I. INTRODUCTION

This document describes comprehensive water resource planning for the conservation, development, management, and optimum use of unappropriated water resources in the South Fork Clearwater River basin in north central Idaho (Map 1). The 1,175-square mile basin is located in Idaho County. It joins the Middle Fork Clearwater River at Kooskia, to form the Clearwater River. The Clearwater River basin is the most northern in the larger Snake River basin. The South Fork Clearwater River basin coincides with U.S. Geological Survey Hydrologic Unit 17060305 and Idaho Department of Water Resources (IDWR) Administrative Basins 82 and 85.

The South Fork Clearwater River basin has two distinct parts. The northwestern portion, the Camas Prairie, is rolling plateaus and prairies, and a major dryland agricultural area of the State of Idaho. It accounts for about 20% of the basin's land area. The eastern portion is forested, mountainous and sparsely populated with about 68% of the land area within the Nez Perce National Forest (NF). Individuals and planning or management entities are encouraged to implement recommendations and build upon the concepts established in this plan.

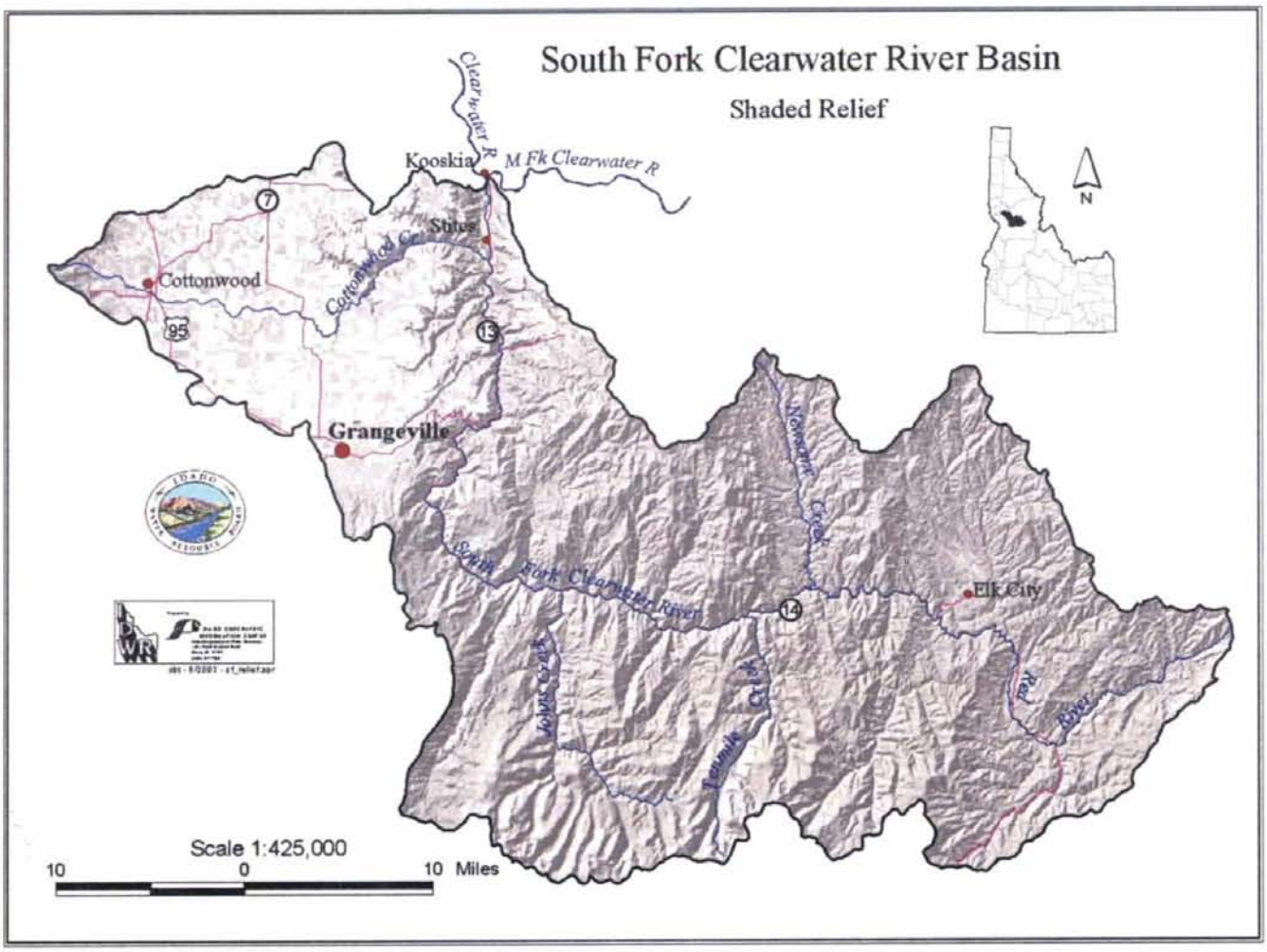
1.1 Constitutional and Statutory Basis of the Comprehensive State Water Plan

The Idaho Water Resource Board (IWRB) is a constitutional agency responsible for developing plans for the state's water resources (Article XV, Section 7 of the Idaho Constitution). The IWRB works within the Idaho Department of Water Resources (IDWR). In 1988, the Idaho State Legislature directed the IWRB to develop a "comprehensive state water plan" (*Idaho Code § 42-1734A*). Idaho Administrative Code for the IDWR further defines comprehensive state water planning rules (IDAPA 37.02.01).

The comprehensive state water plan is a two-part document. "Part A," entitled *Idaho State Water Plan*, sets out statewide policies, goals, and objectives for water resources in the public interest. The latest version was adopted in December, 1996. The second part, "Part B," is directed at specific river basins, waterways, ground water aquifers or other geologic areas defined by the IWRB and in this case, is named the *South Fork Clearwater River Basin Comprehensive State Water Plan-Part B.* The "Part B" plan explains issues, goals, and recommendations that are specific to the South Fork Clearwater River basin. For brevity, the *South Fork Clearwater River Basin Comprehensive State Water Plan-Part B* is referred to as the *Plan* throughout this document.

1.2 Legal, Policy and Planning Context of the South Fork Clearwater River Basin

Several factors led the IWRB to complete a comprehensive state water plan for the South Fork Clearwater River basin. The Snake River Basin Adjudication (SRBA) is a judicial process begun 18 years ago to determine and decree existing water rights in the basin, which includes almost 90% of the land area of Idaho. As part of the SRBA, the USFS agreed to withdraw certain federal reserved water rights if the State of Idaho would work cooperatively to identify and prioritize streams and rivers that could be given minimum instream flow and protection.



Map 1. South Fork Clearwater River basin shaded relief.

Another reason to undertake a plan was that the Idaho Department of Environmental Quality (IDEQ) began a water quality improvement process (a Total Maximum Daily Load) in the basin, affording a collaborative opportunity for the IWRB. Coordinating these two state processes was, in part, an attempt to take advantage of a citizen advisory committee established by the IDEQ for their TMDL process. The *Plan*, after an examination of local, state and federal water resource issues, includes recommendations covering recreational dredge mining, ground water in the Camas Prairie area, minimum flows, and protected river designations. The IWRB desires that this plan be a part of the various state and local processes that ultimately will lead to recovery of threatened and endangered fish species in the basin. Implementation of this plan may help the citizens of Idaho avoid the broad reach of the Endangered Species Act.

1.2.1 Adjudication of Water Rights

In Idaho, adjudications are conducted through the court system. The Department of Water Resources serves as a technical expert for the court in conducting investigations of existing water rights. When completed, the adjudication process and its resulting decree will provide a current, accurate description and security of ownership of water rights for surface and ground water. The decree will be binding on all water users and will identify the water rights as they existed in 1987. This will minimize future challenges against those water rights as long as the rights continue to be used according to law.

This process was prompted by the 1984 Swan Falls agreement between the State of Idaho and Idaho Power Company. Consequently, the Idaho Legislature determined that an adjudication of the entire Snake River Basin was in the public interest. IDWR is responsible for the verification process, including field examinations. A final determination of each claim is the responsibility of the Snake River Basin Adjudication Court, located in Twin Falls.

There have been no prior adjudications in the South Fork Clearwater River basin (Fritschle 2003). There are no rights decreed with the South Fork Clearwater River as the source. The Irrigation and Other Rights Director's Report for Basins 82 and 85 are scheduled for release in 2004.

1.2.2 Federal Reserved Water Rights Claims

One category of claim made in the SRBA is the federal government's reserved claims. Federal reserved water rights are based upon a reservation of land by the United States government, typically stemming from presidential executive order, or an act of Congress. The reserved water rights claims usually carry the priority date when the federal reservation was created by law. The U.S. Supreme Court has held that when the federal government withdraws land for public domain, unappropriated water may be reserved to the extent needed to fulfill the purpose of the land reservation.

In 1993, the United States filed federal reserve water right claims for the Boise, Payette, Clearwater, Nez Perce, Sawtooth, and Salmon-Challis National Forests. In 1997, the SRBA Court rejected federal reserve claims based upon the Multiple Use and Sustained Yield Act (MUSY), but in 1998 ruled that the U.S. could move forward with instream flow claims for federal reserved water rights on national forests under the Organic Administration Act of 1897 provided they could show that channel maintenance flows were required to meet downstream and in-forest uses. The SRBA court rejected the United States' claim for a federal reserved water right for instream flow related to a National Wildlife Refuge in 1998, yet the United States' claims have been granted by the SRBA court in some of the national recreation areas in Idaho. Federally designated Wild and Scenic Rivers reserved water rights claims were also granted.

1.2.3 Memorandum of Understanding

In an effort to avoid continued and costly court proceedings, the US Department of Agriculture Forest Service (USFS) agreed to withdraw 13 channel maintenance water right claims from the SRBA if the IWRB would agree to cooperate and coordinate with the USFS on comprehensive state water plans and forest planning. A memorandum of understanding (MOU) affirming this agreement was signed in August, 2000 by Associate Deputy Chief of the National Forest System, Paul Brouha, and Idaho Water Resource Board Chairman Clarence Parr. This MOU established general guidelines for the agencies to follow in their coordination. The South Fork Clearwater River Basin was chosen as the pilot watershed for the MOU because the basin had no federal wild and scenic water right claims.

A supplemental MOU between the IWRB and the USFS was signed by the Chairman of the IWRB, Joe Jordan, and the Nez Perce National Forest, Forest Supervisor, Bruce Bernhardt, in September of 2001. The purpose of the MOU was to coordinate river basin planning activities in the South Fork Clearwater River basin including collection and sharing of data. One component of the implementation of the supplemental MOU was for the USFS and IWRB to jointly identify and prioritize instream flow needs, streams to be considered as state protected rivers, water development and stream channel protection needs and other water related issues for consideration in comprehensive state water plan and forest planning.

1.2.4 Nez Perce Water Right Negotiations

The Nez Perce Tribe submitted hundreds of water right claims to be arbitrated through the Snake River Basin Adjudication. The claims, based on the Nez Perce Treaties of 1855 and 1863, are mostly for springs and fountains but two claims are for the entire natural flow in the Salmon and Clearwater drainages.

In March of 1993, the United States filed water right claims in the SRBA on behalf of the Tribe as to the legal interest in those rights, and the Tribe filed identical claims on its own behalf as to the beneficial interest. There are three broad categories of claims, each of which contains several components:

> Claims on Trust and Tribal Fee Lands. This type of claim is for a variety of purposes, including: domestic, commercial, municipal, and industrial uses; springs and ponds for livestock and wildlife; irrigation from surface water and from ground water; development if wildlife habitat; recreation; and a small amount of hydroelectric power production.
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> Instream Flow Claims. This type of claim covers areas both on and off reservation land. The Tribe bases these claims from the reservation of fishing rights contained in article 3 of the 1855 treaty. The claims include water for fisheries habitat flows, channel maintenance flows, and riparian maintenance flows.
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> Springs and Fountains. The basis of this type of claim is the treaty of 1863, which reserved access for use of the springs and fountains for the Tribe.

Voluntary negotiations of the Tribe's claims began in 1993. The negotiations have continued since then, but litigation of the claims also began in 1997. By order of the SRBA court in 1998, the negotiations have involved all the major objectors to the Tribe's claims. After several years of negotiations, the parties have developed a framework for a proposed settlement agreement. Specifically, the framework, or "term sheet" is divided into three separate components: (1) the Nez Perce Tribal component to resolve issues on and near lands ceded by the Tribe in the 1863 treaty, (2) the Salmon/Clearwater component to protect flows and habitat within the Salmon and

Clearwater River basins, and (3) the Snake River flow component to resolve issues involving the use of the Snake River above the Hells Canyon Complex.

The Salmon/Clearwater component is crafted to protect current and some future water appropriations for beneficial use, provide for future domestic, commercial, municipal, and industrial uses and to allow for a certain level of future development of other water uses. Instream flows will be established and held by the IWRB for selected streams of importance to the Nez Perce Tribe to provide benefits for ESA listed fish. The state will administer a cooperative agreement(s) under the Endangered Species Act to enhance riparian habitat and protect existing and future State-permitted uses.

The Tribal component resolves water and other natural resource concerns raised by the Tribe in the SRBA. These concerns include water rights, hatchery management, certain Bureau of Land Management Lands, and fisheries habitat. In exchange for the Tribe's agreement to resolve their water-based claims, the United States will provide financial compensation to the Tribe.

For further information on the settlement agreement contact IDWR, the US Department of the Interior or use the following Internet links. http://www.doi.gov/news/040515a, http://www.idwr.state.id.us/

1.2.5 Advisory Group Coordination

In a cooperative effort related to the Federal Clean Water Act, three agencies are working on the South Fork Clearwater River Total Maximum Daily Load (TMDL) process. The lead agency in developing the TMDL is the Idaho Department of Environmental Quality (IDEQ). Other cooperators are the Nez Perce Tribe and the U.S. Environmental Protection Agency (EPA). To improve the efficiency of the State of Idaho's work and to maximize productivity, IWRB and IDEQ agreed to use the same advisory group for the TMDL process and the comprehensive state water plan process since the two processes would be occurring in the same basin at nearly the same time.

A benefit of this collaboration is that state designation of protected river status or minimum stream flow may assist in the implementation of the TMDL through improved flows for recreation and fish, water quality and wildlife habitat.

Coordinating one advisory group for the different processes of the TMDL and State Water Plan is a challenge. IDEQ and the IWRB follow different procedures in selecting members of the advisory group and in conducting advisory group meetings. Additionally, the TMDL and the State Water Plan each have distinct technical and policy issues that may become even more confusing when considered by the same advisory group.

1.2.6 Clearwater Subbasin Assessment, Inventory and Management Plan

While water quality is very important to fish management, fish species also require diverse habitats that meet the needs of all life stages in order to maintain healthy, reproductive populations. In the South Fork Clearwater River basin, another planning activity related to the water, fish and wildlife resources of the basin is the work of the Clearwater Focus Watershed Project. The Clearwater Subbasin Assessment, Inventory and Draft Management Plan, part of the rolling provincial review process developed by the Northwest Power and Conservation Council, will be used to facilitate future development of a subbasin plan for fish and wildlife resources. The Clearwater Focus program has been the lead and coordinating entity for the work leading up

to the management plan. When completed, the subbasin management plan is intended to provide up-to-date biological assessments of fish and wildlife populations, a synthesis of past and ongoing fish and wildlife management activities, identification of factors currently limiting fish and wildlife production, a description of strategies to address the limiting factors. The management plan will assist the Council in making recommendations for the allocation of funds provided by the Bonneville Power Administration. (Subbasin Assessment http://www.nwppc.org/library/releases/2002/1113.htm and draft subbasin plan http://www.nwppc.org/library/isrp/isrp2003-3.htm) This is part of a larger effort within the Columbia River basin to mitigate the impacts of energy facilities on fish and wildlife.

1.2.7 Nez Perce National Forest Plan Revision

The Nez Perce National Forest Plan was completed in October 1987. Since then there have been numerous social and resource changes. Scientific information and methodology has evolved. A few of these changes have been addressed in amendments to the original forest plan. Many others have not been formally recognized and incorporated. Rules guiding implementation of the National Forest Management Act recognize the need to keep forest plans current, recommending they be revised on a 10-year cycle or at least every 15 years. The forest plan is currently being revised under a joint effort with the adjacent Clearwater National Forest. Six categories of decisions are made in forest plans: goals and objectives, standards and guidelines, management area direction, special area designation, suitable land designation and monitoring and evaluation strategy. For the Clearwater and Nez Perce National Forests, five major revision topics have been identified: access management, watersheds and aquatic ecosystem condition, terrestrial ecosystem condition, noxious weed condition and special designations and areas. Current plans call for the revision process to be completed by October, 2006. Information about the forest plan revision process can be found at http://www.fs.fed.us/cnpz/.

1.3 Public Involvement

Concerns and ideas of Idaho residents are important to the IWRB's planning process. Information meetings, citizen advisory group meetings, and formal hearings provided opportunities for public review and suggestions for the South Fork Clearwater River basin plan.

The initial public information meeting to describe the Comprehensive State Water planning process and to seek volunteers to be on the IWRB's Citizen Advisory Group was held on October 22, 2001 in Kooskia. Public notice of this meeting was delivered through the local papers (Free Press, Clearwater Progress). Volunteers were selected to represent varied interests in the basin, such as ranching, tourism, conservation, wastewater treatment plants, timber, mining, the Nez Perce Tribe and other water users. The first official advisory group meeting was held in Kooskia on November 15, 2001. This group also served as the Watershed Advisory Group for developing the TMDL. This group of people met about once a month for nearly two years to discuss either the Board's comprehensive state water plan, the TMDL or both. The role for the advisory group in the water planning process was to identify local concerns, to review information, and to provide opinions and suggestions for IWRB consideration in plan development. All meetings were open to the public. The advisory group members are listed in Appendix A.

1.4 Planning Process

In addition to the IWRB's public participation efforts, the process of developing a comprehensive state water plan consists of the following six steps. Not all steps occur in the order presented; some take place throughout the planning process and some occur concurrently. All are considered essential to the process of developing effective policy and recommendations for the use of the state's waters.

- ***Inventory Resources in the Basin***

Data, information, figures, and statistics about the resources in the basin are obtained through document reviews, field reconnaissance, contacts with government agencies, and citizen input. Maps are prepared using a computerized geographic information system. Inventory information is presented in the Basin Description, Section V.

- ***Identify Local Issues, and Concerns***

Issues, and concerns relating to water resources are identified through public meetings, formation of a local citizens group, and regular contacts with management agencies and local officials. They are described in ISSUES, ANALYSIS, AND RECOMMENDATIONS, Section III.

- ***Assess Current and Future Water Uses and Constraints***

The IWRB's assessments of the present and potential water uses in the South Fork Clearwater River basin are contained in the WATER DEMAND AND SUPPLY section of this document, Section II. The assessments are based on review of water right records, state laws and regulations, the basin's hydrology, and discussions with agency personnel and water users.

- ***Identify Waterways with Outstanding Resource Values***

Idaho Code directs the IWRB to evaluate the waterways of the state for "outstanding" fish and wildlife, recreational, aesthetic, and geological values. Outstanding resources are indicated by: 1) unique or rare features of regional or national importance, 2) significant public concern for protection and/or, 3) existing legal protection or special agency management designation to protect important resource values or the public safety. Specific criteria are described in the OUTSTANDING RESOURCE EVALUATIONS, Section IV.

The IWRB has authority to protect outstanding waterways by designating them as protected in one of two categories: "Natural River" or "Recreational River." Natural River designation protects streams (or stream reaches, lakes, etc.) that are free of substantial human-made impoundments or other structures and have undeveloped riparian areas. Recreational River designation protects rivers (or stream reaches, lakes, etc.) that have some human development within the streambanks or riparian area.

- ***Generate Policy Alternatives***

Alternatives are the actions, recommendations, or policies that may help achieve the goals identified in the *Plan*. They represent the solutions that are considered by the IWRB. The alternatives developed for the South Fork Clearwater River basin are discussed along with issues, found in Section III.

- ***Develop Specific Actions and Recommendations***

"Actions" are the steps that the IWRB can take under the authority granted by the Idaho Constitution and Idaho Code. These steps include proposing protection designations for streams or stream reaches, and submitting applications for minimum stream flows to the IDWR. "Recommendations" are the policy alternatives that the IWRB proposes to help guide public policy decisions. Many of the actions and recommendations evolved from ideas generated during citizen group meetings. They are found in Section III.

- ***Produce the Plan Document***

Comprehensive State Water Plans are first released as a draft. Draft plans are available for public comment for at least 60 days after release. After receiving comments, the IWRB may make changes to the draft plan, and then choose whether to adopt the plan. If adopted, the plan is submitted to the Idaho Legislature for review and public hearings, possible amendment, and approval. When the plan is approved by the legislature, it becomes an official policy document of the state.

Once a plan is approved by the legislature, it can be amended only by actions of the IWRB and the legislature. The IWRB decides whether to amend a plan based on an evaluation of the impact of proposed changes on the protection and preservation of the state's waterways. The evaluation also includes the economic impact of the proposed change on the state as a whole, its effect on existing water rights, whether it is necessary to provide adequate and safe water for human consumption, and whether it is necessary to protect life. All amendments to comprehensive state water plans (Parts A or B) are submitted to the Idaho Legislature for approval.