

ISSUED NOVEMBER 3, 1988

POLICY AND IMPLEMENTATION PLAN FOR PROCESSING
WATER RIGHT FILINGS IN THE SWAN FALLS AREA

I. PURPOSE

The Department of Water Resources (IDWR) is now prepared to process a backlog of filings which seek the right to use water in the Snake River Basin upstream from Swan Falls Dam. Consideration of these filings has been delayed by the Swan Falls controversy, but with the Swan Falls Agreement now fully effective the processing of the filings can begin. The policy and implementation plan addresses the complex water allocation matters in the Swan Falls area. It applies only to the Snake River Basin upstream from Swan Falls Dam and is not applicable to other areas of the state.

The plan itself is not being promulgated as a rule and regulation, and IDWR will not use it as a basis for decision making on individual filings. However, rules will be promulgated as identified in the policy where necessary to implement policies affecting classes of filings in accordance with existing law. Action taken on a particular filing will be subject to due process procedures.

II. BACKGROUND AND PRESENT STATUS

Immediately after the Swan Falls decision was issued by the Idaho Supreme Court on November 19, 1982, IDWR imposed a de facto moratorium on approval of new consumptive uses of water in the Snake River Basin upstream from Swan Falls Dam (Fig. 1). Permits were issued only for uses considered non-consumptive (fish propagation, hydropower, heating and cooling) or determined to be non-tributary to the Snake River. Filings seeking consumptive use of water were held without action under the moratorium and enlarged an existing backlog of applications and undeveloped permits primarily associated with Desert Land Entry, Carey Act, and Bureau of Reclamation projects. Idaho's statutes allow an approved water permit to remain valid though undeveloped and unused if the project is delayed by litigation or other matters outside of the permit holder's control. Unapproved applications which have not been processed for reasons outside of the applicant's control do not have a time limit. Thus, a significant backlog of filings now await a ruling as to whether development and beneficial use may occur.

Resolution of the Swan Falls controversy produced an agreement, a contract, statutory changes, water plan policy changes and new rules and regulations, all of which provide guidance for the administration of water rights in the area of the Snake River Basin upstream from Swan Falls Dam. An immediate effect of the signing on October 25, 1984 of the contract authorized by Senate Bill 1180 of the 1983

legislative session (hereinafter S1180 contract), was that filings for domestic, commercial, municipal and industrial purposes (DCMI) could again be processed and approved. DCMI filings are limited to two (2) acre feet/day depletion and irrigation associated with domestic filings is limited to two and one-half acres. Processing and approval of such DCMI applications is continuing without regard to the backlog of other pending filings.

The Swan Falls Agreement, signed the same day as the S1180 contract, provides the basis for allowing additional consumptive use of water in the Snake River Basin, but the agreement required action by the legislature and certain agencies for it to become fully effective. On March 25, 1988, the Federal Energy Regulatory Commission (FERC) issued an order satisfying the last condition to make the Swan Falls Agreement effective after 60 days (May 24, 1988). IDWR is now able to use the provisions of the agreement and implementing legislation and rules which remove certain filings from the controversy and allow controlled processing of the other filings.

On January 13, 1988, three water delivery organizations filed a petition with IDWR seeking the enlargement of state Water District No. 1 (Upper Snake River and tributaries) to incorporate ground water tributary to the Snake River upstream from Milner Dam into the water district. On March 10, 1988, IDWR received a petition from the same organizations, seeking as an alternative to the first petition, a moratorium on the issuance of any additional permits or further development of existing permits to appropriate ground water from certain areas tributary to the Snake River upstream from Milner Dam. The purpose of the petitions is to protect existing rights to the flow of Snake River diverting at and upstream from Milner Dam from depletions caused by pumping of ground water.

The number of applications and permits presently included in the backlog is approximately 3,800. Of these filings, approximately 1,450 are permits for which development was completed and proof of beneficial use was filed prior to July 1, 1985. These developed uses meet the conditions of section 42-203D, Idaho Code, and do not require further review to be recognized as valid rights. Of the remaining filings (applications and permits for which proof of beneficial use was not filed prior to July 1, 1985) about 900 are seeking water from sources tributary to the Snake River upstream from Milner Dam and about 1,450 are seeking water from sources tributary between Milner Dam and Swan Falls Dam.

III. PROVISIONS OF THE SWAN FALLS SETTLEMENT AND IMPLEMENTING STATUTES AND REGULATIONS WHICH DIRECT IDWR'S ACTION ON THE BACKLOG OF FILINGS

Provisions of the S1180 contract include:

1. A provision subordinating Idaho Power Company's (IPCo) hydropower water rights to all uses developed prior to November 19,

1982 for which a valid license, permit or claim existed on November 19, 1982 and allowing such uses to continue without further protest from IPCo.

2. A provision subordinating IPCo's hydropower water rights to all projects for which a "substantial investment" (\$15,000 or 25% of project costs) had been made in wells and equipment by November 19, 1982, and for which a valid application or permit existed on November 19, 1982, and allowing development and use of such projects to continue without protest from IPCo.

3. A provision subordinating IPCo's hydropower water rights to all DCMI uses, both existing and future, and allowing such uses to continue without protest from IPCo unless the use would interfere with the established minimum flows.

Provisions of the Swan Falls Agreement include:

1. A provision recognizing the Snake River above Swan Falls Dam as fully appropriated as necessary to enforce the State Water Plan. Although the flow of the Snake River during high flow events does exceed the rate of flow for existing rights, including IPCo's hydropower rights in the Milner to Swan Falls Dam reach, the dependable flow in this reach is fully appropriated.

2. A provision providing minimum stream flows of 3,900 cfs during the irrigation season and 5,600 cfs during the non-irrigation season at the Murphy, Idaho U.S.G.S. gauging station located near the Swan Falls Dam site.

3. A provision placing in trust with the state IPCo's water rights in excess of the guaranteed minimum flows.

4. A provision allowing re-allocation of the water held in trust (trust water) when in the "public interest" and adding a definition of public interest requiring, among other considerations, the determination of the effect upon electric utility rates.

5. A provision subordinating IPCo's water rights to beneficial uses of water made prior to October 1, 1984 for which a valid application or claim was filed by June 30, 1985.

6. A provision recognizing IPCo's rights, up to the amount needed to supply the established minimum flow at the Murphy gauging station, as unsubordinated and fully protectable.

IDWR's management of the trust water must comply with the following provisions of the state statutes, adopted rules, and the State Water Plan:

1. Trust water in the Snake River Basin is established by section 42-203B, Idaho Code. It is to be managed:

a. To protect the right of the hydropower user to use the water pending approval of depletionary beneficial uses in accordance with state law;

b. To assure an adequate supply for all future beneficial uses; and,

c. For the use and benefit of the people of the state of Idaho.

2. Definition and location of trust water:

a. "Trust water" is that portion of a water right used for hydropower generation purposes which is in excess of a minimum stream flow established by state action. (Water Appropriation Rule 2,17. -- See Figure 2 & Figure 3 Hydrograph of flows at Bliss Dam and at Murphy, respectively).

b. Trust water flows under the Swan Falls Agreement are located in the Snake River between Swan Falls Dam and Milner Dam, including all surface and ground water sources tributary to the Snake River in that reach - (Water Appropriation Rule 1,5,1,1.). See Figure 1 for the location of ground water presumed to be subject to trust water provisions.

c. Surface and ground water flows tributary to Snake River upstream from Milner Dam are not considered to be subject to the trust water provisions. (42-203B, Idaho Code, and Water Appropriation Rule 1,5,3,5.).

3. Reallocation of trust water is pursuant to state law:

a. First in time is first in right (section 42-106, Idaho Code) and priority of appropriation is determined by the date of receipt of an application to appropriate (Water Appropriation Rule 3,2,2.).

b. Appropriation must be accomplished under the application, permit and license system (section 42-201, Idaho Code and Water Appropriation Rule 3,1,1.).

c. Applications to appropriate trust water are subject to the public notice, protest, and hearing procedures (Water Appropriation Rule 4,2.).

d. Undeveloped permits which will use trust water are subject to reprocessing (section 42-203D, Idaho Code).

e. Filings appropriating trust water must satisfy the criteria of section 42-203A, Idaho Code, which require an assessment of the impact of the proposed use on water available for existing water rights, the adequacy of the water supply for the proposed use, whether the application is filed for speculative purposes, the financial ability

of the applicant to complete the project, and the effect of the proposed use on the local public interest. (Water Appropriation Rule 1,4,1.).

f. Filings appropriating trust water which will result in a significant reduction in flows available to hydropower rights require that the Director also consider additional public interest criteria. The Director shall consider and balance the relative benefits and detriments for each factor required to be weighed under section 42-203C(2), Idaho Code, to determine whether a proposed reduction of the amount of water available for power production serves the greater public interest. The Director shall evaluate whether the proposed use sought in the permit being reprocessed or the application will provide the "greater" benefit to the people of the state of Idaho when balanced against other uses for the same water resource. Water Appropriation Rule 5,3. provides guidelines for evaluating public interest relative to appropriation of trust water and Water Appropriation Rule 5,2. provides guidelines for determining whether the project under consideration will cause a significant reduction in flows available to hydropower rights.

g. Permits reallocating trust water must be conditioned to protect existing uses, established minimum stream flows, and the public interest. To insure that these factors are protected, the Director may condition permits to insure compliance with the provisions of Title 42, Chapter 2, Idaho Code, other statutory duties, the public interest, and the promotion of efficient use and conservation of energy and water (Water Appropriation Rule 6,1. and Rule 6,10.). Permits reprocessed pursuant to section 42-203D, Idaho Code, may be cancelled, modified or conditioned by the Director to make the permit comply in every way with any permit that would be issued for the same purpose based upon a new application processed under these rules (Water Appropriation Rule 6,6.).

h. Policy 5C of the State Water Plan reserves 150 cfs (approximately 108,600 acre-feet/year) of water for consumptive use of future DCMI needs.

i. As a condition of processing applications or reprocessing permits to reallocate trust water, the Director may require a cash bond or surety bond. Such bond, up to five dollars (\$5.00) per acre of land requested to be irrigated or \$250 per cfs for other uses, shall serve as a performance bond for satisfactory compliance with the permitted time requirements for commencement of construction, completion of project works and diversion of water to beneficial use. (Water Appropriation Rule 4,1,5.).

j. The Director is authorized by section 42-1805(7), Idaho Code, and Water Appropriation Rule 7 to implement a moratorium on the issuance of permits or the continued development of existing permits if necessary to protect existing water rights and established minimum stream flows or to ensure compliance with the provisions of Chapter 2, Title 42, Idaho Code.

IV. POLICY

Following the legal requirements described in section III above, IDWR's actions in allocating the water of the Snake River Basin upstream from Swan Falls Dam will advance and be guided by the following policies:

1. Provide protection for all valid, existing water rights including established minimum stream flows;
2. Protect the value, economic and otherwise, of the asset (trust water) obtained by the people of Idaho in the Swan Falls Agreement;
3. Make water available for additional development found to be in the public interest;
4. Encourage efficient use of trust water supplies;
5. Provide orderly processing of the backlog of applications and undeveloped permits while recognizing and protecting the priority date of the filings and still allowing for the processing of filings requiring immediate action;
6. Assure that those directly benefiting from the use of trust water support financially any necessary costs to the state of meeting commitments of the state which enable use of the trust water; and,
7. Provide opportunity for the public and holders of water rights to participate in water management decisions.

Discussion

When the existing hydropower rights are considered, the Upper Snake River Basin is essentially fully appropriated. IPCo's water rights placed in trust and held by the state are a valuable asset in economic and other terms. The state has a responsibility to determine whether this asset provides the greater benefit to the people of Idaho as a source of flow for hydropower and other instream uses, or for upstream consumptive economic development. In either case the trust water resource must be managed on a continuing basis. This continuing management can be assured by issuing permits for the use of the trust water for specific terms long enough to amortize the development investment. The priority of the filing would not be lost at the end of the term, but in reprocessing, the public interest would be re-evaluated and the adequacy of the water supply would be considered. If filings with earlier priority dates are subsequently processed, approved, and developed which require the water which has been used by the filing being re-evaluated or the project no longer meets the public interest criteria, the filing would not be continued.

Permits authorizing development of trust water must give the state the capability to insure that the established minimum stream flows can be maintained and other senior water rights using the Snake River can

be protected. Many of the pending applications and undeveloped permits seeking trust water propose to use wells drilled into the eastern Snake Plain Aquifer. The traditional method of stopping or cutting back the use of junior rights during times of scarcity is not adequate to guarantee that senior flow rights or minimum stream flows in the Snake River will be met. Curtailment of junior ground water pumping rights is inadequate to protect senior Snake River flow rights because of the time delay between reduced ground water pumping and the effect reaching the Snake River. Because curtailment of ground water pumping during a given year will not be effective, a source of water is needed in the upper Snake River Basin to supply water to the river during periods of low flow at the Murphy gauging station. Those using trust water for consumptive uses must be responsible for insuring that the replacement water source is available when needed. A fee based upon the volume of trust water depleted is needed to provide funding to purchase or contract for a source of water to maintain the required minimum instream flows.

The Water District 01 water bank rents water at an annual lease rate which has been set at \$2.50 per acre foot for the past several years. An annual fee for use of trust water at the same rate as that charged by the Water District 01 water bank is proposed. All fees received will be deposited in the Water Management Account created by section 42-1760, Idaho Code, for use by the Water Resource Board to obtain a replacement water supply through lease or purchase of existing storage or construction of new storage.

The criteria and procedures for determining and implementing term review conditions and an annual fee for use of trust water will be provided in rules and regulations adopted pursuant to the director's authority under Section 42-1805(8), Idaho Code.

The order of processing of filings is another important consideration. It appears that sequential processing of the filings based solely upon priority date will focus IDWR's effort on filings not now demanding attention or ripe for action and will delay consideration of filings with later priority dates for which a more pressing need and preparedness to proceed may exist. Many of the earliest priority filings in the backlog seek water (now trust water) for Carey Act or Desert Land Entry projects for which the availability of the land has not been established. Some of the later filings in the backlog seek validation of existing irrigation projects developed subsequent to enactment of the mandatory permit requirement. Without prompt consideration of the filings, these projects will either have to acquire and transfer existing water rights or be required to stop use of the water. Other existing projects propose changes from one source of water to another (i.e., surface water to ground water) or seek supplemental supplies for lands already irrigated. Because water in Idaho, including trust water, is allocated under the appropriation doctrine, the priority date of the pending filings cannot be ignored since the supply of trust water to be reallocated is limited.

IDWR proposes to process some filings out of sequence in order to give timely consideration to filings for development existing prior to October 1, 1984 and to projects which will not deplete trust water. Permits issued may be conditioned to require review after a specific term of years to assure that a source of water will be available to the state to assure that the established instream flows can always be guaranteed. The following categories will be used to guide the order of processing of filings in the area upstream from Swan Falls Dam:

1. Filings seeking water tributary to Snake River upstream from Milner Dam (non-trust water area) are administered separately from water rights in the trust water area and will not be processed in sequence with filings in the trust water area. The department's action on the petitions seeking to enlarge Water District 01 and seeking a moratorium on ground water pumping in part of the trust water area will determine the timing of action on filings in the non-trust water area.

2. Filings seeking water in the trust water area for DCMI purposes have been given a separate allocation and will not be processed in sequence with other trust water filings. Because Water Plan Policy 5C reserves water for all domestic, commercial, municipal and industrial uses without reference to size, filings larger than 2 A-F/day depletion limit can be processed without regard for sequence of filings but the criteria of 42-203C, Idaho Code, must be considered.

3. Applications for water in the trust water area for which IPCo's water rights have been subordinated by the Swan Falls Agreement (development completed prior to October 1, 1984 and application filed prior to July 1, 1985) are not subject to the staged development policy of Section 42-203C, Idaho Code, which limits irrigation development using trust water to twenty thousand (20,000) acres per year or eighty thousand (80,000) acres in any four year period (hereafter termed the "20,000 acres/yr limitation"). These filings will not be processed in sequence with other trust water filings because the effect of these filings on hydropower flows has already occurred and because, due to subordination, the filings are not taking water held in trust.

4. Applications filed after July 1, 1985 to validate water use in the trust water area for projects which were developed prior to October 1, 1984 will also not be processed in sequence with other filings for trust water. The depletion caused by such projects is assumed to have already occurred and need not be counted against the 20,000 acres/yr limitation for the year in which the processing occurred, but all other public interest requirements of 42-203C, Idaho Code, must be evaluated.

5. Applications proposing projects which will not increase the depletion of trust water will not be processed in sequence with other filings for trust water. These projects, which include those for

non-consumptive uses and those for developments existing prior to October 1, 1984 for which a water right from a different or supplemental supply is sought, where both the original and new sources are trust water, will be assumed not to require consideration under the 20,000 acres/yr limitation.

6. All other filings, whether in application or permit stage, whether for a yet to be developed project or for one completed after October 1, 1984, and whether for use on private land or for development of federal desert land, will be processed as nearly as practicable in sequence of the filing date.

IDWR will hold a hearing or hearings as necessary to evaluate the petition to enlarge Water District 01 and the petition to establish a moratorium on further ground water development in certain areas of the non-trust water area. Notice of the hearings will be given to allow participation by all concerned citizens.

A moratorium will be entered to prohibit further expansion or development of existing permits for consumptive purposes in the trust water area until the reprocessing required by section 42-203D, Idaho Code, is completed for a permit. Requests for amendment or extensions of time will be considered in conjunction with reprocessing of the permit.

V. IMPLEMENTATION PLAN

As a general requirement, all applications and undeveloped permits in the Snake River Basin upstream from Swan Falls Dam are to be processed under the provisions for reallocating trust water. This general requirement is modified by various provisions of the S1180 contract, the Swan Falls Agreement, statutes and IDWR's rules which serve to exempt certain filings from the full requirements for reallocating trust water. These provisions are summarized in Table 1 categorized by the nature of the review and evaluation (processing) necessary to determine if the water development can be allowed to proceed. The rationale for assigning a filing to a particular category is referenced in the footnotes to the table. A brief discussion of the nature of the filings in each column follows:

Columns 1 & 2 - "No Processing Required" - Included in this grouping are existing permits from non-trust water sources and certain permits from trust water sources for which IPCo has subordinated its prior hydropower water rights.

A moratorium on development of ground water tributary upstream from Milner Dam, if ordered as proposed in the petition, would cause permits, to the extent development is not complete to be categorized under column 3 requiring reprocessing or column 9 to delay or reject the filing rather than under column 1.

Filings listed in column 2 of Table 1 will not receive further review to determine if the water development can remain or continue and, therefore, further public notice will not be given concerning water rights for these filings. Proof of beneficial use has been submitted on most of the permits included in the categories of columns 1 & 2 or an extension of time has been requested. Extensions may be granted based upon delay because of the Swan Falls litigation or as otherwise provided by section 42-204, Idaho Code. Any extensions allowed will be of short duration not exceeding one construction and use season unless unusual circumstances are demonstrated.

Columns 3 & 4 - "Only 42-203A Processing" - Included in this grouping are all applications seeking water for any purpose from non-trust water sources and various categories of applications seeking water from a trust water source to which Idaho Power Company has subordinated its prior hydropower water rights.

Applications in columns 3 & 4 will be processed sequentially unless processing of a particular filing is delayed by reasons beyond the applicant's control, such as obtaining a right of way, DLE entry or Carey Act entry. However, the holders of such applications will be required to submit evidence that they continue to have an interest in the proposed project and that there is a reasonable expectation that the project may receive the necessary approval from the Bureau of Land Management. Without such evidence the applications will be rejected. Processing will proceed expeditiously without regard to the 20,000 acres per year limitation (which applies only to trust water sources), unless delayed by public interest related reasons.

Public notice of any processing will be given as provided in Water Appropriation Rule 4,2. Rule 4,2. does not require readvertisement of applications diverting from the non-trust water area. However, if a moratorium is imposed as requested in the petition, readvertisement of the pending applications under Column 3 proposing a consumptive use of water could be required or the filings could be held or rejected (Col. 9). The Director is required to apply the five criteria of 42-203A, Idaho Code, to an application for permit, whether protested or unprotested, and if necessary the Director may hold fact-finding hearings or use other procedures to obtain the information necessary to act on an application.

Applications proposing use of trust water categorized under Column 4 will be, if approved, conditioned to require an annual use fee and a term review, unless IPCo's hydropower rights have been subordinated to the filing and it was released from Ada County Case #81375.

Column 6 - "Only 42-203C Processing" - Included in this column are existing permits proposing consumptive use of trust water which are required to be reprocessed pursuant to section 42-203D, Idaho Code. Such filings have already been evaluated against the five (5) criteria of 42-203A, Idaho Code. Water Appropriation Rule 4,2,3,1 provides for evaluation only under the five public interest criteria of 42-203C(2),

Idaho Code. Public notice will be given prior to the IDWR reprocessing any permit in the category under column 6.

Applications in column 8 will be processed in sequence with the existing permits listed in column 6, but will also require review under the criteria of 42-203A, Idaho Code. Filings in both columns are subject to the 20,000 acres/year limitation except that applications filed after July 1, 1985 for development completed prior to October 8, 1984 will not be included in the 20,000 acres/yr limitation. These projects meet the physical requirements to have IPCo's hydropower rights subordinated to them, and the depletion in flow to the hydropower rights began to occur in previous years. This policy allows unauthorized developments in place at the time of the signing of the Swan Falls Agreement to be reviewed outside of the sequential processing based upon priority date. Unauthorized developments made after October 1, 1984 will be processed in sequence and will be included in the 20,000 acres/year limitation.

Applications and reprocessed permits for trust water receiving approval will be conditioned to require that:

- a. Proof of beneficial use will be due in a relatively short time period (not more than one construction and beneficial use season except in unusual circumstances).
- b. The permit will be re-evaluated after a specific term of years if in the trust water area.
- c. An annual use fee shall be paid if in the trust water area as needed to insure maintenance of instream flows.
- d. Surrender of permit and cessation of diversion if conditions of approval are not complied with.

Column 9 - "Delay Processing or Reject Filings" - Filings in this category will be denied if in a critical ground water area, held pending submittal of information needed to demonstrate that water is available, if in a ground water management area, or processed in accordance with the terms of a management order entered in compliance with the Administrative Procedures Act.

VI. IDWR ACTIONS TO IMPLEMENT THE PLAN

1. A data sheet will be prepared for each filing to categorize the filing and to guide processing. The data sheet should be completed to the extent possible from existing information in IDWR files. The computer will be used to compile and/or maintain this information as determined necessary. Supplemental information, when needed, will be obtained from the applicant/permittee using a questionnaire. Information sought may include:

- a. Continued interest in project development.

- b. Status of any needed federal project approval
 - c. Status of development including dates of starting construction, completing construction, first beneficial use and ultimate beneficial use.
 - d. Planned development schedule.
 - e. Type of use, i.e, new development, supplemental, or replacement.
 - f. Acknowledgement that an annual fee for use of the trust water will be a condition of any permit to use trust water.
2. Compile pending filings based upon the level of processing required under the terms of the Swan Falls Agreement, the Idaho Code and the Water Appropriation Rules and Regulations. Table 1 shows processing requirements for filings based on the characteristics of the filings.
3. Notify holders of applications and permits and others requesting to be informed of the category to which a filing is assigned.
4. Begin processing in accordance with the adopted Policy and Implementation Plan.

TABLE 1 - PROCESSING¹ REQUIREMENTS
 BASED UPON CHARACTERISTICS OF FILINGS

No Processing Required		Only 42-203A Processing		Only 42-203C Processing		Both 42-203A & 42-203C Processing		Delay Processing or Reject Filings
Column 1 Non-Trust Water ²	Column 2 Trust Water ²	Column 3 Non-Trust Water	Column 4 Trust Water	Column 5 Non-Trust Water	Column 6 Trust Water	Column 7 Non-Trust Water	Column 8 Trust Water	Column 9 Either Trust or Non-Trust Water
Any existing permit ³	Permits to develop new storage ⁴ Permits issued prior to 7/1/85 for which development was complete prior to 7/1/85 ⁵ Permits which have been released from Ada County Case #81375 because a significant investment was made prior to 11/19/82. ⁶	All applications seeking water for any purpose ⁷	Any application proposing ⁸ only DCMI or non-consumptive uses or only ⁴ new storage Applications & existing permits presumed not to cause a signif- ⁹ icant reduction Applications filed prior to 11/19/82 which have been released from Ada County Case #81375 because a signif-icant investment was made prior to 11/19/82. ¹⁰ Applications filed prior to 7/1/85 for beneficial use made prior to 10/1/84. ¹¹	Not applicable to any filing	Any existing permit not described by Col. 2 or 4 ¹² Any non-DCMI existing permit for a new consumptive use processed in a year during which in excess of 20,000 AF/yr depletion ¹³ approved.	Not applicable to any filing	Any application not described by Col. 2. or 4. Any non-DCMI appli-cation for a new consumptive use processed in a year during which in excess of 20,000 AF/yr depletion ¹³ approved.	Filings with points of diversion located in a ground water management area or a critical ground water area ¹⁴

Footnotes to Table 1

1. Processing as used in this table refers to review and evaluation to determine if water development should be permitted. Public notice is an essential part of processing. Actions to extend the time in which to submit proof of beneficial use or to confirm a water right by issuing a license are outside the scope of the term "processing" as used in this table.
2. Non-trust water and trust water as column headings refer to the location of the point of diversion relative to whether the water, if not diverted, would be tributary to Snake River upstream from Milner Dam (non-trust water) or between Milner Dam and Swan Falls Dam (trust water). The area within which ground water is considered to be trust water is shown on figure 1.
3. The rationale for not requiring processing is based upon 42-203B(2), Idaho Code, which separates water tributary upstream from Milner from trust water. As permits, these filings have previously been determined to meet 42-203A, Idaho Code criteria. Entry of a moratorium order as petitioned, would put existing permits, to the extent development is not complete into Column No. 3 for reprocessing or into Column No. 9 for delay or rejection.
4. Water Appropriation Rule 5,3,7. presumes new storage upstream from Swan Falls Dam to be in the public interest until studies are complete (Reference Policy 5I, adopted State Water Plan).
5. Section 42-203D, Idaho Code exempts these permits from reprocessing. Water Appropriation Rule 4,2,3,1. clarifies that such filings are not subject to reprocessing under the 42-203A, Idaho Code criteria.
6. Article 2.(d) of S1180 Contract subordinates IPCo's rights to these permits which already have been evaluated against the criteria of 42-203A, Idaho Code, and have been released from the Swan Falls lawsuit.
7. Entry of a moratorium order, as requested in pending petitions, would either require readvertisement of pending applications or move the filings to Column 9 for delay or rejection.
8. Article 2.(a) of S1180 Contract subordinates IPCo's rights to DCMI filings and Water Appropriation Rule 5,2,4. creates a presumption that flows available to hydropower will not be significantly reduced.
9. Water Appropriation Rule 5,2. provides criteria for determining which applications will not create a significant reduction in flows to hydropower rights. No more than 20,000 AF/yr of depletion may be authorized for these filings.
10. Article 2.(a) of S1180 contract subordinates IPCo's rights to permits in this category, however, applications in this category have not been evaluated against criteria of 42-203A, Idaho Code.

11. Paragraph 7,D. of Swan Falls Agreement subordinates IPCo's rights to these applications. However, an application must still be evaluated against the criteria of 42-203A, Idaho Code.
12. Refer to 42-203C, Idaho Code, and Water Appropriation Rule 5,2. Water Appropriation Rule 4,2,3,1. limits review to 42-203C, Idaho Code, criteria only.
13. Water Appropriation Rule 5,2. limits the presumption that a development will not create a significant reduction in flows to hydropower rights to 20,000 AF/yr. Any filing processed in excess of that amount of depletion must be reviewed under the requirements of 42-203C, Idaho Code. In the instance of permits, the requirements of 42-203A, Idaho Code have already been shown to be satisfied.
14. Eight critical groundwater areas and four groundwater management areas have been designated in the Swan Falls area under sections 42-233a and 42-233b, Idaho Code.

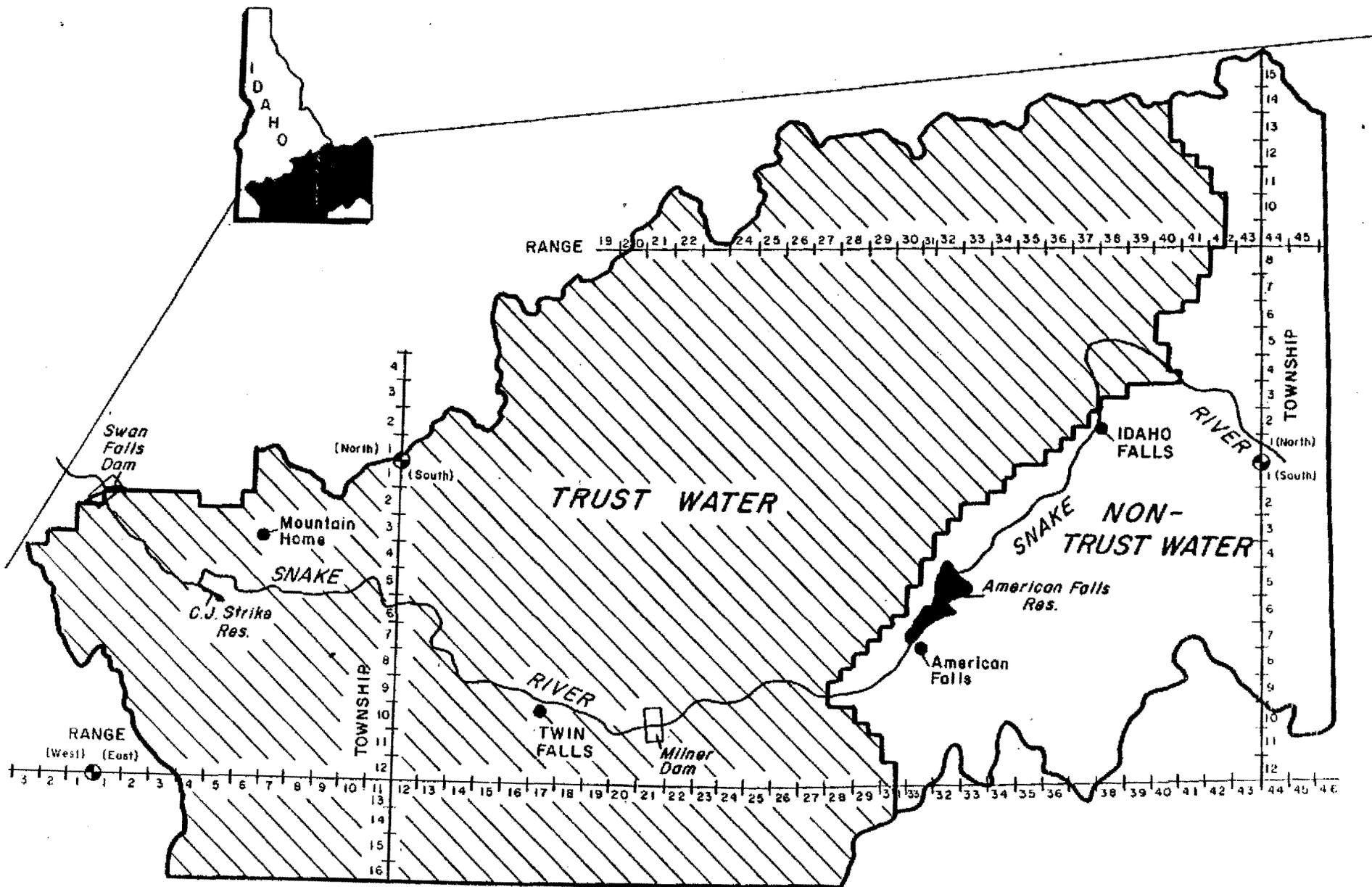
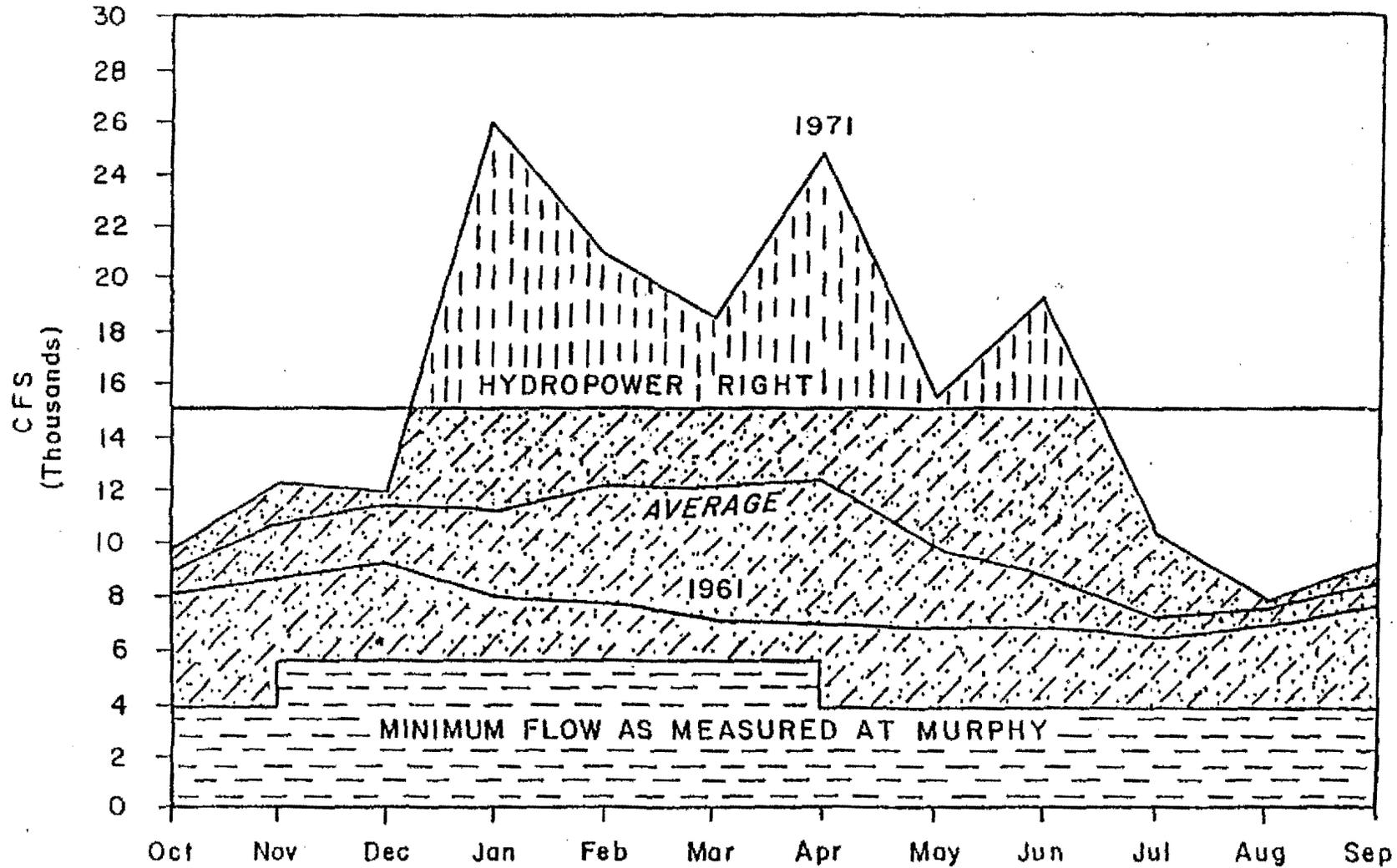


FIGURE I. -16

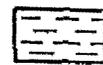
Figure 2

SNAKE RIVER FLOWS

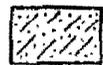
BLISS



Unappropriated water



Guaranteed minimum flow

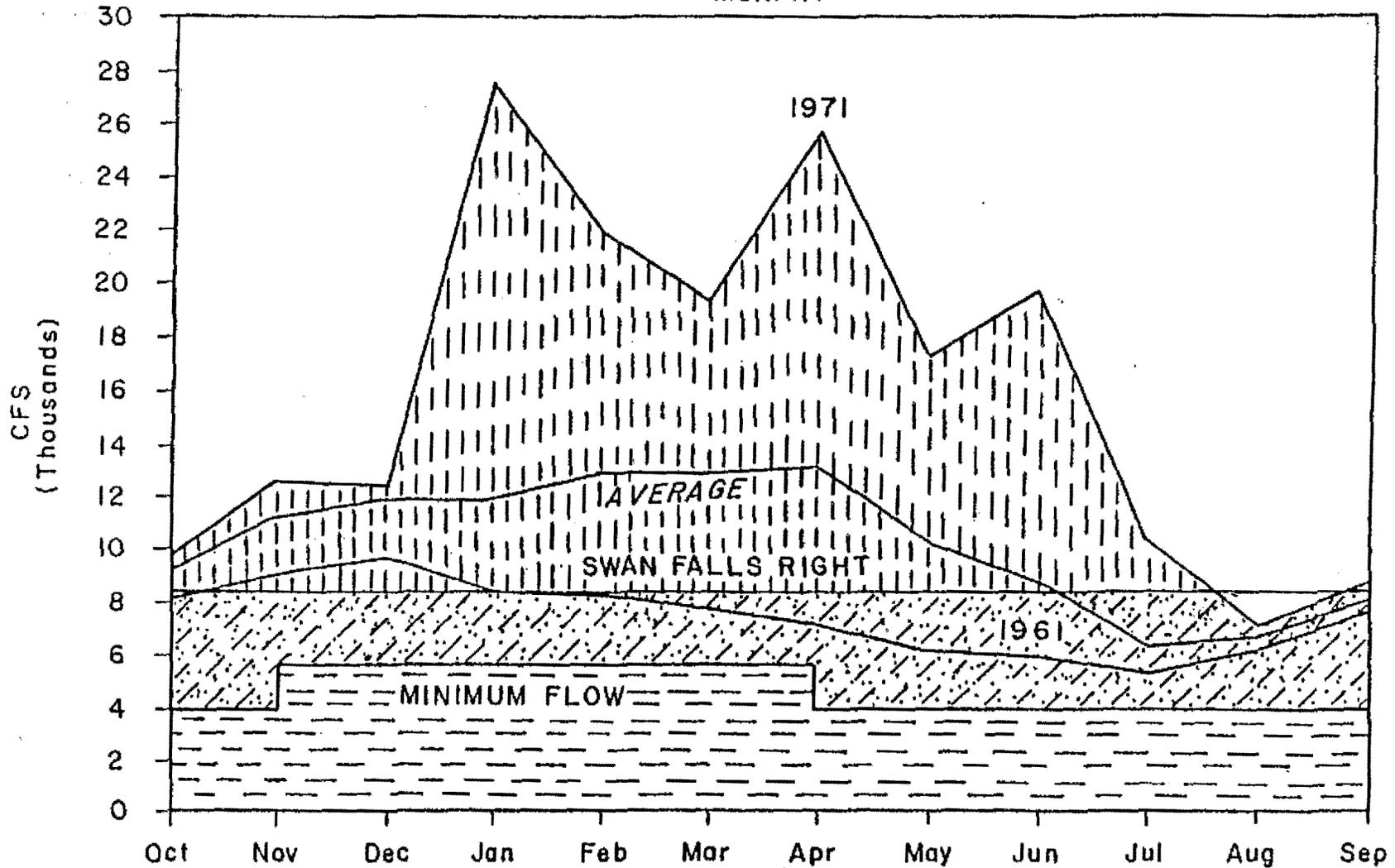


Trust water

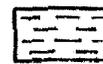
Figure 3

SNAKE RIVER FLOWS

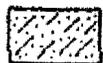
MURPHY



Unappropriated water



Guaranteed minimum flow



Trust water