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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

Dear Ms. Harrington:

Attached are Idaho Power Company's preliminary comments to the draft State Water Plan policies for the Snake River above Milner Dam and from Milner Dam to Murphy Gage. As this is the beginning of the planning process for these particular policies, I have drafted proposed edits to the draft policies that undoubtedly will foster further discussion and consideration of subsequent drafts. I have also included an underlined and strikeout version of the draft policies that reflect the changes to the original drafts. I plan to attend the scheduled State Water Plan Subcommittee meeting on August 24th 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,

A handwritten signature in black ink, appearing to read "James C. Tucker".

James C. Tucker

JCT:sh
Enclosures

STATE WATER PLAN – SNAKE RIVER POLICY

4 - SNAKE RIVER BASIN

4 – SNAKE RIVER BASIN WATER MANAGEMENT FRAMEWORK

~~Minimum stream flow water rights held by 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 of 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, 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, 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~~

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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 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 descent 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 water 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. 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. 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.

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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 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 through 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.

STATE WATER PLAN - SNAKE RIVER POLICY

4 - SNAKE RIVER BASIN

[These sections have been removed from the individual policies and moved to the front, as they are applicable to above and Below Milner]

Conjunctive Administration of the Snake River and the Eastern Snake Plain Aquifer: The Snake River alternately contributes water to and receives water from the Eastern Snake Plain Aquifer (ESPA). The ESPA, one of the largest ground water systems in the United States, underlies the Snake River Plain from the vicinity of St. Anthony in Fremont County, to King Hill in Elmore County. It is estimated to contain roughly 250 million acre feet of water in the fractured zones between successive basalt flows. The ESPA discharges approximately 2,500 cubic feet per second (cfs) of water to the Snake River at American Falls and approximately 5,000 cfs between Milner and King Hill. Elsewhere, the river channel is above the regional water table and river flow recharges ground water. Spring discharge in the Milner to King Hill reach of the river has been in a state of slow decline since the mid-1950's when it exceeded an estimated 6700 cubic feet per second. Withdrawals from the aquifer and increasing efficiencies in irrigation application by surface water users on the plain are expected to result in continuation of the decline. The declining aquifer, spring and river levels have created conflicts between surface and ground, and in some instances between ground and other ground, water rights. Resolution of these water right conflicts is essential to the implementation of the long-term water planning objectives for both the above and below Milner reaches of the Snake River.

In 1993, the Director of the Idaho Department of Water Resources, based on findings that drought conditions, a reduction in recharge due to changes in surface irrigation practices, and increased ground water pumping had resulted in lowered ground water levels, spring flows and stream flows, issued two moratorium orders: 1) a moratorium against the issuance of permits to divert water from the Snake River and all sources tributary to the Snake River above Milner Dam (January 6, 1993 - Non-Trust Water Area Moratorium) and 2) a moratorium against the issuance of permits to divert water from the Snake River and all sources tributary to the Snake River below Milner Dam (April 30, 1993 - Trust Water Area Moratorium). A primary purpose of these moratoriums is to protect the status quo during the development and implementation of conjunctive administration of hydrologically connected surface and ground water rights.

ESPA CAMP: In 2006 the Idaho Legislature, in Senate Concurrent Resolution 136, acknowledged that reduced spring discharges, river reach gains and declining aquifer levels in the Eastern Snake Plain Aquifer continued to create conflicts between holders of water rights diverting from surface and ground water. To facilitate and encourage a resolution of ongoing surface/ground water conflicts, optimize use of water from the heavily developed Eastern Snake Plain Aquifer, and address concerns about the future water supply in the Aquifer, the Legislature requested that the Idaho Water Resource Board expeditiously pursue development of a comprehensive aquifer management plan for the Eastern Snake River Plain Aquifer. In January 2008, the Board adopted the Eastern Snake Plain Aquifer (ESPA) Comprehensive Aquifer Management Plan (CAMP). The overall goal of the CAMP is to "Sustain the economic viability and social and environmental health of the Eastern Snake Plain by adaptively

managing the balance between water use and supplies". The objectives of the plan are to increase predictability for water users by managing the water resources for a reliable water supply; create alternatives to administrative curtailment; manage overall demand for water within the Eastern Snake Plain; increase recharge to the aquifer; and reduce withdrawals from the aquifer. The CAMP established a long-term hydrologic goal of 600 thousand acre-feet (kaf) average annual change to the water budget in the ESPA by the year 2030 through a suite of water management actions.

The ESPA CAMP uses a phased approach to achieving the long-term change in the water budget. The goal of Phase 1 of ESPA CAMP is to implement measures over a ten year period that will result in a target hydrologic water budget change of between 200 kaf and 300 kaf. The recommended actions to achieve this target include measures to redistribute existing water supplies, including ground water to surface water conversions and managed aquifer recharge, and measures to augment water supplies, including demand reduction, and weather modification.

Implementation of the ESPA CAMP is intended to improve the opportunities to adaptively manage and optimize water supplies across the ESPA; increase gains in some river reaches; improve storage carryover; increase aquifer levels; decrease the need for litigation, mitigation and administrative activities; allow for municipal and industrial growth; reduce overall demand; increase and sustain spring flow, and provide an ongoing public process for assessing the hydrologic, economic, and environmental issues related to the implementation of aquifer management strategies. The ESPA CAMP provides for implementation of Phase I strategies by 2018, together with ongoing monitoring and evaluation of the intended and unintended effects of those strategies. The monitoring and evaluation studies will be used to select and design Phase II strategies.

As part of the 2009 Swan Falls Reaffirmation Agreement, the State and the Board entered into a Memorandum of Agreement with Idaho Power Company in which the parties recognized that the maintenance of inexpensive hydropower resources contributes to a positive economic climate for the creation of new jobs for Idahoans, that flows passing Milner Dam provide opportunities for hydropower generation and that under the Swan Falls Agreement the Idaho Power Company has a right to use such flows when available at its hydropower facilities. The parties agreed that it was in their mutual interest to work cooperatively to uphold and implement the principles established by the Swan Falls Agreement. A primary purpose of the Memorandum of Agreement was to "recognize that implementation of managed recharge will have an effect on the flow characteristics of the Snake River above and below Milner Dam and to confirm that the relative merits of recharge proposals in addition to or different than that provided in Phase 1 of ESPA CAMP will be considered through the adaptive management process set forth in Section 4 of ESPA CAMP. In furtherance of that purpose, the Memorandum of Agreement requires that the Board obtain legislative approval to increase the Phase 1 ESPA CAMP managed recharge goal of 100,000 af by more than 75,000 af prior to January 1, 2019, and also that any change to the ESPA CAMP long-term hydrologic target for managed recharge be accomplished through an amendment of the State Water Plan. Finally, the Memorandum of Agreement recognizes that it is the mutual interest of the State and the Company to work cooperatively to explore and develop a managed recharge program for the Snake River Basin above the Swan Falls Dam that achieves to the extent possible benefits for all uses including hydropower.

4A- SNAKE RIVER ABOVE MILNER DAM

The exercise of water rights above Milner Dam has in the past and may in the future reduce the flow of the Snake River at Milner Dam to zero. Water resource policy, planning and practice should optimize the use of existing water supplies while protecting existing water rights and providing for the continued development of the Snake River above Milner Dam.

Discussion:

Milner Dam and Snake River Water Administration: The formulation and implementation of a plan for the optimum development and use of the water resources of the Snake River above Milner Dam must be consistent with State Water Plan policies and the legislative directive set forth in Idaho Code § 42-203B(2), which provides 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 surface or ground water tributary to the Snake River upstream from Milner Dam shall be considered. The addition of this provision to § 203B in 1986 by the Idaho Legislature was and remains consistent with the State policy that the ground and surface water of the Snake River basin are to be managed to meet or exceed a minimum average daily flow of zero at Milner Dam. The zero minimum flow policy at Milner by recognizing that the exercise of water rights above Milner Dam at times reduces the flow of the Snake River at Milner to zero, allows for existing uses to be continued and for some new uses 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 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, this principle has guided the economic growth and the development within the Snake River basin and has become intertwined with the overall management of the water resources of the basin.

The 1920 report recognized that development of American Falls Reservoir and the dedication of flows above Milner Dam to irrigation would impact hydropower generation, but concluded that because spring and return flows accrue to the River below Milner Dam that the value of the hydropower sites at Salmon Falls and downstream would not be materially affected by flows not passing Milner during certain portions of the year. The report further recognized that because upstream irrigation development would take time to complete, that hydropower production downstream would continue with available flows, and that the use of this water for winter power production might later "mitigate against complete use" of upstream water for irrigation purposes. In an effort to avoid this potential conflict between upstream irrigation and downstream hydropower use, the Board suggested that in "granting power rights in the future the Federal Government and the State should so far as possible

provide restrictions requiring [the] eventual surrender ..." of hydropower water rights "when and as the waters are required for application to land".

At the time of the 1920 report, the Idaho Power Company had three 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 projects below Milner, including the three dam Hells Canyon Complex. However not all of the hydropower water rights associated with Idaho Power's Snake River projects contained conditions subordinating them to upstream development, which resulted in an eventual conflict between hydropower and upstream consumptive use water rights in the late 1970s. The 1984 Swan Falls Settlement, together with the 2009 Swan Falls Reaffirmation Agreement, between the State 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.

The 1984 Swan Falls Settlement, and the later 2009 Reaffirmation, confirmed the Milner zero flow policy and the provisions of I.C. § 42-203B(2). At the heart of the Swan Falls Settlement was the recognition that Idaho's water resources are the life-blood of Idaho's agricultural, industrial, municipal, recreational, and environmental values and that the effective management of those resources benefits all of Idaho's citizenry. The parties to that Settlement recognized that Idaho's water, by providing a firm and consistent hydropower base, kept Idaho's electrical rates among the lowest in the nation and Idaho's economy robust.

The underlying value of water to Idaho has remained unchanged. The effective management of Idaho's water resources remains critical to the public interest of the State by sustaining economic growth, maintaining reasonable electric rates, protecting and preserving existing water rights, and protecting water quality and environmental values. Consistent with the Milner zero flow policy and the Swan Falls Settlement, balancing these objectives with the long-term water planning objective for the Snake River above Milner Dam of ensuring that unappropriated flows tributary to the Snake River above Milner Dam are available to supply existing and future beneficial uses in this reach of the Snake River is a fundamental public policy issue.

Upper Snake River Optimum Use Policy: Except for winter and non-irrigation season flows in excess of the storage capacity of existing reservoirs, the Snake River above Milner Dam is fully appropriated. Thus, further development of the water resources in the Snake River Basin upstream of Milner Dam consistent with the State Water Plan and the ESPA CAMP will require measures that augment and enhance available water supplies, such as the development and efficient use and management of existing on-stream, off-stream, and aquifer storage, development of new storage, and water right acquisitions and exchanges. Implementation of such actions, however, will result in a change in flows passing Milner. Such changes must be considered in the context of multi-objective resource planning, recognizing that trade-offs may be necessary to achieve the greatest number and best combination of planning objectives. The State Water Plan recognizes that the Middle Snake region supports multiple uses, including agriculture, industry, hydropower, fish and wildlife and recreation. Maintaining this multiple-use mix is a primary objective of the Board. Development that would jeopardize existing beneficial uses is not in the public interest. Therefore, as discussed in the Milner to Murphy Reach section, a process must be in place to identify and account for impacts that development

above Milner will have on the water supply available to meet management objectives in the Milner to Murphy reach of the Snake River.

The Board has previously established a long-term goal of working toward higher flows at Milner, particularly during low flow periods of the year, to support, and improve, downstream conditions for the existing uses below Milner. However, the Board also recognizes that there is no ready mechanism to provide this water. Coordinated management of the water resource development with the federal reservoir system above Milner Dam may provide an opportunity to optimize the use of the available water supply above Milner Dam and also achieve the Board's goal of supporting and enhancing conditions downstream for the existing multiple-uses. Therefore, the following Upper Snake River Optimum Use Policy is established:

1. It is in the public interest to manage the water resources above Milner Dam in a coordinated manner consistent with state law and the State Water Plan to provide a reliable supply of water for existing and future beneficial uses, and, to the extent not inconsistent or in conflict with the foregoing, to provide for the optimum use of flows passing Milner Dam for hydropower generation, water quality, aquatic habitat, and other environmental purposes.
2. The Bureau of Reclamation is encouraged to manage the federal reservoir system above Milner Dam in a manner compatible with this policy, to the extent consistent with federal reclamation law and project purposes. To facilitate this effort, the Board will implement a process to openly address the potential for integration of water management and reservoir operation needs through a standing advisory subcommittee. The subcommittee will be a collaborative forum for the development, review and exchange of relevant information on the manner in which the state and the Bureau of Reclamation, in the exercise of their respective authorities, can cooperatively manage the water resources and the reservoir system above Milner Dam consistent with the policy set forth in paragraph 1. The Board shall request that the Bureau of Reclamation, the Committee of Nine, and the Idaho Power Company designate representatives as standing members of this subcommittee and shall invite other parties that may be interested in the management of affected water resources to also participate. This subcommittee may periodically submit advisory recommendations to the Board and the Bureau of Reclamation, but shall have no power or authority to affect vested water rights or to prescribe the manner in which the federal reservoir system or the water resources above Milner Dam shall be managed.

In the early 1990s the Idaho Legislature at the request of the Bureau of Reclamation provided authorization for the rental of up to 427,000 af 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 bank or through local water rental committees on a willing buyer-willing seller basis. In addition, the State acquired 60,000 af 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 af. This annual cap may be increased to 487,000 af under certain conditions provided for in Idaho Code § 42-1763B and the 2004 Snake River Water Rights Agreement. The program is coupled with a biological opinion, which provides incidental take coverage for the Bureau of Reclamation's operation and maintenance of the Upper Snake Projects and related private uses of storage water.

As part of the 1990 Fort Hall Water Rights Agreement, the Board approved the creation of the Shoshone-Bannock water bank. The Shoshone-Bannock Water Bank accrues water in American Falls reservoir and is authorized to rent and deliver storage water anywhere in Idaho.

Since the initiation of the flow augmentation program and the authorization of the Shoshone-Bannock water bank, water that would otherwise have been available for use above Milner Dam or for other in-state uses has, on occasion, been leased by Reclamation and released from above Milner reservoirs to augment flows in the lower Snake River for ESA-listed fish. To the extent feasible and consistent with the 2004 Snake River Water Rights Agreement, strategies should be explored and pursued that would allow for this water to be used to meet demands above Milner Dam and other in-state uses consistent with the State Water Plan. Such strategies may include the exchange of flow augmentation water and water rented through the Shoshone-Bannock Water Bank with water downstream of Milner Dam, new storage within the Snake River Basin, water right acquisitions, and exchanges with existing storage spaceholders. Consideration of such strategies should include an assessment of any beneficial or adverse impacts to existing water rights, water quality, aquatic habitat, hydropower generation, and other in-stream uses.

Water Transfer Policy: As a result of the limited water supplies above Milner Dam, future domestic, commercial, municipal, and industrial and other water supply needs likely will have to be met through the transfer of existing water rights to meet these new demands. Therefore some provision must be made to facilitate approval of acquisition and use of water rights for new uses on a willing buyer/willing seller basis. Any changes in water right acquisition policy, however, should include measures to protect against hydrologic, economic, environmental, and/or social impacts.

Cooperation and Assessment of Management of Water Resources: Ongoing review and assessment of actions implemented to augment and sustain existing water resources and support for new water uses above Milner Dam is necessary to determine the efficacy of specific strategies and to ensure consistency with the State Water Plan, including the Milner zero flow policy, objectives of the Swan Falls Agreement, implementation of the ESPA CAMP and the Optimum Use Policy. Procedures for monitoring and assessing the efficacy of administrative strategies shall be developed, and evaluated in the collaborative forum addressed herein, with appropriate recommendations for implementation of such procedures submitted to the Board.

Implementation Strategies:

1. Identify where existing new surface water storage sites can be built that are safe, environmentally sound and economical to store additional water supplies, provide flexibility in reservoir operations, and offset flow augmentation demands on supplies above Milner Dam.

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2. Implement actions recommended in the ESPA CAMP Phase I to accomplish hydrologic targets including groundwater to surface water conversions, managed aquifer recharge, demand reduction, and weather modification.
3. Monitor and evaluate the results of each of the ESPA CAMP actions on water supply conditions above Milner Dam to assist with development and implementation of future actions, and determination of the efficacy of implementation of the ESPA CAMP Phase II.
4. Establish a standing subcommittee for the purpose of supporting the Upper Snake River Optimum Use Policy and collaborating on the management of the water resources and the reservoir system above Milner Dam with representatives from the U.S. Bureau of Reclamation and other stakeholders. The subcommittee shall have no power or authority to affect vested water rights or to prescribe the manner in which the reservoir system or the water resources above Milner Dam shall be managed, but shall develop, through a collaborative effort, recommendations and policies consistent with the State Water Plan for the efficient and effective management of the water resources and the reservoir system above Milner Dam.
5. Consider and develop strategies that are consistent with State Water Plan policies and objectives that may provide opportunities for flow augmentation water to be used to meet demands above Milner Dam and other in-state uses, including the opportunistic acquisition of Snake River water below Milner Dam, or from other tributary basins, to be exchanged for flow augmentation water. Such strategies must include consideration of the public interest and other potential third party impacts including but not limited to impacts on water quality, aquatic resources, and hydropower. In addition, acquire storage water or surface water rights on flow-limited streams upstream of Milner Dam for transfer downstream to support conversions and stream flow restoration.
6. Measurement and Monitoring Implementation Strategy:
 - a. Continue to support, develop and update Eastern Snake River Plain Aquifer and river models and technical tools, including Model Version 1.1 (ESPAM1.1), the Snake River Planning Model (SRPM), and the Snake River Accounting system. Promote linkage of the models and their use in evaluation of impacts of various management decisions on Snake River flows, aquifer levels and reservoir operations.
 - b. Undertake measurement and monitoring of the combined river and aquifer system to facilitate water management and planning in the Snake River Basin above Milner Dam.
 - c. Evaluate the utility of various modeling, data collection, forecasting and risk evaluation techniques to facilitate decision making on optimizing the use of water resources above Milner Dam.
7. Work with the office of the Governor, state agencies, and the legislature to ensure that state management programs are consistent with the State Water Plan and the ESPA CAMP.
8. Implement and maintain cooperative water resource agreements and partnerships with neighboring states, the federal government, and Indian tribes in managing the water resources of the Snake River above Milner Dam.
9. Propose statutory, regulatory, and procedural changes that provide the Idaho Water Resource Board authority and flexibility to use the Water Supply Bank to adaptively manage and optimize water resources of the Snake River above Milner Dam.

10. Enhance water transferability to ensure a water supply for DCMI and other emerging needs while protecting against impacts, including but not limited to impacts on water quality, aquatic resources, and hydropower.

Milestones:

1. Evaluate the efficacy of the ESPA CAMP Phase I strategies by 2018 and identify how and whether to proceed with Phase II to meet long-term ESPA CAMP hydrologic targets.
2. Complete necessary actions to implement water supply enhancement projects.

4B - SNAKE RIVER FROM MILNER DAM TO MURPHY GAGE

Water resources tributary to the Snake River in the Milner to Murphy reach will be managed to meet or exceed the minimum stream flow of 3,900 cfs from April 1 to October 31 and 5,600 cfs from November 1 to March 31 at Murphy gage below Swan Falls Dam.

Discussion:

Swan Falls Minimum Flow Policy: The 1984 Swan Falls Settlement between Idaho Power Company and the State established a minimum average daily flow of 3,900 cfs from April 1 to October 31 and 5,600 cfs from November 1 to March 31 at the Murphy gage to resolve the nature and extent of the Company's water rights at its hydropower projects on the Snake River between Milner Dam and the Murphy gage. These minimum flows are management and permitting constraints.

At the heart of the Swan Falls Settlement was a recognition that Idaho's water resources are the life-blood of Idaho's agricultural, industrial, municipal, recreational, and environmental values and that the effective management of those resources benefits all of Idaho's citizenry. The parties to the Settlement also recognized that Idaho's water, by providing a firm and consistent hydropower base, kept Idaho's electrical rates among the lowest in the nation and Idaho's economy robust.

The underlying value of water to Idaho has remained unchanged. The effective management of Idaho's water resources remains critical to the public interest of the State by sustaining economic growth, maintaining reasonable electric rates, protecting and preserving existing water rights, and protecting water quality and environmental values. Balancing these objectives is a fundamental public policy issue.

State Water Plan policy, and the Legislative directive in Idaho Code § 42-203B(2) recognize that the exercise of water rights, and the development of some new uses above Milner Dam may reduce the flow of the Snake River at Milner to zero, and that consequently river flows from Milner Dam to Murphy gage may consist, at times, almost entirely of ground water discharges from the Eastern Snake Plain Aquifer and surface water returns. Therefore, the Aquifer must be managed conjunctively as an integral part of the Snake River.

The State of Idaho, by and through the Governor, holds legal title to the hydropower water rights for the Idaho Power Company hydroelectric plants in this reach of the Snake River that are in excess of the Swan Falls minimum flows in trust for the benefit of Idaho Power Company and the people of the State of Idaho. Pursuant to Swan Falls Agreement, and Idaho Code § 42-203B, the hydropower water rights held in trust by the State are subject to subordination to and depletion by new water rights that are acquired pursuant to applicable state law, unless such rights deplete or will deplete the average daily flow below the Swan Falls minimums at the Murphy gage.

Subsequent to the Swan Falls Settlement, the State of Idaho processed and approved applications for the appropriation of water from sources tributary to the Snake River between Milner Dam and the Murphy gage. These new water rights are commonly referred to as "trust water rights". Depletions to the Eastern Snake Plain Aquifer caused by these trust water rights, in combination with effects on the aquifer caused by changes in irrigation practices and drought, have led to declines in spring flows in this reach of the Snake River to the point that in dry years the flows at the Murphy gage are beginning to approach the 3,900 cfs minimum flow. It is therefore remains critical that the Eastern Snake Plain Aquifer is managed conjunctively as an integral part of the Snake River system. The State should also continue to acquire water in order to mitigate for any impacts to the minimum flows established by the Swan Falls Settlement.

Milner to Murphy Optimum Use Policy. The water management objectives for the Milner to Murphy reach of the Snake River is to adaptively manage water resources in this reach to achieve a balance between existing water use and supplies, increase the reliability of the water supply available to satisfy existing water rights, and ensure that the Swan Falls minimum flows are satisfied. While a primary tool for achieving these objectives will be the implementation of the ESPA CAMP, the state must also endeavor to administer water rights and manage the water resources of the state in a manner consistent with state law, the State Water Plan and the Swan Falls Agreement.

The comprehensive basin plan for the Middle Snake River basin (Milner Dam to King Hill) recognizes that the Middle Snake supports agriculture, industry, hydropower and recreation, as well as a rich variety of fish and wildlife. A primary objective of the Board in the implementation of that plan was the maintenance of this existing multiple-use mix, together with the protection of water quality and the free flowing character of the Middle Snake.

In order to achieve a balance between water use and supplies, the Middle Snake basin plan recommended that more attention be paid to the cumulative impacts of development, the assimilation capacity of the river, and the coordinated allocation of both ground and surface water development. Development that would preclude or jeopardize existing beneficial uses or values was recognized as not being in the public interest. To prevent future conflicts between existing multiple-uses, existing water users, and new water rights, critical assessments should be made in all applications for new water rights within this reach, to determine whether the water supply is sufficient for the purpose for which it is sought to be appropriated or whether the new use will reduce the quantity of water under existing water rights. Any new water rights granted should be conditioned on providing mitigation to offset any depletionary impacts on flows at the Murphy gage. Nothing in this policy, however, shall be construed to affect or change in anyway the legal rights of any current water right holder under the prior appropriation doctrine as established by Idaho law.

A number of the water rights diverting trust water contain conditions subjecting the water right to review 20 years after issuance to re-evaluate the public interest and reserving authority in the director to change or add conditions to the water right, including the imposition of an annual fee. In light of the declining spring flows, the State should re-evaluate the public interest at the expiration of these term permits and determine whether additional conditions should be imposed, including providing mitigation to offset any depletionary impacts on the flows at the Murphy Gage.

As provided for in the Swan Falls Settlement, approval of new storage projects that seek to divert water from sources tributary to the Snake River below Milner Dam and above the Murphy Gaging station should be coupled with a requirement to mitigate for any impacts of such storage on hydropower generation.

Need direction from the Board on how to reconcile State Water Plan Part B for the Milner to King Hill Reach of the Snake River with "Milner Policy."

Water Transfer Policy: As a result of the limited water supplies in the Milner to Murphy 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. Therefore some provision must be made to facilitate approval of the acquisition and use of water rights for new uses on a willing buyer/willing seller basis. Any changes in water right acquisition policy, however, should include measures to protect against hydrologic, economic, and/or social impacts.

Swan Falls Minimum Flow Adaptive Management Policy: The impact from the use of ground water within the basin on the timing of aquifer discharge to the Snake River is such that curtailment of water rights when the flow of the Snake River approaches the Swan Falls minimum flows is not an effective remedy. Therefore, the development and implementation of a long-term measurement and monitoring program coupled with an adaptive management plan to proactively manage water sources tributary to the Snake River below Milner Dam is essential to prevent depletion of the flow of the Snake River at Murphy gage below the Swan Falls minimums. The plan should establish an agreed upon measurement and monitoring protocol for determining the average daily flow at the Murphy gaging station consistent with terms of the Swan Falls Agreement. In addition, the plan should identify adaptive management strategies for managing the water sources tributary to the Snake River below Milner Dam to ensure that the Swan Falls minimum flows are met.

Implementation Strategies:

- 1) Initiate a review of water right permits and licenses containing a term limitation.
- 2) Support the development of an enhanced spring water measurement program as a mechanism for facilitating adaptive management measures to achieve ESPA CAMP and Swan Falls minimum flow objectives.
- 3) Implementation of a Swan Falls monitoring and adaptive management program to provide for the administration of water sources tributary to the Snake River below Milner Dam to achieve the minimum average daily flows at the Murphy Gauge.

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- 4) Develop streamlined policy for processing transfers to meet the water supply needs for DCM1 and other future water uses...
- 5) Implement ESPA CAMP to accomplish goals and objectives to sustain and enhance spring flows within this reach to improve the reliability of water supply for hydropower generation and other instream values above the Murphy gage.

Milestones:

To be developed...

DRAFT

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STATE WATER PLAN – SNAKE RIVER POLICY

SNAKE RIVER ABOVE MILNER DAM
OUTLINE
[IPC Revisions – Strikeout & Underline]

4 - SNAKE RIVER BASIN

4A- SNAKE RIVER ABOVE MILNER DAM

The exercise of water rights above Milner Dam has in the past and may in the future reduce the flow of the Snake River at Milner Dam to zero. Water resource policy, planning and practice should continue to optimize water the use of existing water supplies while protecting existing water rights and providing e for the full continued development of the Snake River above Milner Dam recognizing that the exercise of water rights above Milner Dam has and may reduce flow at the Dam to zero.

Comment [A1]: Restatement consistent with past policy and to make clear that existing water rights are to be protected.

Discussion:

Milner Dam and Snake River Water Administration Policy. The formulation and implementation of a plan for the optimum development and use of the water resources of the Snake River above Milner Dam must be consistent with the so-called "Milner Policy," State Water Plan policies and the legislative directive set forth in Idaho Code § 42-2038(2), which provides 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 surface or ground water tributary to the Snake River upstream from Milner Dam shall be considered for the purposes of the determination and administration of rights to the use of the waters downstream from Milner dam. The addition of this provision to § 2038 in 1986 by the Idaho Legislature was and remains consistent with the State policy that the ground and surface water of the Snake River basin are to be managed to meet or exceed a minimum average daily flow of zero at Milner Dam. The zero minimum flow policy at Milner by recognizing that the exercise of water rights above Milner Dam at times may reduces the flow of the Snake River at Milner to zero, allows for existing uses to be continued and for some new uses above Milner Dam.

Comment [A2]: Plan for development should be consistent with all SWP policies and legislative directive regarding administration of water rights above and below Milner.

Comment [A3]: Policy SA, 1986 SWP; see also policy 32, March 1, 1985 IWRB Resolution amendi SWP consistent with the SFA.

As early as The Milner Policy evolved from a 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, preparing a plan for the future development of irrigation and hydropower in the Upper Snake River Basin. As described by the Board of Engineers, the Milner Policy Dam was founded recognized as a practical and upon the physical point of divide in the development of the Snake River at Milner Dam. 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 expressed the opinion in the report that the greatest use of the Snake River would be to recommended, therefore, that in order to make optimum use of the water resources the entire flow of the Snake River

Comment [A4]: The 1920 Report is part of the history of the Milner policy, but it is an overstatement to say the policy "evolved" from the Report. Clarifies the purpose and intent of the 1920 Report, see pg. 1, letter from Board to Governor Davis.

above Milner should be dedicated the water above Milner Dam to the extent economically feasible to for-upstream irrigation. Over the past century, Milner Policy this principle has guided the economic growth and the development within the Snake River basin and has become is inextricably intertwined with the overall management of the water resources of the basin.

Comment [A5]: 1920 Report see pg. 5.

The 1920 report recognized Milner Policy envisioned that while development of American Falls Reservoir and the dedication of flows above Milner Dam to irrigation would have some impact on hydropower generation, the increased but concluded that because spring and return flows accrue to the River below Milner Dam resulting from the upstream development that the value would sustain of the hydropower production sites at Salmon Falls and downstream from Milner Dam would not be materially affected by flows not passing Milner during certain portions of the year. The report further recognized that because upstream irrigation development would take time to complete, that hydropower production downstream would continue with available flows; and that the use of this water for winter power production might later "mitigate against complete use" of upstream water for irrigation purposes. In an effort to avoid this potential conflict between upstream irrigation and downstream hydropower use, order to ensure that hydropower development didn't interfere with development above Milner, however, the Board advised suggested that in "granting power rights in the future the Federal Government and the State should so far as possible provide restrictions requiring [their] eventual surrender ..." of hydropower water rights "when and as the waters are required for application to land".

Comment [A6]: Changes more precisely reflect the content of the 1920 Report, pg. 5, 23, & 31.

At the time of the 1920 report, the Idaho Power Company had three 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. This policy of subordinating the use of water for hydropower purposes. development to upstream consumptive uses was affirmed by Through the balance of the twentieth century Idaho Power constructed five additional projects below Milner, including the three dam Hells Canyon Complex. However not all of the hydropower water rights associated with Idaho Power's Snake River projects contained conditions subordinating them to upstream development, which resulted in an eventual conflict between hydropower and upstream consumptive use water rights in the late 1970s. The 1984 Swan Falls Settlement, together with the and 2009 Swan Falls Reaffirmation Agreement, between the State 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 [A7]: This addition provides historical background to the SFA and the subordination of IPC's hydropower rights.

The 1984 Swan Falls Settlement, and the later 2009 Reaffirmation, confirmed the Milner zero flow policy and the provisions of I.C. § 42-203B(2). At the heart of the Swan Falls Settlement was the recognition that Idaho's water resources are the life-blood of Idaho's agricultural, industrial, municipal, recreational, and environmental values and that the effective management of those resources benefits all of Idaho's citizenry. The parties to that Settlement also recognized that Idaho's water, by providing a firm and consistent hydropower base, kept Idaho's electrical rates among the lowest in the nation and Idaho's economy robust.

Comment [A8]: Material taken from Article I, 2009 Framework Reaffirming the SFA.

The underlying value of water to Idaho has remained unchanged. The effective management of Idaho's water resources remains critical to the public interest of the State by sustaining economic growth, maintaining reasonable electric rates, protecting and preserving existing water rights, and protecting water quality and environmental values. Consistent with the Milner zero flow R policy and the Swan Falls Settlement, balancing these objectives with the primary long-term water planning objective for the Snake River above Milner Dam is to of ensuring e that unappropriated flows tributary to the Snake River

Comment [A9]: Id.

above Milner Dam are available to supply existing and future beneficial uses in this reach of the Snake River is a fundamental public policy issue.

Conjunctive Administration of Spring Flow and GW Rights: The Snake River alternately contributes water to and receives water from the Eastern Snake Plain Aquifer. The aquifer discharges approximately 2,500 cubic feet per second (cfs) of water to the Snake River at American Falls and approximately 5,000 cfs between Milner and King Hill. Declining aquifer, spring and river levels have created conflicts between surface and ground, and in some instances ground and other ground, water rights users. Resolution of these surface/ground water right conflicts is essential to the implementation of the long-term water planning objectives for both the above and below Milner reaches of the Snake River.

Comment [A10]: This material is from the 1996 SWP - Idaho's Water Resources, pg 37. Again, provides context and background to basis for moratoriums.

On In January 6, 1993, the Director of the Idaho Department of Water Resources, based on findings that drought conditions, a reduction in recharge due to changes in surface irrigation practices, and increased ground water pumping had resulted in lowered ground water levels, spring flows and stream flows, issued an Amended a moratorium order against the issuance of permits to divert water from the Snake River and all sources tributary to the Snake River above Milner Dam (January 6, 1993 - Non-Trust Water Area Moratorium) and a moratorium order against the issuance of permits to divert water from the Snake River and all sources tributary to the Snake River below Milner Dam (April 30, 1993 - Trust Water Area Moratorium). A primary purpose of these Moratoriums is seeks to protect the status quo during the development and while moving forward with the implementation of the conjunctive administration of hydrologically connected surface and ground water rights.

Comment [A11]: This order provides it is to remain in effect until December 1997, but see Executive Order 2004-02.

ESPA CAMP: In 2006 the Idaho Legislature, in Senate Concurrent Resolution 136, acknowledged that reduced spring discharges, river reach gains and declining aquifer levels in the Eastern Snake Plain Aquifer continued to create conflicts between holders of water rights diverting from surface and ground water. To facilitate and encourage a resolution of this ongoing surface/ground water conflict, and also to consistent with Milner Policy and the intent to optimize use of water in the heavily developed basin, and as well as the need to address concerns about the future water supply and conflicts between surface and ground water use in the Eastern Snake Plain Aquifer, the Legislature requested that the Idaho Water Resource Board expeditiously pursue development of a comprehensive aquifer management plan for the Eastern Snake River Plain Aquifer. In January 2008, the Board adopted the Eastern Snake Plan (ESPA) Comprehensive Aquifer Management Plan (CAMP). The overall goal of the CAMP is to "Sustain the economic viability and social and environmental health of the Eastern Snake Plain by adaptively managing the balance between water use and supplies". The objectives of the plan are to increase predictability for water users by managing the water resources to provide for a reliable water supply; create alternatives to administrative curtailment; manage overall demand for water within the Eastern Snake Plain; increase recharge to the aquifer; and reduce withdrawals from the aquifer, for existing and future uses. The plan CAMP established a long-term hydrologic goal of 600 thousand acre-feet (kaf) average annual change to the strategies to incrementally achieve a net water budget change in the ESPA of 600 thousand acre-feet (kaf) annually by the year 2030 through a suite of water management actions.

Comment [A12]: Changes provide context to IWRB development of CAMP.

The ESPA CAMP uses a phased approach to achieving the long-term change in the water budget. The goal of Phase 1 of ESPA CAMP is to implement measures over a ten year period that will result in a target hydrologic water budget change of between 200 kaf and 300 kaf. The recommended actions measures to achieve this target include measures to redistribute existing water supplies, including

ground water to surface water conversions and managed aquifer recharge, and measures to augment supplies, including demand reduction, and weather modification.

Comment [A13]: Clarifies that not all CAMP measures increase water supply, some merely redistribute supply among users.

Full implementation of the ESPA CAMP will meet the goal and objectives and improve the opportunities to adaptively manage and optimize water supplies across the ESPA by: increasing gains in some river reaches, improving storage carryover; increasing aquifer levels; decreasing the need for litigation, mitigation and administrative activities; allowing for municipal and industrial growth; reducing overall demand; and increasing and sustaining spring flow, and providing an ongoing public process for assessing the hydrologic, economic, and environmental issues related to the implementation of aquifer management strategies. The ESPA CAMP anticipates implementation of Phase I strategies by 2018 with ongoing monitoring and evaluation of the intended and unintended effects of the strategies. The monitoring and evaluation studies will be used to select and design Phase II strategies.

Comment [A14]: Clarification of CAMP goals and objectives, pg. 8.

As part of the 2009 Swan Falls Reaffirmation Agreement, the State and the Board entered into a Memorandum of Agreement with Idaho Power Company in which the parties recognized that the maintenance of inexpensive hydropower resources contributes to a positive economic climate for the creation of new jobs for Idahoans, that flows passing Milner Dam provide opportunities for hydropower generation and that under the Swan Falls Agreement the Idaho Power Company has a right to use such flows when available at its hydropower facilities. The parties agreed that it was in their mutual interest to work cooperatively to uphold and implement the principles established by the Swan Falls Agreement that requires the Board to obtain legislative approval to increase the Phase 1 ESPA CAMP managed recharge goal of 100,000 af by more than 75,000 af prior to January 1, 2019. A primary purpose of the memorandum of agreement was to "recognize that implementation of managed recharge will have an effect on the flow characteristics of the Snake River above and below Milner Dam and to confirm that the relative merits of recharge proposals in addition to or different than that provided in Phase 1 of ESPA CAMP will be considered through the adaptive management process set forth in Section 4 of ESPA CAMP." In furtherance of that purpose, the Memorandum of Agreement also requires that the Board obtain legislative approval to increase the Phase 1 ESPA CAMP managed recharge goal of 100,000 af by more than 75,000 af prior to January 1, 2019, and also that any change to the ESPA CAMP long-term hydrologic target for managed recharge must be accomplished through an amendment of the State Water Plan. Finally, the Memorandum of Agreement recognizes that it is the mutual interest of the State and the Company to work cooperatively to explore and develop a managed recharge program for the Snake River Basin above the Swan Falls Dam that achieves to the extent possible benefits for all uses including hydropower.

Comment [A15]: Statement from 2009 SF Reaffirmation Agreement.

Upper Snake River Optimum Use Policy: Except for winter and non-irrigation season flows in excess of the storage capacity of existing reservoirs, the Snake River above Milner Dam is fully appropriated reliable water supply of the Snake River Basin above Milner Dam is nearly developed. Thus, further development of the water resources in the Snake River Basin upstream of Milner Dam, consistent with the State Water Plan and the ESPA CAMP, will require measures that augment and enhance available water supplies, such as the development and efficient use and management of existing on-stream, off-stream, and aquifer storage, development of new storage, and water right acquisitions and exchanges. Implementation of such actions, however, will result in a change in flows passing Milner. Such changes must be considered in the context of multi-objective resource planning, recognizing that trade-offs may be necessary to achieve the greatest number and best combination of planning objectives. The State Water Plan recognizes that the Middle Snake region supports multiple uses, including agriculture, industry, hydropower, fish and wildlife and recreation. Maintaining this multiple-use mix is a primary objective of the Board. Development that would jeopardize existing

Comment [A16]: The import of this first sentence was unclear. The Snake River was recognized as fully appropriated as early as the SWP. That is the factual predicate for the flow at Milner being zero during certain times of the year & the entry of the 1993 moratoriums.

beneficial uses is not in public interest. Therefore, as discussed in the Milner to Murphy Reach section, a process must be in place to identify and account for impacts that development above Milner will have on the water supply available to meet management objectives in the Milner to Murphy reach of the Snake River.

Comment [A17]: See Actions and Recommendations, pg. 73 of Sub-basin plan for the Snake River from Milner Dam to Kin Hill, the Middle Snake, a component of the of the State Water Plan. This provision recognizes that development of unappropriated flows should consider impacts to downstream uses, including F&W, etc.

The Board has previously established a long-term goal of working toward higher flows at Milner, particularly during low flow periods of the year, to support, and improve, downstream conditions for the existing uses below Milner. However, the Board also recognizes that there is no ready mechanism to provide this water. Coordinated management of the water resource development with the federal reservoir system above Milner Dam may will provide an opportunity to optimize the use of the available water supply above Milner Dam and also achieve the Board's goal of supporting and enhancing conditions downstream for the existing multiple-uses. Therefore, the following Upper Snake River Optimum Use Policy is established:

Comment [A18]: Id, pg. 74.

1. It is in the public interest to manage the water resources above Milner Dam in a coordinated manner consistent with state law and the State Water Plan to provide a reliable supply of water for existing and future beneficial uses, and, to the extent not inconsistent or in conflict with the foregoing, to provide for the optimum use of flows passing Milner Dam for hydropower generation, water quality, aquatic habitat, and other environmental purposes.
2. The Bureau of Reclamation is encouraged to manage the federal reservoir system above Milner Dam in a manner compatible with this policy, to the extent consistent with federal reclamation law and project purposes. To facilitate this effort, the Board will implement a process to openly address water management and reservoir operation needs through a standing advisory subcommittee. The subcommittee will be a collaborative forum for the development, review and exchange of where relevant information may be exchanged and reviewed on the manner in which how the state and the Bureau of Reclamation, in the exercise of their respective authorities, can optimize the management of the water resources and the reservoir system above Milner Dam consistent with the policy set forth in paragraph 1. The Board shall request that the Bureau of Reclamation, the Committee of Nine, and the Idaho Power Company to designate representatives as standing members of this subcommittee and shall invite other parties that may be interested in the management of affected water resources to also participate. This subcommittee may periodically submit advisory recommendations to the Board and the Bureau of Reclamation, but shall have no power or authority to affect vested water rights or to prescribe the manner in which the federal reservoir system or the water resources above Milner Dam shall be managed.

Comment [A19]: Recognition that managing a sort supply requires "trade-offs", see above. Focus should be to supply existing water rights and optimize balance of water for other instream uses.

In the early 1990s the Idaho Legislature at the request of the Bureau of Reclamation provided authorization for the rental of up to 427,000 af 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 bank or through local water rental committees on a willing buyer-willing seller basis. In addition, the State acquired 60,000 af of natural flow water rights that it has rented to the

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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 af. This annual cap may be increased to 487,000 af under certain conditions provided for in Idaho Code § 42-1763B and the 2004 Snake River Water Rights Agreement. The program is coupled with a biological opinion, which provides incidental take coverage for the Bureau of Reclamation's operation and maintenance of the Upper Snake Projects and related private uses of storage water.

As part of the 1990 Fort Hall Water Rights Agreement, the Board approved the creation of the Shoshone-Bannock water bank. The Shoshone-Bannock Water Bank accrues water in American Falls reservoir and is authorized to rent and deliver storage water anywhere in Idaho.

~~Since the initiation of the flow augmentation program and the authorization of the Shoshone-Bannock water bank, is to allow water that would otherwise have been available for use above Milner Dam or for other in-state uses, has, on occasion, been leased by Reclamation and to be released from above Milner reservoirs to augment flows in the lower Snake River for ESA-listed fish meet water-use needs below Milner Dam. To the extent feasible and consistent with the 2004 Snake River Water Rights Agreement, strategies should be explored and pursued that would allow for this water to be used to meet demands above Milner Dam and other in-state uses consistent with the State Water Plan, including to encourage the exchange flow augmentation water and water rented through the Shoshone-Bannock Water Bank with water downstream of Milner Dam in order to meet demands above Milner Dam. Such strategies may include the exchange flow augmentation water and water rented through the Shoshone-Bannock Water Bank with water downstream of Milner Dam, new storage within the Snake River Basin, water right acquisitions, and exchanges with existing storage spaceholders. Consideration of such strategies should include an assessment of any beneficial or adverse impacts to existing water rights, water quality, aquatic habitat, hydropower generation, and other in-stream uses.~~

Comment [A20]: This strategy should consider impacts to other uses on the river.

Water Transfer Policy: As a result of the limited water supplies above Milner Dam, future domestic, commercial, municipal, and industrial and other water supply needs likely will have to be met through the transfer of existing water rights to meet these new demands. Therefore some provision must be made to facilitate approval of acquisition and use of water rights for new uses on a willing buyer/willing seller basis. Any changes in water right acquisition policy, however, should include measures to protect against unreasonable hydrologic, economic, environmental, and/or social impacts.

Cooperation and Assessment Appraisal of Management of Water Resources: Ongoing review and assessment appraisal of actions implemented to augment and sustain existing water resources and support for new water uses above Milner Dam is necessary to determine the efficacy of specific strategies and to ensure consistency with the State Water Plan, including the Milner zero flow Policy, objectives of the Swan Falls Agreement, and implementation of the ESPA CAMP and the Optimum Use Policy. Procedures for monitoring and assessing the efficacy of management administrative strategies shall be developed, and evaluated in the collaborative forum addressed herein, with appropriate recommendations for implementation of such procedures submitted to the Board.

Implementation Strategies:

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1. Identify where existing new surface water storage sites can be built that are safe, environmentally sound and economical to ~~secure new store additional~~ water supplies, provide flexibility in reservoir operations, and offset flow augmentation demands on supplies above Milner Dam.
2. Implement actions recommended in the ESPA CAMP Phase I to accomplish hydrologic targets including groundwater to surface water conversions, managed aquifer recharge, demand reduction, and weather modification.
3. Monitor and evaluate the results of each of the ESPA CAMP actions on water supply conditions above Milner Dam to assist with development and implementation of future actions, and determination of the efficacy of implementation of the ESPA CAMP Phase II.
- ~~4. Manage the water resources above Milner Dam in accordance with the Milner Policy and Upper Snake River Optimum Use Policy.~~
5. Establish a standing subcommittee for the purpose of supporting the Upper Snake River Optimum Use Policy and collaborating on the management of the water resources and the reservoir system above Milner Dam with representatives from the U.S. Bureau of Reclamation and other stakeholders. The subcommittee shall have no power or authority to affect vested water rights or to prescribe the manner in which the reservoir system or the water resources above Milner Dam shall be managed, but shall develop, through a collaborative effort, recommendations and policies consistent with the State Water Plan for the efficient and effective management of the water resources and the reservoir system above Milner Dam.
6. Consider and develop strategies that are consistent with State Water Plan policies and objectives that may provide opportunities for flow augmentation water to be used to meet demands above Milner Dam and other in-state uses, including the opportunistic ally acquire acquisition of Snake River water below Milner Dam, or from other tributary basins, to be exchanged for flow augmentation water. Such strategies must include with consideration of the public interest and other potential third party impacts including but not limited to impacts on water quality, aquatic resources, and hydropower. In addition, acquire storage water or surface water rights on flow-limited streams upstream of Milner Dam for transfer downstream to support conversions and stream flow restoration.
7. Measurement and Monitoring Implementation Strategy:
 - a. Continue to support, develop and update the Eastern Snake River Plain Aquifer and river models and technical tools, including Model Version 1.1 (ESPAM1.1), the Snake River Planning Model (SRPM), and the Snake River Accounting system. Promote linkage of the models and their use in evaluation of impacts of various management decisions on Snake River flows, aquifer levels and reservoir operations.
 - b. Undertake measurement and monitoring of the combined river and aquifer system to facilitate water management and planning in the Snake River Basin above Milner Dam.
 - c. Evaluate the utility of system dynamic various modeling, data collection, forecasting and risk evaluation techniques to facilitate decision making on optimizing the use of water resources above Milner Dam.
8. Work with the office of the Governor, state agencies, and the legislature to ensure that state management programs are consistent with the State Water Plan and the ESPA CAMP.

Comment [A21]: Seems unnecessary to state this as agencies are to exercise their duties in conformance with SWP.

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9. Implement and maintain cooperative water resource agreements and partnerships with neighboring states, the federal government, and Indian tribes in managing the water resources of the Snake River above Milner Dam.
10. Propose statutory, regulatory, and procedural changes that provide the Idaho Water Resource Board authority and flexibility to use the Water Supply Bank to adaptively manage and optimize water resources of the Snake River above Milner Dam.
11. Enhance water transferability to ensure a water supply for DCM1 and other emerging needs while protecting against unreasonable impacts, including but not limited to impacts on water quality, aquatic resources, and hydropower.

Comment [A22]: What are the objectives of # 10 & 11? What changes need to be made? Problems or impediments in existing legislative or administrative procedures should be identified with proposed solutions.

Milestones:

1. Evaluate the efficacy of the ESPA CAMP Phase I strategies by 2018 and identify how and whether to proceed with Phase II to meet long-term ESPA CAMP hydrologic targets.
2. Complete necessary actions to implement water supply enhancement projects.

Additional milestones will be developed.

DRAFT

STATE WATER PLAN - SNAKE RIVER POLICY

SNAKE RIVER FROM MILNER DAM
TO MURPHY GAGE
[IPC Revisions - ~~strikeout~~ & underline]

4 - SNAKE RIVER BASIN

4A - SNAKE RIVER FROM MILNER DAM TO MURPHY GAGE

Water resources tributary to the Snake River in the Milner to Murphy reach will be managed to meet or exceed the minimum stream flow of 3,900 cfs from April 1 to October 31 and 5,600 cfs from November 1 to March 31 at Murphy gage ~~below Swan Falls Dam.~~

Discussion:

Swan Falls Minimum Flow Policy: The 1984 Swan Falls Settlement between Idaho Power Company and the State established a minimum average daily flow of 3,900 cfs from April 1 to October 31 and 5,600 cfs from November 1 to March 31 at the Murphy gage to assure an adequate hydropower resource base ~~and to protect other instream values such as fish propagation, recreation, aesthetics and water quality~~ resolve the nature and extent of the Company's water rights at its hydropower projects on the Snake River between Milner Dam and the Murphy gage. These minimum flows are management and permitting constraints.

At the heart of the Swan Falls Settlement was a recognition that Idaho's water resources are the life-blood of Idaho's agricultural, industrial, municipal, recreational, and environmental values and that the effective management of those resources benefits all of Idaho's citizenry. The parties to the Settlement also recognized that Idaho's water, by providing a firm and consistent hydropower base, kept Idaho's electrical rates among the lowest in the nation and Idaho's economy robust.

The underlying value of water to Idaho has remained unchanged. The effective management of Idaho's water resources remains critical to the public interest of the State by sustaining economic growth, maintaining reasonable electric rates, protecting and preserving existing water rights, and protecting water quality and environmental values. Balancing these objectives is a fundamental public policy issue.

State Water Plan policy, and the Legislative directive As a consequence of the "Milner Policy" set forth in Idaho Code § 42-203B(2), recognizes that the exercise of water rights, and the development of some new uses above river flows over Milner Dam may be reduced the flow of the Snake River at Milner to zero, and that overtime and consequently river flows from the Milner to Murphy gage may consist, at times, almost entirely of ground water discharges from the aquifer into springs and surface water returns. Therefore, the Eastern Snake Plain Aquifer must be managed conjunctively as an integral part of this reach of the Snake River.

The State of Idaho, by and through the Governor, holds legal title to the hydropower water rights for the Idaho Power Company hydroelectric plants in this reach of the Snake River in excess of the Swan Falls

Comment [A1]: Focus of settlement was not what was necessary for hydropower, but reaching some settlement of existing conflict.

Comment [A2]: These two paragraphs taken from the 2009 SF Reaffirmation.

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minimum flows in trust for the benefit of Idaho Power Company and the people of the State of Idaho. Pursuant to the Swan Falls Agreement, and Idaho Code § 42-203B, the hydropower water rights held in trust by the State are subject to subordination to and depletion by new water rights that are acquired pursuant to applicable state law, unless such water rights are unlawfully exercised or deplete or will deplete the average daily flow below the Swan Falls minimums at the Murphy gage.

Comment [A3]: Language from draft SF decree.

Subsequent As contemplated by the parties to the Swan Falls Settlement, the State of Idaho processed and approved applications for the appropriation of water from sources tributary to the Snake River between low Milner Dam and the Murphy gage. These new water rights are commonly referred to as "trust water rights". These new depletions Depletions to the Eastern Snake Plain Aquifer caused by these trust water rights, in combination with changes in irrigation practices and climate variability drought, have led to declines in spring flows in this reach of the Snake River to the point that in dry years the flows at the Murphy gage are beginning to approach the 3,900 cfs minimum flow. It is therefore remains critical that the Eastern Snake Plain Aquifer is managed conjunctively as an integral part of the Snake River system. The State should also continue to acquire water in order to mitigate for any impacts to the minimum flows established by the Swan Falls Settlement.

Comment [A4]: Climate variability too close to climate change and can be read to include wet, as well as dry periods. Drought is more descriptive.

Comment [A5]: From previous SWP.

Conjunctive Administration of Spring Flow and Ground Water Rights: On April 30, 1993, the Director of the Idaho Department of Water Resources issued an Amended Moratorium Order against the issuance of permits to divert water from the Eastern Snake River Plain Area (1993 Trust Water Moratorium). The Moratorium precludes the processing of applications for the appropriation of water pending resolution of the surface and ground water rights water supply conflict. Resolution of this conflict is an essential step in the implementation of the long term water planning objectives for this reach of the Snake River.

ESPA CAMP: In 2009, the Board adopted the ESPA CAMP to address the declining water supplies of the ESPA and the Snake River. The plan, among other things, seeks to stabilize and enhance the spring flows in this reach of the Snake River through implementation of a suite of measures, including managed and incidental recharge, groundwater to surface water conversions, demand reduction, additional surface water storage and weather modification. While the ESPA CAMP measures are expected to lead to stabilization of spring flows, the ESPA CAMP will not result in a return to the historic high spring flow conditions that developed as a result of large scale gravity irrigation diversions in the early part of the last century.

Milner to Murphy Optimum Use Policy: The water management objectives for the Milner to Murphy reach of the Snake River is to adaptively manage water resources in this reach to achieve a balance between existing water use and supplies, and to thereby satisfy the Swan Falls minimum flows and increase the reliability of the water supply available to satisfy existing water rights, protect environmental values and water quality and ensure that the Swan Falls minimum flows are satisfied. The While a primary tool for achieving these objectives will be the implementation of the ESPA CAMP, the state must also endeavor to administer water rights and manage the water resources of the state in a manner consistent with state law, the State Water Plan and the Swan Falls Agreement.

The comprehensive basin plan for the Middle Snake River basin (Milner Dam to King Hill) recognizes that the Middle Snake supports agriculture, industry, hydropower and recreation, as well as a rich variety of fish and wildlife. A primary objective of the Board in the implementation of that plan was the maintenance of this existing multiple-use mix, together with the protection of water quality and the free flowing character of the Middle Snake.

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In order to achieve a balance between water use and supplies, the Middle Snake basin plan recommended that more attention be paid to the cumulative impacts of development, the assimilation capacity of the river, and the coordinated allocation of both ground and surface water development. Development that would preclude or jeopardize existing beneficial uses or values was recognized as not being in the public interest. and To prevent new future conflicts between spring and ground these existing multiple-uses, existing water users and new water rights, critical assessments should be made in all applications for new water rights permits and licenses to divert spring flows should be subordinated to upstream consumptive uses within this reach, to determine whether the water supply is sufficient for the purpose for which it is sought to be appropriated or whether the new use will reduce the quantity of water under existing water rights. Any new water rights granted should be conditioned on providing mitigation to offset any depletionary impacts on minimum flows at the Murphy gage. Nothing in this policy, however, is shall be construed to affect or change in anyway the legal rights of any current water right holder under the prior appropriation doctrine as established by Idaho law.

Comment [A6]: See Actions and Recommendations, pg. 73 of sub-basin plan for the Snake River from Milner Dam to King Hill, the Middle Snake, a component of the of the State Water Plan.

Comment [A7]: Can the state do this in light of constitutional provision that the right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied?

A number of the water rights diverting trust water contain conditions subjecting the water right to review a 20 years after issuance to re-evaluate the public interest and reserving authority in the director to change or add conditions to the right, including the imposition of an annual fee. In light of the declining spring flows, the State should re-evaluate the public interest at the expiration of -examine these term permits as they expire to and determine whether those permits should be additional conditions ed should be imposed, including upon providing mitigation to offset any depletionary impacts on the flows at the Murphy Gage.

Comment [A8]: More accurately reflects type of conditions in these term water rights.

As provided for in the Swan Falls Settlement, approval of new storage projects that seek to divert water from sources tributary to the Snake River below Milner Dam and above the Murphy Gaging station should be coupled with a requirement to mitigate for any impacts of such storage on hydropower generation.

Need direction from the Board on how to reconcile State Water Plan Part B for the Milner to King Hill Reach of the Snake River with "Milner Policy"

Water Transfer Policy: As a result of the limited water supplies in the Milner to Murphy 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. Therefore some provision must be made to facilitate approval of the acquisition and use of water rights for new uses on a willing buyer/willing seller basis. Any changes in water right acquisition policy, however, should include measures to protect against unreasonable hydrologic, economic, and/or social impacts.

Comment [A9]: What is an unreasonable impact?

Swan Falls Minimum Flow Adaptive Management Policy: The impact from the use of ground water within the basin on the timing of aquifer discharge to the Snake River is such that curtailment of water rights when the flow of the Snake River approaches the Swan Falls minimum flows is not an effective remedy. Therefore, the development and implementation of a long-term measurement and monitoring program coupled with an and adaptive management plan to proactively administer manage the water sources tributary to the Snake River below Milner Dam is essential to prevent depletion of the flow of the Snake River at Murphy gage below the Swan Falls minimums. The plan should include establish an agreed-upon collaboratively developed measurement and monitoring protocol for determining the average daily flow at the Murphy gaging station consistent with terms of the Swan Falls Agreement. In addition, the plan should identify adaptive management strategies for managing the water sources

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tributary to the Snake River below Milner Dam to ensure that ~~satisfy~~ the Swan Falls minimum flows are met.

Implementation Strategies:

- 1) Initiate a review of water right permits and licenses containing a term limitation.
- 2) Support the development of an enhanced spring water measurement program as a mechanism for facilitating adaptive management measures to achieve ESPA CAMP and Swan Falls minimum flow objectives.
- 3) Implementation of a Swan Falls monitoring and adaptive management program to provide for the administration of water sources tributary to the Snake River below Milner Dam to achieve the minimum average daily flows at the Murphy Gauge.
- 4) Develop streamlined policy for processing transfers to meet the water supply needs for DCM and other future water uses...
- 5) Implement ESPA CAMP to accomplish goals and objectives to sustain and enhance spring flows within this reach to improve the reliability of water supply for hydropower generation and other instream values above the Murphy gage.

Milestones:

To be developed...