
OUTSTANDING RESOURCE WATERS

1996 - 1997

**REPORT OF THE
BOARD OF HEALTH AND WELFARE
TO THE
FIFTY-FOURTH IDAHO LEGISLATURE
FIRST REGULAR SESSION**



**Idaho Department of Health and Welfare
Division of Environmental Quality**

January, 1997

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**Idaho Department of Health and Welfare
Division of Environmental Quality**

January, 1997

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SECTION I
EXECUTIVE SUMMARY

Executive Summary

IDHW Board Authority

The Idaho Legislature has given the Board of Health and Welfare (Board) the responsibility to receive, review and recommend to the Legislature nominations for Outstanding Resource Waters as stated in Section 39-3617, Idaho Code. The Board has established operating guidelines for the public under Section 055 of IDAPA 16.01.02 Water Quality Standards and Wastewater Treatment Requirements.

ORW Definition

An Outstanding Resource Water (ORW) is defined by the Idaho Legislature as “a high quality water, such as water of national and state parks and wildlife refuges and water of exceptional recreational or ecological significance, which has been designated by the legislature. It constitutes an outstanding national or state resource that requires protection from point source and nonpoint source activities that may lower water quality” (Section 39-3602(16), Idaho Code).

ORW Designation Criteria

The Board has established review criteria under Section 055 of IDAPA 16.01.02 Water Quality Standards and Wastewater Treatment Requirements. Decisions to hold public hearings and to make a recommendation to the legislature on a nominated stream segment may be based on the following criteria: 1) one or more requests from the public containing supporting documentation and valid reasons for designation, 2) a stream segment is generally recognized as constituting an outstanding national resource such as waters of national and state parks, and wildlife refuges, 3) a stream segment is recognized as waters of exceptional recreational or ecological significance.

Nomination Review and Public Comment Process

The Board of Health and Welfare (Board) received prior to the June 1, 1996 deadline three petitions to consider 68 stream segments as Outstanding Resource Waters. All three petitions were submitted by the Idaho Conservation League. The Board accepted the petitions for consideration at its June 1996 regular meeting. A notice was published soon after to receive public comment on these petitions.

In order to process these petitions, the Board established a three member ORW subcommittee. The subcommittee conducted numerous fact finding meetings and organized an ORW workshop for the entire Board at its September 1996 regular meeting. At that time the Board voted to limit the scope of the consideration to 18 stream segments.

The subcommittee continued to investigate information on these 18 stream segments and conducted four hearings around the state and an additional written comment period to receive further public input.

Board's Final Decision

On December 6, 1996, at a special meeting, the Board voted to nominate to the Legislature seven stream segments for consideration as Outstanding Resource Waters. The determination was based on the level of acceptance viewed in the public comments and the Board's rules on designation criteria. The 324 miles in seven streams represent approximately 0.6% of the total number of perennial stream miles in the state. Those seven stream segments and their boundaries are:

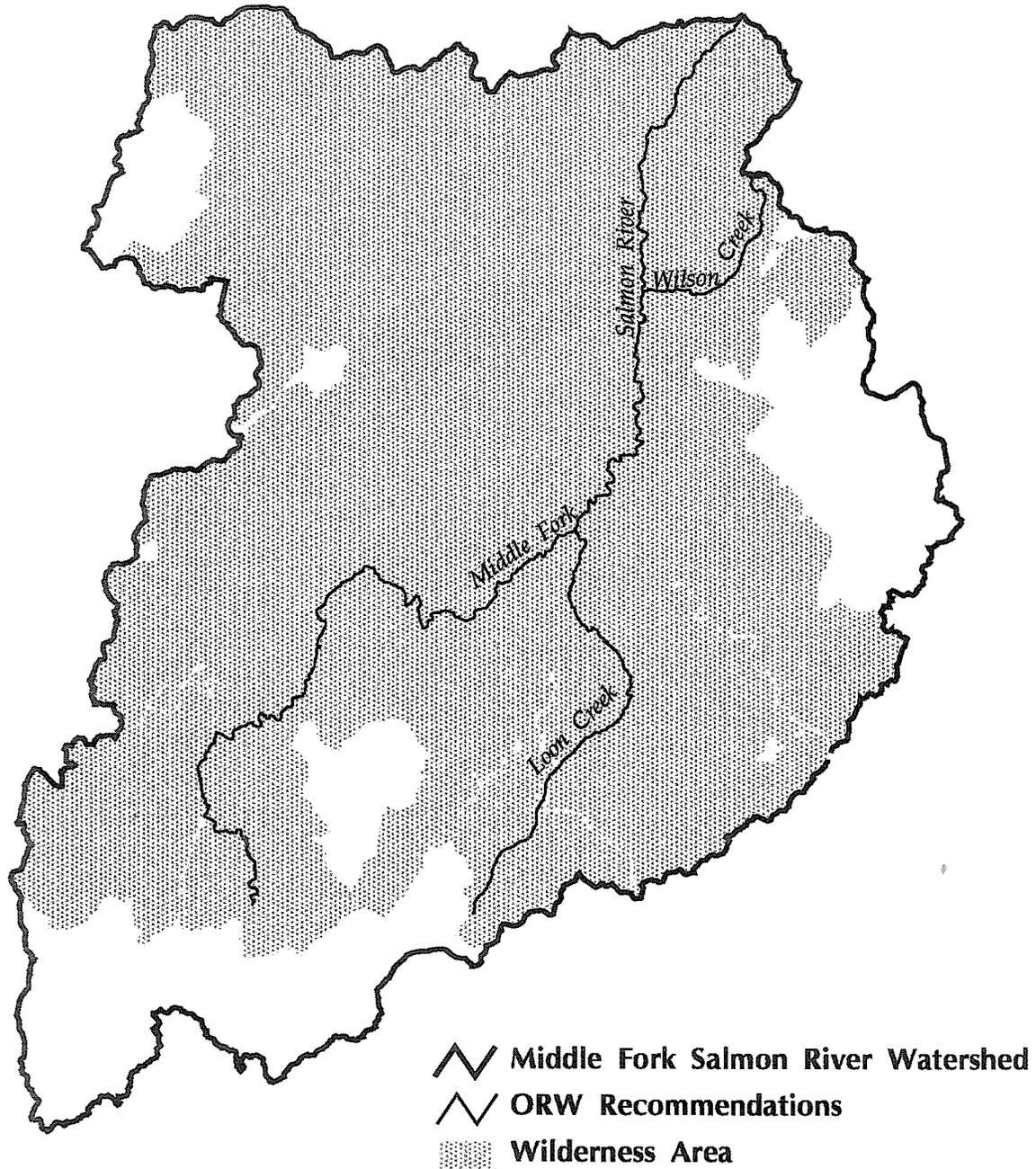
<u>Stream Segment</u>	<u>Upper Boundary</u>	<u>Lower Boundary</u>
Middle Fork Salmon River	Bear Valley/Marsh Creeks	Salmon River
Loon Creek	Headwaters	MF Salmon River
Wilson Creek	Headwaters	MF Salmon River
Selway River	Headwaters	Lochsa River
Bear Creek	Headwaters	Selway River
White Cap Creek	Headwaters	Selway River
Running Creek	Headwaters	Selway River

ORW Implementation Process

If the Idaho Legislature designates a stream segment as Outstanding Resource Waters, then the requirements for implementation as set forth in Sections 39-3617 through 39-3623, Idaho Code are set into motion. Lowering of water quality from new activities or substantially modified existing activities is not allowed. Existing activities may continue so long as current water quality is maintained and protected. Designated state agencies have six months to develop best management practices (BMPs) for reasonably foreseeable nonpoint source activities. These ORW-BMPs are adopted by the agencies, implemented on the ground and monitored according to the provisions of Idaho Code. Based on an initial assessment of the seven stream segments which are hereby recommended to the Legislature for designation as Outstanding Resource Waters, there are no reasonably foreseeable new nonpoint source activities anticipated for these stream segments.

SECTION II
RECOMMENDATIONS

Outstanding Resource Water Health and Welfare Recommendation Middle Fork Salmon River Drainage



RECOMMENDATIONS

The Board of Health and Welfare recommends the following stream segments to the Fifty-Fourth Idaho Legislature, First Regular Session, for Designation as Outstanding Resource Waters. All of these waters are recognized for their outstanding recreational and ecological significance. More information on the stream segments is included in the Section III summaries.

1. Middle Fork of the Salmon River, from the confluence of Bear Valley and Marsh Creeks to the Salmon River.

Rationale:

The Middle Fork of the Salmon River meets criteria for Outstanding Resource Waters as described in IDAPA 16.01.02 Water Quality Standards and Wastewater Treatment Requirements Section 055. The Middle Fork of the Salmon River is recognized as constituting an outstanding national resource as it is contained with the Frank Church River of No Return Wilderness. Public testimony highly favored designation of the Middle Fork of the Salmon River. Adverse social or economic impact is expected to be negligible as a result of designation as an Outstanding Resource Water. See page 15 for summary of this segment.

2. Loon Creek, from its headwaters to the Middle Fork of the Salmon River.

Rationale:

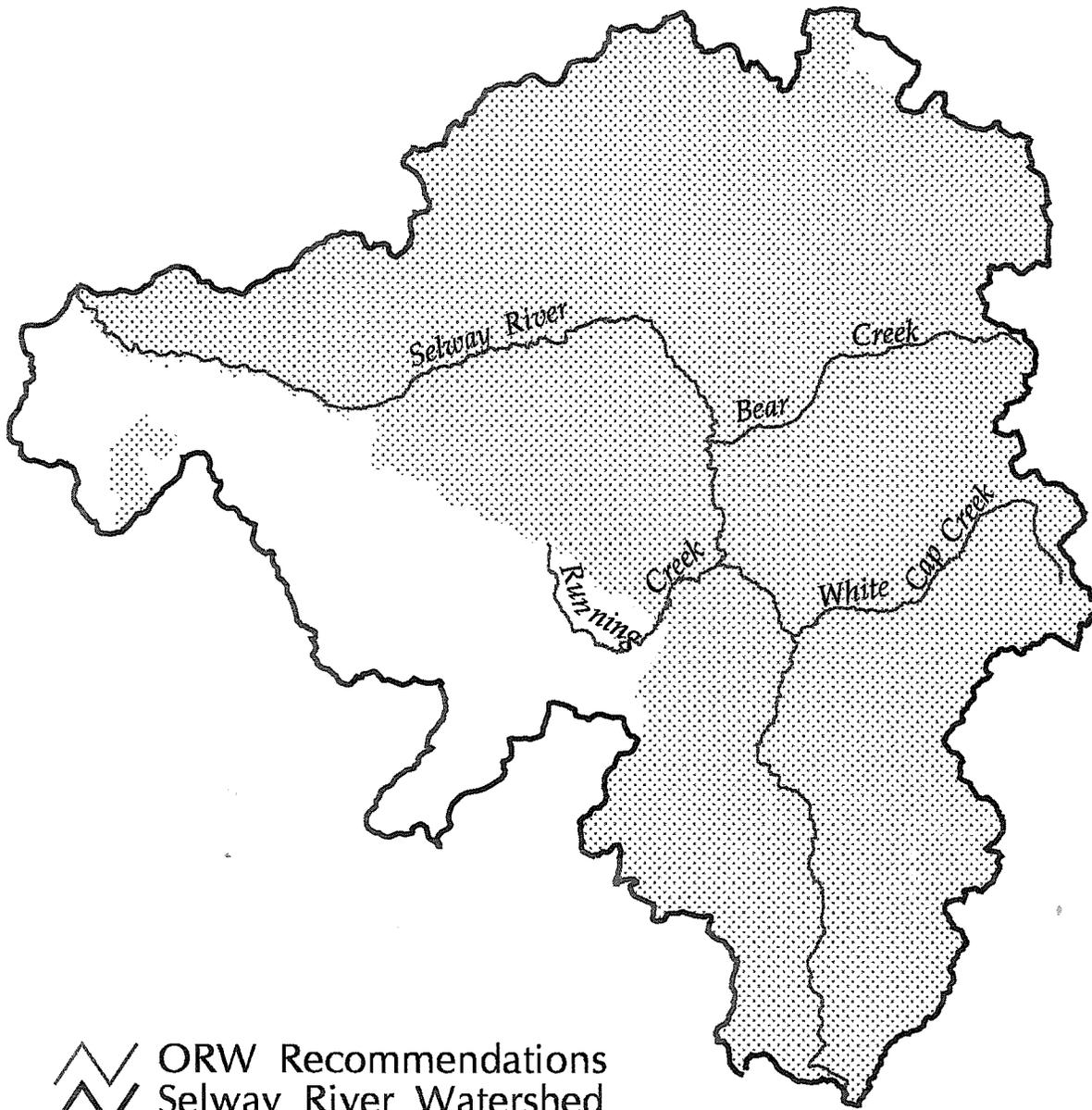
Loon Creek meets criteria for Outstanding Resource Waters as described in IDAPA 16.01.02 Water Quality Standards and Wastewater Treatment Requirements Section 055. Loon Creek is recognized as constituting an outstanding national resource as it is contained with the Frank Church River of No Return Wilderness. Public testimony generally favored designation of the Loon Creek. Adverse social or economic impact is expected to be negligible as a result of designation as an Outstanding Resource Water. See page 17 for summary of this segment.

3. Wilson Creek, from its headwaters to the Middle Fork of the Salmon River.

Rationale:

Wilson Creek meets criteria for Outstanding Resource Waters as described in IDAPA 16.01.02 Water Quality Standards and Wastewater Treatment Requirements Section 055. Wilson Creek is recognized as constituting an outstanding national resource as it is contained with the Frank Church River of No Return Wilderness. Public testimony generally favored designation of the Wilson Creek. Adverse social or economic impact is expected to be negligible as a result of designation as an Outstanding Resource Water. See page 18 for

Outstanding Resource Water Health and Welfare Recommendation Selway River Drainage



 ORW Recommendations
 Selway River Watershed
 Wilderness Area

summary of this segment.

4. Selway River, from its headwaters to the confluence with the Lochsa River.

Rationale:

The Selway River meets criteria for Outstanding Resource Waters as described in IDAPA 16.01.02 Water Quality Standards and Wastewater Treatment Requirements Section 055. The Selway River is recognized as constituting an outstanding national resource as it is mostly contained within the Selway-Bitterroot Wilderness. Public testimony highly favored designation of the Selway River. Adverse social or economic impact is expected to be negligible as a result of designation as an Outstanding Resource Water. See page 19 for summary of this segment.

5. Bear Creek, from its headwaters to the Selway River.

Rationale:

Bear Creek meets criteria for Outstanding Resource Waters as described in IDAPA 16.01.02 Water Quality Standards and Wastewater Treatment Requirements Section 055. Bear Creek is recognized as constituting an outstanding national resource as it is contained within the Selway-Bitterroot Wilderness. Public testimony generally favored designation of the Bear Creek. Adverse social or economic impact is expected to be negligible as a result of designation as an Outstanding Resource Water. See page 21 for summary of this segment.

6. White Cap Creek, from its headwaters to the Selway River.

Rationale:

White Cap Creek meets criteria for Outstanding Resource Waters as described in IDAPA 16.01.02 Water Quality Standards and Wastewater Treatment Requirements Section 055. White Cap Creek is recognized as constituting an outstanding national resource as it is mostly contained within the Selway-Bitterroot Wilderness. Public testimony generally favored designation of the White Cap Creek. Adverse social or economic impact is expected to be negligible as a result of designation as an Outstanding Resource Water. See page 22 for summary of this segment.

7. Running Creek, from its headwaters to the Selway River.

Rationale:

Running Creek meets criteria for Outstanding Resource Waters as described in IDAPA 16.01.02 Water Quality Standards and Wastewater Treatment Requirements Section 055.

Running Creek is recognized as constituting an outstanding national resource as it is partially contained within the Selway-Bitterroot Wilderness. Public testimony generally favored designation of the Running Creek. Adverse social or economic impact is expected to be negligible as a result of designation as an Outstanding Resource Water. See page 23 for summary of this segment.

SECTION III
OUTSTANDING RESOURCE WATER
NOMINATION PROCESS

ORW NOMINATION PROCESS

Procedural Requirements:

The procedure for nominating and designating Outstanding Resource Waters is provided in Section 39-3617, Idaho Code, and in IDAPA 16.01.02.055 of the Water Quality Standards and Wastewater Treatment Requirements. The Board of Health and Welfare and the Department of Health and Welfare have complied with these requirements in reviewing the petitions submitted for Outstanding Resource Waters.

Petitions Received:

Prior to the closing date of June 1, 1996 the Board of Health and Welfare received three petitions for sixty-eight (68) stream segments. All three petitions were received from the Idaho Conservation League. See Section IV for the complete petitions. The 68 stream segments are listed below:

Petition #1	Petition #3	
Middle Fork of the Salmon River	Jarbidge River	Iron Creek
Loon Creek	Little Lost River	East Fork Salmon River
Marble Creek	Snake River	Thompson Creek
Rapid River	Middle Fork Boise River	Warm Springs Creek
Sulphur Creek	North Fork Boise River	Yankee Fork
Bear Valley Creek	South Fork Boise River	Pahsimeroi River
Elk Creek	Middle Fork Payette River	Lemhi River
Marsh Creek	Squaw Creek	South Fork Clearwater River
Wilson Creek	Deadwood River	River
Knapp Creek	Salmon River	Lochsa River
Big Creek	Little Salmon River	White Sands Creek
Monumental Creek	Rapid River	Fish and Hungry Creek
Smith Creek	French Creek	Clear Creek
Logan Creek	Slate Creek	Lolo Creek
Camas Creek	Secesh River	Little North Fork
Yellowjacket Creek	Wind River	Clearwater River
	Sabe Creek	North Fork Clearwater River
	South Fork Salmon River	River
Petition #2	Johnson Creek	Kelly-Cayuse Creeks
Selway River	East Fork of South Fork	Weitas Creek
Meadow Creek	Salmon River	Upper St. Joe River
Moose Creek & its Forks	Big Mallard Creek	Pend Oreille Lake
Running Creek	Owl Creek	Upper Priest Lake
Bear Creek	North Fork Salmon River	Kootenai River
White Cap Creek	Carmen Creek	
	Hat Creek	

Board of Health and Welfare Activities:

The Board of Health and Welfare accepted the petitions at its June 1996 regular meeting. Public notice to receive written comment on all 68 petitioned stream segments was published on July 19, 1996 and again on August 9, 1996 in six major newspapers with a closing date of September 3, 1996. The Board conducted a two-day ORW workshop at their September 9-10, 1996 regular meeting to learn more about the process from DEQ staff, the petitioners, and experienced individuals. At that meeting the Board voted to conduct hearings on a focused group of eighteen (18) stream segments. Notice of the hearings and extension of comment period was published on September 26, 1996 in seven major newspapers. Public hearings were held on October 21, 1996 in Lewiston, October 23, 1996 in Boise, October 28, 1996 in Salmon, and October 30, 1996 in Idaho Falls. Written comments were accepted until a closing date of November 6, 1996. The Board received from the petitioner a request to reconsider more than 18 stream segments. The Board announced this request for reconsideration at the hearings and asked participants in the hearings to also comment on this request. The Board at its November 1996 regular meeting decided no to reconsider any more than the 18 focus stream segments (see Appendix E). The Board reviewed the public comment and the hearing officer's report at a special meeting of the Board convened on December 6, 1996 to determine recommendations to the legislature.

Board of Health and Welfare ORW Subcommittee Activities:

In addition to the public participation steps listed above, the Board of Health and Welfare took an active role in obtaining information on the stream segments and implementation issues. The Board appointed an Outstanding Resource Water subcommittee consisting of Mr. Don Tolley, Mr. Robert Barlow, and Ms. Maureen Finnerty. The subcommittee conducted numerous fact finding meetings throughout the process. The subcommittee, after its research, made the recommendation to the Board to limit the extent of further investigation and to conduct hearings on a focus group of eighteen (18) petitioned stream segments. Appendix D contains the Board's rationale statement for limiting the stream segment number. The following list presents the 18 focus stream segments:

18 Focus Stream Segments for Hearings

- Middle Fork Salmon River
- Loon Creek
- Marble Creek
- Rapid River
- Sulphur Creek
- Elk Creek
- Marsh Creek
- Wilson Creek
- Knapp Creek
- Big Creek
- Smith Creek
- Logan Creek
- Camas Creek
- Yellowjacket Creek

- **Selway River**
- **Bear Creek**
- **White Cap Creek**
- **Running Creek**

At a special meeting of the Board of Health and Welfare held on December 6, 1996, the Board voted to recommend to the Legislature seven (7) of the 18 stream segments to be considered for ORW designation. Those seven stream segments are identified above in **bold and underlined**.

DEQ Staff Activities:

DEQ staff participated in every aspect of the process by providing technical assistance to the Board including providing maps, interpretation of rules and statutes, information gathering, and support during the public hearings. DEQ Public Affairs staff also produced press releases, display boards for the hearings, fact sheets, pamphlets, a slide presentation for the hearing, video footage, and newspaper ads.

SECTION IV

**SUMMARIES OF THE SEVEN
NOMINATED STREAM SEGMENTS**

SUMMARY

MIDDLE FORK OF THE SALMON RIVER

Stream Segment Boundaries:

The Middle Fork of the Salmon River, from the confluence of Bear Valley Creek and Marsh Creek to the Salmon River.

Qualities of Significance

The Middle Fork (MF) of the Salmon River has national significance having been designated by Congress as a Wild and Scenic River. The MF Salmon River is also an important water body within the Frank Church River of No Return Wilderness (see map on page 5). It attracts recreationists and tourism dollars from throughout the world. A float trip industry with an estimated income of \$4.9 million (1991 est.) and employing nearly 150 people seasonally (1991 est.) has developed on the river. 1991 estimates indicate that over 9,000 individuals floated the river with over 5,000 employing the services of outfitters. 1996 web-site information from the Internet indicated that as many as 13 outfitters and guides work in the area. As Idaho's premier backcountry whitewater river, the MF Salmon River is of very high value to the state.

The MF Salmon River is also ecologically significant. It provides primarily rearing habitat for wild anadromous salmon and steelhead trout at pre-molt stage. These are some of the last wild stocks not affected by the introduction of hatchery fish. Additionally, the MF Salmon River contains important westslope cutthroat and bull trout fisheries.

Point and Nonpoint Source Activities and the Effects of ORW Designation:

Nonpoint source activities which affect the MF Salmon River are primarily recreational activities and some associated pack-animal grazing. These existing nonpoint source activities would continue under ORW designation. Currently, outfitters, guides, and private parties utilizing the river must meet rules outlined in the wild river and wilderness management plans developed by the U.S. Forest Service. Provided activities do not substantially increase, these rules should suffice. Substantially increased activities, as well as new activities will require the use of ORW-best management practices developed by the designated state agencies. No new nonpoint source activities are anticipated along the MF Salmon River at this time.

Existing Water Quality Data:

The primary source of water quality data is from the Challis National Forest. The Forest has collected water quality data sporadically over a 20 year period related to management of recreational activities during the summer. The data suggests that the water is of high quality and meets standards for swimming.

Public Comment Specific to this Segment:

The MF Salmon River enjoys the most widespread support of any of the stream segments under consideration based on public comment (see Hearing Officer's Report and Public Comment Summary, Chapters VI & VII). Almost 80% of all 139 written comments supported ORWs in general. Of that support base 56% supported all petitioned water bodies and 44% named specific water bodies. Of those supporting specific water bodies, 72% included the MF Salmon River. The Idaho Mining Association has indicated that they continue to support ORW designation for the MF Salmon River segment. Less than three dozen commentors from both the written correspondence and the hearings did not support the designation of the MF Salmon River, and usually that was in the context of not supporting the ORW concept or any of the petitioned waters.

SUMMARY

LOON CREEK

Stream Segment Boundaries:

The entire Loon Creek from its headwaters to where it joins with the MF Salmon River.

Qualities of Significance

Loon Creek is a high quality water located almost entirely within the Frank Church River of No Return Wilderness (see map on page 5). According to Idaho Fish and Game, Loon Creek is important habitat for chinook salmon, steelhead, bull trout, and westslope cutthroat. The US Forest Service supported ORW status for Loon Creek indicating that while there are some recreational activities in the area, the high water quality is maintained.

Point and Nonpoint Source Activities and the Effects of ORW Designation:

Because of its location within wilderness, activities are minimal. The drainage contains private land with airstrips, two guard stations, eight campgrounds, and recreational trail and river use. There is also a road that parallels the creek. No effects from ORW designation are anticipated.

Existing Water Quality Data:

There may be some specific water quality data associated with a study of stream ecology and wildfires conducted by Richards & Minshall, 1992. Information indicates that water quality is high.

Public Comment Specific to this Segment:

Loon Creek is included in general majority support for the petitioned stream segments. The US Forest Service has indicated support for this specific water body.

SUMMARY

WILSON CREEK

Stream Segment Boundaries:

The entire Wilson Creek from its headwaters to where it joins with the MF Salmon River.

Qualities of Significance

Wilson Creek is a high quality water located entirely within the Frank Church River of No Return Wilderness (see map on page 5). According to Idaho Fish and Game, Wilson Creek is important habitat for chinook salmon, steelhead, bull trout, and westslope cutthroat. The US Forest Service supported ORW status for Wilson Creek indicating that while there are some recreational activities in the area, the high water quality is maintained.

Point and Nonpoint Source Activities and the Effects of ORW Designation:

With the exception of hiking trails and a campground, there appear to be no other activities affecting Wilson Creek. No effects from ORW designation are anticipated.

Existing Water Quality Data:

No information is available, however, water quality is generally assumed to be high.

Public Comment Specific to this Segment:

Wilson Creek is included in general majority support for the petitioned stream segments. The US Forest Service has indicated support for this specific water body.

SUMMARY

SELWAY RIVER

Stream Segment Boundaries:

The entire Selway River, from its headwaters to the confluence with the Lochsa River.

Qualities of Significance

Approximately three-quarters of the length of the Selway River is contained within the Selway-Bitterroot Wilderness Area (see map on page 7) and is designated as a Wild and Scenic River. This area is managed by the Nez Perce National Forest. The remaining one-quarter of the river from the wilderness boundary just above Meadow Creek to the confluence with the Lochsa River is within the Nez Perce National Forest.

The Selway River has national significance as a recreational river. That portion from Paradise Ranger Station to Selway Falls supports whitewater float trips. In 1996, 455 private rafters and 620 commercial rafters floated the river for a total of 3,027 use days. In 1995, there were approximately eight outfitters and guides working in the area.

The river is of high ecological significance as well, supporting the production of anadromous chinook salmon and steelhead trout. The Selway River is considered important to the restoration of the chinook salmon because of the pristine water quality and habitat conditions. Additionally, the Selway River contains important westslope cutthroat and bull trout fisheries.

Point and Nonpoint Source Activities and the Effects of ORW Designation:

The primary activities within the wilderness area are recreational uses such as hiking and whitewater rafting. These activities are subject to the same provisions as described under the Middle Fork of the Salmon River. There are approximately four airstrips, some associated with private lodges and land. The Macgruder corridor road parallels the river near the headwaters and leads to a guard station and campground.

Outside the wilderness boundary, a road parallels the river to Selway Falls. There are 20 or more campgrounds along this stretch of the river. There are two guard stations, one of which has a sewage treatment plant that may discharge to the river. The US Forest Service has indicated that although they do not oppose ORW status for the lower 22 miles of the river outside wilderness, there is a concern regarding their ecosystem management activities and ORW status implications.

Existing Water Quality Data:

The US Forest Service has indicated that the Selway River is managed as a very high water quality river. Although the river has inherently low biological productivity and high natural variation in sediment yield, it is highly favorable for cold water biota and salmonid spawning and rearing. Fish habitat is in excellent condition.

Public Comment Specific to this Segment:

The Selway River enjoys almost as much public support as the MF Salmon River. Both rivers are specifically mentioned in many letters of support. (See Hearing Officer's Report and Public Comment Summary, Chapters VI & VII.)

SUMMARY

BEAR CREEK

Stream Segment Description:

Includes the entire length of Bear Creek from its headwater to where it joins with the Selway River.

Qualities of Significance

Almost all of Bear Creek is within the Selway-Bitterroot Wilderness boundary (see map on page 7).

According to Idaho Fish and Game, Bear Creek contains chinook salmon, steelhead, bull trout, and westslope cutthroat.

Point and Nonpoint Source Activities and the Effects of ORW Designation:

Although there is one campground located near the headwaters, generally recreational hiking may be the only activity in the area. No effects from ORW designation are anticipated.

Existing Water Quality Data:

The US Forest Service considers Bear Creek to be of high water quality with fish habitat in excellent condition.

Public Comment Specific to this Segment:

Bear Creek is included in general majority support for the petitioned stream segments. The US Forest Service has indicated support for this specific water body.

SUMMARY

WHITE CAP CREEK

Stream Segment Boundaries:

Includes the entire length of White Cap Creek from its headwater to where it joins with the Selway River.

Qualities of Significance

Almost all of White Cap Creek is within the Selway-Bitterroot Wilderness boundary (see map on page 7).

According to Idaho Fish and Game, Bear Creek contains chinook salmon, steelhead, bull trout, and westslope cutthroat.

Point and Nonpoint Source Activities and the Effects of ORW Designation:

Two to three miles at the mouth of White Cap Creek occur outside of the wilderness boundary and are associated with a guard station and campground at the end of the Macgruder corridor road. No other activities other than recreational hiking are known to occur. No effects from ORW designation are anticipated.

Existing Water Quality Data:

The US Forest Service considers White Cap Creek to be of high water quality with fish habitat in excellent condition.

Public Comment Specific to this Segment:

White Cap Creek is included in general majority support for the petitioned stream segments. The US Forest Service has indicated that although they do not oppose ORW status for White Cap Creek, they believe their management plans are sufficient to protect the high quality of this specific water body.

SUMMARY

RUNNING CREEK

Stream Segment Boundaries:

Includes the entire length of Running Creek from its headwater to where it joins with the Selway River.

Qualities of Significance

The lower half of Running Creek is within the Selway-Bitterroot Wilderness boundary (see map on page 7).

According to Idaho Fish and Game, Bear Creek contains chinook salmon, steelhead, bull trout, and westslope cutthroat.

Point and Nonpoint Source Activities and the Effects of ORW Designation:

There is an airstrip and a road adjacent to a small portion of Running Creek. No other activities other than recreational hiking are known to occur. No effects from ORW designation are anticipated.

Existing Water Quality Data:

The US Forest Service considers Running Creek to be of high water quality with fish habitat in excellent condition.

Public Comment Specific to this Segment:

Running Creek is included in general majority support for the petitioned stream segments. The US Forest Service has indicated support for this specific water body.

SECTION V
PETITIONS



IDAHO CONSERVATION LEAGUE

RECEIVED

MAY 31 1996

State of Idaho
Board of Health and Welfare

HEALTH & WELFARE
OFFICE OF THE DIRECTOR

Idaho Conservation League) **Petition to Designate**
) **the Middle Fork of the**
) **Salmon River and 15**
Petitioner) **named tributaries as**
) **Outstanding Resource**
May 31, 1996) **Waters**

The Idaho Conservation League hereby petitions the Idaho Board of Health and Welfare to recommend that the Middle fork of the Salmon River and 15 named tributaries be designated by the Idaho Legislature as outstanding resources waters. The tributaries named in this petition are listed below.

The Idaho Conservation League (ICL), with a membership of approximately 3,000 members, is a statewide organization dedicated to preservation and wise use of Idaho's natural resources. Many ICL members use the Middle Fork of the Salmon River and its tributaries for recreational, nature study, aesthetic, and business purposes.

I. Introduction

The Middle Fork of the Salmon River is Idaho's most famous and spectacular river basin. It is generally recognized as being Idaho's most outstanding national resource and known for having exceptional recreational and ecological significance.

The Middle Fork contains more anadromous fish habitat than any other watershed in the Salmon River Basin, and its salmon and steelhead runs form the backbone of Idaho's remaining wild anadromous fish stocks. These fish migrate more than 800 miles from the ocean to spawn at elevations approaching 7,000 feet. The basin not only includes critical salmon and steelhead habitat, but also supports healthy populations of genetically pure bull and cutthroat trout, and may support a relict population of anadromous pacific lamprey.

Water related recreation in the Middle Fork basin is one of the mainstays of Central Idaho's economy. Every year thousands of visitors from throughout the world travel to the Middle Fork basin to enjoy boating, fishing, hiking, hunting, and other activities. The Middle Fork is a designated federal Wild and Scenic River.

The Middle Fork has high quality water, due in large part to its remoteness and protection afforded it by the surrounding Frank Church River of No Return

Wilderness. In addition, the Upper Columbia River Basin Ecosystem Management Project identifies the Middle Fork basin as having high ecological and hydrologic integrity. Many tributaries of the Middle Fork, mostly those originating outside the wilderness, are threatened by a wide range of human activities. Both point and non-point sources, such as mining, livestock grazing, roadbuilding, and logging could degrade water quality in the Middle Fork basin.

This petition is intended to ensure that human activities do not degrade the water quality of these unprotected tributaries and the Middle Fork proper. The petition is not intended to stop human activities. Most of the streams named in this petition include non-wilderness lands within their drainages. ICL selected the named streams in this petition on the basis of their unique values and potential threats; hundreds of smaller streams in the watershed are not named in this petition.

II. Names and Boundaries of Streams Nominated for Outstanding Resource Water Status

<u>Name</u>	<u>Lower Boundary</u>	<u>Upper Boundary</u>
Mid. Fk. Salmon	Salmon River	Bear Valley/Marsh Cr.
Loon Creek	M.F. Salmon	Headwaters
Marble Creek	M.F. Salmon	Headwaters
Rapid River	M.F. Salmon	Headwaters
Sulphur Creek	M.F. Salmon	Headwaters
Bear Valley Creek	M.F. Salmon	Headwaters
Elk Creek	Bear Valley Creek	Headwaters
Marsh Creek	M.F. Salmon	Headwaters
Wilson Creek	M.F. Salmon	Headwaters
Knapp Creek	Marsh Creek	Headwaters
Big Creek	M.F. Salmon	Headwaters
Monumental Creek	Big Creek	Headwaters
Smith Creek	Big Creek	Headwaters
Logan Creek	Big Creek	Headwaters
Camas Creek	M.F. Salmon	Headwaters
Yellowjacket Creek	M.F. Salmon	Headwaters

III. Why designate these streams as Outstanding Resource Waters?

This petition proposes a watershed approach to ORW designation because the outstanding values of the Middle Fork basin are not limited to the Middle Fork mainstem. The bulk of the basin's spawning and rearing habitat for both anadromous and resident fish is located in tributaries of the Middle Fork. These tributaries independently support important recreational values and contribute pure water to the Middle Fork mainstem.

One of the primary purposes of enabling legislation for the Frank Church River of No Return Wilderness was to protect the watershed of the Middle Fork of

the Salmon River from degradation (see Public Law 96-312 sec. 9(a)). The non-wilderness portions of the Middle Fork basin were excluded from the legislation because they had roads or other disturbances that made them ineligible for wilderness designation, not because they lacked exceptional resource values. ORW status offers a way for the State of Idaho to provide protection that will complete the goal of protecting the Middle Fork watershed. ORW status is not intended to eliminate resource exploitation activities outside the wilderness, such as mining and grazing. Rather, we intend it to ensure that activities be conducted in a fashion that protects water quality.

We enclose the most recent Salmon River Basin Status Report dated 1991 for your reference and will offer the most recent Beneficial Use Reconnaissance Project data when they become available.

A) The Middle Fork of the Salmon River Basin supports outstanding anadromous fish resources.

The Middle fork of the Salmon is the most important anadromous fish producing watershed in Idaho and perhaps in the Columbia River Basin, both in terms of the number and the genetic integrity of the fish produced. The salmon and steelhead stocks of the Middle Fork basin are some of the last truly wild runs of anadromous fish remaining in the entire Columbia River Basin. The runs are described as "wild" because they have never been supplemented by hatchery fish. Thus the genetic integrity of salmon and steelhead of the Middle Fork basin had never been compromised by the introduction of hatchery stock.

The importance of the Middle Fork gene pool cannot be over-emphacized. anadromous fish endure tremendous rigors during spawning, rearing, and migration to and from the Gulf of Alaska. Only a tiny fraction of salmon and steelhead fry survive to return and spawn in the tributaries of the Middle Fork. The highly evolved traits necessary for survival in this difficult environment are passed from generation to generation. Relentless natural selection has adapted the wild stocks to be the most productive in their specific spawning habits and migration routes. These wild fish possess a significant advantage over hatchery dependent stocks which have not been selected by their ability to survive in the natural environment of the Middle Fork. These genetic considerations have led fisheries managers to manage the Middle Fork basin for wild fish with no hatchery supplementation. The continued genetic integrity of the Middle Fork stocks is important for the continued productivity of stocks throughout the Salmon River country.

The severely depressed status of both Idaho chinook and steelhead populations lends urgency to this petition. This is compounded by the listing as endangered of Snake River chinook salmon stocks and the likely listing of Snake River steelhead as threatened under the Endangered Species Act. The status of pacific lamprey is less clear, as they have been less studied, but the lamprey is probably in worse shape than salmon and steelhead stocks.

B) The Middle Fork of the Salmon River Basin supports outstanding resident fish resources.

Healthy populations of both bull trout and westslope cutthroat trout occur in the Middle Fork of the Salmon River and its tributaries. Both of these trouts require cold, clean water and excellent habitat to survive. And both species have

suffered from declining habitat quality across much of their range. With bull trout, decline has occurred to the point that the U.S. Fish and Wildlife Service declared listing the species under the Endangered Species Act as "warranted but precluded" due to other political priorities. In addition, Idaho Governor Batt has issued a draft Bull Trout Conservation Plan to rescue the fish from the brink of extinction. The Governor's plan identifies the Middle Fork of the Salmon River and several Middle Fork tributaries (Big, Marble, Bear Valley, Wilson, Camas, Loon Creeks) as the highest priorities for bull trout recovery. These and several other streams across the state are called "focal habitats" which have healthy bull trout populations and high quality habitat. The plan calls these focal habitats the best of what is left.

Since bull trout recovery is a priority for the Watershed Advisory Groups and Basin Advisory Groups, granting ORW status for the Middle Fork basin will simplify the job of WAGs and BAGs as it relates to bull trout.

The Idaho Department of Fish and Game recognizes significant declines in westslope cutthroat trout habitat in Idaho. Many of the last strong and genetically pure strains of westslope cutthroat trout inhabit streams named in this petition. ORW status for these streams would help avoid further declines in Idaho's westslope cutthroat trout populations and therefore the need for their protection under the Endangered Species Act.

C. The Middle Fork basin has outstanding recreational values.

More than 8,000 people float the Middle Fork each year, according to the Challis National Forest. The purity of the river, excellent fishing, whitewater challenges, and the wild character of the area are the prime attractions. Without these the Middle Fork would not receive the national recognition and visitation that it does. Local economies would be hurt if the popularity of boating the Middle Fork declined due to water quality degradation.

The basin's tributaries, independent of their fisheries resources, are an important economic factor because they supply clean water to the Middle Fork. In addition, many visitors to the Middle fork take side trips up the tributaries to fish, collect water, and explore. Many of the finest trails in the wilderness follow tributaries such as loon, big, monumental, and other tributary creeks.

IV. Current Water Quality and Threats

Mining currently occurs or is proposed in headwaters of Smith, Logan, Monumental, Marble, Loon, Yellowjacket Creeks and Rapid River, while mining claims and the threat of new mining exists for most of the other nominated tributaries. Roads contribute sediment to Loon, Marsh, Bear Valley, Monumental, Big, Smith, Logan, Camas, and Yellowjacket Creeks. Substantial logging and some associated road building is proposed on the Salmon/Challis National Forest adjacent to designated wilderness. Seasonal livestock grazing occurs along streams such as Camas and Elk Creeks, both inside and outside the wilderness.

Despite the threats and a few severe problems (eg. mine related pollution of Blackbird Creek and Mule Creek), most beneficial uses in the basin are now fully or partially supported (see 1991 Salmon River Basin Status Report pages 4-11).

The Beneficial Use Reconnaissance Project will provide more up to date information when it becomes available to the public.

However, now is the time to give the Middle Fork and its major tributaries the additional protection against point and non-point source pollution that it deserves. The time to protect Idaho's most valuable and beautiful river from degradation is before the threats become disasters. The Middle Fork and its tributaries are a national treasure which should be fully protected.

V. Conclusion

For the foregoing reasons the Idaho Conservation League respectfully urges the Idaho Board of Health and Welfare to recommend that the streams identified in this petition be designated as Outstanding Resource Waters. Granting this petition will help protect an important part of Idaho's natural heritage for future generations. Thank you.

Submitted by : 
Mike Medberry
State Issues Director

May 31, 1996

Table 2: Summary of threats to bull trout habitat and populations.

HABITAT MODIFICATION		
Activity	Potential Disturbances	Potential Habitat Responses
Timber Harvest	<ul style="list-style-type: none"> removal of riparian zone canopy cover soil disturbance, increased erosion of fine sediments. alteration of total basin vegetation cover 	<ul style="list-style-type: none"> potentially increased summer water temperatures & formation of anchor ice. potential decrease in interstitial spaces and pools (spawning and rearing habitat) potential alteration of timing and magnitude of peak flows (hydrology)
Road Development	<ul style="list-style-type: none"> surface erosion, increased fine sediment inputs. destabilization of upslope areas increased coarse and fine sediment inputs. blockage of migratory corridors (culverts) 	<ul style="list-style-type: none"> potential decrease in interstitial spaces and pools (spawning and rearing habitat) potential for major channel disruption & loss of all habitat with large erosion events. loss of migratory population component.
Livestock grazing	<ul style="list-style-type: none"> bank damage in-channel stream bed disruption removal of bank vegetation 	<ul style="list-style-type: none"> decreased bank stability & direct inputs of fine sediments. loss or disruption of summer rearing habitat. loss of cover, potential for increased summer water temperatures & formation of anchor ice.
Mining	<ul style="list-style-type: none"> streambed disturbance fine sediment inputs chemical runoff 	<ul style="list-style-type: none"> loss or disruption of spawning & summer rearing habitat. loss or disruption of spawning & summer rearing habitat. creation of chemical barriers &/or direct fish mortality.
Dams: Hydroelectric Development & Irrigation diversion	<ul style="list-style-type: none"> blockage of migratory corridors increased temperatures, fine sediments and nutrients with waste water returns channel dewatering loss of anadromous fish 	<ul style="list-style-type: none"> loss of migratory population component. overall decrease in habitat condition direct mortality of redds, loss of available habitat loss of anadromous prey base
Urbanization, Recreation & Other	<ul style="list-style-type: none"> reduction / removal of riparian vegetation streambed damage dewatering channel stability 	<ul style="list-style-type: none"> potentially increased summer water temperatures & formation of anchor ice.
UTILIZATION/ HARVEST		
Fishing Harvest	<ul style="list-style-type: none"> direct mortality 	<ul style="list-style-type: none"> direct mortality
DISEASE, PREDATION, COMPETITION		
Exotic species introductions	<ul style="list-style-type: none"> competition hybridization predation 	<ul style="list-style-type: none"> displacement from most favorable habitats sterile hybrids direct mortality

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Recycled Petition Finding for a Petition To List the Bull Trout as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month recycled petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 12-month recycled petition finding for a petition to list the bull trout (*Salvelinus confluentus*) under the Endangered Species Act of 1973, as amended. The Service finds that sufficient information is available on the biological vulnerability and threats to the species to support a warranted finding to list bull trout as a distinct population segment within the conterminous United States. After review of all available scientific and commercial information, the Service finds that listing this species is warranted, but precluded due to other higher priority listing actions. The Service continues to seek data and comments from the public on the status and threats to this species.

DATES: The finding announced in this document was made on May 31, 1995. Comments and information may be submitted until further notice.

ADDRESSES: Data, information, comments, or questions concerning this finding should be submitted to the Idaho State Supervisor, U.S. Fish and Wildlife Service, 4896 Overland Road, Room 576, Boise, Idaho, 83705. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Idaho State Supervisor (see ADDRESSES section), at 208/334-1931.

SUPPLEMENTARY INFORMATION:**Background**

Section 4(b)(3)(B)(iii) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), provides that the Service may make "warranted but precluded" findings on petitions to revise the Lists of Endangered and Threatened Wildlife and Plants if an immediate proposed rule is precluded by other pending proposals. Section 4(b)(3)(C)(i) of Act requires that any petition for which a

precluded" is made should be treated as if it was resubmitted on the date such finding was made. As a result, the Service must make one of the findings described in section 4(b)(3)(B) within 12 months of the most recent "warranted but precluded" finding (50 CFR 424.14(b)(4)). On June 10, 1994 the Service published a notice of petition finding (59 FR 30254) that determined listing a distinct vertebrate population segment of bull trout (*Salvelinus confluentus*) residing in the conterminous United States is "warranted, but precluded" due to other higher priority listing actions. This finding was made on a petition received October 30, 1992 from the Alliance for the Wild Rockies, Inc., Friends of the Wild Swan, and Swan View Coalition requesting that the bull trout be listed as an endangered species throughout its range. The Service determined that the threats facing the bull trout were imminent but of moderate magnitude. Therefore, in accordance with the Service's listing priority system (48 FR 43098), the listing priority number assigned to this population was 9.

Following the June 10, 1994 "warranted but precluded" finding (59 FR 30254), the Service solicited and continued to evaluate new information regarding the status of bull trout, as well as information pertinent to the present and future threats facing the species. In January 1995, the Service reevaluated the listing priority for the bull trout in the conterminous United States. At this time, there was uncertainty over the status of pending State and Federal actions, such as PACFISH and a new emphasis on timber harvest proposals in areas damaged by fires and insects. Following this reevaluation, the Service concluded that threats previously considered moderate in several watersheds were now of high magnitude and that the majority of the populations were subject to imminent threats of high magnitude. On January 31, 1995, the service elevated the listing priority for the species from 9 to 3.

In evaluating the current status of the bull trout to make the required annual recycled petition finding, information received from a variety of agency and private sources has been fully considered. The Service has carefully assessed the best scientific and commercial information available and has determined that sufficient information exists on the biological vulnerability and threats to the species to continue to support a warranted finding to list bull trout within the conterminous United States. While some of the remaining bull trout

populations with one exception face one or more threats that may result in their future decline.

In conjunction with the determination that listing the bull trout within the conterminous United States was warranted, the Service evaluated the magnitude and imminence of threats faced by bull trout populations in over 60 watersheds in the course of assigning a priority for listing. While watersheds may contain several populations, the Service used watersheds as the evaluation units because in most cases threats in a watershed apply to all populations.

Actions recently taken at both the Federal and State levels are beginning to reverse the long-term decline of bull trout. The Forest Service and Bureau of Land Management, by implementing the President's Forest Management Plan, PACFISH, the Inland Native Fish Strategy and the Eastside Columbia Basin Environmental Impact Statements' recommendations, have initiated activities that will reduce the magnitude of threats to bull trout. In addition, the States of Idaho, Montana, Oregon, and Washington, through their development of bull trout protection agreements, are setting in place activities that will assist the recovery of the bull trout. The Service believes that these activities provide conservation actions and management strategies that will recover and sustain populations of the bull trout.

Based on an evaluation of the bull trout's status in the known watersheds of occurrence and actions undertaken by Federal agencies and the States, the Service's evaluation has determined that the majority of bull trout populations within the conterminous United States faces imminent threats of moderate magnitude. Therefore, bull trout populations residing within the conterminous United States have been assigned a listing priority number of 9.

Recently enacted legislation (P.L. 104-6) imposed a listing moratorium of the remainder of Fiscal Year 1995, and rescinded \$1.5 million from the Service's Fiscal Year 1995 listing funds. In response to this legislation, the Service will focus its limited resources on category 1 species, especially those with listing priority numbers of 2 or 3. Therefore, a listing proposal for bull trout in the conterminous United States remains "warranted but precluded."

Section 4(b)(3)(B)(iii) of the Act provides that the Service may make "warranted but precluded" findings only if it can demonstrate that expeditious progress is being made on other listing actions. Since October 1,

listing of 118 species and finalized the listing of 182 species. The Service believes this demonstrates expeditious progress on other listings.

References Cited

A complete list of references used in the preparation of this finding is available, upon request, from the Idaho State Office (see ADDRESSES section).

Author. The primary authors of this document are Patricia Klahr and Steve Duke (see ADDRESSES section); Bob Hallock, Northern Idaho Office, 11103 East Montgomery Drive, Suite 2, Spokane, WA; Lori Nordstrom, Helena Field Office, P.O. Box 10023, Helena, MT; Shelley Spalding, Washington State Office, 3704 Griffin Lane SE, Suite 102, Olympia, WA.

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 et seq.)

Dated: June 6, 1995.

Mollie H. Beattis,

Director, Fish and Wildlife Service.

(FR Doc. 95-14284 Filed 6-9-95; 8:45 am)

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition To List the Plant *Lathyrus grimesii* (Grimes vetchling) as Endangered in Nevada

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 12-month finding for a petition to list *Lathyrus grimesii* (Grimes vetchling) as an endangered species under the emergency provisions of the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information concerning the status of the species, the Service finds that listing *Lathyrus grimesii* is not warranted.

DATES: The finding announced in this document was made on May 2, 1995.

ADDRESSES: Data, information, comments, or questions concerning this petition should be submitted to the Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 4600 Kietzke Lane, Building C-125, Reno, Nevada 89502. The petition, findings, and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Janet Bair, staff biologist, at the above address, or telephone 702-784-5227.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information, a finding be made within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals. Such 12-month findings are to be published in the Federal Register.

On May 19, 1993, the Service received a petition dated May 10, 1993, to emergency list the plant *Lathyrus grimesii* (Grimes vetchling) as an endangered species. The Service's finding that substantial information existed indicating the petitioned action may be warranted, was published in the Federal Register on July 11, 1994 (59 FR 35304). A status review was initiated at that time.

Lathyrus grimesii, a member of the pea family (Fabaceae), is a perennial herb known only from the Independence Mountains and vicinity in Elko County, Nevada. At the time the petition was submitted to the Service, the total distribution of *Lathyrus grimesii* was believed to be restricted to three or four small populations located within an area smaller than 2 square kilometers (approximately 1 square mile) in the Dorsey Creek drainage of the Independence Mountains. All but one of these populations were located in the immediate vicinity of an area proposed for gold mine exploration.

Based on these data, the petition and supporting information suggested all known populations of *Lathyrus grimesii* were likely to be affected by gold exploration or mine development. However, the Forest Service, in conjunction with other agencies and concerned entities, modified the project so as to avoid all direct and most indirect impacts to the *Lathyrus grimesii* populations. In December 1993 the Service was notified that minerals exploration in this area was not successful and no further exploration was planned.

Data collected by Humboldt National Forest, Independence Mining Company, Inc., and Nevada Natural Heritage Program during the summers of 1993 and 1994 indicates that *Lathyrus*

grimesii is more abundant than previously believed. Aerial and ground field surveys resulted in identification of 67 total populations of *Lathyrus grimesii*, located in nine separate drainages in the Independence Mountains. These populations collectively cover approximately 150 to 200 hectares (400 to 500 acres), distributed over an area of about 130 square kilometers (50 square miles) (James Morefield, Nevada Natural Heritage Program, in litt. 1994). In addition, a separate population occurs on Wilson Peak in the neighboring Bull Run Mountains. Approximately 30 percent of the known populations occur on private lands, while approximately 70 percent occur on lands under Forest Service management. A very small proportion of the known populations (approximately 1 percent) occur on lands managed by the Bureau of Land Management in the Bull Run Mountains.

The existence of disseminated gold has resulted in mine claims throughout the Independence Mountains as well as exploration projects and mine development in several areas. The recently discovered populations of *Lathyrus grimesii* occur on lands with high mineral potential (Dean Morgan, Humboldt NF, Mountain City Ranger District, in litt. 1994). However, while mine claims have been established in this area, exploration has not occurred. The few roads into the area are located primarily on private inholdings. Any extensive exploration of this area will require building new roads or agreements with the private landowners for access. Humboldt National Forest has not received any new proposals for mine exploration, development, or associated activities in areas populated by *Lathyrus grimesii*.

Livestock grazing is presently a dominant land use in the vicinity of the recently discovered populations. Grazing effects were noted as moderate to severe at some sites in 1994, and cattle were observed grazing on the dried stems of *Lathyrus grimesii* within one population (James Morefield, in litt. 1994). Grazing of green stems during flowering and fruiting has not been observed. Humboldt National Forest has notified ranchers of the presence of *Lathyrus grimesii* and advised them to minimize livestock movements through the populations (Jim Nelson, Humboldt NF, in litt., 1994).

The petition indicated that *Lathyrus grimesii* qualified for listing, in part, because of the inadequacy of existing regulatory mechanisms. In April 1994, *Lathyrus grimesii* was added to the Forest Service's Intermountain Region's



IDAHO CONSERVATION LEAGUE

RECEIVED

MAY 31 1996

State of Idaho
Board of Health and Welfare

HEALTH & WELFARE
OFFICE OF THE DIRECTOR

Idaho Conservation League) **Petition to Designate**
) **the Selway River**
) **and 5 tributaries**
Petitioner) **as Outstanding Resource**
) **Waters**
May 31, 1996)

The Idaho Conservation League hereby petitions the Idaho Board of Health and Welfare to recommend that the Selway River and 5 tributaries be designated by the Idaho Legislature as Outstanding Resource Waters. The tributaries named in this petition are the Selway River in its entirety, along with Meadow Creek, Moose Creek, Running Creek, Bear Creek, and White Cap Creek.

The Idaho Conservation League (ICL) , with a membership of approximately 3,000 members, is a statewide organization dedicated to preservation and wise use of Idaho's natural resources. Many ICL members use the Selway River and its tributaries for fishing, recreation, aesthetic, and business purposes.

I. Introduction

The Selway is Idaho's wildest river and runs through one of the nations premier wilderness areas, the 1.1 million acre Selway-Bitterroot Wilderness. The wilderness supports bear, cougar, elk, moose, wolverine, salmon, bull trout, steelhead, and cutthroat trout. The area also supports diverse recreational opportunities which include whitewater boating, hiking, fishing, hunting, outfitting, horse packing, and overnight lodging. For the Nez Perce Tribe, the Selway provides a staging place for cultural fishing ceremonies. Also along the river are historic structures and archaeological sites. The river and wilderness provide a natural laboratory for scientific research. Each of these values depends upon maintaining the river's supply of clear, clean, cool water.

The Selway River and its tributaries define the ideal for Outstanding Resource Waters. If the segments we nominate in this petition cannot be designated as ORWs, then the State of Idaho is incapable of protecting any water in the state from degradation. Here the conflicts are low--for the time being--and the resource values extremely high. This petition is the litmus test of whether the

state has the political will to implement an "anti-degradation policy" under the Clean Water Act. There are no two river basins in Idaho which evoke more pride or public support for protection than the Selway and Middle Fork Salmon Rivers. To paraphrase writer Edward Abbey, these two rivers need no defense, they need more defenders. In this petition, ICL asks the Department of Health and Welfare and the Idaho Legislature to reflect the public support for clean water and wild places by designating the Selway and its 5 tributaries as Outstanding Resource Waters.

II. Name and location of streams included in this Petition

<u>Name</u>	<u>Lower Boundary</u>	<u>Upper Boundary</u>
Selway River	Lochsa confluence	Headwaters
Meadow Creek	Selway River	Headwaters
Moose Creek & its Forks	Selway River	Headwaters
Running Creek	Selway River	Headwaters
Bear Creek	Selway River	Headwaters
White Cap Creek	Selway River	Headwaters

III. Why Designate these streams as Outstanding Resource Waters?

The Selway River and its tributaries support a significant proportion of wild salmon and steelhead runs in the state of Idaho. For this reason the clean water and pristine habitat of these streams should be assured. Bull and cutthroat trout also inhabit the Selway River system and deserve the protection afforded by ORW designation. Wildlife, such as eagles, osprey, bear, otter, and fisher depend on the river's fish and water for sustenance.

The Selway is one of a small handful of the nation's best rivers for wilderness rafting and kayaking. Usage is very limited by the current permitting system which assures that a boat trip on the Selway will provide a true wilderness experience. A great part of that experience is the gin-clear water of the river and its tributaries.

Fishing on the Selway and its tributaries can be superb. The combination of fishing, hiking, hunting, and boating opportunities in and around the wilderness has created a valuable economy in outfitting and support for independent recreational pursuits. ICL will add current water quality data to this petition as we receive it from the State Division of Environmental Quality and the Upper Columbia River Basin Project.

IV. Current Threats

As mentioned in the introduction, the threats to the integrity of the Selway River and its tributaries are few and occur primarily outside the designated wilderness. "Forest health" concerns within the wilderness are minor due to the area's fire history and vegetation types. Outside the wilderness, in the Running Creek, Meadow Creek, and upper Selway River drainages, road construction and use, and logging threaten to degrade habitat by introducing sediment into the streams. Recreational and "hobby mining" are also a threat to water quality.

V. Conclusion

The risks to water quality in the Selway River and its 5 key tributaries will be minimized by designating them as Outstanding Resource Waters. To ignore the tributaries in this designation would be to ignore the potential problems. ICL respectfully requests that the Board recommend to the state legislature that the river and its 5 tributaries be designated as ORWs. Granting this petition will be the first step to proving that the State of Idaho can implement its "anti-degradation policy" in an ideal place: a basin that produces water of the highest quality, embodies wildness, and has few conflicts. Thank you.

Submitted by:



Mike Medberry
State Issues Director

May 31, 1996



IDAHO CONSERVATION LEAGUE

RECEIVED

MAY 31 1996

Idaho Conservation League

) **Petition to Designate**
) **46 Idaho Stream**

) **Segments Containing**
) **Bull Trout as**

Petitioner

) **Outstanding Resource**
) **Waters**

May 31, 1996

)

The Idaho Conservation League hereby petitions the Idaho Board of Health and Welfare to recommend that 46 stream segments in Idaho be designated by the Idaho Legislature as Outstanding Resources Waters (ORW). The tributaries named in this petition are listed in part II below.

The Idaho Conservation League (ICL), with a membership of approximately 3,000 members, is a statewide organization dedicated to preservation and wise use of Idaho's natural resources. Many ICL members use Idaho creeks, rivers, and lakes for fishing, recreation, aesthetic, and business purposes.

I. Introduction

ICL is nominating 46 Idaho rivers, creeks, and lakes for Outstanding Resource Water status to protect bull trout and their habitat. Protecting bull trout waters will also have the important side effect of preserving excellent fishing for other native species such as cutthroat and rainbow trout in many of Idaho's most productive trout streams. ICL believes that Idaho's bull trout streams represent an outstanding state and national resource that deserve protection.

Governor Batt stated in a January 1996 letter regarding his Bull Trout Conservation Plan that, "The bull trout is an Idaho native, and we have a unique opportunity to protect and restore this fish before it is too late.... The state does not want to see the species listed under the federal Endangered Species Act. Rather, we would like to restore the fish as a clear signal that we can manage our own affairs without excessive mandates from the federal government....My goal therefore, is to remove threats to the bull trout and its habitat, to maintain the healthy populations that we have, and to restore populations that were damaged in the past." ICL has taken the Governor's lead in offering these ORW nominations and used Idaho Fish and Game information to identify the rivers, creeks, and lakes where healthy populations of bull trout currently exist.

ORW status for the bull trout streams identified in the Governor's plan would complement that plan and the proposed bull trout beneficial use. ICL's primary goals are to recover bull trout, to keep them from requiring listing under

the Endangered Species Act, and to reestablish a fishing season for them within ten years. We believe that establishing ORW status for all key bull trout watersheds will prove to be the most expeditious way to recover the species while minimizing costs to private landowners and Idaho taxpayers.

ORW recommendations by Watershed Advisory Groups may also be the most direct means of addressing bull trout recovery. This is especially true because WAG and Basin Advisory Group members are already overworked and must sort through many other priorities for cleaning up polluted ("high priority" 303d) streams. ORW designations are probably best used to maintain the "focal habitats," which the Governor's Bull Trout Plan calls *"the best of what is left,"* but they may also be applied, as we recommend, to improve some important habitats that are degraded. Where point source discharges are damaging key bull trout watersheds, Special Resource Water designations will also make sense.

II. Name and location of streams included in this Petition

<u>Name</u>	<u>Lower Boundary</u>	<u>Upper Boundary</u>
Jarbidge River	Bruneau River	Headwaters
Little Lost River	Badger Creek	Headwaters
Snake River	Sheep Creek	Deep Creek
M.F. Boise River	Arrowrock Res.	Headwaters
N.F. Boise River	M.F. Boise	Headwaters
S.F. Boise River	Rattlesnake Cr.	Headwaters
M.F. Payette River	S.F. Payette	Headwaters
Squaw Creek	Payette River	Headwaters
Deadwood River	S.F. Payette	Headwaters
Salmon River	Fiddle Creek	Headwaters
Little Salmon River	Salmon River	Hazard Creek
Rapid River	Little Salmon River	Headwaters
French Creek	Salmon River	Klip Creek
Slate Creek	Salmon River	Headwaters
Secesh River	S.F. Salmon River	Lake Cr. Hdwtrs
Wind River	Salmon River	Headwaters
Sabe Creek	Salmon River	Headwaters
S. F. Salmon River	Salmon River	Headwaters
Johnson Creek	E.F.S.F. Salmon River	Headwaters
East Fork S.F. Salmon	S.F. Salmon River	Headwaters
Big Mallard Creek	Salmon River	Headwaters
Owl Creek	Salmon River	Headwaters
N.F. Salmon River	Salmon River	Headwaters
Carmen Creek	Salmon River	Headwaters
Hat Creek	Salmon River	Headwaters
Iron Creek	Salmon River	Headwaters
E.F. Salmon River	Salmon River	Headwaters

Thompson Creek	Salmon River	Headwaters
Warm Springs Creek	Salmon River	Headwaters
Yankee Fork	Salmon River	Headwaters
Pahsimeroi River	Salmon River	Headwaters
Lemhi River	Salmon River	Headwaters
S.F. Clearwater	M.F. Clearwater	Headwaters
Lochsa River	Selway confluence	Headwaters
White Sands Creek	Lochsa River	Headwaters
Fish and Hungery Cr.	Lochsa River	Headwaters
Clear Creek	M.F. Clearwater	Headwaters
Lolo Creek	Clearwater River	Headwaters
Little NF Clearwater	N.F. Clearwater	Headwaters
N.F. Clearwater	Beaver Creek	Headwaters
Kelly-Cayuse Creeks	N.F. Clearwater	Headwaters
Weitas Creek	N.F. Clearwater	Headwaters
Upper St. Joe River	Mica Creek	Headwaters
Pend Oreille Lake	Entire Lake	
Upper Priest Lake	Entire Lake	
Kootenai River	Canadian Border	Montana state line

III. Why Designate these streams as Outstanding Resource Waters?

Bull trout require clean water and relatively unimpaired habitat. According to Idaho code (16.01.02.051.03), "ORWs shall be maintained and protected from the impacts of nonpoint source activities." This is precisely what many key bull trout watersheds need to maintain clean water and high quality habitat. ORW designations will give the state authority--at a stream-specific level--to minimize impacts to critical bull trout habitat. This petition aims to draw attention to focal habitats that are fully functional for bull trout and to underscore the need for state enforcement authority.

The Boise, Salmon, Payette, and Clearwater River systems are our foremost concern because they hold the most intact and inter-connected habitat. Most of the water bodies in ICL's three ORW petitions fall into one of these river systems, although there are notable exceptions, such as the Jarbidge and Little Lost Rivers. In general, these systems contain large, continuous blocks of high quality habitat and watersheds that support multiple species. We recognize that the breadth of this proposal may generate some opposition from commodity oriented special interests, but a more modest, piecemeal approach simply will not protect bull trout or maintain the integrity of Idaho's unique rivers, creeks, and lakes. Each of the nominated water bodies retains high quality water in some reaches and suffers pollution in others. Waters that are polluted should be cleaned up; waters that are clean should remain so.

In addition to maintaining bull trout and other aquatic species, ORW status will benefit recreationists and businesses which rely on clean water. For instance, tackle shops, outfitters, boating related businesses, restaurants, federal,

state, and local agency employees, hotels, and travel related businesses all depend upon wise use of natural resources to remain profitable. Even home construction and other traditional industries like logging rely on a housing market whose vitality depends upon maintaining a high quality of life. Establishing these 46 ORWs should enhance the stability and productivity of local communities and businesses.

ICL will submit additional water quality information, including Beneficial Use Reconnaissance Project data when it is compiled, along with maps to support our nominations. We hereby incorporate by reference the ORW petitions for the Selway and Middle Fork Salmon River, since those nominations include bull trout key watersheds. The most recent Basin Status Reports from 1991 and 1994 (Panhandle basin only) provide some useful information, but are limited in scope and rather dated.

IV. Current Threats

According to the Governor's Bull Trout Conservation Plan, "Significant modifications in the habitat characteristics of 1) channel stability, 2) substrate composition, 3) cover, 4) temperature, and 5) migratory corridors should be considered a threat to the persistence of a bull trout population. Threats to bull trout persistence are linked to habitat modifications caused by timber harvest and associated road development, livestock grazing, mining, dams, hydro-electric development, and irrigation diversions. Introduction of exotic species has impacted bull trout populations through competitive interaction, predation, and hybridization. Hatchery supplementation may introduce genetic threats to wild stocks. Bull trout have suffered from historical over-harvest."

In its 1992 petition to list the bull trout under the Endangered Species Act, the Alliance for the Wild Rockies (AWR) documents the decline of bull trout in Idaho, Montana, Washington, California, Nevada, Oregon, and British Columbia. That petition states: "The most up-to-date scientific information indicates that Salvelinus confluentes is critically imperiled in the United States. This abundant evidence from highly qualified scientific experts shows beyond a doubt that the bull trout has been and continues to be in a serious decline throughout its historic range. The bull trout is now extinct in roughly half of its known range. It is seriously threatened with extinction throughout vast stretches of its remaining habitat." While definitive data is hard to come by, the AWR petition documents dramatic Idaho bull trout population declines in the Pend Oreille basin, Coeur d'Alene basin, Priest Lake Basin, Clearwater River, Kootenai River, and Salmon River.

The U.S. Fish and Wildlife Service determined in 1994 that the listing proposal was "warranted but precluded" and opined that threats facing the bull trout were "imminent but of moderate magnitude." In June 1995, the Service reevaluated the listing priority and concluded that, "threats previously considered moderate in several watersheds were now of high magnitude and that the majority of the populations were subject to imminent threats of high magnitude" (see Federal Register Vol.60, No. 112). The Service continues to assert that a

listing of the bull trout is "warranted but precluded," and acknowledges in the 1995 Federal Register Notice that, "...all (bull trout) populations with one exception face one or more threats that may result in their future decline."

Many of the threats to bull trout identified in the Governor's Bull Trout Conservation Plan are related to non-point source pollution and thus able to be affected by designation of bull trout streams as ORWs. Enclosed with this ORW nomination is Table 2 from the Governor's plan which summarizes the threats to bull trout habitat and populations.

V. Conclusion

For the foregoing reasons, the Idaho Conservation League respectfully requests that the Idaho Board of Health and Welfare recommend to the state legislature that the 46 streams identified in this nominating petition be designated as Outstanding Resource Waters under Idaho law. This step is needed to assure that Idahoans will once again enjoy a fishing season for bull trout and will ensure that recreationists and businesses continue to benefit from clean water. Granting this petition may also be the decisive step needed to protect a variety of native aquatic species, including bull trout, steelhead, salmon, lamprey, redband and cutthroat trout, which depend upon high quality water and habitat for survival. Thank you.

Submitted by:


Mike Medberry
State Issues Director

May 31, 1996

SECTION VI
HEARING OFFICER'S REPORT

OUTSTANDING RESOURCE WATER NOMINATIONS
1996

REPORT OF THE HEARING OFFICER

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REPORT OF THE HEARING OFFICER:
1996 OUTSTANDING RESOURCE WATER NOMINATIONS

Analysis of Public Comments:
A Sense of the Public

This analysis will focus on the nominations which are currently under consideration by the Board of Health and Welfare (Board). Those nominations include the Middle Fork Salmon River, and the tributaries of Loon, Marble, Sulfur, Elk, Marsh, Wilson, Knapp, Big, Smith, Logan and Camas Creek, as well as the Rapid River tributary, and the Selway River, and the tributaries of Running, Bear and White Cap Creeks.

The report has been organized and written to conform to the oral guidelines established by the Board at its meeting on November 15, 1996. Those guidelines included:

- a sense of public support and opposition to ORWs statewide, including who spoke at the hearings, and some sense of percentage breakdown
- a discussion of individual versus group comment and testimony
- presentation of potential policy issues worth consideration by the Idaho Legislature

Written Comments

A total of 139 written comments were received, with several of these comments received after the closing date of November 6, 1996. Board members may wish to consult the stamped "Received" date to determine which of these comments fall under this category. There were not very many late comments, and their inclusion does not alter the analysis contained in this report. Several of the comments represent the views of large memberships, and will be so noted. Also, some of the early comments did not address the nominations, but instead discussed procedural matters. Finally, some comments were too general to accurately ascertain whether the ORW nominations were supported or not.

One must also proceed with caution in tallying up the number of comments received on any public policy proposal such as this. The ORW process is not based on a "vote" of those who took the time to either attend the public hearings or send in written comments. Indeed the number of participants in this process, whether they participated by written, oral, or hearing attendance, is less than .1% of all registered voters in Idaho. The ORW process clearly reflects the participation of the "attentive public", rather than the public-at-large. Nonetheless, the Board of Health and Welfare did express that

some sense of public support and opposition be discussed in this hearing report.

Of the approximately 120 comments which appeared to express either support or opposition to the Idaho Conservation League (ICL) nomination, approximately 100 comments were supportive of the ICL nomination. Almost 50% of those comments named specific streams or stream segments in the letter of support. Thus, in terms of expressed public support for the ORW nominations, it is clear that a strong majority of written public comments did support the nominations, many times by referring to specific nominated streams.

The reasons for that support were not as clear. The State of Idaho Rules for ORWs (16.01.02.053.02) require that public comments "may include, but are not limited to, discussion of socio-economic considerations; fish, wildlife or recreational values; and other beneficial uses." Yet, the Idaho definition of an outstanding resource water refers to "where high quality waters constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance...." There does not appear to be an express requirement that public comments speak to the "outstanding" or "exceptional" criteria of the ORW definition, especially when nominated segments do not meet the "de facto" qualification of being in a national or state park, or a national wildlife refuge. Some comments did, however, address those criteria, while others did not. It is necessary to pay close attention to the reasons people and group representatives spoke for or against the nominations.

Individual Comments

1. Examples of general comments in support of the nomination, by Exhibit Number

"we all want clean water" 4

"lets protect the 68 of the cleanest rivers, creeks and lakes" 8

"I supportall 68 Outstanding Resource Water nominations" 12

(this was a comment which occurred numerous times)

"all of these waters deserve protection" 22

2. Examples of specific comments in support of the nomination, by Exhibit Number

"The Middle Fork of the Salmon is a river of national reputation" 5

"....the Selway provides incredible recreational opportunities" 5

"essential habitat for bull trout and other native fisheries" 11

"few rivers....can compare to the high quality experiences I have had on the Middle Fork and Selway" 18

"critical habitat....for salmon, steelhead and cutthroat trout" 25

"best water quality in the lower 48 states" 25

"habitat they provide for wildlife: bull trout, salmon, and others" 73
"I depend on our rivers and streams for recreation and my livelihood" 74
"we could drink the water directly out of the rivers (Selway area) unfiltered" 78
"hard pressed to think of a more beautiful river (Selway) 90
"money injected into the local economies through tourism" 96
"most critical waters for protection" 122
"wilderness rivers" (Selway, Middle Fork) 123
"...mining and logging not the only industries worth protecting" 137
"some of the cleanest waters in Idaho" 138

3. *Examples of general comments in opposition to the nomination, by Exhibit Number*

"undesirable side effects" 20
"shut down commercial activities", "tie the hands of the Forest Service" 24

4. *Examples of specific comments in opposition to the nomination, by Exhibit Number*

"It is not clear where such ORW designations would stop, if this criteria were broadly applied as a means test to determine ecological significance. Would all of the Salmon River Basin qualify as ORW because of the Snake river salmon listings?" 33

"how is the baseline determined, by whom, and more importantly how will it be monitored and maintained?" 104

"a concept adopted by EPA, therefore can be delayed until after the TMDLs are developed" 118

"baseline data should be collected prior to legislative action" 125

"present no scientific data on water quality" 125

Group Comments

A number of interest groups offered comments for and against this year's ORW nominations. What this report will focus on are comments which speak to specific issues of concern, either for or against the ORW nominations.

"In general, however, those streams originating in Idaho wilderness or primarily contained in Idaho Wilderness would seem to be logical candidates for ORW designation" 27, Idaho Farm Bureau

"Existing legislative remedies must be given a chance to work" 55, Idaho Farm Bureau

"standards have not been set for this classification" 34, 39, Lemhi Irrigation District, Idaho Cattle Association

"keep some of Idaho's best streams clean" 36, Sierra Club

"Idaho's premier streams" 35, Wilderness Society

"evaluate the nominations received very strictly concerning their completeness and adequacy as required by the rules" 40, Idaho Mining Association

"Our preliminary analysis of these streams (current Selway nominations) indicates little potential conflict with mineral development" 40, Idaho Mining Association

"opposes the nomination of the Selway and the five listed tributaries, because these nominations are not supported by objective, analytical water quality data" 40, Idaho Mining Association

"current nomination of Middle Fork of the Salmon and 15 of its tributaries...is of great concern to the mining industry....most promising mineralized zones..several existing mining operations and exploration programs would be directly impacted..." 40, Idaho Mining Association

"we continue to believe that the Middle Fork Salmon River deserves ORW designation" 40, Idaho Mining Association

"Our industry still views the "no lowering of water quality" standard that accompanies ORW designations as a burden of proof that is impossible to overcome before logging or some other project is started" 43, Intermountain Forest Industry Association

"...there are no ORW designations outside of designated wilderness areas" 43, Intermountain Forest Industry Association

"the Forest Service recommend a phase-in period for any new ORW to make sure that "mixing zones" and new BMP's work" 51, USFS

"The term headwaters could mean the main stem and all tributaries. This term needs clarification...."51, USFS

"responsibility for ORWs should also rest with the Basin Advisory Groups" 51, USFS

"Simplot supports the comments made by the Idaho Mining Association" 68, J.R. Simplot Co.

"habitat for trout and salmon is preserved for ours and future generations to come" 93
"critical habitat...Idaho's most famous (Middle Fork)" 95, Idaho Rivers United

"like the Middle fork, the Selway is one of the original designated rivers ,in the federal Wild and Scenic Rivers system" 95, Idaho Rivers United

"That concept (segments) is outmoded now" 95, Idaho Rivers United

"The Forest Service supports...Sulphur, Selway mainstem from Wilderness boundary to the headwaters, Running and Bear Creek, Middle Fork Salmon, Loon, Wilson; does not oppose ORW designation of the lower 22 miles of the Selway River mainstem from the confluence with the Lochsa river to the wilderness boundary, White Cap Creek..fits the definition of ORW....we are not opposed; does not support.... Elk, Big, Smith, Logan, Marble, Rapid River, Marsh, Knapp, Camas, Yellowjacket. " 128, USFS. Board members should read this comment closely

"The Idaho ORW designation should be considered a tier 2.5 category" 131, ICL.

"Baseline monitoring should not prove to be unreasonably expensive"
131, ICL.

"Wilderness designation limits land uses to maintain wilderness characteristics; not water quality" 131, ICL.

Public Hearings

There were four public hearings held in Lewiston Boise, Salmon and Idaho Falls. Oral and written comments from groups and individuals submitted on the record were as follows:

1. Lewiston (October 21)

Individuals: 8, support; 0 oppose.

Groups in support: Kootenai Environmental Alliance, Idaho Wildlife Federation, Inland Empire Public Land Council, Clearwater Biodiversity Project, Predator Project and ICL.

Groups in opposition: Resource Organization in Timber Supply (ROOTS), Potlatch

2. Boise (October 23)

Individuals: 8, support; 1, oppose

Groups in support: ICL, Boulder White Clouds Council, Northern Rockies Campaign, Trout Unlimited, Land and Water Fund, Wilderness Society

Groups in opposition: Boise Cascade, Intermountain Forest Industry, Idaho Outfitters

and Guides

3. Salmon (October 28)

Individuals: 3 support; 3 oppose

Groups in support: ICL, Thompson Creek Mine, Trout Unlimited

Groups in opposition: 0

4. Idaho Falls (October 30)

Individuals: 3 support; 0 oppose

Groups in support: ICL, Greater Yellowstone Coalition

Groups in opposition: 0

Public hearing oral and written comments closely paralleled the written comments summarized above. Below are some examples from those hearings:

Lewiston

"designation of the Selway River as an ORW is probably consistent with land management plans" Hearing, p. 7, ROOTS

"uncertainty over losing management flexibility on Forest Service lands" Hearing, p. 8, ROOTS

"antidegradation does not work despite comments earlier regarding full compliance with the Forest Practices Act" Hearing, 19, ICL

"BMPs...are not working" Hearing, 31, Larry McLaud

"What makes a stream outstanding?water chemistry, rare insects, high species richness....Fish are one very strong indicator" Hearing, 33, Fred Rabe

"No one understands how you maintain water quality" Hearing, 37, Potlatch

"when BMPs were used, they work" Hearing, 39, Potlatch

"the Forest Service has very effectively avoided dealing with a lot of water quality issues that come down to state implementation" hearing, 50, ICL

Boise

"reserve watersheds and riverine habitat patches....should be designated and protected from new land-disturbing activities in order to establish experimental natural

baselines....and to establish a biological hedge...." Hearing, 15, Boulder White Cloud Council, quoting Return to the River

Elk Creek, Rapid River, Marsh and Knapp creek are reported as having suitable timber base, hence this group is opposed to ORW designation on these segments, Hearing, p. 19, Boise Cascade

"We are not interested in additional regulation" Hearing, 49, Idaho Outfitters and Guides

"it looks to me to be very clear that waters that are in state or national parks or wildlife refuges or other areas like that should be designated" Hearing, 55, Land and Water Fund

"I'm going to look hard at whether litigation is an appropriate method to address that" (lack of ORWs) Hearing, 55, Land and Water Fund

"ORW....creates....lack of clarity in this and the inability to set clear, definable, measurable goals...., and use them to our detriment" Hearing, 64, Doug Tims, outfitter

"wilderness is more restrictive protection" Hearing, 75, Wilderness Society

Salmon

Middle fork is acceptable, but "when you start putting these streams on it that comes up through where there's chunks of private property on them...."Hearing, 22, Rollie Adams

Not opposed to ORWs but "urge a rigorous examination of water quality for each stream segment".... also "many valuable mineralized zones....extreme care be given" Hearing, 29, Thompson Creek Mine

"Middle Fork and Selway are big components of our local economy" Hearing, 32, Jerry Myers

Idaho Falls

"if you were to use that (state water plan) as a starting point, you already have a set list of nominated steams. All those which are either natural or recreational have already been studied by people who live in the basin. And you have a list of streams that should automatically be considered" Hearing, 15, John Ochi

Perhaps the easiest way to determine the sense of the public on this year's ORW nominations is to consider support and opposition for segments which are in or primarily within, federal wilderness boundaries. Put simply, there is less opposition to ORW nominations which are within wilderness areas. For the Selway nominations, there is no Forest Service opposition, and mining interest opposition centers on procedural issues, rather than the existence of mineralization. The timber industry speaks in general terms about opposition to ORWs outside wilderness areas.

Mining concerns, expressed by both the Idaho Mining Association and the Forest Service over segments like Big, Smith and Logan Creek, are the notable exception in the Middle Fork Salmon area. Since there is no logging within wilderness areas, opposition of the timber industry is somewhat muted here, as well.

The Idaho Outfitters and Guides are opposed to all ORW designation, fearing that such designation would be used to regulate them even more than they already are. What remains unclear to this group is whether all existing outfitter activities would be allowed to continue.

Once the nominations move outside of wilderness, opposition increases. Both the Forest Service and industry are opposed to ORW designations for obvious reasons, including constraint on bureau management discretion, and curtailment of new activities.

One major problem with ORW designation concerns the "exceptional ecological significance" term. On one hand EPA has made it clear that these waters need not be measured by traditional parameters (Water Quality Handbook, 4-10) Yet it remains unclear what this term means. This has led ICL, among others, to argue that existing or pending endangered species concerns such as the bull trout or salmon might be an appropriate way to understand this term. This creates a bit of a paradox in that more ORWs might be nominated as species of concern increase. Although the strategy of nominating streams for this reason is completely understandable, one wonders if that was the intent of the original ORW concept. Nonetheless there was support for streams for their ecological significance, but there was strong opposition as well.

Finally, concerns over ecological significance come head-to-head with concerns over economic development and well being. This is at the core of most natural resource issues today. The board is essentially being asked to weigh two deeply held and intense public values. There is, at present no public consensus as to which value ought to be more important.

Pending Policy Issues for the Board's Consideration

Nomination Issues

A comparison of the 1992 and 1996 nominations reveals that there is wide variation in how the nomination is presented. Citizens, interest groups, the Board, Department of Environmental Quality staff and elected officials may understandably be confused by nominations which do not appear to follow a set format. Two areas of most confusion concern the definition of a "segment" and the evidence needed to support a nomination. In the 1992 and 1996 nominations made by ICL, segments were presented as "headwaters" to a named creek or river. The Idaho Mining association used Stream Segment numbers, and segments numbers from the Pacific Northwest River Study. Perhaps some regulatory clarification would be helpful for future nominators.

The timing of the nomination is also worth reconsideration. It was evident to the hearing officer that some members of the Board expressed frustration at the relatively short time period they had to consider ORW nominations. This year, 68 stream segments were nominated on May 31st; by early August the board was in the throes of considering which segments to bring before a series of public hearings. Perhaps nominations should be due several months earlier, at least.

Rule Uncertainty

A number of comments expressed concern over the establishment of "baseline" data which are needed once an ORW has been approved by the Idaho Legislature. This concern apparently stems from the language of Idaho Code 39-3620(4) which requires that newly adopted ORW BMPS will "assure that water quality of an outstanding resource water *is not lowered* (italics from report)." The IDAPA 16. 01.02.350.03.a states that "no person shall conduct a new or substantially modify an existing nonpoint source activity than can *reasonably* (italics from report) be expected to lower the water quality of an ORW, except for conducting short term or temporary nonpoint source activities...." Parenthetically, logging, under appropriate BMPs appears permissible under EPA guidelines in the Water Quality Standards Handbook (1994), p. 4-11. Perhaps some minor additional information as to how current water quality will be arrived at would be useful.

Policy Coordination

Finally, coordination of the ORW process was also an issue. Here, the comments of John Ochi of Idaho Falls are most illustrative. Speaker Ochi argued that the ORW process be tied more closely to the state water planning process (Idaho Falls Hearing Record, p. 15). Of course, the ORW process does not rely on a basin approach for nomination or designation, but at the same time it does "stand alone" as a water quality process.

ORW Clarity: Tier 3 versus Tier 2.5

It is not clear to most of the public that Idaho has established a Tier 2.5 antidegradation policy. EPA, in its Water Quality Standards Handbook (1994) discussion of antidegradation has interpreted a Tier 2.5 water as "more stringent than for Tier 2 (high-quality waters) but somewhat less stringent than the prohibition against any lowering of water quality in Tier 3. EPA goes on to say that "The Tier 2.5 approach allows States to provide a very high level of water quality protection *without precluding unforeseen future economic and social development considerations* (italics from report).

In a recent Federal Register proposed rule for the state of Pennsylvania (August 29, 1996, at 45382) EPA offers additional clarification. Here, EPA asserts that "*no* new or increased discharge is the *only* method to assure that water quality is fully maintained and protected in ONRWs". This language refers to point sources, and applies to Tier 3.

Part of this confusion for Idaho appears to come from the fact that Idaho has adopted a definition of its ORW which is almost identical to the federal definition for "outstanding national resource waters (ONRWs)," which at the same time "allows" for new or expanded nonpoint sources if the water quality is not lowered.

Another way to phrase this is that Idaho does not appear to have a Tier 3 policy in place at this time. This might create a rather interesting problem should someone nominate waters in national or state parks, or wildlife refuges; waters which are clearly intended for Tier 3 protection.

Finally, a number of people, including members of the Legislature, have indicated to the hearing officer that the Idaho ORW regulatory process was designed to be a null set: there was never any intention of actually having ORWs designated. Given the above discussion of Tier 2.5 waters (not in place during the promulgation of Idaho's ORW rules) this assertion appears rather problematical at best.

SECTION VII
PUBLIC COMMENT SUMMARY

**Outstanding Resource Water (ORW) Public Comment Summary
(11/15/96)**

Exhibit	Support	All Nom./ Named Segments	Hearings	Hearing Locations	Additional Comments
#1	yes	MFSalmon tribs, Selway, NFClearwater, Main Salmon & tribs., upper StJoe, Pend Oreille Lake, upper Priest Lake.			
#2	yes	MFSalmon, Selway, Priest Lake			if Selway not outstanding then nothing is, Priest crown jewel of Idaho lakes
#3			yes		hearing officer for 91-92 ORW process
#4	yes	all			
#5	yes	all			recreation and ecosystem values
#6	yes	all			
#7	yes	all - epecially EFSalmon, Yankee Fork, Thompson Cr.	yes	Twin Falls, Ketchum, Salmon, IF, Sandpoint, Moscow, McCall, Boise	concerned about bull trout and salmon in named waters in particular
#8	yes	all	yes		concerned with growth
#9	yes	all			cheaper to stop pollution then to clean it up
#10	yes	all	yes	20,000 + population	for future generations
#11	yes	all			MA-11% of all; NY,NJ-30to40; OK-140; AR-60; FL,ME-nat.&state parks&refuges; NH-nat.forests; CA-35; UT-50; NV-30; WY,MT-nat.parks, wilderness, primitive areas

Exhibit	Support	All Nom./ Named Segments	Hearings	Hearing Locations	Additional Comments
#12	yes	all			
#13	yes	all	yes		182 identical post cards
#14	yes	all			worried about Lake Coeur D'Alene
#15	yes	all	yes	Salmon, Sandpoint, Moscow, McCall, Boise, Ketchum	avoid cost of pollution clean up
#16	yes	all & Little Weitas, Hemlock Cr, White Sands Cr, Cayuse Cr, Kelly Cr.	yes	Moscow, Sandpoint	need to protect unimpaird streams for reference sites
#17	yes	all			tourism economic
#18	yes	MF Salmon, Selway			
#19	yes	all	yes		long term economic well being
#20	no	46 Bull Trout			concerned about undesirable side effects of petition
#21	no	46 Bull Trout			same as #20
#22	yes	all	yes		personally aquainted with 20 named waters
#23					303d-ORW not compatible, concern for good operators
#24	no	all			conflict w/ other approaches, let them work first

Exhibit	Support	All Nom./ Named Segments	Hearings	Hearing Locations	Additional Comments
#25	yes	all	yes	Boise, Ketchum, Salmon, Grangeville Orofino	recreational and ecological values, best water in lower 48 but no ORWs, DEQ provide info&support
#26	yes	all			recreation & economic amenities
#27	yes	wilderness portions only	yes		need more data on bull trout streams before can be supported
#28	yes	all			easier to protect now than after they become polluted
#29	yes	all			need assurance of protection
#30	no	all			concern for multiple use, negative effects on industry, not compatible with 303d list
#31	no	Slate Cr, Yankee Fork, Thompson Cr, Warm Springs Cr and others in Salmon basin	yes	Challis	conflicts with BAG/WAG process, deny or postpone until after water quality standards rulemaking, and then use BAGs for public input
#32	no	bull trout and 303d listed			need better rules on nomination criteria so Board and DEQ don't waste time and money collecting information

Exhibit	Support	All Nom./ Named Segments	Hearings	Hearing Locations	Additional Comments
#33	no	French Cr, Slate Cr, Wind R, Sable Cr, Yankee Fork, Thompson Cr, Warm Springs Cr, others in Salmon R. basin			BAGs should do public process, water quality standards rulemaking not complete, conflicts with existing endangered species issues, not enough time for BAGs to review, consequences of ORW designation unknown
#34	no	all			what are criteria to be met, conflicts with impacted waters
#35	yes	all			
#36	yes	all			will help bull trout and westslope cutthroat, avoid future costly clean ups, does not eliminate industries
#37	yes	all			
#38	no	all			troublesome legal issues, used to stop logging, unnecessary to protect water, "no lowering of water quality" burden of proof impossible to demonstrate, same problems as "no injury" clause of 1982, new water quality law and bull trout plan, priest lake plan are better
#39	no	all			what are criteria to be met, conflicts with impacted waters

Exhibit	Support	All Nom./ Named Segments	Hearings	Hearing Locations	Additional Comments
#40	no	all			petitions inadequate, would consider supporting some segments (ie MF Salmon and Selway if data is supplied) (see letter for attachments)
#41	yes	all-pecially Selway R.			economy depends on highest water quality
#42	yes	all	yes	Ketchum	tourism economy of the future
#43	no	all			used to stop logging, "no lowering of water quality" burden of proof impossible to demonstrate, other states are rejecting ORWs, new water quality law and bull trout plan, priest lake plan are better
#44			yes	Challis, Salmon, lower basin community (McCall to Grangeville)	public meetings should contain brief informational presentation, ample opportunity for public comment, adequately publicized
#45	yes	all	yes	Sandpoint, Moscow, Boise, Ketchum, McCall, Salmon	many attached letters and supporting information
#46	yes	all	yes		
#47	yes	all-especially MF Salmon			

Exhibit	Support	All Nom./ Named Segments	Hearings	Hearing Locations	Additional Comments
#48	no	all			troublesome legal issues, used to stop logging, unnecessary to protect water, "no lowering of water quality" burden of proof impossible to demonstrate, same problems as "no injury" clause of 1982, new water quality law and bull trout plan, priest lake plan are better
#49	yes	all	yes	Pocatello	
#50	no	all			already many protection mechanisms, waste of taxpayers money to add to bureaucracy, conspiracy to close public rivers to but a few, need more objective analysis of fishery mortality factors, wants to present slide show to Board, attached fishing impact facts
#51					recommend phase-in period because effects of requirements untested and unclear, do not designate 303d listed waters, recommend coordination with OR, NV, responsibility for ORWs should also be with BAGs, bull trout waters should not be ORWs, FS can provide specific info on specific waters at hearings if held
#52	yes	all			
#53	yes	all	yes	Ketchum/Sun Valley	

Exhibit	Support	All Nom./ Named Segments	Hearings	Hearing Locations	Additional Comments
#54	yes	all			
#55	no	all			complicate current efforts (SB1284)
#56	yes	all			highest standards for clean water
#57	yes	all			lived in Idaho for 50 years and seen water quality degrade
#58	yes	all			benefit tourism
#59	no	all			
#60	yes	all			
#61	yes	all	yes		
#62	no	all			not needed - enough rules in place
#63	yes	all	yes		
#64	yes	all	yes		
#65	yes	all	yes		prepare Idaho for viable future based on recreation and tourism
#66	yes	all			growth a concern
#67	yes	all	yes		
#68	no	all			petitions inadequate
#69		Clearwater R.; Palouse R.			suggested named rivers, however did not mention any petitioned waters
#70	yes	all			

Exhibit	Support	All Nom./ Named Segments	Hearings	Hearing Locations	Additional Comments
#71	yes	all	yes	Garden City	smarter, cheaper to keep waters clean than to pay to clean them up
#72	yes	all			
#73	yes	all			
#74	yes	all			
#75	yes	all	yes		
#76	yes	all	yes	at least 6 locations	
#77	yes	all			...ORW designation does not mean Idaho waters will be off-limits to industry; an ORW designation requires that a logical standard of water quality will be required...
#78	yes	all			every one of our hundreds of guests over the years came because of the clean water and wilderness that surrounded the [Selway] lodge
#79	yes	all	yes		
#80	yes	Boise River forks			...horrified to see dynamite charges being set in the river...
#81	yes	Boise River forks			
#82	yes	all	yes		

Exhibit	Support	All Nom./ Named Segments	Hearings	Hearing Locations	Additional Comments
#83	yes	all	yes	McCall, Sandpoint, Boise, Moscow, Ketchum, Salmon	
#84	yes	all	yes	McCall, Sandpoint, Boise, Moscow, Ketchum, Salmon	
#85					IDFG provided information on salmonid species found within each petitioned segment
#86	yes	Selway, MF Salmon, Meadow Cr, Marsh Cr, Monumental Cr.			reconsider Meadow and Marsh Cr of Selway drainage and Monumental Cr in MF Salmon drainage
#87	yes	Boise R, Pend Oreille, EF Salmon			Selway and MF Salmon not as important as others in more critical need
#88	yes	all	yes	numerous	protect future drinking water, rights of fish, animals and plants; recreation is a growing industry
#89	yes	Boise R, EF Salmon			bull trout and recreation
#90	yes	Selway, MF Salmon, Monumental Cr, Moose Cr, Meadow Cr			Monumental Cr. is a necessary part of the clean water equation... let's not piecemeal approach this issue...please include Meadow and Moose Cr.

Exhibit	Support	All Nom./ Named Segments	Hearings	Hearing Locations	Additional Comments
#91	yes	Selway, MF Salmon and ICL reconsideration request			Board has responsibility to educate legislature on need to protect Idaho's waterways preventatively
#92	yes	18 focus plus Meadow, Moose, Monumental, Kelly, White Sand Crs, Upper St Joe, Kootenai, Pend Orielle, Boise, Deadwood, EF Salmon, all bull trout waters			
#93	yes	18 focus plus Lochsa, Kelly, Cayuse Crs, St Joe, NF Coeur C'Alene			
#94	yes	upper St Joe, Little NF Clearwater above Cedar Cr, Foehls, Sawtooth, Canyon Crs, upper Priest Lake and thoroughfare			
#95	yes	Selway and five tributaries, MF Salmon and 15 tributaries originally petitioned, upper St Joe, White Sands, Kelly/Cayuse Crs, EF Salmon, Deadwood, NF/MF/SF Boise			ORWs aid implementation of bull trout plan, they are ultimate TMDL, all petitioned waters are high quality, avoid further lawsuits, stream segment vs. watershed major flaw
#96	yes	all, reconsider 55			
#97	yes	Selway, MF Salmon, and tributaries			
#98	yes	Selway, MF Salmon, and tribs., reconsider Moose, Meadow, Monumental, Kelly Crs, EF Salmon, Kootenai, upper St Joe			

Exhibit	Support	All Nom./ Named Segments	Hearings	Hearing Locations	Additional Comments
#99	yes	Selway, MF Salmon, and tribs., reconsider NF/MF/SF Boise, upper St Joe, Kelly Cr, Deadwood, EF Salmon, Kootenai, Pend Orielle, Meadow, Marsh, Monumental Crs. or all 68			
#100	yes	Selway, MF Salmon, and tribs, reconsider bull trout waters, St Joe. Kelly Cr			
#101	yes	Selway, MF Salmon, and tribs., reconsider NF/MF/SF Boise, upper St Joe, Kelly Cr, Deadwood, EF Salmon, Kootenai, Pend Orielle, Meadow, Marsh, Monumental Crs. or all 68			
#102	yes	Selway, MF Salmon, and tribs, reconsider Moose, Meadow, Monumental Crs, Boise, Pend Oreille, EF Salmon, St Joe			why are we so bent on destroying so much of our environment in such little time
#103	yes	all			consistent w/ bull trout plan, avoid federal mandated rehabilitation
#104	no	all			entire matter is premature, state acting in haste, suggest waiting until authority is firmly in place
#105	yes	all			
#106	yes	ICL reconsideration			

Exhibit	Support	All Nom./ Named Segments	Hearings	Hearing Locations	Additional Comments
#107	yes	Selway, MF Salmon, reconsider Monumental, Moose, Meadow Crs, Boise, upper St Joe, Deadwood, Pend Orielle, White Sands, Kelly Crs, EF Salmon, Snake, and all creeks around Rockland and Pocatello			
#108	yes	Selway, MF Salmon, reconsider Boise, upper St Joe, Deadwood, Pend Orielle, White Sands Cr, Lochsa, Kelly Cr, EF Salmon			bull trout plan has little chance of being implemented without ORWs
#109	yes	Main Salmon, MF Salmon			river guide past 15 years
#110	yes	Selway, MF Salmon, and tribs, reconsider NF/MF/SF Boise, upper St Joe, Kelly Cr, Deadwood, EF Salmon, Kootenai			
#111	yes	Selway, MF Salmon, and tribs, reconsider Moose, Meadow, Monumental Crs, Boise, St Joe, Lochsa, Kelly, White Sands Crs, EF Salmon			
#112	yes	MF Salmon and its nominated tributaries			
#113	yes	Selway, MF Salmon and focus tributaries			support site-specific BMPs designed to protect water quality in ORWs
#114	yes	all, at least reconsider Monumental, Moose, Meadow Crs, NF/MF/SF Boise, upper St Joe, White Sands, Kelly/Cayuse Crs, Deadwood, EF Salmon, Pend Orielle			confident that stream in greater yellowstone ecosystem will be nominated in future

Exhibit	Support	All Nom./ Named Segments	Hearings	Hearing Locations	Additional Comments
#115	yes & no	Selway, MF Salmon and focus tributaries, except consider removing Camas and Yellowjacket Crs.			considerable private property in Camas and Yellowjacket, concerned that NMFS already has stringent regulations and this is duplication, time and money should be spent elsewhere
#116	yes	Selway, MF Salmon and focus tributaries			
#117	yes	Selway, MF Salmon and focus tributaries			
#118	no	all			delay until TMDL process is developed and bull trout plan implemented, concerned with competing for scarce money resources and removing local volunteer citizen involvement
#119	yes	Selway, MF Salmon and focus tributaries			support site-specific BMPs designed to protect water quality in ORWs
#120	yes	Meadow Creek			biodiversity could be one way to identify ORW, Meadow Cr. most biodiverse of regions investigated by Dr Rabe of U of I
#121	yes	Selway, MF Salmon, and tribs that fit definition of ORW best			ORW approaches water quality from the top... we always seem to take the other approach of water quality improvement efforts and restoration of degraded waters

Exhibit	Support	All Nom./ Named Segments	Hearings	Hearing Locations	Additional Comments
#122	yes	Selway, MF Salmon and focus tributaries, reconsider Monumental, Bear Valley, Meadow and Moose Crs.			
#123	yes	Selway, MF Salmon and focus tributaries			existing activities would be grandfathered in...this should protect private property rights along Camas and Yellowjacket Crs.
#124	yes	all			
#125	no	all			have BAGs and WAGs study and identify waters suitable for ORW
#126	no	Selway, MF Salmon and focus tributaries			baseline water quality has not been determined, BAGs/WAGs need time to function, streams nominated are already adequately protected
#127	yes	Selway, MF Salmon and focus tributaries, reconsider Monumental, Meadow, Moose, EF Salmon, NF/MF/SF Boise, upper St Joe, White Sands, Kelly/Cayuse Crs, Deadwood			
#128	yes & no	supports MF Salmon and Suphur, Loon, Wilson Crs, do not support Elk, Big, Smith, Logan, Marble, Marsh, Knapp, Camas, Yellowjacket Crs, and Rapid R, supports Selway within wilderness and Running and Bear Crs			USFS
#129	yes	NF/MF/SF Boise R.			DEQ monitoring MBI scores supplied

Exhibit	Support	All Nom./ Named Segments	Hearings	Hearing Locations	Additional Comments
#130	yes	reconsider ICL reconsideration streams			
#131	yes	further support for reconsideration streams			
#132	yes	Selway, MF Salmon and focus tributaries, reconsider Pahsimeroi R.			salmon/steelhead spawning, native rainbow, bull trout
#133	yes	consider NF/SF Clearwater, Lochsa, upper St Joe, and their tributaries, Pend Orielle, Priest Lake, Deadwood Reservoir			
#134	yes	Selway, MF Salmon and focus tributaries, reconsider ICL reconsideration streams			
#135	yes	Selway, MF Salmon and focus tributaries, reconsider Teton, SF Snake, Henry's Fork, Boise, upper St Joe, Deadwood, EF Salmon Rivers, Lake Pend Orielle, White Sands, Keely Creeks			
#136	yes	Selway, MF Salmon and focus tributaries, reconsider Moose, Meadow, Monumental, White Sand, Kelly Crs., upper St Joe, EF Salmon, Deadwood Rivers			qualify and need ORW protection...should be criteria for a proposal, not what the Legislature may choke upon. The Legislature will probable quibble with any list.
#137	yes	Selway, MF Salmon and focus tributaries, reconsider Moose, Meadow, Monumental, White Sand, Kelly Crs., upper St Joe, EF Salmon R., Pend Orielle, Priest Lake			
#138	yes	all 68			

Exhibit	Support	All Nom./ Named Segments	Hearings	Hearing Locations	Additional Comments
#139	yes	Selway, MF Salmon and focus tributaries, reconsider Moose, Meadow, Monumental Crs., Boise R.			
Total- 139	24-no 111-yes	62-support all, 51-support named segments, 16-not support all, 8-not support named segments	31-yes	16-name locations	

APPENDIX A
ORW STATUTE AND RULES

Idaho Statue for Outstanding Resource Waters

Idaho Code 39-3617 through 39-3622

CHAPTER 36

WATER QUALITY

- | SECTION. | SECTION. |
|---|---|
| 39-3601. Declaration of policy and statement of legislative intent. | nonpoint source activities on or affecting outstanding resource waters. |
| 39-3602. Definitions. | 39-3621. Monitoring provisions. |
| 39-3603. General water quality standard and antidegradation policy. | 39-3622. Enforcement provisions. |
| 39-3604. Designation of instream beneficial uses. | 39-3623. Effect of rules. |
| 39-3605. Identification of reference streams or water bodies. | 39-3624. Declaration of policy — Designation of director. |
| 39-3605B. [Amended and Redesignated.] | 39-3625. Definitions. |
| 39-3605C. Environmental remediation fund established. | 39-3626. Authorization of grants and loans — Designation of administering agency — Reservation of funds for operations — Criteria — Priority projects — Eligible projects: |
| 39-3606. Use of reference streams or water bodies to determine full support of beneficial uses. | 39-3627. Payments by state board of health and welfare — Contracts with municipalities, soil conservation districts or soil conservation commission — Rules — Approval of attorney general — Audit of payments. |
| 39-3606A. [Amended and Redesignated.] | 39-3628. Water pollution control account established. |
| 39-3606B. [Amended and Redesignated.] | 39-3629. Wastewater facility loan account established. |
| 39-3606C. Appropriation of environmental remediation fund — Purpose of chapter. | 39-3630. Appropriation of water pollution control account — Purpose of chapter. |
| 39-3607. Monitoring to determine support of beneficial uses. | 39-3631. Appropriation of wastewater facility loan account — Purpose of chapter. |
| 39-3608. Regulatory actions for water bodies where beneficial uses are fully supported. | 39-3632. Grants and loans for design, planning or construction — Limits on amount of grants and loans. |
| 39-3609. Regulatory actions for water bodies where beneficial uses are not fully supported. | 39-3633. Water pollution control bonds. |
| 39-3610. General limitations on point and nonpoint sources for water bodies not fully supporting beneficial uses. | 39-3634. Cottage site defined. |
| 39-3611. Development and implementation of total maximum daily load or equivalent processes. | 39-3635. Cottage site leases — Requirements — Construction of sewage disposal facilities — Connection to water and sewer district systems — Payment of charges — Notification of defaults — Satisfaction of requirements. |
| 39-3612. Integration of total maximum daily load processes with other programs. | 39-3636. Failure to provide sewage disposal — Penalties. |
| 39-3613. Creation of basin advisory groups. | 39-3637. State board of health and welfare — Rules — Inspection. |
| 39-3614. Duties of the basin advisory group. | 39-3638. Final determination by issuing department authorized. |
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| 39-3616. Duties of each watershed advisory group. | |
| 39-3617. Designation of outstanding resource waters. | |
| 39-3618. Restriction provisions for new nonpoint source activities on outstanding resource waters. | |
| 39-3619. Continuation provisions for existing activities on outstanding resource waters. | |
| 39-3620. Approval provisions for best management practices for new | |

39-3601. Declaration of policy and statement of legislative intent. — The legislature, recognizing that surface water is one of the state's

most valuable natural resources, has approved the adoption of water quality standards and authorized the administrator of the division of environmental quality of the department of health and welfare in accordance with the provisions of this chapter, to implement these standards. In order to maintain and achieve existing and designated beneficial uses and to conform to the expressed intent of congress to control pollution of streams, lakes and other surface waters, the legislature declares that it is the purpose of this act to enhance and preserve the quality and value of the surface water resources of the state of Idaho, and to define the responsibilities of public agencies in the control, and monitoring of water pollution, and, through implementation of this act, enhance the state's economic well-being. In consequence of the benefits resulting to the public health, welfare and economy, it is hereby declared to be the policy of the state of Idaho to protect this natural resource by monitoring and controlling water pollution; to support and aid technical and planning research leading to the control of water pollution, and to provide financial and technical assistance to municipalities, soil conservation districts and other agencies in the control of water pollution. The director, in cooperation with such other agencies as may be appropriate, shall administer this act. It is the intent of the legislature that the state of Idaho fully meet the goals and requirements of the federal clean water act and that the rules promulgated under this act not impose requirements beyond those of the federal clean water act. [I.C., § 39-3601, as added by 1995, ch. 352, § 1, p. 1165.]

Compiler's notes. Former § 39-3601 was amended and redesignated as § 39-3624 by § 8 of S.L. 1995, ch. 352, effective July 1, 1995. The Federal Clean Water Act referred to in this section is compiled as 33 U.S.C., § et seq. The words "this act" refer to S.L. 1995, ch. 352, which is compiled as §§ 39-3601 — 39-3639.

39-3602. Definitions. — Whenever used or referred to in this act, unless a different meaning clearly appears from the context, the following terms shall have the following meanings:

(1) "Applicable water quality standard" means those water quality standards identified in the rules of the department.

(2) "Best management practice" means practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan which are determined to be the cost-effective, practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals.

(3) "Board" means the board of health and welfare.

(4) "Department" means the department of health and welfare.

(5) "Designated agency" means the department of lands for timber harvest activities, for oil and gas exploration and development and for mining activities; the soil conservation commission for grazing activities and for agricultural activities; the transportation department for public road construction; the department of agriculture for aquaculture; and the department of health and welfare's division of environmental quality for all other activities.

(6) "Designated use or designated beneficial use" means those uses assigned to waters as identified in the rules of the department whether or not the uses are being attained. Designated uses may include subcategories of existing uses that the director determines are not fully attainable.

(7) "Director" means the director of the department of health and welfare, or his or her designee.

(8) "Discharge" means any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. For the purposes of this chapter, discharge shall not include surface water runoff from nonpoint sources or natural soil disturbing events.

(9) "Existing use" means those surface water uses actually attained on or after November 28, 1975, whether or not they are designated uses. Existing uses that are not fully attainable may form the basis for subcategories of designated uses.

(10) "Full protection, full support, or full maintenance of designated beneficial uses of water" means compliance with those levels of water quality criteria listed in the appropriate rules of the department, or with the reference streams or conditions approved by the director in consultation with the appropriate basin advisory group.

(11) "Lower water quality" means a measurable adverse change in a chemical, physical, or biological parameter of water relevant to a designated beneficial use, and which can be expressed numerically. Measurable adverse change is determined by a statistically significant difference between sample means using standard methods for analysis and statistical interpretation appropriate to the parameter. Statistical significance is defined as the ninety-five percent (95%) confidence limit when significance is not otherwise defined for the parameter in standard methods or practices.

(12) "National pollutant discharge elimination system (NPDES)" means the point source permitting program established pursuant to section 402 of the federal clean water act.

(13) "New nonpoint source activity" means a new nonpoint source activity or a substantially modified existing nonpoint source activity on or adversely affecting an outstanding resource water which includes, but is not limited to, new silvicultural activities, new mining activities and substantial modifications to an existing mining permit or approved plan, new recreational activities and substantial modifications to existing recreational activities, new residential or commercial development that includes soil disturbing activities, new grazing activities and substantial modifications to existing grazing activities, except that reissuance of existing grazing permits, or grazing activities and practices authorized under an existing permit, is not considered a new activity. It does not include naturally occurring events such as floods, landslides, and wildfire including prescribed natural fire.

(14) "Nonpoint source activities" includes grazing, crop production, silviculture, log storage or rafting, construction, mining, recreation, septic systems, runoff from storms and other weather related events and other activities not subject to regulation under the federal national pollutant discharge elimination system. Nonpoint source activities on waters desig-

nated as outstanding resource waters do not include issuance of water rights permits or licenses, allocation of water rights, operation of diversions, or impoundments.

(15) "Nonpoint source runoff" means water which may carry pollutants from nonpoint source activities into the waters of the state.

(16) "Outstanding resource water" means a high quality water, such as water of national and state parks and wildlife refuges and water of exceptional recreational or ecological significance, which has been so designated by the legislature. It constitutes an outstanding national or state resource that requires protection from point source and nonpoint source activities that may lower water quality.

(17) "Person" means any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any legal entity, which is recognized by law as the subject of rights and duties.

(18) "Point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be, discharged. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition.

(19) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, silt, cellar dirt, and industrial, municipal and agricultural waste, gases entrained in water, or other materials which, when discharged or released to water in excessive quantities cause or contribute to water pollution. Provided however, biological materials shall not include live or occasional dead fish that may accidentally escape into the waters of the state from aquaculture facilities.

(20) "Reference stream or condition" means a stream or other water body which represent the following:

(a) The minimum conditions necessary to fully support the designated beneficial uses.

(b) Natural conditions with few impacts from human activities and which are representative of the highest level of support attainable in the basin. In highly mineralized areas or in the absence of such reference streams or water bodies, the director, in consultation with the basin advisory group and the technical advisers to it, may define appropriate hypothetical reference conditions or may use monitoring data specific to the site in question to determine conditions in which the beneficial uses are fully supported.

(21) "Short-term or temporary activity" means an activity which is limited in scope and is expected to have only minimal impact on water quality as determined by the director. Short-term or temporary activities include, but are not limited to, maintenance of existing structures, limited road and trail reconstruction, soil stabilization measures, and habitat enhancement structures.

(22) "Silviculture" means those activities associated with the regeneration, growing and harvesting of trees and timber including, but not limited to, disposal of logging slash, preparing sites for new stands of trees to be either planted or allowed to regenerate through natural means, road construction and road maintenance, drainage of surface water which inhibits tree growth or logging operations, fertilization, application of herbicides or pesticides, all logging operations, and all forest management techniques employed to enhance the growth of stands of trees or timber.

(23) "Soil conservation commission" means an agency of state government as created in section 22-2718, Idaho Code.

(24) "Soil conservation district" means an entity of state government as defined in section 22-2717, Idaho Code.

(25) "State" means the state of Idaho.

(26) "State water quality management plan" means the state management plan developed and updated by the department in accordance with sections 205, 208, and 303 of the federal clean water act.

(27) "Total maximum daily load (TMDL)" means the sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources, and natural background levels of all pollutants. Acceptable pollutant levels established through TMDLs shall be at a level necessary to implement the applicable water quality standards for the identified pollutants with seasonal variations.

(28) "Waters or water body" means all the accumulations of surface water, natural and artificial, public and private, or parts thereof which are wholly or partially within, flow through or border upon this state. For the purposes of this chapter, water bodies shall not include municipal or industrial wastewater treatment or storage structures or private reservoirs, the operation of which has no effect on waters of the state.

(29) "Water pollution" is such alteration of the thermal, chemical, biological or radioactive properties of any waters of the state, or such discharge or release of any contaminant into the waters of the state as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, aesthetic or other legitimate uses or to livestock, wild animals, birds, fish or other aquatic life.

(30) "Watersheds" means the land area from which water flows into a stream or other body of water which drains the area. For the purposes of this chapter, the area of watersheds shall be recommended by the basin advisory group described in section 39-3613, Idaho Code. [I.C., § 39-3602, as added by 1995, ch. 352, § 1, p. 1165.]

Compiler's notes. Former § 39-3602 was amended and redesignated as § 39-3625 by § 9 of S.L. 1995, ch. 352, effective July 1, 1995.

For words "this act" see Compiler's notes, § 39-3601.

Section 402 of the Federal Clean Water Act referred to in subsection (12) is compiled as 33 U.S.C., § 1342 and §§ 205, 208 and 303 referred to in subsection (26) are compiled as 33 U.S.C., §§ 1285, 1288 and 1313, respectively.

39-3603. General water quality standard and antidegradation policy. — The existing instream beneficial uses of each water body and the

level of water quality necessary to protect those uses shall be maintained and protected. Where the quality of waters exceeds levels necessary to support propagation of fish, shellfish and wildlife and recreation in and on the water, that quality shall be maintained unless the department finds, after full satisfaction of the intergovernmental coordination and public participation provisions of this chapter, and the department's planning processes, along with appropriate planning processes of other agencies, that lowering water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such reductions in water quality, the department shall assure water quality adequate to protect existing uses fully. [I.C., § 39-3603, as added by 1995, ch. 352, § 1, p. 1165.]

Compiler's notes. Former § 39-3603 was § 10 of S.L. 1995, ch. 352, effective July 1, amended and redesignated as § 39-3626 by 1995.

39-3604. Designation of instream beneficial uses. — For each surface water body, the director shall designate, pursuant to chapter 52, title 67, Idaho Code, and specifically list in the rules of the department, the beneficial use which that water body can reasonably be expected to support without regard to whether that use is fully supported at the time of such designation. In making such designations, the director shall consider the existing use of the water body and such physical, geological, chemical and biological measures as may affect the water body and shall make such designations utilizing fully the public participation provisions set forth in this chapter. Designated uses as set forth in this chapter shall fully support existing uses and shall supersede existing uses. Designations of beneficial uses shall be reviewed as necessary and revised when such physical, chemical or biological measures indicate the need to do so. In revising a designated beneficial use, the director shall consider the economic impact of the revision and the economic costs required to fully support the revised designated beneficial use. There shall be no requirement for persons who either conduct nonpoint activities or who conduct operations on waters described in section 39-3609, Idaho Code, pursuant to a national pollution discharge elimination system permit to meet water quality criteria other than those necessary for the full support of the existing beneficial use for the water body pertinent to either the nonpoint activity or point source permit in question, except as provided in section 39-3611, Idaho Code. [I.C., § 39-3604, as added by 1995, ch. 352, § 1, p. 1165.]

Compiler's notes. Former § 39-3604 was § 11 of S.L. 1995, ch. 352, effective July 1, amended and redesignated as § 39-3627 by 1995.

39-3605. Identification of reference streams or water bodies. — The director shall, in a manner consistent with the public participation provisions set forth in this chapter and in accordance with chapter 52, title 67, Idaho Code, identify reference streams, water bodies or conditions to assist in determining when designated beneficial uses are being fully supported. Streams, water bodies or conditions shall be selected to represent

the land types, land uses and geophysical features of the basins described in this chapter. Such reference streams or conditions shall be representative of each of the following:

(1) A stream or other water body reflecting natural conditions with few impacts from human activities and which is representative of the highest level of support attainable in the basin.

(2) A stream or water body reflecting the minimum conditions necessary to fully support the designated beneficial uses. [I.C., § 39-3605, as added by 1995, ch. 352, § 1, p. 1165.]

Compiler's notes. Former § 39-3605 was § 12 of S.L. 1995, ch. 352, effective July 1, amended and redesignated as § 39-3628 by 1995.

39-3605B. [Amended and Redesignated.]

Compiler's notes. Former § 39-3605B by § 13 of S.L. 1995, ch. 352, effective July 1, was amended and redesignated as § 39-3629 1995.

39-3605C. Environmental remediation fund established. — There is hereby created in the state treasury a fund to be known as the environmental remediation fund. Surplus moneys in the environmental remediation fund shall be invested by the state treasurer in the manner provided for idle state moneys in the state treasury under section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the environmental remediation fund. The fund may have paid into it:

- (1) Legislative appropriations and transfers from other funds;
- (2) All donations and grants from any source which may be used for the provisions of this act;
- (3) Any other funds which may hereafter be provided by law. [I.C., § 39-3605C, as added by 1995, ch. 344, § 2, p. 1129.]

Compiler's notes. Section 1 of S.L. 1995, ch. 344 contained an appropriation and § 2 is compiled as § 39-3606C. The words "this act" refer to S.L. 1995, ch. 344, which is compiled as §§ 39-3605C and 39-3606C.

39-3606. Use of reference streams or water bodies to determine full support of beneficial uses. — The director, in consultation with the basin advisory group, shall conduct monitoring to determine if designated beneficial uses are fully supported. In making such determination, the director shall compare the physical, chemical and biological measures of the water body in question with the reference stream or condition appropriate to the land type, land uses and geophysical features of the water body in question as described in section 39-3605(2), Idaho Code. If the water body in question has such physical, chemical or biological measures as the reference water body or condition, even though such measures may be diminished from the conditions set forth in section 39-3605(1), Idaho Code, then the director shall deem the designated beneficial uses for the water in question to be fully supported and as having achieved the objectives of the federal clean water act and of this chapter. When site-specific standards have been developed for an activity pursuant to the rules of the department, the use of

reference streams as described in this section shall not be necessary. [I.C., § 39-3606, as added by 1995, ch. 352, § 1, p. 1165.]

Compiler's notes. Former § 39-3606 was § 14 of S.L. 1995, ch. 352, effective July 1, amended and redesignated as § 39-3630 by 1995.

39-3606A. [Amended and Redesignated.]

Compiler's notes. Former § 39-3606A by § 15 of S.L. 1995, ch. 352, effective July 1, was amended and redesignated as § 39-3631 1995.

39-3606B. [Amended and Redesignated.]

Compiler's notes. Former § 39-3606B by § 16 of S.L. 1995, ch. 352, effective July 1, was amended and redesignated as § 39-3632 1995.

39-3606C. Appropriation of environmental remediation fund — Purpose of chapter. — Moneys in the environmental remediation fund may be used for annual legislative appropriations for the purpose of environmental cleanup and remediation and restoration in, but not limited to, the following areas:

(1) To provide the state's matching share of grants for remediation including superfund grants;

(2) To provide for the operations of remediation activities. [I.C., § 39-3606C, as added by 1995, ch. 344, § 3, p. 1130.]

Compiler's notes. Section 2 of S.L. 1995, ch. 344 is compiled as § 39-3605C and § 4 contained an appropriation.

39-3607. Monitoring to determine support of beneficial uses. — The director shall conduct a beneficial use attainability and status survey to identify appropriate designated uses and to determine the status of designated beneficial uses in each water body. Measures to determine appropriate designated uses and the status of designated beneficial uses shall include appropriate water quality standards as identified in the rules of the department in conjunction with biological or aquatic habitat measures that may include, but are not limited to: stream width, stream depth, stream shade, sediment, bank stability, water flows, physical characteristics of the stream that affect habitat for fish, macroinvertebrate species or other aquatic life, and the variety and number of fish or other aquatic life.

Previous assessments of beneficial use attainability and status which are of a quality and content acceptable to the director shall constitute the baseline data against which future assessments shall be made to determine changes in the water body and what beneficial uses can be attained in it. In addition, the director, to the extent possible, may determine whether changes in the condition of the water body are the result of past or ongoing point or nonpoint source activities. The director shall also seek information from appropriate public agencies regarding land uses and geological or other information for the watershed which may affect water quality and the ability of the water body in question to fully support or attain designated

beneficial uses. In carrying out the provisions of this section, the director may contract with private enterprises or public agencies to provide the desired data. [I.C., § 39-3607, as added by 1995, ch. 352, § 1, p. 1165.]

Compiler's notes. Former § 39-3607 was § 17 of S.L. 1995, ch. 352, effective July 1, amended and redesignated as § 39-3633 by 1995.

39-3608. Regulatory actions for water bodies where beneficial uses are fully supported. — For streams or other water bodies where the director has determined that designated beneficial uses are being fully supported, the director shall assure, in a manner consistent with other existing applicable statutes, and rules, that all programs deemed necessary to maintain full support of designated beneficial uses are employed. In providing such assurances, the director may enter together into an agreement with public agencies in accordance with sections 67-2326 through 67-2333. Idaho Code. [I.C., § 39-3608, as added by 1995, ch. 352, § 1, p. 1165.]

Compiler's notes. Former § 39-3608 was § 18 of S.L. 1995, ch. 352, effective July 1, amended and redesignated as § 39-3634 by 1995.

39-3609. Regulatory actions for water bodies where beneficial uses are not fully supported. — In accordance with the provisions set forth in the federal clean water act and the public participation provisions set forth in this chapter, the director shall notify the appropriate public agencies of any water bodies in which the designated beneficial uses are not fully supported. For water bodies so identified, the director shall place such water bodies into one (1) of the following priority classifications for the development of total maximum daily load or equivalent processes:

(1) "High," wherein definitive and generally accepted water quality data indicate that unless remedial actions are taken in the near term there will be significant risk to designated or existing beneficial uses of a particular water body. The director in establishing this category, shall consider public involvement as set forth in this chapter.

(2) "Medium," wherein water quality data indicate that unless remedial actions are taken there will be risks to designated or existing beneficial uses.

(3) "Low," wherein limited or subjective water quality data indicate designated uses are not fully supported, but that risks to human health, aquatic life, or the recreational, economic or aesthetic importance of a particular water body are minimal. [I.C., § 39-3609, as added by 1995, ch. 352, § 1, p. 1165.]

Compiler's notes. Former § 39-3609 was § 19 of S.L. 1995, ch. 352, effective July 1, amended and redesignated as § 39-3635 by 1995.

39-3610. General limitations on point and nonpoint sources for water bodies not fully supporting beneficial uses. — The director shall assure, in a manner consistent with existing statutes or rules, that for each category of water body, as described in section 39-3609(1) through (3), Idaho Code, the following limitations shall apply:

(1) For waters in the "high," category a total maximum daily load or equivalent process as described in this chapter shall be undertaken. Provided however, that nothing in this section shall be interpreted as requiring best management practices for agricultural operations which are not adopted on a voluntary basis.

(2) For waters in the "medium" category, such changes in permitted discharges from point sources on the water body or to the best management practices for nonpoint sources within the watershed deemed necessary to prohibit further impairment of the designated or existing beneficial uses.

(3) For waters in the "low" category, such changes in permitted discharges from point sources on the water body or to the best management practices for nonpoint sources within the watershed deemed necessary to prohibit further impairment of the designated or existing beneficial uses. [I.C., § 39-3610, as added by 1995, ch. 352, § 1, p. 1165.]

Compiler's notes. Former § 39-3610 was § 20 of S.L. 1995, ch. 352, effective July 1, amended and redesignated as § 39-3636 by 1995.

39-3611. Development and implementation of total maximum daily load or equivalent processes. — For water bodies described in section 39-3609, Idaho Code, the director shall, in accordance with the priorities set forth in section 39-3610, Idaho Code, and in accordance with sections 39-3614 and 39-3616, Idaho Code, and as required by the federal clean water act, initiate development of a total maximum daily load process to control point source and nonpoint sources of pollution on the water body. For water bodies where an applicable water quality standard has not been attained due to impacts that occurred prior to 1972, no further restrictions under a total maximum daily load process shall be placed on a point source discharge unless the point source contribution of a pollutant exceeds twenty-five percent (25%) of the total load for that pollutant. Existing uses shall be maintained on all such water bodies. Total maximum daily load processes developed pursuant to this section shall include, but not be limited to:

(1) An inventory of all point and nonpoint sources of the identified pollutants;

(2) An analysis of why current control strategies are not effective in assuring full support of designated beneficial uses;

(3) A plan to monitor and evaluate progress toward water quality progress and to ascertain when designated beneficial uses will be fully supported;

(4) Pollution control strategies for both point sources and nonpoint sources for reducing those sources of pollution;

(5) Identification of the period of time necessary to achieve full support of designated beneficial uses. Point source discharges for which a national pollutant discharge elimination system permit is approved after January 1, 1995, shall be deemed to have met the requirements of this section. [I.C., § 39-3611, as added by 1995, ch. 352, § 1, p. 1165.]

Compiler's notes. Former § 39-3611 was § 21 of S.L. 1995, ch. 352, effective July 1, amended and redesignated as § 39-3637 by 1995.

39-3612. Integration of total maximum daily load processes with other programs. — Upon completion of total maximum daily load processes as set forth in section 39-3611, Idaho Code, the director shall, subject to the provisions of chapter 52, title 67, Idaho Code, adopt such processes as part of the state's water quality management plan developed pursuant to the federal clean water act. Upon such adoption, the provisions of these processes shall be enforced through normal enforcement practices of designated agencies as set forth in the state's water quality management plan. [I.C., § 39-3612, as added by 1995, ch. 352, § 1, p. 1165.]

Compiler's notes. Former § 39-3612 was § 22 of S.L. 1995, ch. 352, effective July 1, amended and redesignated as § 39-3638 by 1995.

39-3613. Creation of basin advisory groups. — The director, in consultation with the designated agencies, shall name, for each of the state's major river basins, no less than one (1) basin advisory group which shall generally advise the director on water quality objectives for each basin and work in a cooperative manner with the director to achieve these objectives. Each such group shall establish by majority vote, operating procedures to guide the work of the group. Members shall be compensated pursuant to section 59-509(c), Idaho Code. The membership of each basin advisory group shall be representative of the industries and interests directly affected by the implementation of water quality programs within the basin and each member of the group shall either reside within the basin or represent persons with a real property interest within the basin. Recognized groups representing those industries or interests in the basin may nominate members of the group to the director. Each basin advisory group named by the director shall reflect a balanced representation of the interests in the basin and shall, where appropriate, include a representative from each of the following: agriculture, mining, nonmunicipal point source discharge permittees, forest products, local government, livestock, Indian tribes (for areas within reservation boundaries), water-based recreation, and environmental interests. In addition, the director shall name one (1) person to represent the public at large who may reside outside the basin. Members named to the basin advisory groups shall, in the opinion of the director, have demonstrated interest or expertise which will be of benefit to the work of the basin advisory group. The director may also name as may be needed those who have expertise necessary to assist in the work of the basin advisory group who shall serve as technical nonvoting advisers to the basin advisory group. [I.C., § 39-3613, as added by 1995, ch. 352, § 1, p. 1165.]

Compiler's notes. Former § 39-3613 was amended and redesignated as § 39-3639 by § 23 of S.L. 1995, ch. 352, effective July 1, 1995. The words enclosed in parentheses so appeared in the law as enacted.

39-3614. Duties of the basin advisory group. — Each basin advisory group shall meet as necessary to conduct the group's business and to provide general coordination of the water quality programs of all public agencies pertinent to each basin. Duties of the basin advisory groups shall include, but not be limited to, providing advice to the director for:

- (1) Determining priorities for monitoring;
- (2) Revisions in the beneficial uses designated for each stream and the status and attainability of designated or existing beneficial uses for the water bodies within the basin;
- (3) Assigning water bodies to the categories described in section 39-3609, Idaho Code;
- (4) Reviewing the development and implementation of total maximum daily load processes as described in section 39-3611, Idaho Code;
- (5) Suggesting members of the watershed advisory groups described in section 39-3615, Idaho Code; and
- (6) Establishing priorities for water quality programs within the basin based on the economic resources available to implement such programs.

In carrying out the provisions of this chapter, the director and the basin advisory groups shall employ all means of public involvement deemed necessary, including the public involvement required by section 39-3603, Idaho Code, or required in chapter 52, title 67, Idaho Code, and shall cooperate fully with the public involvement or planning processes of other appropriate public agencies. [I.C., § 39-3614, as added by 1995, ch. 352, § 1, p. 1165.]

Compiler's notes. Former § 39-3614 § 1, p. 999, was repealed by § 5 of S.L. 1995, which comprised I.C., § 39-3614, as added by ch. 352. 1989, ch. 153, § 1, p. 363; am. 1992, ch. 333.

39-3615. Creation of watershed advisory groups. — The director, with the advice of the appropriate basin advisory group, may name watershed advisory groups which will generally advise the department on those specific actions needed to control point and nonpoint sources of pollution within the watersheds of those water bodies where designated beneficial uses are not fully supported. For each such water body in the "high" category, the director shall name a watershed advisory group to provide guidance on those pollution control efforts needed to achieve, within a reasonable amount of time, full support of designated beneficial uses. For water bodies in other categories, the director may name watershed advisory groups, as economic resources and the interest of those affected by the management of the watershed in question allows. Members of each watershed advisory group shall be representative of the industries and interests affected by the management of that watershed, along with representatives of local government and the land managing or regulatory agencies with an interest in the management of that watershed and the quality of the water bodies within it. Members of each watershed advisory group shall serve and shall not be reimbursed for their expenses during their term of service. [I.C., § 39-3615, as added by 1995, ch. 352, § 1, p. 1165.]

Compiler's notes. Former § 39-3615 § 1, p. 942; am. and redesisg. 1992, ch. 333, which comprised I.C., § 39-3617, as added by § 2, p. 999, was repealed by § 5 of S.L. 1995, 1989, ch. 153, § 1, p. 363; am. 1990, ch. 305. ch. 352, effective July 1, 1995.

39-3616. Duties of each watershed advisory group. — Each watershed advisory group shall generally be responsible for recommending those specific actions needed to control point and nonpoint sources of pollution within the watershed so that, within reasonable periods of time, designated beneficial uses are fully supported. The duties of the watershed advisory group shall include those actions pertinent to total maximum daily loads as described in section 39-3611, Idaho Code. Watershed advisory groups shall, as described in this chapter, develop and recommend actions needed to effectively control sources of pollution. In carrying out the provisions of this section, the director and the watershed advisory groups shall employ all means of public involvement deemed necessary or required in chapter 52, title 67, Idaho Code, and shall cooperate fully with the public involvement or planning processes of other appropriate public agencies. [I.C., § 39-3616, as added by 1995, ch. 352, § 1, p. 1165.]

Compiler's notes. Former § 39-3616 1992, ch. 333, § 3, p. 999, was repealed by § 5 which comprised I.C., § 39-3615, as added by of S.L. 1995, ch. 352, effective July 1, 1995. 1989, ch. 153, § 1, p. 363; am. and redesisg.

39-3617. Designation of outstanding resource waters. — Any person may request, in writing to the board of health and welfare, that a stream segment may be considered for designation as an outstanding resource water. The board shall recommend to the legislature those stream segments the board proposes for designation as outstanding resource waters. The legislature shall determine by law which such stream segments to designate as outstanding resource waters. Stream segments so designated shall be included in a list of outstanding resource waters to be compiled and updated by the department of health and welfare in its rules governing water quality standards. Interim status or special protection shall not be provided to streams recommended by the board prior to legislative designation as an outstanding resource water. No state agency shall delay actions, or deny or delay the processing or approval of any permit for a nonpoint source activity based on nomination of a segment for designation as an outstanding resource water, or while the legislature is considering such designation. [I.C., § 39-3617, as added by 1995, ch. 352, § 1, p. 1165.]

Compiler's notes. Former § 39-3617, as added by 1989, ch. 153, § 1, p. 363; am. and redesisg. 1992, ch. 333, § 4, p. 999, was repealed by § 5 of S.L. 1995, ch. 352, effective July 1, 1995.

39-3618. Restriction provisions for new nonpoint source activities on outstanding resource waters. — No person shall conduct a new or substantially modify an existing nonpoint source activity that can reasonably be expected to lower the water quality of an outstanding resource water, except for short-term or temporary nonpoint source activi-

ties which do not alter the essential character or special uses of a segment, issuance of water rights permits or licenses, allocation of water rights, or operation of water diversions or impoundments. [I.C., § 39-3618, as added by 1995, ch. 352, § 1, p. 1165.]

Compiler's notes. Former § 39-3618 1992, ch. 333, § 5, p. 999, was repealed by § 5 which comprised I.C., § 39-3618 as added by of S.L. 1995, ch. 353, effective July 1, 1995.

39-3619. Continuation provisions for existing activities on outstanding resource waters. — Existing activities may continue and shall be conducted in a manner that maintains and protects the current water quality of an outstanding resource water. The provisions of this section shall not affect short-term or temporary activities that do not alter the essential character or special uses of a segment, allocation of water rights, or operations of water diversions or impoundments, provided that such activities shall be conducted in conformance with applicable laws and regulations. [I.C., § 39-3619, as added by 1995, ch. 352, § 1, p. 1165.]

Compiler's notes. Former § 39-3619, 1992, ch. 333, § 5, p. 99, was repealed by § 5 which comprised I.C., § 39-3619, as added by of S.L. 1995, ch. 352, effective July 1, 1995.

39-3620. Approval provisions for best management practices for new nonpoint source activities on or affecting outstanding resource waters. — No person may conduct a new nonpoint source activity on or affecting an outstanding resource water, except for a short-term or temporary activity as set forth in section 39-3602, Idaho Code, prior to approval by the designated agency as provided in this section.

(1) Within six (6) months of designation of an outstanding resource water by the legislature, the designated agency shall develop best management practices for reasonably foreseeable nonpoint source activities. In developing best management practices the designated agencies shall:

- (a) Solicit technical advice from state and federal agencies, research institutions, and universities and consult with affected landowners, land managers, operators, and the public; and
- (b) Shall assure that all public participation processes required by law have been completed, but if no public participation process is required by law, will require public notification and the opportunity to comment;
- (c) Recommend proposed best management practices to the board of health and welfare.

(2) The board of health and welfare and designated agencies shall adopt the proposed best management practices that are in compliance with the rules and regulations governing water quality standards, and based on the recommendations of the designated agency and the comments received during the public participation process;

(3) After adoption, these best management practices will be known as the outstanding resource water best management practices and will be published by the designated agency. Outstanding resource water approved best management practices will be reviewed and revised where needed by the designated agency every four (4) years in consultation with the department,

landowners, federal managers, operators and the public to determine conformance with objectives of this act;

(4) Following adoption of best management practices, the designated agency shall require implementation of applicable outstanding resource water best management practices which will assure that water quality of an outstanding resource water is not lowered;

(5) Where outstanding resource water best management practices have not been adopted as set forth in subsections (1) through (4) of this section, the designated agency shall:

(a) Assure that all public participation processes required by law have been completed, but if no public participation process is required by law, the designated agency shall provide for public notification of the new activity and the opportunity to comment;

(b) Determine that the site-specific best management practices selected for a new nonpoint source activity are designed to ensure that water quality of the outstanding resource water is not lowered; and

(c) Provide for review by the department that the activity is in compliance with rules and regulations governing water quality standards.

(6) When the applicable outstanding resource water best management practices are applied, the landowner, land manager, or operator applying those practices will be in compliance with the provisions of this act. In the event water quality is lowered, the outstanding resource water best management practices will be revised within a time frame established by the designated agency to ensure water quality is restored. [I.C., § 39-3620, as added by 1995, ch. 352, § 1, p. 1165.]

Compiler's notes. Former § 39-3620 of S.L. 1995, ch. 352, effective July 1, 1995, which comprised I.C., § 39-3620, as added by 1992, ch. 333, § 5, p. 999, was repealed by § 5 of S.L. 1995, ch. 352, effective July 1, 1995. For words "this act" see Compiler's notes, § 39-3601.

39-3621. Monitoring provisions. — The designated agencies, in cooperation with the appropriate land management agency and the department shall ensure best management practices are monitored for their effect on water quality. The monitoring results shall be presented to the department on a schedule agreed to between the designated agency and the department. [I.C., § 39-3621, as added by 1995, ch. 352, § 1, p. 1165.]

Compiler's notes. Former § 39-3621 § 2, p. 842; am. and redesign. 1992, ch. 333, which comprised I.C., § 39-3618, as added by 1989, ch. 153, § 1, p. 363; am. 1990, ch. 305, § 6, p. 999, was repealed by § 5 of S.L. 1995, ch. 352, effective July 1, 1995.

39-3622. Enforcement provisions. — (1) The designated agency shall ensure that the approved outstanding resource water best management practices are implemented for new nonpoint source activities. If a person fails to obtain approval from a designated agency for a new nonpoint source activity as set forth in section 39-3620, Idaho Code, or if a person fails to implement approved best management practices and water quality is lowered, the designated agency may institute a civil action for an immediate injunction to halt the activity or pursue other remedies provided by law.

(2) Nothing in this act shall restrict the enforcement authority of the department or designated agencies as provided by law. [I.C., § 39-3622, as added by 1995, ch. 352, § 1, p. 1165.]

39-3623. Effect of rules. — Every rule promulgated within the authority conferred in sections 39-3617 through 39-3622, Idaho Code, shall be of temporary effect and shall become permanent only by enactment of statute at the first regular session following adoption of the rule. Rules not approved in the above manner shall be rejected, null, void and of no force and effect on July 1, following submission of the rules to the legislature. The rules promulgated within the authority conferred in this act and adopted by the board of health and welfare on January 31, 1990, and contained in IDAPA 16.01.2003,31 and 16.01.2003,32 and 16.01.2053,01 through 16.01.2053,07, are hereby approved by the legislature. [I.C., § 39-3623, as added by 1995, ch. 352, § 1, p. 1165.]

Compiler's notes. Section 2 of S.L. 1995, ch. 352 is compiled as § 38-1303.

For words "this act" see Compiler's notes, § 39-3601.

39-3624. Declaration of policy — Designation of director. — The legislature, recognizing that water is one (1) of the state's most valuable natural resources, has adopted water quality standards and authorized the director of the department of health and welfare to implement these standards. In order to provide and maintain maximum water quality in the state for domestic, industrial, agricultural (irrigation and stockwatering), mining, manufacturing, electric power generation, municipal, fish culture, artificial ground water recharge, transportation and recreational purposes at the earliest possible date, and to conform to the expressed intent of congress to abate pollution of ground waters, streams and lakes, the legislature declares the purpose of this act is to enhance and preserve the quality and value of the water resources of the state of Idaho and to assist in the prevention, control, abatement and monitoring of water pollution. In consequence of the benefits resulting to the public health, welfare and economy it is hereby declared to be the policy of the state of Idaho to protect this natural resource by assisting in monitoring, preventing and controlling water pollution; to support and aid technical and planning research leading to the prevention and control of water pollution, and to provide financial and technical assistance to municipalities, soil conservation districts and other agencies in the abatement and prevention of water pollution. The director of the department of health and welfare shall administer this act and nothing herein shall be construed as impairing or in any manner affecting the statutory authority or jurisdiction of municipalities in providing domestic water, sewage collection and treatment. [1970, ch. 87, § 1, p. 211; am. 1974, ch. 23, § 153, p. 633; am. 1980, ch. 208, § 1, p. 474; am. 1987, ch. 174, § 1, p. 342; am. and redesisg. 1995, ch. 352, § 8, p. 1165.]

Compiler's notes. This section was formerly compiled as § 39-3601.

The words enclosed in parentheses so appeared in the law as enacted.

Idaho Rules for Outstanding Resource Waters

IDAPA 16.01.02

Water Resources, Idaho Department of Fish and Game, members of the WQA Working Committee, sponsoring groups and to the public upon request. The most current list of stream segments of concern shall supersede all previous lists. Segments must be specifically renominated to be included as a stream segment of concern in the next and each successive three (3) year period. Stream segments of concern will be used by the Department to focus resources for monitoring; such results will be considered in implementing nonpoint source management pursuant to Subsection 350.02. Stream segments of concern are also subject to relevant provisions of the rules of the Idaho Department of Lands and the Soil Conservation Commission. (8-24-94)

053. OUTSTANDING RESOURCE WATERS (ORW).

01. Nominations for Outstanding Resource Water Designation. Any person may request, in writing to the Board, that a stream segment be considered for designation as an outstanding resource water. To be considered for ORW designation nominations must be received by the Board before June 1 for consideration during the next regular session of the legislature. All nominations shall be addressed to:

Idaho Department of Health and Welfare

Outstanding Resource Water Nomination

Statehouse Mail, Boise, Idaho 83720

The nomination shall include the following information: (7-1-93)

- a. The name, description and location of the stream segment; (7-1-93)
- b. The boundaries upstream and downstream of the stream segment; (7-1-93)
- c. An explanation of what makes the segment a candidate for the designation; (7-1-93)
- d. A description of the existing water quality and any technical data upon which the description is based as can be found in the most current basin status reports; (7-1-93)
- e. A discussion of the types of nonpoint source activities currently being conducted that may lower water quality, together with those activities that are anticipated during the next two (2) years, as described in the most current basin status reports; and (7-1-93)
- f. Any additional evidence to substantiate such a designation. (7-1-93)

02. Public Notice and Public Comment. The Board will give public notice that one (1) or more stream segments are being considered for recommendation to the legislature as outstanding resource waters. Public notice will also be given if a public hearing is being held. Public comments regarding possible designation will be accepted by the Board for a period of at least forty-five (45) days. Public comments may include, but are not limited to, discussion of socio-economic considerations; fish, wildlife or recreational values; and other beneficial uses. (7-1-93)

03. Public Hearing. A public hearing(s) may be held at the Board's discretion on any stream segment nominated for ORW designation. Public notice will be given if a hearing is held. The decision to hold a hearing may be based on the following criteria: (7-1-93)

a. One (1) or more requests contain supporting documentation and valid reasons for designation;

(7-1-93)

b. A stream segment is generally recognized as constituting an outstanding national resource, such as waters of national and state parks, and wildlife refuges; (7-1-93)

c. A stream segment is generally recognized as waters of exceptional recreational or ecological significance; (7-1-93)

d. The Board shall give special consideration to holding a hearing and to recommending for designation by the legislature, waters which meet criteria found in Subsections 053.03.b. and 053.03.c.; (7-1-93)

e. Requests for a hearing will be given due consideration by the Board. Public hearings may be held at the Board's discretion. (7-1-93)

04. Board Review. The Board shall review the stream segments nominated for ORW designation and based on the hearing or other written record, determine the segments to recommend as ORWs to the legislature. The Board shall submit a report for each stream segment it recommends for ORW designation. The report shall contain the information specified in Subsection 053.01 and information from the hearing record or other written record concerning the impacts the designation would have on socio-economic conditions; fish, wildlife and recreational values; and other beneficial uses. The Department shall then prepare legislation for each segment that will be recommended to the legislature as an ORW. The legislation shall provide for the listing of designated segments in these regulations without the need for formal rule-making procedures, pursuant to Section 67-5200, et seq., Idaho Code. (7-1-93)

05. Designated Waters. Those stream segments designated by the legislature as ORWs are listed in Sections 110 through 160. (7-1-93)

06. Restriction of Nonpoint Source Activities on Outstanding Resource Waters. Nonpoint source activities on ORWs shall be restricted as specified in Subsection 350.04. (7-1-93)

054. SPECIAL RESOURCE WATERS.

01. Designations. Waters of the state may be designated as special resource waters. Designation as a special resource water recognizes at least one (1) of the following characteristics: (7-1-93)

a. The water is of outstanding high quality, exceeding both criteria for primary contact recreation and cold water biota; (7-1-93)

b. The water is of unique ecological significance; (7-1-93)

c. The water possesses outstanding recreational or aesthetic qualities; (7-1-93)

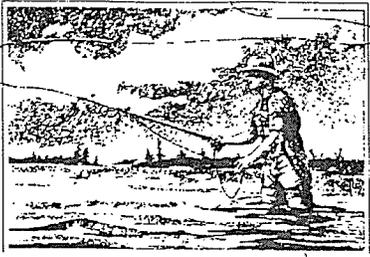
d. Intensive protection of the quality of the water is in paramount interest of the people of Idaho;

(7-1-93)

e. The water is a part of the National Wild and Scenic River System, is within a State or National Park or wildlife refuge and is of prime or major importance to that park or refuge; (7-1-93)

APPENDIX B

**OUTSTANDING RESOURCE WATERS
QUESTION AND ANSWER FACT SHEET**



Outstanding Resource Waters

Idaho law allows for designation of lakes, rivers or streams as Outstanding Resource Waters (ORWs). ORWs are petitioned by citizens or special interest groups. The Board of Health and Welfare reviews the petitions and may hold public hearings, and makes a recommendation to the state legislature, which may designate ORWs.

ORW is the state's highest level of water quality protection. The water in an ORW is protected at a baseline level which is measured at the time of designation.

The Board is charged with receiving petitions from the public for Outstanding Resource Waters. Its responsibilities are clearly outlined in the Idaho Code. It must provide public notice that petitions are being considered and public comments on the petitions must be received for at least 45 days. It also may decide to hold public hearings on the petitions. Following the public comment period and hearings, the Board will review the petitions and comments and determine which, if any, segments to recommend to the legislature for ORW designation.

Common Terms

Antidegradation Policy: A policy adopted by the state, and required by the federal Clean Water Act, to protect beneficial uses of water and the water quality that supports these uses. For Outstanding Resource Waters, the antidegradation policy says the high quality of these waters can not be lowered.

Baseline Water Quality: The quality of the ORW at the time of designation by the Legislature. In practice, defining water quality will depend on available existing information, and data that will be collected by appropriate state and federal agencies.

Beneficial Uses: Uses of water that are protected, including domestic supply, agricultural supply, cold and warm-water life, salmon spawning, primary contact recreation and secondary contact reception.

Best Management Practice: A practice or combination of practices determined to be a cost effective and practical method of preventing or reducing the amount of pollution generated by nonpoint sources.

Nonpoint Source Activities: Land-disturbing activities that may produce pollution that does not discharge from a discrete point. Generally, this includes forest practices, certain mining activities, agriculture, grazing, road building and recreation.

Point Source Activities: Sources of pollution that discharge into surface waters from a pipe, such as discharges from sewage treatment or industrial plants.

Commonly Asked Questions

Q What is an Outstanding Resource Water?

An Outstanding Resource Water (ORW) is a body of water with high quality, such as waterways in national and state parks or wildlife refuges, and/or water of exceptional recreational or ecological significance. The ORW designation must be made by the Idaho Legislature. It constitutes an outstanding national or state resource requiring protection from point source and nonpoint source activities that may lower water quality. (Idaho Code 39-3602(16))

Q Does federal law require states consider designation of ORWs?

Yes. The federal Clean Water Act and regulations adopted by the Environmental Protection Agency require states adopt an "antidegradation policy." One level of protection -- Outstanding Resource Waters -- is given the highest level of protection

from activities that degrade water quality.

Q Where is the law on Outstanding Resource Waters?

Chapter 36, Title 39, of Idaho Code defines ORWs and discusses protection of these waters. Idaho's Antidegradation Policy and the process for nominating ORWs is contained in the Idaho Water Quality Standards promulgated by the Division of Environmental Quality.

Q How are Outstanding Resource Waters designated?

Anyone may nominate a body of water as an ORW by submitting a nomination to the Board of Health and Welfare before June 1 each year. The Board requests public comment and may schedule a hearing. The Board determines which, if any, segments of the stream, river or lake to recommend as an ORW to the Legislature after consideration of public comments.

Q What extra protection do ORWs receive?

The primary difference between protection for all Idaho waterways and for ORWs is in the management goal. ORWs must be managed to maintain the high level of water quality at levels identical to those at the time of ORW designation by the Legislature. A measurable change in water quality caused by pollution is not allowed. Other waters are protected by state standards and water quality criteria. The criteria are set at a level to protect "beneficial uses" of water. Pollution sources are managed to assure that water quality does not drop below these criteria which support the beneficial uses.

Q When is "baseline water quality" established?

Water quality will be established using available data and additional monitoring as needed, to determine conditions at the time of ORW designation by the Legislature.

Q Who monitors water quality in designated ORWs?

The Division of Environmental Quality is responsible for coordinating or conducting monitoring and assuring that monitoring meets accepted scientific standards. In practice, a number of state and federal agencies are

involved. The "designated agency," in cooperation with the Department, ensures that "best management practices" are monitored.

Q What activities are regulated in an Outstanding Resource Water?

An ORW addresses point source and nonpoint source activities, such as NPDES permits, timber harvest, grazing, mining, road building, and recreation.

Q Are short-term or temporary activities eliminated?

No. The law specifically allows for short-term or temporary activities that do not alter the essential character or special uses of ORW segments and only have a minimal impact on water quality. Examples might include limited road and trail reconstruction, maintaining structures or habitat enhancement structures.

Q Are existing activities prohibited by an Outstanding Resource Water designation?

No. Idaho law says: "Existing activities may continue and shall be conducted in a manner that maintains and protects the current water quality of an ORW."

Q Are existing grazing permits prohibited by an Outstanding Resource Water?

No. Existing grazing permits and reissuance of existing grazing permits are considered existing nonpoint source activities.

Q Does ORW designation prohibit future timber harvest, mining, road construction, grazing or recreation?

No. Future activities are not prohibited. However, these activities must be conducted in a manner that does not lower the water quality of the ORW.

Q How are new nonpoint source activities managed to maintain water quality?

The law requires state agencies to develop site-specific and industry-specific best management practices for the stream segment within six months after the Legislature has designated it an ORW. The best management practices would be determined based on technical advice and after consulting with affected parties and the public. The best management practices would be adopted by the Board of Health and Welfare for

the specific ORW. After adoption, the practices would be used by the land manager and operator to ensure water quality is maintained. Where the operator applies these practices and water quality still is impacted, the practices would be revised to ensure water quality protection.

Q Where is water quality measured to ensure compliance?

Water quality is measured in the stream segment designated as an ORW, not in a tributary or side drainage. Water quality in the tributary is subject to the same water quality standards as any other water in the state.

Q What is the relationship between ORWs and wilderness areas?

The two designations are complementary. Wilderness designation requires land management to preserve the natural condition. The Wilderness Act does not specifically set water quality objectives or standards. ORW designation sets an objective of maintaining water quality, establishes review procedures and sets monitoring requirements to ensure the objective is met.

Q How does federal Wild and Scenic River designation differ from ORW?

Several rivers nominated as ORWs also are designated under the federal Wild and Scenic Rivers Act of 1968. The federal law preserves the free-flowing character and scenery of the wild river. Generally, the federal law prohibits construction of new dams and requires federal agencies to develop management plans for the river corridors. It does not convey any water quality protection.

Q How do ORWs fit with the Governor's Bull Trout Plan?

Unfortunately, there is no clear answer. If a stream which supports a good population of bull trout and has excellent water quality is designated, it may be a good match. The water quality will be protected and the bull trout probably will thrive. However, if a stream has fragmented population of trout and less desirable water quality, or if it has a weak population and questionable quality, it may not meet ORW requirements. Those streams need intensive study and upgrading of the water quality when it is possible to provide them.

Q What action can the Board take on the nominations made by the Idaho Conservation League?

The Board may recommend to the legislature that the whole list be designated ORW. It may choose to recommend only those it considers of high enough water quality. It may deny all of them. It may defer its decision until another time. That's why the Board has a subcommittee working on it. By accepting the nominations, the Board already committed to issuing public notices of an open, 45-day public comment period, and it is collecting and reviewing those comments from the public.

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Written testimony

Written comments are welcome! Comments will be accepted until Nov. 6. Send yours to:

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APPENDIX C
FOCUS STREAM SEGMENT ANALYSIS

FOCUS STREAM SEGMENT ANALYSIS

Stream Segment	Boundaries	Current Water Quality	Other Designations	Rational for Designation	Current and Foreseeable Activities
MF Salmon River	source to Salmon River	40 stations sampled over 22 years, last sample taken in 1991, 709 samples taken for 3-9 parameters (USFS)	Wild and Scenic Wilderness	recreation, chinook, steelhead, bull trout, westslope cutthroat (IDFG)	wildfires, recreational trail and river use, 13 outfitters and guides listed (USFS)
Loon Creek	source to MF Salmon	ISU (Richards & Minshall, 1992)	Wilderness	chinook, steelhead, bull trout, westslope cutthroat (IDFG)	parallel road, private land w/airstrip, 2 guard stations, 8 developed campgrounds, wildfires, recreational trail and river use (USFS)
Marble Creek	source to MF Salmon	ISU (Richards & Minshall, 1992)	most in wilderness	chinook, steelhead, bull trout, westslope cutthroat (IDFG)	in wilderness wildfire, recreation, state owned section, private ranch, campground, outside current and past mining (USFS)
Rapid River	source to MF Salmon		half in wilderness	chinook, steelhead, bull trout, westslope cutthroat (IDFG)	wildfire, recreation in wilderness, outside roads, guard station, 2 developed campgrounds, current and past mining claims (USFS)
Sulphur Creek	source to MF Salmon	BNF Reference stream (USFS)	Wilderness	chinook, steelhead, bull trout, westslope cutthroat (IDFG)	
Elk Creek	source to Bear Valley Creek	BNF, tribes, BPA	half in wilderness	chinook, steelhead, bull trout, westslope cutthroat (IDFG)	
Marsh Creek	source to MF Salmon		1/4 wilderness, 3/4 outside wilderness	chinook, steelhead, bull trout, westslope cutthroat (IDFG)	inside wildfire, recreation, outside Hwy21, roads, grazing, private land, 10 developed campgrounds, light timber management (USFS)
Wilson Creek	source to MF Salmon		Wilderness	chinook, steelhead, bull trout, westslope cutthroat (IDFG)	wildfire, recreation (USFS), abandoned mining
Knapp Creek	source to Marsh Creek		mostly outside wilderness	chinook, steelhead, westslope cutthroat (IDFG)	multiple use, little or no roads (USFS)

Stream Segment	Boundaries	Current Water Quality	Other Designations	Rational for Designation	Current and Foreseeable Activities
Big Creek	source to MF Salmon	highest water quality, used as reference site (USFS)	mostly in wilderness	chinook, steelhead, bull trout, westslope cutthroat (IDFG)	
Smith Creek	source to Big Creek	ISU (Richards & Minshall, 1992)	mostly outside wilderness	chinook, steelhead, bull trout, westslope cutthroat (IDFG)	abandoned mining
Logan Creek	source to Big Creek		mostly outside wilderness	steelhead, bull trout, westslope cutthroat (IDFG)	abandoned mining
Camas Creek	source to MF Salmon		2/3 wilderness 1/3 outside	chinook, steelhead, bull trout, westslope cutthroat (IDFG)	inside wildfire, recreation, outside multiple use, dispersed camping, roads, grazing (USFS)
Yellowjacket Creek	source to Camas Creek		half in wilderness	steelhead, bull trout, westslope cutthroat (IDFG)	inside wildfire, recreation, outside multiple use, mining, dispersed camping, roads, possible timber (USFS)
Selway River	source to Lochsa	generally high quality, low inherent biological productivity, high natural variation of sediment, highly favorable for cold water biota and salmonid spawning and rearing, fish habitat in excellent condition (USFS)	Wild and Scenic 3/4 in wilderness	recreation, chinook, steelhead, bull trout, westslope cutthroat (IDFG)	float trips-455 private and 620 commercial rafters in 1996 for a total of 3,027 use days, greatest conc. of nonpoint source activities occurred along lower main stem and several lower tributaries (USFS)
Running Creek	source to Selway	generally high quality and fish habitat in excellent condition (USFS)	half in wilderness	chinook, steelhead, bull trout, westslope cutthroat (IDFG)	
Bear Creek	source to Selway	generally high quality and fish habitat in excellent condition (USFS)	wilderness	chinook, steelhead, bull trout, westslope cutthroat (IDFG)	
White Cap Creek	source to Selway	generally high quality and fish habitat in excellent condition (USFS)	wilderness	chinook, steelhead, bull trout, westslope cutthroat (IDFG)	

Focus Stream Segment Land Use

Stream Segment	Wild & Scenic	Wilderness	USFS	Private	Activities
MF Salmon R.	✓	entirely in wilderness	✓	✓	float trips, recreation, campgrounds, airstrips, private ranches
Loon Cr.		mostly in wilderness	✓	✓	recreation, private ranches, airstrips, roads, campgrounds, ranger/guard stations, place name of Casto
Marble Cr.		entirely in wilderness	✓	✓	recreation, campground, private ranch, mining near headwaters
Rapid R.		lower ½ in wilderness	✓		recreation, campgrounds, ranger/guard station, a number of mines and prospects on tributaries, roads
Sulphur Cr.		mostly in wilderness, 4-5 miles of headwater outside	✓	✓	recreation, private ranch and airstrip, jeep trail
Elk Cr.		½ inside wilderness	✓		recreation, campground, road near mouth
Marsh Cr.		¼ in wilderness	✓	✓	recreation, campgrounds, grazing, roads, airstrip, light timber mgmt
Wilson Cr.		entirely in wilderness	✓		recreation, campground, cabin
Knapp Cr.		mostly outside wilderness	✓	✓	multiple uses according to USFS
Big Cr.		mostly in wilderness, approx. 16 miles of headwaters outside	✓	✓	abandoned mines, roads, 6 airstrips, ranger/guard station, campground, place names of Edwardsburg and Profile Gap, 48 structures, possible state land
Smith Cr.		mostly outside wilderness	✓		abandoned mines, roads
Logan Cr.		mostly outside wilderness	✓	✓	abandoned mines, roads, place name of Edwardsburg
Camas Cr.		¾ in wilderness	✓	?	recreation, dispersed camping, road, grazing, place name of Meyers Cove, 15 structures
Yellow-jacket Cr.		½ in wilderness	✓	✓	recreation, campgrounds, roads, ranger/guard station, private ranch, 13 structures, grazing, mining, timber mgmt
Selway R.	✓	¾ in wilderness	✓	✓	recreation, float trips, 4 airstrips, Selway Lodge, 20+ campgrounds, roads to Selway Falls and Macgruder corridor, 3 ranger/guard stations
Running Cr.		½ in wilderness	✓		recreation, airstrip, road at Warm Springs Bar
Bear Cr.		1 mile outside wilderness at headwater near Bitter-root NF campground	✓		recreation, campground
White Cap Cr.		2-3 miles at mouth outside wilderness	✓		recreation, ranger/guard station, campground and road at mouth

APPENDIX D
ORW FOCUS RATIONALE

ORW NOMINATION FUTURE FOCUS

Robert Barlow

September 11, 1996

The subcommittee has been presented a substantial amount of information during the workshop over the past two days. Also the subcommittee has reviewed the pending nominations for outstanding resource waters (ORWs), the written public comments generated, and prior ORW nominations by this Board. Based upon all of the information, the following themes emerge:

First, many members of the general public would like the Board to maintain the pristine nature of some of Idaho's treasured waterways through the ORW nomination. On the other hand, people and industries that earn their livelihood from working on the land do not agree that ORW designation is the best way to protect pristine waterbodies, since ORW designation does not allegedly take into account the need for continued and future socioeconomic development.

Second, despite the fact that the Idaho legislature amended the ORW legislation in 1992 to describe how ongoing and future activities would be impacted by ORW designation, there continues to be significant questions and concerns about what impact ORW designation would have upon present and future activities on or affecting ORWs. On top of this uncertainty is concern whether the federal government would place additional restrictions upon activities by reason of this Board's designation of certain waterbodies as ORWs.

Third, should the Board recommend and the legislature approve certain ORW designations, there will be a price tag associated with these designations which will include establishing baseline monitoring data (most of the nominated waters have not been thoroughly monitored), development of ORW best management practices (BMPs), and future monitoring to assure BMP effectiveness.

Fourth, the state of Idaho through DEQ is already devoting substantial resources to monitoring waterbodies throughout the state on the present § 303(d) list. This ongoing monitoring effort will fully assess water quality conditions and identify those bodies which are truly impaired and require development of pollution control strategies (TMDLs) under § 303(d) of the Clean Water Act and Idaho Code § 39-3601 (Senate Bill 1284). Likewise, significant state resources will be devoted to implementation of the Governor's Bull Trout Plan. Many of the waterbodies on the pending petition for ORW nominations are already on the Idaho's § 303(d) list of impaired waters presently being monitored by DEQ and are already being addressed in the Governor's Bull Trout Plan.

Fifth, we live in a time of shrinking fiscal resources to implement government programs. This Board needs to recognize that in carrying out its responsibility, we should avoid duplicating or conflicting with other government programs.

Sixth, the sheer number of waters proposed in the nomination (68) and the other laws and plans already in place to assess and address water quality on many of these waters has made it difficult for the subcommittee to focus upon whether individual waters are appropriate for ORW recommendation.

And finally, the Board should only recommend those waterbodies that it believes have a reasonable chance of success in obtaining approval from the Idaho legislature.

Based upon all of these considerations, the subcommittee recommends that the Board proceed cautiously forward and consider recommending only some of the waters within the pending petition. This approach will allow the Board and general public to focus upon consideration of ORW nominations within two separate watersheds: the Selway River and the Middle Fork of the Salmon River. Therefore, the subcommittee recommends that the Board hold public hearings to determine whether ORW recommendation is appropriate on the following stream segments:

The Selway River and the tributaries of the Selway River: Running Creek, Bear Creek, and White Crap Creek;

The Middle Fork of the Salmon River and the tributaries of the Middle Fork of the Salmon River: Yellow Jacket Creek, Sulfur Creek, Elk Creek, Marsh Creek, Logan Creek, Knapp Creek, Smith Creek, Rapid River, Camas Creek, Wilson Creek, Big Creek, Loon Creek, and Marble Creek.

These two rivers, the Selway River and the Middle Fork of the Salmon River, along with some of their tributaries were selected by the subcommittee for further consideration for the following reasons. (1) The Board has already extensively evaluated these waterbodies for ORW nominations in 1991 and 1992 and appear to be appropriate candidates for future public hearings within the Board's Rules; and (2) the Idaho legislature is familiar with the concept of ORWs applying to these waters and therefore are more likely to favorably consider the Board's nomination of these specific waters; and (3) these waters are within two specific watersheds and thereby allows the Board to focus limited resources to these pristine waterways to determine if ORW designation is appropriate.

The remainder of the waters on the proposed Petition will not be considered by the Board for further ORW nomination at this time for the following reasons; many of the waters within the Petition are presently on Idaho/EPA's § 303(d) list which suggests that these waters are polluted or threatened. In light of the legislature's intent to only consider high quality waters for ORW designation, the subcommittee recommends that the Board not

proceed further to consider these waters until adequate monitoring data has been gathered to determine water quality conditions. Most of the other waters within the petition are being addressed by the Governor's Bull Trout Plan and otherwise appear to be less than pristine, thereby not being ideal candidates for ORW designation at this time.

APPENDIX E

**BOARD RECOMMENDATION CONCERNING
RECONSIDERATION REQUEST**

BOARD OF HEALTH AND WELFARE
ORW SUBCOMMITTEE'S RECOMMENDATION CONCERNING
PENDING MOTION TO RECONSIDER

This subcommittee has previously recommended to the Board that we focus our attention to determine whether ORW designation is appropriate for certain specified waters within two river basins. These two river basins were the Middle Fork of the Salmon River and certain tributaries and the Selway River and certain tributaries. This recommendation was unanimously supported by the Board in September 1996. The rationale for focusing the Board's attention to these waters rather than all 68 waters nominated by the Idaho Conservation League (ICL) was that these waters were located within two pristine watersheds that had few activities that might be affected by ORW nomination. Focusing our attention to these separate watersheds also allowed DEQ to focus its limited resources to evaluating water quality data within these watersheds, and if recommended by this Board and ultimately designated by the Legislature, it allowed DEQ to focus its limited resources to obtaining baseline data and implementing and determining ORW best management practice effectiveness. Also, proceeding cautiously and focusing our attention to those specific waters makes good common sense since there is still a high degree of uncertainty associated with ORW designation. Accordingly, designating a limited number of specific pristine waters as ORW increases the chances of ultimate designation by the Legislature and also will allow the Board to evaluate future ORW nominations with some previous experience on the impacts of ORW nominations.

Most of the other 68 waters nominated by ICL were outside the Selway and Middle Fork of the Salmon River watersheds, were identified as polluted by EPA at the request of ICL, or were being addressed through Governor Batt's Bull Trout Plan. The subcommittee, therefore, did not want to duplicate or conflict with other water quality programs in designating these waters as ORWs.

Presently before the Board is a motion by ICL to reconsider the Board's focused approach and add eight additional waters for consideration by the Board as ORWs. I note initially, at this late date the Board would be unable to hold public hearings concerning the propriety of nominating these additional waters prior to making a recommendation to the 1997 Legislature. Individuals or industries who might be affected by designation of these additional waters as ORWs would not have had an opportunity to provide comments concerning the propriety of nominating these additional waters. This Board could be justifiably criticized for adding waters to be considered for ORW nomination at this late date. If the Board were to recommend some waters for ORW designation to the 1997 Legislature, this criticism could serve to distract or otherwise compromise the ability to obtain any ORW nominations in the 1997 Legislature. Also, as set forth in the subcommittee's initial recommendations, it is not appropriate to nominate waters that are potentially polluted as ORWs since ORW nominations were intended to be confined to only those waters within the state that had the highest water quality. Finally, we should continue to focus our efforts to these two watersheds previously identified by the Board for all of the reasons

previously stated. Accordingly, this subcommittee recommends that ICL's pending motion to reconsider be denied and that the Board move forward with a final determination whether any of the previously identified waters within the Middle Fork of the Salmon River and certain tributaries and the Selway River and certain tributaries should be recommended for ORW designation by the Idaho Legislature. The Board's determination concerning this issue will be made at the December 1996 meeting.

APPENDIX F

**IDAHO DEPARTMENT OF HEALTH AND WELFARE BOARD
DECLARATION OF ACTION**

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BOARD OF HEALTH AND WELFARE

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**DECLARATION OF ACTION TAKEN
BY THE BOARD OF HEALTH AND WELFARE
REGARDING STREAM SEGMENTS
NOMINATED FOR DESIGNATION AS
OUTSTANDING RESOURCE WATERS**

I declare that, pursuant to the authority granted to the Board of Health and Welfare in Idaho Code § 39-3617 and IDAPA 16.01.02.053, the Board recommends the following stream segments to the First Regular Session of the Fifty-fourth Idaho Legislature for designation as outstanding resource waters:

Name	Lower Boundary	Upper Boundary
Selway River	Lochsa confluence	Headwaters
Running Creek	Selway River	Headwaters
Bear Creek	Selway River	Headwaters
White Cap Creek	Selway River	Headwaters
Mid. Fk. Salmon	Salmon River	Bear Valley/Marsh Cr.
Loon Creek	M.F. Salmon	Headwaters
Wilson Creek	M.F. Salmon	Headwaters

12-17-96
Date

Maureen A. Finnerty
Maureen A. Finnerty, Chairman

STATE OF IDAHO)
) ss.
County of Ada)

On this 17th of December, 1996, before me, the undersigned, a Notary Public in and for said State, personally appeared Maureen A. Finnerty, Chairman, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same.

DECLARATION OF ACTION TAKEN BY
THE BOARD OF HEALTH AND WELFARE
Page 2

IN WITNESS WHEREOF, I have set my hand and affixed
my official seal the day and year in this certificate first
above written.

(SEAL)



Notary Public for Idaho
Residing at: Boise ID
Expires: 9/18/99

IDEQ-109, 83547, 1/97, Cost Per Unit: \$ 9.05



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