BEFORE THE DEPARMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF APPLICATIONS FOR PERMITS FOR THE DIVERSION AND USE OF SURFACE WATER WITHIN THE SALMON AND CLEARWATER RIVER BASINS IN IDAHO	**AMENDED** **MORATORIUM ORDER**

The Director of the Department of water Resources, having responsibility for the administration of the appropriation of the water of the state of Idaho and the protection of rights to the use of water within the state, the protection of the public interest in the waters of the state, and the conservation of the water resources of the state, enters the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On May 15, 1992, the Director of the department issued a moratorium against the approval of certain new applications within the Salmon and Clearwater River basins. Conditions have now changed so that amendments to the moratorium order are now appropriate.

2. The Salmon and Clearwater River basins are free-flowing streams of the state, generally without obstructions from dams and impoundments and serve as habitat for anadromous salmon and steelhead fish.

3. The National Marine Fisheries Service (NMFS) has listed the Snake River sockeye, spring/summer and fall chinook salmon under provisions of the Endangered Species Act (ESA). That action has resulted in the need to take measures to facilitate the recovery of the salmon. Such measures include protection of the habitat conditions as well as modification of the operation of dams which imperil fish passage thorough the lower Snake and Columbia Rivers.

4. Diversions of water from the Salmon and Clearwater Rivers and their tributaries have the potential of impacting the salmon and steelhead on their migration to the ocean and return to spawning areas in the river basins.

5. Actions are necessary in the public interest to control the appropriation of water from the Salmon and Clearwater Rivers and their tributaries to the extent practicable to prevent loss of anadromous fish. Such actions, however, will only be meaningful over the long-term if other interests in the region make meaningful efforts to remove or modify the down-river obstructions to fish passage caused by dams.

CONCLUSIONS OF LAW

1. The Director of the Department of Water Resources is authorized under the provisions of Section 42-1805(7), Idaho Code, as follows:

> After notice, to suspend the issuance or further action on permits or applications as necessary to protect existing vested water rights or to ensure compliance with the provisions of chapter 2, title 42, Idaho Code, or to prevent violation of the minimum flow provisions of the state water plan.

2. The granting of new water right permits within the Salmon and Clearwater River basins could impact salmon and steelhead, which action would be contrary to the local public interest in such fish resources and would be inconsistent with the conservation of water resources within the state of Idaho which the Director is charged to protect under the provisions of Section 42-203A(5), Idaho Code.

ORDER

IT, IS, THEREFORE HEREBY ORDERED that the prior moratorium order of the department issued on May 15, 1992, is superceded by this Amended Moratorium Order.

IT IS FURTHER HEREBY ORDERED that a moratorium is established on the processing of applications for permits to appropriate surface water resources within the Salmon and Clearwater River

basins subject to the following conditions:

1. This moratorium shall be in effect on and after its entry and shall remain in effect until withdrawn or modified by order of the Director. A future decision to continue or rescind the moratorium will consider all efforts being made within the region toward the recovery of salmon.

2. This moratorium applies to all applications, previously filed, or yet to be filed seeking permits to appropriate surface water within the drainage basins of the Salmon and Clearwater Rivers upstream from their mouths.

3. This permit does not affect the authorization to continue development of any existing approved application (permit).

4. This moratorium does not apply to any application for domestic purposes as such term is defined in Section 42-111, Idaho Code, nor to any application to use ground water.

5. The moratorium does not apply to any application proposing a non-consumptive use of water.

6. This moratorium does not apply to applications for uses existing prior to the start of the Snake River Basin Adjudication in November 1987.

7. This moratorium does not prevent the Director from reviewing on a case by case basis an application which otherwise would not be approved under terms of this moratorium, if:

a) Protection and furtherance of the public interest as determined by the Director requires consideration and approval of the application irrespective of the moratorium, or

b) The Director determines that the use of the water pursuant to the application will have no effect on the migration of anadromous fish due to:

i) the location of use

ii) mitigation provided by the applicant to offset reduction in flow for fish migration, or

iii) insignificant consumption of water.

Dated this 30TH day of APRIL, 1993.

R. KEITH HIGGINSON, Director