



AGENDA

IDAHO WATER RESOURCE BOARD MEETING NO. 7-14

July 9, 2014 at 9:30 am

Idaho Water Center

Director's Conference Room

IWRB Members May Participate by Phone

322 East Front St, Boise, ID 83702

C.L. "Butch" Otter
Governor

Roger W. Chase
Chairman
Pocatello
District 4

Peter Van Der Meulen
Vice-Chairman
Hailey
At Large

Bob Graham
Secretary
Bonners Ferry
District 1

**Charles "Chuck"
Cuddy**
Orofino
At Large

Vince Alberdi
Kimberly
At Large

Jeff Raybould
St. Anthony
At Large

Albert Barker
Boise
District 2

John "Bert" Stevenson
Rupert
District 3

-
1. Roll Call
 2. Executive Session – Board will meet pursuant to Idaho Code § 67-2345 (1) subsections (c) and (f), for the purposes of considering the acquisition of an interest in real property not presently owned by a public agency and to communicate with legal counsel regarding legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. Executive Session is closed to the public.
 3. Mountain Home water rights
 4. Aqua Life Facility
 5. Swan Falls Agreement Minimum Flows
 6. Other Non-Action items Board Members may wish to discuss
 7. Adjourn

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.

322 East Front Street, Boise, Idaho 83720 Tel: (208) 287-4800 Fax: (208) 287-6700

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF THE PURCHASE OF)	A RESOLUTION AUTHORIZING
WATER RIGHTS NOS. 2-10300A, 2-10300B,)	EXECUTION OF A PURCHASE
and 225/240ths of 2-10472)	AND SALE AGREEMENT AND
		OPTION AGREEMENT

WHEREAS, the Idaho Water Resource Board (the "Board") is a constitutional agency of the State of Idaho and empowered by Idaho Code § 42-1734 to acquire, purchase, lease or exchange land, rights, water rights, easements, franchises and other property deemed necessary or proper for the construction, operation and maintenance of water projects; and

WHEREAS, the Mountain Home Air Force Base (the "Base"), as well as surrounding agricultural wells and municipal wells, draw their supply from the Mountain Home Aquifer; and

WHEREAS, the Idaho Department of Water Resources (IDWR) estimates that the rate of withdrawal from the Mountain Home Aquifer exceeds the rate of natural recharge to the aquifer and due to declining ground water levels IDWR established the Cinder Cone Butte Critical Ground Water Area in 1981 and the Mountain Home Ground Water Management Area in 1982; and

WHEREAS, the State of Idaho has a tradition of supporting the United States military, and intends to continue that tradition of support and partnership to assist the military in achieving its national security functions; and

WHEREAS, in order to sustain the Base and its mission, a long-term sustainable water supply for the Base must be developed; and

WHEREAS, the IDWR and the Board have been discussing water supply conditions with the Base for several years, and intend to continue discussions about securing a water supply for the Base for present and future needs of the Base; and

WHEREAS, if the Base is supplied with surface water from the Snake River, that would begin the process of balancing the withdrawals from, and recharge to, the Mountain Home Aquifer; and

WHEREAS, a 2010 Economic Impact Analysis by the United States Air Force, assisted by Boise State University, shows that the estimated annual economic impact from the Mountain Home Air Force Base is approximately \$1.02 Billion; and

WHEREAS, helping to sustain the Base is consistent with Governor Otter's Accelerate Idaho economic initiative; and

WHEREAS, on February 5, 2014 the Board executed a Term Sheet for the acquisition of water right nos. 2-10300A, 2-10300B, and 225/240ths of 2-10472 for the purpose of obtaining a

water supply for Mountain Home Air Force Base, and directed that an appraisal of said water rights be completed;

WHEREAS, an appraisal of water right nos. 2-10300A, 2-10300B, and 225/240ths of 2-10472 has been completed by LeMoyne Appraisal, L.L.C., which states “the value indicated to the subject property...is a reasonable conclusion of value although likely at the upper end of the current range of market values.”

NOW, THEREFORE BE IT RESOLVED, that the Idaho Water Resource Board authorizes the Chairman to execute and carry out the terms of the Purchase and Sale Agreement dated _____ and to execute Option Agreement dated _____ on behalf of the Board for the acquisition of water right nos. 2-10300A, 2-10300B, and 225/240ths of 2-10472 for the purpose of obtaining a water supply for Mountain Home Air Force Base.

DATED this 9th day of July, 2014.

ATTEST:

ROGER CHASE, Chairman

BOB GRAHAM, Secretary

WATER RIGHT PURCHASE AND SALE AGREEMENT

This Water Right Purchase and Sale Agreement (hereinafter "Agreement") is made this _____ day of _____, 2014, is between J. R. Simplot Company, a Nevada corporation whose mailing address is 999 Main Street, Suite 1300, Boise, ID 83702 ("Simplot"), and the Idaho Water Resource Board, whose mailing address is 322 East Front Street, Boise, Idaho 83720-0098 ("IWRB").

WHEREAS, when combined, Idaho Department of Water Resources ("IDWR") water right nos. 2-10300A and 2-10300B authorize the diversion of 8.00 cubic feet per second ("cfs"), 1600 acre feet per year, of water from the Snake River for the irrigation of up to 400 acres; and

WHEREAS, IDWR water right no. 2-10472 authorizes the diversion of 4.8 cfs and 960 acre feet per year, of water from the Snake River for the irrigation of up to 240 acres; and

WHEREAS, for the benefit of the Mountain Home Air Force Base, the IWRB wants to acquire and Simplot, under certain terms and conditions is willing to sell all of IDWR water right nos. 2-10300A and 2-10300B and 225/240ths of the rights, quantity and volume available under IDWR water right 2-10472 (together hereafter referred to as the "Water Rights").

NOW, THEREFORE, in and for the consideration hereinafter recited, the parties agree as follows:

1. Purchase and Sale of Water Rights. Subject to the terms and conditions set forth in this Agreement, Simplot agrees to sell to the IWRB, and the IWRB agrees to purchase from Simplot, all of Simplot's right, title and interest in the Water Rights, subject to Simplot's Option to re-acquire the rights as described in Paragraph 3 below and the limitations of water use described in Paragraph 4 below. On the date of Closing of the purchase of the Water Rights, as described in Paragraph 2 below, the IWRB shall pay to Simplot \$1,000 per acre foot, up to a maximum total of 900 acre feet, authorized by IDWR for diversion under water right 2-10472 and up to 1,600 acre feet authorized by IDWR for diversion under water right nos. 2-10300A and 2-10300B. Copies of said Water Right Reports are attached hereto as Exhibit A. The total purchase price shall be \$2,500,000 ("Purchase Price").

- (i) The IWRB may elect to purchase all or any portion of the Water Rights. In the event the IWRB chooses to purchase only a portion of the Water Rights, the Purchase Price would become the product of multiplying \$1,000 per acre-foot times the number of acre-feet acquired. Should the IWRB choose to purchase only a portion of the Water Rights, the quantity to be acquired shall be taken first from water right no. 2-10300B; then water right no. 2-10300A; then water right no. 2-10472 until such amount desired by the IWRB is fulfilled up to the 2,500 acre foot maximum.

2. Closing; Method of Payment. The closing of this transaction shall occur at a location that is mutually acceptable ("Closing"). The Closing date shall be on or before July 15, 2014. Should the IWRB choose to acquire a portion of the Water Rights, the IWRB shall provide Simplot with written notice that it is making such election and the amount of the Water Rights to be acquired on or before July 1, 2014. The parties acknowledge that the Closing of this transaction is contingent upon the appropriation of funds by the Idaho Legislature.

- (i) At Closing, Simplot shall provide the IWRB with a water right quitclaim deed in a form that is substantially similar to Exhibit B attached hereto ("Deed"), conveying all of Simplot's interest in the Water Rights acquired by the IWRB, subject to the Limitation on the Use of the Water Rights as specified in Paragraph 4 below, and subject, further, to Simplot's right to repurchase the Water Rights as described in Paragraph 3 below.
- (ii) IWRB shall deliver the Purchase Price to Simplot in immediately available funds at Closing. All applicable water assessments will be prorated at Closing.
- (iii) In accordance with the terms contained in this Agreement and as further set forth below, the IWRB and Simplot shall execute an Option to Purchase Water Rights in a form substantially similar to Exhibit C attached hereto.

3. Option to Repurchase Water Rights. As a condition preceding Simplot's obligation to close this transaction, the IWRB shall grant Simplot an option to re-acquire the Water Rights from the IWRB ("Option"), including any succeeding water rights that are identified by new identification numbers assigned by the IDWR to the Water Rights or any portions thereof.

- (i) The Option may be exercised by Simplot up to and including February 1, 2021, subject to extension as provided below ("Option Period"), after giving written notice to the IWRB within 30 days of either of the following events:
 - a. The failure by the IWRB to divert and put the Water Rights to beneficial use for the benefit of the Mountain Home Air Force Base on or before January 1, 2021 (the "Beneficial Use Deadline"); provided, however, IWRB may elect to extend the Beneficial Use Deadline to February 1, 2026. To make such election, the IWRB shall provide Simplot with written notice of extension on or before January 1, 2021. After receipt of the IWRB's notice to extend the Beneficial Use Deadline, the Option Period shall be automatically extended until February 1, 2026, subject to Simplot's right to exercise the Option within 30 days after the closure or cessation of active military training operations at the Mountain Home Air Force Base as described in paragraph b., below. Should the IWRB extend the Beneficial Use Deadline and subsequently fail to divert and put the Water Rights to beneficial use on or before January 1, 2026, Simplot may exercise the Option by providing written notice to the IWRB on or before February 1, 2026.

- b. The closure or cessation of active military training operations at the Mountain Home Air Force Base on or before the Beneficial Use Deadline, as it may be extended pursuant to subparagraph a., above, provided IWRB has not diverted the water and applied it to beneficial use on land owned by and for the benefit of the Mountain Home Air Base prior to the closure or cessation of active military operations.
- (ii) In the event Simplot exercises the Option, Simplot shall pay the IWRB \$2,500,000 (“Option Price”), provided the IWRB acquired all of the Water Rights at the Closing. As set forth above, the IWRB may elect to acquire only a portion of the Water Rights from Simplot. In the event the IWRB makes such election, the Option Price shall be adjusted commensurate with the applicable amount the IWRB paid to Simplot to acquire the applicable portion of the Water Rights.
- (iii) Should the IWRB choose to offer to sell revenue bonds to finance the construction of the system to divert and transport water diverted under the Water Rights, Simplot’s Option rights shall be temporarily suspended. Simplot’s Option rights shall terminate upon the successful sale and issuance of the bonds. However, if the sale and issuance of the bonds fails for any reason, the IWRB shall promptly notify Simplot of such failure and Simplot’s Option rights shall resume as set forth in this Section 3. In the event any suspension of Simplot’s Option rights occurs during the notice periods in clause (i) above, Simplot shall have thirty (30) days following the IWRB’s delivery of notice of failure to provide notice of exercise of the Option.
- (iv) Should Simplot fail to exercise its Option as described herein, Simplot shall have no further interest in the Water Rights.

4. Limitation on Use of Water Rights. During the Option Period (including any extension, if applicable), the IWRB shall not use the Water Rights, or any portion thereof, for any purpose other than for retention or expansion of the Mountain Home Air Force Base without the prior written consent of Simplot, which consent may be granted or withheld in Simplot’s sole discretion. The covenants herein shall survive the Closing and Simplot’s delivery of the Deed.

5. Investigation. Simplot shall cooperate with the IWRB and provide copies of all documents readily available to Simplot, including any conceptual engineering cost estimates and/or design documents for the development of a pumping system and pipelines previously considered to supply water for the Mountain Home Air Force Base.

6. Water Right Transfer Applications. Simplot, at no expense to Simplot, will cooperate with the IWRB on the filing of any applications for the transfer of the Water Rights filed with the IDWR that become necessary to move the point of diversion and/or place of use for the Water Rights to serve the Mountain Home Air Force Base. The IWRB shall be responsible for covering all costs for the filing of any such transfer application(s) together with any costs or legal

fees that are necessary to obtain the approval of the IDWR of any such applications for transfer, including any fees incurred during any appeal or judicial proceedings conducted after the IDWR provides its approval.

7. Termination. This Agreement shall terminate if either the IWRB fails to obtain legislative approval for appropriation of the Purchase Price during the 2014 legislative session or if this transaction fails to close on or before July 15, 2014. The obligations of the parties are further subject to approval by the Simplot Board of Directors, and upon the adoption by the Idaho Water Resource Board of a resolution authorizing the purchase of the Water Rights according to the terms and conditions contained herein.

8. Entire Agreement. This Agreement contains the entire understanding of the parties with respect to its subject matter. Any changes or modifications to this Agreement must be in writing signed by both parties.

9. Notices. Any notice required or permitted is sufficient if it is in writing and sent by United States certified mail, return receipt requested, postage prepaid, to the party being given notice at the following addresses:

IWRB: Idaho Water Resource Board
322 East Front Street
Boise, Idaho 83720-0098

Simplot: J. R. Simplot Company
Attn: Corporate Secretary
P. O. Box 27
Boise, ID 83707

10. Heirs, Successors, and Assigns. The covenants, conditions, and agreements herein contained shall be binding on each of the parties hereto and on all parties and all persons claiming under them or either of them, and the advantages hereof shall inure to the benefit of each of the parties hereto and their respective heirs and successors and assigns; provided, however, neither party may assign its rights or obligations hereunder without the prior written consent of the other.

[signatures on following page]

Executed by the parties as of the date first set forth above.

Idaho Water Resource Board

By: _____
Print Name: _____
Its: _____

J. R. Simplot Company

David Spurling
Senior Vice President, Secretary and General
Counsel

EXHIBIT A

Water Right Report for Water Right No. 2-10300A, 2-10300B and 2-10472 prepared by the Idaho
Department of Water Resources

EXHIBIT B

The undersigned hereby affirms that there is no Social Security number contained in this document

APN: N/A

RECORDING REQUESTED BY:

Idaho Water Resource Board
322 East Front Street
Boise, Idaho 83702

AFTER RECORDATION, RETURN TO GRANTEE:

Idaho Water Resource Board
322 East Front Street
Boise, ID 83702

SPACE ABOVE THIS LINE FOR RECORDER'S USE

WATER RIGHTS QUITCLAIM DEED

THIS DEED, made and entered into this ____ day of _____, 2014 by and between J. R. SIMPLOT COMPANY, a Nevada corporation, hereinafter referred to as "Grantor", and the IDAHO WATER RESOURCE BOARD, hereinafter referred to as "Grantee."

WITNESSETH

That said Grantor, for good and valuable consideration, the receipt of which is hereby acknowledged, does by these presents hereby remise, release, convey, and forever quitclaim unto the Grantee, and to its successors and assigns forever, any and all of the Grantor's right, title and interest in and to the water rights described below, all situated in Elmore County, Idaho. The water rights conveyed hereunder are described as follows:

All of Idaho Department of Water Resources water right numbers 2-10300A and 2-10300B, together with 225/240ths of the rights, quantity and volume under water right no. 2-10472.

[Note: the description of water rights will be modified if the IWRB doesn't elect to acquire all of the described water rights.]

To have and to hold said water rights together with the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and any reversions, remainders, rents, issues or profits thereof, unto the Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the said Grantor has caused this Water Rights Quitclaim Deed to be executed the day and year first above written.

GRANTOR:

J. R. SIMPLOT COMPANY, a Nevada Corporation

By: _____
David Spurling, Senior Vice President, Secretary
and General Counsel

STATE OF IDAHO)
)
) : ss.
)
COUNTY OF ADA)

This instrument was acknowledged before me on this ____ day of _____, 2014,
by David Spurling, as Senior Vice President, Secretary and General Counsel of J. R. Simplot Company, on behalf of
said Nevada corporation therein named.

NOTARY PUBLIC

EXHIBIT B

EXHIBIT C

RECORDING REQUESTED BY:

J. R. Simplot Company
P. O. Box 27
Boise, Idaho 83707

AFTER RECORDATION, RETURN TO GRANTEE:

J. R. Simplot Company
P. O. Box 27
Boise, ID 83707

Option to Repurchase Water Rights

This Agreement for the Repurchase of Water Rights ("Agreement") is made this ____ day of _____, 2014, is between J. R. Simplot Company, a Nevada corporation whose mailing address is 999 Main Street, Suite 1300, Boise, ID 83702 ("Simplot"), and the Idaho Water Resource Board, whose mailing address is 322 East Front Street, Boise, Idaho 83720-0098 ("IWRB").

WHEREAS, in accordance with terms of that certain Water Right Purchase and Sale Agreement dated _____, 2014 ("Water Right Purchase Agreement"), Simplot conveyed by quitclaim deed to the IWRB all of Idaho Department of Water Resources ("IDWR") water right nos. 2-10300A and 2-10300B and 225/240ths of the rights, quantity and volume available under IDWR water right 2-10472 ("Water Rights"), and

WHEREAS, in accordance with the terms and conditions of the Water Right Purchase Agreement, the IWRB must divert and put the Water Rights to beneficial use for the benefit of the Mountain Home Air Force Base on or before January 1, 2021, subject to IWRB's right to extend such deadline to February 1, 2026 as provided herein, and

WHEREAS, as a condition precedent to the obligation of the parties to close purchase and sale of said Water Rights, Simplot and the IWRB agreed to execute an agreement granting Simplot the option to re-purchase the Water Rights Simplot conveyed to the IWRB under certain conditions.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged by the IWRB, the parties agree as follows:

1. Grant. The IWRB grants Simplot the option ("Option") to acquire the Water Rights, including any succeeding water rights that are identified by new identification numbers

assigned by the IDWR to the Water Rights or any portions thereof for [\$2,500,000] (“Option Price”)

2. Exercise. The Option may be exercised up to and including January 1, 2021, subject to extension as provided below (“Option Period”), by Simplot after giving written notice to the IWRB within 30 days of either of the following events:
 - a. The failure by IWRB to divert and put the Water Rights to beneficial use for the benefit of the Mountain Home Air Force Base on or before January 1, 2021 (the “Beneficial Use Deadline”); provided, however, IWRB may elect to extend the Beneficial Use Deadline to February 1, 2026. To make such election, IWRB shall provide Simplot with written notice of extension on or before January 1, 2021. After receipt of the IWRB’s notice to extend the Beneficial Use Deadline, the date for exercising the Option shall be automatically extended until February 1, 2026, subject to Simplot’s right to exercise the Option within 30 days after the closure or cessation of active military training operations at the Mountain Home Air Force Base as described in paragraph b., below. Should the IWRB extend the Beneficial Use Deadline and subsequently fail to divert and put the Water Rights to beneficial use on or before January 1, 2026, Simplot may exercise the Option by providing written notice to the IWRB on or before February 1, 2026.
 - b. The closure or cessation of active military training operations at the Mountain Home Air Force Base on or before the Beneficial Use Deadline, as it may be extended pursuant to subparagraph a., above provided IWRB has not diverted the water and applied it to beneficial use on land owned by and for the benefit of the Mountain Home Air Base prior to the closure or cessation of active military operations. . or
 - c. Should the IWRB choose to offer to sell revenue bonds to finance the construction of the system to divert and transport water diverted under the Water Rights, Simplot’s Option rights shall be temporarily suspended. Simplot’s Option rights shall terminate upon the successful sale and issuance of the bonds. However, if the sale and issuance of the bonds fails for any reason, the IWRB shall promptly notify Simplot of such failure and Simplot’s Option rights shall resume as set forth in this paragraph. In the event any suspension of Simplot’s Option rights occurs during the notice periods in clause (a) above, Simplot shall have thirty (30) days following the IWRB’s delivery of notice of failure to provide notice of exercise of the Option.
3. Closing. The closing of Simplot’s acquisition of the Water Rights must occur within 60 days following Simplot’s exercise of the Option as provided hereunder (“Closing”). The Closing shall occur at a location that is mutually acceptable. At Closing, Simplot shall deliver to the IWRB the Option Price in cash or other form of immediately available funds. The IWRB shall deliver a Water Rights Quitclaim Deed conveying title of the Water Rights to Simplot free and clear of any liens or encumbrances. Any applicable

water assessments or fees will be prorated at Closing. Each party shall be responsible for any costs, including any attorney's fees.

4. Additional Covenants. During the Option Period (including any extension if applicable): (a) the IWRB shall not use the Water Rights, or any portion thereof, for any purpose other than for retention or expansion of the Mountain Home Air Force Base; and (b) the IWRB may not transfer the Water Rights or any interest therein to any third party, without the prior written consent of Simplot, which consent may be granted or withheld in Simplot's sole discretion.
5. Possession. Simplot will be entitled to exclusive possession and use of the Water Rights upon Closing.
6. Assignment. The Option shall not be assigned by Simplot without the prior written consent of the IWRB.
7. Notices. Any notice required or permitted is sufficient if it is in writing and sent by United States certified mail, return receipt requested, postage prepaid, to the party being given notice at the following addresses:

IWRB: Idaho Water Resource Board
322 East Front Street
Boise, Idaho 83720-0098

Simplot: J. R. Simplot Company
Attn: Corporate Secretary
P. O. Box 27
Boise, ID 83707

8. Applicable Law. This Agreement will be construed and enforced in accordance with and governed by the laws of the state of Idaho, and venue for any action will be in Ada County.
9. Entire Agreement. This Agreement and the instruments referred to herein embody the entire agreement and understanding between the parties hereto relating to the subject matter hereof and replaces any prior agreement, and no modifications will be binding unless in writing and signed by the IWRB and Simplot.
10. Attorney Fees. In the event an arbitration, suit or action is brought by either party under this Agreement to enforce any of its terms, or in any appeal therefrom, it is agreed that the prevailing party shall be entitled to reasonable attorneys fees to be fixed by the arbitrator, trial court, and/or appellate court.
11. Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and

that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

12. Additional Documents, Further Acts. The parties hereto hereby agree to execute, acknowledge (if necessary) and deliver such other documents as may be reasonably required to perform this Agreement in form sufficient to recording as the other party (or its designee) may reasonably require from time to time and to undertake such further acts as may be reasonably necessary to carry out the intent and purpose of this Agreement.

[signatures on following page]

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

J. R. Simplot Company	Idaho Water Resource Board
<hr/>	<hr/>
David Spurling	By: <hr/>
Senior Vice President, Secretary and	Its: <hr/>
General Counsel	

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF THE AQUA LIFE) A RESOLUTION CONCERNING
AQUACULTURE FACILITY) A LETTER OF INTENT

WHEREAS, the Idaho Water Resource Board (the "Board") is a constitutional agency of the State of Idaho and empowered by Idaho Code § 42-1734 to acquire, purchase, lease or exchange land, rights, water rights, easements, franchises and other property deemed necessary or proper for the construction, operation and maintenance of water projects; and

WHEREAS, pursuant to House Bill 644, adopted by the Sixty-second Legislature of the State of Idaho during its Second Regular Session in 2014, the Board was authorized to acquire the Aqua Life Aquaculture Facility from the Idaho Department of Parks and Recreation for the July 11, 2011 appraised value of \$1,635,000; and

WHEREAS, the Board's proposed acquisition of the Aqua Life Aquaculture Facility is in furtherance of the State's desire and goal to reduce demand on spring flows in the Hagerman Valley; and

WHEREAS, the Board's proposed acquisition of the Aqua Life Aquaculture Facility would also include associated water rights 36-1044, 36-2734, 36-15476, 36-2414, and 36-2338, as well as rights under NPDES Permit #IDG-13000; and

WHEREAS, on May 7, 2014, the Board entered into a "Letter of Intent" with the Idaho Ground Water Appropriators, Inc. (IGWA), and the Idaho Department of Fish and Game, which contemplates the Aqua Life Aquaculture Facility being a necessary part of a plan to relocate an existing Idaho Department of Fish and Game (IDFG) fish hatchery to address water calls in the Hagerman Valley:

WHEREAS, by letter dated May 30, 2014, IGWA has submitted a second "Letter of Intent" to the Board, which contemplates an alternative plan of direct delivery of up to 10 cfs from the Aqua Life Facility, at a cost yet to be determined, to address water delivery calls in the Hagerman Valley, but does not contemplate relocation of the IDFG fish hatchery.

NOW, THEREFORE BE IT FURTHER RESOLVED, the Board authorizes the Chairman to execute the "Letter of Intent – Use of water from the state's Aqua Life Hatchery, Construction of Pump Station and Pipeline, and Construction of Improvements and the Aqua Life Aquaculture Facility" dated _____, between the Board and the Idaho Ground Water Appropriators.

DATED this 9th day of July, 2014.

ATTEST:

ROGER CHASE, Chairman

BOB GRAHAM, Secretary



RACINE
OLSON
NYE
BUDGE
BAILEY

201 E. Center St.
P.O. Box 1391
Pocatello, ID 83204
O 208.232.6101
F 208.232.6109
racinelaw.net

RANDALL C. BUDGE
rcb@racinelaw.net

RECEIVED

JUN 02 2014

DEPARTMENT OF
WATER RESOURCES

May 30, 2014

John Homan, Deputy Attorney General
Brian Patton
The Idaho Water Center
322 East Front Street
PO Box 83720
Boise, Idaho 83720-0098
john.homan@idwr.idaho.gov
brian.patton@idwr.idaho.gov

RE: Aqua Life LOI

Dear John and Brian,

Enclosed please find the signed original LOI regarding the Aqua Life Pumpback Project which is a key component of IGWA's Third Mitigation Plan filed yesterday. It is my understanding that this may be presented to the IWRB at its meeting next week. Thank you for your assistance and let me know if I can do anything further on this or if you have questions.

Sincerely,



RANDALL C. BUDGE

RCB:ts
Enclosures

LETTER OF INTENT

USE OF WATER FROM THE STATE'S AQUA LIFE HATCHERY, CONSTRUCTION OF PUMP STATION AND PIPELINE AND CONSTRUCTION OF IMPROVEMENTS AT THE AQUA LIFE AQUACULTURE FACILITY

This Letter of Intent ("LOI") is entered into by and between Idaho Ground Water Appropriators, Inc. ("IGWA"), and the State of Idaho, by and through the Idaho Water Resource Board ("IWRB").

RECITALS

A. In response to Rangen, Inc.'s ("Rangen") water delivery call, the Idaho Department of Water Resources ("IDWR") determined in its January 29, 2014 order that holders of ground water rights junior to July 13, 1962 must provide 9.1 cfs of direct flow to Rangen.

B. IGWA represents ground water districts whose members consist of irrigators, municipalities, and commercial and industrial entities with ground water rights. Many of the ground water districts' member's water rights are junior to Rangen's water rights and are subject to curtailment unless a mitigation plan is approved providing replacement water.

C. IWRB owns and operates the Aqua Life Aquaculture Facility Hatchery ("Aqua Life") and is willing to make available to IGWA by lease or purchase up to ten (10) cfs of its Aqua Life water rights from Big Springs as needed to meet the mitigation obligation to Rangen.

D. IWRB and IGWA intend to commence negotiation of a final agreement consistent with the terms set forth below.

TERMS

The Agreement shall have the following terms and conditions:

1. The Agreement will be contingent upon IWRB acquiring title to Aqua Life. IWRB and IGWA acknowledge that House Bill 644, adopted by the Sixty-second Legislature of the State of Idaho during its Second Regular Session in 2014 authorizes Idaho Parks and Recreation to sell Aqua Life to the IWRB.

2. IWRB will lease or sell up to ten (10) cfs of water from the Aqua Life to IGWA for an amount to be determined.

3. IGWA will pay all costs to design, construct, operate and maintain the water collection and intake system pump station, pipeline and other facilities necessary to deliver 10 cfs of water from the Aqua Life to the head of Billingsley Creek directly up gradient from the Rangen hatchery. IGWA will ensure that the diversion structure to be constructed will not interfere with the use of IWRB's remaining water rights at Aqua Life.

4. IGWA shall be responsible to secure from IDWR approval of a transfer application to change the point of diversion and place of use as needed to accomplish the delivery of Aqua Life water rights to Billingsley Creek. IWRB hereby grants consent to IGWA to file and process such transfer application, with the approved transfer made subject to the Agreement.

5. IWRB will grant IGWA a permanent easement at Aqua Life to design, construct, operate and maintain the water intake and collection facilities, pump station, pipeline and other facilities as necessary for the delivery of up to 10 cfs of water to Billingsley Creek. IWRB will convey to IGWA a permanent easement to access and maintain the pump station and water supply pipeline.

6. IWRB will cooperate with IGWA and provide all necessary documents to conduct such investigation as it shall deem appropriate.

7. All transaction fees for closing and all recording fees will be shared equally between IGWA and IWRB. Each party will be responsible to pay its own legal fees.

8. The Agreement will be contingent upon: (a) IGWA securing an order from IDWR approving a mitigation plan providing for the delivery of 10 cfs from Aqua Life's Big Springs water rights to satisfy the mitigation obligations to Rangen; (b) IGWA securing an order from IDWR approving the transfer of the point of diversion and place of use of up to 10 cfs from Aqua Life to the head of Billingsley Creek and, (c) IGWA proceeding to implement the plan.

This LOI may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute but one and the same agreement. Delivery of an executed counterpart of this LOI via facsimile transmission shall be as effective as delivery of an original signed copy. Thereafter, the parties shall exchange executed originals of this LOI.

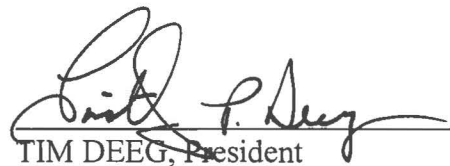
This LOI is intended as a general expression of the terms and conditions, under which the parties are willing to proceed to prepare, negotiate and if acceptable to all parties in their respective sole discretion, execute a final Agreement. Neither this LOI nor the execution hereof as provided below, shall be binding on any party until the formal Agreement is executed by all parties.

Please indicate your acceptance and agreement with the terms of this LOI and desire to proceed to negotiate a final Agreement incorporating the terms and conditions as outlined above by executing the enclosed copy of this LOI in the space provided below and return such executed copy to the other parties.

Sincerely,

Idaho Ground Water Appropriators, Inc.

By:

 5/30/14
TIM DEEG, President

AGREED AND ACCEPTED this _____ day of _____, 2014.

Idaho Water Resource Board

Chairman

FOUR COMMON MISCONCEPTIONS ABOUT THE 1984 SWAN FALLS SETTLEMENT AND 2009
REAFFIRMATION AGREEMENT

1. The Swan Falls Agreement constitutes a comprehensive plan for the management of the Snake River basin above the Murphy Gage.

FACT: The SRBA District Court's " *Memorandum Decision and Order on Cross-Motions for Summary Judgment*, Subcase 00-92023 at 26 (2008) (" *Memorandum Decision*") found that the Swan Falls Agreement was an agreement to resolve the nature and extent of Idaho Power Company's hydropower water rights. "As the State points out in its brief 'the Swan Falls Agreement was not a self-executing instrument, but rather proposed a suite of legislative and administrative action that if implemented would resolve the controversy and the legal issues to the mutual satisfaction of the parties.'" Likewise, the Idaho Supreme Court stated that "[i]t is only the resolution of Idaho Power's water rights that was at issue in the Swan Falls Agreement. The reference to 'a comprehensive plan' was to meet the requirements of section 10 of the [FPA] with respect to hydropower licensing." *Clear Springs Foods, Inc. et. al v. Spackman*, 252 P.3d 71, 80 (2011).

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(emphasis added)." *Memorandum Decision* at 27-28. Pat Costello, counselor for Governor Evans explained that the purpose for holding the water rights in trust was "to say that the river has, in essence, been fully appropriated, because that right exists, and it's the right to – basically all the flow that gets down there." *Id.* at 34

The trust restored the State's control over the Snake River. As Tom Nelson described to the Senate Resources and Conservation Committee on February 1, 1985:

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FACT: The 2009 Reaffirmation Framework provided for execution of a Memorandum of Agreement between the Idaho Water Resource Board and Idaho Power Company (“MOA”). The May 6, 2009 MOA states:

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Id. at 2. Thus, the MOA does not establish managed recharge targets, but rather, acknowledges the recharge targets in the ESPA CAMP and the State Water Plan.

Policy 4B Snake River Milner Zero Minimum Flow of the State Water Plan provides:

Implementation of managed recharge will have an effect on the flow characteristics of the Snake River above and below Milner Dam. Accordingly, while the [ESPA CAMP] established a long-term annual hydrologic target..., this target should be phased in to allow for informed water management and planning. The Phase I managed recharge hydrologic target for the Snake River Basin above Milner is to recharge between 100,000 and 175,000 acre-feet on an average annual basis. Based upon data gathered during this initial phase of managed recharge, the Board will consider in 2019 whether to implement the ESPA long-term managed recharge hydrologic target.

Footnote 3 of Policy 4B explains that the MOA sets forth additional understandings between IPC and the Board regarding implementation of managed recharge.

The MOA recognizes the Board's and IPC's interest in a cooperative approach to implementation of the ESPA CAMP, sets out a process for these cooperative efforts, and confirms that IPC will be an active participant in the ESPA CAMP's adaptive management process as the Board evaluates specific projects and proposals.

Policy 4E Snake River Basin New Storage, Implementation Strategies, of the State Water Plan states: "[T]he Board's managed recharge program will be limited to not more than 175,000 acre-feet on an average annual basis until January 1, 2019." This statement references Paragraph 3 of the MOA, which sets out a process for involving the legislature and the public should the Board determine it important to significantly increase the Phase I target set out in the ESPA CAMP. The MOA states: "If the Board proposes to increase the 100,000 acre-foot average annual ESPA CAMP Phase I target for managed aquifer recharge by more than 75,000 acre-feet prior to January 1, 2019, the Board must obtain legislative approval for such increase."

In summary, the 2009 Reaffirmation Framework and the MOA recognize the Board's authority to implement the ESPA CAMP, the State's authority to authorize managed recharge, and the Company's existing rights under state law to challenge the implementation of managed recharge. Pursuant to the MOA, the Board will request legislative approval if it determines that significant changes are needed in the targets during Phase I to accomplish the goals set out in the ESPA CAMP.

Neither the 2009 Reaffirmation Framework nor the MOA alter state law or preclude future changes to existing state law.

Overview of the Swan Falls Settlement

Brief History:

The Swan Falls Settlement resolved an ongoing controversy over how to balance water uses for agriculture and water needs for hydropower generation in the Snake River Basin. In the late 1970s, a group of Idaho Power Company's ratepayers initiated a lawsuit against the Company, contending that it had failed to adequately protect its water rights for hydropower generation at the Swan Falls Dam. As a result of the Company's alleged failure to protect junior water uses upstream from Swan Falls Dam, the ratepayers claimed, the Company had less water for power generation, resulting in higher electricity rates for its customers. Idaho Power Company, in its initial response, maintained that all of its water rights for hydropower generation were subordinated as a result of the subordination condition on its rights at the Hells Canyon Complex. The Idaho Supreme Court, however, decided the issue in favor of the ratepayers, holding that the subordination at Hells Canyon did not extend upstream to the Swan Falls water rights.

Following the decision, Idaho Power Company initiated a lawsuit against the holders of approximately 7,500 water rights upstream from its Swan Falls facility, seeking curtailment of those rights based on their junior priority relative to the Company's hydropower rights. Given the catastrophic consequences that such curtailment would have had on agriculture in southern Idaho, the State, through the Governor and the Attorney General, entered into negotiations with Idaho Power Company to resolve the litigation.

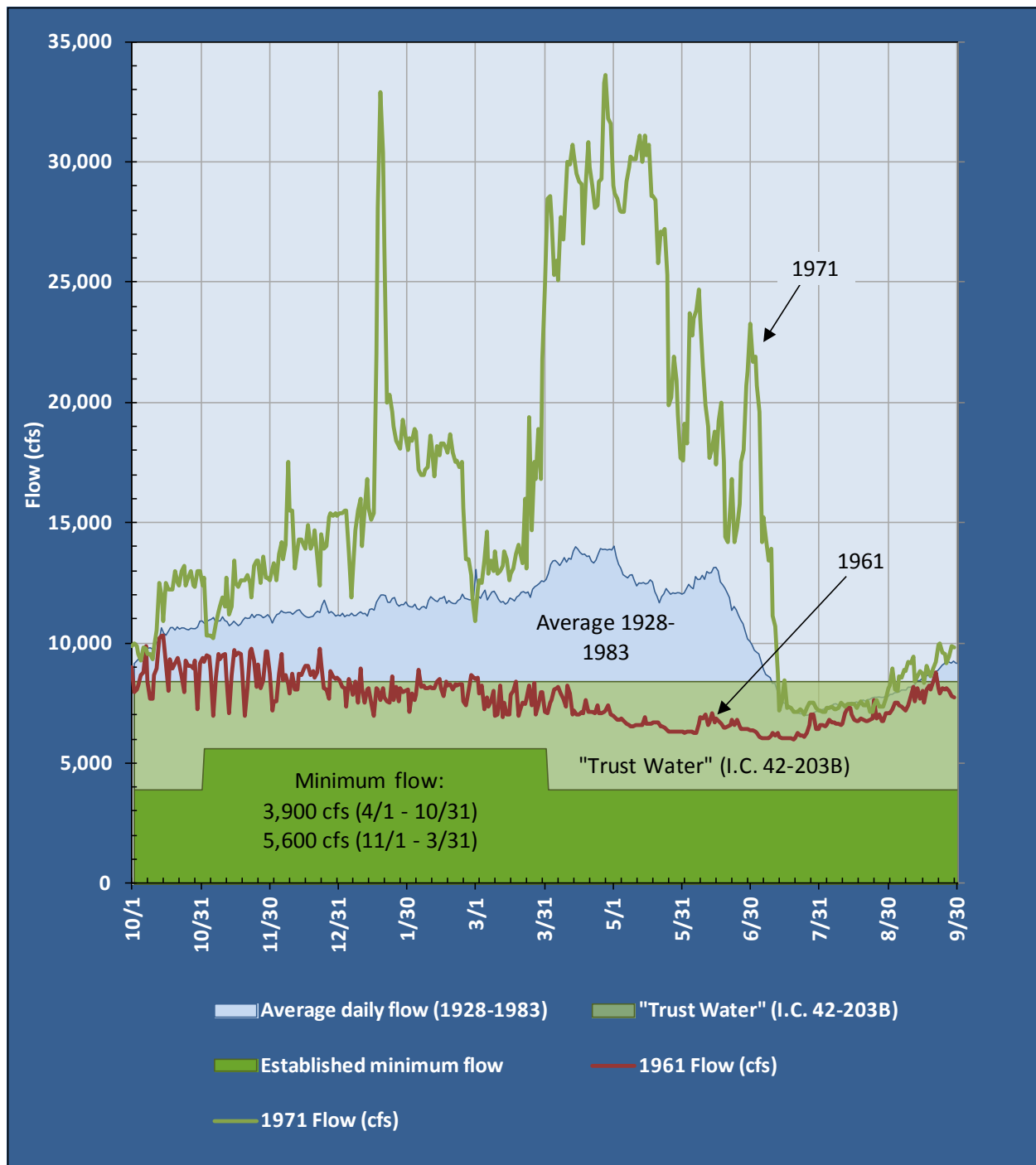
The State's primary interests were to protect existing water uses, and to ensure that the State would control the allocation of water between hydropower and other uses. The interest of the Idaho Power Company was to maintain adequate water levels in the Snake River for hydropower generation at its Swan Falls facility. The minimum stream flow right held by the State at the Murphy Gage (located approximately 4 miles downstream of the Swan Falls facility) was for 3,300 cfs at the time of the negotiations, while Idaho Power Company's hydropower rights were for 8,400 cfs at the Swan Falls facility. An effort was launched to determine the actual historic low flow in the river, in a way that accounted for all existing upstream water uses. The low flow was estimated to have been approximately 4,500 cfs, providing the parties with a context for negotiations about how to maximize the benefit of the State's water resources for both existing agricultural and hydropower interests, as well as for future water development.

The parties crafted a settlement in 1984 with the following key features:

1. Idaho Power Company agreed to subordinate its water rights at Swan Falls and 10 other hydropower facilities to all upstream water uses in existence at the time of the agreement.¹
2. The State agreed to increase the minimum stream flow rights at Murphy Gage by 600 cfs in the summer months and 2,300 cfs in the winter. The result was a minimum stream flow of 3,900 cfs from March to November, and a 5600 cfs minimum stream flow for the rest of the year. This provided the Company with some assurance that the State would work to preserve the water levels in the Snake River on the basis of its own right.
3. Idaho Power Company agreed to not contest the State's authority to place the Company's hydropower water rights in excess of the minimum flow in a State controlled trust. The trust resolved a conflict between the State and Idaho Power Company about how to ensure that water would be available for future development. The State sought immediate subordination of Idaho Power's rights to future uses down to the new minimum stream flows, while Idaho Power preferred to leave those rights unsubordinated until new uses were approved. This impasse was resolved by legislation that placed the Company's water rights for flows in excess of the minimum stream flows in a State administered trust. Through this trust, Idaho gained control over the hydropower water rights and could thereby, as a matter of state law, subordinate the hydropower water rights to future water rights granted in accordance with state law. These future water rights licensed by IDWR, became known as "Trust Water Rights."

Trust water is that flow of the Snake River that is greater than the Murphy minimum flow but less than the decreed water rights at each of the Idaho Power Company's facilities. As shown on the attached graph, for example, trust water at the Murphy Gage is that flow of the Snake River in excess of the Murphy minimum flow but less than 8,400 cfs, the total of the decreed water rights for the Swan Falls facility.

¹ The subordination also included those water rights for which substantial investment was made pursuant to a valid application or permit by the target date, even if actual use had not yet occurred.



4. The parties reaffirmed that the flow at Milner Dam may be reduced to zero, and that for purposes of the administration of surface and groundwater rights tributary to the Snake River below Milner Dam, no water above Milner is to be considered.

Frequent Questions:

1. What is “Trust Water”?

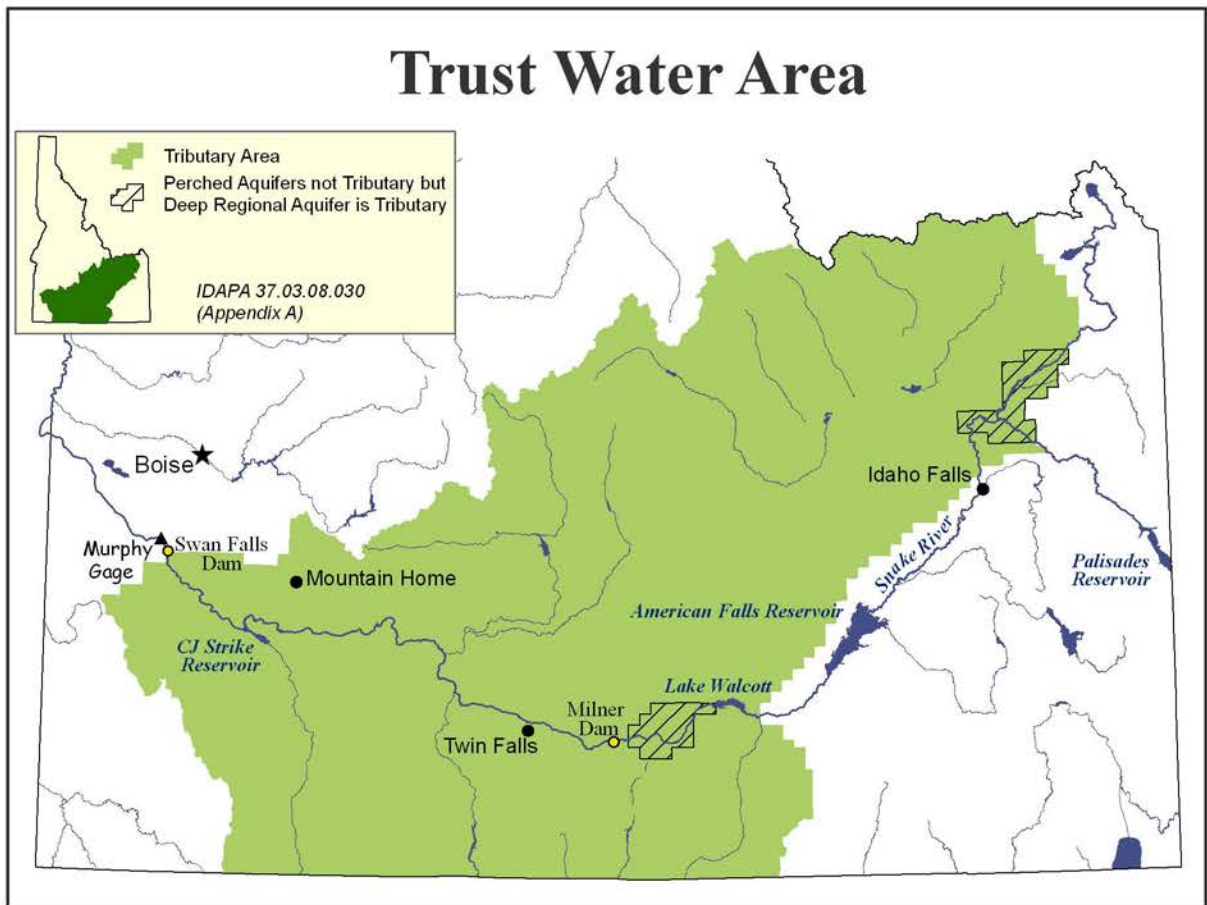
- a. The term “Trust Water” is a misnomer. The trust consists of water rights, not actual water. Trust Water is a shorthand term referring to flows above the minimum stream flow at the Murphy Gage, which were originally appropriated under water rights for hydropower generation.

2. What is a “Trust Water right”?

- a. Trust Water rights are surface and ground water rights in the Trust Water Area for which actual use occurred after October 25, 1984, that divert water previously appropriated under the hydropower rights held in trust by the State (these rights were already subordinate to existing uses). These rights may be curtailed if the water level in the Snake River drops below the minimum stream flows of 3,900/5,600 cfs at the Murphy Gage. Because trust water rights authorize the diversion of water that was first appropriated under Idaho Power Company’s Swan Falls hydropower rights, they are likewise subordinated to the water uses that existed at the time of the Swan Falls Agreement. Some trust water rights were established with a 20 year term condition, which provides that Idaho Department of Water Resources (IDWR) can revisit those water rights after the term expires to determine whether the authorized use remains in the public interest as expressed in Idaho Code § 42-203C.

3. What is the “Trust Water Area”?

- a. The trust water area is pictured in the map below. It shows the area within which surface and ground water is deemed tributary to the Snake River between Milner Dam and the Swan Falls Dam for purposes of the Swan Falls Settlement. This trust water boundary is not a hydrologic boundary, but rather, permanently delineates the area that will be subject to administration under the Swan Falls trust.



4. What about enlargement and expansion water rights?

- a. Enlargement water rights are water rights issued pursuant to Idaho Code § 42-1426 for enlargements of the place of use of previously acquired water rights (so long as there is no increase to the rate of diversion). These enlargement water rights, despite having a priority date based on the date of enlargement, are subordinate to all water rights senior to April 12, 1994, including the Swan Falls hydropower water rights. Expansion water rights are water rights issued pursuant to Idaho Code § 42-1416B for expanded uses in critical ground water areas. Expansion water rights have a priority date of June 30, 1985. Both enlargement and expansion water rights are trust water rights, and may be

subject to curtailment if the minimum stream flows at Murphy gage drop below 3,900/5,600 cfs.

5. Does the trust water area include the Snake River and surface and groundwater tributary to the Snake River upstream from Milner dam?

- a. No. Pursuant to Idaho Code 42-203B, the Snake River and tributary surface water or ground water above Milner Dam is administered separately from the Snake River and tributary surface water or ground water below Milner Dam. That means that in the event that the minimum stream flows at the Murphy Gage are not met, uses of the waters of the Snake River or surface and ground water sources tributary to the Snake River above Milner Dam are not subject to curtailment based upon senior water rights downstream from Milner Dam.

6. What does zero minimum flow at Milner mean?

- a. The zero minimum stream flow at Milner Dam was adopted by the Idaho Water Resource Board in 1976 as a means of formalizing the management of the Snake River as “two rivers.” This policy provides for the optimum development of the surface and ground water resources tributary above Milner Dam, and protects water users above Milner Dam from administration stemming from surface and ground water uses from sources tributary to the Snake River below Milner Dam.²

7. What would happen if the Snake River drops below the 3,900/5,600 cfs Murphy minimum stream flow?

- a. In the event that the water level of the Snake River drops below the minimum stream flows at Murphy Gage, upstream trust water rights (water rights in the trust water area with priority junior to 10/25/1984³) are subject to curtailment. The sufficiency of the flows at Murphy Gage is determined by the “actual flow conditions”⁴ at the gage.

² See Idaho Code 42-203B(2).

³ There are some exceptions to this characterization, notably, water rights where actual use was determined to have begun prior to 10/25/1984, despite a more junior priority date. These rights have been identified in SRBA proceedings.

⁴ “Actual flow conditions” means the flow measured at the Murphy Gage after adjustments to account for any fluctuations resulting from the operation of Idaho Power Company’s hydropower facilities. Acquisitions of water

07/15/12

8. Are water rights with a priority date earlier than October 25, 1984 subject to curtailment if the flow of the Snake River falls below the Murphy minimum stream flow?

- a. No. Water rights with a priority date senior to October 25, 1984 are not subject to curtailment by either the State's 1985 minimum stream flow rights or hydropower water rights, unless it is expressly noted on the face of the water right. In the event, however, that actual flow conditions in the Snake River drop below 3,300 cfs, water rights junior to the State's 1976 Murphy minimum stream flow right are subject to curtailment.

9. If the actual flow conditions of the Snake River at the Murphy Gage fall below the minimum flow, are surface water rights below Milner Dam subject to curtailment before ground water rights?

- a. No. Surface water rights are not subject to curtailment before ground water rights. Surface and ground water rights are subject to curtailment on the basis of the prior appropriation doctrine as established by Idaho law and will be conjunctively administered.

10. What is the State doing to prevent actual flow conditions from dropping below the minimum stream flows?

- a. In the near-term, the Idaho Water Resource Board has acquired 5,000 acre-feet of storage space in Palisades Reservoir to be used to sustain the Murphy minimum stream flow in the event of a short-term drop in flows. In the long-term, IDWR, in conjunction with other entities, is actively developing a measurement protocol designed to provide accurate information about the flow in the Snake River. With more accurate data, and greater understanding of factors influencing the flow of the Snake River, comes greater ability to manage the Snake River flow at the Murphy Gage. This information will be used by the Idaho Water Resource Board in the implementation of the Eastern Snake Plain Aquifer Management Plan to provide strategies for stabilizing spring flow discharge from the aquifer and or managing other sources contributing to Snake River flow. Finally, the creation of water districts within the trust water area,

by the Company from above Milner dam are defined as a fluctuation resulting from the operation of Idaho Power Company's hydropower facilities, and therefore, are not counted in the calculation of the actual flow conditions.

and coordination between those districts, will aid IDWR in administering the resource to sustain the Murphy minimum flow.

11. Does flow augmentation water count toward the minimum flow for purposes of the Swan Falls Agreement?

- a. Flow augmentation water refers to water rented by the U.S. Bureau of Reclamation for use below Hells Canyon dam to supplement flows for salmon and steelhead listed under the Endangered Species Act. Flow augmentation water is not a fluctuation caused by Idaho Power Company operations, and therefore is included in determining the “actual flow conditions” at the Murphy Gage for purposes of the Swan Falls Settlement. The accounting for flow augmentation deliveries is a separate matter governed by the 2004 Snake River Water Rights Agreement.

12. Why do some trust water rights have term limits?

- a. In implementing the Swan Falls Settlement, IDWR recognized the need to revisit allocations of Trust Water to ensure that, after a certain period, such rights remain in the public interest, as defined by criteria found in Idaho Code § 42-203C. As a result, many Trust Water rights were approved with a condition stating that they will be subject to review under the public interest criteria after a term of 20 years.

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF THE SWAN FALLS)
AGREEMENT MINIMUM FLOWS) A RESOLUTION

WHEREAS, as a result of the Swan Falls Settlement, , the minimum streamflow at the Murphy Gaging Station, just downstream of Swan Falls Dam, was increased to an average daily flow of 3,900 cfs between April 1st and October 31st of every year, and 5,600 cfs between November 1st and March 31st of every year; and

WHEREAS, the Idaho Water Resource Board (IWRB) holds decreed minimum streamflow water rights at the Murphy Gage; and

WHEREAS, Idaho Power Company holds decreed hydropower water rights for its mid Snake River hydropower facilities in the amount of 3,900 cfs between April 1st and October 31st and 5,600 cfs between November 1st and March 31st measured at the Murphy Gage; and

WHEREAS, the IWRB's and Idaho Power Company's water rights provided that the average daily flow is to be based on the actual flow conditions, which means that the average daily flow at the Murphy Gage is to be adjusted to account for any fluctuations resulting from the operation of the Idaho Power Company's hydropower facilities; and

WHEREAS, the State of Idaho, by and through the Governor, hold hydropower water rights in trust for the benefit of Idaho Power Company and the people of Idaho; and

WHEREAS, the hydropower water rights held in trust by the State of Idaho are subordinated to water rights diverting trust water within the area shown on Appendix A of IDAPA 37.03.08.030; provided, however, trust water rights are subject to curtailment if the average daily flow at the Murphy Gage fall below 3,900 cfs between April 1st and October 31st and 5,600 cfs between November 1st and March 31st measured at the Murphy Gage; and

WHEREAS, the adjusted average daily flow at the Murphy Gage is beginning to approach the 3,900 cfs minimum flow; and

WHEREAS, the IWRB also holds 5,000 acre-feet of storage space in the U.S. Bureau of Reclamation's Palisades Reservoir through Contract No. 14-06-100-1836; and

WHEREAS, because of the hydrologic complexities of the Snake River system, curtailment is not a satisfactory means of maintaining the Murphy minimum flow; and

WHEREAS, the IWRB desires to establish an interim plan for maintaining the Murphy minimum flow while a long term adaptive management plan is developed for maintaining the Murphy minimum flow; and

WHEREAS, due to the uncertainty of whether the river flows will drop below the Murphy adjusted average daily flow, the uncertainty of when and how long that may occur, the IWRB intends to establish a "Debit System" in cooperation with the Idaho Power Company to offset short fall in the adjusted average daily flow at the Murphy Gage; and

Whereas, the IWRB agrees to make available to Idaho Power water accruing to the IWRB's storage space, if necessary, as an offset against debits accruing to Idaho Power Company on an acre-foot for acre-foot basis; provided, however, the IWRB's obligation to provide storage water shall be limited to storage water accruing to its storage space.

NOW, THEREFORE BE IT RESOLVED, that, the Idaho Water Resource Board hereby establishes a "Debit System" for making its Palisades storage water available to augment flows at the Murphy Gage in the event the adjusted average daily flow at the Murphy Gage drops below the Murphy minimum flows during calendar year 2014.

NOW, THEREFORE BE IT FURTHER RESOLVED, that within the "Debit System," in the event river flows drop below the Murphy minimum flows, the Idaho Power Company shall be entitled to call for delivery of water from the IWRB's Palisades storage space, in a volume equivalent to the shortfall at the Murphy Gage, on a schedule determined by the Idaho Power Company, until the volume of the shortfall is replaced or the IWRB storage water is fully utilized.

NOW, THEREFORE BE IT FURTHER RESOLVED that the costs and administrative fees for delivery of the Palisades storage water to the Murphy Gage shall be borne by the IWRB; and

NOW, THEREFORE BE IT FURTHER RESOLVED, that if successful in calendar year 2014, the IWRB intends to extend this "Debit System" into the future; however, the IWRB intends to engage the Trust Water Right owners and develop a mechanism whereby in the future the costs and administrative fees for delivery of the Palisades storage water to the Murphy Gage will be borne by the Trust Water Right owners.

DATED this 9th day of July, 2014.

ATTEST:

ROGER CHASE, Chairman

BOB GRAHAM, Secretary

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ESPA CAMP Phase I target for managed recharge by more than 75,000 acre-feet prior to January 1, 2019, the Board must obtain legislative approve for such increase.

Id. at 2. Thus, the MOA does not establish managed recharge targets, but rather, acknowledges the recharge targets in the ESPA CAMP and the State Water Plan.

Policy 4B Snake River Milner Zero Minimum Flow of the State Water Plan provides:

Implementation of managed recharge will have an effect on the flow characteristics of the Snake River above and below Milner Dam. Accordingly, while the [ESPA CAMP] established a long-term annual hydrologic target..., this target should be phased in to allow for informed water management and planning. The Phase I managed recharge hydrologic target for the Snake River Basin above Milner is to recharge between 100,000 and 175,000 acre-feet on an average annual basis. Based upon data gathered during this initial phase of managed recharge, the Board will consider in 2019 whether to implement the ESPA long-term managed recharge hydrologic target.

Footnote 3 of Policy 4B explains that the MOA sets forth additional understandings between IPC and the Board regarding implementation of managed recharge.

The MOA recognizes the Board's and IPC's interest in a cooperative approach to implementation of the ESPA CAMP, sets out a process for these cooperative efforts, and confirms that IPC will be an active participant in the ESPA CAMP's adaptive management process as the Board evaluates specific projects and proposals.

Policy 4E Snake River Basin New Storage, Implementation Strategies, of the State Water Plan states: "[T]he Board's managed recharge program will be limited to not more than 175,000 acre-feet on an average annual basis until January 1, 2019." This statement references Paragraph 3 of the MOA, which sets out a process for involving the legislature and the public should the Board determine it important to significantly increase the Phase I target set out in the ESPA CAMP. The MOA states: "If the Board proposes to increase the 100,000 acre-foot average annual ESPA CAMP Phase I target for managed aquifer recharge by more than 75,000 acre-feet prior to January 1, 2019, the Board must obtain legislative approval for such increase."

In summary, the 2009 Reaffirmation Framework and the MOA recognize the Board's authority to implement the ESPA CAMP, the State's authority to authorize managed recharge, and the Company's existing rights under state law to challenge the implementation of managed recharge. Pursuant to the MOA, the Board will request legislative approval if it determines that significant changes are needed in the targets during Phase I to accomplish the goals set out in the ESPA CAMP.

Neither the 2009 Reaffirmation Framework nor the MOA alter state law or preclude future changes to existing state law.

Overview of the Swan Falls Settlement

Brief History:

The Swan Falls Settlement resolved an ongoing controversy over how to balance water uses for agriculture and water needs for hydropower generation in the Snake River Basin. In the late 1970s, a group of Idaho Power Company's ratepayers initiated a lawsuit against the Company, contending that it had failed to adequately protect its water rights for hydropower generation at the Swan Falls Dam. As a result of the Company's alleged failure to protect junior water uses upstream from Swan Falls Dam, the ratepayers claimed, the Company had less water for power generation, resulting in higher electricity rates for its customers. Idaho Power Company, in its initial response, maintained that all of its water rights for hydropower generation were subordinated as a result of the subordination condition on its rights at the Hells Canyon Complex. The Idaho Supreme Court, however, decided the issue in favor of the ratepayers, holding that the subordination at Hells Canyon did not extend upstream to the Swan Falls water rights.

Following the decision, Idaho Power Company initiated a lawsuit against the holders of approximately 7,500 water rights upstream from its Swan Falls facility, seeking curtailment of those rights based on their junior priority relative to the Company's hydropower rights. Given the catastrophic consequences that such curtailment would have had on agriculture in southern Idaho, the State, through the Governor and the Attorney General, entered into negotiations with Idaho Power Company to resolve the litigation.

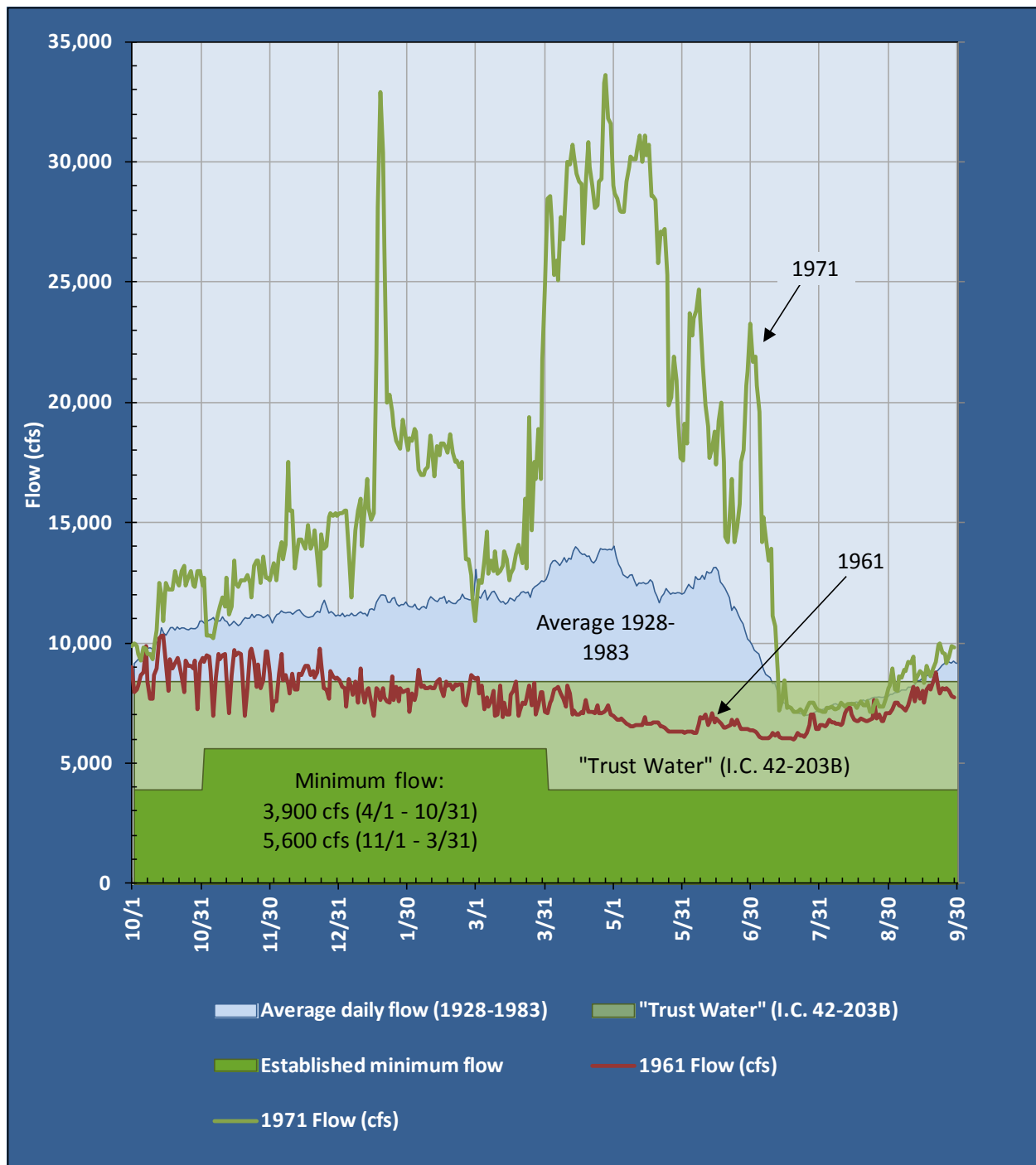
The State's primary interests were to protect existing water uses, and to ensure that the State would control the allocation of water between hydropower and other uses. The interest of the Idaho Power Company was to maintain adequate water levels in the Snake River for hydropower generation at its Swan Falls facility. The minimum stream flow right held by the State at the Murphy Gage (located approximately 4 miles downstream of the Swan Falls facility) was for 3,300 cfs at the time of the negotiations, while Idaho Power Company's hydropower rights were for 8,400 cfs at the Swan Falls facility. An effort was launched to determine the actual historic low flow in the river, in a way that accounted for all existing upstream water uses. The low flow was estimated to have been approximately 4,500 cfs, providing the parties with a context for negotiations about how to maximize the benefit of the State's water resources for both existing agricultural and hydropower interests, as well as for future water development.

The parties crafted a settlement in 1984 with the following key features:

1. Idaho Power Company agreed to subordinate its water rights at Swan Falls and 10 other hydropower facilities to all upstream water uses in existence at the time of the agreement.¹
2. The State agreed to increase the minimum stream flow rights at Murphy Gage by 600 cfs in the summer months and 2,300 cfs in the winter. The result was a minimum stream flow of 3,900 cfs from March to November, and a 5600 cfs minimum stream flow for the rest of the year. This provided the Company with some assurance that the State would work to preserve the water levels in the Snake River on the basis of its own right.
3. Idaho Power Company agreed to not contest the State's authority to place the Company's hydropower water rights in excess of the minimum flow in a State controlled trust. The trust resolved a conflict between the State and Idaho Power Company about how to ensure that water would be available for future development. The State sought immediate subordination of Idaho Power's rights to futures uses down to the new minimum stream flows, while Idaho Power preferred to leave those rights unsubordinated until new uses were approved. This impasse was resolved by legislation that placed the Company's water rights for flows in excess of the minimum stream flows in a State administered trust. Through this trust, Idaho gained control over the hydropower water rights and could thereby, as a matter of state law, subordinate the hydropower water rights to future water rights granted in accordance with state law. These future water rights licensed by IDWR, became known as "Trust Water Rights."

Trust water is that flow of the Snake River that is greater than the Murphy minimum flow but less than the decreed water rights at each of the Idaho Power Company's facilities. As shown on the attached graph, for example, trust water at the Murphy Gage is that flow of the Snake River in excess of the Murphy minimum flow but less than 8,400 cfs, the total of the decreed water rights for the Swan Falls facility.

¹ The subordination also included those water rights for which substantial investment was made pursuant to a valid application or permit by the target date, even if actual use had not yet occurred.



4. The parties reaffirmed that the flow at Milner Dam may be reduced to zero, and that for purposes of the administration of surface and groundwater rights tributary to the Snake River below Milner Dam, no water above Milner is to be considered.

Frequent Questions:

1. What is “Trust Water”?

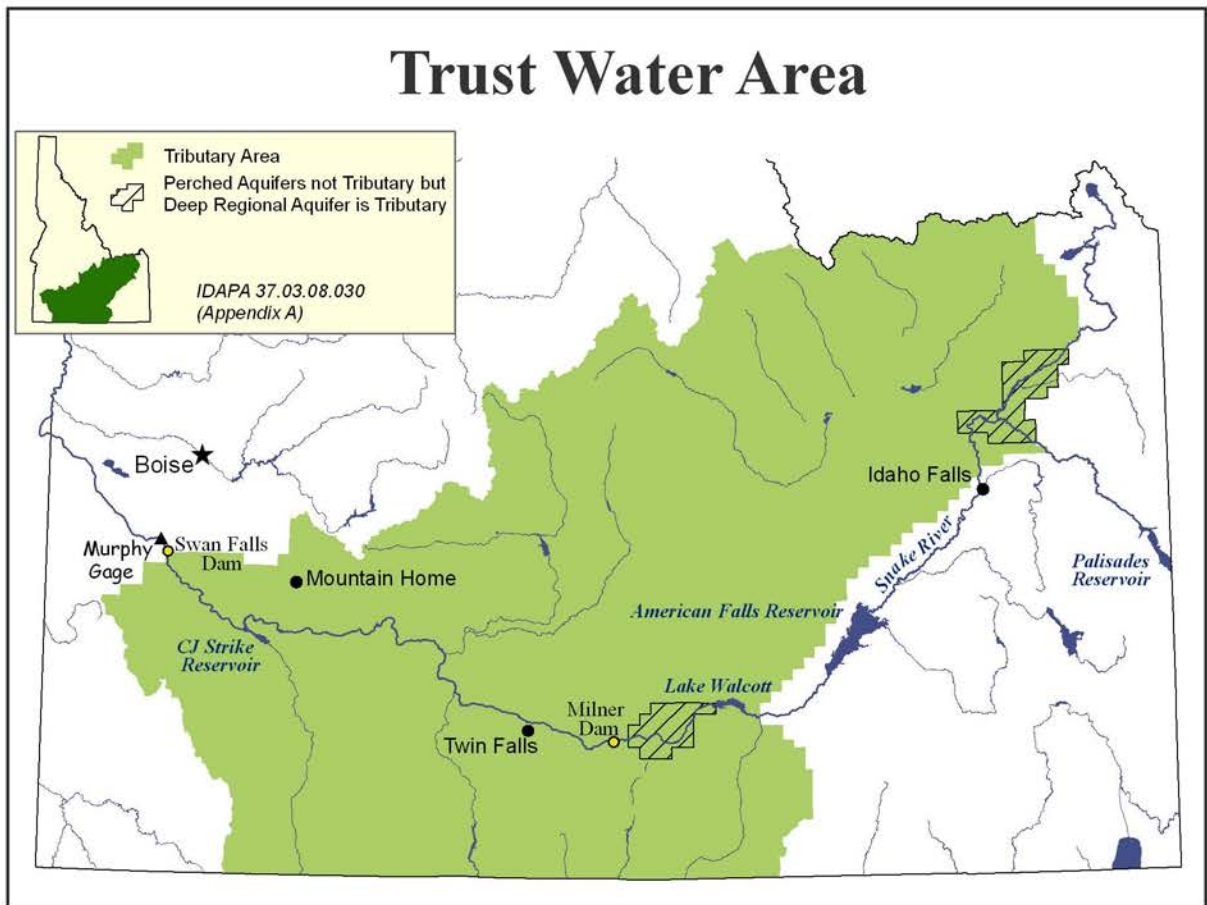
- a. The term “Trust Water” is a misnomer. The trust consists of water rights, not actual water. Trust Water is a shorthand term referring to flows above the minimum stream flow at the Murphy Gage, which were originally appropriated under water rights for hydropower generation.

2. What is a “Trust Water right”?

- a. Trust Water rights are surface and ground water rights in the Trust Water Area for which actual use occurred after October 25, 1984, that divert water previously appropriated under the hydropower rights held in trust by the State (these rights were already subordinate to existing uses). These rights may be curtailed if the water level in the Snake River drops below the minimum stream flows of 3,900/5,600 cfs at the Murphy Gage. Because trust water rights authorize the diversion of water that was first appropriated under Idaho Power Company’s Swan Falls hydropower rights, they are likewise subordinated to the water uses that existed at the time of the Swan Falls Agreement. Some trust water rights were established with a 20 year term condition, which provides that Idaho Department of Water Resources (IDWR) can revisit those water rights after the term expires to determine whether the authorized use remains in the public interest as expressed in Idaho Code § 42-203C.

3. What is the “Trust Water Area”?

- a. The trust water area is pictured in the map below. It shows the area within which surface and ground water is deemed tributary to the Snake River between Milner Dam and the Swan Falls Dam for purposes of the Swan Falls Settlement. This trust water boundary is not a hydrologic boundary, but rather, permanently delineates the area that will be subject to administration under the Swan Falls trust.



4. What about enlargement and expansion water rights?

- a. Enlargement water rights are water rights issued pursuant to Idaho Code § 42-1426 for enlargements of the place of use of previously acquired water rights (so long as there is no increase to the rate of diversion). These enlargement water rights, despite having a priority date based on the date of enlargement, are subordinate to all water rights senior to April 12, 1994, including the Swan Falls hydropower water rights. Expansion water rights are water rights issued pursuant to Idaho Code § 42-1416B for expanded uses in critical ground water areas. Expansion water rights have a priority date of June 30, 1985. Both enlargement and expansion water rights are trust water rights, and may be

subject to curtailment if the minimum stream flows at Murphy gage drop below 3,900/5,600 cfs.

5. Does the trust water area include the Snake River and surface and groundwater tributary to the Snake River upstream from Milner dam?

- a. No. Pursuant to Idaho Code 42-203B, the Snake River and tributary surface water or ground water above Milner Dam is administered separately from the Snake River and tributary surface water or ground water below Milner Dam. That means that in the event that the minimum stream flows at the Murphy Gage are not met, uses of the waters of the Snake River or surface and ground water sources tributary to the Snake River above Milner Dam are not subject to curtailment based upon senior water rights downstream from Milner Dam.

6. What does zero minimum flow at Milner mean?

- a. The zero minimum stream flow at Milner Dam was adopted by the Idaho Water Resource Board in 1976 as a means of formalizing the management of the Snake River as “two rivers.” This policy provides for the optimum development of the surface and ground water resources tributary above Milner Dam, and protects water users above Milner Dam from administration stemming from surface and ground water uses from sources tributary to the Snake River below Milner Dam.²

7. What would happen if the Snake River drops below the 3,900/5,600 cfs Murphy minimum stream flow?

- a. In the event that the water level of the Snake River drops below the minimum stream flows at Murphy Gage, upstream trust water rights (water rights in the trust water area with priority junior to 10/25/1984³) are subject to curtailment. The sufficiency of the flows at Murphy Gage is determined by the “actual flow conditions”⁴ at the gage.

² See Idaho Code 42-203B(2).

³ There are some exceptions to this characterization, notably, water rights where actual use was determined to have begun prior to 10/25/1984, despite a more junior priority date. These rights have been identified in SRBA proceedings.

⁴ “Actual flow conditions” means the flow measured at the Murphy Gage after adjustments to account for any fluctuations resulting from the operation of Idaho Power Company’s hydropower facilities. Acquisitions of water

07/15/12

8. Are water rights with a priority date earlier than October 25, 1984 subject to curtailment if the flow of the Snake River falls below the Murphy minimum stream flow?

- a. No. Water rights with a priority date senior to October 25, 1984 are not subject to curtailment by either the State's 1985 minimum stream flow rights or hydropower water rights, unless it is expressly noted on the face of the water right. In the event, however, that actual flow conditions in the Snake River drop below 3,300 cfs, water rights junior to the State's 1976 Murphy minimum stream flow right are subject to curtailment.

9. If the actual flow conditions of the Snake River at the Murphy Gage fall below the minimum flow, are surface water rights below Milner Dam subject to curtailment before ground water rights?

- a. No. Surface water rights are not subject to curtailment before ground water rights. Surface and ground water rights are subject to curtailment on the basis of the prior appropriation doctrine as established by Idaho law and will be conjunctively administered.

10. What is the State doing to prevent actual flow conditions from dropping below the minimum stream flows?

- a. In the near-term, the Idaho Water Resource Board has acquired 5,000 acre-feet of storage space in Palisades Reservoir to be used to sustain the Murphy minimum stream flow in the event of a short-term drop in flows. In the long-term, IDWR, in conjunction with other entities, is actively developing a measurement protocol designed to provide accurate information about the flow in the Snake River. With more accurate data, and greater understanding of factors influencing the flow of the Snake River, comes greater ability to manage the Snake River flow at the Murphy Gage. This information will be used by the Idaho Water Resource Board in the implementation of the Eastern Snake Plain Aquifer Management Plan to provide strategies for stabilizing spring flow discharge from the aquifer and or managing other sources contributing to Snake River flow. Finally, the creation of water districts within the trust water area,

by the Company from above Milner dam are defined as a fluctuation resulting from the operation of Idaho Power Company's hydropower facilities, and therefore, are not counted in the calculation of the actual flow conditions.

and coordination between those districts, will aid IDWR in administering the resource to sustain the Murphy minimum flow.

11. Does flow augmentation water count toward the minimum flow for purposes of the Swan Falls Agreement?

- a. Flow augmentation water refers to water rented by the U.S. Bureau of Reclamation for use below Hells Canyon dam to supplement flows for salmon and steelhead listed under the Endangered Species Act. Flow augmentation water is not a fluctuation caused by Idaho Power Company operations, and therefore is included in determining the “actual flow conditions” at the Murphy Gage for purposes of the Swan Falls Settlement. The accounting for flow augmentation deliveries is a separate matter governed by the 2004 Snake River Water Rights Agreement.

12. Why do some trust water rights have term limits?

- a. In implementing the Swan Falls Settlement, IDWR recognized the need to revisit allocations of Trust Water to ensure that, after a certain period, such rights remain in the public interest, as defined by criteria found in Idaho Code § 42-203C. As a result, many Trust Water rights were approved with a condition stating that they will be subject to review under the public interest criteria after a term of 20 years.