanctioned river de-watering mechanism.

The SWP should create the following Implementation Strategies:

- (1) an expansion of the Boards' ability to establish water supply banks,
- (2) a vision for water supply banks providing a source for minimum stream flows,
- (3) forfeiture of water rights leased to water supply banks which are not rented while in the bank,
- (4) specification that water may not be rented out-of-basin.

“1E-Conjunctive Management” is necessary, and the Wood River Basin should be the next conjunctive management focal point.

The SWP properly states that, where hydraulically connected, surface and ground waters should be managed conjunctively. In time, all waters in the state should be managed conjunctively; accordingly, resources should be allocated to ensure conjunctive management occurs.

Currently, a moratorium exists on new, consumptive use water right applications in the Big Wood River Basin. The moratorium is indicative of the need to develop a more thorough understanding of the conjunctive nature of the Wood River Valley's surface and groundwater resources. The Big Wood River Basin should be the next focus for conjunctive management.

In addition to naming the Wood, the SWP should include not just a suggestion of a prioritization list for conjunctive management basins, but an actual detailed list of the priority basins.

The SWP should also include the following milestone:

-Conjunctive management of the water resources in the Wood River Basin.

Automation should be prioritized to ensure accurate “1H-Quantification and Measurement of Water Resources.”

The SWP should require automation of main-stem diversions. Water Districts 1 and 65 provide examples of the accounting accuracy that flows from automation. Automation and accounting provide an economical basin-by-basin opportunity for IDWR to learn how much water is truly unallocated. Without these numbers, IDWR and the Board cannot fully know the extent of our anticipated future statewide storage needs. While appreciating that the Board is under a legislative mandate to study storage sites, ICL recommends the Board also dedicate staff and financial resources on the study and implementation of automation.

The Implementation Strategies and Milestones associated with § 1-H all accurately reflect what should be utmost priorities for IDWR and the Board. To ensure these milestones occur, the Implementation Strategies should be revised to name specific automation sites, along with accompanying deadlines for automation installation.

“1I-Aquifer Recharge” should remain solely in the purview of the Idaho Water Resource Board.

As is evidenced by the Board’s ongoing aquifer recharge study sites, numerous sections of the SWP, and recent new water right applications to IDWR, managed aquifer recharge is becoming an increasingly relevant topic in Idaho. As a form of aquifer storage and recovery, managed aquifer recharge could assist as a future storage option. However, while understanding that the Board’s stated purpose of managed aquifer recharge is ultimately to enhance flows at certain times of year and to increase aquifer levels, ICL wishes to underscore a potential harm associated with recharge: if turned over to private industry, it creates a novel legal method to dewater streams for profit.

To ensure that recharge projects prioritize the needs and interests of the public and its water resources, as opposed to the interests of private industry, aquifer recharge should stay strictly within the purview of the Board. However, should private entities begin acquiring recharge water rights, minimum stream flows should accompany each recharge water right. Such rights would need to be secured concurrently with private recharge applications so that they would maintain identical priority dates, placing them on even ground with recharge rights and protecting the streams and rivers from which the recharge water is diverted.

In making this suggestion, ICL notes this is a novel use of minimum stream flows. Moreover, the concept implies that the Board would need to have a sort of clairvoyance in order to apply for water rights contemporaneously with a private recharge application. However, these obstacles can be overcome via the Director’s discretion in mitigating water right applications so that the applied for beneficial use remains within the public interest.

Finally, and especially should recharge move into the private arena, ICL welcomes the opportunity to be a member of § 1H’s suggested Aquifer Storage and Recovery Task Force.

In order to protect Idaho’s rivers and water bodies from dewatering for profit, the Implementation Strategies should be revised to clarify that the Board is the sole entity able to conduct aquifer recharge. Alternatively, the Implementation Strategies should state that the Board will establish minimum stream flows intended to stand on even ground with private recharge projects.

1J-Water Quality

While appreciating the depth of knowledge and ability “cooperative efforts” contribute to any program, ICL submits that it is the state’s job to ensure that Idaho’s ground and surface water sources meet state water quality standards. This is not an arena in which voluntary, cooperative measures should be the primary source of compliance. Instead, § 1J should clearly state that agencies are *required* to implement Best Management Practices and they are *required* to ensure that water quality standards are met.

Additionally, while water flow used for dilution may not entirely substitute for water quality treatment, the Board should consider rewording this statement to reflect that, in certain instances, mixing zones may be an appropriate component of ensuring water quality.

“1K-Comprehensive Aquifer Management Plans” are necessary to accurately manage the changing demands on all of Idaho’s water resources.

ICL is pleased to see comprehensive aquifer management planning highlighted in the SWP as it reflects an emphasis on practical water management, thus providing a realistic framework for the integration of hydrologic realities with social needs of communities. ICL feels the term “*changing* demands on the state’s water supply” better characterizes the spirit of the intent of the CAMP process than the term “*increasing* demands on the...” While this may seem minor, “increasing” demands are just one aspect of the “changing” demands on our water resources, and because the SWP attempts to best characterize Idaho’s current and future water landscape, “changing” is a more appropriate term.

Additionally, ICL encourages the Board to prioritize the Wood River Valley as the next CAMP project, the need for which is evidenced by the recently implemented Groundwater Measurement District in that basin as well as increasingly competing uses of water in that basin.

1L-Surface Water Supply Enhancement

ICL recognizes the Board is charged with creating a list of storage proposals. ICL also speaks for 20,000 supporters who believe that aquatic habitat and its resulting natural, recreational, and economic benefits are important beneficial uses of Idaho’s water that should not be usurped so that that natural flow water can be put to anticipated future consumptive uses. Additionally, in light of the economic climate, the likelihood of new large-scale dam construction is unlikely; that the state’s primary water policy document focuses so heavily on new dams is not realistically facing the future.

In an era of dam removal, ICL strongly dissuades building new storage reservoirs without first fully pursuing all other options. Specifically, updating obsolete and inefficient diversions, implementing diversion automation on main-stem diversions, and *requiring* conservation measures. Such efforts would result in the discovery and potential utilization of vast water resources. Moreover, automation and conservation measures are preferred economic options to building dams.

Therefore, in addition to the legislatively mandated list of storage sites, ICL encourages that the following be incorporated into SWP § 1L: 1) automation systems should be mandated for mainstem

diversions; 2) loan or grant funding for irrigation diversion upgrades and diversion automation systems; and 3) municipal water plans should be required to include conservation measures.

These alternatives are cheaper, more quickly implemented, and more easily implemented, than the building of new storage reservoirs. Additionally, automation and the implementation of local water conservation measures are apt to be more socially palatable than new storage reservoirs.

In making this recommendation, ICL notes the state's current policy that conservation measures be voluntary. However, as our population grows, our climate changes, and our water resources are increasingly stressed, we must be vigilant in protecting them. It is in the public interest that all water users be required to implement the most efficient use of water possible and the leadership to make that happen comes from the Board. A successful water future for Idaho is going to require the shared sacrifice of all Idahoans, and the SWP is the appropriate occasion to introduce this concept.

CONSERVATION

While pleased to see conservation policies prominently featured in the SWP, ICL believes water conservation programs—meaning programs which encourage smart and efficient use of water—should be required as opposed to voluntary. The Board should be making every effort to lead Idaho's 21st century water use in the most fiscally prudent way possible. Implementing water conservation measures on all consumptive uses of water is a smart way to get the most out of our water, and a superior financial and environmental alternative to the large scale storage projects onto which the SWP currently focuses.

“2A-Water Efficiency” is properly highlighted as an important element of water resource management.

Water conservation and water use efficiency measures are excellent ways to make smart use of our water resources. Specifically, ICL encourages the Board to incorporate the following into SWP § 2A: 1) automation systems on main-stem river diversions should be mandated; 2) loan or grant funding assistance for irrigation diversion upgrades and diversion automation systems; and 3) municipal water plans should be required to include conservation measures.

ICL welcomes the opportunity to participate in the anticipated partnerships (stated in the § 2A Implementation Strategies) for coordinating and supporting water conservation programs.

2B-Federally Listed Species and State Species of Greatest Concern

This section appears to attempt to strip federal protections for Idaho's endangered and threatened fish species—the very species for which the legendary Salmon River is named. In recommending that § 2B either be stricken in its entirety or significantly reworded, ICL speaks for more than 20,000 Idahoans who value the aquatic species that this section attempts to undercut.

While “voluntary community-based conservation programs” are a component of achieving species protection and recovery, there is no factual basis for the following statement in § 2B, ¶1: “Cooperative community-based programs are more effective in providing on-the-ground habitat benefits than enforcement actions.” If Idaho wants such programs to be its primary method of addressing

endangered aquatic species issues, then that is what the sentence should say, as opposed to articulating a policy as a fact.

ICL recommends that cooperative, community-based programs be one of multiple tools for ensuring aquatic species protection and recovery. Notably, thanks to the efforts of Fish & Game, IWRB, Fish & Wildlife Service, National Oceanic and Atmospheric Association, Trout Unlimited, The Nature Conservancy, Bonneville Power Administration, area land trusts, private landowners, local governments, and others, dozens, if not hundreds, of individual aquatic habitat and species restoration projects are currently in place all across Idaho. In some instances, it is the threat of enforcement actions that motivates landowners and water right holders to cooperate with other entities to establish protection and recovery projects. Without the power that comes with enforcement actions, these projects would not be as successful, leading to continually decreasing species numbers and opening the state to more federal regulation.

Moreover, as currently written, § 2B conflicts with all of these individual restoration projects--the very projects that the introduction to § 2B states are the preferred method of addressing species protection and recovery.

In sum, ICL recommends that § 2B be deleted, or, alternatively, revised to clarify that current restoration and protection projects are compliant with the state policy goals.

The Board should have the ability to establish additional “2C-Instream Flows,” additional rental pools, and to change the nature of use of acquired water rights.

Instream flow water rights are integral to meeting many beneficial uses related to aquatic habitat, water quality, recreation, and aesthetic values. These instream uses of water are paramount to ICL members, as well as Idaho’s tourism and recreation economy. ICL commends the SWP’s intention to establish new instream flow water rights.

Instream flow statutory changes are needed. The Board should be empowered to establish local rental pools, both from storage water and from natural flow water, without needing to first acquire legislative approval. This would not only streamline the process by enabling the Board to more effectively implement instream flows, it would also allow the local rental pool communities more control over local water usage. This is in the public interest and should be a primary focus of the SWP.

The statute should also be amended to allow the Board to transfer the nature of use of acquired water rights where it has been determined that instream flows are needed. Instream flows are beneficial uses of water and denying that ability essentially relegates instream flow rights to a lesser status than other beneficial uses.

To reiterate, ICL strongly supports the SWP’s intention to establish additional instream flows around the state, as well as the related intention to instigate statutory changes allowing the Board to establish local rental pools from either storage or natural flow water and to apply for a change in nature of use.

MANAGEMENT

“3C-Research Programs” should prioritize future demand estimates.

The SWP rightly prioritizes research and smartly emphasizes utilizing the efforts of numerous public and private entities conducting water research. However, the SWP’s research goals do not address one of the most important aspects of a forward reaching water policy document: future demand based on changing land and water use. The SWP repeatedly states that we will have increasing water needs, however, as agricultural lands go into urban uses and as water use becomes more efficient, water demand changes. A full understanding of future demand underlies almost every aspect of the SWP, and research in that area should be an utmost priority.

“3D-Funding Program” should include grant or loan funding for diversion automation and local conservation measures.

Appreciating the significant demands placed on the Board’s funding mechanisms, ICL asks that the SWP prioritize loan and grant funding for conservation programs in its litany of funding priorities. ICL notes that conservation programs are listed as fundable opportunities in the SWP, and includes this request in its comments in efforts to emphasize our belief in the benefits of conservation practices to the overall resource.

3G-Climate Variability

The SWP’s use of the term “climate variability” is confusing. Presumably, climate variability is a synonym for climate change. ICL suggests that the SWP adopt the term climate change as opposed to climate variability. Climate change is a real and accepted issue that our water managers face. The text of § 3G properly addresses that. However, in using an alternative term, the SWP confuses the issue, leaving open for debate what has already been proven and accepted.

Separately, ICL supports the SWP’s emphasis on climate change and the challenges it poses. Additionally, ICL welcomes the opportunity to participate in the climate change stakeholder forums.

SNAKE RIVER BASIN

While the SWP lays out a full history of the Snake River’s development and many uses, it fails to address the tributaries which create the Snake. A true management plan for the Snake River must include plans for the Big and Little Wood, the Big and Little Lost, the Blackfoot, the Henry’s Fork, the South Fork of the Snake, the Bruneau, the Portneuf and others.

“4J-Snake River Fish, Wildlife, Recreation, and Scenic Resources” should be afforded the same protections as other beneficial uses of water.

Appreciating that the SWP includes maintenance of current Snake River minimum stream flows, ICL submits that instream flows to protect the above stated values and beneficial uses are in the public interest and the ability to establish them in the future should not be foreclosed. The SWP documents Idaho’s water history, but it also plans for the future. Section 4J demeans the future potential economic contribution that fishing, tourism and recreation bring to the State. ICL respectfully submits that foreclosing these entire industries in favor of current existing water uses is not accepting the economic, social and climate realities of the 21st century.

SALMON/CLEARWATER RIVER BASINS

ICL commends the SWP for promoting continued use of community-based conservation plans and instream flows in efforts to protect threatened and endangered species at the same time as protecting the agricultural and tourism economies in these basins.

PANHANDLE RIVER BASINS

“7A-Interstate Aquifers” will need additional planning support and protection.

The water in Idaho’s panhandle is apt to become the envy of our sister states as populations continue to increase and climate changes. Especially with this in mind, ICL supports the SWP’s intention of initiating the CAMP process in the Palouse Basin, and the SWP’s focus on implementing the existing Rathdrum Prairie CAMP.

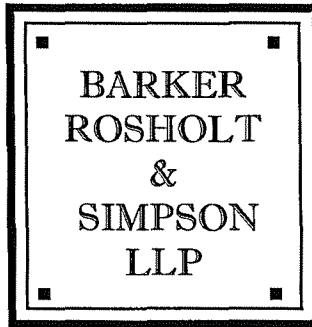
7B-Minimum Stream Flows

Idaho’s panhandle economy is deeply dependent on the health of its lakes and rivers. ICL acknowledges the existence of numerous minimum lake levels and stream flows in the panhandle, and commends the SWP’s Implementation Strategies and Milestones that aspire to establish additional minimum stream flows in the region.

7C-Navigation, Fisheries, and Recreation

ICL suggests that § 7C’s Implementation Strategies include financial support for the Lakes Commission in addition to the stated strategy of offering technical assistance.

ALBERT P. BARKER
JOHN A. ROSHOLT
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Shelley M. Davis
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September 21, 2012

VIA ELECTRONIC MAIL

Idaho Water Resource Board
ATTN: SWP
P.O. Box 83720
Boise, ID 83720-0098

Re: Comments to Proposed Revised 2012 Comprehensive State Water Plan

Dear Mr. Chairman, and Members of the Board:

Enclosed are the written comments the Boise Project Board of Control to the Draft Comprehensive Idaho State Water Plan. Thank you for the opportunity to submit these comments.

Very truly yours,

BARKER ROSHOLT & SIMPSON LLP

Shelley M. Davis

**COMMENT OF THE BOISE PROJECT BOARD OF CONTROL ON PROPOSED
REVISIONS BY THE STATE WATER BOARD TO THE COMPREHENSIVE STATE
WATER PLAN (2012)**

The following are Comments and Suggestions by the Boise Project Board of Control to the Board concerning the Proposed Revision dated May 12, 2012 of the Comprehensive Idaho State Water Plan.

The Boise Project Board of Control is the operating agency for five irrigation districts within the Boise River Drainage: Boise-Kuna Irrigation District, Nampa & Meridian Irrigation District, New York Irrigation District, Wilder Irrigation District and the Big Bend Irrigation District. Together, the Boise Project and these Districts irrigate over 167,000 acres of land, including farm land and open spaces.

As agriculture is a driving force in the economics of the Treasure Valley and the State of Idaho, the Boise Project Board of Control believes that the State Water Plan should encourage continued use of water for agricultural purposes throughout the state, including the Treasure Valley. The Boise Project is concerned that the proposed Plan's elements relating to changing uses to urban uses could be construed as discouraging the maintenance of this important agricultural base. The Board's policies should explicitly recognize the importance of agriculture to the economy, culture, and natural resources of the Treasure Valley.

The Objectives section of the State Water Plan references six objectives as required under 42-1734A. However, the Objectives section leaves out references to the guiding criteria in 42-1734A(1)(a-e). The draft Plan's Introduction section prior to setting out those Objectives has omitted central guiding criteria for the first time since the plan was initially adopted in 1976. In that 36 year history the Plan has always included a reference to the fact that the Plan must "fully conform to the prior appropriation doctrine." 1996 Plan, at p. 4. The Boise Project is concerned

that this omission could be read as a signal that the Plan and the Board's policies are untethered to the prior appropriation doctrine. Boise Project requests that the objectives and introductory section contain a specific reference to two foundational elements of any water plan required for the State of Idaho.

The first is the prior appropriation doctrine, which is not only the law of the State of Idaho but is embedded in the Idaho Constitution. Idaho Code § 42-1734A which defines the scope and content of the plan states:

In adopting a comprehensive state water plan the board shall be guided by these criteria:

(a) existing rights, established duties, and the relative priorities of water established in article XV, section 3 of the constitution of the state of Idaho, shall be protected and preserved;

Id.

The second is the recognition that existing water right holders hold a property interest in their water rights and, while the State has a management role, the water users have a property interest that must be protected in any state policy. The Boise Project Board of Control is part of a large group of entities which took the issue of ownership of water rights to the Idaho Supreme Court in *U.S. v. Pioneer Irrigation District, et al.*, 144 Idaho 106 (2006). There the Supreme Court that recognized the property interests of the irrigation districts and the landowners hold a property right in the water rights, including those held for them by the Bureau of Reclamation at Reclamation projects, and put to beneficial use. The State of Idaho supported this effort and agreed that the Districts and water users held such a property interest.

All of the Policies of the Board must rest upon the foundation of the prior appropriation doctrine and the recognition of the property interest of the water users in their water rights.

These fundamental concepts cannot be ignored in the State Water Plan as they seem to be in this current version.

Policy 1A State Sovereignty: The Boise Project supports the policy of state sovereignty over water as exclusive to any other entity. The Project is concerned that the state policy contends that all waters are “owned” by the State as public property and, as noted above, omits any reference to the property interest of the water users who have put the water to beneficial use. Recognition of the State’s sovereign interest should be in conjunction with a recognition of the water users’ property interest.

Boise Project also believes that this State Sovereignty section should be strengthened in another way to make it explicit that for both the water resources of the State of Idaho and aquatic species that occur within those waters of the State of Idaho, the State of Idaho is the sole trustee over those resources to the exclusion of claims of trusteeship by other entities, including the federal government. This notion of trusteeship is important in a number of federal statutes involving natural resources and the State should assert its Policy that the State is the trustee to the exclusion of all others.

Policy 1I Aquifer Recharge: With respect to the aquifer recharge and managed recharge policies, the Boise Project encourages the Board to recognize that there are very different hydrology and geologic conditions in different parts of the state and that a one size fits all managed recharge program is not appropriate without specific consideration of the local resources.

Policy 1J Water Quality: The Boise Project encourages the Board to recognize the limits of its authority concerning implementation of water quality measure and encourages the Board to work collaboratively with the Board of the Department of Environmental Quality and

the Office of Species Conservation so that all state entities can understand the impacts of their actions on resources committed to the supervision of other agencies.

Policy 1K Comprehensive Aquifer Management: The Boise Project will be submitting separate comments to the Board addressing the Treasure Valley Comprehensive Aquifer Management Plan ("TV CAMP") and believes that the TV CAMP process has gone further afield than is authorized under state law.

Policy 1L Surface Water Supply Enhancement: The Boise Project supports policy 1L, particularly for evaluation of surface water enhancement in the Boise Basin and continued studies of those potential alternatives.

Policy 1N Hydropower: Concerning hydropower, Boise Project is concerned that this policy is focused on main stem power generation facilities, to the exclusion of the development of power resources on irrigation canals and conduits. These small lowhead hydro projects on irrigation canals offer an enormous potential benefit to energy resources of the state and to the irrigation entities which are in the process of developing these projects. The Boise Project has already developed two lowhead projects that are online and a third that is under construction. The Department of Water Resources should be strongly encouraged by the Board to eliminate barriers, hurdles and excessive regulatory review of these lowhead hydro projects. For example, there is a significant fee and a lengthy review associated with obtaining a hydro power water rights even when the irrigation entities are simply using their existing water rights and existing canals to develop hydro power. The Department should be directed to streamline these efforts. Moreover, there is no need to subordinate or term limit any of these in-conduit or in-irrigation canal hydro facilities especially when those hydro facilities are owned and operated by the owners of the irrigation systems and water rights themselves.

Policy 2B Federally Protected Species and State Species of Greatest Need: The Boise

Project supports the current draft of the Plan prohibiting reintroduction of listed species without careful state review and approval. As recent experience with terrestrial species has determined, introduction of a species, even as an experimental basis, can have significant economic and social costs. Introduction of any species, can have unintended consequences on water resources, existing and future uses, and on the wildlife present today. Species introduction must be carefully evaluated, monitored and controlled or prohibited by the State where appropriate, whether a species is federally listed or not.

Harrington, Helen

From: Erin Mader [lakescommission@gmail.com]
Sent: Friday, September 21, 2012 4:55 PM
To: Harrington, Helen
Subject: state water plan comments

Hi Helen,

I hope it isn't too late to submit comments. I am pasting them below.

--

Erin Mader
Pend Oreille Basin Commission
Program Coordinator
(208)946-7397

Re: Comments on the Idaho State Water Plan

The Pend Oreille Basin Commission (POBC) is thankful for this opportunity to comment on the proposed State Water Plan. POBC would also like to acknowledge the efforts put forth in revising the State Water Plan and is appreciative of the new focus on individual basins. As a representative of the Panhandle Basin, POBC would like to reiterate the importance of our surface waters to fish, wildlife, and recreation. Our local economy is dependent on the health and abundance of these waters. The lakes and rivers in the Pend Oreille Basin are a major reason that people are drawn to Northern Idaho and they nourish our souls along with our economy.

The revised Idaho State Water Plan does an excellent job of covering many of the building conflicts over water in Idaho. The focus on minimum stream flows for fish and wildlife health is refreshing and necessary. Idaho needs to remain diligent in protecting its waters. POBC fears that there are more and more entities eyeing the water of Lake Pend Oreille as a source for supplementing water shortages in other states. We are hopeful that Idaho will guard our water resources for the economy and environment of Northern Idaho. POBC supports developing and enforcing water conservation methods as the best way to protect water resources.

POBC is concerned that Washington State is considering the waters of Lake Pend Oreille for artificial recharge of the Spokane Valley Rathdrum Prairie Aquifer. 1F in the Water Plan states that "average withdrawals from an aquifer should not exceed the reasonably anticipated rate of future natural recharge..." 1I then states that "aquifer recharge should be promoted and encouraged." POBC hopes that Idaho is working with Washington to best evaluate anticipated future withdrawals from the aquifer. POBC also hopes conservation methods are not only encouraged, but enforced in Idaho as well as Washington. Artificial recharge from Lake Pend Oreille should be a last resort as it may impact the quality of the aquifer water and the ecology of the southern portion of the lake.

POBC would also like to point out that policy 3A is a bit confusing. The meaning of the third implementation strategy is unclear and needs to be clarified.

POBC would like to acknowledge the importance of hydropower to our region, but would also like to press that this benefit should not be valued over the benefit of stable and dependable water levels in the Pend Oreille Basin. There are unmitigated impacts on our aquatic ecosystem from the current hydropower system and we would suggest caution when contemplating expansion of this system.

POBC recognizes the benefit of policy 7B which focuses on setting and enforcing minimum stream flows in the Panhandle in order to preserve the scenic and recreational water bodies. We are also supportive of the focus on navigation, fisheries, and recreation in the Panhandle. These uses are the lifeblood of the Panhandle and they do deserve priority protection. POBC is thankful for recognition in the State Plan and hopes to build a closer relationship with the Department of Water Resources. We would like to be included in all discussions that have potential to impact water quantity and quality in the Pend Oreille Basin.

Thank you again for this opportunity to comment.



Peter R. Anderson
Counsel, Idaho Water Project

RECEIVED

SEP 21 2012

September 21, 2012

DEPARTMENT OF
WATER RESOURCES

Idaho Water Resource Board
[HAND DELIVERED]

Dear Board Members,

Trout Unlimited and the Idaho Council of Trout Unlimited respectfully submit these comments regarding the Idaho State Water Plan proposed May 2012 for public comment. Trout Unlimited is the nation's largest coldwater conservation organization dedicated to the protection of trout and salmon populations and the watersheds upon which they depend. It has approximately 2,000 members in Idaho along with professional staff, who participate in local partnerships with landowners and state and federal resource agencies to protect and restore trout, salmon, and steelhead habitat in Idaho's freshwater streams and lakes.

In general, we support the Board's proposed Idaho State Water Plan. It takes a broad look at the importance of Idaho's water resources and, if fully implemented, positions the State well for the future. Trout Unlimited was especially pleased with Policies 6A and 6B, because of our participation as an active partner in upper Salmon River Basin fisheries restoration. We encourage the Board to recognize and expand its partnerships with private organizations like Trout Unlimited in those types of projects in the Plan. The following specific comments track the organization of the proposed Plan.

LEGISLATIVE AUTHORITY

Page 3, line 1: This sentence should read "The authority to designate "protected rivers" derives, in part, from the state's power...." There is no need to limit the authority under which the state designates protected rivers, when a full analysis of the authorities has not been undertaken. This would be consistent with broader language on Page 26.

1. OPTIMUM USE

1C – Transferability of Use

This policy should be changed to reflect that water right owners are currently allowed to change the nature of use of their water right pursuant to I.C. §42-222(1). The policy could be amended to read: "Changes in the ~~nature of~~ use of a water right should be ~~allowed~~ promoted to meet emerging needs and to provide for optimum use of the state's water resources."

The discussion section of this policy should also be changed to reflect that I.C. §42-222 provides for changes in "nature of use."

Trout Unlimited: America's Leading Coldwater Fisheries Conservation Organization

910 W. Main Street, Suite 342, Boise, ID 83702

(208) 345-9800 • Fax: (208) 345-6766 • email: panderson@tu.org • www.tu.org

1I – Aquifer Recharge

This policy should be amended as follows: “Aquifer recharge should be promoted and encouraged, consistent with state law and with appropriate consideration of environmental impacts and opportunities.” This would make the policy consistent with the ESPA CAMP managed aquifer recharge provisions, pp. 19, 23, 26. The Board should be mindful of the environmental impacts of its recharge efforts, even after those efforts are authorized by a water right license.

1K – Comprehensive Aquifer Management Plans

This policy should be amended to read as follows: “The Idaho Water Resource Board will complete and implement comprehensive aquifer management plans to address the increasing changing demands on the state’s water supply.” This language broadens the issues that may lead to the development of aquifer management plans, but includes increasing demands. For instance, the issue in the Treasure Valley that led to the development of such a plan was primarily the change from irrigation to urban water use. In the Wood River Valley, changes include changing water use from agricultural to domestic irrigation and from surface water sources to ground water sources. There may be little change in the actual demand for water in the Valley.

1L – Surface Water Supply Enhancement

Implementation Strategies:

The first bulleted implementation strategy should add in the second sentence, regarding major considerations in defining high-potential projects, the following language: “viability of alternative supply options.” This consideration is important to disclose the relative benefits of water supply options and is critical for efficient and cost-effective decision-making.

A new implementation strategy should also be added to this section which highlights that surface water supply projects should be developed in collaborative forums. Collaborative forums provide the best, and perhaps the only, process for developing new major water supply projects. The alternative, traditional, route has proven to be a long and contentious, producing little but hard feelings between water users and wasted expenditures. The Board should also emphasize that it is imperative that agreements reached in collaborative forums be honored both by the parties and by the State, to encourage parties to participate in such forums.

1N - Hydropower

The term “base” flow is used in this section in a way that differs from its normal hydrologic meaning. A better phrase would perhaps be “firm” flows.

2. CONSERVATION

2B – Federally Listed Species and State Species of Greatest Conservation Need

The following language in this policy is extremely problematic: “Accordingly any reintroduction or introduction of federally listed species where the species enters waters of the State is against the policy of the State of Idaho absent the express approval of the State of Idaho.” This policy language appears to administratively impose a new permitting rule for activities involving federally listed aquatic species in Idaho, without providing sufficient definition of the terms it uses nor following the requirements of the Administrative Procedures Act, chapter 52, title 67, Idaho Code. For instance:

- Who is subject to the provisions of this rule? The federal government and its agencies are not subject to control by the State of Idaho pursuant to the Supremacy Clause of the United States Constitution. As a result, the entities subject to the rule can only be state and local governmental entities, private companies and organizations and individuals.
- What does the term “reintroduction” encompass? Salmon and steelhead are federally listed species that are removed from Idaho waters, bred in federal, state and private hatcheries, and their offspring are “reintroduced” to Idaho’s lakes and rivers. It is not clear whether this type of active hatchery-fish reintroduction is encompassed by the rule.

Further, there are many streams, rivers and lakes, large and small, that were the historic homes of Idaho native federally listed species, but which are no longer accessible to those species because of culverts, weirs, diversions, de-watering and so on. Multiple organizations—federal, state¹, local, municipal corporations, and non-governmental entities -- work in Idaho, using Idaho citizens as employees, to remove or modify those barriers to reconnect listed species with their historic habitat. Increasing the geographic range of aquatic species through projects that reconnect fragmented habitat (e.g. culvert replacement) is essential to the recovery of a species to the point where it can be delisted and state control restored. It is not clear whether this type of passive reintroduction is encompassed by the policy.

- What does the term “introduction” encompass? Introducing federally listed aquatic species to waters that were part of their historic native range but from which they had been extirpated would appear to be “reintroduction.” It is hard to imagine that federally listed species would be introduced in Idaho to waters that were not part of their historic range, but such invasive activity by state, local and private businesses and persons should be regulated by the state.
- What does “express approval” mean? It is not clear whether this approval needs to be oral or written, in the form of a permit or a letter. Nor is it clear how an entity or

¹ This includes the Board’s own water transaction program.

person applies for such approval or whether they have a right to appeal the withholding of such approval.

- Which entity represents the State of Idaho in providing such approval? This policy is being promulgated by the Idaho Water Resource Board, and will be approved by the legislature. It is not apparently consistent with the responsibilities assigned for federally listed species in I.C. §§ 67-818 and 36-104.
- What are the penalties or consequences of violations of this policy/rule? The rule does not specify how it applies to state and local agencies, and to private entities or public utilities.

This policy needs to be rewritten. It could have unintended, adverse affects on many private and public organizations that are working to restore federally listed species in Idaho. Those efforts are designed to remove the federally listed designation from Idaho's aquatic species and free Idaho water users from the consequences of that designation. It is hard to predict how it will affect BPA's Columbia Basin Water Transaction Program, the Bureau of Reclamation's habitat restoration program, the 2008 Columbia Basin Fish Accord obligations, the availability of privately managed funds and programs, and other efforts, in Idaho. The decision to leave it as written should not be taken lightly and without much further research and analysis by the Board.

2E – Riparian Habitat and Wetlands

Discussion

The last sentence of the first paragraph of the discussion should be rewritten as follows: "Riparian zones and wetlands should be protected, restored and managed, to preserve their ecological values and functions." This change would reflect that simple protection may not be enough—some riparian areas have been severely damaged and must be restored or require active management in order for them to function properly. The Board appropriately supports efforts to study the need for such restoration in its implementation strategies.

2F – Stream Channel Rehabilitation

Discussion

The last sentence of the first paragraph of the discussion should be rewritten as follows: "It is in the state's interest to ensure that the stream channels of the state and their environments be protected and restored." This change would reflect that simple protection may not be enough—some stream channels have been severely damaged and must be restored for them to function properly. The Board appropriately supports efforts to study the need for such restoration in its implementation strategies.

Implementation Strategies

The implementation strategies recognize that there are ongoing assessments and inventories of streams where natural and human-influenced disturbances can threaten public safety, private property, or other water resource values. We assume "other water resource values" include things like aquatic species habitat, public recreation, and municipal water supplies for drinking water. The implementation strategy should therefore direct Idaho Department of Water Resources to become a more active participant in such assessments.

3. MANAGEMENT

3B – Hydropower Siting

In this policy the Board should state its support for using its loan programs for the installation in existing canals and conduits of hydroelectric generation facilities.

4. SNAKE RIVER BASIN

The policies in this section do not adequately capture the full extent of the Snake River Basin. They are too focused on the conflicts along the main stem of the Snake River, and ignore its tributaries. The Henrys Fork, the Teton River, the South Fork Snake, the Blackfoot River, the Portneuf River, the Bruneau River, the Boise River, the Big and Little Wood Rivers, the Big and Little Lost Rivers and so on receive little mention in these policies. The mainstem policies that are discussed fail to capture the issues affecting these tributaries, and in some instances, as noted below, overstate the reach of the mainstem policies.

4B – Snake River Milner Zero Minimum Flow

This policy appears to overstate the reach of the Milner Dam zero minimum stream flow policy. If "full development of the Snake River" above Milner Dam means storing every drop out of the Henrys Fork, the Teton River, the South Fork of the Snake, from the Blackfoot reach of the Snake River, from the Blackfoot River, or from the Portneuf River, very few citizens of Idaho would support it. The policy should say, at most, that the impacts of new developments on the flow at Milner Dam should not be considered in determining whether those developments should be constructed.

4E – Snake River Basin New Storage

Without any qualifiers, this policy is too broad. At a minimum it should recognize the new storage must be cost effective, including consideration of costs to the environment. But beyond that, developing new water supply projects should be done in transparent, collaborative planning processes that look in the first instance at all possible water supply options, including non-structural solutions such as water markets and reducing demand. Examining possible benefits to streamflows and fish and wildlife should be a basic part of the process. All stakeholders should work together to reach broad-based consensus on Idaho's water needs and how to meet them. That is clearly the best way to build the necessary public support for any

possible storage recommendations.

4J – Snake River Fish, Wildlife, Recreation, and Scenic Resources

This policy overstates the adequacy and reach of the Snake River minimum flows set forth in Policy 4A. It ignores the minimum flows that have been established for other rivers in the Snake River basin, such as the Boise River and Wood River minimum flows, and flows protected by operational guidelines and collaborative processes that protect flows separately and apart from the Policy 4A minimums. Those minimum flows do nothing to provide adequate flows for Idaho treasures such as the Henrys Fork and the South Fork Snake. This language could be used to allow for the dewatering of these streams through new water right developments and operational changes that would rob Idaho of some of its greatest natural wonders. To this end the first bulleted milestone should be amended to include “[m]inimum stream flows maintained and collaboratively established.”

CONCLUSION

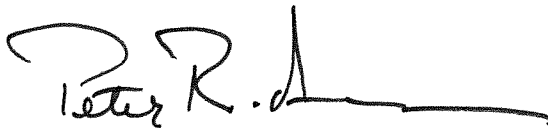
We complement the Board for its efforts on this proposed State Water Plan. There is much in the Plan we agree with and support. To summarize our major concerns, we would like to see:

- The new rule/policy regarding federally listed aquatic species reintroduction be appropriately defined and narrowed;
- The emphasis on new storage tempered by the recognition that collaborative water planning processes and cost-effective projects are necessary for any new water supply solutions; and
- The emphasis on the Snake River mainstem be broadened to include consideration of the tributaries to the Snake River.

Thank you for considering our comments. We hope you find them to be constructive.



CHRIS JONES
President, Idaho Council
Trout Unlimited



PETER ANDERSON
Counsel, Idaho Water Project
Trout Unlimited

OWYHEE INITIATIVE



BRENDA RICHARDS, CHAIR
CRAIG GEHRKE, VICE CHAIR

September 21, 2012

Idaho Water Resource Board
Terry T. Uhling, Chairman
Idaho Water Center
322 East Front Street
PO Box 83720
Boise, Idaho 83720-0098

Re: Owyhee Initiative Board of Directors Support for Draft State Water Plan Language Supporting the Implementation of the Owyhee Initiative Water Rights Agreement

Dear Chairman Uhling,

In September of 2010, the Owyhee Initiative (OI) Board of Directors requested the inclusion of the Owyhee Initiative water rights agreement in the revised State Water Plan.

During the long, careful deliberations throughout development of the OI, the members of the Working Group (now the Board of Directors) entered into the Owyhee Initiative Agreement. The signing was, quite frankly, an historic event in the history of Owyhee County. It brought together conservationists, ranchers, wildlife interests, recreation users, local government, state interests and federal management personnel.

A key element of the Agreement was the OI Wild and Scenic Rivers Water Rights Agreement that was Appendix B to the Agreement. The Water Rights language that forms a critical part of the Agreement was the base upon which final agreement was reached.

The Appendix B Agreement provides for the protection of existing senior water rights, provides for limited new appropriation and protects flows for fish and wildlife species and recreational opportunities.

At its meeting on September 17, 2010, the Board of Directors of the Owyhee Initiative, Inc. voted unanimously to recommend to the Idaho Water Resource Board that the Agreement be incorporated into the Revised Comprehensive Idaho State Water Plan. We heartily urged that the Water Board consider this Agreement, and its importance to the Initiative, perhaps the the

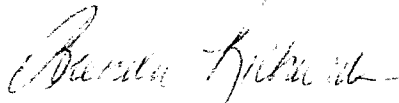
most successful collaborative land and water conflict resolution in the history of southwestern Idaho, and one of the most successful in the nation today.

As you know, the Agreement that incorporates Appendix B is implemented by the following broad base of interests: Owyhee County, the Owyhee Cattleman's Association, the Idaho Wilderness Society, the Owyhee Borderlands Trust, the Idaho Conservation League, the Owyhee Farm Bureau, Idaho Rivers United, the Owyhee Soil Conservation Districts, The Nature Conservancy, the Idaho Back Country Horsemen, the South Idaho Dirt Racing Association, Idaho Outfitters and Guides, the Sierra Club, and the Wild Sheep Foundation Idaho Chapter.

Remarkable it was, and is, that such a group of varied interests could agree upon a Water Rights Agreement. The Water Rights agreement was executed after months of review with Idaho Water Users, the Department of Interior (through both the Solicitor's office and the Secretary's personal attorney and assistant Michael Bogart), the Idaho Attorney General's Office and other state agencies interested in the state's most precious commodity.

The OI Board of Directors has reviewed the relevant language on pages 62 & 63 of the Draft State Water Plan and strongly supports its inclusion in the final State Water Plan. Additionally, the OI Board of Directors thanks the Water Board for their time and consideration.

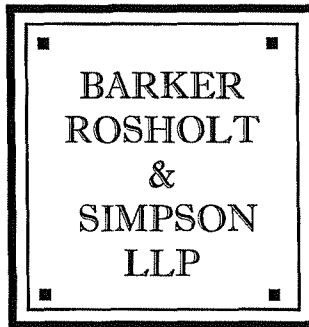
Cordially,

A handwritten signature in cursive script, appearing to read "Brenda Richards", written in dark ink.

Brenda Richards

Chair, Owyhee Initiative Board of Directors

ALBERT P. BARKER
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JOHN K. SIMPSON
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September 21, 2012

VIA ELECTRONIC MAIL

Idaho Water Resource Board
ATTN: SWP
P.O. Box 83720
Boise, ID 83720-0098

Re: Comments to Proposed Revised 2012 Comprehensive State Water Plan

Dear Mr. Chairman, and Members of the Board:

Enclosed are the written comments of North Side Canal Company, Twin Falls Canal Company, and Clear Springs Foods, Inc. to the Draft Comprehensive Idaho State Water Plan. Thank you for the opportunity to submit these comments.

Very truly yours,

BARKER ROSHOLT & SIMPSON LLP

Shelley M. Davis

Comments of the North Side Canal Company, Twin Falls Canal Company, and Clear Springs Foods, Inc. submitted September 21, 2012, to the Draft 2012 Comprehensive State Water Plan:

Thank you for the opportunity to provide the following comments on the proposed revised Comprehensive State Water Plan ("Plan"). These comments are submitted on behalf of the Twin Falls Canal Company, the North Side Canal Company, and Clear Springs Foods, Inc. (collectively "Commenters"). At the outset these Commenters would like to commend the Board for its substantial efforts over the past five years to update the Plan. It has been an arduous task and the final resulting draft Plan in many respects proposes important policy updates and improvements. Additionally, the Commenters would like to thank the Board, and its planning staff, for the transparency and inclusion of the Commenters concerns and thoughts throughout the process. The following comments are provided to propose additional revisions that the Commenters believe will improve the Plan, and help it to meet the needs of all of Idaho water users in the coming years.

Any Comprehensive State Water Plan must have at its core the fundamental legal principle in Idaho law that protects the private property rights that arise in appropriated water. See Idaho Code § 42-1736B(3)(d). After reviewing the draft Plan the Commenters notice a shift in tone from prior Plans. In this Plan there seems to be an effort being made to de-emphasize the Plan's historic deference to the prior appropriation doctrine and protection of the private property rights of appropriators. In several policies throughout the Plan there are proposed revisions that either remove or de-emphasize the Board's previous references to the importance of adhering to law of the State of Idaho concerning prior appropriation and the protection of senior appropriator's water rights. In the place of the Plan's earlier emphasis on the protection of senior water rights there is an apparent tone shift that emphasized urban growth and a need for flexibility in administration that is troubling to these Commenters. The specific policies in the Plan where this tone shift is apparent will be discussed in more detail below, but the Commenters request that the Board take a broad look at the overall draft Plan and determine whether the message of flexible administration to accommodate potential urban needs over the long-standing protection of the prior appropriation doctrine is the tone that the Board intended to convey. A specific reference to the Idaho Code § 42-1734A(1)(a) requirement that the Plan must be guided by "existing rights, established duties, and the relative priorities of water," and that those rights, duties and priorities, "shall be protected and preserved," in the Plan would benefit the Plan as a whole.

Additionally, and as these Commenters have stated before, the scope of the Board's authority in drafting and implementing the Idaho State Water Plan, is limited to policy determinations "for conservation, development, management and optimum use of all *unappropriated* water resources and waterways of this state in the public interest." I.C. § 42-1734A(1), (*emphasis added*). The draft Plan does include the code section that authorizes the Board to set policy for unappropriated waters in the state, but the Commenters suggest an additional statement that the policies embodied in the Plan do not impact the exercise of existing water rights in the State of Idaho. The Commenters understand that based on the scope of the

Baord's planning authority, a bright line distinction between appropriated and unappropriated water may be difficult to achieve. However, where such a distinction can be preserved, it should.

The following comments will be divided into the same sections that the Plan itself uses. Comments propose specific revisions, general concerns, or general areas that the Commenters consider to be improved over past versions of the Plan.

I. Introduction: The Commenters believe that the new addition of the section titled "Idaho Resource Board Programs" is a helpful addition to the Plan. The Board's authorities are scattered throughout Idaho code, and a brief summary of the programs that the Board is responsible to administer provides a helpful guide to future users of the Plan.

The revision of the Plan's introductory overview poses some concerns. In the 1996 version of the Plan, the overview stated:

The State Water Plan emerges from a vision of Idaho in which water is used efficiently, and is allocated through laws that fully conform to the prior appropriation doctrine. Water resource planning involves the widespread participation of Idaho citizens.

In the new plan, the overview has been completely re-written, and now states:

The Comprehensive State Water Plan represents the state's position on water development, allocation, and conservation. Accommodating Idaho's growing and changing water needs and the increasing demands on both surface and ground water presents a significant challenge. The Plan seeks to meet that challenge through the establishment of policies on water development, management, and conservation with accompanying strategies that may be implemented depending on the availability of funds, and milestones which will assist in ongoing Plan review.

The new overview statement erases the recognition of the laws of Idaho and adherence to the prior appropriation doctrine as its guiding tenets, and instead states that the Plan "represents the state's position on water....allocation[.]" Allocation of water is not an area that is committed to the Board's authority. The term is vague as used here, and has the appearance of being potentially in conflict with the settled law of the state of Idaho and the authorities of the Director of the Idaho Department of Water Resources. The Commenters suggest that the Board either replace the new proposed overview statement with the statement present in the 1996 Plan, or revise it to remove the reference to "allocation" and to replace the statement that the Plan is intended to fully conform to the prior appropriation doctrine and laws of the State of Idaho.

The new overview statement also appears to be attempting to create policies that would apply to already appropriated water that is subject to use and allocation pursuant to already settled Idaho law. For this additional reason the new proposed overview should be amended or replaced with the 1996 Plan overview so that it is clear that the 2012 Plan is not intended to make policies for already appropriated and existing water rights, in accordance with Idaho Code § 42-1734A(1).

In the discussion of the Objectives of the Plan, there are statements that appear to potentially infringe on the authorities of other agencies, or areas of water planning that are not committed to the Board. The Board does have broad authority to plan for the unappropriated waters of the state. Furthermore, agencies must “exercise their duties in a manner consistent with the comprehensive state water plan.” I.C. § 42-1734B(4). As such, to the extent that Plan statements do not intend to affect “the authority of any state agency with respect to activities not prohibited by the comprehensive state water plan,” then those policy statements are not objectionable. *Id.*

II. Optimum Use Policies: At Policy 1A, titled State Sovereignty, the 2012 Plan has revised the emphasis of this policy to state that “[a]ll waters, whether surface or ground water, are owned by the state as public property and the state asserts its sovereign right to regulate all waters within the state of Idaho for the benefit of its citizens.” Because of the lack of emphasis on the Plan being directed only at unappropriated waters, the Commenters request that this policy statement be revised to distinguish public waters subject to the Plan’s policies from those appropriated and privately held water rights that are only subject to administration by the Department. Such a revision would be consistent with Idaho Code § 42-110 that specifically states “[w]ater diverted from its source pursuant to a water right is the property of the appropriator while it is lawfully diverted, captured, conveyed, used or otherwise physically controlled by the appropriator.” Also, it would be beneficial to include the statement “in accordance with state law,” after the phrase “all waters within the state of Idaho.”

It would be appropriate and helpful for this policy to include an affirmation that the State of Idaho is the sole trustee of the waters of the state as an addition to the statement that “the state opposes any attempt by the federal government or other states, or any other entity to usurp the state’s control over Idaho’s water resources.”

Policy 1C, titled “Transferability of Use” is still misplaced in this Plan, as it was in the the 1996 Plan. Transferability of use is a concept aimed directly at already appropriated water rights in the state of Idaho, and provisions have already been made through the water bank and other marketing systems to address the concerns raised in this policy. These Commenters believe that this policy should be removed from the Plan. This issue has been previously raised during the five year discussion of this plan, both by counsel for the Commenters, and also by the Idaho Water User Association representative, Norm Semanko. This comment arises from the earlier recognition that to the extent that it can be achieved, the policies of the Plan should be directed toward optimum use of the unappropriated waters of the state.

Policy 1D directed to the Water Supply Bank should be revised to include recognition that the Bank can only be used in a manner that does not injure existing rights, and an implementation strategy should be added that reflects the Bank’s requirement that it protect existing water rights and uses. There is some question also whether the Shoshone-Bannock Tribe’s rental pool is actually “authorized by the state.” If that state does not authorize the Shoshone-Bannock rental pool, then that statement should be corrected.

Policy 1F relating to Ground Water Withdrawal should be revised to remove the third sentence of the discussion which stated “All beneficial uses, including interdependent spring and surface water uses, should be considered in evaluating the full economic development potential of the state’s ground water resources.” This sentence erroneously implies that the administration of surface water rights is somehow subject to Idaho’s Ground Water Act or “full economic development” of groundwater. The Supreme Court has held otherwise. *See Clear Springs Foods v. Spackman*, 252 P.3d 71, 84-85 (2011). It is also suggested that the Board add an implementation strategy that encourages the creation of a water budget for portions or areas of an aquifer.

Policy 1H titled Quantification and Measurement of Water Resources should include an implementation strategy or milestone that would require that the basins subject to quantification be prioritized, as is done in many other broad reaching policies such as this policy.

The Aquifer Recharge Policy 1I, has necessarily changed substantially since the 1996 version of the Plan. There are a few issues in the discussion portion of the Plan that should be revised and the policy statement itself should be revised to clarify that aquifer recharge should not only be consistent with state law, but should also emphasize that it cannot interfere with, injure or impair existing water rights. In the discussion portion of the policy statement the state expands substantially on its previous comments concerning aquifer recharge in the state by dividing the discussion into three separate areas of recharge; 1) managed aquifer recharge, 2) aquifer storage and recovery, and 3) incidental aquifer recharge.

The “managed recharge” discussion contains two sentences that need further clarification for them to be meaningful. Those sentences state, “Monitoring and evaluation of managed recharge projects is essential to document hydrologic effects and effects on surface and ground water quality. All water use needs affected by managed recharge projects should be considered.” This statement should be revised to state:

The effects on ground water, surface water, and spring flow water budgets from managed recharge projects must be studied to determine the effectiveness of managed recharge projects after implementation, and to determine the continued feasibility of such projects.

This statement better explains the purpose of “monitoring and evaluation of managed recharge projects.” Both the “aquifer storage and recovery” and the “incidental recharge” sections of the policy reflect the need to determine the beneficial and negative effects of the projects and the need for meaningful study and evaluation of the projects, and is appropriate that the managed recharge section also include such considerations.

Policy 1J titled Water Quality should be clarified so that it does not imply that water management may be subject to water quality regulation. The implementation strategy that suggests that the Board or the Department “participate with DEQ and other state agencies to integrate water management programs and policies,” is not appropriate. Voluntary collaborative projects may benefit water quality in certain areas, and the Board should collaborate with the

appropriate agencies to ensure that water quality and integrity be maintained when the Board is exercising its instream flow and other authorities. But the term “integrate” should be revised in order to clarify the Board’s role in water quality monitoring, but not to insinuate a role in regulatory management. *See* Idaho Code § 42-1734(15).

Policy IK addressing Comprehensive Aquifer Management Planning needs to be revised. The new policy states, “the Idaho Water Resource Board will complete and implement comprehensive aquifer management plans to address the increasing demands on the state’s water supply.” The majority of the discussion portion of this policy tracks the provisions of Idaho Code that established the CAMP, except that the second paragraph states that the Board will “be responsible for implementing the plan to obtain sustainable water supplies and provide for the optimum use of a region’s water resources.” While the CAMPs are intended to evaluate the sustainability of ground water resources, there is nothing in the Code that states a CAMP plan is intended “to provide for the optimum use of a region’s water resources.” This is beyond the appropriate scope of a CAMP plan.

Policy 1L is directed toward Surface Water Supply Enhancement. The 2012 Plan policy replaces the “Potential Reservoir Sites” policy in the 1996 Plan, but an important aspect of the 1996 Policy is lost in the proposed replacement. The 1996 policy stated “that potential reservoir sites be protected from significant land use change.” The proposed new policy states “surface water development will continue to play an important role in meeting Idaho’s future water needs.” The need to protect potential reservoir sites is lost in the new policy. Some recognition of the need to protect these potential sites, in order to protect the economic feasibility of future potential development should continue to be addressed in the policy. The Board is tasked with accounting for and protecting potential reservoir sites. *See* Idaho Code § 42-1736B(3)(c). Also, The milestone statement that seeks to initiate and complete construction of an additional storage facility for approximately 600,000 acre-feet should be clarified to identify the waterway or Basin in which such a facility would be constructed.

The hydropower policy at 1N needs revision. The new policy states:

Appropriation of water for hydropower should be subordinated to subsequent upstream beneficial uses to assure an adequate supply of water for all future beneficial uses and minimum stream flows for hydropower projects should be established through the Board’s minimum stream flow program.

The statement that hydropower water rights should be subordinated to subsequent upstream beneficial uses, is really only applicable to run of river hydropower water rights, and has no applicability to in-conduit hydro rights. Further, the statement that the Board should use its minimum stream flow authority to set minimum stream flows for hydropower projects is not an authorized exercise of the Board’s minimum stream flow authority.

The hydropower policy fails to take into account the different types of hydropower projects that are licensed by IDWR. While it may be appropriate in some circumstances to subordinate run of river projects, it may be infeasible and unnecessary to apply the same standard

to in-conduit hydropower facilities. Also, there may be circumstances where it is more beneficial not to subordinate a new run of river facility, but this policy would make such a determination impossible. The Commenters believe a revision to this policy that encourages the continued development of in-conduit hydropower facilities, and suggests a change in Idaho law to streamline the process to develop such facilities in the state.

Additionally, while it would be helpful for the Board to be able to protect hydropower minimum flows at facilities, the present Ch. 15, Title 42, Idaho Code authorizing the Board to appropriate minimum stream flows does not provide protection of hydropower flows as one of the intended uses of the minimum stream flow authority. The statute would have to be amended. Further, the hydropower policy appears to be at odds with certain of the stated goals of Part B of the 1996 Plan for the Milner to King Hill portion of the Snake River. The 1992 Part B Portion of the State Water Plan from Milner to King Hill called for additional hydropower development and sought increased flows past Milner Dam for wildlife and spring flow purposes. That needs to be sorted out before it is presented to the legislature.

- Another important policy that was present in the 1996 Plan has been eliminated in this proposed 2012 Plan. In the 1996 Plan, there was a policy titled Spring Flows that specifically stated that “the hydrogeologic relationships between ground water supplies and spring flows continue to be quantified to allow for the determination of optimal development of the water resources.” In the comments to the policy the Board stated that where a groundwater/spring discharge relationship exists “it must be sufficiently quantified to allow for optimal utilization of the ground water supply while protecting established senior rights which depend on spring flows discharging from the aquifer.” This policy has been eliminated and no substitute policy has been proposed. While some of the issues have been resolved legally since 1996, the need to continue to protect spring flows still exists, and a policy reflecting that need should continue to be present in the plan.

III. Conservation Policies: The first conservation policy, 2A, titled Water Use Efficiency should include in the discussion portion a cautionary statement that further water conservation may have adverse impacts to water supplies and senior water rights. For example, further reductions in incidental recharge on the Eastern Snake Plain Aquifer could reduce ground water levels, spring flows, and reach gain. Although efficient water use is an important policy, there may be areas where additional water conservation may do more harm than good.

These Commenters support Policy 2B directed at Federally Listed Species, and the Board’s May 18th 2012 Resolution directed at the State’s opposition to reintroduction or introduction of listed species. However, it may be appropriate to include the opposition to any introduction or reintroduction of non-native or extirpated species in order to fully protect the aims of the policy. The clarification of Policy 1A titled “State Sovereignty” that the Board affirmatively declare that the state is the sole trustee of the water of Idaho would also benefit this statement.

The Commenters continue to have concerns with Policy 2C directed at instream flows. The new instream flow policy is controversial. In the discussion portion of the policy, the Board

states that it “supports efforts to obtain storage and natural flow rights to improve and maintain instream flows when in the public interest. The Water Bank and local rental pools are tools that can be used to improve instream flows through voluntary cooperation and to meet local needs.” The policy discussion then states that statutory changes are needed in order to facilitate the expanded instream flow policy.

The Idaho Water User Association, on several occasions during the subcommittee meetings expressed concern with the proposed expansion of instream flow uses that could infringe on already inadequate surface flows and storage. The Board, nonetheless adopted the following policy:

The Idaho Water Resource Board will exercise its authority to establish and to protect minimum stream flow water rights on those water bodies where it is in the public interest to protect and support instream uses.

The Board must determine whether this is an appropriate use of the instream flow statute as it exists, whether this is an amendment to Ch. 15, Title 42, Idaho Code that the Board can support, and in any event, the statement should include a statement that any such expansion of the instream flow rights would not injure or impair already existing senior water rights. The Board should also review Idaho Code § 42-1736B(3)(d) when it makes this determination.

At Policy 2E titled Riparian Habitat and Wetland, a citation for the statement that “Riparian and wetlands areas cover approximately 20% of the state and support 80% of the species in the state,” would be appreciated.

The Commenters support the modifications to the Stream Channel Rehabilitation policy 2F. This policy was substantially modified, for the better. In the past discussion portion of the policy the Board had stated “catastrophic flooding is often the outcome of heavy run-off combined with human disturbances, and may result in the destruction of stream channels.” In the new version, that was largely authored by Fish & Game the statement is much more focused on proactive work to restore stream channels, and less on the potential human causes of such destruction. We also support the Board’s decision to eliminate the Tailing Pond Regulation and Radioactive Waste Monitoring policies from the 2012 draft Plan.

Similarly, Policy 2G, the Safety Measures Program policy has been improved substantially. In the new policy, while it continues to recognize the inherent dangers of urbanization in close proximity to canals and other sorts of waterways, the new policy does not refer to these waterways as “hazards” but rather emphasizes that while there are fatal accidents that occur because of “inherent dangers” that there has been “a greater effort to provide public awareness programs and, where feasible, implement measures designed to prevent such occurrences.” The implementation strategies include securing and providing funding for construction and maintenance of safety features, and to continue to encourage the implementation of safety awareness programs.

At Policy 2H it may be appropriate for the Board to take a position discouraging development in flood prone areas, and statement that development in flood plains has resulted in Corps of Engineer rules that force excessive evacuation of stored reservoir water.

III. Management Policies: As a general comment on these policies, the elimination of the “energy” and “hydropower licensing” policies that were present in the 1996 Plan give the overall appearance that the Board is stepping away from its historic support for the continued development of clean renewable hydropower in the state. While some portions of those two policies appear to have been consolidated in the “Hydropower Siting” policy, some important Idaho code references from the energy and licensing policies were eliminated.

Policy 3A, relating to the Review of Federal Reservoir Water Allocation should be revised to clarify that “allocation” or “reallocation” does not affect existing storage rights. Neither the Board nor the federal government has any authority to “reallocate” storage in federal reservoirs that has been contracted to existing spaceholders, and which spaceholders hold state law water rights in. The Board should clarify that this policy only applies to federal reservoirs that have unallocated storage space.

Policy 3B, Hydropower Siting, could use some revision. The hydropower siting policy attempts to incorporate some of the policy statements that were originally in the 1996 Plan under the headings “Energy Plan” and “Hydropower licensing.” The new consolidated policy states that “the expansion of hydropower capacity and generation consistent with the state water plan can help meet the need for affordable and renewable energy resources.” The three 1996 policies stated separately:

It is the policy of Idaho that the State Energy Plan set forth policies for energy use and development in the state that the plan be updated every five years.

It is the policy of Idaho to insure that public interest, existing water rights, related settlement agreements, and the future water and energy needs of the State are considered in hydropower licensing.

It is the policy of Idaho that new hydropower developments be in conformance with the State Energy Plan.

The new policy simply states “[t]he expansion of hydropower capacity and generation consistent with the state water plan can help meet the need for affordable and renewable energy resources.” The new discussion portion of the Draft Plan hydropower siting policy includes most of what was previously included in the discussion portions of all three policies. However, it fails to include references to the specific code sections that define the scope of the State’s ability to condition hydropower water right licenses contained at I.C. § 42-203B. A revision to this policy that also recognizes the generation capacity and plentiful supply of in-conduit low-head hydro facilities as a potential benefit to the state would be appreciated. Further, the Commenters suggest a statement from the Board encouraging and simplifying the process to develop in-conduit hydropower.

COMMENTS

Policy 3F titled Water Rights Adjudication is a new addition to the State Water Plan. Some Commenters have taken offense at the representation that the Board was single-handedly responsible for negotiating the successful resolution of the federal tribal claims, but the record of those claim proceedings likely will speak for themselves.

IV: Snake River Basin Policies: These policies were provided to these same Commenters many months ago requesting preliminary comment. The Commenters provided substantial comments at that time, but it is apparent from the final draft that none of those proposed revisions or comments were incorporated into the subsequent draft. As the Snake River Policies were not revised in response to the comments, these Commenters hereby submit again in whole, the comments that it provided when requested to do so in March of this year.

Overall, this version of the policies represents a marked improvement from the initial set released in 2010, but there are still a few areas that pose some issues that should be addressed and discussed. First, these policies have unnecessary and unduly long discussions of disputed factual situations that the Board relies upon as justification for the policies. These historical recitations are out of character with the rest of the plan, and misplaced in this section of the Plan as well.

In the Introduction: P. 1 - ¶ 2, last sentence: The sentence should be amended to read “When conflicts arise between competing interests – and with water resources in the arid American West, as they inevitably do – the laws of the State of Idaho and the policies in this Plan establish the blueprint for allocation of unappropriated waters of the Snake River. P. 1-¶ 3, the minimum stream flow policy 4A does not guide “overall” water planning and management in the Snake River Basin. The purposes of minimum stream flow appropriation is set out at Ch. 15, title 42, Idaho Code, and does not anywhere represent that such flows are intended to “guide overall water planning and management.” They are adopted in order to fulfill certain delineated beneficial uses, including to protect fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, transportation and navigation values, and water quality, and to prevent out of state appropriation. Using minimum stream flow appropriations for other purposes is not authorized under Idaho law. Also, at paragraph 2, the reference to many governmental interests regulating the Snake River should clarify that each of those interests are limited to their specific jurisdictional authorities.

At Policy 4A – Snake River Minimum Flows – My concern set forth about the appropriate designated purposes of minimum stream flows carries through here. Throughout the historical discussion of the Board’s Milner, Murphy and Weiser gages flows they are referred to as “minimum average daily flows,” except that the heading calls them minimum stream flows. Those two things are not alike. Also, the representation that these designated flows “establish a framework for planning and management in the Snake River Basin” should be reviewed in light of the Supreme Court’s *Clear Springs* opinion issued in March 2011. Also, I have concerns about the length of the description of the history of the development of the Snake River watershed. The history of Milner Dam and the “two river” concept is oversimplified and incorrect. Certain hydropower water right above Milner Dam have not been subordinated as the

Board suggests, at various times in history, or now (i.e. City of Idaho Falls power plants, Minidoka power plant). These concerns also apply to section 4B related to the Snake River Minimum Flow. In the implementation strategies, strategy 2, there needs to be a determination of whether the Snake River has been fully appropriated before any discussion of new appropriations should be addressed.

In reference to Policy 4B – Snake River Milner Zero Minimum Flow- See concerns in 4A. The last two paragraphs of 4C should also be referenced here. There is an ongoing SRBA subcase to determine the effect of the water board's Milner Zero minimum average daily flow, and whether that policy was properly transformed into a minimum stream flow water right. This case has not yet been resolved. The Board should clarify that the development of new "in-stream and off-stream storage projects above Milner Dam" is subject to existing water rights and cannot in any way affect existing storage reservoir operations. A recognition that the optimization of flows passing Milner dam should be done to first protect existing uses, including storage rights, and that such development is subject to all existing uses, including storage water rights.

Policy 4C- Trust water. There are concerns among the Commenters that this policy's emphasis on additional uses without more emphasis being placed on the potential of the system being fully appropriated is problematic. As to the implementation strategies, strategy 2 is already required by Idaho law. The same comment applies to the milestones.

Policy 4D-Conjunctive Management: First, the Board should clarify that its policy does not affect or interfere with water right administration in any way. Although this is referenced, it should be set out in the body of the statement. Further, the Board's discussion appears limited to conjunctive management of the aquifer and the river above Milner Dam, erroneously omitting the connection that exists above Milner Dam. The Commenters believe it is important to more thoroughly review this section to make certain that the suggestions relating to "adaptive management triggers" don't conflict with the already existing law in Idaho concerning conjunctive administration. Additionally as to the implementation strategies, a strategy should be adopted to confirm that the predicted benefits of aquifer recharge are actually realized prior to implementing actions to conduct more recharge. As to strategy 3, the Commenters suggest that a working group, like that contemplated in policy 4B to monitor water management operations be formed in order to participate in developing a monitoring program to better predict the occurrence and duration of future low flows. As to the milestones, my clients would prefer that some study that confirms the hoped for benefits of recharge be completed prior to or at least in conjunction with meeting or exceeding the ESPA CAMP targets.

Policy 4E-Snake River Basin New Storage: Certain surface and ground water users in the Snake River Basin continue to experience water shortages for irrigation purposes. The Board should adopt in this policy a prioritization for any newly developed storage to be dedicated to supplement existing irrigation water rights, and state that any new storage cannot interfere with or injure existing irrigation water rights. A further concern in this section relates to the last milestone stated there, that aquifer management goals be achieved. The definition of those goals is necessary in order to determine whether they have been achieved.

Policy 4F-Snake River Basin Agriculture: The policy statement needs to be revised so that it recognizes that development of supplemental water supplies to sustain existing uses is not exclusive to agriculture, but to all beneficial uses on the Snake River, including aquaculture, storage and hydropower. The Commenters would like to see a more explicit definition of what the Board means when it refers to "remaining unappropriated flows." As the *Clear Springs* case determined, the prognostications of the State Water Plan as it relates to satisfying the senior below Milner surface rights does not trump the prior appropriation doctrine as it relates to non-Idaho Power rights. Also the second paragraph of the comments seems not to recognize an increasing belief that the river between Milner and Murphy may be limited because it is already fully appropriated.

Policy 4J-Snake River Fish, Wildlife, Recreation and Scenic Resources: This policy should probably be combined with 4A related to minimum stream flows, since it represents the proper purposes for which minimum stream flows are appropriated.

These Commenters appreciate this opportunity to present these comments, concerns and proposed revision before the Board, and look forward to the any revised draft of the Plan that may be issued prior to the plan being submitted to the legislature.



RECEIVED

SEP 21 2012

DEPARTMENT OF
WATER RESOURCES

IDAHO DEPARTMENT OF FISH AND GAME

600 S Walnut / P.O. Box 25
Boise, Idaho 83707

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

September 19, 2012

Idaho Water Resource Board
ATTN: SWP
PO Box 83720
Boise, ID 83720-0098

Dear Chairman Uhling and Members of the Idaho Water Resource Board:

Idaho Department of Fish and Game (Department) has reviewed the 2012 revision of the Idaho State Water Plan (Plan). The purpose of this letter is to assist the Idaho Water Resource Board by providing comments and recommendations for your consideration for the 2012 State Water Plan. It is not the purpose of Idaho Department of Fish and Game to either support or oppose the Plan.

Policy 2B-Federally Listed Species and State Species of Greatest Conservation Need

The Department recommends this section of the Plan, in addition to stating the State's interest in assuring state primacy over water resources, should also note it is in the State's interest to assure state primacy of management over fish and wildlife resources within Idaho as opposed to listing under the Endangered Species Act (ESA). The Department, acting under the supervision of the Idaho Fish and Game Commission, has statutory responsibility for carrying out the policy to preserve, protect, manage, and perpetuate all fish and wildlife. Idaho Code 36-103(a). The Department further recommends, in addition to noting the State's obligations under the Snake River Water Rights Settlement Act of 2004, the Plan should also note the State's agreements for the 2008 Columbia River Basin Fish Accord.

The Department also recommends the following wording changes (changes in italics) in bullets 2 and 3 under "Implementation Strategies":

"Collaborate with the Office of Species Conservation, *Idaho Department of Fish and Game and other* state and federal agencies, affected Indian tribes, and local stakeholders to develop and implement habitat conservation programs that preclude the need for listing of species and contribute to listed species' recovery."

"Coordinate with the Office of Species Conservation *and Idaho Department of Fish and Game* to integrate water resource programs with species protection and recovery, including the establishment of minimum streamflows, and state designation of protected rivers."

Keeping Idaho's Wildlife Heritage

Idaho Water Resource Board
September 19, 2012
Page 2

Policy 2E-Riparian Habitat and Wetlands

This policy discusses the development of voluntary watershed-based conservation strategies for the protection of riparian and wetland areas. However, the Plan uses the term “mean high watermark” without definition. We suggest including the definition of this term as a footnote.

Policy 4J-Snake River Fish, Wildlife, Recreation, and Scenic Resources

In the discussion regarding Snake River Flow Augmentation, the following statement is made:

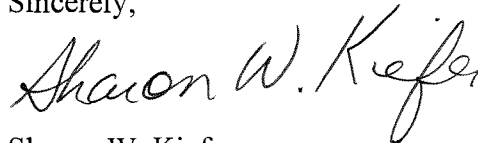
“Although flow augmentation from the upper Snake River has proven to be controversial because of the inability to demonstrate the specific benefits to ESA-listed fish...”

The Department recommends using the wording “...*because of the uncertainty regarding specific benefits to ESA-listed fish...*”

Idaho Department of Fish and Game is very interested in continuing to work with the Idaho Water Resource Board to enhance and protect Idaho’s valuable fish and wildlife resources and the important water resources that support them. The Department looks forward to the continuation of that partnership.

Thank you for the opportunity to comment on the proposed revisions to Idaho’s State Water Plan.

Sincerely,



Sharon W. Kiefer
Deputy Director

SWK/CR/mb

cc: Bonnie Butler, Governor’s Office
Dustin Miller, Office of Species Conservation
Helen Harrington, Department of Water Resources

Harrington, Helen

From: Ball, Diana
Sent: Monday, September 24, 2012 9:17 AM
To: Harrington, Helen
Subject: FW: Proposed State Water Plan Public Comments

Helen-

Mr. Marvel called to make sure that you received a copy of these comments. He submitted them prior to midnight on Friday, September 21. He received an error message from your email account.

*Diana Ball
Planning & Technical Assistant
Idaho Department of Water Resources
Email Diana.Ball@idwr.idaho.gov
Phone 208.287.4829
Fax 208.287.6700*

From: Jon Marvel [<mailto:jon@westernwatersheds.org>]
Sent: Friday, September 21, 2012 11:20 PM
To: SWP
Cc: Spackman, Gary
Subject: RE: Proposed State Water Plan Public Comments

September 21, 2012

Western Watersheds Project
P.O. Box 1770
126 South Main Street, Suite B-2
Hailey, ID 83333

To the Idaho Water Resource Board (Board):

These are the comments of Western Watersheds Project (WWP) on the draft 2012 Idaho State Water Plan (plan). WWP understands that comments are being accepted until September 21, 2012 and so these comments are being provided in a timely way on September 21, 2012.

Western Watersheds Project is a membership non-profit conservation group headquartered in Hailey, Idaho with additional offices in Boise, Idaho and in several other western states including California, Utah, Wyoming, Montana and Arizona. WWP has been active for many years in Idaho issues related to water quality and quantity across the State. WWP appreciates the opportunity to comment on this draft revision of the Idaho State Water Plan.

WWP's comments are referenced to particular sections of the draft plan as well as page numbers:

Section 1D Water Supply Bank, page 9: WWP believes that the issue of water leasing and water sales through the State water supply bank could be made more efficient by enabling a better mechanism for valuing water for any use. WWP recommends the Board adopt as part of the plan a policy that Idaho State water be valued per acre-foot, cubic foot per second or other convenient measure of use and that for each acre-foot a fee be charged by the State for all water rights recorded by the Idaho Department of Water Resources (IDWR). An Idaho State water rights use charge per acre-foot of all water right would create a clear understanding of water value and assist in the functioning of the State Water Supply Bank by acknowledging that water is a valuable asset of the State and should not be given away for free.

WWP recommends that the Board also adopt policy in the State Water Plan that directs that the State of Idaho receive a reasonable portion of all subsequent rentals or sales of water rights carried out through water banks.

Section 1E Conjunctive Management, page 11 and 12: WWP recommends that the Board adopt a policy that conjunctive management within any Idaho watershed not impair or increase basic costs of providing water for the basic needs of municipalities in the case where surface agricultural water rights have much earlier dates of priority for water rights than municipal groundwater wells. The policy of prioritizing agricultural water rights above municipalities simply because of the prior appropriation doctrine misplaces the costs of providing water without interruption to citizens on their pocketbooks without any consideration of the relative values of municipal uses as contrasted with agriculture or other earlier rights gained through prior appropriation. By exempting municipal groundwater uses from conjunctive management, the Board can better prioritize existing and future water use without creating huge monetary windfalls for agricultural water rights holders if and when municipalities need to acquire earlier water rights to protect their citizens from possible water calls by relatively low-value agricultural water use like alfalfa hay production. This is especially important when appropriated water use in Idaho is skewed so greatly toward agriculture. WWP understands that annual water use in Idaho for agriculture is more than 90% of all annual human uses of water. Since this proportion is likely to be reduced in the future by municipal water needs due to population growth, citizens of Idaho's cities should not suffer financially because of reliance on the prior appropriation doctrine to allocate water and value it.

At a minimum the Board needs to direct in the plan that areas of the State where future water use for municipalities may be restricted by conjunctive management be studied so as to best determine how municipal interests are to be protected for current water use and future needs.

Section 1K Comprehensive Aquifer Management Plans, page 16 and 17: WWP supports the initial effort in the ESPA CAMP plan to establish a charge for water in order to facilitate the implementation of the ESPA CAMP plan. In future such efforts to create similar CAMP plans, WWP recommends the Board adopt a policy of recovering full water administrative and operational costs for all future CAMP plans including those of plan development and administration by the IDWR through a proportional water charge to water rights holders to avoid the need for any charge to general fund revenues.

Section 1L Surface Water Supply Enhancement, page 17, 18 and 19: WWP recommends that the Board adopt policy in regard to all proposed dams that requires that prior to the Board supporting any new dams including very large projects like the proposed rebuilding of the Teton Dam and the Galloway Dam on the Weiser River that the Board complete a full financial and environmental analysis of the costs and impacts of the dam including a full comparison of costs and impacts of enabling the same amount of water to be made available through water conservation and/or the acquisition or retirement of existing water rights.

In addition Wwp recommends that surface water enhancement policy of the State Water Plan include a requirement that the costs of any future dams shall be fully paid by those receiving appurtenant water rights in proportion to their percentage of water rights created by the dam storage. In addition any dams under consideration shall have clear dollar value benefits in excess of all costs.

Section 2A Water Use Efficiency, page 22-23: WWP recommends the Board adopt a policy that states clearly that the State of Idaho owns the waters of the State and that the State may implement a charge for the use of all water rights in order to accomplish public benefits such as conservation of water and equitable assignment of the costs to administer the Idaho Department of Water Resources.

WWP recommends that the Board adopt policy acknowledging that it is beneficial for the State of Idaho to charge a market rate for the use of water under all Idaho State water rights to create an incentive for conservation of water and to enable fair returns for all Idaho citizens for the use of publicly owned ground and surface water. The Board knows that market pricing of water by the State is the fairest way to achieve market-based benefits. The current allocation of water rights without charge by the State leads to waste of water and eliminates market signals about the value of water to the State and its citizens.

Section 2B Federally Listed Species and State Species of Greatest Conservation Need, page 23-24: WWP recommends that the Board adopt policy direction of charging for the use of water allocated under all recorded Idaho water rights so that there is an incentive for water users whose practices threaten endangered or special status species like ESA listed anadromous or native fish to allow water to by-pass diversions and provide habitat for the year-round needs of listed species.

Section 2C Instream Flow page 25: WWP recommends the Board include policy direction that requires minimum year-round instream flows for all streams and rivers of the State regardless of existing water rights. Absent such direction in policy from the Board, many streams and rivers in the State will continue to be annually dewatered for agriculture and other uses, thereby destroying listed species habitat in some areas of the State.

WWP also recommends policy direction be adopted by the Board to enable existing surface water rights holders to donate their existing water rights for permanent instream flow rights with the original date of priority retained. Such a

policy will encourage water rights holders with a desire to see conservation benefits from their rights to create instream flows without risk of subsequent diversion of that volume of surface water by lower priority water rights holders in the same watershed.

Section 2E Riparian Habitat and Wetlands, page 27-28: WWP recommends that the Board adopt policy that states that all private and public property owners have an obligation not to degrade riparian areas through human activities and that where human caused development damages or destroys riparian areas and wetlands that equivalent restoration elsewhere shall be required.

Section 2G Safety Measures Program, page 29-30: WWP recommends that the Board adopt policy direction that all private dam owners subject to IDWR safety oversight pursuant to IC 42-1717 be obliged to pay a reasonable annual fee to IDWR to offset the costs to the State of ensuring public safety from the risk of dam failure or overtopping.

Section 3D Funding Program, page 35-36: WWP finds it remarkable that in this draft Funding section, there is no discussion or consideration of a simple and straightforward policy to gain funding for water policy administrative and implementation needs. The Board needs to identify and analyze the establishment of an annual fee for all water rights issued by the State of Idaho to understand how charging users for a valuable State resource, the use of publicly owned water, should be part of any discussion of funding for water projects of all kinds as well as administration costs of IDWR. Under current State law the annual use of surface and ground water is given away for free. Absent a reasonable fee for the use of water, the State of Idaho and its citizens are providing a valuable commodity use right at no cost to those, who in many cases, lease or sell that right for profit. This is not good public policy since it undervalues the provision of public assets for private and public uses.

Section 4B Snake River Milner Zero Minimum Flow, page 44-46: WWP recommends that the Board acknowledge that times have changed and the creation of the two rivers policy by the adoption of the zero minimum flow at Milner needs to be modified to reflect values that have been dismissed for almost 100 years. The idea of full development of water in the Snake River above Milner is an idea that has resulted in many respects a non-functional river below Milner Dam except at very high Spring flows. The Snake River below Milner is more than just the proverbial "working river". At a minimum WWP recommends that the Board adopt a policy of accomplishing minimum instream flow below Milner to ensure water quality and quality fisheries habitat from Milner to and below the Murphy gauge.

Thank you for the opportunity to comment on the 2012 draft State Water Plan on behalf of Western Watersheds Project.

Jon Marvel



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September 21, 2012

Idaho Water Resource Board
Terry T. Uhling, Chairman
Idaho Water Center
322 East Front Street
PO Box 83720
Boise, Idaho 83720-0098

Re: Idaho Rivers United's Comments on Draft State Water Plan

Dear Chairman Uhling,

Idaho Rivers United thanks the Idaho Water Resource Board (Board) for the opportunity to comment on the Draft State Water Plan (SWP).

Idaho Rivers United (IRU) is Idaho's only statewide conservation organization dedicated solely to the protection and restoration of Idaho's rivers and streams. The 3,500 members of IRU believe that healthy and free-flowing rivers contribute greatly to the quality of life for all Idahoans.

As Idaho's population increases and the long-term effects of climate change affect the quantity and timing of water supplies, sound planning and wise decisions will be needed to ensure healthy rivers and streams while providing for the needs of our citizens. The foundation of planning is the development of a Comprehensive State Water Plan that realistically evaluates the current challenges and opportunities while providing guidance and direction for future decisions.

General Comments

The SWP correctly recognizes the many beneficial uses of Idaho's water and the need to protect and enhance those uses - including restoring streamflows and protecting fish, wildlife and recreational uses. Additionally, the SWP correctly identifies climate change as a possible threat to water supply and the need to plan for the effects of changing precipitation and runoff patterns.

IRU believes that the SWP is overly reliant on the construction of additional surface water storage to meet future needs. More emphasis should be placed on conservation and using our limited resources more wisely. Constructing new surface water storage is prohibitively expensive, very damaging to the environment and provides no guarantee of additional water. The SWP would be more accurate and more useful during the time period it will be in effect, to acknowledge that new surface water storage is highly unlikely, if not impossible. The SWP needs to focus instead on new flexibilities and

methods to adjust water uses, conservation, transferring water rights between willing buyers/sellers/lessors and nature of use and investigating other possible forms of storage such as aquifer storage.

Specific Comments

Objectives – 5. Environmental Quality

The phrase “where appropriate” should be deleted. IRU believes that it is always appropriate to consider state protection of Idaho’s rivers and streams.

Policies

The sentence “The Board adopts the following policies for the conservation, development, management and optimum use of all the unappropriated water resources and waterways of this state in the public interest.” should be modified to remove the reference to unappropriated water resources. The SWP should apply to all of Idaho’s water resources, appropriated or not.

1I – Aquifer Recharge

Managed aquifer recharge should be coordinated by the State Water Board and conducted only with sufficient safeguards to protect rivers and streams from excessive diversions.

1L – Surface Water Enhancement

In addition to IRU’s general comments on new surface water storage, IRU is concerned that this policy fails to fully assess and quantify the need for additional water. In many instances, demand reduction can play a major role in meeting the changing needs of the future. For example, in the Treasure Valley, the majority of future growth will likely occur through the conversion of farmland to subdivisions. Wise planning of this growth and its actual water needs may realize substantial savings.

2B – Federally Listed Species and State Species of greatest Concern

This policy, as currently written, appears contrary to federal law and federal authority and should be deleted from the SWP.

2D – State Protected Rivers

IRU is a strong supporter of both state protected rivers and federal Wild and Scenic River designations. The majority of rivers eligible for federal Wild and Scenic designation are located in areas of public land ownership and there is a national interest in protecting these rivers for future generations.

2E – Riparian Habitat and Wetlands

Idaho’s stream channel protection program is understaffed and consistently underfunded. The Board should seek additional and consistent funding to ensure effective permitting and monitoring of activities that occur on public trust lands.

3B – Hydropower Siting

IRU believes that there is limited opportunity to develop new instream hydropower projects. Upgrading existing facilities, adding generation to existing dams and utilizing irrigation drops for new generation will provide the greatest opportunity for new generation. In the event that new instream hydro is developed, minimum streamflows and ramping rates to protect fish, wildlife, water quality and recreation in bypassed and downstream sections should be required.

3E – Water Resource Planning Program

The Board should adopt a reasonable timetable for the periodic revision of the Comprehensive State Water Plan. The Board should develop a timetable to complete basin planning and review of existing basin plans.

3G – Climate Variability

This section should be renamed Climate Change. Climate change is a real and accepted challenge that the State must face head on, not in a manner that unnecessarily recharacterizes it.

4. Snake River Basin

The Snake River policies focus almost solely on the main stem of the Snake. There are many tributaries to the main stem that deserve the Board's attention: Henrys Fork, South Fork Snake, Blackfoot, Portneuf, Big and Little Wood Rivers, Boise, Bruneau, Payette and Weiser. With the exception of discussing new surface water storage, there is very little mention, if any, regarding these watersheds.

4D – Conjunctive Management of the ESPA and Snake River

Police should be developed to enhance natural recharge from the north into the ESPA. In watersheds like the Wood, Lost, Birch Creek and Medicine Lodge Creek, IRU would like to see special efforts/incentives developed to restore downbasin flows, which would benefit downbasin users and ESPA recharge.

4J – Snake River Fish, Wildlife, Recreation and Scenic Resources

Flow Augmentation

The Snake River Flow Augmentation language is divisive – the State of Idaho is a signatory to the 2004 Snake River Water Rights Agreement that includes the rental of up to 427,000 acre-feet of water from willing lessors in Idaho. The state should support its agreements despite efforts of special interests to create controversy.

Owyhee Initiative

IRU is a signatory to the Owyhee Initiative Agreement and strongly supports the Board's Policy, Implementation Strategies and Milestones.

5. Bear River Basin

A separate policy should be added that discusses the 2002 Bear River Hydropower Settlement Agreement and the ongoing efforts to protect and enhance Bonneville Cutthroat Trout habitat in the Bear River and its tributaries.

6A – Conservation Plans

The SWP should define strategies and set target dates for achieving the minimum streamflows established in the Water Rights agreement of 2004.

Cordially,



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September 21, 2012

Idaho Water Resource Board

Terry T. Uhling, Chairman
Idaho Water Center
322 East Front Street
PO Box 83720
Boise, Idaho 83720-0098

Re: Comments on Draft State Water Plan

Dear Chairman Uhling,

The proposed Idaho State Water Plan (ISWP) thoughtfully considers the changing demands of water use by the growing population of the state in conjunction with established policy of water rights.

It is commendable that ISWP aims to address the current demands and anticipates future needs by incorporating continued assessment and measurement of current water use. Assessing water use is necessary to adequately project future use and accurately troubleshoot potential issues that may be problematic and ensure prudent water practice.

While the ISWP is contemplative of established policy and provides strategies for future issues, there are several factors well worth consideration which may increase effectiveness for the overall plan design.

A methodical review of the language can increase uniformity within the plan design and the context of ISWP. The conflicting language of sections, discussion and “implementation strategies” and selective exclusion of the environmental quality [**Idaho Code § 42-1734(15)**] throughout the ISWP produces inconsistent policy and undue emphasis on economic development.

In section 2B FEDERALLY LISTED SPECIES AND STATE SPECIES OF GREATEST CONSERVATION NEED reads more like a legal declaration against ESA “ any reintroduction or introduction of federally listed species where the species enters waters of the State is against the policy of the State of Idaho absent

the express approval of the State of Idaho” rather than a policy statement fitting the Idaho Water Resource Board (IWRB). The spin, infers the primary strategy for achieving protection or recovery of a wildlife species falls under the purview Idaho Water Resource Board (IWRB) instead of the federal and state wildlife agencies. No state has the right to limit the federal authority, even Idaho. Promoting this belief is poor commentary for ISWP. Further concerning is merely referencing ESA listed species. Any substantial perspective on wildlife and fish is sorely absent and is dismissive of IWRB overall state responsibility for environmental quality and maintaining water flow for all public resources, fish, wildlife and recreation.

To add more confusion the discussion component of 2B acknowledges cooperative community based conservation programs as effective for defining specifics; the funding mechanism to collect the site information for implementing conservation strategies is unmentioned. This kind of disregard for financial resources validates most often the biggest obstruction for conservation efficiency is insufficient data from limitation from funding sources.

The next section in 2B “implementation strategies” has inconsistent policy approaches. On the one hand, the language of all inclusive stakeholders’ state and federal agencies, Native American tribes and others is identified for collaboration. Whereas in any coordination of species recovery or protection, stakeholders as well as state and federal agencies are excluded in the process and sets ISWP up for ineffective policy.

If willing ISWP can judiciously take a step further and go as far as including state and federal agencies such as Idaho Department of Fish and Game (IDFG) and Department of Environmental Quality (DEQ) in active roles working in coordination with Office of Species and Conservation for species recovery. The value of community based conservation funding and on the ground restoration projects plays a more notable role than a passing mention as useful for staving off enforcement actions.

Another opportunity to standardize and update the language used in IWSP is by clarifying the word groupings in section 2F Stream Channel. It may be interesting to change the traditional concept of “hunting and fishing” and instead try the modernized notion of “consumptive and non consumptive uses of the natural landscape” to convey inclusion.

The following sections are suggested ideas to broaden the perspective of ISWP.

Section 2I Flood Damage Reduction Levee Regulation:

During the assessment process, flood mitigation ought to address development in the floodplain.

Section 3G Climate Variability:

Placing so much focus on storage is based on the current belief within the industry that water conservation is the new water supply. This assumption indirectly promotes storage as the only answer and pries open the door to construction.

Section 4 Snake River Basin:

ISWP has a limited overview of the Snake River and the tributaries of the basin. A broader scope of the plan can address the proper management and the importance of the tributaries especially as the Snake is dubbed a “working river”

Section 4G Snake River Domestic, Commercial, Municipal and Industrial Uses:

The implementing strategies could effectively include environmental impacts.

Reiterate the strategy of further developing programs to promote efficient water use in future by DCMIU.

Section 5B Bear River Basin:

Expand the concept of the Bear River serving human consumptive needs by promoting storage by acknowledging fish restoration projects are in process.

The most encouraging section of the plan is 2E Riparian and Wetland Protection suggesting an evaluation of the Stream Channel Protection Act (SCPA). Re-storing SCPA to the original intent would be a start in the right direction for playing catch-up. Reinstatement of SCPA to include methods that ensure successful state conservation efforts can possibly preclude federal interventions or future litigations of the watershed.

Providing ecological security to stream beds also works beyond providing the economical engine of goods or services for the public as mentioned in the plan, by safeguarding the functionality of the unseen biological world, we ensure the longevity of wildlife and fish species and well being of the growing population of human species.

Idaho placed enough value on the environmental quality of water to include that objective in code. Perhaps the single greatest demand for the future water use outside of water provision is ensuring high environmental quality water. As population numbers continue to rise and the agricultural industry scrambles to meet the demand, the process of providing environmentally clean water is sure to grow in complexity. Integrating the environmental quality objective throughout ISWP is a necessary adjustment to reflect state standards and reach the potential envisioned. Protecting the water is a moral obligation we all share for the promise of a better tomorrow.

Thank you for opportunity to provide a citizen's perspective.

Sincerely~
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