AGENDA

STREAMFLOW ENHANCEMENT AND MINIMUM STREAM FLOW COMMITTEE MEETING NO. 3-13

November 18, 2013 at 1:00 pm

Idaho Water Center
Conference Rooms 602 B, C, D
322 East Front Street, Boise, Idaho 83720

1. Introductions
2. Idaho Water Transactions Program Overview and Annual Summary
    a. Upper Salmon Basin
    b. Clearwater Basin Proposed Effort
    c. Teton Basin
3. Transactions Discussion and Recommendations
    a. Process
    b. Upper Salmon Basin
        i. Pole Creek 2014
        ii. Lower Lemhi Annual 2014-15
    c. Teton Basin
        i. South Leigh Creek (Osagia LLC)
        ii. South Leigh Creek (Burr)
4. Public Comment
5. Next Meeting Schedule

Committee Members – Peter Van Der Meulen (Chairman), Roger Chase, Vince Alberdi, Bob Graham

Americans with Disabilities

The meeting will be held in facilities that meet the accessibility requirements of the Americans with Disabilities Act. If you require special accommodations to attend, participate in, or understand the meeting, please make advance arrangements by contacting Department staff by email Mandi.Pearson@idwr.idaho.gov or by phone at (208) 287-4800.

Memorandum

To: IWRB – Streamflow Enhancement and Minimum Streamflow Committee

From: Morgan Case

Date: November 18, 2013

Re: Water Transactions Program – 2013 Update

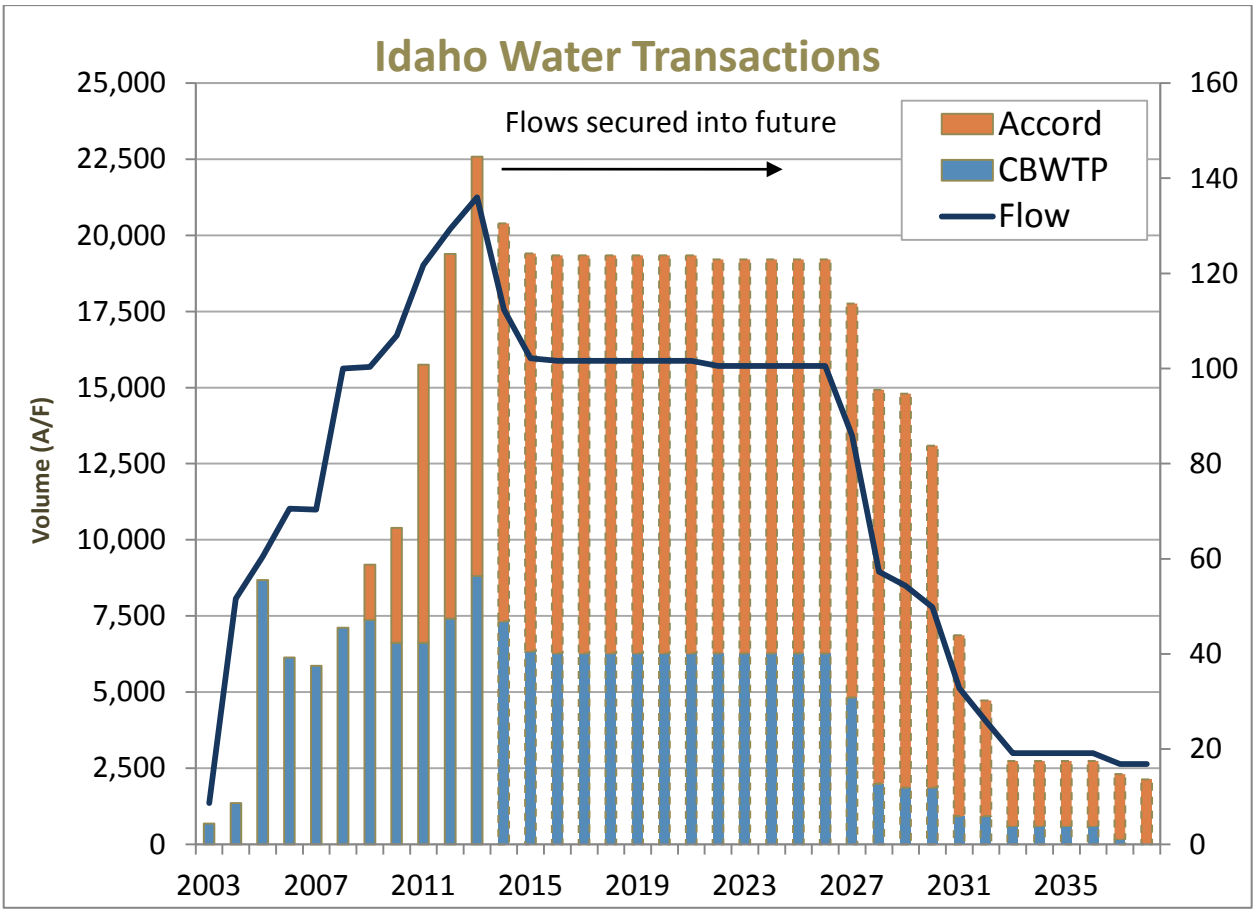
Annual Summary

September 31st, 2013 marked the end of the Federal fiscal year, the end of the FY 2013 contract with the Columbia Basin Water Transactions Program (CBWTP), and the end of the FY 2012 & FY 2013 Idaho Fish Accords (IFA) contract. With the support of the CBWTP and the IFA, the Board's 2013 water transactions added 29.4 cfs to the previously secured 107.6 cfs in tributaries in the Upper Salmon River and Teton River Basins.

The Board's partnership with Friends of the Teton River was successful, in the fact that FTR was able to complete 4 transactions. Using an adaptive approach, we will improve communication to ensure that the partnership continues to be beneficial to flow restoration efforts.

The 2013 irrigation season was an extremely dry one. In the Lemhi River basin, the watermaster was regulating to maintain the minimum flow targets for 86 days. That is the longest on record, with the previous maximum being 62 days and the previous average 19 days.

Transaction Name	Type	Term (Yr)	Flow (cfs)	AF/Yr	Price
Lower Lemhi 2013	Minimum Flow Agreement	1	16.21	822	$33,431.86
Lemhi - Big Springs	Source Switch	20	4.64	1620.9	$69,438.50
Kenney Creek Source Switch	Source Switch	20	0.14	41.7	$28,106.06
Pole Creek 2013	Minimum Flow Agreement	1	6	893	$50,000.00
Lower Lemhi Permanent - JP	Subordination Easement	Permanent	0.6	119	$58,500.00
Spring Creek - RE Beard	Lease	5	0.17	29.75	$3,725.15
Spring Creek - L Beard	Lease	5	0.11	20.3	$2,541.85
Spring Creek - City of Tetonia	Lease	5	1.5	262.5	$0.00
Spring Creek - Smaellie	Lease	5	0.07	12.25	$0.00



Upcoming Activity for 2014

The Board has secured programmatic funding in the form of a $209,127 contract through the CBWTP for FY 2014 and a $234,844 contract through the Idaho Fish Accords for FY 2014 and FY 2015. Efforts will once again be focused on the Lemhi and Pahsimeroi River Basins, with some increased focus on the Stanley basin.

Upper Salmon Position

The State of Idaho has committed to spending over $7 million on water transactions in the Lemhi and Pahsimeroi River basins as part of the Idaho Fish Accords. With only one staff person spending time in the Upper Salmon Basin developing transactions, it is difficult to assess and pursue all transaction opportunities. With the encouragement of the Northwest Power and Conservation Council, staff has proposed amending the CBWTP contract to add an additional staff position to the budget. The proposed position would be based in Salmon, and the primary purpose would be to develop water transactions in the Upper Salmon Basin. We hope to have someone hired by the end of the calendar year.

Memorandum

To: IWRB – Streamflow Enhancement and Minimum Streamflow Committee

From: Morgan Case

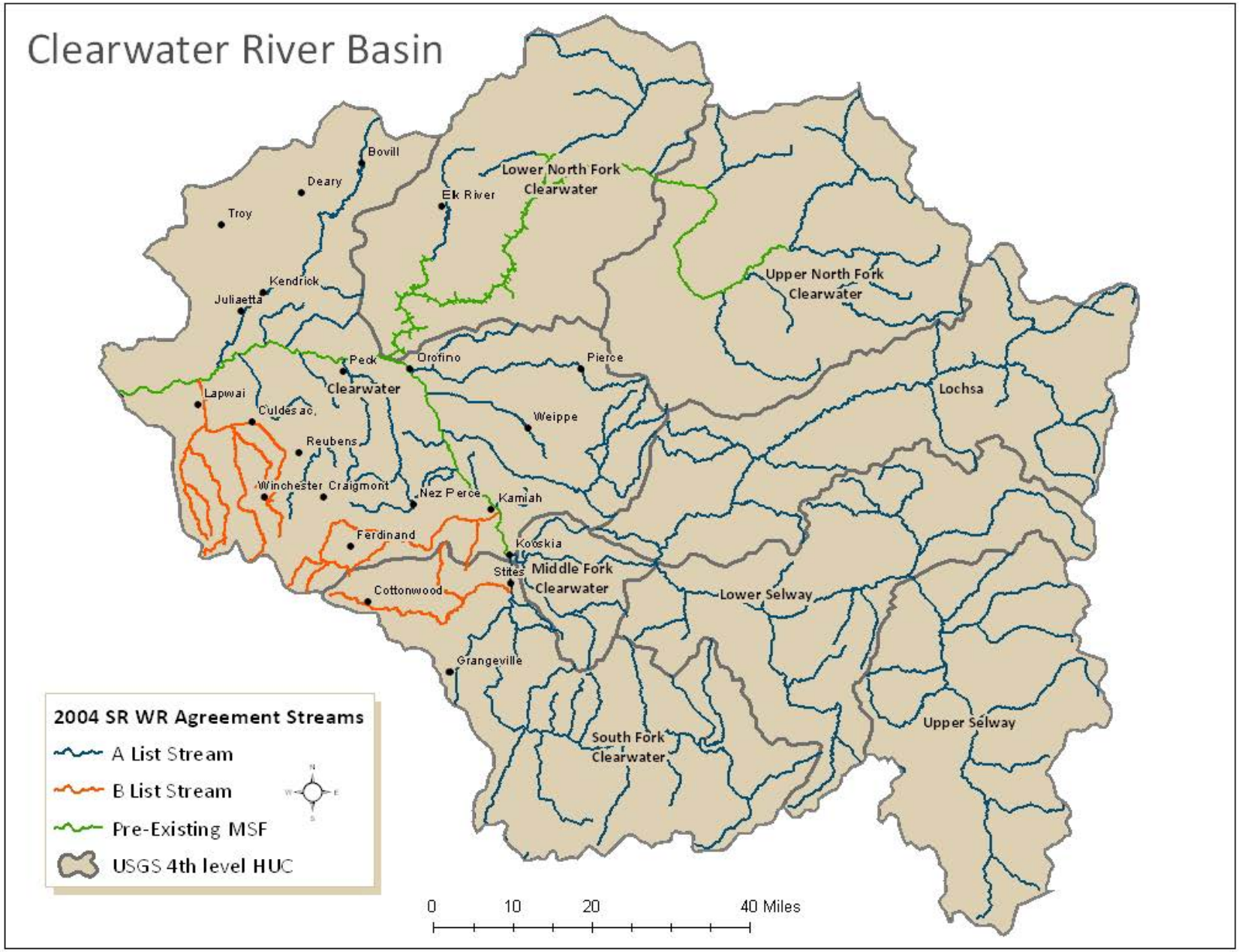
Date: November 18, 2013

Re: Water Transactions Program – Expansion into Clearwater River Basin

The Northwest Power and Conservation Council has expressed concerns that Idaho is not fully utilizing the funds available through the Columbia Basin Water Transactions Program (CBWTP) for stream flow restoration. Expansion of the program into the Teton River Basin through a partnership with Friends of the Teton River has been one outcome efforts to increase transaction activity. Another option would be to move into the Clearwater River Basin.

The Clearwater River is a tributary of the Snake River that supports an important population of ESA-listed steelhead. While flow limitations are not the primary factor limiting the steelhead population in the Clearwater, there are several areas do have low flow conditions. One of those areas is the Lapwai drainage near Lewiston, Idaho. As a result of the 2004 Snake River Basin Water Rights Settlement (Nez Perce Agreement), Lapwai Creek and 5 tributaries were recognized as flow-limited (B-List) and minimum stream flows water rights were established for those streams. A condition on the water rights specifically calls out the future use of the Water Supply Bank to fulfill those rights. There are also several tributaries in the Potlatch River basin that have high stream temperature related to low flow conditions.

Staff has been working with Janet Hohle, of the Governor's Office of Species Conservation (OSC) to explore these areas of potential water transaction activity. With Board support, we will continue those efforts to assess whether expanding the program into limited areas of the Clearwater River Basin could provide meaningful flow restoration for ESA-listed steelhead populations.


Clearwater River Basin
Bovill
Deary
Troy
Kendrick
Juliaetta
Elk River
Lower North Fork Clearwater
Upper North Fork Clearwater
Peck
Orofino
Pierce
Lapwai
Culdesac
Clearwater
Lochsa
Weippe
Reubens
Winchester
Craigmont
Nez Perce
Kamiah
Ferdinand
Kooskia
Stites
Middle Fork Clearwater
Cottonwood
Lower Selway
Grangeville
Upper Selway
South Fork Clearwater
2004 SR WR Agreement Streams
A List Stream
B List Stream
Pre-Existing MSF
USGS 4th level HUC
0
10
20
40 Miles

MEMORANDUM

To: **Streamflow Enhancement and Minimum Stream Flow Committee**

From: **Sarah Rupp**

Date: **November 7, 2013**

Re: **Teton River Basin – Annual Summary and Program Overview**

Annual Summary

In 2013 Friends of the Teton River worked in partnership with the Idaho Water Resource Board to advance four water transactions on Spring Creek. These were the first formal (i.e. – paid) water transactions implemented in the Teton Basin. Spring Creek was selected because the legal and social hurdles which have made it challenging to work on restoring flow in other tributaries are not present on Spring Creek. Additionally, there is broad based support for the deal and, by consequence, Friends of the Teton River believed that the deals presented the perfect opportunity – improved biologic conditions for Yellowstone cutthroat trout, low cost, and positive public perception.

As you will recall, two of the water right owners – the City of Tetonia and Mitchell Smaellie – donated their rights to the IWRB to put into the Water Supply Bank for a term of five years. The other two water right owners – Richard LaVere Beard and Richard & Ella Beard – leased their rights into the Water Supply Bank for a term of five years. All of the water rights were historically diverted at a single headgate, known as the Tetonia Canal. In total, the leases secured an additional 4.35 cfs instream.

In 2013, the four water transactions were monitored for compliance. The headgate associated with the point of diversion for these water rights was monitored on a weekly basis by Friends of the Teton River, in its capacity as hydrographer, to ensure that the water rights remained instream. Further, all other diversions on the source were monitored on a weekly basis as well, to ensure that the water was not simply re-appropriated by another user. In addition, occasional site visits were conducted by Friends of the Teton River. The water right owners were found to be in compliance at all times. Funding has been requested from the Columbia Basin Water Transactions Program and payments to certain water right holders are expected to be distributed in early December.

Monitoring efforts revealed some interesting issues which were not previously anticipated. There are seven diversions on Spring Creek which do not have functional headgates or staff gages. Additionally, it appears that some of the water right owners on Spring Creek have engaged in the practices of marshaling water when not permitted to do so under their water rights. Both of these issues made it challenging to shepherd leased water to the mouth of Spring Creek for delivery to the Teton River minimum streamflow reach. Both of these issues have been raised with Water District 01 and efforts are being made to remedy the situation.

Some individuals expressed concern for what happen to the ground when the leases were implemented. Positively, two of the four water right owners chose to produce a dryland hay crop, thereby serving to keep the land in production and reduce the risk of invasive weed issues. The other two water right owner fallowed their ground, occasionally grazing a few horses and 4-H animals.

2013 was an extremely dry year. The impacts to Spring Creek, as with all tributaries in the region, were significant. For the first time ever Spring Creek was deemed futile by Water District 01. The result was a series of approximately 30 days with sporadic stream connectivity, including an approximate two week time period in which Spring Creek was completely disconnected from the Teton River. However, it is plausible that the water administration issues discussed above (lack of headgates on several diversions and the unauthorized marshaling of water) contributed to the futile call determination.

Overall, it appears that the water transactions were successful. From an ecological perspective, additional water was kept instream during a very dry summer, serving to decrease stream temperatures and increase valuable habitat for fish and wildlife. Additionally, conversations with participating water right holders indicate overall satisfaction with the program and, in many cases, gratitude for the opportunity to participate. Further, implementation of these leases in the Teton Basin has helped address and assuage the concerns many water users expressed about the water transaction program, and ultimately served to catalyze interest in the program.

Program Overview and 2014 Planning

A. Teton Basin Program Overview

Over the past year Friends of the Teton River has been working diligently to identify other tributaries in the Teton Basin which may be appropriate for flow restoration. As an outgrowth of that work, I began to realize just how unique the Teton Basin really is, and how its unique characteristics dictate the type of flow restoration work which will be achieved. Several of the Teton Basin's unique characteristics are discussed below.

i. Development Trends and the Associated Impact on Water

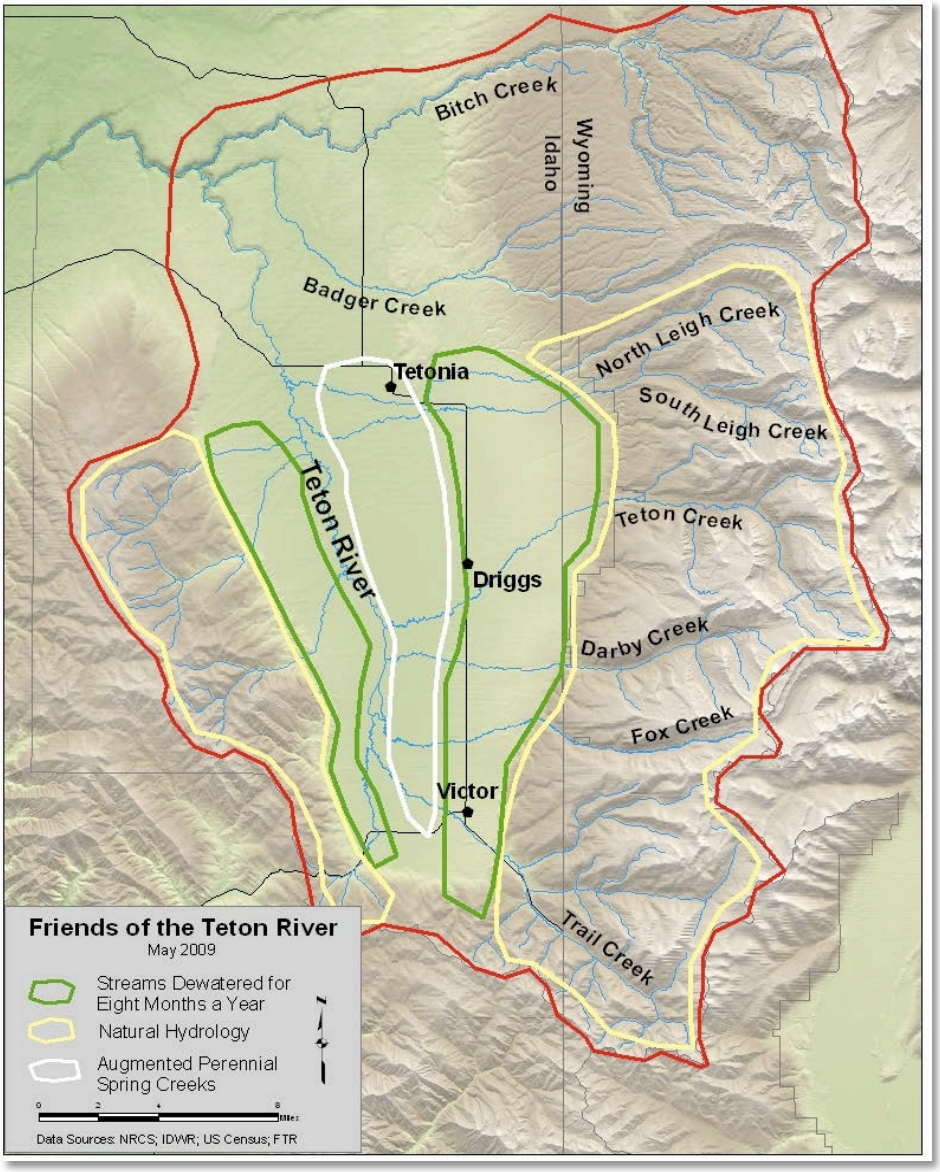
Teton County's economy has historically been based on agriculture. However, it has transitioned over the past 10 to 15 years toward more of a "New West" economy driven by real estate, recreation, and quality of life. The high quality of life in the Teton Valley is strongly tied to its rich natural resources. The nearby national parks, wilderness areas, and clear mountain rivers are all magnets for new development. The qualities that make it an attractive place to live are also sensitive to the impacts of growth and development. This, in turn, creates a delicate balancing act for the region as it plans for the future.

Teton County's population has more than doubled over the past 15 years and now stands at over 7,600 people. Most of the growth has been in the formerly agricultural areas of the county. While Victor has grown by nearly 1,000 people and Driggs has grown by roughly 300, over 4,000 people have moved into unincorporated areas throughout the county since 1990.

The impact of an increased population has translated to a reduction in the number of working farms and ranches in the region. Throughout Teton County, significant parcels of previously irrigated agricultural land have been developed to make way for residential housing. And the water rights appurtenant to those lands have, by consequence, been split and fragmented as well. The result is a series of many, small water rights on a stream. On South Leigh Creek, for example, there are approximately 200 irrigation water rights. On the other hand, on some streams the majority of water rights are controlled by large canal companies. Each structure presents a unique set of challenges.

ii. Teton Basin Hydrology

At the start of the twentieth century Teton River tributaries flowed from high-elevation headwaters to the Teton River in all but the driest years and supported both fluvial and resident life history forms of Yellowstone cutthroat trout. As organized agriculture developed in the Teton Valley, irrigation canals and ditches were built throughout the valley to divert and distribute streamflow according to agricultural needs. Over the past century land use has dramatically changed both the landscape and hydroscape of the Teton Valley (Van Kirk and Jenkins 2005). Tributary streams now have three distinct hydrological regimes: an unaltered snowmelt-driven hydrology in the headwater portions above diversions on U.S. Forest Service land; the middle portions are dewatered eight months of the year due to irrigation diversions; and the lower streams that flow perennially and are augmented by groundwater return flows and have a spring creek hydrology (attenuated peak flows and higher winter flows).



The tributaries of the Teton River are large, snow melt dominated systems. This means they are large, flashy systems. It is routine to see tributary flows ranging between 650-800 cfs (during spring run-off) to 30 cfs (late fall) in a single year. By consequence, flow restoration in these flashy systems often requires

working with significant quantities of water and working to target restoration of flows during key periods of time. Initial flow targets on many of these systems range from 25-35 cfs.

iii. Water Delivery Constraints

The historic practice of futile call presents challenges to flow restoration in the Teton Basin. Irrigators in Teton Valley rely heavily on the practice of Futile Call. When the flow in a tributary drops so low that the tributary does not flow to the main stem river, the tributary is deemed "futile." The water users on that tributary are then permitted to divert the water, when they would not otherwise be entitled to it. The practice of Futile Call serves to exacerbate stream dewatering problems. Understandably, irrigators perceive stream flow restoration efforts as jeopardizing their Futile Call practice, since the goal of these efforts is to keep tributaries connected to the Teton River.

iv. Working for a Non-Listed Fish Species

Yellowstone cutthroat trout (YCT) are considered a species of special concern in the State of Idaho and the condition of YCT populations are often an indication of the overall health of the watershed. Between 1999 and 2003, Idaho Fish and Game observed a 95% decline in Yellowstone cutthroat trout populations, while both brook trout and rainbow trout populations increased by 300%. Historically, YCT occupied much of the Greater Yellowstone Ecosystem (GYE), which encompasses parts of Idaho, Montana, Wyoming, and small regions of Nevada and Utah. Currently, YCT exist in just 27% of their historic range. The Teton River Watershed is one of three remaining stronghold systems for YCT in the entire GYE. Given the range-wide decline in YCT abundance and distribution, experts believe it is likely that the species will be petitioned for listing under the ESA in the future unless significant progress is made towards stabilizing and increasing populations throughout the region. The time to make changes and address declining populations is now.

v. Summary

Given the unique challenges discussed above, it is likely that the flow restoration strategy in the Teton Basin will look a bit different than other places. Specifically, the following can be expected:

- It is likely that several small water right deals will be advanced in any given year, as there are very few large agricultural operations in the region. By intentionally targeting water rights appurtenant to small ranchettes, it is possible to restore stream flow in many streams without impacting working family farms.
- On those streams with organized canal companies, energy will be invested in developing flow restoration strategies which work for the unique needs of the specific company. Development of such strategies may take many years to form and finalize.
- Flow restoration must be coordinated closely with IDF&G to ensure that the work is positively impacting fish populations, and to ensure that genetically pure populations of YCT are not jeopardized.
- Due to the large flow targets associated with many streams, the flow restoration effort in the Teton Basin must be couched in the long-term.
- Energy will be invested in determining how the practice of futile call can be harmonized with the flow restoration program, and I welcome input as to how that may achieved.

B. 2014 Planning - Bureau of Reclamation Watershed Planning Grant

Friends of the Teton River was awarded a sizable Bureau of Reclamation WaterSMART 2013, Watershed Planning grant. Through this grant FTR will form a diverse working group, called the Teton River

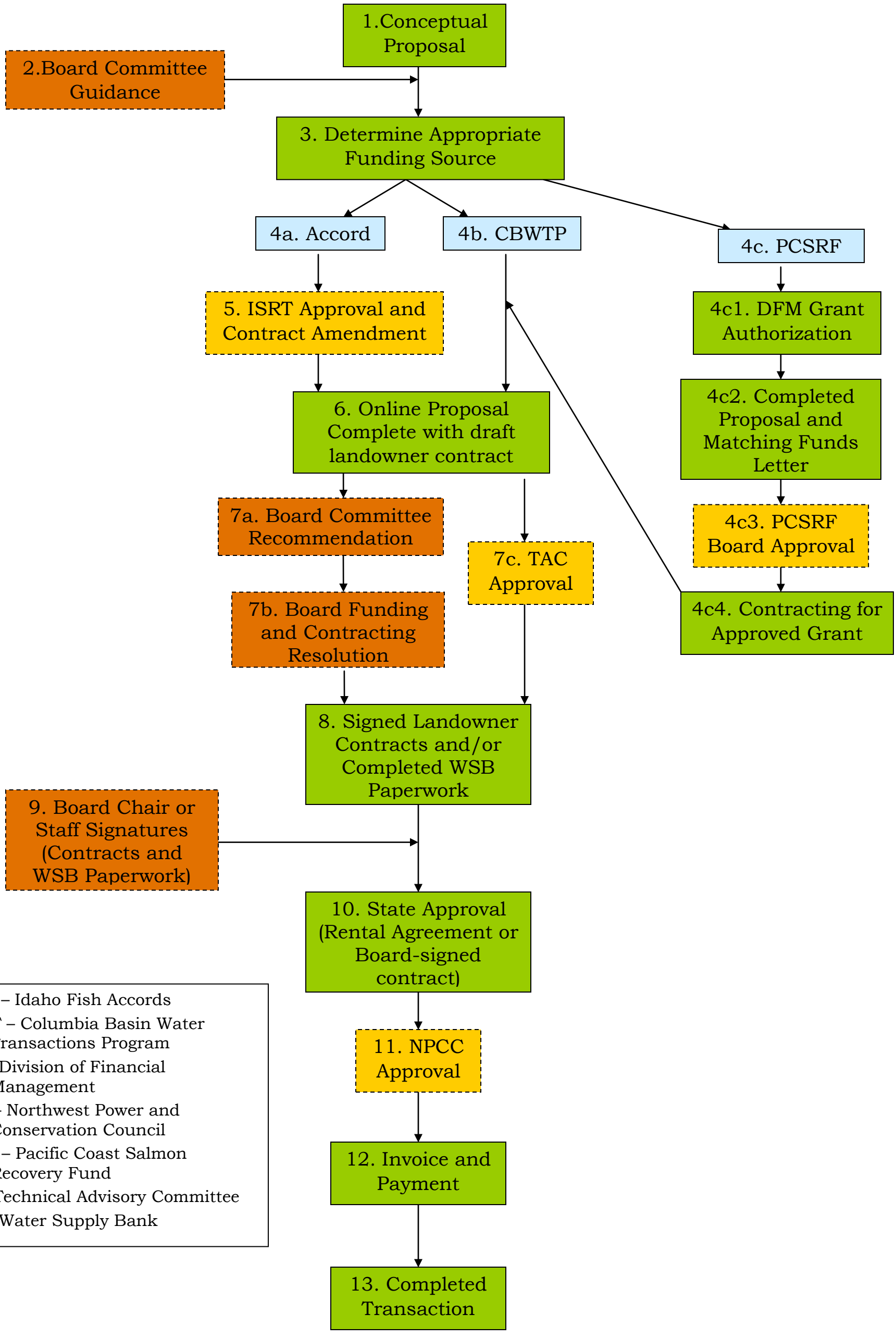
Advisory Council (TRAC), which will work collaboratively to identify, review, vet, prioritize, and endorse watershed restoration activities in the Teton River watershed. The goal of the TRAC is to: (1) engage diverse stakeholders in a process (2) to develop a comprehensive watershed restoration plan (3) which can be implemented to improve stream conditions, water quality, and flows in the Teton River Watershed (4) while meeting the needs of agricultural, residential, and municipal interests, thereby reducing conflicts over water. It is FTR's intention that this group will help guide the development of flow restoration work in the Teton River Basin, thereby ensuring that the various water transactions developed in the Basin are aligned with community goals and needs, and by consequence are supported by the community as a whole.

Over the next several months FTR will be working to identify appropriate workgroup members to participate in the TRAC. FTR is committed to recruiting a broad range of workgroup members to participate in this effort, including a significant number of individuals from the irrigation community, including representatives from the major canal companies in the region (Grand Teton Canal Company, Fox Creek Canal Company, Trail Creek Sprinkler and Irrigation Company), as well as individual ranchers, farmers and landowners with water rights.

Once work group members have been recruited, FTR will be working with each individual workgroup member to clearly define and understand the unique water related needs and challenges facing him or her. This will be done through a series of interviews with each workgroup member or group so as to characterize current water use and develop specific water management related goals.

You may recall that the Idaho Water Resource Board provided a letter of support for this grant application. Thank you very much for your support, and for helping to make this possible.

IWRB Water Transaction Process



Accord – Idaho Fish Accords
CBWPT – Columbia Basin Water Transactions Program
DFM – Division of Financial Management
NPCC – Northwest Power and Conservation Council
PCSRF – Pacific Coast Salmon Recovery Fund
TAC – Technical Advisory Committee
WSB – Water Supply Bank

Funding | Process Step | Board Action | Funder Action

Memorandum

To: IWRB – Streamflow Enhancement and Minimum Streamflow Committee

From: Morgan Case

Date: November 20, 2013

Re: Water Transactions Program – Pole Creek 2014

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

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

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

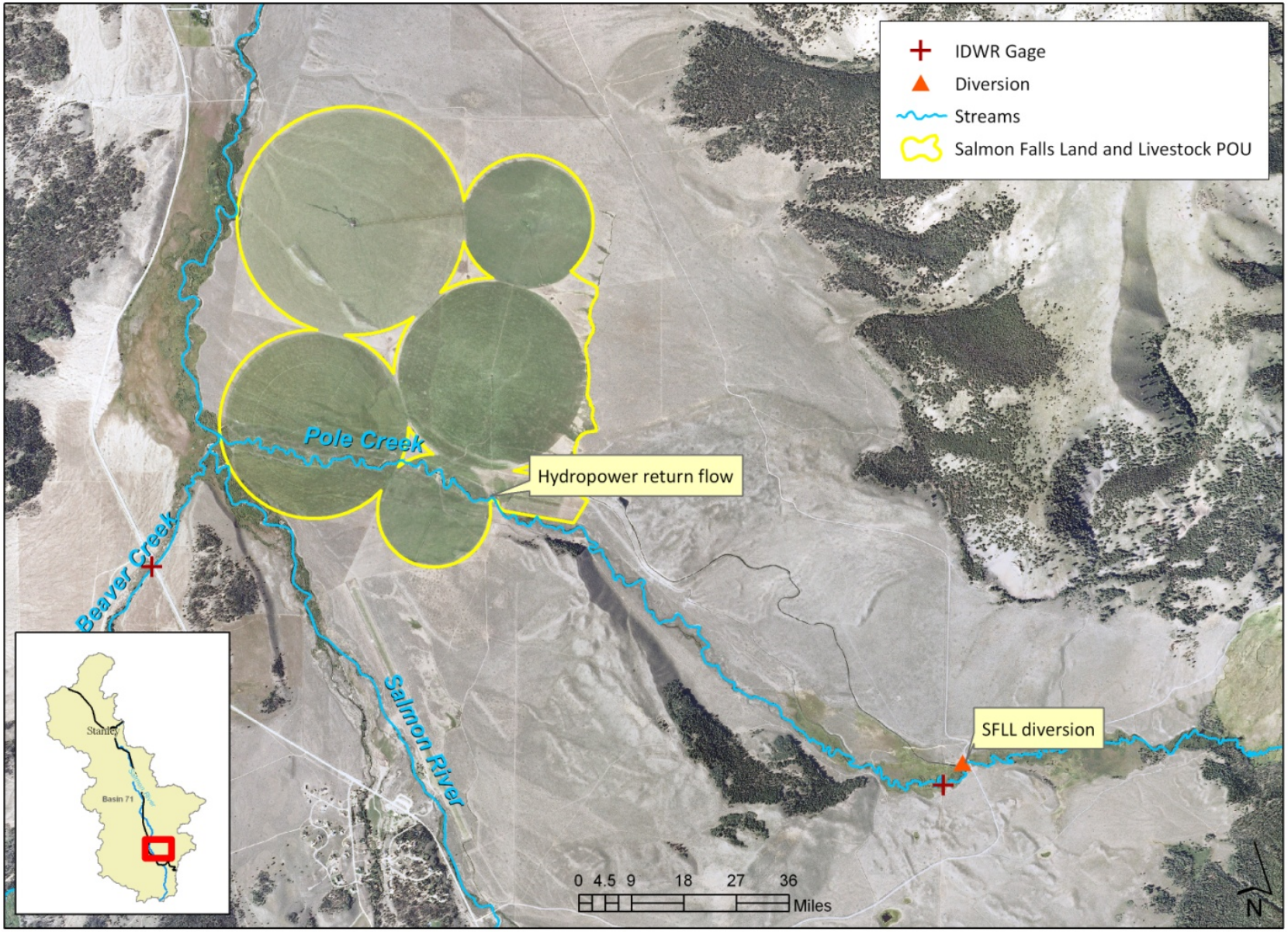
Pole Creek is a tributary to the Salmon River near the headwaters in the Sawtooth Valley. Pole Creek has the potential to provide high quality habitat for threatened Chinook salmon and bull trout. There is one active diversion on Pole Creek which can seasonally dewater a 2 mile reach of the creek. Salmon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

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

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

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

Pole Creek - Salmon Falls Land and Livestock Irrigation



Memorandum

To: IWRB – Streamflow Enhancement and Minimum Streamflow Committee

From: Morgan Case

Date: November 18, 2013

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

Request for Recommendation: Attached is an expenditure of funds resolution for the annual Lower Lemhi 2014-2015 agreements not to divert 15.61 cfs in order to bridge to gap between the permanent acquisitions and the flow target in the Lower Lemhi River. The agreement not to divert contracts will not exceed **$155,009.30** and the Water District 74 contract will not exceed **$12,800.00.**

Background

The Lemhi River Basin is an important basin for the spawning, migration and rearing of Chinook salmon, summer steelhead, westslope cutthroat trout, and bull trout. During the irrigation season, low flows at the L-6 diversion can cause migration barriers for out-migrating juvenile Chinook salmon and in-migrating adult Chinook salmon and steelhead. The State of Idaho has committed to maintaining flows between 25 and 35 cfs at the L-6 diversion (See attached map) through the 2004 Snake River Water Rights Agreement. The 35 cfs flows are needed for out-migration in the spring and 25 cfs is needed for in-migrating adults in the mid- to late-summer.

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

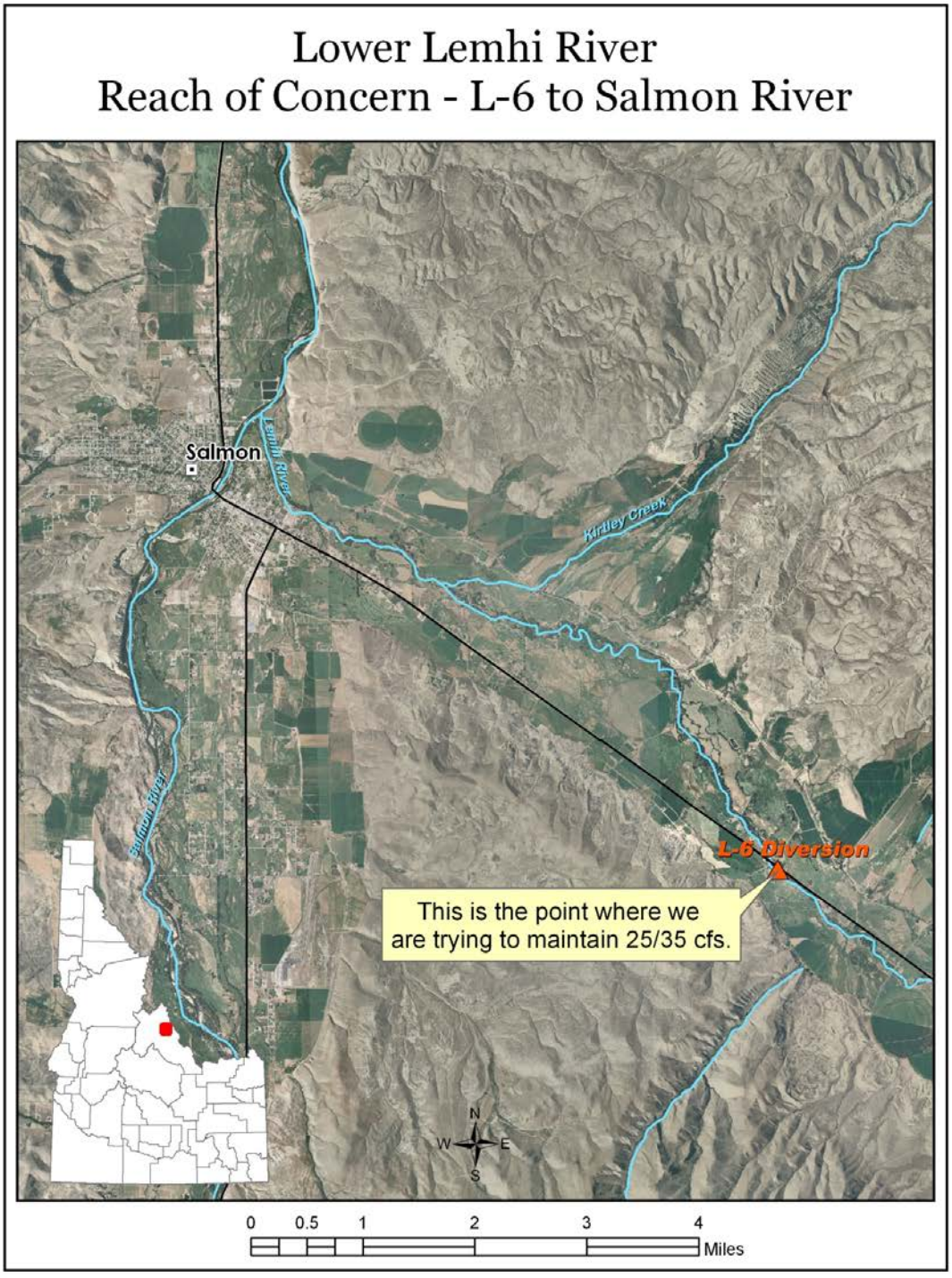
Flow Target:		**35 cfs**
Currently Protected:		
Permanent Easements	(15.53)	
Thomas Agreement	(1.14)	
TNC Donation	(0.30)	
City of Salmon	(2.42)	
Total Protected		**(19.39)**
Unmet Target		**15.61**

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

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

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

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



MEMORANDUM

To: **Streamflow Enhancement and Minimum Stream Flow Committee**

From: **Sarah Rupp**

Date: **November 7, 2013**

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

Background and Ecological Significance of South Leigh Creek

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

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

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

A great deal of effort has been committed to resorting and improving fish habitat, and preventing fish entrainment in canal diversions on South Leigh Creek. FTR has conducted three stream restoration projects on South Leigh Creek, restoring and stabilizing over 1,350 feet of stream and re-vegetating over 6,755 square feet of stream bank. Substantial stream restoration work has also been conducted by private landowners. Additionally, FTR worked with irrigators to rebuild the largest diversion on South Leigh Creek, the Hog Canal diversion. The rebuild not only incorporated modern diversion works but solar operated fish screens. Building from the success of that project, FTR is currently working with irrigators to install fish screens on the Desert Canal, which is the last unscreened diversion on upper South Leigh Creek. The project is tentatively scheduled for construction in the fall of 2014.

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

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

Description of Proposed Transactions

A. Dan and Patti Burr

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

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

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

B. Osagia, LLC

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

The water right held by Osagia, LLC is one of 5 water rights with an April 1, 1889 priority date. These five water rights are the most senior water rights on South Leigh Creek. As mentioned above, South Leigh Creek has historically been deemed futile on an annual basis, and is therefore subject to the futile call doctrine each year.

The Osagia, LLC water right has historically been diverted at the Desert Canal diversion, which is located near the upper end of the annually dewatered stream reach, also referred to as the futile call reach. (See, attached map entitled South Leigh Creek Transaction Map.) Because this transaction involves a water right historically diverted at the upper end of a futile call reach, it is proposed that the IWRB enter into an

agreement not to divert with Osagia, LLC, as opposed to utilizing the Water Supply Bank to shepherd the water to the Teton River minimum streamflow reach. This transactional structure will ensure that the water right is legally deliverable to the historic point of diversion (the Desert Canal), regardless of whether the stream has been deemed futile or not. This structure satisfies the objectives of the Idaho Water Transactions Program by ensuring that South Leigh Creek remains wetted to the Desert Canal diversion and that the Osagia, LLC water right is left instream, serving to increase available habitat for Yellowstone cutthroat trout.

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

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

Monitoring and Contract Compliance

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

Letters of Support

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

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

Summary of the Proposed Water Transactions

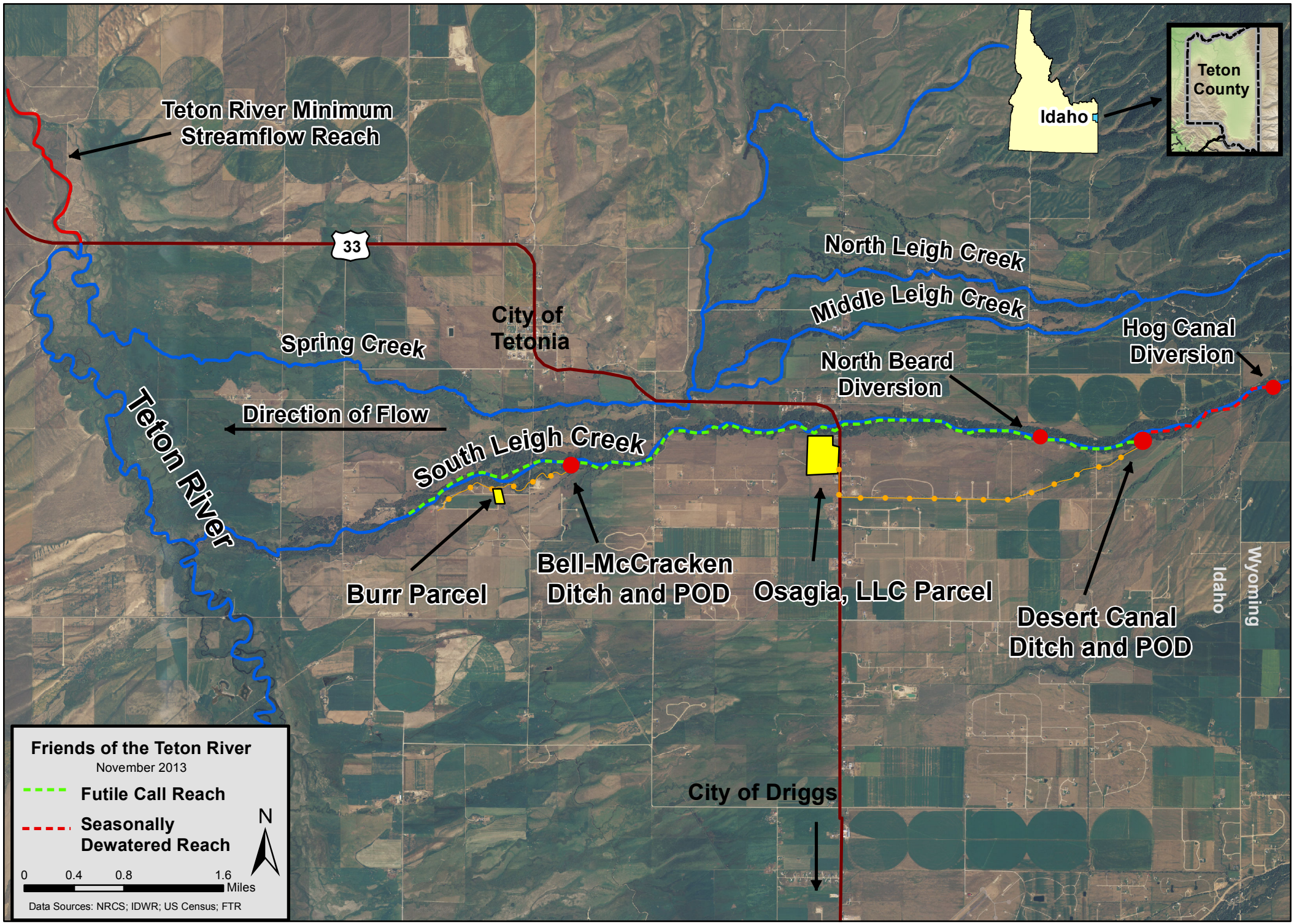
Dan and Patti Burr Rights

- Water Right # 22-13436
  - Quantity: 0.08 cfs
  - Tool: Donation
  - Duration: 5 years
- Water Right # 22-13437
  - Quantity: 0.03 cfs
  - Tool: Donation
  - Duration: 5 years
- Total Cost: $703.50 (Includes the following: Water Supply Bank Application Fee of $500.00; 10% Administrative Fee of $178.50; and Recording Fee of $25.00)

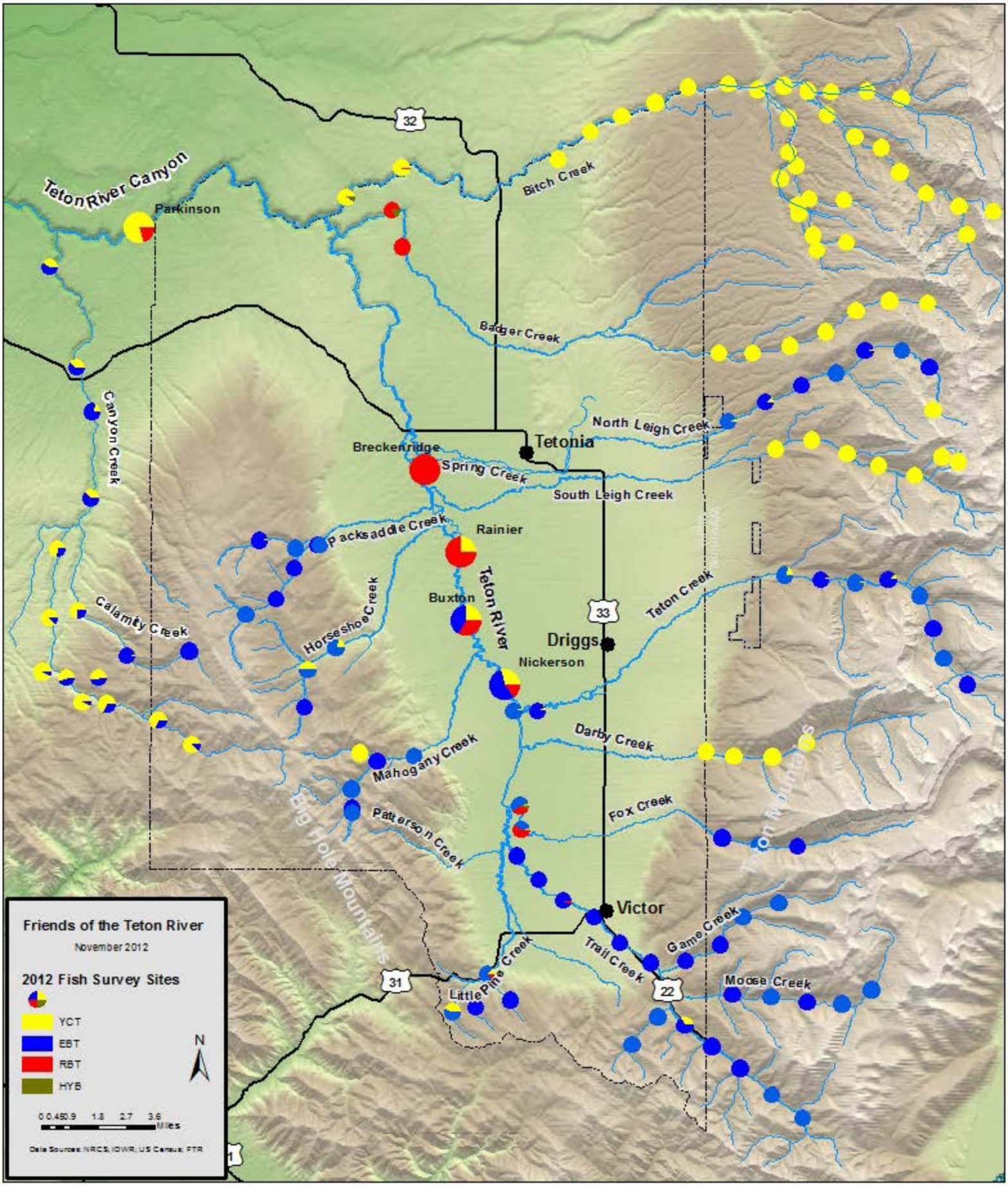
Osagia, LLC Rights

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

South Leigh Creek Transaction Map



Teton Watershed E-fishing 2005-2012



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

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

November 6, 2013

Dear Sarah:

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

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

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

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

Sincerely,

Dan Garren
Regional Fisheries Manager

Subject: South Leigh Creek Water Transactions

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

Case,

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

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

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

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

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

From: Case, Morgan
Sent: Tuesday, November 05, 2013 5:13 AM
To: Olenichak, Tony
Subject: South Leigh Creek Water Transactions

Tony,

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

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

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

Thank you for your help.

Morgan Case