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December 16, 2010

Via Email: Helen.harrington@idwr.idaho.gov

Helen Harrington
Planning Section Manager-IWRB
P.O. Box 83720
Boise, Idaho 83720-0098

Re: Initial comments – Draft Snake River Policies – State Water Plan
Policy 4 – Water Management Framework; Murphy to Weiser & Below

Dear Ms. Harrington:

Attached are Idaho Power Company's initial comments to the draft State Water Plan policies for the Snake River (draft policy 4) from the Murphy Gage downstream to below the Hells Canyon Complex. Consistent with our prior comments, the proposed edits to the draft policies are in an underlined, strikeout and comment format of the original draft policies. I am also including two referenced attachments, an excerpt from the 2007 Final Environmental Impact Statement (FEIS) for the HCC relicensing, and a summary relating to the navigation issues pending in the FERC licensing proceeding.

Idaho Power will continue to attend scheduled State Water Plan Subcommittee meetings and will be pleased to respond to any questions that either you or subcommittee members may have. Idaho Power looks forward to working with the Subcommittee, the Board and staff in the development of these important policy revisions to the State Water Plan.

Very truly yours,

James C. Tucker

JCT:sh
Enclosures

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STATE WATER PLAN – SNAKE RIVER POLICY

4 - SNAKE RIVER BASIN

4 – SNAKE RIVER BASIN WATER MANAGEMENT FRAMEWORK

Minimum stream flow water rights held by ~~T~~the Idaho Water Resource Board~~'s Snake River minimum stream flows establish the~~ provide a 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 basin 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.

An integral component ~~t the core~~ of Snake River water management is the state policy of managing the waters within the Snake River basin in a manner that recognizes the relative priorities of the ~~to meet or exceed~~ minimum stream flow water rights established pursuant to State law. ~~at the Milner, Murphy, Weiser, Johnson Bar and Lime Point gaging stations~~. These minimum stream flows reflect~~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. The realization that instream flows are essential to many uses of the state's water resources, including hydropower production, fish and wildlife propagation, recreation, and navigation ~~This policy of managing reaches of the Snake River to meet or exceed designated instream flows~~ evolved over the course of the 20th Century. In 1976, the Board recognized that no procedure existed for establishing a right to an instream flow from the unappropriated waters of the state and recommended in ~~and was incorporated into~~ the 1976 State Water Plan that the Legislature enact legislation for the establishment of water rights for instream purposes. It was also recommended that the Idaho Water Resource Board be the only entity authorized to apply for and hold an instream water right. Minimum instream flow legislation was subsequently enacted, now codified in Idaho Code §§ 1501 – 1508. Since 1976, the Board has acquired various instream flow water rights pursuant to state law. Each of these water rights has a priority date consistent with its date of appropriation and is administered under the priority system. The Board should continue to evaluate water use and availability in the basin and acquire additional instream water rights, or modify those it currently holds, in a manner consistent with the State Water Plan and the public interest. 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.

Comment [jct1]: Minimum stream flow water rights do not take priority over other, senior, water rights in the basin; All of the Board's w/r are administered in priority consistent with the priority system.

Comment [jct2]: See Policy 6, 1976 SWP, pg. 94.

Comment [jct3]: /The Board's instream flow policy should remain dynamic, while consistent with the priority doctrine and state law, so that it may adjust as necessary to changing conditions.

~~Throughout the first half of the 20th Century t~~ The dynamic tension between diversion of water for consumptive uses and retention of flows for instream uses was first 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, t~~ The potential for conflict between these two potentially competing uses was recognized as early as the 1889 Constitutional Convention, and the tension continued through the early part of the

20th Century. It was ultimately addressed in 1928 with the amendment of Article XV of the Constitution which gave the state the authority to regulate and limit the use of water for power purposes ~~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 Snake r River also influenced and provided opportunity for continued agricultural development and the maintenance of a viable hydropower resource. 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 turn of the century. ~~time.~~ Below Milner Dam, the Snake River enters a deep canyon and was largely inaccessible for agricultural development in the first half of the 20th century. The decent of the Snake River into the canyon below Milner, however, made the downstream reach of the river ~~ideally~~ well suited for hydropower development. This resulted in the early development of lands above Milner with relatively senior surface waster irrigation rights as compared to those water rights below Milner Dam. At times during the irrigation season, these early irrigation diversions dried up the Snake River at Milner, effectively resulting in a zero flow immediately below Milner Dam. The river, however, soon reconstitutes itself downstream from Milner from irrigation return flows and tributary springs and surface sources. This two or fractured river phenomena was recognized in the 1976 State Water Plan which set a "protected flow" of zero at the Milner gaging station. The 1986 State Water Plan, under Policy 5A, provided that the ground water and surface water of the Snake River basin was to be managed to meet or exceed a minimum average daily flow of zero at the Milner gauging station. This recognition of a zero minimum flow at Milner allowed existing uses to be continued, and for some new uses, above Milner. The Board recognized, however, that a "zero flow" was not a target or goal to be achieved, nor was it necessarily desirable. Rather, the policy was a recognition that the exercise of water rights above Milner Dam had in the past and may in the future reduce the flow at Milner Dam to zero. ~~hus, 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.~~ The 1984 Swan Falls settlement, together with the 1986 amendment of Idaho Code § 42-203B (2) and the later 2009 Swan Falls Reaffirmation Agreement, confirmed the Milner zero flow 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.~~

The license issued by the Federal Power Commission (FPC, now the FERC) ~~license~~ in 1955 for the Hells Canyon complex provided that the project was to be operated to maintain certain ~~for operational~~ flows at Johnson Bar and Lime Point to provide for navigation. As discussed more fully in the Below Weiser reach policy, these license provisions ~~operational flows form~~ were the basis for the Johnson Bar and Lime Point state minimum stream flows, which were first recognized in the 1976 Idaho State Water Plan. The IPC is currently seeking a new license for the HCC and in the course of the relicensing process it is expected that the issue of navigation flows below the HCC will be revisited by the FERC.

Comment [jct4]: See Nov/Dec 2010 issue of The Advocate and article by Prof. Colson, and authorities cited therein. The Milner "policy" did not resolve the issue – there is hydropower above and below Milner.

Comment [jct5]: 1976 SWP, pg. 116. In the 1972 Interim SWP, the Board recommended that studies should be initiated to establish "official instream flows" at 5 points on the Snake River, including "below Milner Reservoir", pg. 195 & 239.

Comment [jct6]: See Policy 5A of 1992 State Water Plan.

Comment [jct7]: I'm not sure what this paragraph is intended to do. If there is a link between ground water development and instream flows, it fails to define it. Moreover, the reference to the HCC development is simplistic and leaves the reader with the impression that there was controversy between IPC and the state on the HCC development, when the controversy actually related to the public v. private power development issue associated with the HCC. It was IPC's willingness to subordinate its water rights to upstream consumptive use that solidified the State and upstream users behind IPC's private development proposal. See: Legacy of Light, Chapter 14, and Nov/Dec issue of the Advocate, Brooks article on Hells Canyon. The last sentence also seems unnecessary given the reference to subordination. It also may limit the Board's discretion to make policy choices in the future should it determine that hydropower potential should take precedence over some upstream development.

Comment [jct8]: This needs further development. The potential impact of navigation flows on upstream development was referenced in the 1972 Interim SWP (pg. 63). Navigation flows continue to be a contested issue in the current HCC relicensing process. See discussion under Below Weiser reach policy.

In the latter part of the 20th 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. Through the Swan Falls Agreement, the State and Idaho Power Company agreed that the resolution of the Company's water rights together with the State Water Plan "provide a sound comprehensive plan for the management of the Snake River watershed". Consistent with that Agreement, Policy 5A of the 1986 State Water Plan provided that ~~T~~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 recognized to be ~~designated as~~ management constraints, insuring "that minimum flow levels of Snake River water will be available for hydropower, fish wildlife and recreational purposes".

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 minimum flows are those established by the Swan Falls Agreement and are considered~~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. 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 though each successive plan, has recognized this framework as a means of ensuring an equitable allocation of the flows of the Snake River between consumptive and instream uses 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.

Comment [jct9]: The 1976, and 1982, SWP go a bit further than this, recognizing that the 3300 cfs minimum is less than that needed for fish, wildlife and recreational purposes. The Board concluded that the depletion of flows below that "currently available in the low flow months to maintain water for production of hydropower and other main stem water uses is not in the public interest". It is unclear whether this reference to "currently available" flows is to the 3300 cfs minimum or the flow that would be available when the pending permits issued by IDWR are "fully developed".

Comment [jct10]: Pg. 5, paragraph 11, SFA.

Comment [jct11]: This is a confusing paragraph. It first speaks in terms of an "equitable allocation" which is antithetical to the priority system, but then seems to consider the current MSF regime as absolute, requiring that development decisions take into account impacts to downstream reaches. I suspect its meaning is that MSF decisions by the Board in 1976-86 resulted in an equitable allocation and that now governs river management. From a w/r standpoint, that may be accurate, but it fails to recognize that water policy and management is a dynamic process and that the conditions or emphasis 10, 20 or 50 years from now may require different or additional consideration of MSF.

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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 minimum stream flow water right of 4,750 cfs (year round) is held by the Idaho Water Resource Board. This water right has a priority date of December 29, 1976 and was ~~established by legislative approval of the State Water plan in 1976~~ partially decreed by the SRBA Court on July 9, 2007. The flow of the Snake River at the Weiser gage is a management and permitting constraint and is administered in priority with other water rights. This minimum flow was established to assure an adequate hydropower resource base and protect other instream flow values such as fish habitat, recreation, aesthetics, and water quality.

Comment [jct1]: Not sure this is entirely correct. 1976 SWP does not specifically speak to the basis for the 4750, simply concludes that depletion of the flows at Murphy and Weiser below that currently available in low flows months was not in public interest. Did not conclude that 4750 was an "adequate" hydro base, or necessarily protective of F/W, recreation, aesthetics or WQ. If there is a basis for this conclusion, what is it?

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 population growth over the past several decades with land-use changing from

agricultural to urban use. As a result, there are increasing demands on water supplies for domestic use. This change in land and water use not only requires water management strategies to meet demand, but also requires methods for protecting water quality and effective flood risk management. These issues are best addressed through a regional planning process.

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. The Treasure Valley CAMP will provide the framework for water planning and management for the next 50 years.

The specific 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 future water needs and supply

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

A few of the components 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 evolved to a point where Conjunctive Management must 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
    - 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, in contrast

with 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 be needed.

3. **Studies for Additional Storage:** A 1994 U.S. Army Corps of Engineers, *Technical Report on Additional Snake River Basin Storage, Phase 1* concluded that additional upstream storage, including the Galloway Project, could benefit fall 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 Treasury 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 CAMP will also evaluate the potential for managed recharge in the Treasure Valley as a method of water storage.

Comment [jct2]: Is this an accurate summary of this report? The April 1994 draft report that I have concludes that "based on the evaluation completed as part of this Phase I study, it has been determined that there are no quantifiable benefits of adding new upstream storage for the purpose of increasing fish survival in the lower Snake and Columbia Rivers", see section 5.03. It then says additional storage "could" benefit FC by augmenting flows in short water years and shifting some of the Dworshak ops to Galloway, but these are said to be "qualitative reasons", not based on quantitative findings. Also, this report was completed as part of the lower Snake interests (NPPC) inquiry about opportunities for increasing flow augmentation in the lower Snake/Columbia from Idaho. It also recognizes that additional storage, for instance at Galloway, could impact IPC hydropower operations which would require compensation. As to the transfer of flood control from Brownlee to Galloway, the proposed Galloway project is not large enough to relief Brownlee of significant flood control responsibility. In short, this is somewhat simplistic summary of a 15 year old preliminary report that was focused on increasing flows from Idaho–I'm not sure why it's referenced here.

Municipal Water Use and Development Policy: As a result of the limited water supplies 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 industrial) and other water supply needs. The Board therefore adopts a Municipal Water Use Policy with the following components:

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 it has 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/Payette 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)

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STATE WATER PLAN – SNAKE RIVER POLICY

SNAKE RIVER BELOW WEISER

4 - SNAKE RIVER BASIN

4D- SNAKE RIVER BELOW WEISER

Navigation flows in the Snake River below Weiser shall be consistent with the Federal Power Act license for the Hells Canyon Complex and other applicable provisions of state and federal law. The minimum stream flows at Johnson Bar and Lime Point were developed in recognition of Article 43 of the Hells Canyon license and are not permitting or ~~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.~~

Discussion:

The Snake River near Weiser runs north for approximately two miles before flowing into the ~~head~~ backwaters of Brownlee Reservoir, the upstream project of the Hells Canyon Complex (HCC, FERC Project No. 1971). A USGS gage near Weiser Idaho defines the beginning of this ~~e~~reach of the Snake River and measures inflows into the HCC. ~~;~~ ~~t~~ The Snake River ~~reach~~ exits Idaho ~~ends~~ at the Idaho/Washington State Line, approximately ---- miles downstream from the Weiser gage. The Snake R~~r~~iver defines the Idaho-Oregon state border as it ~~, which~~ flows through Brownlee, Oxbow, and Hell's Canyon Reservoirs of the HCC and into Hells Canyon, a steep and spectacular gorge that cuts through the Salmon River Mountains and Blue Mountains of Idaho and Oregon. Hells 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 6A and 6B).

Hells Canyon Complex – Optimum Use Policy: After the Great Depression, the hydroelectric power potential of the Columbia River gained national attention, resulting in the development of Bonneville (1938) and Grand Coulee dams (1942). During this same period, federal agencies began planning for additional development of the lower Snake River through the construction of a high Hells Canyon dam, which was to store more water than Grand Coulee Dam. The prospect of a federal dam on the lower Snake, with its impact upon future upstream development in Idaho, concerned Idaho interests. In response, political, agricultural, business, and financial interests in Idaho, joined by Idaho Power, opposed the federal development plan and promoted Idaho Power's plan for the three-dam Hells Canyon Complex. A unifying component of this consortium of opposition to the federal plan was Idaho Power's assurances that it would agree ~~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 for the Hells Canyon Complex to all future upstream consumptive uses. In 1955, Idaho Power was granted a license by ~~T~~ the Federal Power ~~Energy Regulatory~~ Commission (FPC, now the Federal Energy Regulatory ~~formerly Federal Power~~ Commission, FERC) for the Hells Canyon Complex, consisting of the Brownlee,

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Oxbow and Hells Canyon dams and reservoirs. ~~a~~ At the request of Idaho Power Company, ~~included~~ Article 41 was included in ~~of~~ the FPC~~ERC~~ license which provides that the "project ~~will~~" shall be operated in such a manner as ~~[to]~~ will 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 backwater created by the project, for the irrigation of lands and other beneficial consumptive uses in the Snake River waterhead [sic ~~watershed~~]." The Idaho Supreme Court in 1983 (Idaho Power Company v. State, 104 Idaho 575) held that this provision constituted a subordination of the Company's hydropower water rights for the Hells Canyon Complex and was within the authority of the FPC.

The 1955 ~~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 license for the HCC also addressed ~~required minimum~~ flows ~~be maintained~~ below the HCC for navigation. Article 43 of the ~~power~~ HCC license provides ~~that~~:

> *"The project shall be operated in the interest of navigation to maintain 13,000 c.f.s. 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 c.f.s. 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, as 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, at which point the maximum variation in river stage will not exceed one foot per hour. These conditions will be subject to review from time to time as requested by either party.~~..."*

This license article has governed navigation flows since the original licensing of the HCC in 1955.

The 1972 Interim State Water Plan recognized that boating interests below the HCC had asked the FPC to alter the HCC license provisions dealing with minimum releases from the HCC and expressed concern that the establishment of a fixed minimum navigation flow below the HCC could have major implications on upstream development. In ~~T~~the 1976 State Water Plan, the Board concluded that studies indicated that there was sufficient water in excess of the minimum flows established at the Milner, Murphy and Weiser gaging stations to provide for additional uses and development and also allow for the navigation flow targets in Article 43 of the HCC license to be met without significantly affecting hydropower production. Based upon these conclusions, the 1976 State Water Plan concluded that Article 43 was still in the public interest. Unlike the minimum flows at Milner, Murphy and Weiser, however, the target flows referenced in Article 43 below the HCC were not preserved and protected against further upstream appropriations ~~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 were not intended to be and are not permitting or management constraints.

Comment [jct1]: See July 1972 Interim SWP, Preliminary Report, pg. 63 and 106.

Comment [jct2]: See 1976 SWP, pg. 115-117.

The hydropower potential of the HCC should be preserved and, to the extent possible, enhanced while protecting other water rights and the natural characteristics of the Hells Canyon and Snake River downstream of the HCC. Idaho has abundant renewable energy resources, but few in-state fossil fuel reserves. The Snake River and related tributaries provide Idaho with significant hydropower energy resources. Hydropower supplies approximately four-fifths of the State's energy production and insures that Idaho electric rates are among the lowest in the nation. The HCC, which represents the majority of Idaho Power's hydropower generation capacity, is the largest privately owned hydroelectric project in the United States. The FERC license for the HCC expired in 2005 and Idaho Power is currently operating the project under annual licenses while FERC processes Idaho Power's pending relicense application. The new license for the HCC will determine the operating conditions for the project as well as address the protection and enhancement of recreational, aesthetic, navigation, and fish and wildlife resources in the reach of the Snake River that are affected by the project. The Board finds that it is in the public interest for the FERC to relicense the HCC under operational conditions that will preserve and enhance the generation capacity of the project in a manner consistent with this State Water Plan.

Comment [jct3]: Source – Energy Information Administration; www.eia.gov.

The Hells Canyon reach of the Snake River below the HCC also continues to provide unique recreational opportunities like hiking, backpacking, rafting, fishing, and private and commercial jet boating. The area is a tourist destination that positively contributes to the local and regional economy. As such, providing adequate navigation conditions for private and commercial boating below the HCC is in the public interest. Various state and federal agencies exercise jurisdiction over resources in Hells Canyon and each of these agencies, together with private interests are parties to the HCC relicensing proceedings pending before FERC. Section 10(a)(1) of the FPA requires that a FERC licensed project "be best adapted to a comprehensive plan for improving and developing a waterway"; which requires a balancing of public interest factors. The Final Environmental Impact Statement (FEIS 2007) issued by the FERC preliminary addressed navigation flows below the HCC and the issue will be finally determined by FERC in a subsequently issued license order. The Board believes that FERC should consider and address the navigation issue in the new HCC license in a manner consistent with this State Water Plan while ensuring that upstream water rights and water development is not impacted, and the full hydropower capacity of the HCC is preserved. The State of Idaho should remain engaged in the HCC relicensing process to ensure that the State's interests are adequately addressed. The Board will continue to monitor the relicensing process to ensure consistency and continuity with this and future State Water Plans.

Comment [jct4]: The navigation issue remains is a live and contested issue in the HCC relicensing proceeding. See attached excerpt from 2007 FEIS.

Hells Canyon National Recreation Area: The early controversy over the development of Hells Canyon fostered ~~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. While providing protection to these important resources, the Act also protects present and future uses of the waters of the Snake River for consumptive or non-consumptive beneficial uses, including domestic, municipal, stockwater, irrigation, mining, power, and industrial uses. The Act specifically provides ~~d~~ that no flow requirements of any kind may be imposed on the waters of the Snake River below Hells Canyon Dam under the provisions of the

Act, or any rules, regulations, or guidelines adopted pursuant the Act. The United States' federal reserved water rights associated with the HCNRA 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.

Comment [jct5]: 16 U.S.C. § 460gg-3

Endangered Species Act: The Snake River below Hells Canyon Dam provides habitat for various fish species, some of which ~~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.

Pursuant to the provisions of the biological opinion for the Federal Columbia River Power System (FCRPS), and the Snake River Water Rights Agreement (2004), the U.S. Bureau of Reclamation annually seeks to acquire up to 487,000 acre-feet of water from willing lessor in Idaho for Snake River ~~F~~ flow augmentation to assist in offsetting the impact of the FCRPS ~~is a strategy currently used as mitigation for the effects of~~ hydropower operations on ESA-listed species below the HCC. ~~Flow augmentation is intended to enhance migration of ESA listed fish species.~~ Although ~~F~~ flow augmentation from the upper Snake River has proven to be controversial because of the inability to demonstrate the specific benefits to ESA-listed anadromous fish ~~of the program~~, the State of Idaho cooperates with the federal program (See I.C. § 42-1763B). 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.~~

~~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.~~

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.