









From the desk of

DONALD VANCE SHAFF

7/29/83

DISCUSS CFS RECOMMENDED
VS. 1969 AFFIDAVITS OF CALLENDAR,
ETC.

FROM D. SHAFF 11/19/82

MEETING W/ :

D. SHAW

T. DAVIS

L. DAVIS

MYSELF

Do not
microfilm

IDAHO POWER'S P/D'S
DESCRIBED IN PROPOSED
FINDING MAY BE INCORRECT.

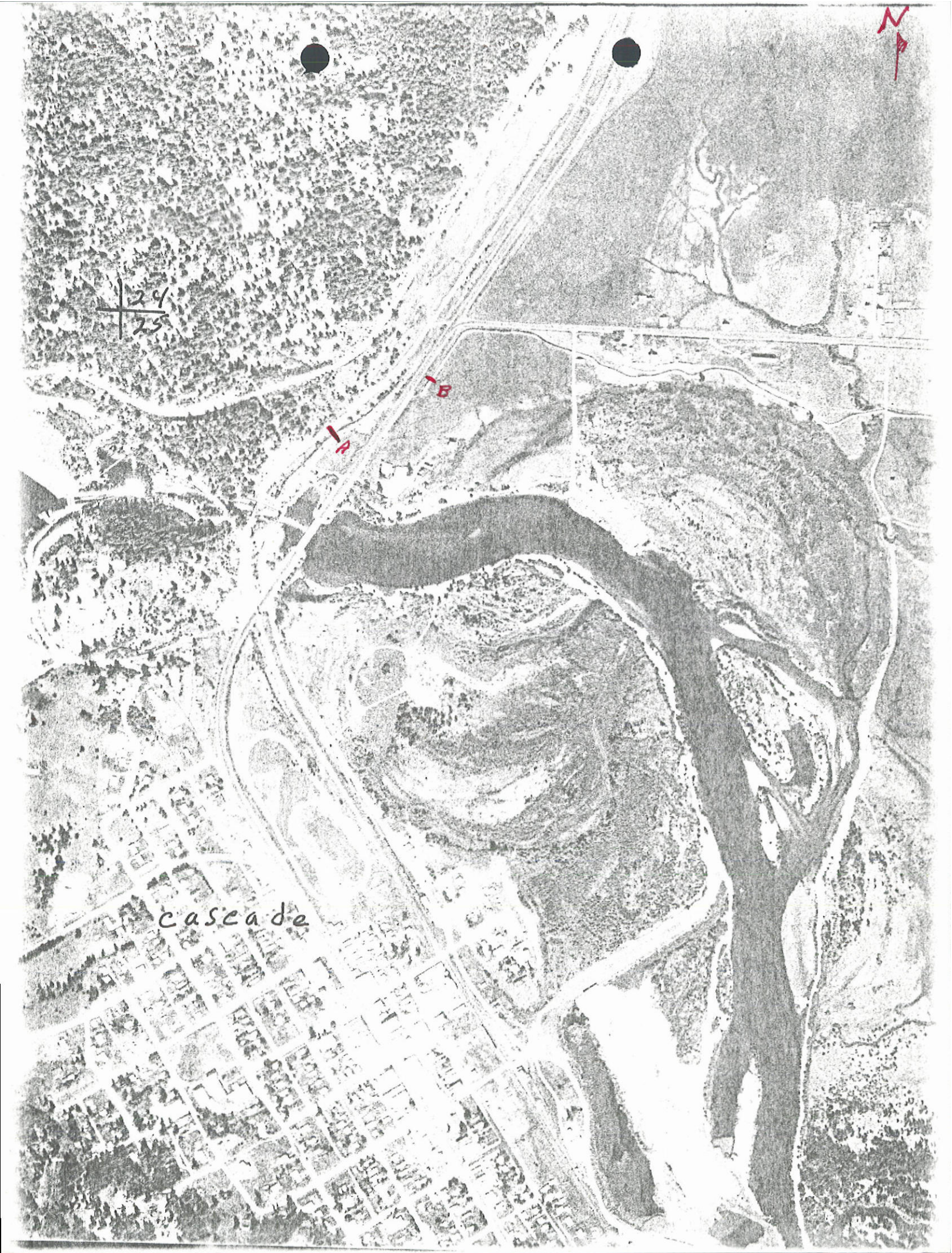
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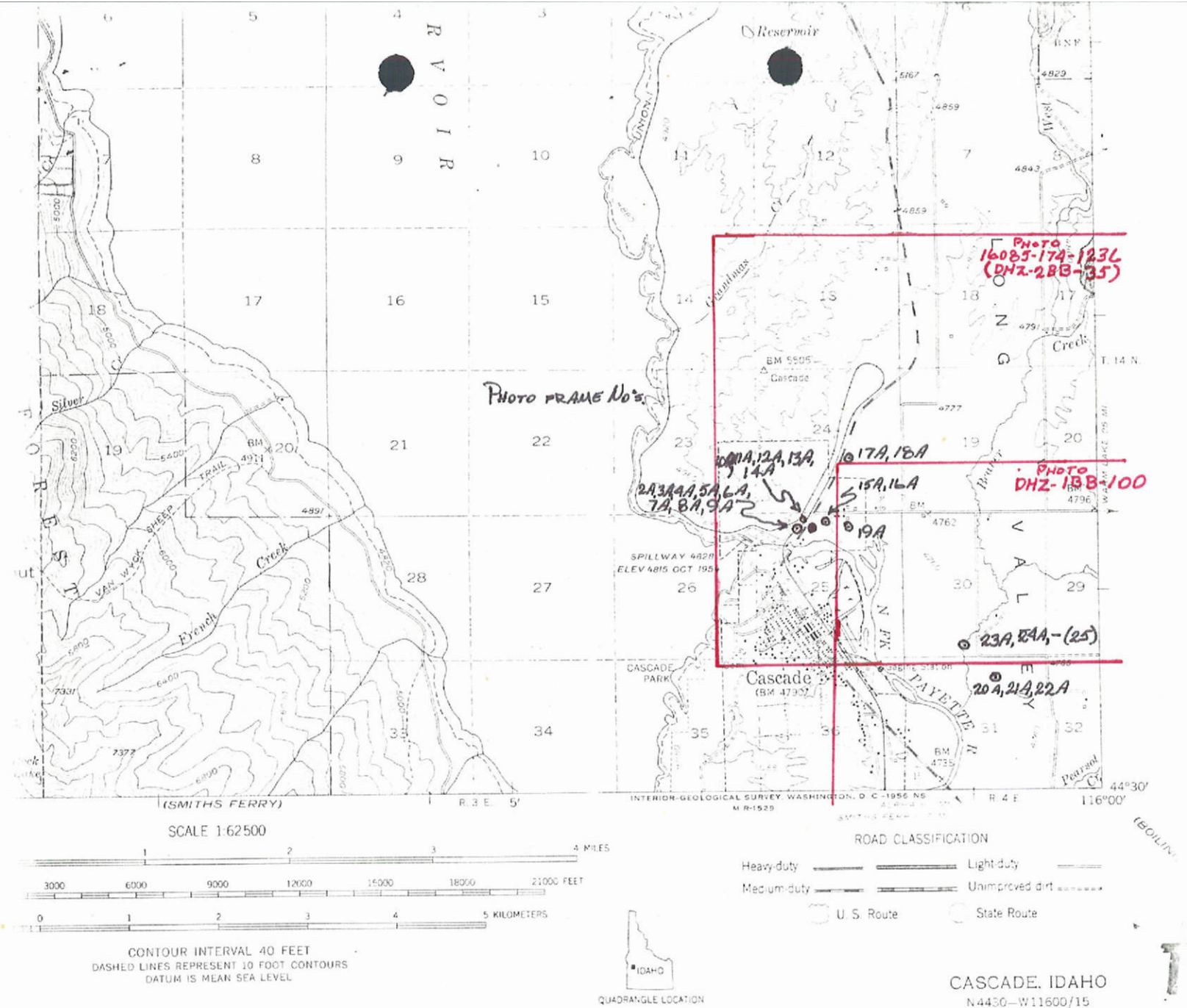
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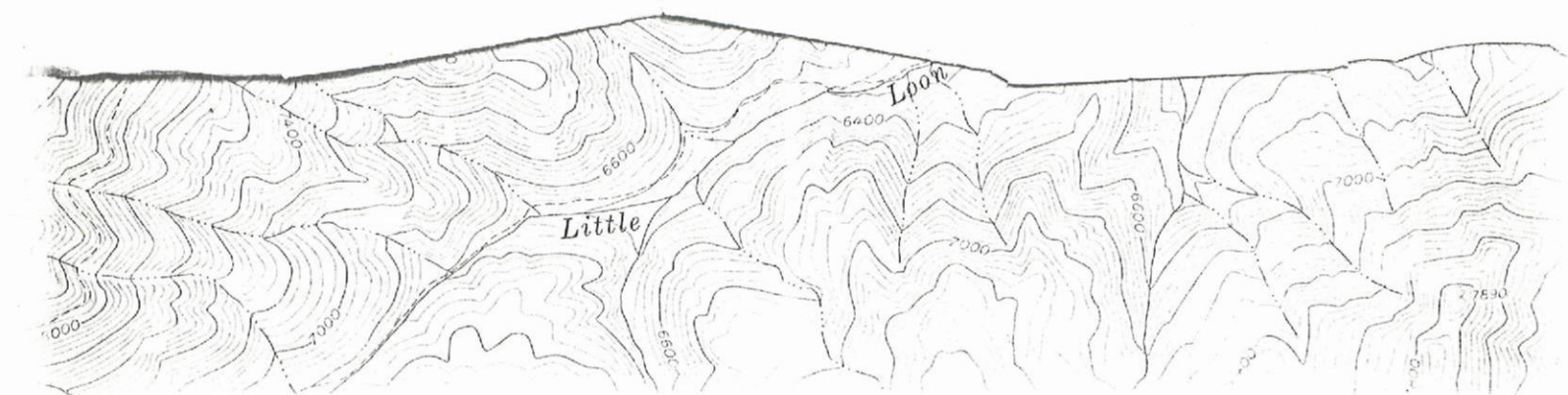




THIS MAP COMPLIES WITH NATIONAL MAP ACCURACY STANDARDS
GEOLOGICAL SURVEY, FEDERAL CENTER, DENVER, COLORADO OR WASHINGTON 25, D. C.
FOR DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON REQUEST

A FOLDER DESCRIBING

AMS 2973 II-SERIES V793



00000000_00000000(2)02RIGHTS BY PLACE OF USE

[illegible]

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A65-03580
Date Received: 11/ 9/1988
Receipt No: X999999
Received By: _____

COPY FOR
YOUR FILES

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

COPY FOR
YOUR FILES

1. Name: DAVIS CATTLE CO 208-382-4892
Address: 19 WARM LAKE HWY
CASCADE ID 83611

2. Date of Priority: APR 1, 1917

3. Source: PAYETTE RIVER, NORTH FORK Trib. to: PAYETTE RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
14N	03E	26	NE	NE	NE	5	VALLEY

5. Description of diverting works:
DITCH & PIPELINE

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/15	10/15	0.840		

7. Total Quantity Appropriated is:
0.840 C.F.S. (and/or) A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
INCIDENTAL STOCKWATERING WITH IRRIGATION.

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
14N	03E	25	NE	SE		IRR	7.0

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
					Section Acres	7.0
	04E	31	NW	NW	1 IRR	37.0
					Section Acres	37.0
					Total Acres	44.0

11. Place of use in counties: VALLEY

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
NONE

14. Remarks:
ADDRESS CORRECTION 10/22/99 SB

15. Basis of Claim: DECREED

Case Number: 3667

Court :

Decree date: 1/21/1986

STATE OF IDAHO

Decree Plaintiff

A & C CORP., ET AL.

vs

Decree Defendant

STATE OF IDAHO
IDAHO DEPARTMENT OF WATER RESOURCES

CHANGE IN ADDRESS OF NOTICE OF CLAIM

RECEIVED
OCT 22 1999
WATER RESOURCES
WESTERN REGION

[] Water Right Number(s):

[] Claimant Name(s):

Davis Cattle Co.
F. Phillip Davis

[] Old Mailing Address:

HC 71 Bx 2005
Cascade Id. 83611

[] New Mailing Address:

19 WARM LAKE Hwy
Cascade Id 83611

Telephone Number:

(208) 382-4892

[] Signature of Claimant(s):



Date:

10/19/99

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF TWIN FALLS

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A65-03580
Date Received: 11/09/1988
Receipt No: X999999
Received By: EA

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: DAVIS CATTLE CO. 208-382-4892
Address: HC-71, BOX 2005
CASCADE, ID 83611

2. Date of Priority: APR 01, 1917

3. Source: PAYETTE RIVER, NORTH FORK Trib. to: PAYETTE RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
14N	03E	26	NE	NE		5	VALLEY

5. Description of diverting works:
DITCH & PIPELINE

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
IRRIGATION	04/15	10/15	0.840		

7. Total Quantity Appropriated is:
0.840 C.F.S. (and/or) A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
INCIDENTAL STOCKWATERING WITH IRRIGATION.

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
14N	03E	25	NE	SE		IRR	7.0
Section Acres							7.0

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
14N	04E	31	NW	NW	1	IRR	37.0
Section Acres							37.0
Total Acres							44.0

11. Place of use in counties: VALLEY

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
NONE

14. Remarks:

15. Basis of Claim: DECREED
Case Number: 3667
Court :
Decree date: 1/21/1986

STATE OF IDAHO

Decree Plaintiff

vs

A & C CORP., ET AL.

Decree Defendant

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments:

For Organizations:

I do solemnly swear or affirm that I am President of Davis Cattle Co. that I have signed the foregoing document in the space below as President of Davis Cattle Co. and that the statements contained in the foregoing document are true and correct.

Sam Davis
Signature of Authorized Agent

President
Title and Organization

10/9/88
Date

State of Idaho)
County of Valley) SS.

Subscribed and sworn (or affirmed) before me this 9th day

of Nov 19 88

Michael Gene Larson
Notary Public

Seal

Residing at Boise, Id

My Commission Expires 9-2-1994

AJ0749NP
No. R65-03580

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
(REGIONAL)

DATE: 10/22/99
PAGE: 1

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	DAVIS CATTLE CO 19 WARM LAKE HWY CASCADE ID 83611 (208) 382-4892	04/01/1917	IRRIGATION	04-15 10-15	0.840 CFS	
TOTAL DIVERSION:					0.840 CFS	

Water Source: PAYETTE RIVER, NORTH FORK

Tributary to: PAYETTE RIVER

Stage: DECREED

Point(s) of Diversion:

T14N R03E S26 Lot05(NENE)

VALLEY County

Place of use Legal Description for: IRRIGATION

			NE				NW				SW				SE				
T	R	S	NENE Lt Ac	NWNE Lt Ac	SWNE Lt Ac	SENE Lt Ac	NENW Lt Ac	NWNW Lt Ac	SNNW Lt Ac	SENE Lt Ac	NESW Lt Ac	NWSW Lt Ac	SWSW Lt Ac	SESW Lt Ac	NESE Lt Ac	NWSE Lt Ac	SWSE Lt Ac	SESE Lt Ac	SUM
14N	03E	13	:			06	:				:				32		13	40	91.1
14N	03E	24	:	40	22	28	40	:			:	.3		15	:	40	35	41	302.3
14N	03E	25	:	40	31	.6	30	:	21		:				:	29		28	179.6
14N	03E	36	:	04				:			:				:				4.1
14N	04E	18	:			01		:		36	35	:	37	40	40	34	:	01	224.9
14N	04E	19	:					:	28	40	40	20	:	28	40	40	:	05	281.4
14N	04E	30	:		06	19		:	40	40	39	40	:	40	39	39	33	:	362.9
14N	04E	31	:	04	19	40	29	:	36	33	01	28	:	15		29	:	03	318.4
TOTAL ACRES																			1764.7

POU County: VALLEY

Other Rights: NONE

Conditions of Approval:

- C18 - THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
- NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
- ADMINISTRATION OF THE WATER RIGHTS.

Remarks: POU1

THIS RIGHT IS LIMITED TO THE IRRIGATION OF 44 ACRES WITHIN
THE PLACE OF USE DESCRIBED ABOVE IN A SINGLE IRRIGATION SEASON.
USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 4831 ACRES IN A SINGLE
IRRIGATION SEASON. COMBINED RIGHT NOS.: 65-02832, 65-02920,
65-03579, 65-03583, 65-02931, 65-07312, 65-07649, 65-04031A,
65-04031B, 65-04031X, 65-02536, 65-03582.

EXP THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF
DIVERSION DESCRIBED ABOVE: 65-04031A, 65-04031B, 65-04031X

Dates:

Exam Made Date:

Verified Date:

Objection Filed Date:

Misc:

Water District Number: 65

Field Inspection Flag:

Presumption Flag: C

AJ0749NP
No. R65-03580

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
(REGIONAL)

DATE: 10/22/99
PAGE: 2

=====
Comments: Date: 09/25/1999 User-ID: AJU10-JS Subject: AJU10 CONDITION UPDATE
CONDITION CODE(S) C18 ADDED IF NOT ALREADY PART
OF RECORD THRU AJU10.

Date: 10/22/1999 User-ID: SBOCK Subject: ADDRESS CORRECTION
PER CLAIMANT

Audit: 10/22/99 SBOCK

AJ0749NP
No. R65-03580

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
(REGIONAL)

DATE: 10/07/99
PAGE: 1

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	DAVIS CATTLE CO HC 71 BOX 2005 CASCADE ID 83611 (208) 382-4892	04/01/1917	IRRIGATION	04-15 10-15	0.840 CFS	
TOTAL DIVERSION:					0.840 CFS	

Water Source: PAYETTE RIVER, NORTH FORK

Tributary to: PAYETTE RIVER

Stage: DECREED

Point(s) of Diversion:

T14N R03E S26 Lot05(NENE)

VALLEY County

Place of use Legal Description for: IRRIGATION

		NE				NW				SW				SE				
		NENE	NWNE	SWNE	SENE	NENW	NWNW	SWNW	SENW	NESW	NWSW	SWSW	SESW	NESE	NWSE	SWSE	SESE	SUM
T	R S	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	
14N	03E 13	:			06	:				:				32		13	40	91.1
14N	03E 24	:	40	22	28	40	:			.3			15	40	35	41	41	302.3
14N	03E 25	:	40	31	.6	30	:	21		:				29			28	179.6
14N	03E 36	:	04				:			:								4.1
14N	04E 18	:			01	:		36	35	37	40	40	34		01			224.9
14N	04E 19	:				:	28	40	40	28	40	40	40			05		281.4
14N	04E 30	:		06	19	:	40	40	39	40	40	39	33		26	01		362.9
14N	04E 31	:	04	19	40	29	:	36	33	01	28	15	29	03	40	40		318.4
TOTAL ACRES																	1764.7	

POU County: VALLEY

Other Rights: NONE

Conditions of Approval:

- C18 - THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
- NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
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USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO
THE IRRIGATION OF A COMBINED TOTAL OF 4831 ACRES IN A SINGLE
IRRIGATION SEASON. COMBINED RIGHT NOS.: 65-02832, 65-02920,
65-03579, 65-03583, 65-02931, 65-07312, 65-07649, 65-04031A,
65-04031B, 65-04031X, 65-02536, 65-03582.

EXP THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF
DIVERSION DESCRIBED ABOVE: 65-04031A, 65-04031B, 65-04031X

Dates: Exam Made Date: Verified Date: Objection Filed Date:

Misc: Water District Number: 65 Field Inspection Flag:
Presumption Flag: C

AJ0749NP
No. R65-03580

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
(REGIONAL)

DATE: 10/07/99
PAGE: 2

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Comments: Date: 09/25/1999 User-ID: AJU10-JS Subject: AJU10 CONDITION UPDATE
CONDITION CODE(S) C18 ADDED IF NOT ALREADY PART
OF RECORD THRU AJU10.

Audit: 10/07/99 SBOCK

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

00:19:30
05/08/99
240

PAGE: 15
PROFILE REPORT

CLAIM NUMBER: A65-03580

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	DAVIS CATTLE CO	04/01/1917	IRRIGATION	04-15 10-15	0.84 CFS	
					TOTAL DIVERSION:	0.84 CFS

Water Source: PAYETTE RIVER, NORTH FORK

Tributary to: PAYETTE RIVER

Stage: DECREED

Point(s) of Diversion: T14N R03E S26 Lot05(NENE)

VALLEY County

Place of use Legal Description for: IRRIGATION

				NE				NW				SW				SE					
T	R	S	:	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	:	SUM
14N	03E	25	:																	:	7.0
14N	04E	31	:																	:	37.0
																			TOTAL ACRES	44.0	

POU County: VALLEY

Non-Irrigation Uses: INCIDENTAL STOCKWATERING WITH IRRIGATION.

Other Rights: NONE

Dates: Exam Made Date: Verified Date: 04/10/1986 Objection Filed Date:

Misc: Water District Number: 65 Field Inspection Flag:
Presumption Flag:

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

00:04:34
05/08/99

PAGE: 1
GENERAL INFORMATION

226
CLAIM NUMBER: A65-03580

LAST: DAVIS CATTLE CO FIRST:
ADDRESS: HC-71 BOX 2005
CITY: CASCADE STATE: ID ZIP: 83611
PHONE NUMBER: 208-382-4892

OWNER CODE: C

FIELD EXAM REQUIRED?
VERIFICATION REQUIRED DUE TO REMARKS? DATABASE N FIELD EXAMINER
NO REMARKS IN CLAIM

FIELD EXAMINATION INFORMATION

CONTACT PERSON: _____ PHONE NUMBER: (____) ____-____
DATE OF FIELD EXAM: ____/____/____ APPOINTMENT MADE: Y(____) N(____) TIME: ____:____ A(____) P(____)
ACCOMPANIED BY: _____ PHONE NUMBER: (____) ____-____
RELATIONSHIP TO CLAIMANT: _____
DIRECTIONS TO PROPERTY / NOTES:

A. AJ CLAIM: # A65-03580 PRIORITY DATE: 04-01-1917 STAGE: D

B. WR RECORD: # 65-03580 PRIORITY DATE: 04-01-1917 STAGE: D

C. CAN THE PRIORITY DATE CLAIMED BE CONFIRMED BY A DECREE OR LICENSE?

Y(☒) N(☐)

D. HAS THERE BEEN A LATER COURT DECREE OF THE WATER RIGHT(S) FROM THIS WATER SOURCE?

Y(☐) N(☒)

E. IS THERE ANY INDICATION THAT THERE HAS BEEN A FIVE YEAR PERIOD OF CONTINUOUS NONUSE?
(IF YES, DESCRIBE BELOW)

Y(☐) N(☒)

F. IF THIS CLAIM IS BASED ON A PERMIT, WHERE IS THE PERMIT IN THE LICENSING PROCESS?

PROOF OF BENEFICIAL USE SUBMITTED

N/A(☒) Y(☐) N(☐)

FIELD EXAM COMPLETED

N/A(☐) Y(☐) N(☐)

FIELD EXAM SENT TO STATE OFFICE

N/A(☐) Y(☐) N(☐)

LICENSE ISSUED

N/A(☐) Y(☐) N(☐)

* IF THE PERMIT WILL NOT BE LICENSED PRIOR TO THE DIRECTOR'S REPORT,
USE CONDITION CODE A01 AND RECOMMEND AS PERMITTED.

G. IF THIS CLAIM IS BASED ON BENEFICIAL USE, IS ADDITIONAL EVIDENCE
OF THE PRIORITY DATE REQUIRED?

N/A(☒) Y(☐) N(☐)

* FOR CLAIMS BASED ON BENEFICIAL USE, DESCRIBE THE EVIDENCE OF PRIORITY SUBMITTED,
INCLUDING THE ANALYSIS OF THE EVIDENCE.

H. IS THE STAGE OF THE CLAIM CODED CORRECTLY?

Y(☒) N(☐)

NOTES: _____

=====

RECOMMENDED PRIORITY DATE:

04-01-1917

REVIEWED BY 28

DATE 8/2/99

A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

RIGHT	TWP. RGE.	SEC.	1/4	1/4	1/4	LOT	POD FLAG	COUNTY	DIVERSION NAME	DIVERSION NUMBER
A65-03580	14N 03E	26		NE	NE	5		VALLEY		

OTHER AJ CLAIMS WITH SAME AJ POD

A PREFIX R PREFIX
A65-02232 NONE

A65-02338A

A65-02338X

A65-04031A

A65-04031B

A65-04031X

A65-12096

WR RECORDS IN SAME 40 ACRE TRACT

65-02927A

65-02927B

65-04031A

65-04031B

65-04031X

65-13619

T65-02927A

T65-02927B

SOURCE: PAYETTE RIVER, NORTH FORK

TRIB: PAYETTE RIVER

B. WR POINT OF DIVERSION AND SOURCE:

RIGHT	TWP. RGE.	SEC.	1/4	1/4	1/4	LOT	POD FLAG	COUNTY	DIVERSION NAME	DIVERSION NUMBER
65-03580	14N 03E	26		NE	NE	5		VALLEY		

OTHER WR RECORDS WITH SAME WR POD

65-02927A

65-02927B

65-04031A

65-04031B

65-04031X

65-13619

T65-02927A

T65-02927B

AJ CLAIMS IN SAME 40 ACRE TRACT

A PREFIX R PREFIX

A65-02232

NONE

A65-02338A

A65-02338X

A65-04031A

A65-04031B

A65-04031X

A65-12096

SOURCE: PAYETTE RIVER, NORTH FORK

TRIB: PAYETTE RIVER

C. IS THE CLAIMED POD WITHIN THE SAME 40 ACRE TRACT THAT IS DESCRIBED IN THE WATER RIGHT FILE? N/A() Y(☒) N()

* IF NO, AND IF THE CHANGE IS VERIFIED AS AN ACCOMPLISHED CHANGE IN POD, DESCRIBE THE INJURY ANALYSIS PERFORMED AND ENTER FLAG "C" WITH THE APPROPRIATE EXPLANATORY CODE.

D. CAN THE CLAIMED POD BE VERIFIED USING THE WATER RIGHT FILE OR GPS DATA?

N/A() Y(☒) N()

E. SHOULD THE CLAIMED POD BE VERIFIED BY FIELD EXAM?

Y() N(☒)

F. IS THE CLAIMED SOURCE THE SAME AS DESCRIBED IN THE WATER RIGHT FILE?

N/A() Y(☒) N()

* IF NO, AND IF THE CHANGE IS VERIFIED AS AN ACCOMPLISHED CHANGE IN SOURCE, DESCRIBE THE INJURY ANALYSIS PERFORMED AND ENTER FLAG "C" WITH THE APPROPRIATE EXPLANATORY CODE.

G. CAN THE CLAIMED SOURCE BE VERIFIED USING THE WATER RIGHT FILE?

Y(☒) N()

H. SHOULD THE CLAIMED SOURCE BE VERIFIED BY FIELD EXAM?

Y() N(☒)

I. HOW WAS THE POD AND SOURCE VERIFIED?

LICENSING FIELD EXAM (DATE OF FIELD EXAM _____)

Y() N()

AJ FIELD EXAM

(DATE OF FIELD EXAM _____)

NAME OF EXAMINER _____

Y() N()

OTHER (DESCRIBE IN NOTES BELOW)

NOTES:

POD changed in a 1980's court agreement
w/ Idaho Power.

RECOMMENDED POINT(S) OF DIVERSION AND SOURCE: CHECK HERE IF RECOMMENDED AS CLAIMED (☒)

TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	POD FLAG	COUNTY	DIVERSION NAME	DIVERSION NBR
14N	03E	26		NE	NE	5		VALLEY		
—	—	—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	—	—

SOURCE: PAYETTE RIVER, NORTH FORK

TRIB: PAYETTE RIVER

REVIEWED BY:

SB

DATE:

8/2/99

SYSTEM DESCRIPTION: DESCRIBED BELOW (), SEE LICENSE FILE (), OR SEE ATTACHMENT ()

A. ROOT WATER RIGHT NUMBERS: A65-03580

B. POU LISTING

TWP	RNG	SEC	1/4	1/4	LOT	NAME	AJ #/ACRES	WR #/ACRES	LANDSAT DATA	FIELD EXAM.	RECOMM. ACRES
14N	03E	25	NE	SE		DAVIS CATTLE CO	A65-03580 / 7.0	65-03580 / 7.0			
14N	04E	31	NW	NW	1	DAVIS CATTLE CO	A65-03580 / 37.0	65-03580 / 37.0	18.0		
			NW	NW		DAVIS, TOM J.		65-12202 / 40.0			
			NW	NW	1	DAVIS, TOM J.		65-07312 / 15.0			
			NW	NW	1	DAVIS, TOM J.		65-07649 / 15.0			
			NW	NW	1	DAVIS CATTLE CO		65-13019 / 33.7			

ADDITIONAL POU FOUND

TOTAL ACRES A65-03580 44.00 44.00 18.00

POU COUNTY: VALLEY

44

C. IS WATER USAGE FOUND IN TRACTS OTHER THAN THOSE CLAIMED?

Y() N(☒)

* IF YES, ARE THESE TRACTS LISTED ABOVE (), OR ARE THEY LISTED ON AN ATTACHED SHEET ()

LIST OF ALL RIGHTS WITH A SAME POU AND IRRIGATION USAGE

NO CLAIMS FOUND WITH SAME POU AND IRRIGATION USAGE

NO RIGHTS WITH SAME POU BUT NOT USED FOR IRRIGATION

D. ARE OTHER WATER RIGHTS USED FOR THE SAME PURPOSE?

Y() N(☒)

* IF YES, COMPLETE OVERLAP REVIEW:

OTHER RIGHTS LISTED IN CLAIM: NONE

E. IS THE CLAIMED POU THE SAME AS DESCRIBED IN THE WATER RIGHT FILE?

N/A() Y(☒) N()

* IF NO, AND IF THE CHANGE IS VERIFIED AS AN ACCOMPLISHED CHANGE IN POU, DESCRIBE THE INJURY ANALYSIS PERFORMED AND ENTER FLAG "C" WITH THE APPROPRIATE EXPLANATORY CODE.

F. CAN THE CLAIMED POU BE VERIFIED USING THE WATER RIGHT FILE AND AVAILABLE AERIAL PHOTOS?

N/A() Y(☒) N()

Y() N()

Y() N()

NOTES:

TOTAL ACRES: 44 N/A()

REVIEWED BY: 28

DATE: 8/2/99

A. AJ CLAIMED USES:

PURPOSE OF USE	PERIOD OF USE (MONTH/DAY)	DIV. RATE FOR EACH USE	DIV. VOL. FOR EACH USE
A65-03580 IRRIGATION	FROM 04-15 TO 10-15	0.840 CFS	
TOTAL DIVERSION RATE/VOLUME		0.840 CFS	

B. WR RECORDED USES:

PURPOSE OF USE	PERIOD OF USE (MONTH/DAY)	DIV. RATE FOR EACH USE	DIV. VOL. FOR EACH USE
65-03580 IRRIGATION	FROM 04-15 TO 10-15	0.840 CFS	
TOTAL DIVERSION RATE/VOLUME		0.840 CFS	

C. DOES THE CLAIMED PURPOSE OF USE CORRECTLY DESCRIBE THE WATER USE? Y(☒) N(☐)

D. IS THE CLAIMED PURPOSE OF USE THE SAME AS DESCRIBED IN THE WATER RIGHT FILE? N/A(☐) Y(☒) N(☐)

* IF NO, AND IF THE ACTUAL WATER USE IS VERIFIED AS AN ACCOMPLISHED CHANGE IN PURPOSE OF USE, DESCRIBE THE INJURY ANALYSIS PERFORMED AND ENTER FLAG "C" WITH THE APPROPRIATE EXPLANATORY CODE.

E. SHOULD THE CLAIMED PURPOSE OF USE BE VERIFIED BY FIELD EXAM? Y(☐) N(☒)

F. DOES THE CLAIMED PERIOD OF USE CONFORM TO IDWR STANDARDS? Y(☒) N(☐)

G. SHOULD THE PERIOD OF USE BE RECOMMENDED TO IDWR STANDARDS? Y(☐) N(☐)

* IF THE RECOMMENDED PERIOD OF USE IS DIFFERENT THAN IDWR STANDARDS, EXPLAIN IN NOTES BELOW.

H. IS THE CLAIMED DIVERSION RATE FOR EACH USE THE SAME AS DESCRIBED IN THE WATER RIGHT FILE? N/A(☐) Y(☒) N(☐)

* IF NO, DESCRIBE IN NOTES BELOW HOW THE RECOMMENDED DIVERSION RATE FOR EACH USE WAS DETERMINED.

I. SHOULD THE CLAIMED DIVERSION RATE FOR EACH USE BE VERIFIED BY FIELD EXAM? N/A(☐) Y(☐) N(☒)

J. IS THE CLAIMED DIVERSION VOLUME FOR EACH USE THE SAME AS DESCRIBED IN THE WATER RIGHT FILE? N/A(☒) Y(☐) N(☐)

* IF NO, DESCRIBE IN NOTES BELOW HOW THE RECOMMENDED DIVERSION VOLUME FOR EACH USE WAS DETERMINED.

K. SHOULD THE CLAIMED DIVERSION VOLUME FOR EACH USE BE VERIFIED BY FIELD EXAM? N/A(☒) Y(☐) N(☐)

PAGE: 8

PURPOSE OF USE, PERIOD OF USE, DIVERSION RATE AND DIVERSION VOLUME REVIEW SHEET CONTINUED

233

CLAIM NUMBER: A65-03580

NOTES:

AJ CLAIM TOTAL DIVERSION RATE: 0.840 CFS

WR ROOT RIGHT TOTAL DIVERSION RATE: 0.840 CFS

A. IS THE CLAIMED TOTAL DIVERSION RATE THE SAME AS DESCRIBED IN THE WATER RIGHT FILE? N/A() Y(☒) N()

B. CAN THE CLAIMED TOTAL DIVERSION RATE BE VERIFIED USING THE WATER RIGHT FILE? N/A() Y() N()

* ALL CLAIMS BASED ON BENEFICIAL USE (INCLUDING POSTED NOTICES AND STATUTORY CLAIMS) REQUIRE A FLOW MEASUREMENT.

C. IS THERE ANY INDICATION THAT THERE HAS BEEN A FIVE YEAR PERIOD OF CONTINUOUS NONUSE OF THIS RIGHT, OR ANY PORTION OF THE DIVERSION RATE? Y() N(☒)

* IF AN AMOUNT SMALLER THAN THE ORIGINAL DIVERSION RATE IS CLAIMED AND A FIELD EXAM IS NOT REQUIRED, EXPLAIN IN NOTES.

D. SHOULD THE CLAIMED DIVERSION RATE BE VERIFIED BY FIELD EXAM? Y() N(☒)

E. FLOW MEASUREMENT

MEASUREMENT METHOD _____, SEE ATTACHED CALCULATIONS.

F. RATE/VOLUME CALCULATIONS: (IRRIGATION)

1a. IRRIGATION RATE
ACRES 99 x 0.02 CFS/ACRE = 88 CFS
(Taken from pou review)

1b. CALCULATIONS

IS A DIVERSION RATE PER ACRE GREATER THAN 0.02 CFS/ACRE CLAIMED? Y() N(☒)

IF YES, IS AN ADDITIONAL WATER USE FORM FILED AND ATTACHED? Y() N()

2. IRRIGATION DIVERSION VOLUME

CLAIMED DIVERSION VOLUME = AF/A

ACRES _____ x DIVERSION VOL. AF/A FOR AREA _____ =

TOTAL DIVERSION VOLUME _____ AF/A

3. IRRIGATION CONSUMPTIVE USE

CLAIMED CONSUMPTIVE USE = AF/A

ACRES _____ x CONSUMPTIVE VOL. AF/A FOR AREA _____ =

TOTAL CONSUMPTIVE USE _____ AF/A

4. CALCULATIONS FOR USES OTHER THAN IRRIGATION: SEE BELOW () OR SEE ATTACHMENT ()

NOTES: 6/16/05 After recommendations were made, C. Steck
of Paperwork came over from the State office
on this claim 65-04031A,B,+X

WR RECORD CONDITIONS/REMARKS:

RECOMMENDATIONS: CHECK HERE IF RECOMMENDED AS CLAIMED (___)

REC. PURPOSE OF USE	REC. PERIOD		REC. DIV		REC. DIV		REC. CONS.	
	FROM	TO	RATE	CFS	VOL.	AF/A	USE	
IRRIGATION	04-15	10-15	DATABASE 0.840	EXAMINER _____	DATABASE	EXAMINER _____	DATABASE 0.0	EXAMINER _____
_____	_____	_____		_____		_____		_____
_____	_____	_____		_____		_____		_____
_____	_____	_____		_____		_____		_____
_____	_____	_____		_____		_____		_____
TOTAL FOR THIS RIGHT			0.840	_____		_____	0.0	_____

NON-IRRIGATION USES CLAIMED: INCIDENTAL STOCKWATERING WITH IRRIGATION.

NON-IRRIGATION USES RECOMMENDED: CHECK HERE IF RECOMMENDED AS CLAIMED (___)

REVIEWED BY: _____ DATE: _____

FLAG: _____

STANDARD CONDITIONS (CODE):

EXP FOLLO
CO3

STANDARD REMARKS (CODE):

EXPLANATORY CONDITIONS (CODE):

EXPLANATORY REMARKS (CODE):

A. CHECK ONLY THE FOLLOWING THAT APPLY:

	ACCEPTED AS CLAIMED	NEEDS REVIEW
OWNERSHIP _____	()	()
FORFEIT/ABANDON _____	()	()
ADDITIONAL DIV. AMOUNT _____	()	()

B. SPLIT WATER RIGHT REVIEW

ROOT WATER RIGHT NUMBER: 65-03580

TOTAL DIVERSION RATE OF WR SPLITS

DATABASE
0.840

EXAMINER

CFS

SPLITS:

OLD RIGHT NUMBERS	CURRENT CLAIM NUMBERS	DIVERSION RATE	CURRENT "R" CLAIM NUM.	"R" DIV. RATE	WR RIGHT NUMBERS	DIVERSION RATE
-	A65-03580	0.840	-		65-03580	0.840
TOTAL CFS		0.840				0.840

DIVERSION RATE REVIEW

DO THE SUM CFS RATE OF THE SPLITS EQUAL THE ROOT RIGHT CFS RATE? (Y/N)
IF NO, IS THE WRITTEN REVIEW DESCRIBED BELOW () OR SEE ATTACHMENT ()?

DATABASE
Y
FIELD
EXAMINER
Y() N()

NOTES:

AUTHENTICATION:

SIGNATURE: John Boer DATE: 8/2/99

NAME OF FIELD EXAMINER: _____ TITLE: _____

MAPS AND AERIAL PHOTOGRAPHS USED TO REVIEW THIS NOTICE OF CLAIM TO A WATER RIGHT

TYPE OF MAP OR PHOTOGRAPH (CHECK IF USED)	IF USED, SUPPLY APPROPRIATE DATE AND OTHER INFORMATION	COPY INCLUDED IN FILE?
() ORTHOPHOTOQUAD	DATE OF PHOTO _____ IDWR ID NO. _____	Y() N()
() TOPOGRAPHIC	DATE FIELD CHECKED _____ IDWR ID NO. _____	Y() N()
() NAPP	DATE OF PHOTO _____ IDWR ID NO. _____	Y() N()
() ASCS AERIAL PHOTO	DATE OF PHOTO _____	Y() N()
() ASCS COLOR SLIDE	DATE OF PHOTO _____	Y() N()
() BLM OR USFS AERIAL PHOTO	DATE OF PHOTO _____	Y() N()
() TOWNSHIP SURVEY (GOVERNMENT PLAT)	DATE OF SURVEY _____	Y() N()
() SCS SOIL SURVEY MAP	DATE ISSUED _____	Y() N()
() SUBDIVISION PLAT MAP	DATE OF MAP _____	Y() N()
(X) OTHER <u>ColoMap</u>	DATE <u>8/2/99</u>	Y() N()
() OTHER _____	DATE _____	Y() N()
() OTHER _____	DATE _____	Y() N()

LIST OF ATTACHMENTS (CHECK IF ATTACHED)	IF ATTACHED, SUPPLY APPROPRIATE INFORMATION	NO. OF PAGES	NOTES
() LICENSING FIELD EXAM	DATE OF FIELD EXAM _____	_____	_____
() WATER RIGHT LICENSE	DATE LICENSE SIGNED _____	_____	_____
() IDWR APPROVED TRANSFER	DATE TRANSFER APPROVED _____	_____	_____
() SYSTEM DESCRIPTION	DATE DRAWN _____	_____	_____
() PHOTOGRAPHS	DATE(S) PHOTOS TAKEN _____	_____	_____
() SPLIT RIGHT REVIEW	DATE REVIEW COMPLETED _____	_____	_____
() HUBBLE ANALYSIS	DATE ANALYSIS COMPLETED _____	_____	_____
() CONVEYANCE LOSS ANALYSIS	DATE ANALYSIS COMPLETED _____	_____	_____
() FLOW MEASUREMENT CALCULATIONS	DATE SYSTEM MEASURED _____	_____	_____
() OTHER _____	DATE _____	_____	_____
() OTHER _____	DATE _____	_____	_____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

00:04:34
05/08/99

PAGE: 14
QUICKLOOK INFORMATION

239
CLAIM NUMBER: A65-03580

WR ELEMENT	DATA DISCREPANCY Y/N	CORRESPONDENCE SENT/RECEIVED BY WHOM/DATE	FIELD EXAM BY WHOM/DATE	CHANGE CLAIM Y/N	ELEMENT DOCUMENTED WHOM/DATE	COMPLETED REVIEW WHOM/DATE	COMPLETED DATA ENTRY WHOM/DATE	VERIFIED DATE WHOM/DATE
PRIORITY DATE					<i>Dewe</i>	<i>JB</i> <i>8-2-99</i>		
POINT OF DIV								
SOURCE								
PLACE OF USE	Y							
DIV. AMOUNT CFS/VOLUME								
CONSUMPTIVE USE	-							
PURPOSES OF USE								
PERIOD OF USE								
BASIS OF CLAIM								
REMARKS								

BARCODE UPDATED
WHOM/DATE



From the desk of

DONALD VANCE SHAFF

7/29/83

DISCUSS CFS RECOMMENDED
VS. 1969 AFFIDAVITS OF CALLENDAR,
ETC.

From D. Shaff

11/19/82

MEETING w/ :

D. SHAFF

T. DAVIS

L. DAVIS

Myself

Do not
microfilm

1 DAVIS POWER'S P/D's
DESCRIBED IN P/D's
FINDING MAY BE RECOMMENDED.

June 22, 1984

Mr. Terry E. Uhling
Nelson, Rosholt, Robertson, Tolman
and Tucker
P.O. Box 1906
Twin Falls, ID 83301

Re: Payette River Watermaster

Dear Mr. Uhling:

A watermaster has regulated diversions on the Payette River and its major tributaries of the North Fork, Middle Fork and South Fork of the Payette River in only one year, as far back as at least 1976.

In 1977 under the authority of Idaho Code Section 42-602-A and appropriate order of the district court, a water district No. 65 was formed for the Payette River and its tributaries. A watermaster was elected by the waterusers and was appointed by the Director of the Department. The waterusers requested the watermaster commence his duties on May 12, 1977. The watermaster's report for 1977 shows the diversions were last regulated on September 30th.

This information does not mean other streams in the Payette River Drainage Basin have not had watermasters. Many smaller streams tributary to the main river and the three major forks had prior to 1977 and consistently afterward have had active water districts with watermasters appointed. These water districts are now designated by an alphabetic suffix to the number 65; eg, 65K.

The documents and reports relative to Water District No. 65 are available for inspection in the Boise office of this Department. Copies of these documents and all or parts of the reports are available upon request.

Regards,

Donald V. Shaff
Ajudication Unit Leader

DS/pma

CC: P. Nassier

HAWLEY TROXELL ENNIS & HAWLEY

ATTORNEYS AND COUNSELORS

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

PAUL B. ENNIS
(1916-1962)

ROBERT I. TROXELL
JESS B. HAWLEY, JR.
JOHN T. HAWLEY, P.A.
THOMAS A. MILLER
M. NEAL NEWHOUSE
CRAIG L. MEADOWS
JOSEPH D. McCOLLUM, JR.
WAYNE B. SLAUGHTER, JR.
GARY D. BABBITT, P.A.
P. CRAIG STORTI
MERLYN W. CLARK
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ALBERT P. BARKER
JOHN T. HAWLEY, JR.
DON A. OLOWINSKI
J. CHARLES HEPWORTH
NICHOLAS G. MILLER
RONALD E. BUSH

ONE CAPITAL CENTER
POST OFFICE BOX 1617
BOISE, IDAHO 83701

TELEPHONE
(208) 344-6000

April 17, 1984

Mr. Donald V. Shaff
Adjudication Unit Leader
State of Idaho
Department of Water Resources
Western Region
450 West State Street
Boise, Idaho 83720

Re: Payette River Adjudication *DAVIS OBJ.*

Dear Don:

*Returned
4/18*

Thank you once again for being so helpful with this case. We received a copy of the Findings of Fact, Conclusions of Law and Order and the three volume Proposed Finding of Water Rights in the Payette River Drainage Basin which we will return to you in a short period of time. If we intend to keep the three volumes longer than a week, I will give you a call to see what can be arranged.

Again my thanks.

Sincerely yours,

Susan C. Sahlberg
SUSAN C. SAHLBERG
Paralegal

SCS/se

RECEIVED

APR 19 1984

Department of Water Resources
Western Regional Office

ROBERT I. TROXELL
JESS B. HAWLEY, JR.
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THOMAS A. MILLER
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HAWLEY TROXELL ENNIS & HAWLEY
ATTORNEYS AND COUNSELORS
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

PAUL B. ENNIS
(1916-1982)

ONE CAPITAL CENTER
POST OFFICE BOX 1617
BOISE, IDAHO 83701

TELEPHONE
(208) 344-6000

December 2, 1983

OK

Mr. Donald V. Shaff
Adjudication Unit Leader
State of Idaho
Department of Water Resources
Western Region
450 West State Street
Boise, Idaho 83720

Re: Tom Davis/Payette River Adjudication

Dear Don:

Pursuant to your letter of November 30, 1983, please find enclosed a check from Hawley Troxell Ennis & Hawley in the amount of \$40.95. This check plus the check I left at the Department of Water Resources on November 23, 1983 in the amount of \$36.30 (copy attached) should bring our account up to date.

We appreciate your helping us acquire the proper files and will contact you if we need anything in the future. Thank you again.

STATE OF IDAHO

Department of Water Resources

No 32514

Boise, Idaho, 12/16, 1983

RECEIVED FROM Hawley Troxell Ennis & Hawley for Tom Davis \$ 40.95
forty dollars & 95/100 DOLLARS

FOR

rest of acct.	\$	40.95
for acct.	\$	
	\$	
	\$	
TOTAL - - -	\$	40.95

Gary Ennis

HAWLEY TROXELL ENNIS & HAWLEY

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(1916-1982)

ONE CAPITAL CENTER
POST OFFICE BOX 1617
BOISE, IDAHO 83701

TELEPHONE
(208) 344-6000

December 2, 1983

OK/ES

Mr. Donald V. Shaff
Adjudication Unit Leader
State of Idaho
Department of Water Resources
Western Region
450 West State Street
Boise, Idaho 83720

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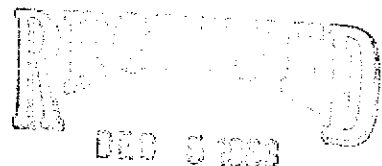
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Sincerely,

Susan C. Sahlberg

SUSAN C. SAHLBERG
Paralegal

SCS/se
Enclosures



Department of Water Resources
Western Regional Office

11883 DEPT OF WATER RESOURCES DAVIS-WATER 1306-1 SCS 36.30

DATE TO THE ORDER OF

DETACH AND RETAIN FOR YOUR RECORDS

CHECK AMOUNT

CK 9A-4 TW

HAWLEY, TROXELL, ENNIS & HAWLEY
Boise, Idaho 83702

HAWLEY, TROXELL, ENNIS & HAWLEY
ATTORNEYS AND COUNSELORS
ONE CAPITAL CENTER DRAWER X
999 MAIN STREET
BOISE, IDAHO 83702

DATE	INVOICE	AMOUNT
	COPIES	

92-6
1241

3201

NOV. 18, 19 83

Dollars \$ 36.30

DEPT. OF WATER RESOURCES

HAWLEY, TROXELL, ENNIS & HAWLEY
COST ADVANCE

TO
THE ORDER
OF

FIRST SECURITY BANK of Idaho, N.A.
BOISE OFFICE BOISE, IDAHO

NON-NEGOTIABLE

003201 24100064003 01708 15

STATE OF IDAHO
Department of Water Resources
Boise, Idaho, Nov. 23, 19 83

RECEIVED FROM Hawley, Troxell, Ennis & Hawley \$ 36.30

Thirty six and 3/100 DOLLARS

FOR

water right	\$	36.30
Copies	\$	
(western)	\$	
	\$	
TOTAL - - -	\$	

ck 3201 92-6 1241

Sharla Curtis

RECEIVED

Department of Water Resources
Boise, Idaho

November 30, 1983

Hawley, Troxel, Ennis & Hawley
P.O. Box 1617
Boise, ID 83701

Attn: Susan Sahlberg

RE: Tom Davis Objection
Payette River Adjudication

Dear Ms. Sahlberg:

You picked up copies of materials from various water right files on November 23, 1983, that carry a service charge as detailed below. I believe we previously discussed these charges.

State Office Water Right Files

<u>Qty</u>	<u>Description</u>	<u>Fee/Copy</u>	<u>Sub Total</u>
14	Microfilm copies of Permit 14529	50¢	\$ 7.00
10	Microfilm copies of Permit 16042	50¢	5.00
26	Photocopies of 65-4031	25¢	6.50
115	Photocopies of 65-2338	25¢	28.75
88	Photocopies of 65-2232	25¢	22.00

Adjudication Claim Files

<u>Qty</u>	<u>Description</u>	<u>Fee/Copy</u>	<u>Sub Total</u>
4	Photocopies of 65-4031X	25¢	1.00
4	Photocopies of 65-4031A	25¢	1.00
5	Photocopies of 65-4031B	25¢	1.25
3	Photocopies of 65-3581	25¢	.75
2	Photocopies of 65-3580	25¢	.50
3	Photocopies of 65-2338A	25¢	.75
4	Photocopies of 65-2338X	25¢	1.00
7	Photocopies of 65-2232	25¢	1.75

TOTAL

\$77.25

Ms. Sahlberg

2

November 30, 1983

The quantity of the items was tabulated from memory rather than of exact count before you retrieved the materials. If you concur with the amounts, please tender payment from your firm's trust account. Thank you. If you need more services of the Department, please contact me.

Regards,

Donald V. Shaff
Adjudication Unit Leader

DVS/cjk

November 17, 1983

Terry T. Uhling
Elam, Burke, Evans, Boyd & Koontz
P.O. Box 1559
Boise, ID 83701

RE: Davis Objection - Civil No. 3667

Dear Terry:

Your request for historical information on Cascade Dam has been forwarded to me. I have enclosed copies of materials from various sources, including the water right file for the present Cascade Dam, that may be of some value to you. You may already have some of these materials.

Some of the holes could probably be filled by contacting the U.S. Bureau of Reclamation, Snake River Projects Office on Broadway Avenue for further details on the inundation of the old dam site by the present reservoir pool. The only other suggestion for printed sources of information is a search of back issues at the appropriate dates of the Valley County newspaper(s).

Regards,

Donald V. Shaff
Adjudication Unit Leader

DVS/cjk

CONVERSATION MEMORANDUM

DATE 7/29/83

FILE DAVIS DBV.

NAME OF PARTY TOM DAVIS

EMPLOYEE D. SHAEF

RE: IRRIGATED ACREAGE

AT CLAIMANT'S REQUEST EARLIER TODAY, I REVIEWED LOOSELY THE LAND IRRIGATED FROM THE RIVER AS SHOWN ON OUR AERIAL PHOTOS VS. THE LAND RECOMMENDED IN THE PROPOSED FINDING.

AFTER THAT REVIEW, I ADVISED DAVIS THAT A SUPPLEMENTAL OBJECTION OR A NEW LATE OBJECTION WITH AMENDED CLAIMS WOULD BE NECESSARY TO CORRECT THE WATER RIGHTS. DAVIS SAID HE WOULD COME INTO THE OFFICE FOR ASSISTANCE IN FILING THE AMENDED CLAIMS.

INTER-DEPARTMENT MEMO — 1

FROM *Glen*

DATE *7-29-83*

TO

SUBJECT

- Tom Davis, Cascade called me
@ home Thurs nite w/ ? on some
of his water rights.

- Tap @ Power Plant
- Compensation being worked out
by I.P.C.O.
- Someone needs to call him
- mentioned John Hayes.

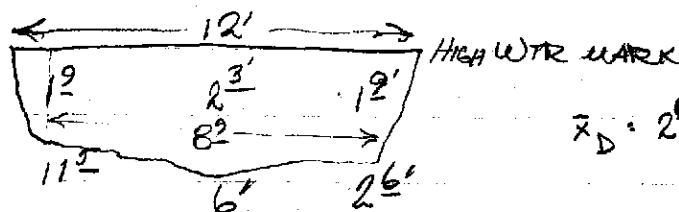
[Signature]
SIGNATURE

Field Measurements 5/06/83

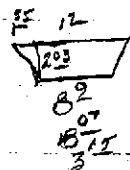
including photos

365-4561

Cross Section A



$$\bar{x}_D = 2.03'$$



Looking up the ditch toward river

wood stick or chip

20' / 47 sec

20' / 37 sec

20' / 39 sec

1" x 1/2"

2" x 1/2"

2" x 1/2"

$$\bar{x} = 20' / 38 = 0.53 \text{ ft/sec}$$

$$= 11.25 \text{ cfs}$$

$$\text{vel. cfs} = \frac{13.52}{21.22} = 0.6371 \text{ ft/sec} = \bar{x}_{VEL}$$

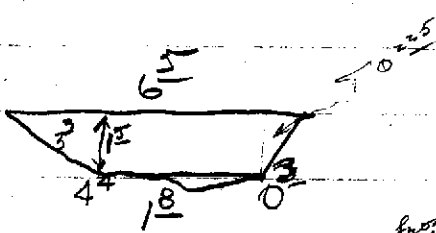
Manning formula $r = 1.5$

$$Q = 4.5385 \frac{r^{2.48}}{n}$$

where $n = .018$
 $Q = 2.52$
 where $n = .06$
 $Q = 75$

Cross Section B

Same velocity as above



$$A = 6.23$$

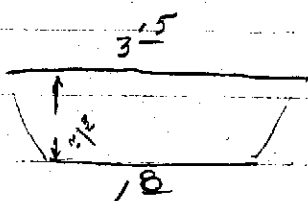
$$\text{from velocity } \bar{x}_{VEL} = 0.85$$

$$Q = 5.29 \text{ cfs}$$

$$\text{from above } \bar{x}_{VEL} = 0.53$$

$$Q = 3.3 \text{ cfs}$$

#(B) on June 17, 1971



$$A = 3.361 \text{ ft}^2$$

$$\bar{x}_{VEL} = 0.85$$

$$Q = 2.86$$

Handbook of Water Control
 by Arno & Dring
 Max in welded steel pipe 22.28 cfs



casca de

HAWLEY TROXELL ENNIS & HAWLEY

SUSAN C. SAHLBERG
PARALEGAL

TELEPHONE
(208) 344-6000

ONE CAPITAL CENTER
POST OFFICE BOX 1617
BOISE, IDAHO 83701

[illegible]

SEWER DISCHARGING RIGHTS AND DIVISION RATE PER ACRE															TOWNSHIP		RANGE		SECTION		TRACT		LOT	
TOWNSHIP	RANGE	SECTION	TRACT	LOT	ACRES	USE	INCHES PER ACRE	ACRE FEET PER ACRE	RIGHT NUMBER	STAGE	ST	TUS	PRIORITY DATE	SOURCE OF WATER	TOWNSHIP	RANGE	SECTION	TRACT	LOT					
14N	03E	10	NEW	10	A	1.0000			65-9948	D			03-30-1900	DEER CREEK										
			SENE	10	A	.9642			65-11291	D			07-02-1904	UNNAMED STREAM										
			NESE	04	A	1.0000			65-9947	D			01-27-1913	SILVER CREEK										
			WASE	01	A	1.0000			65-9947	D			01-27-1913	SILVER CREEK										
			SESE	11	A	1.0000			65-11292	D			01-27-1913	UNNAMED STREAM										
			SESE	08	A	1.0000			65-9947	D			01-27-1913	SILVER CREEK										
			SESE	02	A	1.0000			65-9947	D			01-27-1913	SILVER CREEK										
			WASE	18	A	1.0000			65-11347	D			06-01-1937	UPN HYCK CREEK										
			SESE	18	A	1.0000			65-11347	D			06-01-1937	UPN HYCK CREEK										
			SENE	07	A	.9736			65-11343	D			10-12-1900	UNNAMED STREAM										
			NEW	18	A	1.0000			65-11290	D			10-12-1900	UPN HYCK CREEK										
			NEW	08	A	1.0000			65-11292	D			01-27-1913	UNNAMED STREAM										
			NEW	08	A	.9736			65-11293	D			01-27-1913	UNNAMED STREAM										
			SESE	17	A	1.0000			65-9951	D			07-18-1907	FRENCH CREEK										
			SENE	13	A	1.0000			65-9951	D			07-18-1907	FRENCH CREEK										
			SENE	34	A	.2564			65-4031A	D			04-01-1957	RAYETTE RIVER, NORTH FORK										
			SENE	34	A	.5662			65-4031B	D			04-01-1954	RAYETTE RIVER, NORTH FORK										
			SENE	34	A	.1971			65-4031X	D			04-01-1957	RAYETTE RIVER, NORTH FORK										
			SENE	23	A	.2564			65-4031A	D			04-01-1957	RAYETTE RIVER, NORTH FORK										
			SENE	23	A	.5662			65-4031B	D			04-01-1954	RAYETTE RIVER, NORTH FORK										
			SENE	23	A	.1971			65-4031X	D			04-01-1957	RAYETTE RIVER, NORTH FORK										
			SENE	38	A	.2564			65-4031A	D			04-01-1957	RAYETTE RIVER, NORTH FORK										
			SENE	38	A	.5662			65-4031B	D			04-01-1954	RAYETTE RIVER, NORTH FORK										
			SENE	38	A	.1971			65-4031X	D			04-01-1957	RAYETTE RIVER, NORTH FORK										
			SENE	20	A	.2564			65-4031A	D			04-01-1957	RAYETTE RIVER, NORTH FORK										
			SENE	20	A	.5662			65-4031B	D			04-01-1954	RAYETTE RIVER, NORTH FORK										
			SENE	20	A	.1971			65-4031X	D			04-01-1957	RAYETTE RIVER, NORTH FORK										
			SENE	20	A	.5662			65-4031B	D			04-01-1954	RAYETTE RIVER, NORTH FORK										
			SENE	20	A	.1971			65-4031X	D			04-01-1957	RAYETTE RIVER, NORTH FORK										
			SENE	24	A	.5662			65-4031B	D			04-01-1954	RAYETTE RIVER, NORTH FORK										
			SENE	24	A	.1971			65-4031X	D			04-01-1957	RAYETTE RIVER, NORTH FORK										
			SENE	24	A	.5662			65-4031B	D			04-01-1954	RAYETTE RIVER, NORTH FORK										
			SENE	24	A	.1971			65-4031X	D			04-01-1957	RAYETTE RIVER, NORTH FORK										
			SENE	25	A	.2564			65-4031A	D			04-01-1957	RAYETTE RIVER, NORTH FORK										
			SENE	25	A	.5662			65-4031B	D			04-01-1954	RAYETTE RIVER, NORTH FORK										
			SENE	25	A	.1971			65-4031X	D			04-01-1957	RAYETTE RIVER, NORTH FORK										
			SENE	25	A	.5662			65-4031B	D			04-01-1954	RAYETTE RIVER, NORTH FORK										
			SENE	25	A	.1971			65-4031X	D			04-01-1957	RAYETTE RIVER, NORTH FORK										
			SENE	15	A	.5662			65-4031B	D			04-01-1954	RAYETTE RIVER, NORTH FORK										
			SENE	15	A	.1971			65-4031X	D			04-01-1957	RAYETTE RIVER, NORTH FORK										
			SENE	15	A	.5662			65-4031B	D			04-01-1954	RAYETTE RIVER, NORTH FORK										
			SENE	15	A	.1971			65-4031X	D			04-01-1957	RAYETTE RIVER, NORTH FORK										
			SENE	35	A	.2564			65-4031A	D			04-01-1957	RAYETTE RIVER, NORTH FORK										
			SENE	35	A	.5662			65-4031B	D			04-01-1954	RAYETTE RIVER, NORTH FORK										
			SENE	35	A	.1971			65-4031X	D			04-01-1957	RAYETTE RIVER, NORTH FORK										
			SENE	23	A	.2564			65-4031A	D			04-01-1957	RAYETTE RIVER, NORTH FORK										
			SENE	23	A	.5662			65-4031B	D			04-01-1954	RAYETTE RIVER, NORTH FORK										
			SENE	23	A	.1971			65-4031X	D			04-01-1957	RAYETTE RIVER, NORTH FORK										
			SENE	22	A	.2564			65-4031A	D			04-01-1957	RAYETTE RIVER, NORTH FORK										
			SENE	22	A	.5662			65-4031B	D			04-01-1954	RAYETTE RIVER, NORTH FORK										

TOWNSHIP	RANGE	SECTION	TRACT	LOT	ACRES	USE	INCHES PER ACRE	ACRE FEET PER ACRE	RIGHT NUMBER	STAGE	STATUS	PRIORITY DATE	SOURCE OF WATER	TOWNSHIP	RANGE	SECTION	TRACT	LOT
100	02E	25	507	22	1.1771				07-0314			07-01-1912	WATTE CREEK					
				24	1.1771				07-0314			07-01-1912	WATTE CREEK					
				01	1.1771				07-0314			07-01-1912	WATTE CREEK					
				07	1.1771				07-0314			07-01-1912	WATTE CREEK					
		26		03	1.1771				07-0314			07-01-1912	WATTE CREEK					
				04	1.1771				07-0314			07-01-1912	WATTE CREEK					
				05	1.1771				07-0314			07-01-1912	WATTE CREEK					
				06	1.1771				07-0314			07-01-1912	WATTE CREEK					
				07	1.1771				07-0314			07-01-1912	WATTE CREEK					
				08	1.1771				07-0314			07-01-1912	WATTE CREEK					
				09	1.1771				07-0314			07-01-1912	WATTE CREEK					
				10	1.1771				07-0314			07-01-1912	WATTE CREEK					
				11	1.1771				07-0314			07-01-1912	WATTE CREEK					
				12	1.1771				07-0314			07-01-1912	WATTE CREEK					
				13	1.1771				07-0314			07-01-1912	WATTE CREEK					
				14	1.1771				07-0314			07-01-1912	WATTE CREEK					
				15	1.1771				07-0314			07-01-1912	WATTE CREEK					
				16	1.1771				07-0314			07-01-1912	WATTE CREEK					
				17	1.1771				07-0314			07-01-1912	WATTE CREEK					
				18	1.1771				07-0314			07-01-1912	WATTE CREEK					
				19	1.1771				07-0314			07-01-1912	WATTE CREEK					
				20	1.1771				07-0314			07-01-1912	WATTE CREEK					
				21	1.1771				07-0314			07-01-1912	WATTE CREEK					
				22	1.1771				07-0314			07-01-1912	WATTE CREEK					
				23	1.1771				07-0314			07-01-1912	WATTE CREEK					
				24	1.1771				07-0314			07-01-1912	WATTE CREEK					
				25	1.1771				07-0314			07-01-1912	WATTE CREEK					
				26	1.1771				07-0314			07-01-1912	WATTE CREEK					
				27	1.1771				07-0314			07-01-1912	WATTE CREEK					
				28	1.1771				07-0314			07-01-1912	WATTE CREEK					
				29	1.1771				07-0314			07-01-1912	WATTE CREEK					
				30	1.1771				07-0314			07-01-1912	WATTE CREEK					
				31	1.1771				07-0314			07-01-1912	WATTE CREEK					
				32	1.1771				07-0314			07-01-1912	WATTE CREEK					
				33	1.1771				07-0314			07-01-1912	WATTE CREEK					
				34	1.1771				07-0314			07-01-1912	WATTE CREEK					
				35	1.1771				07-0314			07-01-1912	WATTE CREEK					
				36	1.1771				07-0314			07-01-1912	WATTE CREEK					
				37	1.1771				07-0314			07-01-1912	WATTE CREEK					
				38	1.1771				07-0314			07-01-1912	WATTE CREEK					
				39	1.1771				07-0314			07-01-1912	WATTE CREEK					
				40	1.1771				07-0314			07-01-1912	WATTE CREEK					
				41	1.1771				07-0314			07-01-1912	WATTE CREEK					
				42	1.1771				07-0314			07-01-1912	WATTE CREEK					
				43	1.1771				07-0314			07-01-1912	WATTE CREEK					
				44	1.1771				07-0314			07-01-1912	WATTE CREEK					
				45	1.1771				07-0314			07-01-1912	WATTE CREEK					
				46	1.1771				07-0314			07-01-1912	WATTE CREEK					
				47	1.1771				07-0314			07-01-1912	WATTE CREEK					
				48	1.1771				07-0314			07-01-1912	WATTE CREEK					
				49	1.1771				07-0314			07-01-1912	WATTE CREEK					
				50	1.1771				07-0314			07-01-1912	WATTE CREEK					
				51	1.1771				07-0314			07-01-1912	WATTE CREEK					
				52	1.1771				07-0314			07-01-1912	WATTE CREEK					
				53	1.1771				07-0314			07-01-1912	WATTE CREEK					
				54	1.1771				07-0314			07-01-1912	WATTE CREEK					
				55	1.1771				07-0314			07-01-1912	WATTE CREEK					
				56	1.1771				07-0314			07-01-1912	WATTE CREEK					
				57	1.1771				07-0314			07-01-1912	WATTE CREEK					
				58	1.1771				07-0314			07-01-1912	WATTE CREEK					
				59	1.1771				07-0314			07-01-1912	WATTE CREEK					
				60	1.1771				07-0314			07-01-1912	WATTE CREEK					
				61	1.1771				07-0314			07-01-1912	WATTE CREEK					
				62	1.1771				07-0314			07-01-1912	WATTE CREEK					
				63	1.1771				07-0314			07-01-1912	WATTE CREEK					
				64	1.1771				07-0314			07-01-1912	WATTE CREEK					
				65	1.1771				07-0314			07-01-1912	WATTE CREEK					
				66	1.1771				07-0314			07-01-1912	WATTE CREEK					
				67	1.1771				07-0314			07-01-1912	WATTE CREEK					
				68	1.1771				07-0314			07-01-1912	WATTE CREEK					
				69	1.1771				07-0314			07-01-1912	WATTE CREEK					
				70	1.1771				07-0314			07-01-1912	WATTE CREEK					
				71	1.1771				07-0314			07-01-1912	WATTE CREEK					
				72	1.1771				07-0314			07-01-1912	WATTE CREEK					
				73	1.1771				07-0314			07-01-1912	WATTE CREEK					
				74	1.1771				07-0314			07-01-1912	WATTE CREEK					
				75	1.1771				07-0314			07-01-1912	WATTE CREEK					
				76	1.1771				07-0314			07-01-1912	WATTE CREEK					
				77	1.1771				07-0314			07-01-1912	WATTE CREEK					
				78	1.1771				07-0314			07-01-1912	WATTE CREEK					
				79	1.1771				07-0314			07-01-1912	WATTE CREEK					
				80	1.1771				07-0314			07-01-1912	WATTE CREEK					
				81	1.1771				07-0314			07-01-1912	WATTE CREEK					
				82	1.1771				07-0314			07-01-1912	WATTE CREEK					
				83	1.1771				07-0314			07-01-1912	WATTE CREEK					
				84	1.1771				07-0314			07-01-1912	WATTE CREEK					
				85	1.1771				07-0314			07-01-1912	WATTE CREEK					
				86	1.1771				07-0314			07-01-1912	WATTE CREEK					
				87	1.1771				07-0314			07-01-1912	WATTE CREEK					
				88	1.1771				07-0314			07-01-1912	WATTE CREEK					
				89	1.1771				07-0314			07-01-1912	WATTE CREEK					
				90	1.1771				07-0314			07-01-1912	WATTE CREEK					
				91	1.1771				07-0314			07-01-1912	WATTE CREEK					
				92	1.1771				07-0314			07-01-1912	WATTE CREEK					
				93	1.1771				07-0314			07-01-1912	WATTE CREEK					
				94	1.1771				07-0314			07-01-1912	WATTE CREEK					
				95	1.1771				07-0314			07-01-1912	WATTE CREEK					
				96	1.1771				07-0314			07-01-1912	WATTE CREEK					
				97	1.1771				07-0314			07-01-1912	WATTE CREEK					
				98	1.1771				07-0314			07-01-1912	WATTE CREEK					
				99	1.1771				07-0314			07-01-1912	WATTE CREEK					
				100	1.1771				07-0314			07-01-1912	WATTE CREEK					

██████████ 62 ██████████

02

DAVIS

COMMON DITCH W/ SEVERAL W.R. OF SEVERAL IND.

CROWWALL V. TALBOY 45 D. 459... (1928) p. 56-1LR

DITCH MAY BE OWNED BY DIFFERENT PERSONS p. 55, 1LR

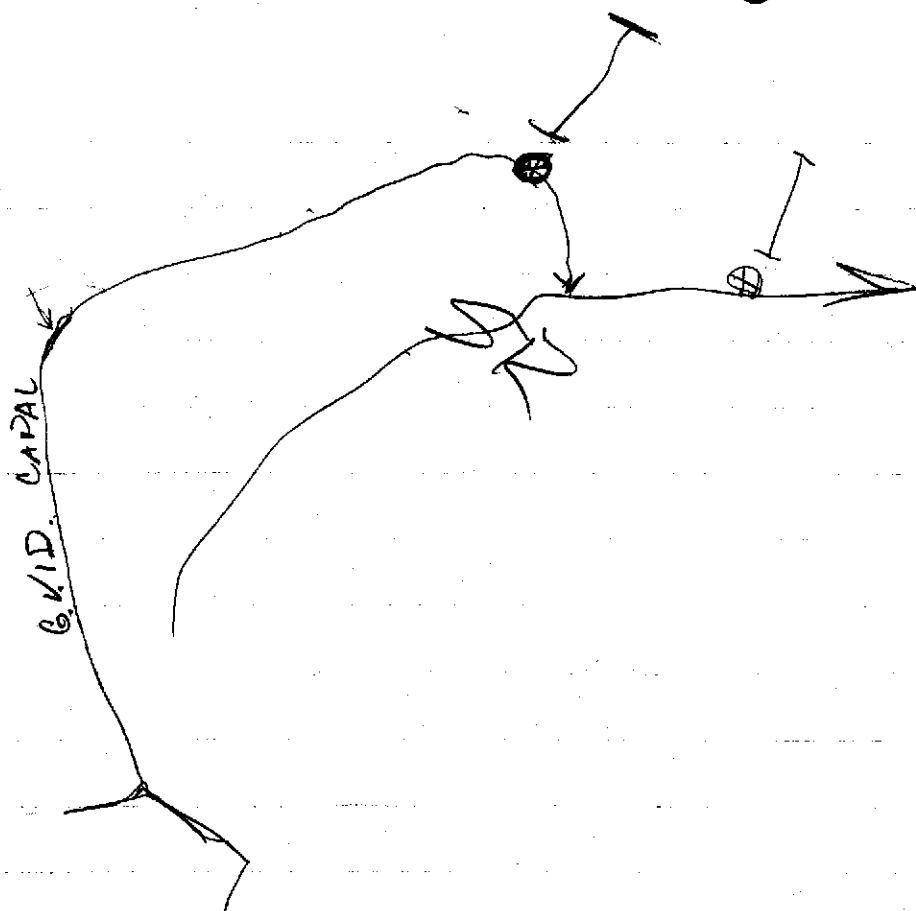
SIMONSON V. MOON, 72 D 39 (1951) * RANSEYER V

JAKERSON, 78 D 504 (1957)

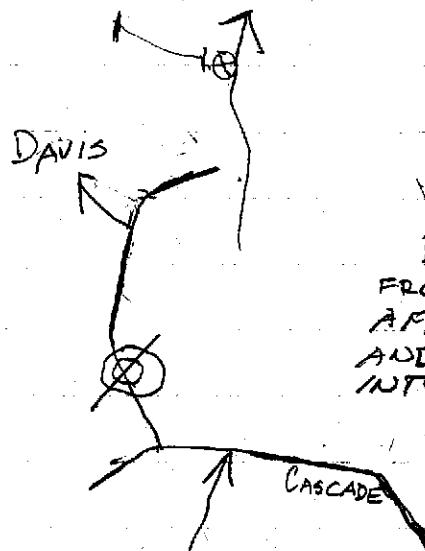
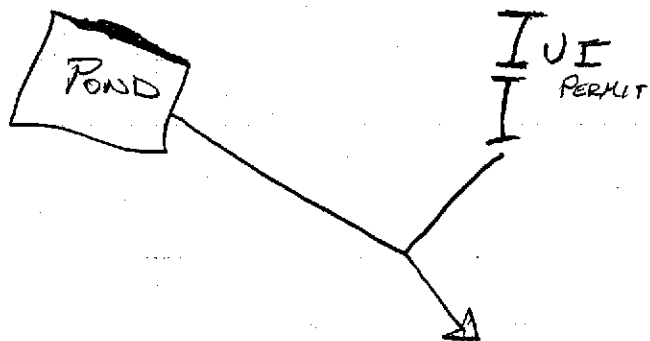
USER NOT REQUIRED TO WASTE WATER FOR BENEFIT OF OTHERS.

WASTEWATER OR N. FK.

DOD WATTS 342-7751 A+B ENGINEERING



COULD NOT FIND A RT.
UNIVERSITY OF IDAHO
SEWAGE PLANT



~~WRONG~~
DAVIS DIVERSION IS
FROM PENSTOCK
AFTER GENERATOR
AND BEFORE DISCHARGE
INTO N. FK.

Abbreviations:

CP—Copayment

VCP—Variable Copayment

GPP—Group Practice Plan

IP—Inpatient

IPP—Individual Practice Plan

OP—Outpatient

DO NOT RELY ON THIS CHART ALONE—

Before making a final decision read the brochures and addenda for the plans of interest to you. All benefits are subject to the definitions, limitations, and exclusions set forth in the plan brochure(s).

Common Characteristics of CMP/HMOs Continued —

- CMP/HMOs usually charge copayments for some services.
- CMP/HMOs normally do not utilize claim forms.
- CMP/HMO's benefit package includes catastrophic coverage, since these plans provide for necessary care during a year.

IP Services from Plan Doctors and In Plan Facilities			OP Services from Plan Doctors and In Plan Facilities			Other Benefit Features	1984 Monthly Rates Your Share		1984 Bi-weekly Rates Your Share	
Hospital Care	Surgery	Doctors Visits	Surgery	Diagnostic Tests	Doctors Visits	(see key below)	Self Only	Family	Self Only	Family
Tennessee										
In full, \$50 CP	In full	In full	In full	VCP	\$5 CP	1-2-5-6-11-12-13	\$50.67	\$177.37	\$23.38	\$81.86
In full	In full	In full	In full	In full	In full	1-2-5-7-12-13	27.66	99.28	12.76	45.82
In full	In full	In full	In full	In full	In full	1-2-5-7-8-12-13	21.27	113.19	9.81	52.24
Texas										
In full	In full	In full	In full	In full	In full	1-2-5-7-11-13	16.19	60.46	7.47	27.90
In full	In full	In full	In full	VCP	\$3 CP	1-2-5-6-11-12-13	16.43	78.83	7.58	36.38
In full	In full	In full	In full	VCP	\$3 CP	1-2-5-6-11-12-13	16.95	85.11	7.82	39.28
In full, \$80 CP	In full	In full	In full	In full	\$8 CP	1-2-5-6-10-12-13	39.16	83.96	18.07	38.75
In full	In full	In full	In full	In full	In full	1-2-5-6-11-13	16.60	70.36	7.66	32.47
In full	In full	In full	In full	In full	\$2 CP	1-2-5-7-11-12-13	33.20	102.49	15.32	47.30
In full	In full	In full	In full	In full	In full	1-2-5-7-11-12-13	29.43	87.97	13.58	40.60
In full, \$60/day CP, days 1-10	In full	In full	In full	In full	\$2 CP	1-2-3-5-7-11-13	16.17	75.49	7.46	34.84
Utah										
In full for most conditions	In full*	In full	In full*	In full	\$3 CP	1-2-3-4-5-6-8-11-12-13	35.63	111.13	16.44	51.29
Vermont										
In full	In full	In full	In full	In full	\$2 CP	1-2-3-5-7-11-12-13	14.46	39.16	6.67	18.07
Virginia										
In full	In full	In full	In full/VCP	In full/VCP	In full/VCP	1-2-5-6-9-12-13	33.29	93.32	15.36	43.07
In full	In full	In full	In full	In full	In full	1-2-5-6-10-12-13	36.41	112.43	16.80	51.89
In full	In full	In full	In full	In full	In full	1-2-5-6-8-11-12-13	33.68	100.28	15.54	46.28
In full, \$150 CP	In full	In full	In full	In full	\$10 CP	1-2-5-6-8-11-12-13	18.47	60.93	8.52	28.12
In full	In full	In full	In full	In full	In full	1-2-5-6-13	29.22	87.43	13.48	40.35
In full, \$300 CP 1st admit.	In full	In full	In full	In full	In full	1-2-5-7-8-9-10-13	18.19	72.39	8.39	33.41
In full	In full	In full	In full	In full	In full	1-2-5-6-10-12-13	42.07	130.27	19.41	60.12
Washington										
In full	In full	In full	In full	In full	In full	1-2-5-6-8-10-11-12-13	21.68	63.71	10.00	29.40
In full	In full	In full	In full	In full	\$4 CP	1-2-5-6-11-12-13	30.02	82.97	13.85	38.29
In full	In full	In full	In full	In full	\$4 CP	1-2-5-6-11-12-13	15.72	49.69	7.26	22.93
In full, \$200 CP ex. accident	In full	In full	In full	In full	\$5 CP	1-2-5-6-11-13	69.52	143.96	32.08	66.44
In full	In full	In full	In full	In full	\$5 CP	1-2-5-6-11-13	42.69	121.49	19.70	56.07
80% of 1st \$5,000, then 100%	In full	In full	In full/VCP	In full/VCP	\$2 CP	1-2-5-6-9-11-13	43.13	131.72	19.90	60.79
In full, \$250 CP	In full	In full	In full	In full	In full	1-2-6-13	50.67	109.12	23.38	50.36

Key:

1. Routine Physicals & Immunizations
2. Extended Care Facility
3. Preventive Dental Care for Children

4. Dental Care
5. Home Health Care
6. Alcohol/ Drug Abuse Care

7. Alcohol/Drug Detox. Only
8. Midwives
9. Chiropractors

10. Hospice Care
11. Vision Care
12. Prescription Drugs
13. Short Term Mental Health

11/28/83

125 150 MI on bottom lands 1948¹⁹¹⁹

100 MI 240 acres above W.L. Rd 1957 pump 10 HP ¹⁹⁵⁴
~~then 15HP~~

300 MI 600 acres RR ditch 1962 pump 40 HP

~~550~~ 550 10⁵ - 11 of

DF

claimed

3580 1917 .84 (42 MI) 107 44 Ac

4031X 1917 2.50 & 125 MI 125 * 634

4031A 1957. 3.0 (150 MI) 150 * 634

4031B 1964^{62 gone} 7.18 (359 MI) 400 * 634

13⁵² of 676 MI 702 678

INTER-DEPARTMENT MEMO — 1

FROM Glen

DATE 5-21-84

TO Dave Shaw

SUBJECT

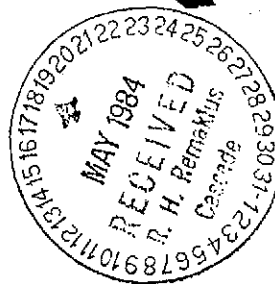
- Tom Davis stopped by
the office today & left this
copy.

OR Problems @ p. 6 & 7.


SIGNATURE

RECEIVED
MAY 23 1984

Department of Water Resources
Nelson Regional Office



RECEIVED

MAY 21 1984

Department of Water Resources

FILED

MAY 16 1984

U.L.L.U.R.

Thelma R. Kolodziej CLERK

Karen M. Brown DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE GENERAL	)	Case No. 3667
DETERMINATION OF THE RIGHT TO THE	)	
USE OF SURFACE AND GROUND WATERS	)	FINDINGS OF FACT AND
OF THE PAYETTE RIVER DRAINAGE	)	CONCLUSIONS OF LAW
BASIN.	)	

The above entitled matter came on regularly for trial the 23rd day of April, 1984; Idaho Power Company appearing through its attorneys Terry T. Uhling and Thomas G. Nelson of Nelson, Rosholt, Robertson, Tolman, and Tucker, Twin Falls, Idaho and Thomas J. Davis appearing in person and through his attorneys John T. Hawley and Albert R. Barker of Hawley, Troxell, Ennis and Hawley, Boise, Idaho and Robert H. Remaklus, Cascade, Idaho.

Numerous exhibits having been introduced and numerous witnesses having testified; briefs having been filed, and the

COPY

Court being fully advised in the premises, makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

1. On March 5, 1979 the State of Idaho Department of Water Resources filed herein a PROPOSED FINDING OF WATER RIGHTS pursuant to Idaho Code section 42-1410, wherein the Department of Water Resources found that Tom J. Davis is the owner of certain water rights in the Payette River in the total amount of 13.52 cubic feet per second (cfs). Said water rights bear numbers 65-3580, 65-4031X, 65-4031A and 65-4031B, and one more particularly set forth in the attachment to the Don Watts Affidavit on file in this action.

2. The original point of diversion for No. 65-3580 and No. 65-4031X with a priority date of April 1, 1917 was in Lot 2, Section 25, Township 14 North, Range 3 East, Boise Meridian, Valley County, Idaho. However, such point of diversion was changed by the construction of the Cascade Dam in 1948, and since that time the true and actual point of diversion of said water has been at the head of the outlet works of Cascade Dam.

3. The true point of diversion for the water rights set forth in No. 65-4031A with a priority date of April 1, 1957 and No. 65-4031B with a priority date of April 1, 1964 was at the head of the outlet works of said Cascade Dam in Lot 5, Section 26, Township 14 North, Range 3 East, Boise Meridian, Valley

County, Idaho, and at all times thereafter the water was conveyed and carried under the Cascade Dam through said outlet works by gravity flow to a wooden penstock and finally to the place of beneficial use on the property of Tom J. Davis.

4. In 1971 when Tom J. Davis filed said numbered claims for water rights he was acting upon the advise of the officials of the State Board of Water Resources at the Western Regional offices thereof in Boise, Idaho and said claims were prepared with their cooperation and under their guidance and erroneously set forth the point of diversion on all of the above numbered water rights as bein the same as the original diversion point of the 1917 water rights in Lot 2, Section 25, Township 14 North, Range 3 East, Boise Meridian, Valley County, Idaho. Whereas in fact said diversion point of all of said water rights ever since the construction of the Cascade Dam in 1948 has been at the head of the outlet works of Cascade Dam in said Lot 5, Section 26, Township 14 North, Range 3 East, Boise Meridian, Valley County, Idaho.

5. On July 12, 1982 this Court entered its Order amending said March 5, 1979 State of Idaho Department of Water Resources PROPOSED FINDING OF WATER RIGHT to set forth the true point of diversion of such water as being at the head of the outlet works of Cascade Dam in Lot 5, Section 26, Township 14 North, Range 3 East, Boise Meridian, Valley County, Idaho.

6. On September 1, 1982 the Idaho Power Company objected to the Order amending the Proposed Finding of Water Right.

7. On October 6, 1982 Tom J. Davis filed a Motion to Strike and/or Dismiss the Idaho Power Company objection and the matter was set for a hearing on November 8, 1982 in the Gem County Courthouse, Emmett, Idaho.

8. On October 27, 1982 the Idaho Power Company filed a Motion to Strike the Order of July 12, 1982 entered by Judge Norris amending the Proposed Finding of Water Right.

9. On March 14, 1983 the Court heard the Idaho Power Company's Motion to Strike (and objection to) the Judge Norris Order entered July 12, 1982. The Court heard full argument from counsel for the Idaho Power Company and counsel for Thomas J. Davis and read the affidavits of Thomas J. Davis, Donald Watts, Nic Ysursa and Josephine Beeman filed therein and subsequently denied the Idaho Power Company's Motion to Strike.

10. On March 24, 1983 the Idaho Power Company filed its Motion for Reconsideration.

11. On April 18, 1983 Thomas J. Davis filed his Motion for an Interlocutory Order in the nature of a preliminary injunction pursuant to Idaho Code section 42-1406 et seq. Additional affidavits were filed by the Idaho Power Company of Glen Brewer (May 6, 1983). Nicholas Ysursa (March 21, 1983 and May 6, 1983),

Gary Wilbert (April 28, 1983) and Darcy A. Frownfelter (April 27, 1983).

12. Idaho Power Company's Motion to Reconsider and Thomas J. Davis Motion for an Interlocutory Order in the nature of a preliminary injunction were heard on May 9, 1983 before this Court. The Court read the motions, read the briefs, read the numerous affidavits and attachments and heard oral argument from counsel for the Idaho Power Company, the State of Idaho and Thomas J. Davis and at the request of counsel Court withheld the entry of an Order pending the outcome of discussions between the parties concerning the restoration of gravity flow of water to the Davis property.

13. On October 28, 1983 the Court received a communication from counsel for Thomas J. Davis advising the parties were unable to reach an agreement concerning the restoration of the gravity flow of water to the Davis property. A proposed Order was also submitted by the Court on May 9, 1983.

14. On October 31, 1983 the Court signed said Order and on November 1, 1983 said Order was filed in this Court.

15. Subsequent to the filing of the Order of this Court dated October 31, 1983 the Idaho Power Company has filed the following motions: (a) Motion to Reconsider said October 31, 1983 Order; (b) Motion to Alter and Amend said October 31, 1983 Order; (c) Motion for Relief from said October 31, 1983 Order;

(d) Motion Requesting the Court to Set Forth Findings of Fact and Conclusions of Law; (e) Motion for Stay of said Order. In support of said Motions the Idaho Power Company has filed an additional affidavit of Glen Brewer along with an affidavit of its counsel Terry T. Uhling.

16. The Idaho Power Company's objection to and Motions to Strike the Judge Norris Order of July 12, 1983 has been heard by this Court on two separate occasions (March 14, 1983 and May 9, 1983). Numerous affidavits were filed by the Idaho Power Company and by Thomas J. Davis.

5 with a point of diversion at the head of the outlet works of Cascade Dam (Lot 2, Section ²⁶25, Township 14 North, Range 3 East, Boise Meridian, Valley County, Idaho).

18. This Court finds that Tom Davis (and his predecessors) has been diverting his water from the head of the outlet works at Cascade Dam via gravity flow through a steel pipe and redwood penstock to his property from at least 1948 through the irrigation season of 1981 (a total of 33 years).

19. This Court finds that the Idaho Power Company was fully aware of the fact that Davis diverted his water at the head of the Cascade Dam outlet works and that said water was carried by gravity flow to his property. The tap, the penstock and the

pipe of Davis which carried water to the Davis ditch were destroyed by the Idaho Power Company in the spring of 1982 depriving Mr. Davis of his water for that irrigation season.

20. The 13.52 cfs of water which had been applied to a beneficial use on the Davis ranch has never been run through the Idaho Power Company power plant. Until the spring of 1982 the water had been applied to Mr. Davis' ranch, irrigating approximately 1,000 acres of pasture ground. Reinstating the Davis tap and pipe between the dam outlet and the power plant will restore to Davis the 13.52 cfs and the gravity flow wrongfully taken from him by the destruction of the tap and pipe.

21. The evidence is unrefuted that the Idaho Power Company was fully aware of the fact that Tom Davis had for many years been receiving his water by gravity flow via the tap, pipe and penstock; the evidence is also unrefuted that the Idaho Power destroyed Davis' diversion point, tap and pipe and deprived him of water without notice and due process; the Idaho Power Company resisted the Davis' motion to correct the record as to the true point of diversion of his water rights, belatedly and without any showing of good cause or good faith; that the Idaho Power Company has delayed final resolution of this matter by numerous attempts to relitigate issues decided in Mr. Davis' favor, including the attempt to defeat the water rights of Davis and the additional right to have the water flow continue as conveyed for more than

33 years through and by reason of the Idaho Power Company facilities.

Conclusions of Law

1. The Order of the Court dated October 31, 1983 should be reinstated except as to the size of pipe, title to the pipeline, and easement provisions, in that Davis should have full rights of usage and maintenance of the pipeline, but that Idaho Power should provide the pipeline of sufficient capacity to carry the 13.52 cubic feet per second of Davis, and to bear the cost of and responsibility of ownership and replacement when necessary, unless conveyed and accepted by the respective parties.

2. The motions of Idaho Power, except as herein above set forth, to reconsider the October 31, 1983 Order, amend said Order, grant relief from said Order and stay said Order, should all be denied.

3. That as concerns the issue of awarding attorney fees, the Court concludes that Idaho Power's contest of the amended point of diversion of Mr. Davis, has been frivolous and without reasonable basis, and has rather been in fact an effort to, after the fact and although legally barred therefrom, attempt to defeat and set aside the water rights of Davis together with his right to have that water continue to flow as conveyed for more than 33 years. That such conduct should require Idaho Power Company to pay the reasonable attorney fees and costs of Mr.

Davis as hereafter approved as submitted by appropriate affidavit and memorandum.

4. That as concerns the issue of whether or not pumping water from the Payette River via a permanent pumping system would be an adequate substitute for the gravity flow pipeline system via tap into the dam; the Court concludes such is not the case and will not be authorized.

Dated this 15th day of May, 1984.

Roger L. Williams

Roger L. Williams
District Judge

RECEIVED

NOV 7 1983

Department of Water Resources

FILED

NOV 4 1983

Terry T. Uhling
ELAM, BURKE, EVANS, BOYD & KOONTZ
1010 FIRST INTERSTATE BUILDING
P.O. BOX 1559 BOISE, IDAHO 83701
PHONE (208) 343-5454

THELMA R. KOLODZIEJ CLERK
Karen M. Brown DEPUTY

Attorneys for Idaho Power Company

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE GENERAL)	Civil No. 3667
DETERMINATION OF THE RIGHT)	
TO THE USE OF SURFACE AND)	ORDER GRANTING MOTION TO
GROUNDWATERS OF THE PAYETTE)	REDUCE TIME REQUIRED FOR
RIVER DRAINAGE BASIN)	NOTICE OF HEARING

The above entitled action having come on pursuant to Idaho
Power Company's Motion to Reduce Time Required for Notice of
Hearing, and good cause appearing therefor;

NOW THEREFORE, IT IS HEREBY ORDERED, That said motion is
hereby granted, and that the hearing on the said Motion for
Stay, Motion to Reconsider, Motion to Alter and Amend Order,
Motion for Relief from Order, and Motion for the Court to Set
Forth Findings of Fact and Conclusions of Law shall be held at
10:00 o'clock a.m., on the 8th day of November, 1983, at the
Canyon County Courthouse, Caldwell, Idaho.

DATED This 4th day of November, 1983.

Roger L. Williams

District Judge

ORDER GRANTING MOTION TO REDUCE
TIME REQUIRED FOR HEARING - 1

RECEIVED

NOV 8 1983

Department of Water Resources

Terry T. Uhling
ELAM, BURKE, EVANS, BOYD & KOONTZ
1010 FIRST INTERSTATE BUILDING
P.O. BOX 1559 BOISE, IDAHO 83701
PHONE (208) 343-5454

Attorneys for Idaho Power Company

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE GENERAL	)	Civil No. 3667
DETERMINATION OF THE RIGHT	)	
TO THE USE OF SURFACE AND	)	NOTICE OF HEARING
GROUNDWATERS OF THE PAYETTE	)	
RIVER DRAINAGE BASIN	)	

TO: All parties and their respective counsel of record:

YOU WILL PLEASE TAKE NOTICE That Idaho Power Company, by and through their counsel of record, Elam, Burke, Evans, Boyd and Koontz, will bring their Motion for Stay, Motion to Reconsider, Motion to Alter and Amend Order, Motion for Relief from Order, and Motion for the Court to Set Forth Findings of Fact and Conclusions of Law on for hearing before this Court on the 8th day of November, 1983, at the hour of 10:00 o'clock a.m., of said day, or as soon thereafter as counsel can be heard before the Honorable Roger Williams, at the Canyon County Courthouse, Caldwell, Idaho.

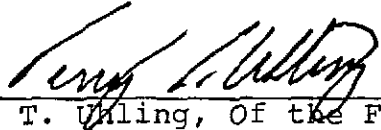
DATED This 4 day of November, 1983.

//

NOTICE OF HEARING - 1

ELAM, BURKE, EVANS, BOYD & KOONTZ
1010 FIRST INTERSTATE BUILDING
P.O. BOX 1559 BOISE, IDAHO 83701
PHONE (208) 343-5454

ELAM, BURKE, EVANS, BOYD & KOONTZ


Terry T. Uhling, Of the Firm
Attorneys for Idaho Power Co.

CERTIFICATE OF SERVICE

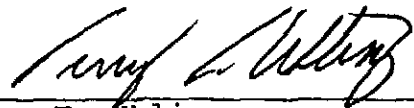
I HEREBY CERTIFY That on this 4 day of November, 1983,
I caused to be served a true and correct copy of the within and
foregoing instrument, by personal service of the same upon:

Jack Hawley
Hawley, Troxell, Ennis & Hawley
One Capital Center
Boise, Idaho 83702

Darcy Frownfelter
Deputy Attorney General
Statehouse
Boise, Idaho 83720

and by mail, postage prepaid, to:

Robert Remaklus
Attorney at Law
P.O. Box 759
Cascade, Idaho 83611


Terry T. Uhling

DEC 11 1977

NOV 1977

1 Terry Uhling
2 ELAM, BURKE, EVANS, BOYD & KOONTZ
3 1010 FIRST INTERSTATE BUILDING
4 P.O. BOX 1559 BOISE, IDAHO 83701
5 PHONE (208) 343-5454

6 Attorneys for Idaho Power Co.

7 IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
8 STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

9 IN THE MATTER OF THE GENERAL) Civil No. 3667
10 DETERMINATION OF THE RIGHT TO THE)
11 USE OF SURFACE AND GROUNDWATERS OF) AFFIDAVIT OF GLENN BREWER
12 THE PAYETTE RIVER DRAINAGE BASIN)

13 STATE OF IDAHO) ss.
14 County of Ada)

15 GLENN BREWER, being first duly sworn upon oath, deposes and says:

16 1. That I received a Master of Science Degree in Civil Engineering
17 from Montana State University in 1970;

18 2. That I am a registered professional engineer in good standing
19 in the States of Idaho and California;

20 3. That I am an engineer for Idaho Power Company and make the
21 following statements based upon my own personal knowledge and belief;

22 4. That I am the project engineer for the Cascade Hydroelectric
23 Project currently under construction below the U. S. Bureau of Reclamation
24 Cascade Dam;

5. That the outlet works of Cascade Dam are owned by the United
States and operated by the U. S. Bureau of Reclamation;

//

6. That pursuant to my authority as project engineer for Cascade Hydroelectric Project, I have supervised the installation of pumps in the North Fork of the Payette River, NW $\frac{1}{4}$ of Section 25, Township 14N, Range 3E, Boise Meridian. That these pumps were installed on the left bank just upstream of the Highway 55 bridge over the North Fork of the Payette River, just north of Cascade, Idaho. That the installation included electrical transformers, meter, and panels to provide power for two pumps, pump supports, the pumps, valves and piping from the pumps to Mr Davis's ditch and a concrete basin and wier where the pipe discharges into said ditch.

7. That the installation described above has the capacity to deliver 13.52 cfs of water to Tommy J Davis and Jemima K Davis at Mr Davis's ditch. That prior to and following my appointment as project engineer for the Cascade Hydroelectric Project in March of 1981, I made several site investigations of the project area from Cascade Dam downstream to the Highway 55 bridge. That during these investigations I observed the existing site conditions including the USBR outlet works, penstock and valves; Idaho Power Company overflow structure, penstock and 300 kw powerplant; and a tap with a valve and pipe going from the Idaho Power Company penstock to the start of Mr Davis's ditch. That included in the construction has been the demolition or removal of the exposed portion of the USBR penstock and valves, the overflow structure, penstock and 300 kw powerplant, and the valve and pipe from the penstock to Mr Davis's ditch. That the water delivered to Mr Davis's ditch from the present pumps is at the same elevation and to the same ditch as the previous tap from the Idaho Power Company penstock discharged.

8. That the pumps were installed by Idaho Power Company. That the first pump, 65 HP submersible, was installed and operational June 26, 1983. That a supplementary 58 HP submersible pump was installed and operational June 27, 1983. That these two pumps provided water to Mr Davis's ditch until July 22, 1983, when the 58 HP pump was replaced by a more efficient 60 HP irrigation

pump. That following completion of the installation on July 26, 1983, the system has been capable of providing 13.52 cfs.

9. That from June 26, 1983, until August 21, 1983, Idaho Power utilized the pumps to supply Tommy J Davis and Jemima K Davis with water pursuant to their alleged water right. That the pumps were not operated after August 21, 1983, at the request of Tommy J Davis and/or his son.

10. That following the installation of the pump system by Idaho Power Company the keys, operation, adjustment and control of the system were given to Tommy J Davis or his appointee or individual in charge to control the delivery of water into the Davis's ditch.

11. That Idaho Power Company will continue during the pendency of this litigation to provide Tommy J Davis and Jemima K Davis with water in accordance with their alleged water right through the pumping installation. That Idaho Power Company will continue to pay all costs attributable to the delivery and maintenance of this pumping installation.

12. That Idaho Power Company has designated the operator of the Cascade Hydroelectric Project as the individual responsible for ensuring that the pumps are in proper operating condition. That this individual will have the responsibility of maintaining prompt and adequate delivery of water to Mr Davis's ditch for Mr Davis's water delivery system during the pendency of this litigation.

13. That installation of a tap into the existing Idaho Power Company penstock upstream of the powerplant with valves and a 16" pipe to the Davis's ditch is estimated to cost \$73,998 plus contingencies. That the loss of energy generation during said installation would cost up to \$46,500 based upon five days loss of generation at 3¢/kwh. That the annual loss due to the diversion of 13.52 cfs during the irrigation season from upstream of the Cascade Hydroelectric Project would result in lost generation costs of \$10,550/year at 3¢/kwh. That

removal of the tap and providing a permanent closure with generation loss for one day would cost approximately \$2040. That based on the above estimate the total cost of installation of a penstock diversion with removal after one year would cost \$133,088 plus contingencies.

14. That dewatering of the penstock and high pressure outlet works which are under the exclusive control of the U S Bureau of Reclamation would be required to install a tap in the penstock.

15. That prior to construction of the new Cascade Hydroelectric Project, Idaho Power Company was not injured by the diversion of irrigation water from the Idaho Power Company penstock, because the water required to operate the plant at full capacity was always available. That releases to the Idaho Power overflow structure by the U S Bureau of Reclamation which exceeded the plant capacity were either discharged into the river or diverted into the Davis's irrigation ditch.

16. That if a diversion were installed into the penstock, there would be a loss of generation due to diversion of 13.52 cfs upstream of the powerplant which is estimated to be 351,700 kwh/year or \$10,550/year based on 3¢/kwh.

Further your affiant sayeth not.

Glenn W. Brewer
GLENN BREWER

4th SUBSCRIBED AND SWORN To before me, the undersigned, this
day of September, 1983.

Valley J. Peapack
NOTARY PUBLIC for Idaho
Residing at Boise, Idaho

RECEIVED

NOV 7 1983

Terry Uhling
ELAM, BURKE, EVANS, BOYD & KOONTZ
1010 FIRST INTERSTATE BUILDING
P.O. BOX 1559 BOISE, IDAHO 83701
PHONE (208) 343-5454

Attorneys for Idaho Power Company

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE GENERAL)	Civil No. 3667
DETERMINATION OF THE RIGHT)	
TO THE USE OF SURFACE AND)	AFFIDAVIT OF TERRY T. UHLING
GROUNDWATERS OF THE PAYETTE)	
RIVER DRAINAGE BASIN)	

STATE OF IDAHO) ss.
County of Ada)

TERRY T. UHLING, being first duly sworn upon oath, deposes
and says:

1. That I am an attorney for Elam, Burke, Evans, Boyd
and Koontz, representing Idaho Power Company in Civil Case No.
3667 in the District Court of the Third Judicial District of
the State of Idaho, in and for the County of Gem, and make the
following statements based upon my own personal knowledge
and belief.

2. That I was served with the signed Order with the
filing date of November 1, 1983, in Civil Case No. 3667 in the
District Court of the Third Judicial District of the State of
Idaho, in and for the County of Gem, by hand delivery from

ELAM, BURKE, EVANS, BOYD & KOONTZ
1010 FIRST INTERSTATE BUILDING
P.O. BOX 1559 BOISE, IDAHO 83701
PHONE (208) 343-5454

1 the lawfirm of Hawley, Troxell, Ennis and Hawley, representing
2 Thomas Davis in Civil Case No. 3667, on November 2, 1983.

3 3. That prior to receiving through hand delivery from
4 Hawley, Troxell, Ennis and Hawley the Order filed in Civil No.
5 3667 on November 1, 1983, I had filed with the Court in Civil
6 Case No. 3667 in the District Court of the Third Judicial
7 District of the State of Idaho, in and for the County of Gem,
8 an objection to the proposed order.

9 Further, your affiant sayeth not.

10
11 
12 TERRY T. UHLING

13
14  SUBSCRIBED AND SWORN To before me, the undersigned, this
15 day of November, 1983.

16 
17 NOTARY PUBLIC for Idaho
18 Residing at Boise
19
20
21
22
23
24
25
26
27

CERTIFICATE OF SERVICE

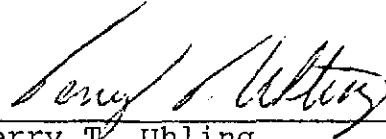
I HEREBY CERTIFY That on this 4 day of November, 1983, I caused to be served a true and correct copy of the within and foregoing Affidavit of Terry T. Uhling, along with the Affidavit of Glenn Brewer, by personal service of the same upon:

Jack Hawley
Hawley, Troxell, Ennis & Hawley
One Capital Center
Boise, Idaho 83702

Darcy Frownfelter
Deputy Attorney General
Statehouse
Boise, Idaho 83720

and by mail, postage prepaid, to:

Robert Remaklus
Attorney at Law
P.O. Box 759
Cascade, Idaho 83611


Terry T. Uhling

NOV 7 1983

by attachment to Motion Reconsidered

Terry T. Uhling
ELAM, BURKE, EVANS, BOYD & KOONTZ
1010 FIRST INTERSTATE BUILDING
P. O. BOX 1559 BOISE, IDAHO 83701
PHONE (208) 343-5454

Attorneys for Idaho Power Company

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE GENERAL	)	Civil No. 3667
DETERMINATION OF THE RIGHT	)	
TO THE USE OF SURFACE AND	)	MOTION TO REDUCE TIME
GROUNDWATERS OF THE PAYETTE	)	REQUIRED FOR NOTICE OF
RIVER DRAINAGE BASIN	)	HEARING

COMES NOW Idaho Power Company, by and through their counsel
of record, Elam, Burke, Evans, Boyd & Koontz, and moves the
court for an order allowing Idaho Power Company's Motion for
Stay, Motion to Reconsider, Motion to Alter and Amend Order,
Motion for Relief from Order, and Motion for the Court to Set
Forth Findings of Fact and Conclusions of Law to be heard at
10:00 o'clock a.m., on the 8th day of November, 1983, on the
ground and for the reason that if said Motions are not heard
at the time requested, they may suffer irreparable damage, as
the object of said Motions are to stay, reconsider, set aside,
change or alter the Order entered on November 1, 1983 in the
above referenced matter.

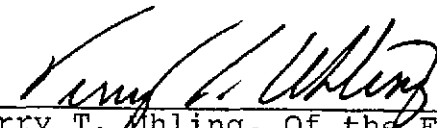
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MOTION TO REDUCE TIME
REQUIRED FOR HEARING - 1

ELAM, BURKE, EVANS, BOYD & KOONTZ
1010 FIRST INTERSTATE BUILDING
P.O. BOX 1559 BOISE, IDAHO 83701
PHONE (208) 343-5454

1 DATED This 4 day of November, 1983.

2 ELAM, BURKE, EVANS, BOYD & KOONTZ

3
4 
5 Terry T. Uhling, Of the Firm
6 Attorneys for Idaho Power Co.
7

8 CERTIFICATE OF SERVICE

9 I HEREBY CERTIFY That on this 4 day of November, 1983,
10 I caused to be served a true and correct copy of the within and
11 foregoing instrument, by personal service of the same upon:

11 Jack Hawley
12 Hawley, Troxell, Ennis & Hawley
13 One Capital Center
14 Boise, Idaho 83702

13 Darcy Frownfelter
14 Deputy Attorney General
15 Statehouse
16 Boise, Idaho 83720

16 and by mail, postage prepaid, to:

17 Robert Remaklus
18 Attorney at Law
19 P.O. Box 759
20 Cascade, Idaho 83611

21 
22 Terry T. Uhling
23
24
25
26
27

NOV 2 1983

Terry T. Uhling
ELAM, BURKE, EVANS, BOYD & KOONTZ
1010 FIRST INTERSTATE BUILDING
P.O. BOX 1559 BOISE, IDAHO 83701
PHONE (208) 343-5454

Attorneys for Idaho Power Company

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE GENERAL)	Civil No. 3667
DETERMINATION OF THE RIGHT)	
TO THE USE OF SURFACE AND)	MOTION TO RECONSIDER;
GROUNDWATERS OF THE PAYETTE)	MOTION TO ALTER AND
RIVER DRAINAGE BASIN)	AMEND ORDER;
)	MOTION FOR RELIEF FROM ORDER;
)	MOTION FOR THE COURT TO
)	SET FORTH FINDINGS OF FACT
)	AND CONCLUSIONS OF LAW

COMES NOW Idaho Power Company, by and through their
attorneys of record, Elam, Burke, Evans, Boyd and Koontz,
and makes the following motions requesting relief from the
Order filed on November 1, 1983, in Civil Case No. 3667 in
the matter of the General Determination of the Right to the
Use of Surface and Groundwaters of the Payette River Drainage
Basin (hereinafter referred to as "Order"):

1. Idaho Power Company, pursuant to Idaho Rules of
Civil Procedure 59(e) and 54(b), moves the Court to reconsider
its order.

2. Idaho Power Company, pursuant to Idaho Rules of

MOTIONS - 1

1 Civil Procedure Rules 59(e) and 54(b) moves this Court to
2 alter and amend the Order.

3 3. Idaho Power Company, pursuant to Idaho Rules of
4 Civil Procedure Rule 60(b)(6), moves this Court for relief
5 from the Order.

6 4. Idaho Power Company, pursuant to Idaho Rules of
7 Civil Procedure Rule 52(a) and (b), moves this Court to set
8 forth findings of fact and conclusions of law.

9 The above motions are based upon, but not limited to
10 the following reasons.

11 1. The Order does not accurately reflect the Court's
12 rulings and comments on May 9, 1983, in Civil Case No. 3667.

13 2. The Court has never set forth specific findings of
14 facts and conclusions of law to support the Order.

15 3. Idaho Power Company was denied notice and due
16 process under the Idaho and United States Constitutions and
17 law because we were never given the opportunity to object to
18 the Order.

19 4. Idaho Power Company was denied notice and due
20 process under the Idaho and United States Constitutions and
21 law because there was never a full evidentiary hearing to
22 determine the merits of the interlocutory order in the
23 nature of the preliminary injunction filed by Thomas Davis
24 in this action.

25 5. The Order signed by the Court exceeded the relief
26 requested by Thomas Davis' motion for an interlocutory order
27 in the nature of a preliminary injunction.

1 6. The Order transformed Thomas Davis' motion for an
2 interlocutory order in the nature of a preliminary injunction
3 into an amended motion which is fatally defective for its
4 failure to provide Idaho Power Company with notice and a
5 full evidentiary hearing contrary to the Idaho and United
6 States Constitutions and laws.

7 7. Thomas Davis cannot recover attorneys fees under
8 Idaho Code §12-121.

9 8. The Court failed to follow the procedured^{al} require-
10 ments of Idaho Rules of Civil Procedure 54(e)(1) and (2),
11 by setting forth the bases and reasons for awarding attorneys
12 fees.

13 9. That the Court failed to follow the mandatory
14 requirements of Idaho Rules of Civil Procedure 65(a) through
15 (e) before signing an order granting the motion for an
16 interlocutory order in the nature of preliminary injunction.

17 10. That a preliminary injunction can only be utilized
18 to refrain Idaho Power Company's actions and cannot be
19 utilized to command Idaho Power Company to perform a manda-
20 tory action.

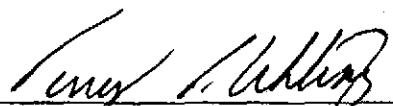
21 11. That Idaho Power Company has provided a physical
22 solution to maintain the status quo and prevent irreparable
23 harm to the parties.

24 This motion is further based upon affidavits filed
25 herewith and memorandum in support thereof to be filed, as
26 well as all pleadings and documents on filed herein. Oral
27 argument is requested.

ELAM, BURKE, EVANS, BOYD & KOONTZ
1010 FIRST INTERSTATE BUILDING
P.O. BOX 1559 BOISE, IDAHO 83701
PHONE (208) 343-5454

1 DATED This 4 day of November, 1983.

2 ELAM, BURKE, EVANS, BOYD
3 and KOONTZ

4 
5 Terry T. Uhling, Of the Firm
6 Attorneys for Idaho Power Co.

7
8
9
10 CERTIFICATE OF SERVICE

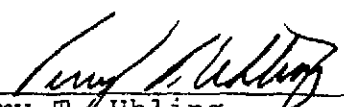
11 I HEREBY CERTIFY That on this 4 day of November, 1983,
12 I caused to be served a true and correct copy of the within and
13 foregoing instrument, by personal service of the same upon:

13 Jack Hawley
14 Hawley, Troxell, Ennis & Hawley
15 One Capital Center
16 Boise, Idaho 83702

17 Darcy Frownfelter
18 Deputy Attorney General
19 Statehouse
20 Boise, Idaho 83720

21 and by mail, postage prepaid, to:

22 Robert Remaklus
23 Attorney at Law
24 P.O. Box 759
25 Cascade, Idaho 83611

26 
27 Terry T. Uhling

NOV 17 1983

Terry T. Uhling
ELAM, BURKE, EVANS, BOYD & KOONTZ
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P.O. BOX 1559 BOISE, IDAHO 83701
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Attorneys for Idaho Power Company

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE GENERAL)	
DETERMINATION OF THE RIGHT)	Civil No. 3667
TO THE USE OF SURFACE AND)	
GROUNDWATERS OF THE PAYETTE)	MOTION FOR STAY
RIVER DRAINAGE BASIN)	

COMES NOW Idaho Power Company, by and through their attorneys of record, Elam, Burke, Evans, Boyd & Koontz, pursuant to Idaho Rules of Civil Procedure, Rule 62(b), and moves this Court for a Stay of the Order entered on November 1, 1983, in Civil Case No. 3667, In the Matter of the General Determination of the Right to use of Surface and Groundwaters of the Payette River Drainage Basin. This Motion for Stay is based upon the following reasons:

1. That Idaho Power has filed a timely motion to alter or amend the Judgment and/or Motion to Reconsider the Order in Civil Case No. 3667, filed on November 1, 1983.

2. That Idaho Power has filed a timely Motion pursuant to Rule 60(b)(6) of the Idaho Rules of Civil Procedure.

MOTION FOR STAY - 1

1 3. That Idaho Power has filed a timely Motion pursuant
2 to Rule 54(e)(1) and (2) of the Idaho Rules of Civil Procedure
3 for the Court's failure to make a written finding in a separate
4 document as a basis for awarding attorneys fees.

5 4. That Idaho Power has filed a timely Motion pursuant
6 to Rule 52(a) and (b) of the Idaho Rules of Civil Procedure for
7 failure to have specific findings of fact and conclusions of
8 law filed with the Court in support of the Order.

9 5. Idaho Power has filed an Objection to the Inter-
10 locutory Order entered in the nature of a Preliminary Injunction
11 because it failed to comply with Idaho Rules of Civil Procedure,
12 Rules 65(a) through (e). That a Preliminary Injunction cannot
13 be issued without a full and fair hearing regarding the merits
14 of the injunction. That Rule 65(c) requires that security be
15 provided before a preliminary injunction can be issued and
16 that Rule 65(d) requires that before an injunction or restrain-
17 ing order can be set, the order shall set forth the reasons
18 for issuance and shall be specific in terms.

19 Idaho Power seeks a stay of the Order since there is no
20 irreparable harm or injury occurring to the Davises at the
21 instant time. There is no necessity of water to be delivered
22 to the Davises in the non-irrigation season and Idaho Power,
23 during the pendency of this litigation, has implemented a
24 pumping installation to deliver the Davises the quality and
25 quantity of water they require under their alleged water right.

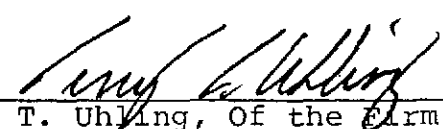
26 This Motion is further based upon Affidavits filed herewith
27 and Memorandum in Support thereof to be filed as well as all

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1 the pleadings and documents on file herein. ORAL ARGUMENT
2 IS REQUESTED.

3 DATED This 4 day of November, 1983.

4 ELAM, BURKE, EVANS, BOYD
5 and KOONTZ

6 
7 Terry T. Uhling, Of the firm
8 Attorneys for Idaho Power Co.

9 CERTIFICATE OF SERVICE

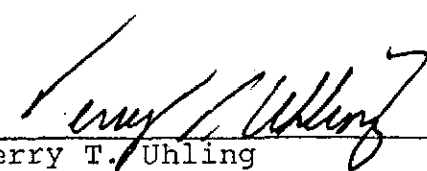
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24 P.O. Box 759
25 Cascade, Idaho 83611

26 
27 Terry T. Uhling

RECEIVED

NOV 11 1983

Department of Water Resources

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Attorneys for Idaho Power Company

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE GENERAL	)	Civil No. 3667
DETERMINATION OF THE RIGHT TO	)	
THE USE OF SURFACE AND GROUND-	)	MEMORANDUM IN SUPPORT
WATERS OF THE PAYETTE RIVER	)	OF MOTION TO STAY
DRAINAGE BASIN	)	ORDER, ETC.

FACTS

The record in the instant case establishes the following facts:

1. There is no necessity for an interlocutory order in the nature of a preliminary injunction (hereinafter referred to as "injunction") in the instant case. Tommy J. Davis and Jemima K. Davis have no necessity to be provided with irrigation water during the nonirrigation season on their Cascade property.

2. Tommy J. Davis and Jemima K. Davis cannot establish irreparable harm to their Cascade property because the 1983 irrigation season has concluded and Idaho Power Company has agreed to maintain the status quo during the pendency of this litigation by the implementation and utilization of pumping

1 installations to deliver the Davises the quality and quantity
2 of water they require under their alleged water right.

3 3. That Idaho Power Company was not provided an oppor-
4 tunity to be heard regarding its objections to the proposed
5 order filed with the court on November 2, 1983.

6 4. The November 1, 1983, order filed in case No. 3667
7 was provided to the court by Hawley Troxell Ennis and Hawley
8 and was signed by the court without any changes or alterations.

9 5. Idaho Power Company has filed the following timely
10 motions: (1) An Idaho Rules of Civil Procedure Rule 59(e)
11 motion to reconsider and/or alter, amend or set aside the
12 order; (2) An Idaho Rules of Civil Procedure Rule 52(a) and (b)
13 motion for failure to set forth findings of fact and conclusions
14 of law; (3) An Idaho Rules of Civil Procedure Rule 54(e)(1) and
15 (2) motion; (4) An Idaho Rules of Civil Procedure Rule 65(a)
16 through (e) motion to set aside the preliminary injunction for
17 failure to comply; and (5) An Idaho Rules of Civil Procedure
18 Rule 60(b)(6) motion. The above facts highlight some of the
19 major facts that the court needs to consider in determining
20 Idaho Power Company's motions in the instant case. The pleadings
21 and documents on file in case No. 3667 provide the court with a
22 complete factual record for its review.

1 ISSUES

2 I.

3 IDAHO RULES OF CIVIL PROCEDURE RULE 62(b) PROVIDES THE COURT
4 WITH THE DISCRETION AND ON THE CONDITIONS OF SECURITY AS
5 THE COURT DEEMS PROPER TO STAY THE EXECUTION OF ANY
6 ORDER PENDING THE DISPOSITION OF MOTIONS THAT IDAHO POWER
7 HAS FILED IN THE INSTANT ACTION

8 The record establishes that the court must grant a stay of
9 the interlocutory order in the nature of preliminary injunction
10 in the instant case.

11 Idaho Rules of Civil Procedure Rule 62(b) provides the
12 court with the authority to stay the order filed with the court
13 on November 1, 1983, in civil case No. 3667 (hereinafter referred
14 to as "order"). Idaho Power Company filed an objection to the
15 proposed order in civil case No. 3667 on November 1, 1983.
16 Idaho Power was served with the order on November 2, 1983, by
17 the firm of Hawley Troxell Ennis and Hawley. In Kelson v.
18 Ahlborn, 393 P.2d 578 (Idaho 1964), the Idaho Supreme Court
19 analyzed a factual situation strikingly similar to the instant
20 case. In Kelson defendant's counsel prepared objections to the
21 plaintiff's proposed findings of fact and conclusions of law
22 and filed them with the court on September 11, 1961. The trial
23 judge signed the findings of fact and conclusions of law on
24 September 6, 1961, prior to receiving defendant's counsel's
25 objections. The Idaho Supreme Court in Kelson addressed the
26 situation by expressing the following:

27 Therefore, the document titled "Objection
to Proposed Findings" is to be regarded as
a motion to amend and to make additional
findings, made within ten days after the
entry of the judgment. The appeal taken
November 28, 1961, was timely, and the
motion to dismiss is denied.

1 Id. at 580.

2 In the instant case the objections to the proposed order
3 filed by Idaho Power Company prior to being served or notified
4 of the signed order should be treated as timely filed. The
5 court must stay the execution of the order until Idaho Power's
6 objections can be heard.

7 II.

8 THE ORDER FAILS TO SET FORTH SPECIFIC FINDINGS
9 OF FACT AND CONCLUSIONS OF LAW WHICH CONSTITUTES
REVERSIBLE ERROR

10 The order is defective because it fails to comply with
11 Idaho Rules of Civil Procedure Rule 52(a). Rule 52(a) provides
12 that in all actions tried upon the facts without a jury or with
13 an an advisory jury, "the court shall find the facts specifically
14 and state separately its conclusions of law thereon and direct
15 the entry of the appropriate judgment; and in granting or
16 refusing interlocutory injunctions, the court shall similarly
17 set forth the findings of fact and conclusions of law which
18 constitute the grounds of its action." (Emphasis added.) The
19 order does not find the facts specifically and state separately
20 conclusions of law which constitute the grounds for the order.
21 Idaho Power moves pursuant to Rule 52(a) and (b) to amend and
22 correct the order to meet the procedural requirements of
23 Rule 52(a).

24 In Compton v. Gilmore, 98 Idaho 190, 560 P.2d 861 (1977),
25 the court analyzed the importance of Rule 52(a) by stating:

26 Some trial judges make their own findings
27 and conclusions, but others delegate that
duty. We call attention of bench and bar
alike to a statement we recently made:

"IRCP 52(a) requires the judge in all actions tried upon the facts without a jury to 'find the facts specially and state separately [his] conclusions of law thereon and direct the entry of the appropriate judgment'." In re Estate of Stibor, 96 Idaho 162, 163, 525 P.2d 357, 358 (1974).

Therein we quoted approvingly from the Supreme Court of New Mexico in Mora v. Martinez, 80 N.M. 88, 451 P.2d 992, 993-4 (1969):

"[We] take note of the fact that, although our Rule 52 differs from the federal rule, nevertheless the reasons for both rules are the same, i.e., as an aid to the appellate court by placing before it the basis of the decision of the trial court; to require care on the part of the trial judge in his consideration and adjudication of the facts; and for the purposes of res judicata and estoppel by judgment. [Citing Barron & Holtzoff and Moore.]" (Emphasis added.) In re Estate of Stibor, 96 Idaho at 163-64, 525 P.2d 357 at 358.

The New Mexico court in Mora continued on from the above passage with the following:

"We agree with the federal cases which, without exception, require adequate findings and insist on the exercise of an independent judgment on the part of the trial judge in making his own findings of fact rather than adopting those of one of the parties. (Emphasis supplied.)

.....
The Supreme Court voiced its dissatisfaction with this practice, quoting approvingly from the advice given by Judge J. Skelly Wright in his "Seminars for Newly Appointed United States District Judges":

"Who shall prepare the findings? Rule 52 says the court shall prepare the findings. 'The court shall find the facts specially and state separate-

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1 ly its conclusions of law.' We all
2 know what has happened. Many courts
3 simply decide the case in favor of the
4 plaintiff or the defendant, have him
5 prepare the findings of fact and
6 conclusions of law and sign them.
7 This has been denounced by every court
8 of appeals save one. This is an
9 abandonment of the duty and the trust
10 that has been placed in the judge by
11 these rules. It is a noncompliance
12 with Rule 52 specifically and it
13 betrays the primary purpose of
14 Rule 52--the primary purpose being
15 that the preparation of these findings
16 by the judge shall assist in the
17 adjudication of the lawsuit.

"I suggest to you strongly that you
avoid as far as you possibly can
simply signing what some lawyer puts
under your nose. These lawyers, and
properly so, in their zeal and advocacy
and their enthusiasm are going to
state the case for their side in these
findings as strongly as they possibly
can. When these findings get to the
courts of appeals they won't be worth
the paper they are written on as far
as assisting the court of appeals in
determining why the judge decided the
case." 376 U.S. at 656, 84 S.Ct. at
1047, n. 4.

18 Id. at 864-65 (emphasis added). See also, In re Johnson, 300
19 P. 492 (Idaho 1931). The effect of the court's failure to
20 follow Idaho Rule of Civil Procedure 52(a) in its order is
21 addressed in Pope v. Intermountain Gas Co., 103 Idaho 217,
22 646 P.2d 988 (1982). The Idaho Supreme Court in Pope held that
23 failure to comply with 52(a) necessitated a reversal by express-
24 ing:

25 When the court sits as the trier of
26 fact, it is charged with the duty of pre-
27 paring findings of fact and conclusions of
law in support of the decision which it
reaches. I.R.C.P. 52(a). Compton v.
Gilmore, 98 Idaho 190, 56 P.2d 861 (1977);

Matheson v. Harris, 98 Idaho 758, 572 P.2d 861 (1977). The purpose behind requiring the court to "find the facts specially and state separately its conclusions of law thereon" is to afford the appellate court a clear understanding of the basis of the trial court's decision, so that it might be determined whether the trial court applied the proper law to the appropriate facts in reaching its ultimate judgment in the case. Perry Plumbing Co. v. Schuler, 96 Idaho 494, 497, 531 P.2d 584, 585 (1975). The absence of findings and conclusions may be disregarded by the appellate court only where the record is clear, and yields an obvious answer to the relevant question. Perry Plumbing Co. v. Schuler, supra; see, e.g., Clements v. Clements, 91 Idaho 732, 430 P.2d 98 (1967); Call v. Marler, 89 Idaho 120, 403 P.2d 588 (1965); Merrill v. Merrill, 83 Idaho 306, 362 P.2d 887 (1961). Absent such circumstances, the failure of the trial court to make findings of fact and conclusions of law concerning the material issues arising from the pleadings, upon which proof is offered, will necessitate a reversal of the judgment and a remand for additional findings and conclusions, unless such findings and conclusions would not affect the judgment entered. In the Matter of the Estate of Lewis, 97 Idaho 299, 302, 543 P.2d 852, 855 (1975); Perry Plumbing Co. v. Schuler, 96 Idaho at 497, 531 P.2d at 585; and, where there is no evidence which would support further findings material to the judgment, the judgment will simply be reversed, the plaintiff having failed to prove his claim.

Id. at 996 (emphasis added). It is necessary for the order to comply with Rule 52(a) in order to allow and afford the appellate court a clear understanding of the trial court's decision in determining whether the proper law and appropriate facts were reached in entering the order in the instant case. The record in the instant case is unclear regarding what facts were decided and what conclusions were reached in the May 9, 1983, hearing. The court needs to outline in a specific decision the factual

1 and legal basis for each of the component parts of the order.
2 This procedure will provide the reviewing court with a clear
3 understanding of the basis of the court's decision.

4 In Sorenson v. Adams, 98 Idaho 707, 571 P.2d 769 (1977),
5 the supreme court outlined what constitutes proper findings of
6 fact and conclusions of law under Rule 52(a). The court in
7 Sorenson held that bench remarks do not comply with Rule 52(a)
8 by stating:

9 Although failure to make findings and
10 conclusions is not assigned as error, the
11 defendants urge upon us that the trial
12 court did in fact make the requisite find-
13 ings. We can only assume that defendants
14 would have us accept the trial court's
15 bench remarks, made in passing upon the
16 motion, as the equivalent of compliance
17 with Rule 52(a) which reads: "If an opinion
18 or memorandum decision is filed, it will be
19 sufficient if the findings of fact and
20 conclusions of law appear therein." The
21 defendants are not on sound ground; there
22 are no findings of fact and conclusions of
23 law; there is no memorandum opinion of the
24 trial court. A trial court's bench remarks
25 are simply that, and nothing more. A trial
26 court in fulfilling the requirements of
27 Rule 52(a) may very well decide to make
findings quite different from the indica-
tions stated in passing on the motion.
Bench remarks, sometimes referred to as
tentative impressions of what the evidence
shows, do not substitute for nor rise to
the dignity of writing findings of fact and
conclusions of law, either separately
stated, or embodied in a written memorandum
opinion.

23 Id. at 773-74 (emphasis added).

24 The Idaho Supreme Court has ruled on numerous occasions
25 that the best procedure to utilize in developing an order or
26 proposed findings of fact and conclusions of law is to allow
27 both parties a full and fair opportunity to be heard before

1 signing the order. Idaho Power was never provided an oppor-
2 tunity to voice its objections to the order and the implementa-
3 tion of an interlocutory order in the nature of a preliminary
4 injunction in civil case No. 3667. The order was submitted on
5 a form provided by opposing counsel and was signed without any
6 changes or alterations. The record before the court does not
7 support the substance of the order and should be stayed until
8 both parties have an opportunity to have a hearing to correct
9 and modify the order pursuant to the Idaho Rules of Civil
10 Procedure.

11 III.

12 THE ORDER GRANTING AN INTERLOCUTORY ORDER IN THE NATURE
13 OF A PRELIMINARY INJUNCTION FAILS TO MEET THE
14 PROCEDURAL AND SUBSTANTIVE REQUIREMENTS
UNDER THE LAW

15 The order is fatally defective by ordering an interlocutory
16 order in the nature of preliminary injunction while failing to
17 satisfy the procedural prerequisites for such an order. The
18 original notice of hearing and motion for an interlocutory
19 order in the nature of preliminary injunction was signed by
20 John T. Hawley on behalf of the Davises in civil case No. 3667
21 on April 18, 1983, and set for hearing on May 9, 1983, at
22 9:30 a.m. This motion stated the following "Pursuant to Idaho
23 Code section 42-1406, etc., Thomas Davis moves the Court for an
24 Order enjoining Idaho Power Company from interfering with his
25 diversion of water from the point of diversion decreed by this
26 court and the Department of Water Resources and allowing them
27 access to this point." This motion requested the court to
enjoin Idaho Power from denying Tommy Davis access to his point

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1 of diversion. The statements contained in the order under
2 paragraphs 3, 4, and 5 provide greater relief than requested in
3 the motion and notice of hearing provided to Idaho Power Company.
4 Idaho Power Company was denied due process and the right to a
5 full and fair evidentiary hearing regarding paragraphs 3, 4,
6 and 5 in the order. The order cannot be entered without each
7 party having a full and fair opportunity to present evidence
8 and have a hearing regarding the necessity or propriety of
9 entering such an order against Idaho Power Company.

10 The order grants relief to the Davises which excessively
11 exceeds the notice of hearing and motion provided to Idaho
12 Power regarding the interlocutory order and preliminary injunc-
13 tion. In Lyon v. Cascade Commodities Corp., 97 Idaho 714, 496
14 P.2d 951 (1972), the court held that an amended preliminary
15 injunction which was so much more restrictive than the original
16 preliminary injunction issued on March 3, 1971, was in effect a
17 completely new injunction which could not be issued without a
18 notice to the adverse party. The injunctive order issued by
19 the court in the instant case is much broader than the original
20 motion and notice for an interlocutory order in the nature of
21 preliminary injunction. The breath and scope of the order in
22 effect transforms it into a new motion for an interlocutory
23 order and preliminary injunction on grounds much broader than
24 the original motion. Idaho Power Company was not provided with
25 notice or a hearing regarding the order that was entered in the
26 instant case on November 1, 1983.

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1 Idaho Power was never provided a full and complete eviden-
2 tiary hearing on the original motion for an interlocutory order
3 in the nature of a preliminary injunction. The record reflects
4 that the court on May 9, 1983, gave the parties time to work
5 out a solution before entering any order. The parties have
6 been unable to resolve the controversy through settlement
7 negotiations. Idaho Power requests a full and complete eviden-
8 tiary hearing on the motion for an interlocutory order in the
9 nature of a preliminary injunction. Idaho Power requests the
10 opportunity to present witnesses and cross-examine witnesses at
11 the hearing. See Lawrence Warehouse Co. v. Rudio Lumber Co.,
12 _____ Idaho _____, 405 P.2d 634 (1965).

13 The order in the nature of preliminary injunction also
14 fails to comply with Idaho Rules of Civil Procedure Rule 65(a)
15 through (e). Rule 65(c) is mandatory and states:

16 No restraining order or preliminary injunc-
17 tion shall issue except upon the giving of
18 security by the applicant, in such sums as
19 the court deems proper for the payment of
20 such costs and damages including reasonable
attorney fees to be fixed by the court, as
may be incurred or suffered by any party
who is found to have been wrongfully
enjoined and restrained. . . .

21 Idaho Rules of Civil Procedure Rule 65(c) requires that there
22 be security given before a preliminary injunction can be issued.
23 In the instant case, injunction relief was granted without
24 conforming to Rule 65(c) which is mandatory and the injunctive
25 order must fail. In Hutchins v. Trombley, 95 Idaho 360, 509
26 P.2d 579 (1973), the court addressed the mandatory security
27 deposit requirement of 65(c) by stating:

1 The order pendente lite was improperly
2 issued for another reason. Rule 65(c)
3 provides that no restraining order or
4 preliminary injunction shall issue except
5 upon giving a bond by the applicant in such
6 sum as the court deems proper. . . . In view
7 of our background and practice under I.C.
8 § 8-405 which made the filing of a bond
9 mandatory, we hold that before an injunction
10 is issued under Rule 65 the giving of
11 security by the applicant for the payment
12 of costs, damages and attorneys fees as
13 provided in Rule 65(c) is mandatory, unless
14 the trial court makes a specific finding
15 based upon competent evidence that no such
16 costs, damages or attorneys fees will
17 result to the restrained party as a result
18 of a wrongful issuing of the injunction or
19 restraining order. Since there is no such
20 finding in this case, the trial court
21 improperly issued the order pendente lite
22 without requiring security as provided for
23 in Rule 65(c). For all of the foregoing
24 reasons the order pendente lite was errone-
25 ously entered by the district court.

26 Id. at 583.

27 The order is defective because it fails to comply with
Rule 65(d) which states:

Every order granting an injunction and
every restraining order shall set forth the
reasons for its issuance; shall be specific
in terms; shall describe in reasonable
detail, and not by reference to the com-
plaint or other document, the act or acts
sought to be restrained; and is binding
only upon the parties to the action, their
officers, agents, servants, employees, and
attorneys, and upon those persons in active
concert or participation with them who
receive actual notice of the order by
personal service or otherwise.

The order in the case at bar does not meet the specificity
requirements under Rule 65(d).

The Davises have failed to meet the legal criteria for the
issuance of a preliminary injunction as outlined in Rule 65(e)(1)

1 through (6). Rule 65(e) of the Idaho Rules of Civil Procedure
2 sets out the criteria by which a district court should determine,
3 in its discretion, whether it should grant a preliminary injunc-
4 tion. Specifically, the rule provides that a district court
5 may grant a preliminary injunction:

6 (1). When it appears by the complaint
7 that the plaintiff is entitled to the
8 relief demanded, and such relief, or any
9 part thereof, consists in restraining the
commission or continuance of the acts
complained of, either for a limited period
or perpetually.

10 (2). When it appears by the complaint
11 or affidavit that the commission or continu-
12 ance of some act during the litigation
would produce waste, or great or irreparable
injury to the plaintiff.

13 (3). When it appears during the litiga-
14 tion that the defendant is doing, or
15 threatens, or is about to do, or is pro-
16 curing or suffering to be done, some act in
violation of the plaintiff's rights,
respecting the subject of the action, and
tending to render the judgment ineffectual.

17 (4). When it appears, by affidavit,
18 that the defendant during the pendency of
19 the action, threatens, or is about to
20 remove, or to dispose of his property with
intent to defraud the plaintiff, an injunc-
tion order may be granted to restrain the
removal or disposition.

21 (5). A preliminary injunction may also
22 be granted on the motion of the defendant
23 upon filing a counterclaim, praying for
24 affirmative relief upon any of the grounds
mentioned above in this section, subject to
the same rules and provisions provided for
the issuance of injunctions on behalf of
the plaintiff.

25 (6). The district courts, in addition
26 to the powers already possessed, shall have
27 power to issue writs of injunction for
affirmative relief having the force and
effect of a writ of restitution, restoring

1 any person or persons to the possession of
2 any real property from the actual possession
3 of which he or they may be ousted by force,
4 or violence, or fraud, or stealth, or any
5 combination thereof, or from which he or
6 they are kept out of possession by threats
7 whenever such possession was taken from him
8 or them by entry of the adverse party on
9 Sunday or a legal holiday, or in the night-
10 time, or while the party in possession was
11 temporarily absent therefrom. The granting
of such writ shall extend only to the right
of possession under the facts of the case,
in respect to the manner in which the
possession was obtained, leaving the parties
to their legal rights on all other questions
the same as though no such writ had issued;
provided, that no such writ shall issue
except upon notice in writing to the adverse
party of at least five (5) days of the time
and place of making application therefor.

12 From the above-quoted sections of Rule 65(e), it is clear that
13 this rule codifies the common law criteria for establishing a
14 legal basis for injunctive relief. To this extent, Idaho cases
15 decided prior to the promulgation of this rule are helpful for
16 determining if the plaintiffs here have actually established
17 any legal basis for relief.

18 The issuance of a preliminary injunction is, of course,
19 discretionary with the court, the court should grant such
20 relief only in extreme cases where plaintiff's rights are very
21 clear, and it appears that irreparable injury will flow from
22 the refusal of that right. Farm Service, Inc. v. United States
23 Steel Corporation, 90 Idaho 570, 414 P.2d 898 (1966); Evans v.
24 District Court, 47 Idaho 267, 275 P. 99 (1929). The Idaho
25 Supreme Court in Farm Service, Inc. set out the following
26 criteria to be considered in determining whether a preliminary
27 injunction should be issued: (1) whether the plaintiff will

1 suffer great or irreparable injury during the pendency of the
2 action; (2) whether any such injury may be adequately compensated
3 in damages and whether the defendant may be able to respond in
4 damages; and (3) whether plaintiff has demonstrated a clear
5 right to the relief sought. 414 P.2d at 907. The court also
6 indicated that these considerations should be weighed against
7 the injury which may result to the defendant during the pendency
8 of the action by the imposition of a preliminary injunction in
9 the event that it should finally be determined that plaintiff
10 is not entitled to injunctive relief. Ibid.

11 These considerations amplify the grounds stated in Rule 65(e)
12 for the issuance of a preliminary injunction. The reasons for
13 the rule, as well as the criteria set out in Farm Services,
14 Inc. against the improper use of preliminary injunctions are
15 apparent. The plaintiff should not be allowed, as plaintiffs
16 are attempting here, to obtain relief without final determination
17 on the merits unless truly extraordinary circumstances warrant
18 the relief.

19 If the court enters the November 1, 1983, order Idaho
20 Power would object because Idaho Power was not provided notice
21 or a full evidentiary hearing on the matter. In the instant
22 case the order entered by the judge on November 1, 1983, pro-
23 vides Tommy J. Davis and Jemima K. Davis with the final and
24 ultimate relief requested in the civil case No. 3667.

25 In Rowland v. Kellogg Power and Water Co., 40 Idaho 216,
26 233 P.2d 869 (1925), the Idaho Supreme Court stated:

27 A temporary injunction will not usually
be allowed when the effect is to give the

1 plaintiff the principal relief he seeks,
2 without bringing the cause to trial.
3 Neither should a preliminary injunction be
4 dissolved where its effect would be such as
5 to give the defendant the relief he seeks
6 without bringing the case to trial.

7 Id. at 225. The Idaho Supreme Court quoted this language with
8 approval in Gilbert v. Elder, 65 Idaho 383, 144 P.2d 194 (1943)
9 and more recently in Lawrence Warehouse Company v. Rudio Lumber
10 Company, 89 Idaho 389, 405 P.2d 634 (1965). The granting to
11 plaintiffs of principally all of the relief which they seek at
12 the preliminary injunction level, deprives Idaho Power of the
13 opportunity to adequately prepare and meet the allegations and
14 present their case. In addition, the court should not exercise
15 its extraordinary injunctive powers when the Davises can be
16 adequately compensated by monetary damages. A review of the
17 pleadings which plaintiffs have submitted indicates that their
18 injuries, if any, are purely economic. Hence, to the extent
19 that such injuries can be proved, they can be easily remedied
20 by monetary relief.

21 In Lawrence the court noted that the preliminary injunction
22 gave the plaintiff all the relief it sought in the action
23 except incidental damages. The Idaho Supreme Court in Lawrence
24 addressed the issue of allowing a temporary injunction to grant
25 the moving party the principal relief he seeks in the action by
26 stating:

27 In Sims v. Greene, 161 F.2d 87 (3rd Cir.
1947), the circuit court set aside a pre-
liminary injunction on the ground that it
had been granted upon the pleadings and
affidavits filed by the parties and without
opportunity to the adverse party to produce
oral testimony. The court said:

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"The issuance of a preliminary injunction under such circumstances is contrary not only to the Rules of Civil Procedure but also to the spirit which imbues our judicial tribunals prohibiting decision without hearing. Rule 65(a) provides that no preliminary injunction shall be issued without notice to the adverse party. Notice implies an opportunity to be heard. Hearing requires trial of an issue or issues of fact. Trial of an issue of fact necessitates opportunity to present evidence and not by only one side to the controversy." 161 F.2d at 88.

and further:

"If anything more was required to indicate with certainty that a preliminary injunction may not issue without giving the party sought to be enjoined an opportunity to present evidence on his behalf, it is furnished by the provisions of Rule 52(a) which requires the court, in all actions 'tried upon the facts without a jury' to state separately its conclusions of law and 'in granting or refusing interlocutory injunctions' 'similarly [to] set forth the findings of fact and conclusions of law which constitute the grounds of its actions.' The conclusion is inescapable that since a district court is required by the rule to make findings of fact, the findings must be based on something more than a one-sided presentation of the evidence." 161 F.2d at 89.

Id. at 638. The court in Lawrence stated that irreparable injury is a cornerstone for granting the preliminary injunction:

In this case no hearing was had on the motion for preliminary injunction, and the defendants were denied an opportunity to present evidence in opposition to the application. The court did not make findings of fact and conclusions of law as required by IRCP 52(a). . . . The procedure followed by the court effectively denied defendants their right to be heard, and an

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1 opportunity to make a record of their
2 opposition to the injunction.

3 Id. at 639.

4 In Lawrence the supreme court stated that because of the
5 severity of the preliminary injunction it necessitated having a
6 full and fair hearing with each party being able to present
7 oral as well as affidavit testimony. The court analyzed Idaho
8 Rules of Civil Procedure in conjunction with other jurisdictions
9 and stated:

10 Timely notice and an opportunity to be
11 heard are of the essence of due process,
12 and are jurisdictional essentials of a
13 valid judgment. Leonard v. Leonard, 88
14 Idaho 485, 401 P.2d 541 (1965); Armstrong
15 v. Manzo, 380 U.S. 545, 85 S.Ct. 1187, 14
16 L.Ed.2d 62.

17
18 The order granting preliminary injunction
19 is reversed and the cause is remanded for
20 further proceedings not inconsistent with
21 this opinion.

22 Id. at 639. The court in Lawrence went onto reverse the pre-
23 liminary injunction and remanded the case for a full and fair
24 hearing. Idaho Power Company has never been provided the
25 opportunity for a full and fair hearing regarding the issuance
26 of an interlocutory order in the nature of a preliminary injunc-
27 tion. Idaho Power must be provided the opportunity to call
witnesses before the court can enter the order dated November 1,
1983, in civil case No. 3667. Idaho Power Company was never
provided notice that the court was going to issue an injunction
and not consider the temporary solutions offered the court at
the time of the hearing. The motion for preliminary injunction

1 and interlocutory order was not fully heard before the parties
2 because of settlement negotiations between Mr. Davis and Idaho
3 Power Company. Idaho Power Company requests that the court set
4 a hearing where witnesses can be called and testimony taken
5 regarding the propriety of entering an interlocutory order in
6 the nature of preliminary injunction in this case.

7 The order signed November 1, 1983 in this case granting an
8 interlocutory order in the nature of a preliminary injunction
9 is beyond the scope and powers of the preliminary injunction
10 rules. In Brint v. Steele, 112 P. 319 (1910), the court stated:

11 [U]nder the law of this state, an injunc-
12 tion is a writ or order requiring a person
13 to refrain from a particular act (sec-
14 tion 4287, Rev. Codes) and not a writ or
order requiring a person to do a certain
act. (Citations omitted.)

15 Id. at 320. The preliminary injunction in this case not only
16 enjoins Idaho Power Company from interfering with Tommy Davis's
17 and Jemima K. Davis's alleged water right but mandatorily
18 requires Idaho Power to take and affirmatively perform an act.
19 This is clearly beyond the scope and the power of an preliminary
injunction and the preliminary injunction must be stayed.

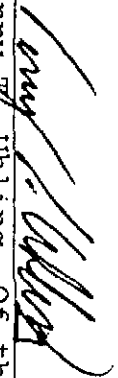
20 The record does not establish any facts which justify the
21 award of attorney fees under Idaho Code section 12-121. The
22 order entered in civil case No. 3667 is defective for its
23 failure to comply with Idaho Rules of Civil Procedure
24 Rule 54(e)(1) and (2) because the court failed to make a written
25 finding as to the basis and reasons for awarding the attorney
26 fees. There cannot be an award of attorney fees until such
27 requirement by the Idaho Rules of Civil Procedure is established

1 on the record. Idaho Power has never been provided notice or a
2 hearing to argue the rational for awarding the attorney fees in
3 the instant action under section 12-121.

4 Idaho Power would further move pursuant to Rule 60(b)(6)
5 that based upon the affidavits and record in the instant case,
6 there is no necessity or irreparable harm that can be proven by
7 the Davises to support the interlocutory order in the nature of
8 a preliminary injunction. Pursuant to Idaho Rules of Civil
9 Procedure Rule 60(b)(6) the order should be set aside and
10 stayed based upon the record before the court.

11 RESPECTFULLY SUBMITTED This 4 day of November, 1983.

12 ELAM, BURKE, EVANS, BOYD & KOONTZ

13 By 
14 Terry V. Uhling, Of the Firm
15 Attorneys for Idaho Power
16 Company
17
18
19
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21
22
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26
27

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on this 4 day of November, 1983,

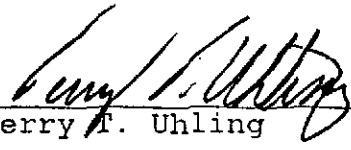
I caused to be served a true and correct copy of the within and foregoing instrument, by personal service of the same upon:

Jack Hawley
Hawley Troxell Ennis & Hawley
One Capital Center
Boise, Idaho 83702

Darcy Frownfelter
Deputy Attorney General
Statehouse
Boise, Idaho 83720

and by mail, postage prepaid, to:

Robert Remaklus
Attorney at Law
P.O. Box 759
Cascade, Idaho 83611


Terry T. Uhling

ELAM, BURKE, EVANS, BOYD & KOONTZ
1010 FIRST INTERSTATE BUILDING
P.O. BOX 1559 BOISE, IDAHO 83701
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NOV 7 1983

Department of State Records

FILED

NOV 4 1983

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THELMA R. KOLODZIEJ CLERK
Karen M. Brown DEPUTY

Attorneys for Idaho Power Company

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE GENERAL)	Civil No. 3667
DETERMINATION OF THE RIGHT)	
TO THE USE OF SURFACE AND)	ORDER GRANTING MOTION TO
GROUNDWATERS OF THE PAYETTE)	REDUCE TIME REQUIRED FOR
RIVER DRAINAGE BASIN)	NOTICE OF HEARING

The above entitled action having come on pursuant to Idaho Power Company's Motion to Reduce Time Required for Notice of Hearing, and good cause appearing therefor;

NOW THEREFORE, IT IS HEREBY ORDERED, That said motion is hereby granted, and that the hearing on the said Motion for Stay, Motion to Reconsider, Motion to Alter and Amend Order, Motion for Relief from Order, and Motion for the Court to Set Forth Findings of Fact and Conclusions of Law shall be held at 10:00 o'clock a.m., on the 8th day of November, 1983, at the Canyon County Courthouse, Caldwell, Idaho.

DATED This 4th day of November, 1983.

Roger L. Williams

District Judge

ORDER GRANTING MOTION TO REDUCE
TIME REQUIRED FOR HEARING - 1

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NOV 3 1983

Department of Water Resources

Terry T. Uhling
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Attorneys for Idaho Power Company

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE GENERAL)
DETERMINATION OF THE RIGHT TO) Civil No. 3667
THE USE OF SURFACE AND GROUND)
WATERS OF THE PAYETTE RIVER) NOTICE OF HEARING
DRAINAGE BASIN.)

TO: All Parties and their respective counsel of record:

YOU WILL PLEASE TAKE Notice That Idaho Power Company will
bring their Objection to Proposed Order on for hearing before
this Court on the 14th day of November, 1983, at the hour of
9:30 o'clock a.m., of said day, or as soon thereafter as
counsel can be heard.

DATED This 1 day of November, 1983.

ELAM, BURKE, EVANS, BOYD & KOONTZ

By:

151
Terry T. Uhling, Of the Firm
Attorneys for Idaho Power Company

ELAM, BURKE, EVANS, BOYD & KOONTZ
1010 FIRST INTERSTATE BUILDING
P.O. BOX 1559 BOISE, IDAHO 83701
PHONE (208) 343-5454

CERTIFICATE OF MAILING

I HEREBY CERTIFY That on this 1 day of November, 1983, I mailed a true and correct copy of the within and foregoing instrument, postage prepaid, to:

John T. Hawley
Hawley, Troxell, Ennis & Hawley
P.O. Box 1617
Boise, Idaho 83701

Robert H. Remaklus
P.O. Box 759
Cascade, Idaho 83611

Darcy Alan Frownfelter
Attorney at Law
State of Idaho
Department of Water Resources
450 West State
Boise, Idaho 83720

151
Terry T. Uhling

1 Terry T. Uhling
2 ELAM, BURKE, EVANS, BOYD & KOONTZ
3 1010 FIRST INTERSTATE BUILDING
4 P. O. BOX 1559 BOISE, IDAHO 83701
5 PHONE (208) 343-5454

6 Attorneys for Idaho Power Company

7 IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
8 STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

9 IN THE MATTER OF THE GENERAL)
10 DETERMINATION OF THE RIGHT TO) Civil No. 3667
11 THE USE OF SURFACE AND GROUND) OBJECTION TO PROPOSED
12 WATERS OF THE PAYETTE RIVER) ORDER
13 DRAINAGE BASIN.)
14)

15 COMES NOW Idaho Power Company, by and through their
16 attorneys of record, Elam, Burke, Evans, Boyd & Koontz, and
17 hereby objects to the proposed Order filed in the above
18 referenced matter. Idaho Power Company objects on the ground
19 that the proposed Order fails to accurately state the findings
20 of fact and conclusions of law set forth in the Court's Ruling
21 and Comments entered May 9, 1983, at 9:30 o'clock a.m., in the
22 Gem County Courthouse, Emmett, Idaho. Attached hereto and
23 incorporated by reference as Exhibit "A" is a true and correct
24 copy of the transcript of the Court's Ruling and Comments
entered May 9, 1983, in the instant case. This objection is
based upon the pleadings, files and memoranda on file herein
and upon any pleadings to be filed in support hereof.

ELAM, BURKE, EVANS, BOYD & KOONTZ
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PHONE (208) 343-5454

1 ORAL ARGUMENT IS REQUESTED.

2 DATED This 1 day of November, 1983.

3 ELAM, BURKE, EVANS, BOYD & KOONTZ

4
5 By:

151
Terry T. Uhling, Of the Firm
Attorneys for Idaho Power Company

6
7 CERTIFICATE OF MAILING

8 I HEREBY CERTIFY That on this 1 day of November,
9 1983, I mailed a true and correct copy of the within and
foregoing instrument, postage prepaid, to:

10 John T. Hawley
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Boise, Idaho 83701

13 Robert H. Remaklus
14 P.O. Box 759
Cascade, Idaho 83611

15 Darcy Alan Frownfelter
16 State of Idaho
Department of Water Resources
17 450 West State
Boise, Idaho 83720

AUG 4 1983

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

In the Matter of the General	)	
Determination of the Right to	)	
the Use of Surface and Ground-	)	CASE NO. 3667
waters of the Payette River	)	
Drainage Basin	)	

COURT'S RULING AND COMMENTS

May 9, 1983

APPEARANCES:

Mr. John T. Hawley
Hawley, Troxell, Ennis & Hawley
Attorneys at Law
One Capital Center
P. O. Box 1617
Boise, Idaho 83701

Mr. Robert H. Remaklus
Attorney at Law
P. O. Box 759
Cascade, Idaho 83611

Mr. Terry T. Uhling
Elam, Burke, Evans, Boyd & Koontz
Attorneys at Law
First Interstate Bank Building
P. O. Box 1559
Boise, Idaho 83701

Mr. Darcy Alan Frownfelter
Attorney at Law
State of Idaho
Department of Water Resources
450 West State
Boise, Idaho 83720

1 EMMETT, IDAHO, MONDAY, MAY 9, 1983, 9:30 A.M.

2 * * *

3 COURT: Well, as you both know, on March 17,
4 I denied the motion to strike. I don't see any reason to
5 do otherwise. I can understand the due process concern,
6 but if as stated, and apparently uncontested, that Idaho
7 Power did have notice of the information contained in the
8 affidavits of Mr. Davis and apparently Mr. Watts, that
9 in effect -- and correct me if I misstate this, but my
10 understanding is that the correction related to amending
11 the record so as to reflect the true point of diversion as
12 opposed to what was contained in the report as being the
13 point of diversion, more specifically to reflect that the
14 true point of diversion was Lot 5 as opposed to Lot 2.

15 Now anybody knowledgeable about water rights,
16 which the officials of Idaho Power certainly are, could
17 anticipate that that correction would give rise to the
18 amendment as was done by Judge Norris, and I would think
19 that if something occurred in their absence, that is, Judge
20 Norris did amend and in effect confirmed the amended
21 adjudication, then it would have been incumbent upon the
22 power company to object within the ten days indicated by
23 the statute to the amended judgment.

24 I'm more concerned about the merits than I am the
25 rules, but I'm also concerned about avoiding irreparable

1 harm to Mr. Davis, who appears to me, at this point at
2 least, to be certainly the apparent water owner.

3 I'm also concerned about whether or not the
4 objection to the point of diversion is really a good faith
5 situation. I mean, I could grant you a hearing, and that's
6 costly to Mr. Davis or anyone that has placed upon them
7 the burden that counsel alludes to.

8 I think at this point in time, I have not
9 received, and there's nothing in the record, and I can
10 understand that you can argue that maybe it's premature
11 to do so, but for the purposes of being persuasive to me,
12 I am going to deny any motion to reconsider that order
13 entered March 17, until I show -- or until I see some
14 evidence of a good faith objection. My concern here,
15 frankly, is that at this point in time, either procedurally
16 or otherwise, I consider the burden of proof to be on
17 Idaho Power Company. I think that Mr. Davis, through the
18 procedures, has sustained his burden of receiving the
19 confirmation of the point of diversion in Lot 5; that to
20 avoid irreparable harm to him, I'm going to continue to
21 treat his water right as having been fully adjudicated.

22 The second thing I'm concerned about, of course,
23 is the fact that obviously for a considerable period of
24 time, he did -- from wherever the water was diverted, it did
25 flow to him through the spillway of the power company.

1 They're certainly aware of that, or I would presume that
2 they have been over those years, and that they voluntarily
3 removed it without any talk about due process, they removed
4 it without any hearing as to what was going to happen to
5 the Davises by reason of the removal. To me, that is
6 certainly an arbitrary action, and for that reason, I'm
7 going to place, whether rightfully or wrongly, I'm going
8 to require the power company, before I will consider any
9 motions to reconsider, an absolute showing that to me
10 would be prima facie evidence of a priority contrary to that
11 of the Davises because, at the present time, I consider
12 the amendment to be proper, that there has been no objection,
13 and I want you, Mr. Hawley, and you, Mr. Davis, to know
14 that the only reason that I would consider any reconsidera-
15 tion is the fact that these due process issues can go on
16 until you know what freezes over and the good and very
17 capable counsel that you have fees will also go on, and that
18 this matter could be very expensive and could be very lengthy
19 and, for lack of a better word, your title, assured title
20 to your water right could be in jeopardy for an indefinite
21 period of time. That I'm trying to avoid. I'm not trying
22 to drag this matter out and make it any more legalistic
23 than it already has been. But in the meantime, I'm going
24 to treat it as an adjudicated water right with all the tenant
25 rights that go with it.

1 And, therefore, that makes it also encumbent
2 upon the power company to not interfere with that right
3 or make whatever means are reasonably necessary in order
4 to provide the water as we've alluded to prior to this
5 hearing. That's the only reason.

6 The other thing I would say is that in any
7 showing, good faith is of extreme importance to me, so much
8 so that if good faith is not determined to be shown and
9 the Davises are put through additional hearings, that I,
10 on my own motion -- hopefully, the Supreme Court will confirm
11 my latitude in discretion -- I would be amenable to award
12 of attorney's fees to any water owner that would be put
13 to what I would consider an unnecessary showing.

14 So it's encumbent upon the power company to not
15 only make a showing that would satisfy -- you know, make
16 a prima facie showing of their priority, but also that the
17 same be in good faith which would include the issue of
18 damages.

19 I'm not going to speculate here in any way that
20 the continued usage of this water by the Davises would in
21 any way be damaging to the power company. I don't know
22 whether you can show it or not, but basically I'm not going
23 to hear it unless there is some good faith showing as to
24 that.

25 That'll be my ruling at this point in time, Mr.

1 Hawley. Technically, I will again deny the motion for
2 reconsideration, and I hope -- hopefully, all counsel
3 understand what I'm trying to do is set the parameters of
4 what I will consider if there's any merit to be considered.

5 In the meantime, as to the motion basically in
6 the way of a preliminary injunction, if the parties are
7 willing to work on that and try to arrive at a solution, I
8 would certainly encourage that. If you're not able to,
9 I'll continue that matter, basically take it under advise-
10 ment for a period of ten days, and if you don't arrive at
11 a solution in that period of time, then I will enter an
12 appropriate order which would be in the affirmative that
13 you will be -- until determined otherwise, the power company
14 will be enjoined from interfering with the Davises water
15 use.

16 I assume that Mr. Davis either has or will very
17 soon have the necessity of irrigating, and so I do not want
18 this case to develop into a damage issue from his standpoint
19 as well as from anybody else's.

20 MR. UHLING: Your Honor.

21 COURT: Yes, sir.

22 MR. UHLING: One of the things that we had
23 placed in the record, if it got to the preliminary injunction
24 stage, was those affidavits. And there were some questions
25 as to what Idaho Power meant. Well, what Idaho Power means

1 by this, Your Honor, is that we will place in a pump, we
2 will bear the cost of the pump, there will be no expense to
3 Davises, and we will have him water, 13.5 cfs, through a
4 pump that will not cost him anything, so he will not be
5 damaged through water, if the Court would consider the
6 preliminary injunction, if that was a means that the Court
7 was going to enter.

8 COURT: To me that seems like a satisfactory
9 temporary solution. I can understand a property owner's
10 concern about relying on water being delivered by somebody
11 else. That's always, you know, God helps those that help
12 themselves, and that's a pretty necessary thing when you're
13 dependent on water, delivery is necessary. And that's the
14 only thing I would say is that it would not only be
15 encumbent on the power company to bear the cost of that, but
16 the maintenance would have to be adequate and delivery would
17 have to be prompt, and the power company would have to
18 understand that damages would be considered and awardable
19 in the event the same was not done so, the point being that
20 somebody would have to be -- have it be their immediate
21 responsibility to see that that's taken care of, and the
22 property owner, in this case the Davises, are not left behind
23 to take you know what.

24 MR. UHLING: We understand that.

25 COURT: That they have to have the priority,

1 a real priority that their water is there promptly and
2 efficiently, albeit a temporary situation. And hopefully,
3 Mr. Hawley, the ultimate solution may be this one of working
4 it out with the Federal Government in getting that, assuming
5 that this matter isn't resolved. And I think if you do
6 have a showing to make relative to reconsideration, that
7 that also be done as immediately as possible --

8 MR. UHLING: Your Honor.

9 COURT: -- because the water season is
10 coming on, and we've got to get this resolved as efficiently
11 as possible.

12 MR. UHLING: In regards to a future motion
13 to reconsider, would the Court be acceptable to hear evidence
14 contesting whether the Davises have a water right at all, or
15 are you limiting the testimony just to Idaho Power showing
16 some sort of different or superior priority to the Davises?
17 I guess the question I'm asking --

18 COURT: Well, the only thing I'm concerned
19 about is, one, the priorities as between the power company
20 and the Davises because that's the only thing you could
21 obviously object to, and, two, the issue of damage on the
22 part of the power company by Davises being granted their
23 water right as has been heretofore adjudicated.

24 MR. UHLING: Thank you, Your Honor.

25 COURT: In other words, I don't want to just

1 play games about who comes first. It doesn't really matter.
2 So long as the Davis water right isn't harmful to the
3 power company, I would consider their objection somewhat
4 frivolous.

5 MR. UHLING: I understand that. One of the
6 questions I had is that there is some contention that the
7 Davises may not even have a water right of 13.5, but Idaho
8 Power Company has individuals who indicate that this may
9 have been somewhat of a license that was granted Davises.
10 He never was really --

11 COURT: Well, I don't particularly have any
12 desire to have the Davises appeal this matter until the stuff
13 freezes over, either. As to that issue, I think basically,
14 the thing -- the only thing I want to determine or think
15 I even have a basis to determine is, because of the due
16 process issue, is the one of how the Davises water right
17 relates to the water rights of the power company and the
18 damages that are probable to occur by confirming that water
19 right. I'm not going to go back and decide the -- Well,
20 frankly, for better or for worse and on the record, it's
21 totally against my nature to deny a person a water right
22 when they've had it over the period of time the Davises
23 have, and they've had it in the manner and with the integrity
24 that they've had it. It wasn't the Davises that cut
25 themselves off from this. They've had that flow down that

1 spillway for a long period of time, and I'm not going to go
2 back and destroy what occurred there or create appealable
3 error, to be honest about it.

4 If there's a basis to make some determination as
5 the relationship between the Davises and the power company
6 and to avoid damage, then I'll consider it. But otherwise,
7 it's a closed chapter.

8 MR. UHLING: Thank you, your Honor.

9 COURT: For expediency, Mr. Hawley, there
10 probably wouldn't be any necessity at this time for you to
11 prepare and submit an order until we can see what happens
12 in the next ten days. Then we can submit an order and try
13 to take care of the whole thing in one order.

14 MR. HAWLEY: All right. Fine.

15 MR. UHLING: Thank you, Your Honor.

16 (At 10:27 a.m., the hearing
17 concluded.)
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FILED

NOV 1 1983

U. S. CLERK 3.30

Helma L. Kellogg CLERK
Robert Remaklus DEPUTY

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NOV 4 1983

Department of Water Resources

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE GENERAL)
DETERMINATION OF THE RIGHT TO)
THE USE OF SURFACE AND GROUND)
WATERS OF THE PAYETTE RIVER)
DRAINAGE BASIN.)

Civil No. 3667

ORDER

The matter of Idaho Power Company's motion to reconsider the Order of this Court entered March 17, 1983 (Order denying Idaho Power Company's motion to strike and objection to the Order of this Court entered July 12, 1982), and the matter of Thomas J. and Jemima K. Davis' motion for an interlocutory order in the nature of a preliminary injunction, both having come for a hearing at 9:30 a.m., May 9, 1983, before this Court, in the Gem County Courthouse, Emmett, Idaho, pursuant to notice duly given, and the Idaho Power Company appearing through its attorney, Terry T. Uhling, of Boise, Idaho, and Thomas J. and Jemima K. Davis appearing through their attorneys, Robert Remaklus of Cascade,

Idaho, and Jack Hawley of Boise, Idaho, and the Idaho Department of Water Resources appearing through its attorney, Darcy A. Frownfelter, Deputy Attorney General, State of Idaho, and the Court having read the above motions, including the briefs, affidavits and attachments, and having heard oral argument and being fully advised in the premises and good cause appearing therefor,

IT HEREBY ORDERED, ADJUDGED AND DECREED, AND THIS DOES ORDER, ADJUDGE AND DECREE:

1. That the Idaho Power Company's motion to reconsider the May 17, 1983 Order of this Court, which order denied the Idaho Power Company's motion to strike (and objection to) the July 12, 1982 Order of this Court amending proposed finding of water rights be and hereby is denied.

2. That the water rights of Thomas J. Davis and Jemima K. Davis of 13.52 cfs and located at the head of the outlet works of Cascade Dam, in Lot 5, Section 26, Township 14 North, Range 3 East, Boise Meridian, Valley County, Idaho, to wit: Claim No. 65-3580, Claim No. 65-4031X, Claim No. 65-4031A, and Claim No. 65-4031B are to be treated as fully adjudicated with all appurtenant rights, pursuant to Idaho Code § 42-1410.

3. That Idaho Power Company is hereby enjoined from and ordered to refrain from interfering in any manner with the above-water right and its point of diversion.

4. Idaho Power is hereby ordered to install a permanent tap and 16-inch pipeline from the outlet works of Cascade Dam to the head of Thomas and Jemima Davis' ditch (the point at which Mr. and Mrs. Davis had been receiving water prior to the time that Idaho Power destroyed the penstock and pipeline from the penstock to the Davis' ditch) to restore the Davis point of diversion within sixty (60) days of the date of this Order. Idaho Power Company is to bear all costs associated therewith. Idaho Power Company is to draw the necessary legal and engineering documents, to the satisfaction of Mr. and Mrs. Davis and their attorneys, granting them title to the pipeline and an easement or ditch right across Idaho Power property for that pipeline.

5. That Plaintiff is granted its costs and reasonable attorneys fees necessarily incurred herein.

DATED: October 31, 1983.


DISTRICT JUDGE

Darcy

(NCH)

RECEIVED

APR 18 1983

Department of Water Resources

ROBERT H. REMAKLUS, Lawyer P.A.
P. O. Box 759
Cascade, Idaho 83611
Telephone: (208) 382-4267

John T. Hawley
Albert P. Barker
HAWLEY TROXELL ENNIS & HAWLEY
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Boise, Idaho 83701
Telephone: (208) 344-6000

Attorneys for Claimants

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

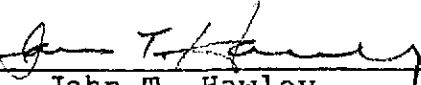
IN THE MATTER OF THE GENERAL	)	
DETERMINATION OF THE RIGHT TO	)	Civil No. 3667
THE USE OF SURFACE AND GROUND	)	
WATERS OF THE PAYETTE RIVER	)	NOTICE OF HEARING
DRAINAGE BASIN.	)	
	)	

TO: Director, Department of Water Resources, State of Idaho;
Darcy Frownfelter, Deputy Attorney Attorney; and Idaho
Power Company and its attorneys of record, Elam, Burke,
Evans, Boyd & Koontz

YOU AND EACH OF YOU are hereby notified that the Claim-
ants will bring on for hearing their Motion for an Interlocutory
Order in the Nature of a Preliminary Injunction in the courtroom
of the above-entitled court in Emmett, Gem County, on Monday, May
9, 1983, at the hour of 9:30 a.m., or soon thereafter as counsel
may be heard.

DATED this 18th day of April, 1983.

HAWLEY TROXELL ENNIS & HAWLEY

By 
John T. Hawley

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 18th day of April, 1983, I served the within and foregoing NOTICE OF HEARING by causing a true and correct copy thereof to be deposited in the United States Mail, Boise, Idaho, postage prepaid, addressed as follows:

Terry T. Uhling, Esq.
ELAM, BURKE, EVANS, BOYD
& KOONTZ
P. O. Box 1559
Boise, Idaho 83701

Director
Department of Water Resources
State of Idaho
450 West State Street
Boise, Idaho 83720

Darcy Frownfelter
Deputy Attorney General
450 West State Street
Boise, Idaho 83720


John T. Hawley

Robert H. Remaklus, Lawyer P.A.
P.O. Box 759
Cascade, Idaho 83611
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Albert P. Barker
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Boise, Idaho 83701
Telephone: (208) 344-6000

Attorneys for Claimants

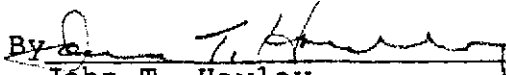
IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE GENERAL	)	Civil No. 3667
DETERMINATION OF THE RIGHT TO	)	
THE USE OF SURFACE AND GROUND	)	MOTION FOR AN INTER-
WATERS OF THE PAYETTE RIVER	)	LOCUTORY ORDER IN
DRAINAGE BASIN.	)	THE NATURE OF A
	)	PRELIMINARY INJUNCTION
	)	

Pursuant to Idaho Code § 42-1406 et seq., Thomas Davis moves the Court for an Order enjoining Idaho Power Company from interfering with his diversion of water from the point of diversion decreed by this Court and the Department of Water Resources and allowing them access to this point. In support of his Motion, Claimant Davis will rely upon the record of the Court in this matter, the attached Memorandum of Law and affidavits, and the inherent power of the Court.

DATED this 18th day of April, 1983.

HAWLEY TROXELL ENNIS & HAWLEY

By 
John T. Hawley

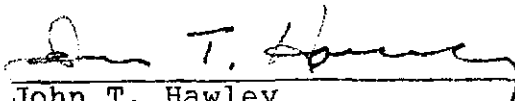
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 18th day of April, 1983, I served the within and foregoing MOTION FOR AN INTERLOCUTORY ORDER IN THE NATURE OF A PRELIMINARY INJUNCTION, by causing a true and correct copy thereof to be deposited in the United States Mail, Boise, Idaho, postage prepaid, addressed as follows:

Terry T. Uhling, Esq.
ELAM, BURKE, EVANS, BOYD
& KOONTZ
P.O. Box 1559
Boise, Idaho 83701

Director
Department of Water Resources
State of Idaho
450 West State Street
Boise, Idaho 83720

Darcy Frownfelter
Deputy Attorney General
450 West State Street
Boise, Idaho 83720


John T. Hawley

Robert H. Remaklus, Lawyer P.A.
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Cascade, Idaho 83611
Telephone: (208) 382-4267

John T. Hawley
Albert P. Barker
HAWLEY TROXELL ENNIS & HAWLEY
P. O. Box 1617
Boise, Idaho 83701
Telephone: (208) 344-6000

Attorneys for Claimants

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE GENERAL	)	Civil No. 3667
DETERMINATION OF THE RIGHT TO	)	
THE USE OF SURFACE AND GROUND	)	AFFIDAVIT IN SUPPORT OF
WATERS OF THE PAYETTE RIVER	)	MOTION FOR AN INTER-
DRAINAGE BASIN.	)	LOCUTORY ORDER IN THE
	)	NATURE OF A PRELIMINARY
	)	INJUNCTION

STATE OF IDAHO)
) ss.
County of Ada)

THOMAS J. DAVIS, being first duly sworn upon oath,
deposes and says:

1. I am the Claimant seeking relief from this Court to allow me to divert water from my decreed diversion point.
2. I make the following statements based upon my own personal knowledge and belief.

3. I am the owner of property in Valley County consisting primarily of a ranch approximately 6000 acres in size, of which 1400 acres are irrigated by the water rights at issue in this Motion.

4. From 1948 through 1981, my predecessors and I diverted water from the outlet of the Cascade Dam in Lot 5 of Section 26, T 14 N, R 3 E, B.M., Valley County, Idaho.

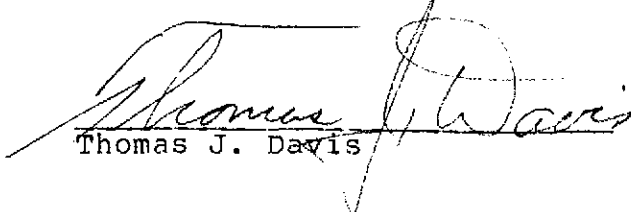
5. In 1982, Idaho Power Company destroyed my diversion works at the outlet tunnel and has since refused to either replace these works or to permit me to construct additional works.

6. This action of the Power Company has deprived me of the water necessary to irrigate my lands.

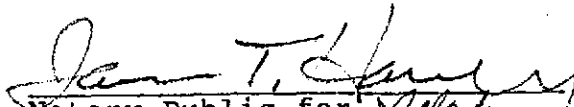
7. I was damaged in 1982 because I did not have water to irrigate my lands and feed my cattle and because the lands decrease in productivity when deprived of water over a period of time.

8. I will be similarly damaged in 1983 if I am not allowed to irrigate my property. In addition, the continued failure to obtain water puts the continued viability of my cattle operation into serious doubt.

9. If my lands continue to be deprived of water, they will experience a decline in productivity that mere future application of water will not be able to alleviate.


Thomas J. Davis

SUBSCRIBED AND SWORN to before me this 15th day of
April, 1983.


Notary Public for Delaware
Residing at Boice, Delaware

Robert H. Remaklus, Lawyer P.A.
P.O. Box 759
Cascade, Idaho 83611
Telephone: (208) 382-4267

John T. Hawley
Albert P. Barker
HAWLEY TROXELL ENNIS & HAWLEY
P. O. Box 1617
Boise, Idaho 83701
Telephone: (208) 344-6000

Attorneys for Claimants

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE GENERAL	)	Civil No. 3667
DETERMINATION OF THE RIGHT TO	)	
THE USE OF SURFACE AND GROUND	)	
WATERS OF THE PAYETTE RIVER	)	MEMORANDUM OF LAW
DRAINAGE BASIN.	)	
	)	
	)	

FACTS

Claimants and their predecessors have continuously diverted water since approximately 1948 from the outlet of the Bureau of Reclamation's Dam at the Cascade Reservoir. This water has been used by Claimants to irrigate 5,000 acres of pasture land in connection with their ranching operation. The success of this operation depends upon the obtaining of the irrigation water. The Idaho Department of Water Resources filed proposed findings of water rights concerning the Claimants' rights on or

about March 5, 1979. See Exhibits A through D. These proposed findings accurately described the Claimants' rights except that the point of diversion was incorrectly described. In June of 1982, Claimants became aware that the diversion point was erroneously described. They therefore moved to permit a late filing of an objection to the proposed findings by the Department.

The Department of Water Resources neither formally supported nor opposed the motion by the Claimant. It did state, however, that:

"[I]f the court grants the Davis' motion, Water Resources would ask the court to order that the proposed findings be amended to reflect the point of diversion in Lot 5, Section 26, T 14 N, R 3 E, B.M. for claims 65-3580, 65-4031X, 65-4031A, and 65-4031B."

Copies of this response were mailed to Idaho Power Company.

On July 12, 1982, through district court Judge Gilbert C. Norris, this Court ordered that the proposed late filing of objection be allowed and that the proposed findings of water rights by the Department concerning Claimants' rights be amended to conform with the true point of diversion as set forth in the response of the Department of Water Resources (see Exhibit E).

Idaho Power Company objected to the order allowing the late filing and change of point of diversion and moved to strike that Order. On March 14, 1983, Idaho Power Company's motion was argued before this Court. On March 17, 1983, this Court through Judge Roger L. Williams denied the Power Company's Motion to Strike (see Exhibit F).

Despite the continuous use by Claimants and their predecessors of the actual point of diversion and despite this Court's earlier Order of July 12, 1982, Idaho Power Company has refused to allow Claimants to continue the diversion of water according to their water rights. This refusal has damaged Claimants in 1982 and continued refusal by the Company will cause severe damage and hardship to the Claimants and to their property. Claimants use the irrigation water primarily to irrigate grazing land for their cattle. Without the water, their cattle ranching operation is likely to fail. In addition, depriving their land of water over successive irrigation seasons can cause irreparable harm to the land which the simple reapplication of water sometime in the future will not be able to undo. See Affidavit of Thomas J. Davis (April 15, 1983), attached hereto.

LEGAL ANALYSIS

Under Idaho Code § 42-1410 provides that for purposes of delivery of water, the water rights in the report of the Department of Water Resources shall be in full force and effect during the pendency of the general adjudication:

"The report of the Director of the Department of Water Resources shall constitute prima facie evidence of the nature of the rights existing within the water system. For purposes of formation of a water district and delivery of water, the water rights in the report of the Director shall be considered to be adjudicated and the report shall be in full force and effect from the date of its filing with the court, unless and until its operation

shall be stayed by a stay bond as provided in
§ 42-1415, Idaho Code." (Emphasis added)

Idaho Power is clearly in violation of this provision by failing
to give Claimants access to their point of diversion.

And even if the statute in question were not clear, this
Court would have inherent authority to issue such orders. In
Salt Lake City v. Anderson, 106 Utah 350, 148 P.2d 346 (1944),
the court confronted a similar issue concerning the powers of a
court in a general water rights adjudication. It succinctly
concluded that:

"We are of the opinion the district court has
the power and jurisdiction to issue temporary
injunctive orders prior to judgment on the
general statutory adjudication procedure."

148 P.2d at 351.

Thus, it is abundantly clear that Claimants will suffer
severe and irreparable harm if they are not allowed access to
their point of diversion, that under the law they are entitled to
such access, and that this Court has the authority to give them
that access.

RESPECTFULLY SUBMITTED this 18th day of April.

HAWLEY TROXELL ENNIS & HAWLEY

By John T. Hawley
John T. Hawley

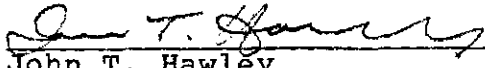
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 18th day of April, 1983, I served the within and foregoing MEMORANDUM OF LAW, by causing a true and correct copy thereof to be deposited in the United States Mail, Boise, Idaho, postage prepaid, addressed as follows:

Terry T. Uhling, Esq.
ELAM, BURKE, EVANS, BOYD
& KOONTZ
P.O. Box 1559
Boise, Idaho 83701

Director
Department of Water Resources
State of Idaho
450 West State Street
Boise, Idaho 83720

Darcy Frownfelter
Deputy Attorney General
450 West State Street
Boise, Idaho 83720



John T. Hawley

THE DISTRICT COURT OF THE THIRD
JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF GEM.

THE MATTER OF THE GENERAL DETER-
MINATION OF THE RIGHT TO THE USE OF
SURFACE AND GROUNDWATERS OF THE
PAYETTE RIVER DRAINAGE BASIN.

CIVIL NO. 3667

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

PROPOSED FINDING
OF WATER RIGHTS

IDWR
WESTERN REGION
92 SOUTH COLE ROAD
BROADBENT BUSINESS PARK
BOISE, IDAHO 83705
(208) 384-2190

Wateruser:

In connection with the above entitled action you or your predecessors filed one or more Claims to a Water Right in the Payette River Drainage Basin. Your water rights have been recommended to the court as described below:

DESCRIPTION OF COLUMN HEADINGS AND ABBREVIATIONS ON REVERSE SIDE

1974

IES TOTAL*

SOURCE: NORTH FORK, PAYETTE RIVER

NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR CLAIM
DAVIS, TOM J. CASCADE, IDAHO 83611	4/ 1/1964	IRRIGATION	4/15 10/15	--- AFA 7.18 CFS	LCT 2 S25 T14N R 3E	SESE(5) S13 T14N R 3E NENE(34) NWNE(23) SWNE(20) SENE(38) NESE(24) NWSE(25) SWSE(35) SESE(15) S24 T14N R 3E SWNW(38) SENW(40) NESH(40) NWSH(39) SWSH(38) SESW(29) S19 T14N R 4E NENW(39) SENW(39) NESH(40) SESW(28) S30 T14N R 4E NENE(23) SENE(22) S25 T14N R 3E *634*	BENEFICIAL USE

EXHIBIT A

IN THE DISTRICT COURT OF THE THIRD
JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF GEM.

IN THE MATTER OF THE GENERAL DETER-
MINATION OF THE RIGHT TO THE USE OF
SURFACE AND GROUNDWATERS OF THE
PAYETTE RIVER DRAINAGE BASIN.

CIVIL NO. 3667

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

PROPOSED FINDING
OF WATER RIGHTS

IDWR
WESTERN REGION
92 SOUTH COLE ROAD
BROADBENT BUSINESS PARK
BOISE, IDAHO 83705
(208) 384-2190

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DESCRIPTION OF COLUMN HEADINGS AND ABBREVIATIONS ON REVERSE SIDE

MAR 05, 1979

INDICATES TOTAL

SOURCE: NORTH FORK, PAYETTE RIVER

CLAIM NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR CLAIM
55-3580	DAVIS, THOMAS J. CASCADE, IDAHO 83611	4/ 1/1917	IRRIGATION	4/15 10/15	--- AFA .04 CFS	LCT 2 S25 T14N R 3E	NESE(7) S25 T14N R 3E NW(37) S31 T14N R 4E *44*	BENEFICIAL USE

IN THE DISTRICT COURT OF THE THIRD
JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF GEM,

IN THE MATTER OF THE GENERAL DETER-
MINATION OF THE RIGHT TO THE USE OF
SURFACE AND GROUNDWATERS OF THE
PAYETTE RIVER DRAINAGE BASIN.

CIVIL NO. 3667

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

PROPOSED FINDING
OF WATER RIGHTS

IDWR
WESTERN REGION
92 SOUTH COLE ROAD
BROADBENT BUSINESS PARK
BOISE, IDAHO 83705
(208) 384-2190

Dear Wateruser:

In connection with the above entitled action you or your predecessors filed one or more Claims to a Water Right in the Payette River Drainage Basin. Your water rights have been recommended to the court as described below:

DESCRIPTION OF COLUMN HEADINGS AND ABBREVIATIONS ON REVERSE SIDE

MAILED 05, 1979

INDICATES TOTAL

SOURCE: NORTH FORK, PAYETTE RIVER

CLAIM NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR CLAIM
5-4031A	DAVIS, THOMAS J. CASCADE, IDAHO 83611	4/ 1/1957	IRRIGATION	4/15 10/15	--- AFA 3.00 CFS	LCI 2 S25 T14N R 3E	SESE(5) S13 T14N R 3E NENE(34) NWNE(23) SWNE(20) SENE(38) NESE(24) NWSE(25) SWSE(35) SESE(15) S24 T14N R 3E NENE(23) SENE(22) S25 T14N R 3E SWNW(38) SENW(40) NENW(40) NWSW(39) SWSW(38) SESW(29) S19 T14N R 4E NENW(39) SESW(28) NENW(39) NWSW(40) S30 T14N R 4E #634A	BENEFICIAL USE

EXHIBIT C

IN THE DISTRICT COURT OF THE THIRD
JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF GEM.

IN THE MATTER OF THE GENERAL DETER-
MINATION OF THE RIGHT TO THE USE OF
SURFACE AND GROUNDWATERS OF THE
PAYETTE RIVER DRAINAGE BASIN.

CIVIL NO. 3667

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

PROPOSED FINDING
OF WATER RIGHTS

IDWR
WESTERN REGION
92 SOUTH COLE ROAD
BROADBENT BUSINESS PARK
BOISE, IDAHO 83705
(208) 384-2190

Dear Wateruser:

In connection with the above entitled action you or your predecessors filed one or more Claims to a Water Right in the Payette River Drainage Basin. Your water rights have been recommended to the court as described below:

DESCRIPTION OF COLUMN HEADINGS AND ABBREVIATIONS ON REVERSE SIDE

MAR 05, 1979

INDICATES TOTAL

SOURCE: NORTH FORK, PAYETTE RIVER

CLAIM NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM TO	MAX AMOUNT MAX RATE	DIVERSION PCINT	PLACE OF USE AND ACREAGE	BASIS FOR CLAIM
65-4031X	DAVIS, THOMAS J. CASCADE, IDAHO 83611	4/ 17/1917	IRRIGATION	4/15 10/15	--- AFA 2.50 CFS	LCT 2 S25 T14N R 3E	SESE(5) S13 T14N R 3E NENE(34) NWNE(23) SWNE(20) SENE(38) NESE(24) NWSE(25) SWSE(35) SESE(15) S24 T14N R 3E NENE(23) SESE(22) SWNW(38) SENW(40) NENW(40) NENW(39) SWSW(38) SESW(29) S19 T14N R 4E NENW(39) SENW(39) NENW(40) SESW(28) S20 T14N R 4E 4634*	BENEFICIAL USE

ROBERT H. REMAKLUS, Lawyer P.A.
P. O. Box 759
Cascade, Idaho 83611
Telephone (208) 382-4267

JOHN T. HAWLEY
HAWLEY, TROXELL, ENNIS & HAWLEY
One Capital Center
P. O. Box 1617
Boise, Idaho 83701
Telephone (208) 344-6000

ATTORNEYS FOR CLAIMANTS

FILED

JUL 12 1982

THELMA R. KOLODZIEJ
CLERK
S/ DEBBIE BACON DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE)	CIVIL NO. 3667
GENERAL DETERMINATION OF)	
THE RIGHT TO THE USE OF)	ORDER ALLOWING FILING OF LATE
SURFACE AND GROUND WATERS))	OBJECTION TO PROPOSED FINDINGS
OF THE PAYETTE RIVER)	OF WATER RIGHTS AND AMENDING
DRAINAGE BASIN.)	PROPOSED FINDINGS OF WATER RIGHTS

The motion of Thomas J. Davis and Jemima K. Davis, husband and wife, to Permit Late Filing of Objection to Proposed Findings of Water Rights coming on to be heard pursuant to notice duly served upon the Director of the Department of Water Resources of the State of Idaho, Robert H. Remaklus of ROBERT H. REMAKLUS, Lawyer P.A., and John T. Hawley of Hawley, Troxell, Ennis & Hawley, appearing as Counsel for Claimants, and Josephine P. Beeman appearing as Counsel for the Idaho Department of Water Resources, the Court having reviewed the record herein, and having heard the statements of counsel, and being fully advised in the premises, and good cause appearing therefor,

It is hereby ORDERED and this does ORDER that said motion is granted and Claimants are hereby permitted to file their late Objection to Proposed Findings of Water Rights.

It is hereby further ORDERED and this does ORDER that the proposed findings of water rights concerning the following claims be and the same are hereby amended to set forth the true point of diversion of such waters as being at the head of the outlet works of Cascade Dam in Lot 5, Section 26, Township 14 North, Range 3 East, Boise Meridian, Valley County, Idaho, to-wit:

Claim No. 65-3580
Claim No. 65-4031X
Claim No. 65-4031A
Claim No. 65-4031B

It is further ORDERED and this does ORDER that the Director of the Department of Water Resources of the State of Idaho shall endorse upon the proposed findings of water rights concerning the above enumerated claims, the amendment made by this order.

Dated this 12th day of July, 1982.

s/ Gilbert C. Harris
DISTRICT JUDGE

8:43 PM
DEBBIE BACON

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE GENERAL	)	
DETERMINATION OF THE RIGHT TO	)	Civil No. 3667
THE USE OF SURFACE AND GROUND	)	
WATERS OF THE PAYETTE RIVER	)	ORDER
DRAINAGE BASIN	)	

The matter of the Idaho Power Company's Motion to Strike (and Objection to) the Order of this Court entered July 12, 1982 (Order Amending Proposed Findings of Water Rights) and the matter of the Thomas J. and Jemima K. Davis Motion to Strike and/or Dismiss said Idaho Power Company Motion both having come on for hearing at 9:30 a.m. March 14, 1983 before this Court in the Gem County Courthouse, Emmett, Idaho, pursuant to notice duly given and the Idaho Power Company appearing through its attorney Terry T. Uhling of Boise, Idaho and Thomas J. and Jemima K. Davis appearing through their attorneys Robert Remaklus of Cascade, Idaho and Jack Hawley of Boise, Idaho and the Idaho Department of Water Resources appearing through its attorney Darcy A. Frownfelter, Assistant Attorney General State of Idaho, and the Court having read the above Motions including the

affidavits of Thomas J. Davis, Donald Watts, Nic Ysursa and Josephine Beeman and having read the briefs and having heard oral argument and being fully advised in the premises and good cause appearing therefore,

IT IS HEREBY ORDERED AS FOLLOWS:

1. That the Idaho Power Company's Motion to Strike (and the Objection to) the July 12, 1982 Order of this Court Amending Proposed Findings of Water Rights be and hereby is denied.

2. That in view of the denial of said Idaho Power Company's Motion (and Objection) the Motion of Thomas J. and Jemima K. Davis to Strike and/or Dismiss said Idaho Power Company Motion be and hereby is declared to be moot.

DATED: MARCH 17, 1983

sl ROGER L. WILLIAMS
DISTRICT JUDGE

RECEIVED

OCT 7 1982

Department of Water Resources

ROBERT H. REMAKLUS, Lawyer P.A.
P.O. Box 759
Cascade, Idaho 83611
Telephone: (208) 382-4267

John T. Hawley
HAWLEY TROXELL ENNIS & HAWLEY
P.O. Box 1617
Boise, Idaho 83701
Telephone: (208) 344-6000

Attorneys for Claimants

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE GENERAL	)	Civil No. 3667
DETERMINATION OF THE RIGHT TO	)	
THE USE OF SURFACE AND GROUND	)	NOTICE OF HEARING
WATERS OF THE PAYETTE RIVER	)	
DRAINAGE BASIN.	)	

TO: DIRECTOR, DEPARTMENT OF WATER RESOURCES, STATE OF IDAHO,
JOSEPHINE BEEMAN, DEPUTY ATTORNEY GENERAL, and ELAM,
BURKE, EVANS, BOYD & KOONTZ.

YOU, AND EACH OF YOU, are hereby notified that Claimants
will bring on for hearing their Motion to Strike and/or Dismiss
Idaho Power Company Objection, in the Courtroom of the above-
entitled Court in Emmett, Gem County, Idaho, on Monday,
the 8th day of November, 1982, at the hour of 9:30
a.m., or as soon thereafter as counsel may be heard.

DATED this 5th day of October, 1982.

HAWLEY TROXELL ENNIS & HAWLEY

By John T. Hawley
John T. Hawley

Attorneys for Claimants

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 5th day of October, 1982, I served the within and foregoing NOTICE OF HEARING by causing a true and correct copy thereof to be deposited in the United States Mail, Boise, Idaho, postage prepaid, addressed as follows:

Terry T. Uhling, Esq.
ELAM, BURKE, EVANS, BOYD
& KOONTZ
P.O. Box 1559
Boise, Idaho 83701

Director
Department of Water Resources
State of Idaho
450 West State Street
Boise, Idaho 83720

Josephine Beeman
Deputy Attorney General
450 West State Street
Boise, Idaho 83720



John T. Hawley

OCT 7 1982

Department of Water Resources

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Attorneys for Claimants

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE GENERAL	)	Civil No. 3667
DETERMINATION OF THE RIGHT TO	)	
THE USE OF SURFACE AND GROUND	)	MOTION TO STRIKE
WATERS OF THE PAYETTE RIVER	)	AND/OR DISMISS IDAHO
DRAINAGE BASIN.	)	POWER COMPANY OBJECTION

- Claimants Thomas J. Davis and Jemima Davis (hereinafter called Davis) move this Court for its order striking and/or dismissing the pleading filed herein by the Idaho Power Company (hereinafter called Power Company) entitled "Objection to Order Amending Proposed Finding of Water Rights."

Said motion is based upon the pleadings, including the March 5, 1979 Proposed Finding of Water Rights filed by the State of Idaho Department of Water Resources; upon Idaho Code § 42-1410; upon Rule 7(b)(3) of the Idaho Rules of Civil Procedure; and upon further grounds as follows:

That said Power Company objection has not been timely filed pursuant to the requirements of Idaho Code § 42-1410; that

the Power Company is guilty of laches in failing to file prior objections to the Davis point of diversion; that the Power Company had actual and adequate notice of the proceedings wherein the Proposed Finding of Water Rights were amended and failed to appear; that said objection of the Power Company is not supported by either a brief or by affidavits; that said objection of the Power Company goes far beyond the amending order entered by this Court on July 12, 1982, in that the Power Company claims Davis has no right to 13.52 CFS of water and no right to claim the diversion point used by Davis since 1948, and in fact that Davis has no water rights at all under Idaho law.

In support hereof Davis states:

THE POWER COMPANY OBJECTION IS UNTIMELY AND IS BARRED BY IDAHO CODE § 42-1410; BY RULE 7(b)(3), IDAHO RULES OF CIVIL PROCEDURE; AND BY GENERAL LACHES.

Clearly the Power Company was on notice on March 5, 1979 as to the nature of Davis's rights. Idaho Code § 42-1410 provides that:

[A]ny claimant who desires to object to the report shall file his objections with the court within sixty (60) days of the date of mailing of such report . . . and shall send a copy of such objection to the director of the department of water resources.

The Power Company objection was filed on September 1, 1982, over 3 1/2 years after the Proposed Finding of Water Rights was filed. Neither a brief nor affidavits have been filed in support of the objection. Nor did the Power Company indicate whether it desired to "present oral argument or file a brief" upon the face of the pleading.

Rule 7(b)(3) of the Idaho Rules of Civil Procedure reads:

Briefs and arguments on motions.--It shall not be necessary to file a brief or

memorandum of law in support of a motion, but the moving party must indicate upon the face of the motion whether he desires to present oral argument or file a brief within ten (10) days with the court in support of the motion. If the moving party does not request oral argument upon the motion, and does not file a brief within ten (10) days, the court may deny such motion without notice if the court deems the motion has no merit. If argument has been requested on any motion, the court may, in its discretion, limit or deny oral argument by counsel by notice to all counsel before the day of the hearing.

THE POWER COMPANY HAD ACTUAL AND ADEQUATE NOTICE OF THE PROCEEDINGS ON JULY 12, 1982, AND STILL FAILED TO APPEAR.

On March 5, 1979, the Director of the State of Idaho Department of Water Resources filed the Proposed Finding of Water Rights.

Included in said proposed finding were the water rights of Davis. A true and exact copy of the Davis water rights as proposed by the Department of Water Resources and as filed by the department on March 5, 1979, is attached hereto as Exhibit A (4 pages).

The Davis water rights as set forth on Exhibit A include a total of 13.52 CFS. The priority dates for those rights are January 19, 1917 for 3.34 CFS; January 19, 1957 for 3 CFS; and January 19, 1964 for 7.18 CFS. The diversion point on said water right claims was erroneously stated in the Department of Water Resources' March 5, 1979 proposal. The error being that said diversion point has been changed to the head of the outlet works of Cascade Dam since 1948.

To correct the error in the designation of the diversion point Davis filed on June 17, 1982, a Motion to Permit Late Filing of Objections accompanied by an affidavit from Thomas J. Davis and an affidavit from Donald Watts, Engineer, stating the factual basis supporting the request to amend the erroneous

diversion point. A copy of the Davis request which was served upon the State of Idaho Department of Water Resources Board, and that department mailed copies of same to counsel for the Power Company along with a notice of the hearing (set for July 12, 1982).

On July 9 , 1982, the Department of Water Resources filed its Response to the Davis Objections and a copy was served upon counsel for Davis and upon counsel for the Power Company.

In the response filed by the State of Idaho Department of Water Resources and served upon the Power Company the department states:

"Accordingly if the court grants the Davis' motion Water Resources would ask the court to order that the proposed findings be amended . . ."

The Power Company did not appear at the July 12 hearing.

The Court having heard the presentation of counsel and having read the affidavits of Mr. Davis and Engineer Donald Watts entered the order amending the said point of diversion and directing the Director of the Department of Water Resources to endorse said amendments on the Proposed Finding of Water Rights.

THE AMENDMENT OF JULY 12, 1982, TO THE PROPOSED FINDING OF WATER RIGHTS DID NOT ENLARGE OR INCREASE THE DAVIS WATER RIGHTS. RATHER IT WAS MERELY A TECHNICAL CHANGE TO REFLECT THE TRUE POINT OF DIVERSION IN ACTUAL USE BY DAVIS SINCE 1948.

In the affidavits of Thomas J. Davis and of Engineer Donald Watts supporting the Davis request for an amendment to correct the diversion point of his water rights it is clearly shown and unrefuted by any showing of the Power Company that the true diversion point of the Davis water rights has been since 1948 at the heard of the outlet works of Cascade Dam. Davis states that when he filed all of the above claims to 13.52 CFS of

water rights in 1971 with the Department of Water Resources the diversion point was erroneously designated and that he was not aware of the error until Engineer Donald Watts informed him in the spring of 1982.

DAVIS UNDER IDAHO LAW CLEARLY HAS THE RIGHT TO CHANGE THE POINT OF DIVERSION OF HIS WATER RIGHTS.

Idaho Code § 42-108 provides in part as follows:

The person entitled to the use of water or owning any land to which water has been made appurtenant either by a decree of the court or under the provisions of the constitution and statutes of this state, may change the point of diversion, period of use, or nature of use, and/or may voluntarily abandon the use of such water in whole or in part on the land which is receiving the benefit of the same and transfer the same to other lands, if the water rights of others are not injured by such change in point of diversion, place of use, period of use, or nature of use . . . ,

Any person desiring to make such change of point of diversion, place of use, period of use, or nature of use of water shall make application for change with the department of water resources under the provisions of section 42-222, Idaho Code. After the effective date of this act, no person shall be authorized to change the period of use or nature of use, point of diversion or place of use of water unless he has first applied for and received approval of the department of water resources under the provisions of section 42-222, Idaho Code.

A copy of Idaho Code § 42-108 is attached hereto.

It has been well established for years in Idaho that an owner of water rights has a right to change the point of diversion if the rights of others are not injured.

"That persons entitled to the use of water may change the place of diversion if others are not injured by such change seems to be the universal rule, the test always being: 'If others are not injured by the change.'"

See Hard v. Boise City Irr., Etc. Co., 9 Idaho 589, at 598, 76 P. 331 (1904); see also Bassinger v. Taylor, 30 Idaho 289, 164 P.

522 (1917); Graham v. Leek, 65 Idaho 279, 144 P.2d 475 (1944);
Almo Water Company v. Derrington, 95 Idaho 16, 501 P.2d 700
(1972).

ABSENT A SHOWING OF ACTUAL HARM THE POWER
COMPANY'S OBJECTION TO THE DAVIS CHANGE OF
DIVERSION POINT IS WITHOUT BASIS.

The objection filed by the Power Company is not only
untimely and contrary to the time and procedural requirements
under Section 42-1410 and Rule 7(b)(3), it is also fatally
defective in its failure to assert that the diversion point
change has caused actual harm to the Power Company.

In Almo Water Company v. Derrington, supra, the Idaho
Court reaffirmed the universal rule that a water-right holder has
the right to change the point of diversion and that any
challenger to that right must show that the change caused him
actual harm.

The Power Company objection merely disputes the Davis
claim to water rights and the change in the diversion point. It
fails to allege that it has suffered actual harm resulting from
the change.

THE POWER COMPANY IS 34 YEARS LATE IN FILING
ITS OBJECTION IN THE DIVERSION POINT CHANGE.

The affidavits of Mr. Davis and his Engineer, Mr. Watts,
clearly show that the actual diversion point of the Davis water
rights has been at the head of the outlet works of Cascade Dam
since 1948. The Power Company, or its predecessors, and the U.
S. Bureau of Reclamation have been fully aware of the right of
Davis and his predecessor to withdraw their allotted water rights
(3.34 CFS priority date 1917; 3 CFS priority date 1957; and 7.18
CFS priority date 1964) from the head of the Cascade Dam outlet
works.

No objection has ever been made by either the U. S. Bureau of Reclamation or by the Power Company, or its predecessors, to Davis's right to the diversion point at the head of the outlet works. No attempt has ever been made by either the U. S. Bureau of Reclamation or by the Power Company, or its predecessors, to interfere with Davis's point of diversion until recently when the Power Company eliminated the Davis water rights by the destruction of the penstock pipe and other works which conveyed Davis's water to his property.

Even if the Power Company could correct the defects in its objection and claim harm resulted from the change of diversion point, it would be 18, 25, and 34 years too late.

RESPECTFULLY SUBMITTED this 5th day of October, 1982.

HAWLEY TROXELL ENNIS & HAWLEY

By John T. Hawley
John T. Hawley

Attorneys for Claimants

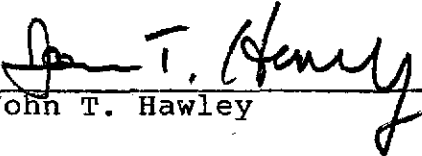
CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 5th day of October, 1982, I served the within and foregoing MOTION TO STRIKE AND/OR DISMISS IDAHO POWER COMPANY OBJECTION by causing a true and correct copy thereof to be deposited in the United States Mail, Boise, Idaho, postage prepaid, addressed as follows:

Terry T. Uhling, Esq.
ELAM, BURKE, EVANS, BOYD
& KOONTZ
P.O. Box 1559
Boise, Idaho 83701

Director
Department of Water Resources
State of Idaho
450 West State Street
Boise, Idaho 83720

Josephine Beeman
Deputy Attorney General
450 West State Street
Boise, Idaho 83720



John T. Hawley

42-101. Nature of property in water.

Cited in: *Nettleton v. Higginson*, 98 Idaho 87, 558 P.2d 1048 (1977).

ANALYSIS

Appropriation of water.

Diversion.

Rights of senior appropriator.

Waste water.

Appropriation of Water.

Diversion is a prerequisite to appropriation of water, along with the application of such water to a beneficial use. *Hidden Springs Trout Ranch, Inc. v. Hagerman Water Users, Inc.*, 101 Idaho 677, 619 P.2d 1130 (1980).

Diversion.

It is sufficient, for establishing diversion, that the water flows in a different channel than it would have done absent intervention by the appropriator; where, instead of running downhill directly into the creek, water entered a pipe and traveled approximately one-half mile before the water in dispute was lost as seepage and reemerged

would be considered diverted for purposes of appropriation. *Hidden Springs Trout Ranch, Inc. v. Hagerman Water Users, Inc.*, 101 Idaho 677, 619 P.2d 1130 (1980).

Rights of Senior Appropriator.

A senior appropriator of water retains his right to surface waste and seepage water, and may reclaim it, even though such water has been used by a junior appropriator, even for as long as 40 years. *Hidden Springs Trout Ranch, Inc. v. Hagerman Water Users, Inc.*, 101 Idaho 677, 619 P.2d 1130 (1980).

Waste Water.

No distinction is to be drawn between waste water appropriated after it has been put to irrigation use and waste water seeping from irrigation canals, and no appropriator of waste water should be able to compel any other appropriator to continue the waste of water which benefits the former. *Hidden Springs Trout Ranch, Inc. v. Hagerman Water Users, Inc.*, 101 Idaho 677, 619 P.2d 1130 (1980).

42-103. Right acquired by appropriation.**ANALYSIS**

Constitutional use water right.

Dependence on supply.

Constitutional Use Water Right.

A constitutional use water right is created simply by diverting unappropriated waters and putting those waters to beneficial use. *Nettleton v. Higginson*, 98 Idaho 87, 558 P.2d 1048 (1977).

Dependence on Supply.

The right of appropriation does not carry with it an unconditional guarantee of water regardless of supply of water available. *Nettleton v. Higginson*, 98 Idaho 87, 558 P.2d 1048 (1977).

42-105. Use of natural channels — Measurement of commingled water — Application for right to exchange water.**ANALYSIS**

Cotenants of canal system.

Exchange distinguished.

Cotenants of Canal System.

The cotenant of a canal system must necessarily be able to commingle the waters with other cotenants, if not, condemnation of concurrent ownership in a canal system would never be possible. *Canyon View Irrigation Co. v. Twin Falls Canal Co.*, 101 Idaho 604, 619 P.2d 122 (1980).

Exchange Distinguished.

An exchange differs from commingling, although the two concepts are closely related and may in some circumstances overlap; essentially, commingling occurs when waters are mixed and later separated, and exchange takes place when different waters are traded without being mixed. *Canyon View Irrigation Co. v. Twin Falls Canal Co.*, 101 Idaho 604, 619 P.2d 122 (1980).

42-108. Change in point of diversion, place of use, period of use, or nature of use — Application of act. — The person entitled to the use of

water or owning any land to which water has been made appurtenant either by a decree of the court or under the provisions of the constitution and statutes of this state, may change the point of diversion, period of use, or nature of use, and/or may voluntarily abandon the use of such water in whole or in part on the land which is receiving the benefit of the same and transfer the same to other lands, if the water rights of others are not injured by such change in point of diversion, place of use, period of use, or nature of use, provided; if the right to the use of such water, or the use of the diversion works or irrigation system is represented by shares of stock in a corporation or if such works or system is owned and/or managed by an irrigation district, no change in the point of diversion, place of use, period of use, or nature of use of such water shall be made or allowed without the consent of such corporation or irrigation district; provided, any permanent change in period or nature of use in or out-of-state for a quantity greater than fifty (50) cfs or for a storage volume greater than five thousand (5,000) acre-feet shall require the approval of the legislature. Any lease within the state of Idaho for a term of less than three (3) years may be approved by the director without legislative approval.

Any person desiring to make such change of point of diversion, place of use, period of use, or nature of use of water shall make application for change with the department of water resources under the provisions of section 42-222, Idaho Code. After the effective date of this act, no person shall be authorized to change the period of use or nature of use, point of diversion or place of use of water unless he has first applied for and received approval of the department of water resources under the provisions of section 42-222, Idaho Code. [R.S., § 3157; 1899, p. 380, § 11; reen. R.C. & C.L., § 3247; C.S., § 5563; I.C.A., § 41-108; am. 1943, ch. 53, § 1, p. 101; am. 1947, ch. 80, § 1, p. 130; am. 1969, ch. 303, § 1, p. 905; am. 1981, ch. 147, § 1, p. 253.]

Compiler's notes. Section 2 of S.L. 1981, ch. 147 is compiled as § 42-221.

Section 4 of S.L. 1981, ch. 147 declared an emergency. Approved March 27, 1981.

Sec. to sec. ref. This section is referred to in §§ 42-222 and 50-1805A.

Cited in: *Nettleton v. Higginson*, 98 Idaho 87, 558 P.2d 1048 (1977).

Change in Nature of Use.

The director of the Department of Water Resources has not been granted the authority to approve an application for a requested change in the nature of the use of water. *Baker Indus., Inc. v. Georgetown Irrigation Dist.*, 101 Idaho 187, 610 P.2d 546 (1980).

42-108A. Leasing of water for hydroelectric generation — Exception to requirement of application to change nature of use. — Any person having the right to the beneficial use of a water right may lease the water to a private or public utility doing business in the state of Idaho for hydroelectric generation purposes within the state of Idaho for a period not to exceed one (1) year on application to the department of water resources indicating the name of the owner of the right, the lessor, the lessee, the amount of water leased, the duration of the lease, and the proposed place of use and point of diversion. Such a lease or leases shall not constitute a change in the nature of use of such water nor shall the same constitute an abandonment or forfeiture or any other diminution of such water right. [I.C., § 42-108A, as added by 1981, ch. 267, § 1, p. 566.]

42-108B. Leasing of water under established rights — Notice — Appeal. — Any person, entitled to the use of water whether represented by a license issued by the department of water resources, or by decree of the court, who shall desire to lease the water pursuant to section 42-108A, Idaho Code, shall make application to the department of water resources. Such application shall be upon forms furnished by the department and shall describe the right licensed, claimed or decreed which is to be leased. Upon receipt of said application, an application filing fee of thirty dollars (\$30.00) and a publication fee of fifty dollars (\$50.00), it shall be the duty of the director of the department of water resources to examine same and if otherwise proper, to cause notice of the proposed leasing of water and setting forth the hearing date at which protests will be heard, to be published once a week for two (2) consecutive weeks in a newspaper published and of general circulation within the county where the water is diverted, if there is such a paper, otherwise in a newspaper of general circulation within the county. Such notice shall advise that anyone who desires to protest the proposed leasing of water and who has a superior right to use the water and who may suffer pecuniary loss shall file notice of protest with the department within five (5) days of the last date of publication. The hearing date set by the director of the department of water resources shall be held not sooner than ten (10) nor later than fifteen (15) days after the last date of publication. Upon receipt of any protest, it shall be the duty of the director of the department of water resources to investigate the same and to conduct a hearing thereon. He shall also advise the watermaster of the district in which such water is used of the proposed lease.

The director of the department of water resources shall examine all of the evidence and available information and shall approve, in whole or in part, or upon conditions, provided no other water rights senior or junior to the water to be leased are injured thereby. A copy of the approved application for leasing of water shall be returned to the applicant, and he shall be authorized upon receipt thereof to lease the water pursuant to section 42-108A, Idaho Code. In the event the director of the department of water resources determines that a proposed change shall not be approved as provided in this section, he shall deny same and forward a notice of such action to the applicant by certified mail, which decision shall be subject to review pursuant to section 42-1701A, Idaho Code.

All fees received by the department of water resources under the provisions of this section shall be submitted to the state treasurer for deposit in the water administration fund. [I.C., § 42-108B, as added by 1981, ch. 267, § 2, p. 566.]

CHAPTER 2

APPROPRIATION OF WATER—PERMITS, CERTIFICATES, AND LICENSES—SURVEY

SECTION.

42-203. Notice upon receipt of application —
Protest — Hearing and findings
— Appeals.

SECTION.

42-204. Examination — Permit — Com-
mencement of work —
Extensions — Appeal.

IN THE DISTRICT COURT OF THE THIRD
JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF GEM.

IN THE MATTER OF THE GENERAL DETER-
MINATION OF THE RIGHT TO THE USE OF
SURFACE AND GROUNDWATERS OF THE
PAYETTE RIVER DRAINAGE BASIN.

CIVIL NO. 3667

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

PROPOSED FINDING
OF WATER RIGHTS

IDWR
WESTERN REGION
92 SOUTH COLE ROAD
BROADBENT BUSINESS PARK
BOISE, IDAHO 83705
(208) 384-2190

Dear Wateruser:

In connection with the above entitled action you or your predecessors filed one or more Claims to a Water Right in the Payette River Drainage Basin. Your water rights have been recommended to the court as described below:

DESCRIPTION OF COLUMN HEADINGS AND ABBREVIATIONS ON REVERSE SIDE

MAR 05, 1979

INDICATES TOTAL

SOURCE: NORTH FORK, PAYETTE RIVER

CLAIM NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FKLM TC	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR CLAIM
45-3580	DAVIS, THOMAS J. CASCADE, IDAHO 83611	4/ 1/1917	IRRIGATION	4/15 10/15	--- AFA .84 CFS	LCT 2 S25 T14N R 3E	NESE(7) S25 T14N R 3E NNW(37) S31 T14N R 4E *44*	BENEFICIAL USE

IN THE DISTRICT COURT OF THE THIRD
JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF GEM.

IN THE MATTER OF THE GENERAL DETER-
MINATION OF THE RIGHT TO THE USE OF
SURFACE AND GROUNDWATERS OF THE
PAYETTE RIVER DRAINAGE BASIN.

CIVIL NO. 3667

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

PROPOSED FINDING
OF WATER RIGHTS

IDWR
WESTERN REGION
92 SOUTH COLE ROAD
BROADBENT BUSINESS PARK
BOISE, IDAHO 83705
(208) 384-2190

Dear Wateruser:

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DESCRIPTION OF COLUMN HEADINGS AND ABBREVIATIONS ON REVERSE SIDE

SOURCE: NORTH FORK, PAYETTE RIVER

INDICATES TOTAL

CLAIM NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR CLAIM
55-4031X	DAVIS, THOMAS J. CASCADE, IDAHO 83611	4/ 1/1917	IRRIGATION	4/15 10/15	--- AFA 2.50 CFS	LCT 2 S25 T14N R 3E	SESE(5) S13 T14N R 3E NENE(34) NWNE(23) SWNE(20) SENE(38) NESE(24) NWSE(25) SWSE(35) SESE(15) S24 T14N R 3E NENE(23) SENE(22) S25 T14N R 3E SWNW(38) SENW(40) NESW(40) NWSW(39) SWSW(38) SESW(29) S19 T14N R 4E NENW(39) SENW(39) NESW(40) SESW(28) S30 T14N R 4E #634*	BENEFICIAL USE

IN THE DISTRICT COURT OF THE THIRD
JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF GEM.

IN THE MATTER OF THE GENERAL DETER-
MINATION OF THE RIGHT TO THE USE OF
SURFACE AND GROUNDWATERS OF THE
PAYETTE RIVER DRAINAGE BASIN.

CIVIL NO. 3667

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

PROPOSED FINDING
OF WATER RIGHTS

IDWR
WESTERN REGION
92 SOUTH COLE ROAD
BROADBENT BUSINESS PARK
BOISE, IDAHO 83705
(208) 384-2190

Dear Wateruser:

In connection with the above entitled action you or your predecessors filed one or more Claims to a Water Right in the Payette River Drainage Basin. Your water rights have been recommended to the court as described below:

DESCRIPTION OF COLUMN HEADINGS AND ABBREVIATIONS ON REVERSE SIDE

1979

INDICATES TOTAL*

SOURCE: NORTH FORK, PAYETTE RIVER

CLAIM NUMBER	NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM TO	MAX AMOUNT MAX RATE	DIVERSION PCINT	PLACE OF USE AND ACREAGE	BASIS FOR CLAIM
5-4031A	DAVIS, THOMAS J. CASCADE, IDAHO 83611	4/ 1/1957	IRRIGATION	4/15 10/15	--- AFA 3.00 CFS	LC1 2 S25 T14N R 3E	SESE(5) S13 T14N R 3E NENE(34) NWNE(23) SWNE(20) SENE(38) NESE(24) NWSE(25) SWSE(35) SESE(15) S24 T14N R 3E NENE(23) SENE(22) S25 T14N R 3E SWNW(38) SENW(40) NESW(40) NWSW(39) SWSW(38) SESW(29) S19 T14N R 4E NENW(39) SESW(28) NESW(39) NWSW(40) S30 T14N R 4E *634*	BENEFICIAL USE

THE DISTRICT COURT OF THE THIRD
JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF GEM.

THE MATTER OF THE GENERAL DETER-
MINATION OF THE RIGHT TO THE USE OF
SURFACE AND GROUNDWATERS OF THE
PAYETTE RIVER DRAINAGE BASIN.

CIVIL NO. 3667

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

PROPOSED FINDING
OF WATER RIGHTS

IDWR
WESTERN REGION
92 SOUTH COLE ROAD
BROADBENT BUSINESS PARK
BOISE, IDAHO 83705
(208) 384-2190

Wateruser:

In connection with the above entitled action you or your predecessors filed one or more Claims to a Water Right in the Payette River Drainage Basin. Your water rights have been
submitted to the court as described below:

DESCRIPTION OF COLUMN HEADINGS AND ABBREVIATIONS ON REVERSE SIDE

PAGES TOTAL*

SOURCE: NORTH FORK, PAYETTE RIVER

NAME AND ADDRESS	PRIORITY DATE	USE	USE PERIOD FROM TO	MAX AMOUNT MAX RATE	DIVERSION POINT	PLACE OF USE AND ACREAGE	BASIS FOR CLAIM
DAVIS, TOM J. CASCADE, IDAHO 83611	4/ 1/1964	IRRIGATION	4/15 10/15	--- AFA 7.18 CFS	LCT 2 S25 T14N R 3E	SESE(5) S13 T14N R 3E NENE(34) NWNE(23) SWNE(20) SENE(38) NESE(24) NWSE(25) SWSE(35) SESE(15) S24 T14N R 3E SWNW(38) SENW(40) NENW(40) NWSW(39) SWSW(39) SESW(29) S19 T14N R 4E NENW(39) SENW(39) NENW(40) SESW(28) S30 T14N R 4E NENE(23) SENE(22) S25 T14N R 3E	BENEFICIAL USE

634

RECEIVED

SEP 2 1982

ELAM, BURKE, EVANS, BOYD AND KOONTZ

ATTORNEYS AND COUNSELORS AT LAW

SUITE 1010 FIRST INTERSTATE BANK BUILDING

POST OFFICE BOX 1559

BOISE, IDAHO 83701

TELEPHONE 208-343-5454

CABLE-EBEBK

September 1, 1982

LAUREL E. ELAM (1888-1974)
CARL A. BURKE (1898-1961)
CARL P. BURKE
BLAINE F. EVANS
PETER J. BOYD
ROBERT J. KOONTZ
M. ALLYN DINGEL, JR.
JOHN S. SIMKO
JACK S. GJORDING
LARRY D. RIPLEY
JOHN MAGEL
DAVID B. LINCOLN
RICHARD C. MELLON, JR.
ROBERT M. TYLER, JR.
JAMES D. LARUE

Department of Water Resources
MERRILL J. RUSSELL
WILLIAM J. RUSSELL
RANDALL A. PETERMAN
DANIEL L. POOLE
KAYE L. O'RIORDAN
RYAN P. ARMBRUSTER
DAVID E. COMSTOCK
CHARLES L. HAY
MELVILLE W. FISHER II
WILLIAM G. DRYDEN
ROBERT C. HAMPTON
BILL V. BRUMLEY, JR.
TODD J. WILCOX
RICHARD KIM DREDGE
BRUCE H. TOMPKINS
KARL JEPPESEN
OF COUNSEL

Clerk of the Court
Gem County Courthouse
Emmett, Idaho 83617

RE: Civil No. 3667
In the Matter of the General Determination of the
Right to the Use of Surface and Ground Waters of
the Payette River Drainage Basin

Dear Clerk:

Please find enclosed for filing in the above referenced
matter, OBJECTION TO ORDER AMENDING PROPOSED FINDINGS OF WATER
RIGHTS.

Thank you.

Sincerely,

ELAM, BURKE, EVANS, BOYD & KOONTZ

Terry T. Uhling

TTU:pj

Enc.

cc: All Counsel

RECEIVED

Department of Water Resources
Western Regional Office

RECEIVED

SEP 2 1982

Department of Water Resources

Terry T. Uhling

ELAM, BURKE, EVANS, BOYD & KOONTZ
1010 FIRST INTERSTATE BANK BUILDING
P.O. BOX 1559 BOISE, IDAHO 83701
PHONE (208) 343-5454

Idaho Power Company

Attorneys for

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE) CIVIL NO. 3667
GENERAL DETERMINATION OF)
THE RIGHT TO THE USE OF) OBJECTION TO ORDER
SURFACE AND GROUND WATERS) AMENDING PROPOSED FINDINGS
OF THE PAYETTE RIVER) OF WATER RIGHTS
DRAINAGE BASIN.)

COMES NOW the Claimant, Idaho Power Company, a Maine corporation qualified to do business in the State of Idaho, by and through their attorneys of record, Elam, Burke, Evans, Boyd & Koontz, and object to the Order amending proposed findings of water rights based upon the following grounds and reasons:

(1) That the notice of hearing filed by the Claimants, Thomas J. Davis and Jemima K. Davis, husband and wife, to permit late filing of objections to proposed findings of water rights (attached hereto as Exhibit "A") was defective. Notice of the hearing provided to Idaho Power Company involved the procedural issue of whether or not the said claimants would be permitted to file with the Court their late objection to proposed findings of water rights. The notice of hearing to Idaho Power did not provide Idaho Power with notice that the Court would adjudicate the merits of the point of diversion issue and allow claimants to amend the proposed findings of water rights to set forth a different point of diversion.

(2) That the Idaho Power Company disputes whether the claimants have any water right cognizable under Idaho law.

OBJECTION TO ORDER AMENDING PROPOSED
FINDINGS OF WATER RIGHTS - 1

Department of Water Resources
Western Regional Office

ELAM, BURKE, EVANS, BOYD & KOONTZ
1010 FIRST INTERSTATE BANK BUILDING
P.O. BOX 1559 BOISE, IDAHO 83701
PHONE (208) 343-5454

1 (3) If the Court finds that the claimants have a water
2 right recognized under Idaho law, Idaho Power Company disputes
3 the nature and extent of that water right including, but not
4 limited to, the location of the point of diversion, the right
5 to a particular means of diversion, and the quantity of water.

6 DATED This 1 day of September, 1982.

7 ELAM, BURKE, EVANS, BOYD & KOONTZ

8
9 By:

Terry T. Uhling
Terry T. Uhling, Of the Firm
Attorneys for Idaho Power

10
11
12 CERTIFICATE OF MAILING

13 I HEREBY CERTIFY That on this 1st day of September, 1982,
14 I mailed a true and correct copy of the within and foregoing
instrument, postage prepaid, to:

15 Robert H. Remaklus
16 P.O. Box 759
Cascade, Idaho 83611

17 John T. Hawley
18 Hawley, Troxell, Ennis & Hawley
19 P.O. Box 1617
Boise, Idaho 83701

20 Director
21 Department of Water Resources
22 State of Idaho
450 West State Street
Boise, Idaho 83720

23 Josephine Beeman
24 Deputy Attorney General
450 West State Street
Boise, Idaho 83720

25
26
27 Terry T. Uhling
Terry T. Uhling

ROBERT H. REMAKLUS, Lawyer P.A.
P. O. Box 759
Cascade, Idaho 83611
Telephone (208) 382-4267

JOHN T. HAWLEY
HAWLEY, TROXELL, ENNIS & HAWLEY
One Capital Center
P. O. Box 1617
Boise, Idaho 83701
Telephone (208) 344-6000

ATTORNEYS FOR CLAIMANTS

FILED

JUL 12 1982

10:47AM CLERK

Thomas J. Davis CLERK
Jemima K. Davis DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE)	CIVIL NO. 3667
GENERAL DETERMINATION OF)	
THE RIGHT TO THE USE OF)	ORDER ALLOWING FILING OF LATE
SURFACE AND GROUND WATERS))	OBJECTION TO PROPOSED FINDINGS
OF THE PAYETTE RIVER)	OF WATER RIGHTS AND AMENDING
DRAINAGE BASIN.)	PROPOSED FINDINGS OF WATER RIGHTS

The motion of Thomas J. Davis and Jemima K. Davis, husband and wife, to Permit Late Filing of Objection to Proposed Findings of Water Rights coming on to be heard pursuant to notice duly served upon the Director of the Department of Water Resources of the State of Idaho, Robert H. Remaklus of ROBERT H. REMAKLUS, Lawyer P.A., and John T. Hawley of Hawley, Troxell, Ennis & Hawley, appearing as Counsel for Claimants, and Josephine P. Beeman appearing as Counsel for the Idaho Department of Water Resources, the Court having reviewed the record herein, and having heard the statements of counsel, and being fully advised in the premises, and good cause appearing therefor,

It is hereby ORDERED and this does ORDER that said motion is granted and Claimants are hereby permitted to file their late Objection to Proposed Findings of Water Rights.

It is hereby further ORDERED and this does ORDER that the proposed findings of water rights concerning the following claims be and the same are hereby amended to set forth the true point of diversion of such waters as being at the head of the outlet works of Cascade Dam in Lot 5, Section 26, Township 14 North, Range 3 East, Boise Meridian, Valley County, Idaho, to-wit:

EXHIBIT "A"

Claim No. 65-3580
Claim No. 65-4031X
Claim No. 65-4031A
Claim No. 65-4031B

It is further ORDERED and this does ORDER that the Director of the Department of Water Resources of the State of Idaho shall endorse upon the proposed findings of water rights concerning the above enumerated claims, the amendment made by this order.

Dated this 12th day of July, 1982.

Robert C. Morris
DISTRICT JUDGE

ROBERT H. REMAKLUS, Lawyer P.A.
P. O. Box 759
Cascade, Idaho 83611
Telephone (208) 382-4267

JOHN T. HAWLEY
HAWLEY, TROXELL, ENNIS & HAWLEY
One Capital Center
P. O. Box 1617
Boise, Idaho 83701
Telephone (208) 344-6000

ATTORNEYS FOR CLAIMANTS

JUL 13 1982

Department of Water Resources
FILED

JUL 12 1982

UCLUCH

Thomas P. Kolodziej GEN.
Dennis Bacon DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE)	CIVIL NO. 3667
GENERAL DETERMINATION OF)	
THE RIGHT TO THE USE OF)	ORDER ALLOWING FILING OF LATE
SURFACE AND GROUND WATERS))	OBJECTION TO PROPOSED FINDINGS
OF THE PAYETTE RIVER)	OF WATER RIGHTS AND AMENDING
DRAINAGE BASIN.)	PROPOSED FINDINGS OF WATER RIGHTS

The motion of Thomas J. Davis and Jemima K. Davis, husband and wife, to Permit Late Filing of Objection to Proposed Findings of Water Rights coming on to be heard pursuant to notice duly served upon the Director of the Department of Water Resources of the State of Idaho, Robert H. Remaklus of ROBERT H. REMAKLUS, Lawyer P.A., and John T. Hawley of Hawley, Troxell, Ennis & Hawley, appearing as Counsel for Claimants, and Josephine P. Beeman appearing as Counsel for the Idaho Department of Water Resources, the Court having reviewed the record herein, and having heard the statements of counsel, and being fully advised in the premises, and good cause appearing therefor,

It is hereby ORDERED and this does ORDER that said motion is granted and Claimants are hereby permitted to file their late Objection to Proposed Findings of Water Rights.

It is hereby further ORDERED and this does ORDER that the proposed findings of water rights concerning the following claims be and the same are hereby amended to set forth the true point of diversion of such waters as being at the head of the outlet works of Cascade Dam in Lot 5, Section 26, Township 14 North, Range 3 East, Boise Meridian, Valley County, Idaho, to-wit:

Claim No. 65-3580
Claim No. 65-4031X
Claim No. 65-4031A
Claim No. 65-4031B

It is further ORDERED and this does ORDER that the Director of the Department of Water Resources of the State of Idaho shall endorse upon the proposed findings of water rights concerning the above enumerated claims, the amendment made by this order.

Dated this 12th day of July, 1982.

Gilbert C. Morris
DISTRICT JUDGE

ROBERT H. REMAKLUS, Lawyer P.A.
P. O. Box 759
Cascade, Idaho 83611
Telephone (208) 382-4267
ATTORNEY FOR CLAIMANTS

→ Don Shaff
RECEIVED

JUN 22 1982

Department of Water Resources

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE) CIVIL NO. 3667
GENERAL DETERMINATION OF)
THE RIGHT TO THE USE OF) NOTICE OF HEARING
SURFACE AND GROUND WATERS)
OF THE PAYETTE RIVER)
DRAINAGE BASIN.)

TO: DIRECTOR
DEPARTMENT OF WATER RESOURCES
STATE OF IDAHO
450 WEST STATE STREET
BOISE, IDAHO 83720

JOSEPHINE BEEMAN
DEPUTY ATTORNEY GENERAL
450 WEST STATE STREET
BOISE, IDAHO 83720

YOU WILL PLEASE TAKE NOTICE that the Motion of Thomas J.
Davis and Jemima K. Davis, husband and wife, Claimants, to
Permit Late Filing of Objection to Proposed Findings of Water
Rights, shall come on for hearing before the above entitled
Court at the courtroom thereof in the Gem County Courthouse
at Emmett, Idaho, on the 12th day of July, 1982, at the hour
of 9:30 o'clock A.M. of said day, or as soon thereafter as
counsel may be heard.

Dated this 22nd day of June, 1982.

ROBERT H. REMAKLUS, Lawyer P.A.


Of the Firm
Attorney for Claimants

NOTICE OF HEARING-1

RECEIVED

JUN 28 1982

Department of Water Resources
Western Regional Office

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Notice of Hearing was sent by regular United States mail, postage prepaid, on the 22nd day of June, 1982, to:

Director
Department of Water Resources
State of Idaho
450 West State Street
Boise, Idaho 83720

Josephine Beeman
Deputy Attorney General
450 West State Street
Boise, Idaho 83720


Robert H. Remaklus

ROBERT H. REMAKLUS, Lawyer P.A.
P. O. Box 759
Cascade, Idaho 83611
Telephone (208) 382-4267
ATTORNEY FOR CLAIMANTS

→ Don Shaff
RECEIVED

JUN 21 1982

Department of Water Resources

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE)	CIVIL NO. 3667
GENERAL DETERMINATION OF)	
THE RIGHT TO THE USE OF)	MOTION TO PERMIT LATE FILING
SURFACE AND GROUND WATERS))	OF OBJECTION TO PROPOSED
OF THE PAYETTE RIVER)	FINDINGS OF WATER RIGHTS
DRAINAGE BASIN.)	AND NOTICE OF HEARING

COME NOW, Thomas J. Davis and Jemima K. Davis, husband and wife, hereinafter called Claimants and move the Court for permission to make a late filing of objection to proposed findings of water rights upon the grounds and for the reasons following:

I

That the proposed findings of water rights concerning the following claims should be amended to set forth the true point of diversion of such waters as being in Lot 5, Section 26, Township 14 North, Range 3 East, Boise Meridian instead of Lot 2, Section 25, Township 14 North, Range 3 East, Boise Meridian, to-wit:

Claim No. 65-3580
Claim No. 65-4031X
Claim No. 65-4031A
Claim No. 65-4031B

II

That ever since 1948 when the Cascade Dam was completed, the true and actual point of diversion for all water described in the above claims has been at the head of the outlet works of Cascade Dam in said Lot 5 above described.

III

That a copy of Claimants' proposed late filing of objection to proposed water rights is marked Exhibit "A" attached hereto and by reference made a part hereof.

MOTION TO PERMIT LATE FILING-1

WHEREFORE, Claimants pray for an order permitting a late filing of objection to said proposed findings of water rights above described.

Dated this 15th day of June, 1982.

ROBERT H. REMAKLUS, Lawyer P.A.

A handwritten signature in dark ink, appearing to read "Robert H. Remaklus", is written over a horizontal line.

Of the Firm
Attorney for Claimants

ROBERT H. REMAKLUS, Lawyer P.A.
P. O. Box 759
Cascade, Idaho 83611
Telephone (208) 382-4267
ATTORNEY FOR CLAIMANTS

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GEM

IN THE MATTER OF THE)	CIVIL NO. 3667
GENERAL DETERMINATION OF)	
THE RIGHT TO THE USE OF)	OBJECTION TO PROPOSED FINDINGS
SURFACE AND GROUND WATERS) OF WATER RIGHTS	
OF THE PAYETTE RIVER)	
DRAINAGE BASIN.)	

COME NOW, the Claimants, Thomas J. Davis and Jemima K. Davis, husband and wife, and object to the proposed findings of water rights hereinafter enumerated upon the grounds and for the reasons following:

I

That the proposed findings of water rights concerning the following claims should be amended to set forth the true point of diversion of such waters as being in Lot 5, Section 26, Township 14 North, Range 3 East, Boise Meridian instead of Lot 2, Section 25, Township 14 North, Range 3 East, Boise Meridian, to-wit:

Claim No. 65-3580
Claim No. 65-4031X
Claim No. 65-4031A
Claim No. 65-4031B

II

That ever since 1948 when the Cascade Dam was completed, the true and actual point of diversion for all water described in the above claims has been at the head of the outlet works of Cascade Dam in said Lot 5 above described.

Dated this 15th day of June, 1982.

ROBERT H. REMAKLUS, Lawyer P.A.

Of the Firm
Attorney for Claimants

OBJECTION TO PROPOSED
FINDINGS OF WATER RIGHTS-1

EXHIBIT "A"

NOTICE OF HEARING

TO: DIRECTOR
DEPARTMENT OF WATER RESOURCES
STATE OF IDAHO AND
JOSEPHINE BEEMAN,
DEPUTY ATTORNEY GENERAL
450 WEST STATE STREET
BOISE, IDAHO 83720

YOU WILL PLEASE TAKE NOTICE that the above Motion shall come on for hearing before the above entitled Court at the courtroom thereof in the Gem County Courthouse at Emmett, Idaho, on the 28th day of June, 1982, at the hour of 9:30 o'clock A.M. of said day, or as soon thereafter as counsel may be heard.

Dated this 18th day of June, 1982.

ROBERT H. REMAKLUS, Lawyer P.A.


Of the Firm
Attorney for Claimants

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing Motion to Permit Late Filing of Objection to Proposed Findings of Water Rights and Notice of Hearing was sent by regular United States mail, postage prepaid, on the 18th day of June, 1982., to:

Director
Department of Water Resources
State of Idaho and
Josephine Beeman
Deputy Attorney General
450 West State Street
Boise, Idaho 83720


Robert H. Remaklus

SUBJECT _____

DATE _____

IMPORTANT

DO NOT CUT NEGATIVES
ORDER BY NUMBER

PRINT SIZE INFORMATION

SEE BACK OF ENVELOPE

**IF NEGATIVE NUMBERS ARE
DUPLICATED** USE SEPARATE NEGATIVE
ENVELOPES

NEGATIVES—BE VERY CAREFUL—HANDLE BY EDGE ONLY—AVOID FINGERPRINTS

COMPLETE WITH BEAUTIFUL _____

No.	Qty.	No.	Qty.	No.	Qty.	No.	Qty.	No.	Qty.	No.	Qty.
1		00A		12		12A		25		25A	
0		0A		13		13A		26		26A	
1		1A		14		14A		27		27A	
2		2A		15		15A		28		28A	
3		3A		16		16A		29		29A	
4		4A		17		17A		30		30A	
5		5A		18		18A		31		31A	
6		6A		19		19A		32		32A	
7		7A		20		20A		33		33A	
8		8A		21		21A		34		34A	
9		9A		22		22A		35		35A	
10		10A		23		23A		36		36A	
11		11A		24		24A		37		37A	

FOR REGULAR PRINTS

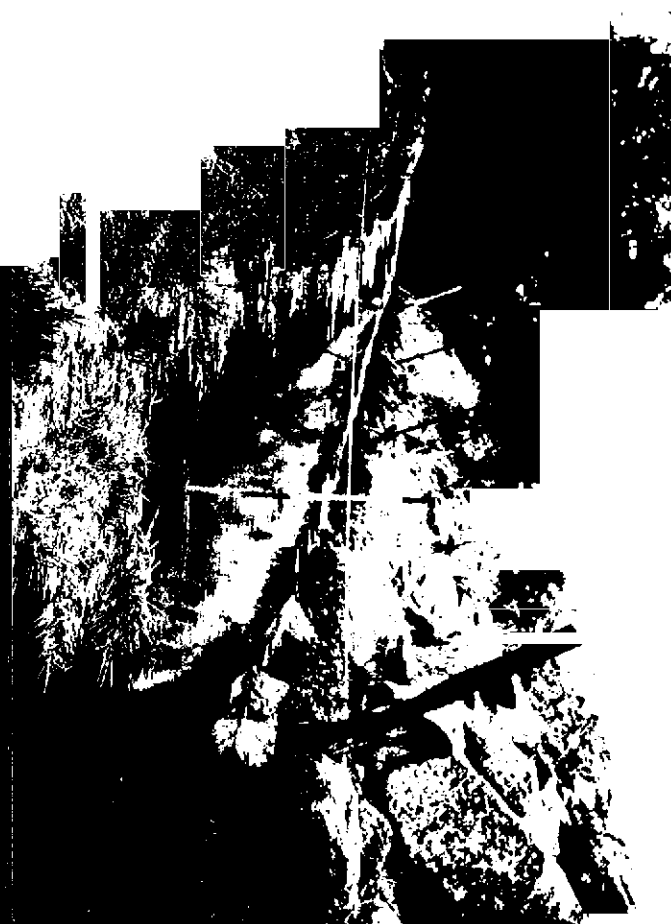
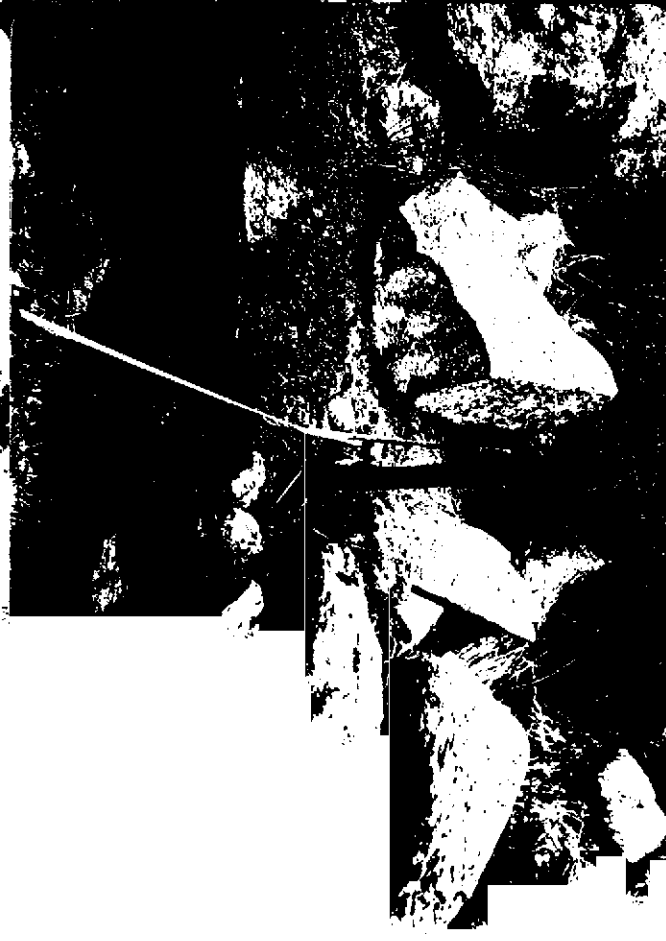
INDICATE QUANTITY DESIRED OPPOSITE NEGATIVE NUMBER

**FOR
ENLARGEMENTS**

5 x 7, 8 x 10 and 11 x 14 available from most size negatives		
NEG. NO.	QUANTITY OF EACH	SIZE

Important

DO NOT CUT FILM — Order by number



5/06/83 - FRAME 4A

T. DAVIS OBJECTION

CROSS SECTION A

SHOVEL MARKS POINT IN DITCH WHERE MAXIMUM WATER - 2³ FEET - IS.

5/06/83 - FRAME 6A

T. DAVIS OBJECTION

CROSS SECTION A

SHOVEL MARKS POINT IN DITCH WHERE BANK SLOPE MEETS BOTTOM OF DITCH. MAXIMUM WATER DEPTH AT THIS POINT IS 12 FEET.

5/06/83 - FRAME 9A

T. DAVIS OBJECTION

FENCE IS CLAIMANT'S UP THE DITCH FROM CROSS SECTION A. PHOTO SHOWS CHARACTERISTICS OF THE DITCH. THIS LOCATION, WATER IS NOT MOVING.

5/06/83 - FRAME 5A

T. DAVIS OBJECTION

CROSS SECTION A

SHOVEL MARKS POINT IN DITCH WHERE BANK SLOPE REACHES BOTTOM DITCH. MAXIMUM WATER DEPTH AT THIS POINT IS 12 FEET.

5/06/83 - FRAME 8A

T. DAVIS OBJECTION

CROSS SECTION A

OVERVIEW LOOKING UP THE DITCH TOWARD B. FK. PAYETTE RIVER. DAVIS FENCE LINE IS ACROSS CENTER.

5/06/83 - FRAME 3A

T. DAVIS OBJECTION

VIEW IS DOWN THE DITCH AT CROSS SECTION A. FIRST TAP FROM DITCH IS TO LEFT FRONT OF PICKUP, AT ARROW. LAND IRRIGATED BY THIS TAP IS JUST ACROSS HIGHWAY TO RIGHT ESSENTIALLY OF WILLOWS IN CENTER. A SPRING OR RUN-OFF WATER IS RESPONSIBLE FOR WATER IN DITCH; ARROW AT LEFT SHOWS ITS ENTRANCE TO DITCH.

REMAINDER OF DITCH CARRIES WATER TO A POND THAT LIFTS WATER FOR LANDS AT NORTH END OF RANCH AND TO THE LANDS SHOWN BELOW TIMBER IN THIS PHOTO.

5/06/83 - FRAME 7A

T. DAVIS OBJECTION

CROSS SECTION A

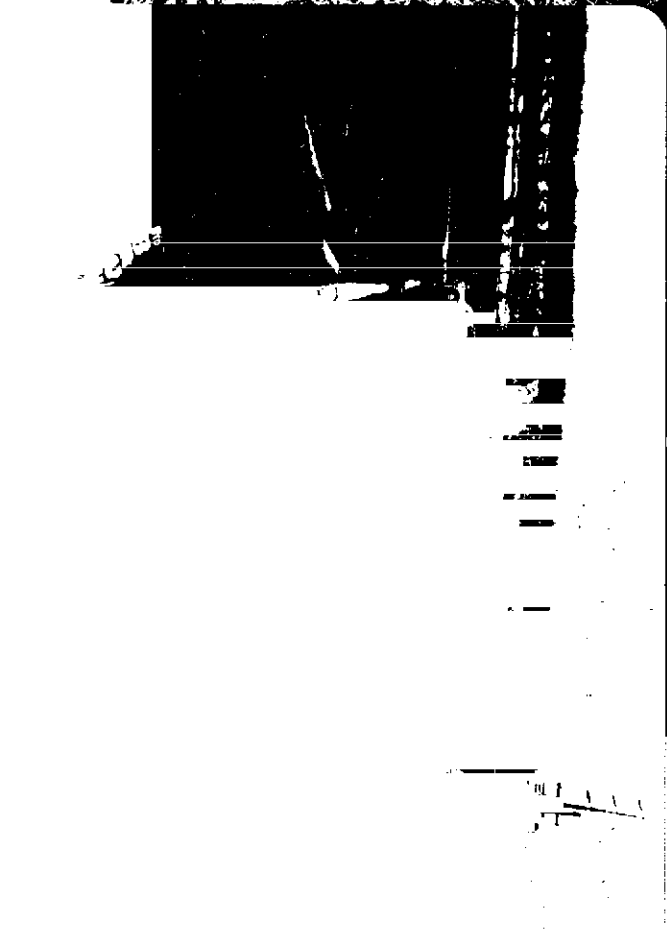
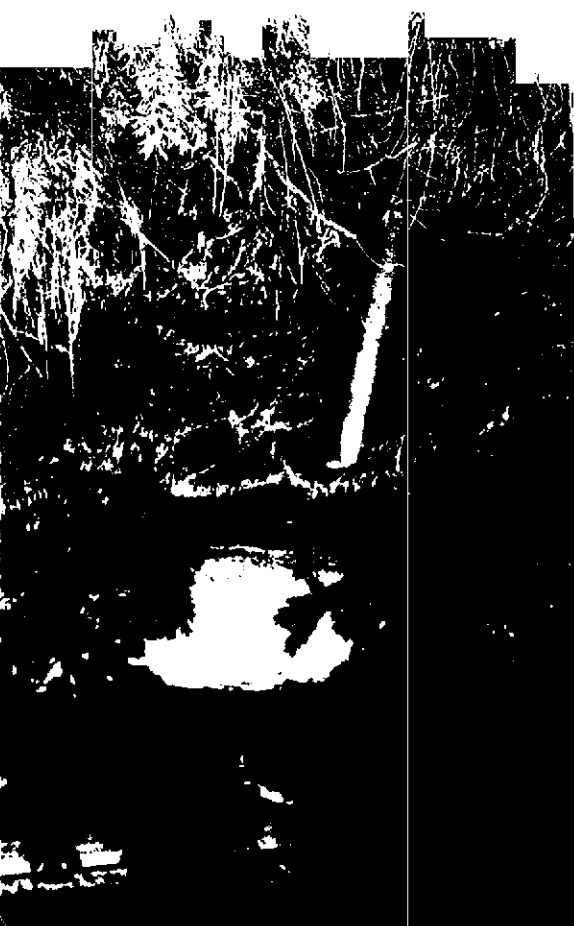
PHOTO TO ILLUSTRATE HIGH WATER MARK ON LEFT BANK OF DITCH.

5/06/83 - FRAME 2A

T. DAVIS OBJECTION

CLAIMANT'S DITCH FROM OLD PENSTOCK. ARROWS INDICATE POINTS OF HIGH WATER SHOWN BY VEGETATION, SOIL AND - MOST PARTICULARLY BY DISCOLORATION ON LARGE ROCK IN LOWER RIGHT NEXT TO FENCE POST. DISTANCE ACROSS DITCH AT HIGH WATER MARK IS 12 FEET.

POINT IS CROSS SECTION A, NWNW, S. 25, T14N, R3E.



5/06/83. FRAME 10A T. DAVIS OBJECTION

POINT ON DITCH BETWEEN CROSS SECTION A AND RELIFT PUMP #1. DISTANCE ON TAPE IS 20 FEET. AVERAGE VELOCITY WAS 0.53 feet/second. (SEE SHEET "FIELD MEASUREMENTS 5/06/83." WATER IS FROM SOURCE DESCRIBED ON PHOTO 3A.

5/06/83 FRAME 14A

T. DAVIS OBJECTION

POINT WHERE MAIN DITCH CROSSES HIGHWAY. NENW, S. 25, T14N, R3E

5/06/83. FRAME 11A

T. DAVIS OBJECTION

RELIFT PUMP #1 ON CLAIMANT'S DITCH.

5/06/83. FRAME 15A

T. DAVIS OBJECTION

"RIVER" DITCH AT CORNER OF WARM LAKE RD (PICTURE) AND HIGHWAY 55. RELIFT PUMP #2 TO RIGHT OF PICKUP. NENW, S. 25, T14N, R3E

5/06/83. FRAME 12A

T. DAVIS OBJECTION

RELIFT PUMP #1 & PIPELINE TO "RAILROAD DITCH."

5/06/83. FRAME 16A

T. DAVIS OBJECTION

RELIFT PUMP #2 NEAR CORNER OF WARM LAKE RD & HIGHWAY 55. NENW, S. 25, T14N, R3E.

5/06/83. FRAME 13A

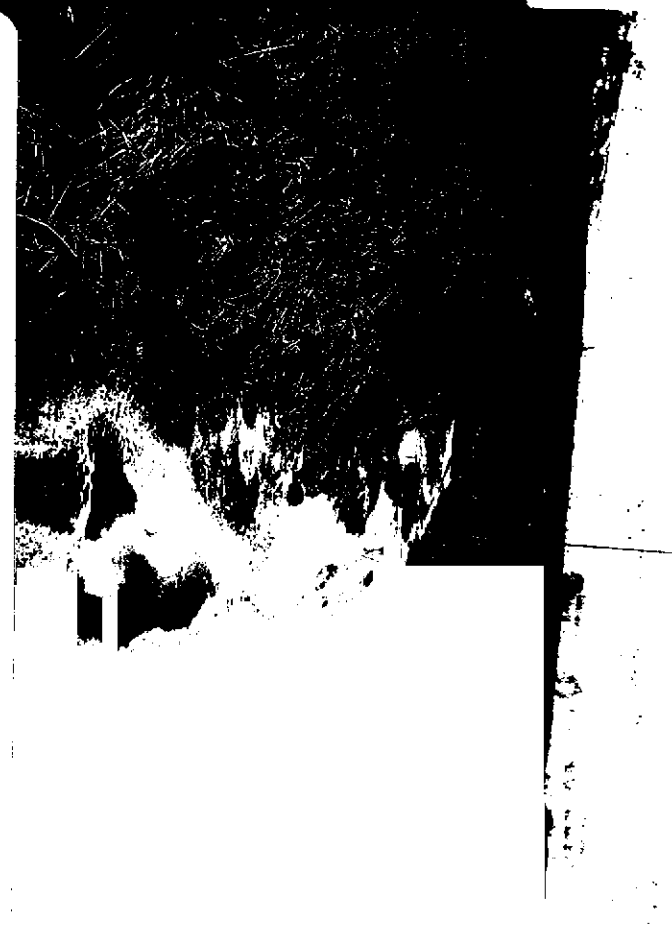
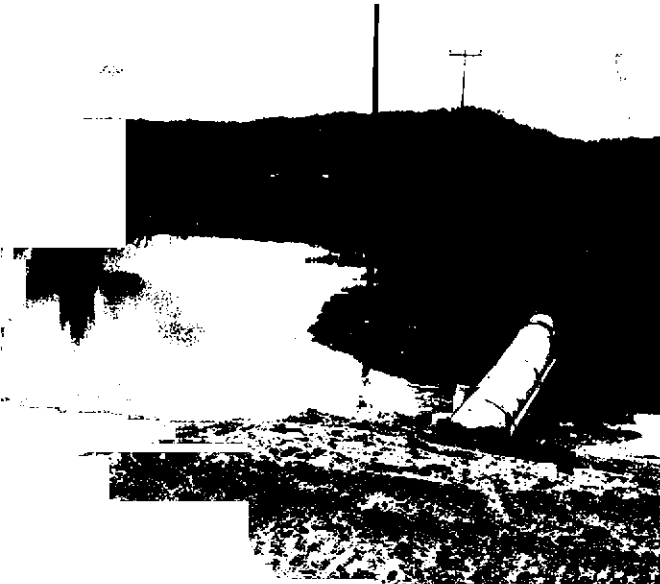
T. DAVIS OBJECTION

DISCHARGE FROM RELIFT PUMP #1 INTO "RAILROAD DITCH."

5/06/83. FRAME 17A

T. DAVIS OBJECTION

DISCHARGE FROM PIPE FOR RELIFT PUMP #2 BEHIND PICKUP. SESW, S. 24, T14N, R3E.



5/06/83. FRAME 18A

T. DAVIS OBJECTION

DITCH ALONG HIGHWAY 55 FROM PIPE
DISCHARGE OF RELIFT PUMP #2.

5/06/83. FRAME — (25)

T. DAVIS OBJECTION

VIEW DOWNSTREAM OF "RIVER BOTTOM"
DITCH IN SESW S. 30, T14N, R4E, FROM
BEAVER CREEK CROSSING.

5/06/83 - FRAME 19A

T. DAVIS OBJECTION

APPARENTLY THE GATE VALVE THAT CONNECTED
TO THE POWER COMPANY'S REDWOOD PENSTOCK.
STAKES WERE USED AROUND PLATE AT REAR
TO SECURE PIPELINE TO PENSTOCK.

LOCATION IS HAYBARN ALONG WARM LAKE RD.
IN NWNE, S. 25, T14N, R3E.

5/06/83 - FRAME 20A

T. DAVIS OBJECTION

LOOKING UP "RIVER BOTTOM" DITCH IN
NWNE, S. 31, T14N, R4E, EAST OF
BEAVER CREEK

5/06/83. FRAME 23A

T. DAVIS OBJECTION

BEAVER CREEK CROSSING FOR "RIVER
BOTTOM" DITCH. LOCATION IS SESW, S. 30,
T14N, R4E, VIEW IS UPSTREAM.

5/06/83 - FRAME 21A

T. DAVIS OBJECTION

12" CULVERT IN "RIVER BOTTOM" DITCH,
LOOKING UPSTREAM, IN NWNE, S. 31,
T14N, R4E.

5/06/83. FRAME 24A

T. DAVIS OBJECTION

BEAVER CREEK CROSSING FOR "RIVER
BOTTOM" DITCH IN SESW, S. 30, T14N,
R4E. VIEW IS UPSTREAM.

5/06/83. FRAME 22A

T. DAVIS OBJECTION

LOOKING DOWN THE "RIVER BOTTOM"
DITCH; 12" CULVERT AT ROAD CROSS IS IN
NWNE, S. 31, T14N, R4E,