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February 11, 2005

Karl Dreher, Director - via Regular Mail & E-mail
Idaho Department of Water Resources
322 East Front Street
P. O. Box 83720
Boise, Idaho 83720-0098

Re: "Surface Water Coalition" Request for Water Right Administration in WD 120 & Request for Delivery of Water to Senior Surface Water Rights.

Dear Director Dreher:

Over the past several months, the Idaho Power Company (Company) has been monitoring the process initiated by the State to resolve complex and, at times, contentious issues associated with the management of the State's water resources. The Company was not a party to the agreement that initiated this process and, as such, has not been an active participant.[1] However, as that process has progressed, the Company has made it clear to the interests involved that a solution to the controversy that involves diverting water from the river or from reservoir storage to mitigate for shortages to some water users may have consequences to the water rights of others, including those held by the Company.

Recent events, as well as the interest of the Company in ensuring that its interests and those of its customers are adequately represented and protected, have caused the Company to reassess its position. It is in this context that the Company submits this letter in support of the request for water right administration and delivery of water submitted to you on January 14, 2005 by a group of surface water interests identified as the "Surface Water Coalition".[2]

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[1] This process was initiated as a result of the Eastern Snake Plain Aquifer Mitigation, Recovery and Restoration Agreement for 2004 (2004 Agreement) entered into between the Idaho Legislature and various ground and surface water resource users. As part of the process, the Legislature formed an Interim Natural Resource Committee (Interim Committee) to study the issues and meet with stakeholders in an effort to identify solutions to the controversy.

[2] The Surface Water Coalition is comprised of A&B Irrigation District, Burley Irrigation District, Minidoka Irrigation District, Twin Falls Canal Company, American Falls Reservoir District #2, Milner Irrigation District and the North Side Canal Company. The Company is also filing a motion to intervene in the proceeding before IDWR initiated by the Surface Water Coalition's *Petition for Water Right Administration and Designation of the Eastern Snake Plain Aquifer as a Ground Water Management Area.*

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In order to prevent ongoing depletion and injury to the Coalition members' senior natural flow and storage water rights in the 2005 water year, the Coalition has requested that the Idaho Department of Water Resources (IDWR) appropriately administer hydraulically connected surface and ground water sources consistent with the prior appropriation doctrine. The Company is similarly situated to the members of the Coalition in that it holds storage rights in American Falls Reservoir that are dependent on natural flow, tributary spring flows and river reach gains. Therefore, to the extent that Coalition water rights suffer injury from the failure to appropriately administer connected surface and ground water resources, the Company's storage rights in American Falls Reservoir will likewise suffer injury.[3]

The Coalition's request also expresses an expectation that water rights in Idaho will be administered consistent with State law. Again, the Company has similar expectations. In 1984, the Company and the State of Idaho entered into a landmark settlement, commonly known as the Swan Falls Agreement, intended to resolve conflicts between the Company's senior hydropower water rights on the Snake River and junior water rights that impacted those senior rights. Through the Swan Falls Agreement, the Company agreed to subordinate many of its hydropower water rights on the Snake River in exchange for various commitments by the State of Idaho. The Swan Falls Agreement also recognized the inherent value of hydropower to the State and its citizens and provided for the consideration of that value in the allocation of "trust water", that portion of the Company's water rights subject to subordination under the Agreement.[4] Additionally, the Agreement acknowledged the need for effective management of the State's water resources and provided that the Agreement, together with the State Water Plan, provided a sound comprehensive plan for the management of the Snake River watershed. The constant underlying the comprehensive approach to water management contemplated by the Swan Falls Agreement was State law and the constitutionally established prior appropriation doctrine. As such, the Company, like the Surface Water Coalition, has a reasonable expectation that water right administration in the Snake River basin will be consistent with State law.

Evidence presented to the Interim Committee over the past several months illustrates that the State, contrary to these expectations, has not effectively managed Idaho's water resources. It is clear that the Eastern Snake Plains Aquifer ("ESPA") is being depleted at a rate faster than it is being replenished and that because of the interrelationship of the ESPA to the Snake River, the entire resource is over-appropriated. Aquifer levels, spring flows tributary to the aquifer, and the

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[3] By motion dated February 3, 2005, the Idaho Ground Water Appropriators Inc. petitioned to intervene in the request for administration filed by the Coalition. Should the IDWR decide to treat the Coalition's request as either a contested case or a formal administrative proceeding under IDWR's rules, the Company would request that this letter be treated as a motion to intervene and that the Company be granted party status in such proceeding.

[4] The Company's hydropower system continues to provide this value to the State. The Company provides electric service to in excess of 400,000 customers in southern Idaho and eastern Oregon. This customer base is projected to grow at a rate of approximately 2% annually (8,000/yr), which will necessarily require additional energy and capacity production. A 2003 survey of 185 investor-owned utilities by the Edison Electric Institute (EEI) found that the Company's residential rates were the lowest in the West and the 8th lowest in the nation. Large to medium commercial rates were the lowest nationally and small commercial ranked 17th. In large measure, these low rates result from the Company's hydropower projects, which provide approximately 60% of the Company's total capacity.

Snake River have all been declining for many years.[5] While, of late, these conditions have been exacerbated by several years of drought, it is clear that extensive ground water pumping has contributed significantly to the declines. These declines result in less flow in the river, which negatively impacts the Company's water rights, its capacity for power production, and its customers. These depletions in river flow appear to be the rule rather than the exception, reflecting a long-term trend that in 2003 resulted in the violation of the Swan Fall Agreement minimums at Murphy Gage and in 2004 a shortfall in the Company's storage right in American Falls Reservoir.[6] The Snake River is currently experiencing record lows, and projections indicate that in the absence of some immediate action the declining trends that the resource has experienced over the past several years will continue.

In the 2004 Agreement, the Legislature committed to develop "short-term and long-term [ESPA] goals and objectives together with standards to determine whether the goals are being met, all of which are consistent with the prior appropriation doctrine and state law" (emphasis supplied). The Company commends the Legislature for undertaking this charge and concurs that the objective of any solution should be to bring the ESPA and the connected water resources within the basin back into balance by ensuring that groundwater pumping withdrawals are equal to or less than natural and incidental recharge to the ESPA. This should be the overarching goal of effective State administration of Idaho's water resources.

In the Company's view, there are two primary tools for achieving the long-term sustainability of southern Idaho's water resources: first, curtailing the use of water under junior water rights that impact senior water rights through priority administration; and second, providing the legal, technical and policy framework necessary to allow junior water right diversions to continue by providing mitigation or replacement water that will prevent injury to senior water rights. This second tool compliments the first, allowing for junior diversions to continue provided senior water rights are not injured. Any measures implemented to achieve this goal must be consistent with the prior appropriation doctrine. This means that all diversions from, or to, the ESPA or the Snake River must be in priority, or exercised in such a manner that all out-of-priority depletions are fully replaced to protect senior water rights. Circumstances in which senior and junior water right priorities conflict are not unusual in an over-appropriated system such as the upper Snake River basin and the ESPA, and are precisely the type of circumstance that the constitutionally recognized prior appropriation doctrine was intended to address.

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[5] The graphs at the end of this correspondence illustrate that the Snake River and the tributary springs to the ESPA have all been in decline for the past 40 + years. All flows depicted on the graphs are annual average flows and while they are broad representations of the average trend over 45 years, in all cases there is a declining trend in total flow in the Snake River. Also attached is an illustration of the declining levels of the ESPA since 1980.

[6] Reductions in spring and river flow have also impacted the Company's secondary storage rights in American Falls Reservoir. The Company has referenced these storage rights in previous correspondence to the U.S. Bureau of Reclamation (see letter to J. Wm. McDonald dated 10/18/01) and concurrently, with the submission of this letter is advising the Bureau of the Company's demand that these secondary rights, like those of the Coalition, be protected and delivered to the Company consistent with the applicable storage contract.

In the Interim Committee process, it has been suggested that a managed aquifer recharge program is also a necessary tool for reversing the declining trends in the aquifer and the springs. The Company submits, however, that while managed recharge may be a theoretical tool, it is not a practical one. First, the Company holds water rights that are senior to any water rights that might be acquired or exercised for recharge purposes.[7] As the Coalition has done, the Company must demand that the senior priorities of its water rights be observed and protected. Notwithstanding the seniority of the Company's water rights, however, because the Snake River system is over-appropriated and subject to various ESA and other regulatory constraints[8], there is simply insufficient surface water available to recover the ESPA through a managed recharge program.

The Company is committed to working with the State and other stakeholders to ensure the long-term health of the ESPA and Snake River basin resources and, as such, supports the request of the Surface Water Coalition for effective administration of water rights within the basin. In the context of these cooperative efforts, however, the Company must demand that the senior priorities of its water rights be observed and protected. Any action that injures the Company's water rights will increase power costs to the Company's customers. To insure that such does not occur, the Company will take necessary actions to protect its property rights.

Before closing, the Company feels compelled to respond to recent allegations relative to the Company's involvement with certain members of the Coalition and their request for administration. The Company has reviewed the letter to you dated January 21, 2005 from John K. Simpson, an attorney representing the Twin Falls Canal Company, which makes reference to certain statements made by Ron Carlson, the regional manager for the IDWR's Eastern Regional Office in Idaho Falls and the Watermaster for Water District No. 1, in a presentation at the winter conference of the Far West Agribusiness Association in Jackpot, Nevada on January 10, 2005. Mr. Simpson attached a copy of Mr. Carlson's presentation to his letter. In his letter, Mr. Simpson asserts that at the presentation in Jackpot Mr. Carlson stated that the Surface Water Coalition's request for water right administration was a "strategy' devised by Twin Falls Canal Company and Idaho Power Company to ensure that additional water passes Milner Dam to increase power revenues."[9]

The Company takes issue with Mr. Carlson's statements and any assertion that Idaho Power Company has engaged in any type of "strategy" with the Twin Falls Canal Company, or any other member of the Surface Water Coalition, to increase flows past Milner Dam. In an Order dated January 25, 2005 you indicate that Mr. Carlson's statements were his own personal

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[7] I.C. § 42-1401A.

[8] These constraints include the federal flow augmentation program, which requires that the Bureau of Reclamation provide up to 427,000 acre-feet of water to the lower Snake River annually to assist with juvenile salmon migration. Similar ESA constraints are being asserted in the context of the relicensing of the Company's hydro projects on the Snake River, including the Hells Canyon Complex. They relate not only to ESA listed salmon, downstream of the HCC, but also to ESA listed mollusks in the middle Snake River. All of these constraints place more emphasis and pressure to maintain, and even increase, Snake River flows.

[9] Letter from John K. Simpson to Karl Dreher dated January 21, 2005, pg. 2. See also, pg. 46 of the letter, part of Mr. Carlson's presentation, which is entitled "Implementing the TFCC & IPCO Strategic Plan".

opinions and were not authorized by the IDWR. We view this as a particularly unpersuasive and inadequate response. Mr. Carlson's materials for the presentation in Jackpot identify him as "Snake River Watermaster & IDWR Eastern Regional Manager" and, as such, one can only presume that he was speaking as a representative of the IDWR. In the Company's view, whether the statements were authorized by IDWR or not is irrelevant. The mere fact that such statements were made reflects a lack of objectivity and judgment by a senior manager of the state agency charged with the responsibility of resolving the water right disputes that are in contest in this matter, as well as an absence of effective management by IDWR supervisory staff. Both the Company and the Twin Falls Canal Company are entitled to a retraction of the statements and an apology from IDWR and Mr. Carlson.

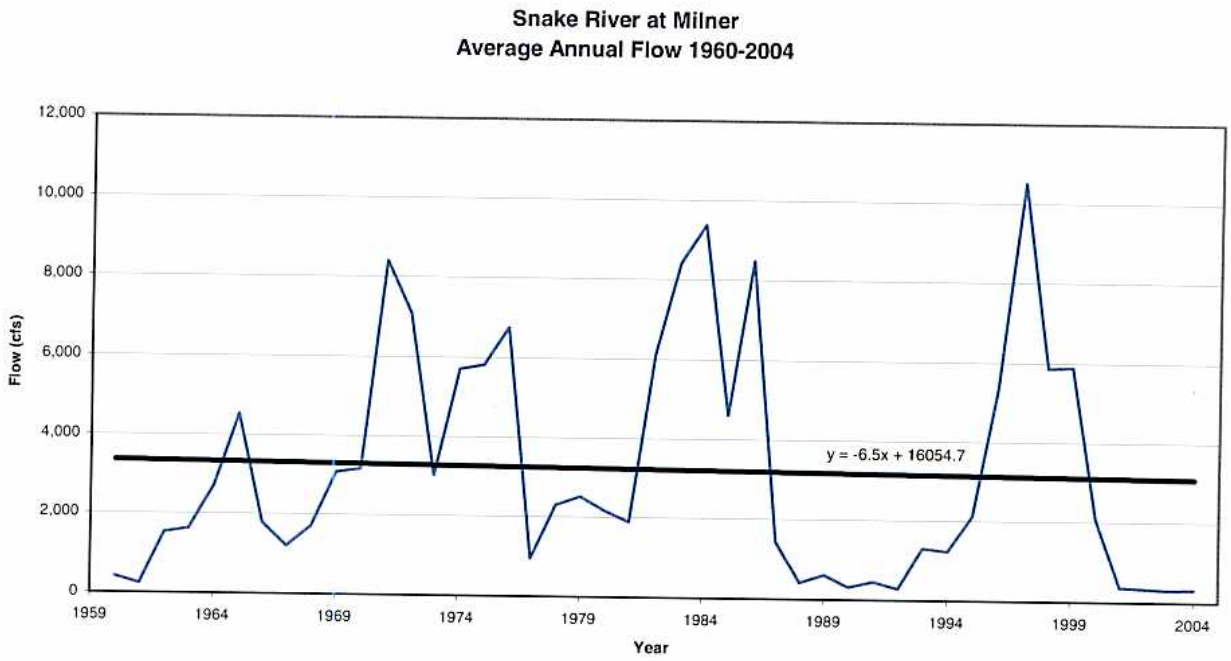
The Company would be pleased to meet and discuss these matters in more detail at your convenience. Please direct any communications relating to matters associated with the Coalition's request for administration or the Petition for Water Right Administration and Designation of the Eastern Plain Aquifer as Ground Water Management Area to the undersigned.

Very truly yours,

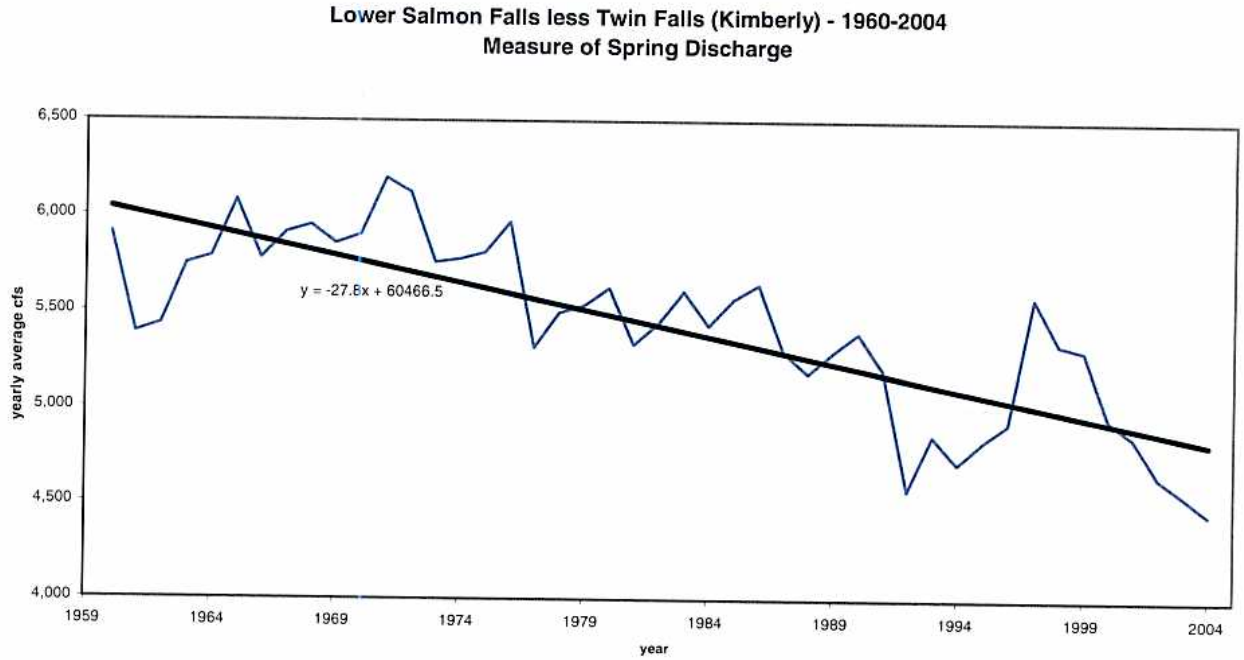
James C. Tucker

JCT/dkp

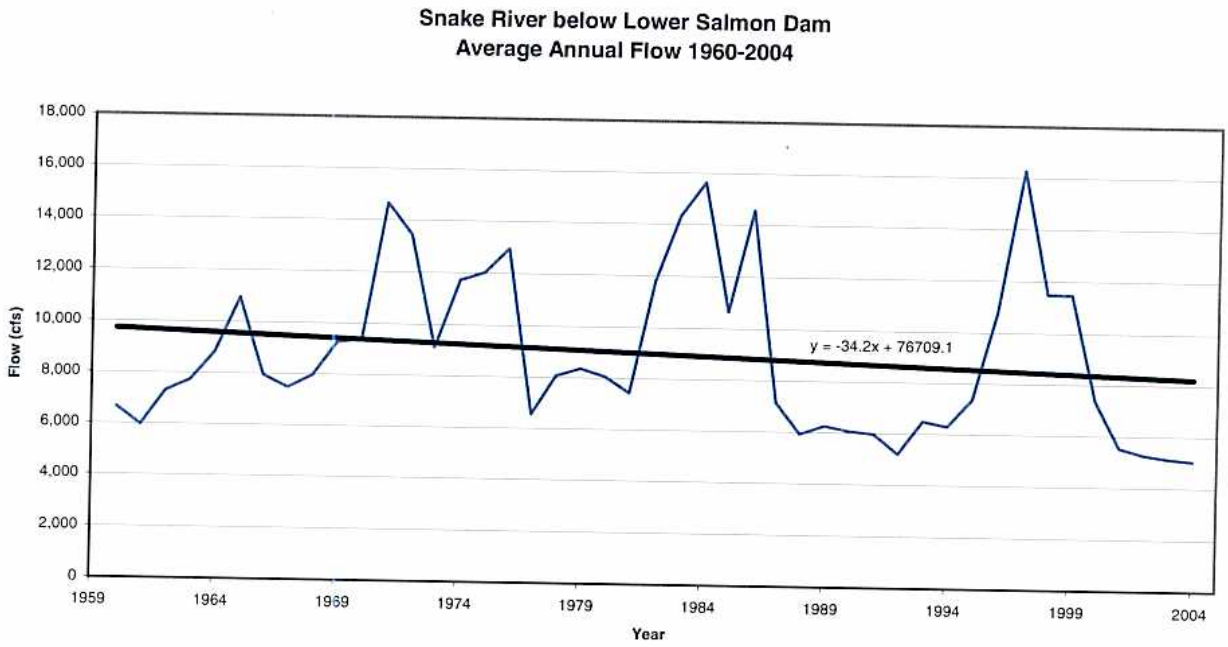
cc: Honorable Dirk Kempthorne, Governor
Honorable Bruce Newcomb, Speaker of the House
Chair – Interim Natural Resource Committee
Counsel for the "Surface Water Coalition"
J. William McDonald, U.S. Bureau of Reclamation
Counsel for the Idaho Ground Water Appropriators Inc.



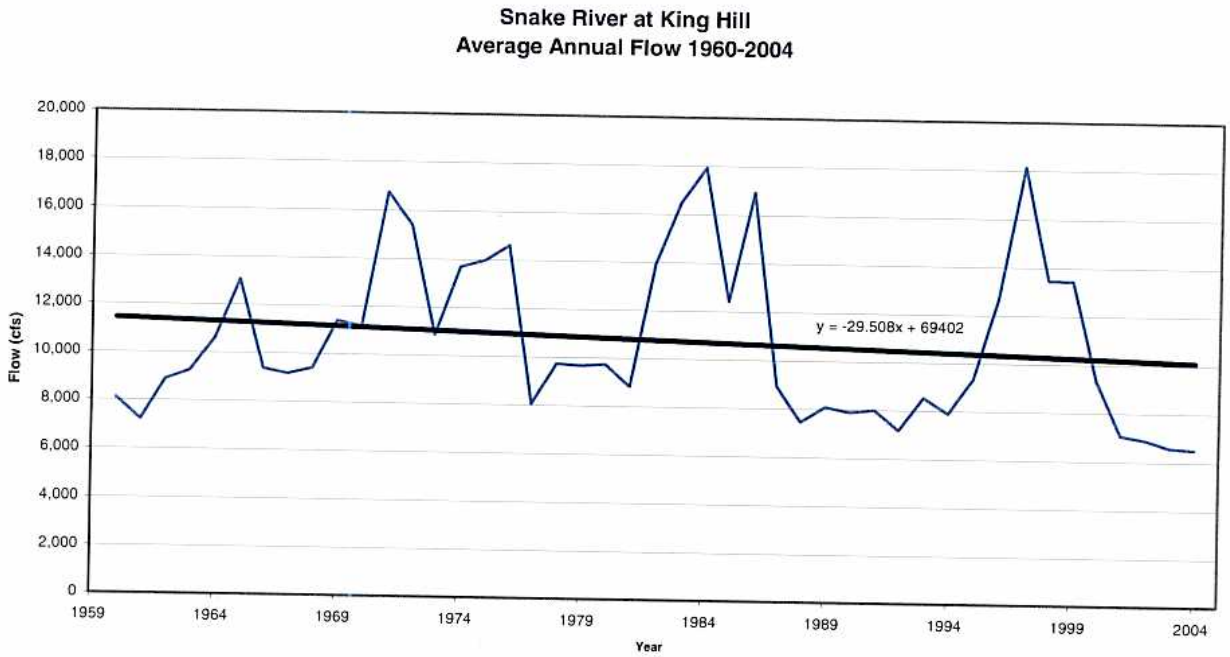
Average Annual Flow Decline = 6.5 cfs/Total Decline after 45 years = 293 cfs.



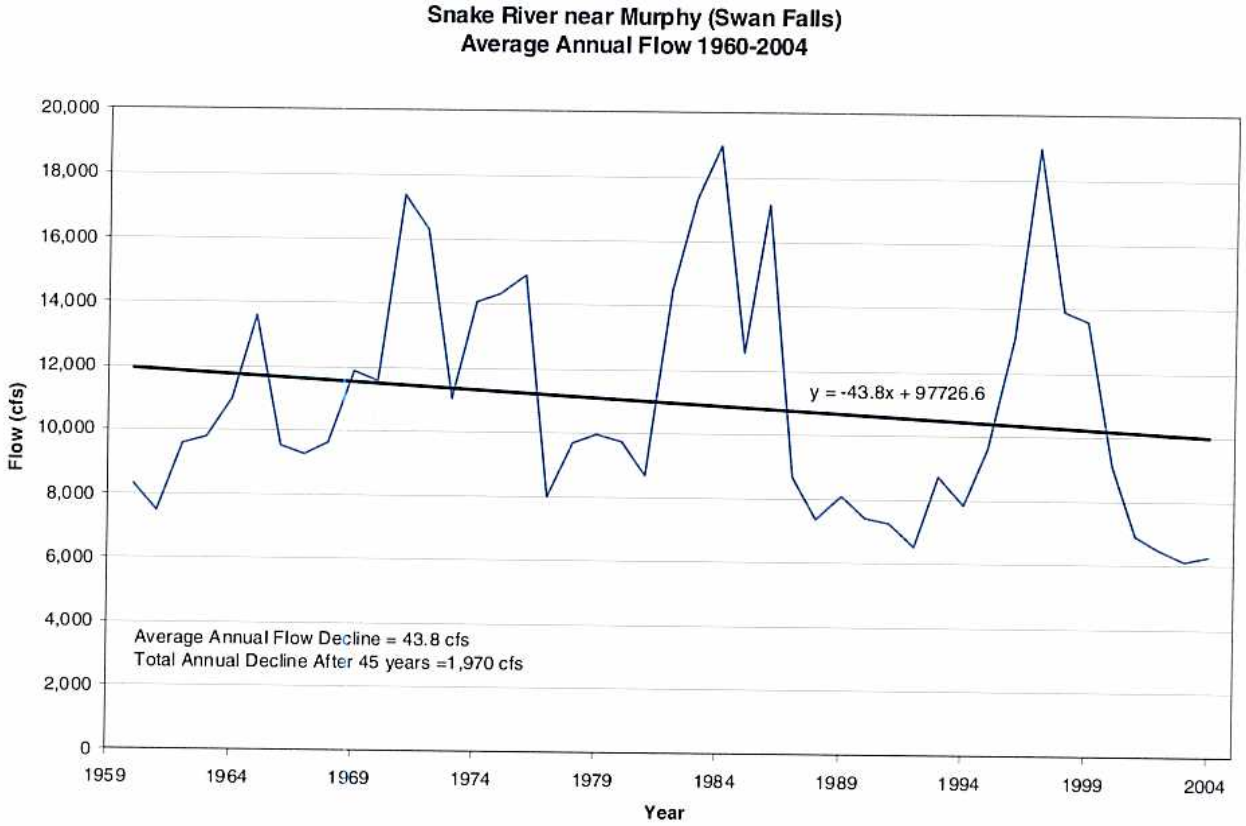
Average Annual Flow Decline = 27.8 cfs/Total Decline after 45 years = 1250 cfs

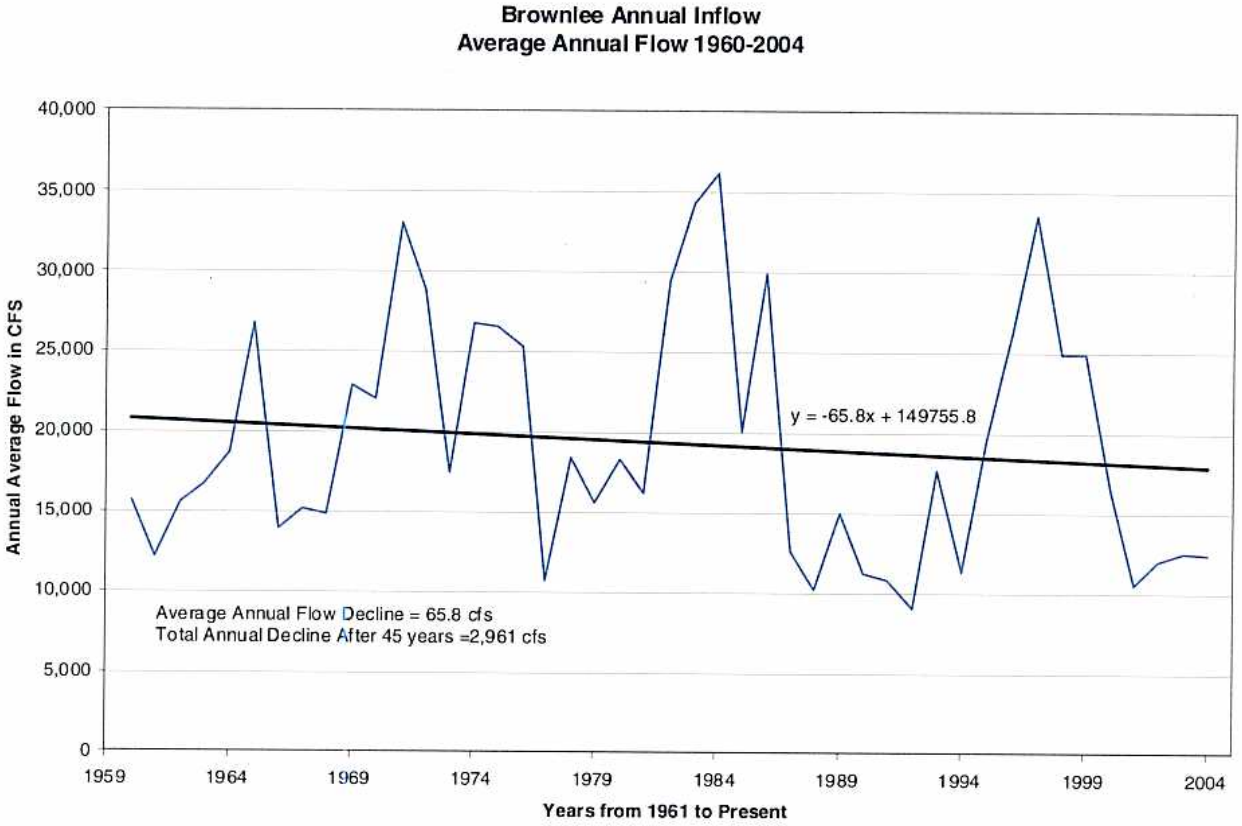


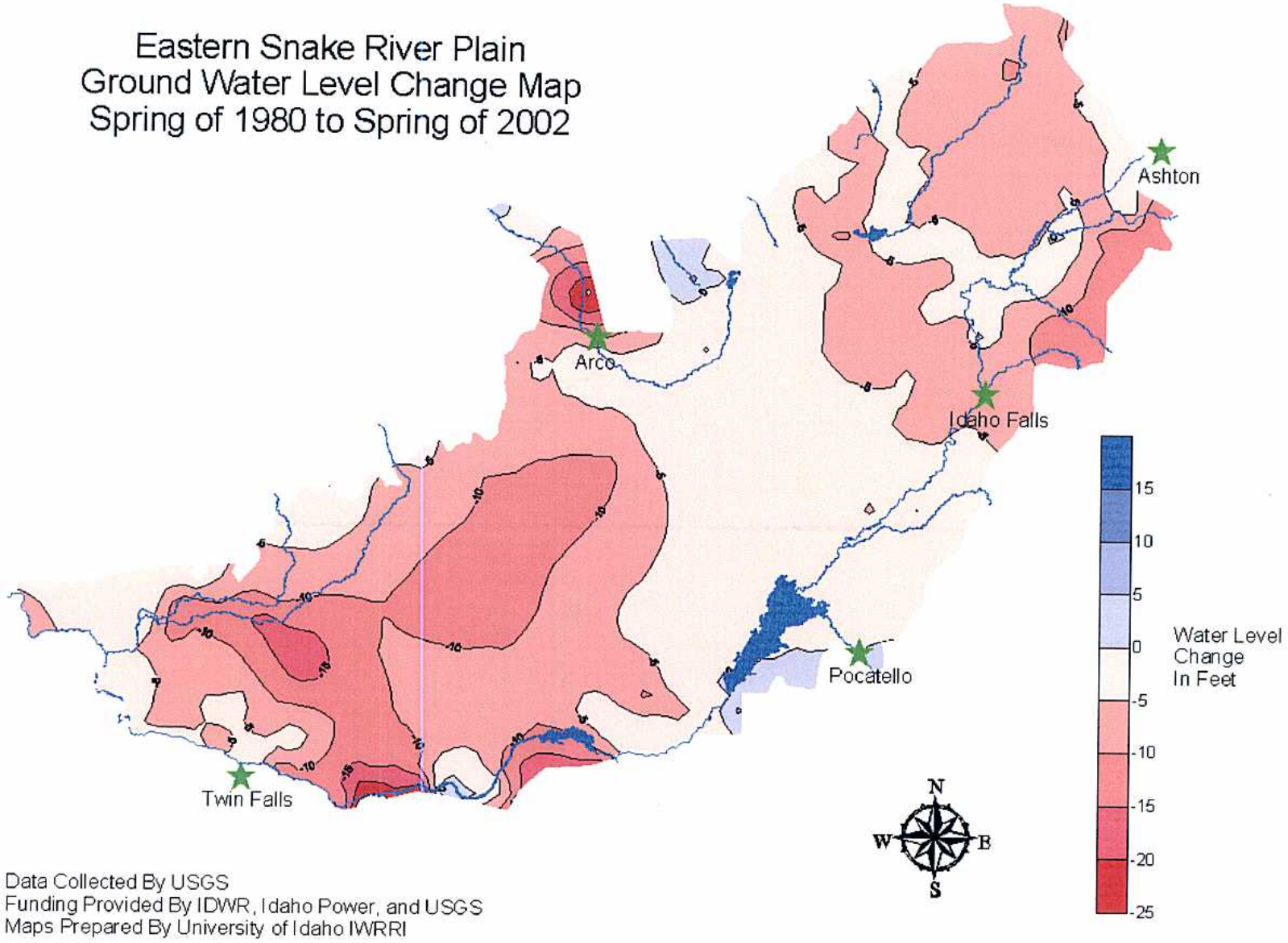
Average Annual Flow Decline = 34.2 cfs/Total Decline after 45 years = 1,538 cfs



Average Annual Flow Decline = 29.5 cfs/Total Decline after 45 years – 1,328 cfs


Snake River near Murphy (Swan Falls)
Average Annual Flow 1960-2004
20,000
18,000
16,000
14,000
12,000
10,000
8,000
6,000
4,000
2,000
0
Flow (cfs)
y = -43.8x + 97726.6
Average Annual Flow Decline = 43.8 cfs
Total Annual Decline After 45 years =1,970 cfs
1959
1964
1969
1974
1979
1984
1989
1994
1999
2004
Year


Brownlee Annual Inflow
Average Annual Flow 1960-2004
Annual Average Flow in CFS
40,000
35,000
30,000
25,000
20,000
15,000
10,000
5,000
0
1959
1964
1969
1974
1979
1984
1989
1994
1999
2004
Years from 1961 to Present
y = -65.8x + 149755.8
Average Annual Flow Decline = 65.8 cfs
Total Annual Decline After 45 years =2,961 cfs



Data Collected By USGS
Funding Provided By IDWR, Idaho Power, and USGS
Maps Prepared By University of Idaho IWRRI