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October 11, 2010

**VIA US MAIL AND E-MAIL**

Helen Harrington  
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Re: Initial Comments on Snake River Draft Policies- Murphy Gauge to Below Weiser

Dear Ms. Harrington:


The following comments are submitted on behalf of the Twin Falls Canal Company, North Side Canal Company, and Clear Springs Foods, Inc. It is my understanding that these comments are solicited only as a preliminary matter to assist in the continued formulation of the Snake River Policies of the proposed Idaho State Water Plan currently undergoing re-drafting, and that additional opportunities for public comment will be offered as the proposed plan nears completion. As such, these comments are to be considered preliminary, and additional formal comments will be submitted when the Plan is officially considered open to public comments.

Sub-committee Chairman Chamberlain explained at the last meeting of the sub-committee that changes to the policies submitted in a red-line format were more useful than lengthy dialogue without context in the original proposed policies. As such, the comments of Twin Falls Canal Company, North Side Canal Company, and Clear Springs Foods to the second set of Snake River policies are in a red-line format attached to the original proposed policies, and hereby submitted for the sub-committee's review and information.

Additionally, while it is helpful to participate in meetings at which the spectators discuss their general comments concerning the policies, it is equally and in most instances more helpful to attend meetings where the members of the sub-committee discuss their concerns and comments relating to the policies. It is my sincere hope that the sub-committee does intend to convene again to discuss the sub-committee members concerns, comments and intent with regard to these proposed Snake River policies.

Very truly yours,

**BARKER ROSHOLT & SIMPSON LLP**

A handwritten signature in black ink, appearing to read 'S. M. Davis', with a long horizontal flourish extending to the right.

Shelley M. Davis

Cc via e-mail: Brian Olmstead-Manager TFCC  
Ted Diehl – Manager NSCC  
Randy MacMillan, Vice President Clear Springs Foods, Inc.

## STATE WATER PLAN – SNAKE RIVER POLICY

### 4 - SNAKE RIVER BASIN

#### 4 – SNAKE RIVER BASIN WATER MANAGEMENT FRAMEWORK

The Idaho Water Resource Board's Snake River minimum stream flows establish the framework for water management in the Snake River basin.

##### Discussion:

Approximately 87% of the surface area of the State of Idaho is within the Snake River drainage basin. The waters of the Snake River form the backbone of Idaho's economy. Effective management of this resource is essential to protecting existing water rights, sustaining economic growth, maintaining low-cost power rates, and preserving fish, wildlife and other environmental values.

At the core of Snake River water management is the state policy of managing the Snake River to meet or exceed minimum stream flows established at the Milner, Murphy, Weiser, Johnson Bar and Lime Point gaging stations. These minimum stream flows establish, as a matter of state policy, a balance between diversion of water out of stream for consumptive uses and preservation of flows for instream uses. This policy of managing reaches of the Snake River to meet or exceed designated instream flows evolved over the course of the 20<sup>th</sup> Century and was incorporated into the 1976 State Water Plan. A brief overview of the evolution of the instream flow management policy is provided to give context for the individual river reach policies that follow.

Throughout the first half of the 20<sup>th</sup> Century the dynamic tension between diversion of water for consumptive uses and retention of flows for instream uses was manifested in the context of the simultaneous development of the irrigable lands within the Snake River Basin and the development of the hydropower potential of the main stem Snake River.

Initially, the conflict was resolved through the development of the Milner Policy in 1920, which dedicated the flow of the Snake River above Milner Dam for future agricultural development. The Milner Policy was based upon the physical character of the river. Upstream from the Milner Dam the relatively flat landscape facilitated water diversions from the main stem Snake River into canal systems with technology available at the time. Below Milner Dam, the Snake River enters a deep canyon and was largely inaccessible for agricultural development in the first half of the 20<sup>th</sup> century. The descent of the Snake River into the canyon below Milner, however, made the downstream reach of the river ideally suited for hydropower development. Thus, the State adopted the Milner Policy, which subordinated hydropower development below Milner to future upstream development. As discussed more fully below, the Milner Policy as it evolved does not mandate a zero flow at the Milner gage but rather prevents holders of water rights using water below Milner Dam from calling for the delivery of water above Milner Dam. As early as 1920, in a report prepared by a Board of Engineers convened by the Governor and the United States for the purpose of considering projects on the Snake River, particularly those that might affect the development of the then proposed American Falls Reservoir, Milner Dam was recognized as a practical and physical point of divide in the development of the Snake River. Above Milner Dam, the waters were easily diverted and used for irrigation and other consumptive uses. Below

Milner Dam the river descended into a deep canyon and was unavailable for agricultural development with the technology available at the time. Given these physical conditions, the Board of Engineers expressed the opinion in the report that the greatest use of the Snake River would be to dedicate the water above Milner Dam to the extent economically feasible to upstream irrigation. Over the past century, the principle has come to be expressed as the "zero flow at Milner" policy, which was codified in 1986 at Idaho Code § 42-203B(2) providing that for the purposes of the determination and administration of rights to the use of the waters of the Snake River or its tributaries downstream from Milner Dam, no portion of the waters of the Snake River or its tributaries upstream from Milner Dam shall be considered

**Comment [s1]:** This proposed revision is taken nearly verbatim from the revisions proposed by Idaho Power Company to the "Snake River Above Milner" policy discussing the 1920 Board of Commissioners report, and accurately reflects the history of the development of the zero flow at Milner policy.

The advent of high lift pumping technology in the 1950s precipitated the next phase of the Snake minimum stream flow policy. Pumping made irrigation of vast expanses of desert land lying above the Eastern Snake Plain Aquifer possible. Additional power to turn the pumps was to come from development of the hydropower potential of the Hells Canyon reach of the Snake River. Concern that hydropower development might monopolize the flows of the Snake River, however, led to an agreement between the State of Idaho and Idaho Power Company that subordinated its hydropower water rights for the Hells Canyon complex to all future upstream consumptive uses. The subordination provision in the Hells Canyon complex license, like the Milner Policy, precludes hydropower uses from interfering with future upstream development. At the time of the 1920 Board of Commissioners report, the Idaho Power Company had three existing hydropower projects on the Snake River below Milner Dam; Shoshone Falls, Lower Salmon and Swan Falls. In 1928, the Idaho Constitution was amended providing the state with the authority to regulate and limit the use of water for hydropower purposes. Through the balance of the twentieth century, Idaho Power constructed five additional hydropower projects below Milner, including the three dam Hells Canyon complex. However, not all of the hydropower water rights associated with Idaho Power Snake River projects contained conditions that subordinated the rights to upstream development, which had been suggested in the 1920 Board of Commissioners report. The failure to include such conditions in the hydropower water rights resulted in an eventual conflict between hydropower and upstream consumptive uses culminating in the late 1970s. The 1984 Swan Falls Settlement Agreement, together with the 2009 Swan Falls Reaffirmation Agreement between the State of Idaho and Idaho Power Company resolved this conflict, subordinating the balance of Idaho Power's hydropower water rights to upstream development consistent with the terms of those agreements.

**Comment [s2]:** This proposed language revision is also from the Idaho Power comments submitted proposing revisions to the "Snake River Above Milner" policy.

The FPC federal license for the Hells Canyon complex provided for operational flows at Johnson Bar and Lime Point to provide for navigation. As discussed more fully in the Below Weiser reach policy, these operational flows form the basis for the Johnson Bar and Lime Point state minimum stream flows, which were first recognized in the 1976 Idaho State Water Plan.

In the latter part of the 20<sup>th</sup> Century, the dynamic tension between consumptive and instream flow uses expanded beyond the irrigation/hydropower context to include water quality, fish and wildlife and other instream uses. Studies conducted by the Idaho Department of Fish and Game suggested that further depletions of the flows of the Snake River in the reach between Milner and Weiser would be detrimental to fish and wildlife. Thus, the 1976 Idaho State Water Plan determined it was not in the public interest to allow depletion of the average daily flow of the Snake River below 3,300 cfs at the Murphy gage and below 4,750 cfs at the Weiser gage. These minimum flows were established to "maintain water for production of hydropower and other main stem water uses. . ."

The Swan Falls Controversy brought the need for maintaining minimum flows into greater focus, and led to a comprehensive settlement balancing instream uses with upstream development. As a result of the Swan Falls settlement agreement, the average minimum daily flow at the Murphy gage was increased to 3,900 cfs during the irrigation season and 5,600 cfs during the non-irrigation season and the State Water Plan directed "that ground water and surface water of the Snake River basin would be managed to meet or exceed the state minimum average daily flow at Milner, Murphy, and Weiser. The Murphy and Weiser minimum flows were designated as management constraints.

The State of Idaho, as part of the 2004 Snake River Water Rights Agreement, established a flow augmentation program that supplements the main stem Snake River state minimum stream flows. The program consists of two tiers. Tier 1 recognizes the Milner and Murphy minimum stream flows as base flows. Tier 2 provides for the rental of storage water in accordance with the provisions of Idaho Code § 42-1763B and the Snake River flow component of the 2004 Snake River Water Rights Agreement and for the acquisition of up to 60,000 acre-feet of natural flow water rights within the Milner to Murphy reach of the Snake River.

The minimum stream flows that evolved over the last century form an integrated plan for management of the Snake River as a whole have guided the Idaho Water Resource Board's policy determinations concerning the Snake River. Each minimum stream flow was established to address specific management objectives for the Snake River above its ending point. The State Water Plan, beginning with the first plan in 1976 and continuing through each successive plan, has recognized this framework as a means of a tool to help ensuring ensure an equitable allocation of the flows of the Snake River between consumptive and instream uses, and continues to guide policies attempting to achieve and as a means of ensuring an equitable allocation of the flows of the Snake River for future development throughout the basin. While this framework allows for the development of future uses of water within each reach, localized decisions must take into account the potential impact of such development on water supplies in other reaches. The following policies representing the Board's comprehensive plan for the Snake River are not intended to affect or in any way direct the continued use of private water rights, and are limited in their application to only the unappropriated waters of the Snake River in conformance with Idaho Code § 42-1734A(1).

## STATE WATER PLAN – SNAKE RIVER POLICY

### SNAKE RIVER FROM MURPHY GAGE TO WEISER GAGE

#### 4 - SNAKE RIVER BASIN

#### SNAKE RIVER FROM MURPHY GAGE TO WEISER GAGE

Water resources tributary to the Snake River from Murphy Gage to Weiser Gage reach will be managed to meet or exceed an average daily flow of 4,750 cfs at the Weiser Gage.

#### Discussion:

**Management and Permitting Constraints:** The Idaho Water Resource Board claims a minimum stream flow water right of 4,750 cfs (year round) is held by the Idaho Water Resource Board at the Weiser gage. This water right has a priority date of 1876 and was established by legislative approval of the State Water plan in 1976. The flow of the Snake River at the Weiser gage is a management and permitting constraint. This claimed minimum flow at the Weiser gage is intended to help assure an adequate hydropower resource base and protect other instream flow values such as fish habitat, recreation, aesthetics, and water quality.

**Comment [s1]:** A water right is not conferred upon the Board simply through declaration in the State Water Plan. All water rights in the state of Idaho must be acquired through the statutory method, if claimed after 1971, as would be the case for the minimum stream flow water right at the Weiser Gage.

**Background:** Large-scale organized irrigation came to the lower Boise River in the 1860's and 1870's. At that time, the greatest need was for a water storage system to supplement river flows during the late summer months when irrigation demands exceeded natural river supplies.

The Boise Project began in 1906 by extending the New York Canal 40 miles to convey water from the Boise River Diversion to Lake Lowell. Since then, the Boise Project has evolved to provide full irrigation water supply to approximately 224,000 acres and a supplemental supply to some 173,000 acres.

Storage facilities tributary to the Murphy to Weiser reach of the Snake River consist of Anderson Ranch Reservoir, Arrowrock Reservoir, Lucky Peak Reservoir, Lake Lowell, Deadwood Reservoir, Cascade Reservoir, and Black Canyon Reservoir. In the Boise River basin all three reservoir facilities (Anderson Ranch, Arrowrock, and Lucky Peak) are operated in a coordinated manner to provide water for irrigation within the Boise River basin and flood control. To the extent possible, water is stored high in the system for operational flexibility. During the irrigation season, Lucky Peak is held at or near full through the summer and Arrowrock and Anderson Ranch Reservoirs are drafted for irrigation. In the fall, Lucky Peak is drafted to meet late-season irrigation needs. Storage water that is not used is credited as carryover into the next year.

*Background and challenges on Payette, Weiser, Owyhee being developed.*

**Urban Growth In Boise River Basin:** The lower Boise River flows approximately 64 miles through Ada and Canyon counties, from Lucky Peak Dam to its confluence with the Snake River. This area has experienced rapid substantial population growth over the past several decades with land-use changing

**Comment [s2]:** Growth over several decades may be substantial, but not necessarily "rapid."

in some areas from agricultural to urban residential use. As a result, there are increasing demands on water supplies for domestic use. Irrigation districts and other irrigation supply entities have adapted to this change by incorporating pressurized urban irrigation systems into the services that these irrigation supply entities provide. This change changing in-land and water uses in the Treasure Valley not only requires water management strategies to meet demand, but also and requires exploring new methods for protecting water quality and effective flood risk management. These issues are best addressed through a regional planning process.

**Comment [s3]:** Residential more accurately describes the change that the treasure valley land use has experienced, and is consistent with planning and zoning terminology.

**Comment [s4]:** This sentence as initially written appears to imply that prior to the adoption of this plan water quality and flood risks were not being adequately addressed. The proposed revisions more accurately describe the history of the system and the additional efforts that the Board supports.

**Treasure Valley CAMP:** In 2008 the Idaho Legislature passed House Bills (HB) 428 and 644 which directed the Idaho Water Resource Board to conduct a statewide comprehensive aquifer planning and management effort (CAMP). The Idaho Water Resource Board began developing the framework for a comprehensive management plan (CAMP) for the Treasure Valley basin in Fiscal Year 2008. The process is anticipated to take four years. It is anticipated by the Board that the Treasure Valley CAMP will provide the framework for water planning and management for the next 50 years. A Committee of advisors made up of local stakeholders in water management, delivery, supply, conservation and permitting, have been appointed to make all decisions concerning the goals and programs that may eventually be adopted for the Treasure Valley CAMP.

At this time, without additional direction from the Treasure Valley CAMP advisory committee, the Idaho Water Resource Board specifically anticipates that the goals of the CAMP program are to:

- Provide reliable sources of water, projecting 50 years in to the future
- Develop strategies to avoid conflicts over water resources
- Prioritize future state investments in water
- Bridge the gaps between Determine whether future water supply is predicted to meet future water needs and supply

**Comment [s5]:** A statement at this time, without direction from the TV CAMP advisory committee about what the specific goals of the TV CAMP are, seems presumptuous.

**Comment [s6]:** This seems to indicate that the law of the state of Idaho and the Department's administrative rules are insufficient to address these conflicts.

During the first phase of the project, technical studies and planning activities will be undertaken. The technical studies that have so far been commissioned will focus on refining the understanding of the ground and surface water system and developing a water budget for the Treasure Valley. The planning process will undertake studies to estimate future water needs and identify tools to meet those needs.

A few of the components anticipated by the Board to be addressed in the Treasure Valley CAMP are:

**1. Conjunctive Management:** Over the years, surface water and ground water development and management in the Boise basin has may have evolved to a point where Conjunctive Management must may need to be implemented to satisfy both ground water and surface water demands. A few of the drivers of this change are:

- Reduced deep percolation of water as a result of improved irrigation efficiencies
- Increasing urbanization residential growth on previously agricultural lands
- Increased interest in maintenance of instream flows
- Water needs for energy production
- Impacts of climate variability

2. **Additional DCMI for Growth:** In addition to surface water supplies, water users in the Boise River basin rely on groundwater. In recent years, increasing population and droughts have led to localized declines in shallow groundwater levels in the Boise River basin. Water supply for DCMI uses is forecasted to be one of the most pressing water supply issues for this reach of the Snake River. In 2000, 175,000 acre-feet of groundwater was pumped in the Boise River basin, of which 30 percent was used for irrigation (53,000 AF) and 70 percent was used for DCMI (122,000 AF [IDWR, 2000]). Most large municipal water suppliers draw from the deeper regional aquifer. Analysis suggests that groundwater levels in the deeper aquifer are relatively stable. Historically, the shallow aquifer in the Treasure Valley is primarily fed by agricultural irrigation and return flows, and in contrast with the shallow water table levels that appear to be locally declining in areas where residential development is replacing flood-irrigated farmland (IWRRI, 2004).

In 2001, an IDWR study "predicted that there will be a significant increase in DCMI water demand during the next 25 years (in Ada and Canyon Counties) and that between 76,000 and 96,000 additional acre-feet of water will be needed to accommodate the additional demand. As part of the Treasure Valley CAMP, a future demand study will estimate future water for various categories, including DCMI, over the next 50 years."

Additional DCMI demands are particularly pressing upstream of Star [located on the Boise River], where much of the population of the Treasure Valley is located, and where the only surface water available for new appropriation occurs during the spring run-off. In order to utilize the unappropriated spring run-off water for additional DCMI demand, new surface water storage or aquifer recharge projects will may be needed.

3. **Studies for Additional Storage:** A 1994 U.S. Army Corps of Engineers, *Technical Report on Additional Snake River Basin Storage, Phase I* concluded that additional upstream storage, including the Galloway Project, could benefit all Chinook salmon, from the confluence of the Salmon River to Lower Granite Dam during critical low flow years by allowing for flow augmentation in the Snake River. Additionally, the report concluded "the feasibility of transferring the flood control storage space from the Brownlee Project to the Galloway Project could improve the effectiveness of upstream storage and should be considered."

In conjunction with the Treasure Valley CAMP, House Joint Memorial (HJM) 8 encouraged the Idaho Water Resource Board, in coordination with other public and private entities, to initiate and complete the study of additional water storage projects for water supply and flood control in the state of Idaho. Including, but not limited to, the study of Twin Springs Dam in the Boise River drainage. Completion of the interim feasibility study is anticipated in 2012, subject to congressional funding.

The Board anticipates that the Treasure Valley CAMP will also evaluate the potential for managed recharge in the Treasure Valley as a method of water storage.

**Municipal Water Use and Development Policy:** As a result of the limited water supplies and increasing demands in the Murphy Gage to Weiser reach of the Snake River, the day is fast approaching when there will be no unappropriated water available for future DCMI (domestic, commercial, municipal, and

**Comment [s7]:** This is a very good component of the Treasure Valley CAMP analysis. Based on the current and somewhat prolonged national economic downturn, and the substantial number of already built but never occupied homes in the Treasure Valley, it is likely that the new study to replace the 2001 study will yield very different predictions.

**Comment [s8]:** This once again raises the concerns that we as a group have discussed trying to remedy of a "policy within a policy."

Industrial and other water supply needs. The Board therefore adopts a Municipal Water Use Policy with the following components:

**Comment [s9]:** This term has already been used frequently without additional definition throughout the Plan.

1. Continuation of dual-use residential systems to preserve incidental recharge throughout Treasure Valley where appropriate.
2. Development of flexible water marketing tools to facilitate rental or acquisition of water rights for new uses on a willing buyer/willing seller basis. Water acquisition strategies should account for adverse hydrologic, economic, and/or social impacts.
3. Improved hydrologic monitoring programs to inform policy decisions.
4. Evaluation and implementation of water supply enhancement measures, including but not limited to, groundwater conservation, additional storage, and water re-use.
5. Protection of surface water and ground water quality for beneficial uses.

**Flow Augmentation:** In the early 1990's the Idaho Legislature at the request of the Bureau of Reclamation provided authorization for the rental of up to 427,000 acre-feet of storage water on a willing buyer-willing seller basis for augmenting flows for ESA-listed fish in the Lower Snake River. Despite continuing concerns about the efficacy of flow augmentation, the 2004 Snake River Water Rights Agreement resolving the Nez Perce Tribe's water right claims in the SRBA extended the flow augmentation program for a period of thirty years. All storage water released for flow augmentation must be rented through the Idaho Water Resource Board's water supply bank or through local water rental committees on a willing buyer-willing seller basis. In addition, the State of Idaho acquired 60,000 acre-feet of natural flow water rights that has been rented to the Bureau of Reclamation as part of the flow augmentation program. While the total amount of water provided in any particular year varies based upon water available for rental and market conditions, there is an annual cap of 427,000 acre-feet. This annual cap may be increased to 487,000 acre-feet under certain conditions proved for in Idaho Code 42-1763B and the 2004 Snake River Water Rights Agreement.

The Snake River basin augmentation flows are supplied in part from the Boise Project, and in part from other upper Snake River Projects. Currently the Boise/Pavette reservoir system is able to provide approximately 136,000 acre-feet (in total from Lucky Peak Reservoir, Deadwood Reservoir, and Cascade Reservoir) of water to be used for flow augmentation.

#### **Additional items that may need to be addressed in this reach of the Snake River**

*Use of storage water to maintain flows/winter flows (includes aspects of water quality)*

#### **Implementation Strategies:**

- 1) Complete and implement Treasure Valley CAMP
- 2) Complete evaluation of new surface water storage sites in the Boise and Weiser River Basins
- 3) Evaluate managed recharge as a water storage strategy for meeting increasing DCMI needs.

#### **Milestones:**

- 1)

## STATE WATER PLAN – SNAKE RIVER POLICY

### SNAKE RIVER BELOW WEISER

#### 4 - SNAKE RIVER BASIN

##### 4D- SNAKE RIVER BELOW WEISER

The minimum stream flows at Johnson Bar and Lime Point are ~~not~~ permitting and management constraints for water right administration above the Hells Canyon Complex. These minimum stream flows will be maintained through operational releases from the Hells Canyon Complex and tributary inflows to this reach.

Comment [s1]: Please see comment below related to the clarification of this issue statement.

##### Discussion:

The Snake River near Weiser runs north for approximately two miles before flowing into the headwaters of the Hells Canyon Complex (HCC). A USGS gage near Weiser Idaho defines the beginning of the reach and measures inflows into the HCC; the reach ends at the Idaho/Washington State Line. The river defines the Idaho-Oregon state border, which flows through Brownlee, Oxbow, and Hell's Canyon Reservoirs and into Hell's Canyon, a steep and spectacular gorge that cuts through the Salmon River Mountains and Blue Mountains of Idaho and Oregon. Hell's Canyon is one of the most rugged and treacherous portions of the course of the Snake River. The river plunges 8,000 feet below the He Devil Peak of Idaho's Seven Devils Mountains. The Salmon and Clearwater Rivers are major tributaries in this reach of the Snake River. (See Policies 5A and 6B)

**Hells Canyon Complex:** In the late 1940s and early 1950s, Idaho Power Company and federal agencies competed for the right to construct hydropower facilities in the Hells Canyon reach of the Snake River. At the center of the conflict between public and private development was the question of which project would ensure the opportunity for future upstream development. Ultimately, Idaho Power prevailed, based upon its voluntary agreement to subordinate its hydropower water rights to all future upstream consumptive uses. The Federal Energy Regulatory Commission (formerly Federal Power Commission), at the request of Idaho Power Company, included Article 41 of the FERC license which provides that the project will "be operated in such a manner as [to] not conflict with the future depletion in flows of the waters of the Snake River and its tributaries, or prevent or interfere with the future upstream diversion and use of such water above the instream water created by the project, for the irrigation of lands and other beneficial consumptive uses of the Snake River [watershed]." The Idaho Supreme Court in 1983 held that this provision constituted a subordination of the Company's hydropower water rights for the Hells Canyon Complex.

Comment [s2]: Based on the Overarching introduction to these policies, it appears the focus of the SR policies is intended to be on the minimum stream flows. The history concerning the Hells Canyon subordination seems unnecessary in this section.

While the hydropower water rights for the Hells Canyon Complex are subordinated to all future upstream consumptive uses, the Federal Power Commission as part of the FPC Hells Canyon license required minimum flows be maintained for navigation.

Article 43 of the power license provides that:

*"The project shall be operated in the interest of navigation to maintain 13,000 cfs flow in the Snake River at Lime Point (river mile 172) a minimum of 95 percent of the time, when determined by the Chief of Engineers to be necessary for navigation. Regulated flows of less than 13,000 cfs will be limited to the months of July, August, and September, during which time operation of the project would be in the best interest of power and navigation mutually agreed to by the Licensee and the Corps' of Engineers. The minimum flow during periods of low flow or normal minimum plant operations will be 5,000 cfs at Johnson's Bar..."*

The 1976 State Water Plan recognized the importance of these minimum flows to downstream uses, and the 1986 State Water Plan made their maintenance a matter of state water policy. The plan, however, also made clear that "Snake River flows above the hydropower right at any Idaho Power facility are considered unappropriated and therefore are not held in trust by the state." Accordingly, the state minimum flows at Johnson Bar and Lime Point are not permitting or management constraints.

**Comment [s3]:** I believe that there was discussion at the last meeting that this sentence concerning the minimum flows not being considered management constraints is going to be clarified.

**Hells Canyon National Recreation Area:** The Hells Canyon controversy gave rise to emerging concerns about the preservation of the region's natural features, and ultimately led to enactment of the Hells Canyon National Recreation Area Act of 1975 which precluded future hydropower development in the Hells Canyon reach of the Snake River. The Act also designated the Snake River as "wild" (Hells Canyon Dam to Pittsburg Landing) and "scenic" (Pittsburg Landing to 37 miles south of Lewiston) to preserve the free-flowing character and unique environment while providing for continued public use. The Act provided that no flow requirements of any kind may be imposed on the waters of the Snake River below Hells Canyon Dam. The United States' federal reserved water rights are limited to the tributary streams of the Snake River within the HCNRA. The decrees quantifying the tributary federal reserved water rights contain subordination provisions that protect existing rights and allow for a limited amount of future development on the tributary streams.

**Endangered Species Act:** The Snake River below Hells Canyon Dam provides habitat for fish species that have been listed as endangered or threatened under the Endangered Species Act, including sockeye salmon, spring/summer Chinook salmon, fall Chinook salmon, steelhead trout, and bull trout.

Flow augmentation is a strategy currently used as mitigation for the effects of hydropower operations on ESA-listed species. Flow augmentation is intended to enhance migration of ESA-listed fish species. Flow augmentation from the upper Snake River has proven to be controversial because of the inability to demonstrate the specific benefits of the program. Evaluation of the efficacy of flow augmentation should be conducted in conjunction and/or cooperation with other State and Federal agencies and regional interests.

#### Port of Lewiston - Placeholder

**Optimum Use Policy:** Existing hydropower uses should be preserved while protecting the natural characteristics of the Hells Canyon and Snake River downstream of the Hells Canyon Complex.

**Comment [s4]:** This raises the "policy within a comment" concern that I believe the drafters have stated they intend to remedy in some fashion. Perhaps adding a separate and new policy would accomplish the goal.

The Hells Canyon Complex represents the majority of Idaho Power's hydropower generation capacity. The HCC FERC license expired in 2005. The relicensing of this complex is critical to the Company's ability

to continue to provide low-cost power for Idaho. The relicensing will also address the protection and enhancement of recreational, aesthetic, and fish and wildlife resources in this reach. The Board finds that it is in the public interest that any operational requirements in the FERC license should be consistent with the state-established minimum stream flows.

The Hells Canyon National Recreation Area provides unique recreational opportunities. Traditional Recreation Area activities like hiking, backpacking, rafting, and fishing occur along-side commercial jet boat excursions in the Canyon. The area is a tourist destination that positively contributes to the local economy. It is therefore in the public interest to preserve these unique resources below the Hells Canyon Complex. [The State minimum stream flows are permitting and management constraints below the HCC.]

**Comment [s5]:** Needs additional clarification consistent with previous two statements relating to permitting and management constraints.

**Implementation Strategies:**

- 1) Collaborate with state and federal agencies in FERC relicensing proceedings to ensure consistency with SWP.
- 2) Support collaborative efforts to address water quality and ESA issues while sustaining low cost hydropower for the State.

**Milestones:**

- 1) FERC relicensing in accordance with SWP.

DRAFT