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September 21, 2012

Idaho Water Resource Board
[HAND DELIVERED]

Dear Board Members,

Trout Unlimited and the Idaho Council of Trout Unlimited respectfully submit these comments regarding the Idaho State Water Plan proposed May 2012 for public comment. Trout Unlimited is the nation's largest coldwater conservation organization dedicated to the protection of trout and salmon populations and the watersheds upon which they depend. It has approximately 2,000 members in Idaho along with professional staff, who participate in local partnerships with landowners and state and federal resource agencies to protect and restore trout, salmon, and steelhead habitat in Idaho's freshwater streams and lakes.

In general, we support the Board's proposed Idaho State Water Plan. It takes a broad look at the importance of Idaho's water resources and, if fully implemented, positions the State well for the future. Trout Unlimited was especially pleased with Policies 6A and 6B, because of our participation as an active partner in upper Salmon River Basin fisheries restoration. We encourage the Board to recognize and expand its partnerships with private organizations like Trout Unlimited in those types of projects in the Plan. The following specific comments track the organization of the proposed Plan.

LEGISLATIVE AUTHORITY

Page 3, line 1: This sentence should read "The authority to designate "protected rivers" derives, in part, from the state's power...." There is no need to limit the authority under which the state designates protected rivers, when a full analysis of the authorities has not been undertaken. This would be consistent with broader language on Page 26.

1. OPTIMUM USE

1C – Transferability of Use

This policy should be changed to reflect that water right owners are currently allowed to change the nature of use of their water right pursuant to I.C. §42-222(1). The policy could be amended to read: "Changes in the ~~nature of use~~ of a water right should be ~~allowed~~ promoted to meet emerging needs and to provide for optimum use of the state's water resources."

The discussion section of this policy should also be changed to reflect that I.C. §42-222 provides for changes in "nature of use."

1I – Aquifer Recharge

This policy should be amended as follows: “Aquifer recharge should be promoted and encouraged, consistent with state law and with appropriate consideration of environmental impacts and opportunities.” This would make the policy consistent with the ESPA CAMP managed aquifer recharge provisions, pp. 19, 23, 26. The Board should be mindful of the environmental impacts of its recharge efforts, even after those efforts are authorized by a water right license.

1K – Comprehensive Aquifer Management Plans

This policy should be amended to read as follows: “The Idaho Water Resource Board will complete and implement comprehensive aquifer management plans to address the ~~increasing~~ changing demands on the state’s water supply.” This language broadens the issues that may lead to the development of aquifer management plans, but includes increasing demands. For instance, the issue in the Treasure Valley that led to the development of such a plan was primarily the change from irrigation to urban water use. In the Wood River Valley, changes include changing water use from agricultural to domestic irrigation and from surface water sources to ground water sources. There may be little change in the actual demand for water in the Valley.

1L – Surface Water Supply Enhancement

Implementation Strategies:

The first bulleted implementation strategy should add in the second sentence, regarding major considerations in defining high-potential projects, the following language: “viability of alternative supply options.” This consideration is important to disclose the relative benefits of water supply options and is critical for efficient and cost-effective decision-making.

A new implementation strategy should also be added to this section which highlights that surface water supply projects should be developed in collaborative forums. Collaborative forums provide the best, and perhaps the only, process for developing new major water supply projects. The alternative, traditional, route has proven to be a long and contentious, producing little but hard feelings between water users and wasted expenditures. The Board should also emphasize that it is imperative that agreements reached in collaborative forums be honored both by the parties and by the State, to encourage parties to participate in such forums.

1N - Hydropower

The term “base” flow is used in this section in a way that differs from its normal hydrologic meaning. A better phrase would perhaps be “firm” flows.

2. CONSERVATION

2B – Federally Listed Species and State Species of Greatest Conservation Need

The following language in this policy is extremely problematic: “Accordingly any reintroduction or introduction of federally listed species where the species enters waters of the State is against the policy of the State of Idaho absent the express approval of the State of Idaho.” This policy language appears to administratively impose a new permitting rule for activities involving federally listed aquatic species in Idaho, without providing sufficient definition of the terms it uses nor following the requirements of the Administrative Procedures Act, chapter 52, title 67, Idaho Code. For instance:

- Who is subject to the provisions of this rule? The federal government and its agencies are not subject to control by the State of Idaho pursuant to the Supremacy Clause of the United States Constitution. As a result, the entities subject to the rule can only be state and local governmental entities, private companies and organizations and individuals.
- What does the term “reintroduction” encompass? Salmon and steelhead are federally listed species that are removed from Idaho waters, bred in federal, state and private hatcheries, and their offspring are “reintroduced” to Idaho’s lakes and rivers. It is not clear whether this type of active hatchery-fish reintroduction is encompassed by the rule.

Further, there are many streams, rivers and lakes, large and small, that were the historic homes of Idaho native federally listed species, but which are no longer accessible to those species because of culverts, weirs, diversions, de-watering and so on. Multiple organizations—federal, state¹, local, municipal corporations, and non-governmental entities -- work in Idaho, using Idaho citizens as employees, to remove or modify those barriers to reconnect listed species with their historic habitat. Increasing the geographic range of aquatic species through projects that reconnect fragmented habitat (e.g. culvert replacement) is essential to the recovery of a species to the point where it can be delisted and state control restored. It is not clear whether this type of passive reintroduction is encompassed by the policy.

- What does the term “introduction” encompass? Introducing federally listed aquatic species to waters that were part of their historic native range but from which they had been extirpated would appear to be “reintroduction.” It is hard to imagine that federally listed species would be introduced in Idaho to waters that were not part of their historic range, but such invasive activity by state, local and private businesses and persons should be regulated by the state.
- What does “express approval” mean? It is not clear whether this approval needs to be oral or written, in the form of a permit or a letter. Nor is it clear how an entity or

¹ This includes the Board’s own water transaction program.

person applies for such approval or whether they have a right to appeal the withholding of such approval.

- Which entity represents the State of Idaho in providing such approval? This policy is being promulgated by the Idaho Water Resource Board, and will be approved by the legislature. It is not apparently consistent with the responsibilities assigned for federally listed species in I.C. §§ 67-818 and 36-104.
- What are the penalties or consequences of violations of this policy/rule? The rule does not specify how it applies to state and local agencies, and to private entities or public utilities.

This policy needs to be rewritten. It could have unintended, adverse effects on many private and public organizations that are working to restore federally listed species in Idaho. Those efforts are designed to remove the federally listed designation from Idaho's aquatic species and free Idaho water users from the consequences of that designation. It is hard to predict how it will affect BPA's Columbia Basin Water Transaction Program, the Bureau of Reclamation's habitat restoration program, the 2008 Columbia Basin Fish Accord obligations, the availability of privately managed funds and programs, and other efforts, in Idaho. The decision to leave it as written should not be taken lightly and without much further research and analysis by the Board.

2E – Riparian Habitat and Wetlands

Discussion

The last sentence of the first paragraph of the discussion should be rewritten as follows: "Riparian zones and wetlands should be protected, restored and managed, to preserve their ecological values and functions." This change would reflect that simple protection may not be enough—some riparian areas have been severely damaged and must be restored or require active management in order for them to function properly. The Board appropriately supports efforts to study the need for such restoration in its implementation strategies.

2F – Stream Channel Rehabilitation

Discussion

The last sentence of the first paragraph of the discussion should be rewritten as follows: "It is in the state's interest to ensure that the stream channels of the state and their environments be protected and restored." This change would reflect that simple protection may not be enough—some stream channels have been severely damaged and must be restored for them to function properly. The Board appropriately supports efforts to study the need for such restoration in its implementation strategies.

Implementation Strategies

The implementation strategies recognize that there are ongoing assessments and inventories of streams where natural and human-influenced disturbances can threaten public safety, private property, or other water resource values. We assume "other water resource values" include things like aquatic species habitat, public recreation, and municipal water supplies for drinking water. The implementation strategy should therefore direct Idaho Department of Water Resources to become a more active participant in such assessments.

3. MANAGEMENT

3B – Hydropower Siting

In this policy the Board should state its support for using its loan programs for the installation in existing canals and conduits of hydroelectric generation facilities.

4. SNAKE RIVER BASIN

The policies in this section do not adequately capture the full extent of the Snake River Basin. They are too focused on the conflicts along the main stem of the Snake River, and ignore its tributaries. The Henrys Fork, the Teton River, the South Fork Snake, the Blackfoot River, the Portneuf River, the Bruneau River, the Boise River, the Big and Little Wood Rivers, the Big and Little Lost Rivers and so on receive little mention in these policies. The mainstem policies that are discussed fail to capture the issues affecting these tributaries, and in some instances, as noted below, overstate the reach of the mainstem policies.

4B – Snake River Milner Zero Minimum Flow

This policy appears to overstate the reach of the Milner Dam zero minimum stream flow policy. If "full development of the Snake River" above Milner Dam means storing every drop out of the Henrys Fork, the Teton River, the South Fork of the Snake, from the Blackfoot reach of the Snake River, from the Blackfoot River, or from the Portneuf River, very few citizens of Idaho would support it. The policy should say, at most, that the impacts of new developments on the flow at Milner Dam should not be considered in determining whether those developments should be constructed.

4E – Snake River Basin New Storage

Without any qualifiers, this policy is too broad. At a minimum it should recognize the new storage must be cost effective, including consideration of costs to the environment. But beyond that, developing new water supply projects should be done in transparent, collaborative planning processes that look in the first instance at all possible water supply options, including non-structural solutions such as water markets and reducing demand. Examining possible benefits to streamflows and fish and wildlife should be a basic part of the process. All stakeholders should work together to reach broad-based consensus on Idaho's water needs and how to meet them. That is clearly the best way to build the necessary public support for any

possible storage recommendations.

4J – Snake River Fish, Wildlife, Recreation, and Scenic Resources

This policy overstates the adequacy and reach of the Snake River minimum flows set forth in Policy 4A. It ignores the minimum flows that have been established for other rivers in the Snake River basin, such as the Boise River and Wood River minimum flows, and flows protected by operational guidelines and collaborative processes that protect flows separately and apart from the Policy 4A minimums. Those minimum flows do nothing to provide adequate flows for Idaho treasures such as the Henrys Fork and the South Fork Snake. This language could be used to allow for the dewatering of these streams through new water right developments and operational changes that would rob Idaho of some of its greatest natural wonders. To this end the first bulleted milestone should be amended to include “[m]inimum stream flows maintained and collaboratively established.”

CONCLUSION

We complement the Board for its efforts on this proposed State Water Plan. There is much in the Plan we agree with and support. To summarize our major concerns, we would like to see:

- The new rule/policy regarding federally listed aquatic species reintroduction be appropriately defined and narrowed;
- The emphasis on new storage tempered by the recognition that collaborative water planning processes and cost-effective projects are necessary for any new water supply solutions; and
- The emphasis on the Snake River mainstem be broadened to include consideration of the tributaries to the Snake River.

Thank you for considering our comments. We hope you find them to be constructive.



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