

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHT PROFILE REPORT

WR5809NP
No. 63-02063

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	DANIEL KIRBY ATLANTA ID 83601	10/07/1907	POWER	00/00 00/00	200.000 CFS	200.000 CFS
TOTAL DIVERSION:					200.000 CFS	

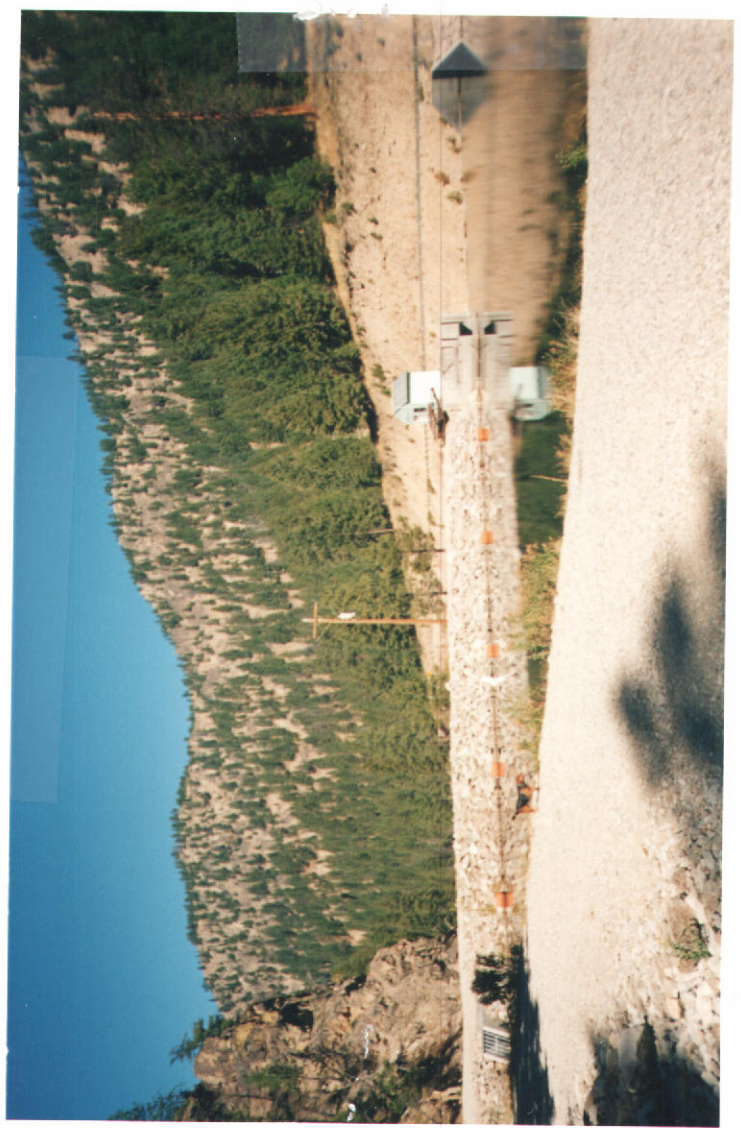
Water Source: MIDDLE FORK, BOISE RIVER Tributary to: BOISE RIVER Stage: LICENSE
Point(s) of Diversion: T05N R11E S05 NENE ELMORE County

Pou County:

Remarks: GEN P/U & P/D INCOMPLETE. SEE FILE.
WATER USE FOR POWER PLANT TO OPERATE MINING & MILLING PROJECT.

Dates: App. Received: Priority Date: 10/07/1907
Proof Due Date: Proof Made Date:
Exam Made Date: Exam Sent to S.O.:
Licensed Date: 08/21/1979

Misc: Water District Number: 63 Field Exam Fee:



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: A63-02063
Date Received: 9/15/1998
Receipt No: W024392
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: ATLANTA POWER COMPANY 208-764-2310
Address: PO BOX 100
FAIRFIELD ID 83327

2. Date of Priority: OCT 7, 1907

3. Source: BOISE RIVER, MIDDLE FORK Trib. to: BOISE RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
05N	11E	5		NE	NE		ELMORE

5. Description of diverting works:
SEE REMARKS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
POWER	01/01	12/31	200.000		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
POWER, SERVES COMMUNITY OF ATLANTA, IDAHO AND VICINITY

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
05N	11E	2				POWER	
		3				POWER	
		4				POWER	
		5				POWER	

10. Place of Use: Continued

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
05N	11E	11			POWER	
06N	11E	35			POWER	

11. Place of use in counties: ELMORE

12. Do you own the property listed above as place of use? NO

13. Other Water Rights Used:

14. Remarks:

DESC. OF DIVERTING WORKS: EXISTING DIVERSION IS FROM A ROCK FILLED DAM ACROSS THE MIDDLE FORK BOISE RIVER BELOW ITS CONFLUENCE WITH THE YUBA RIVER. WATER IS DIVERTED INTO A 60" FLUME FOR APPROX. 360' INTO A 24' X 40' HEADBOX, FROM WHICH IT FLOWS THROUGH A 36" PENSTOCK TO THE POWERHOUSE TO DRIVE A 250 HP FRANCIS TURBINE. THE ORIGINAL KIRBY DAM WASHED OUT IN 1991 AND WAS REPLACED BY THE EXISTING DAM IN 1992.

REMARKS FROM THE CLAIM: ATLANTA POWER COMPANY ACQUIRED ALL RIGHT TITLE AND INTEREST IN THIS HYDROPOWER RIGHT IN 1985 FROM HAROLD LANNING VIA WARRANTY DEED, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT A(NOTE-NO WARRANTY DEED WAS ATTACHED TO THIS CLAIM).

DIVERSION AND USE OF WATER UNDER THIS WATER RIGHT IS SUBJECT TO SUBORDINATION TO A WATER RIGHT TO BE HELD BY THE STATE OF IDAHO, DEPARTMENT OF FISH AND GAME FOR FISH PASSAGE AT KIRBY DAM, SUCH SUBORDINATION TO BE IN THE AMOUNTS AND DURING THE PERIODS PROVIDED BY THAT CERTAIN AGREEMENT BY AND BETWEEN ATLANTA POWER COMPANY, INC. AND THE STATE OF IDAHO, DEPARTMENT OF FISH AND GAME GOVERNING OWNERSHIP AND OPERATION OF KIRBY DAM FISH LADDER DATED EFFECTIVE JULY 31, 1998.

15. Basis of Claim: LICENSE

Water Right Number: 3188

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 _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): _____ Date: _____
_____ Date: _____

State of Idaho)
County of _____) SS.

Subscribed and sworn (or affirmed) before me this _____ day
of _____ 19 _____

Notary Public

Seal

Residing at _____
My Commission Expires _____

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 A63-02063

Date Received

Receipt Number

9-14-98

W024392

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

RECEIVED

SEP 14 1998

WATER RESOURCES
WESTERN REGION

Please type or print clearly

1. Name of Claimant (s) Atlanta Power Company Phone (208) 764-2310
Mailing Address Box 100, Fairfield, Idaho Zip 83327

2. Date of Priority (Only one (1) per claim) October 7, 1907

3. Source of water supply (a) Middle Fork Boise River
which is tributary to (b) Boise River

4. a. Location of existing point of diversion is: Township 5N Range 11E Section 5,
NE 1/4 of NE 1/4 of 1/4, Govt. Lot, B.M., County of Elmore

Additional points of diversion if any: _____

b. If instream flow, beginning point of claimed instream flow is:

Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,

Govt. Lot _____ B.M., County of _____

ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of

_____ 1/4, Govt. Lot _____ B.M., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc), including the dates of any changes or enlargements in use, the dimensions of the diversion works as constructed and as enlarged and the depth of each well. Existing diversion is from a rock-filled dam across the Middle Fork Boise River below its confluence with the Yuba River. Water is diverted into a 60" flume for approximately 360' into a 24' x 40' headbox, from which it flows through a 36" penstock to the powerhouse to drive a 250 hp Francis turbine. The original Kirby Dam washed out in 1991 and was replaced by the existing dam in 1992.

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Power, Mining & Milling purposes from 1-1 to 12-31 amount 200.00 cfs or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) _____ (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is 0 acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) Power serves the community of Atlanta, Idaho and vicinity.

10. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
6N	11E	35																	
5N	11E	2																	
5N	11E	3																	
5N	11E	4					POWER USE FOR ALL SECTIONS INDICATED												
5N	11E	5																	
5N	11E	11																	

Total number of acres irrigated _____

11. In which county (ies) are lands listed above as place of use located? Elmore

12. Do you own the property listed above as place of use? Yes _____ No X
If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.
_____ or None ()

14. Remarks: Atlanta Power Company acquired all right, title and interest in this hydropower right in 1985 from Harold Lanning via Warranty Deed, a copy of which is attached hereto as Exhibit A

(SEE ATTACHED SHEET FOR ADDITIONAL REMARKS)

Last Name Atlanta Power Company Ident No. A63-02063

Copies: White -State, Yellow-Claimant

14. Remarks: (cont.) Diversion and use of water under this water right is subject to subordination to a water right to be held by the State of Idaho, Department of Fish and Game for fish passage at Kirby Dam, such subordination to be in the amounts and during the periods provided by that certain Agreement by and Between Atlanta Power Company, Inc. and the State of Idaho, Department of Fish and Game Governing Ownership and Operation of the Kirby Dam Fish Ladder dated effective July 31, 1998.

15. Basis of Claim (check one) Beneficial Use _____ Posted Notice _____ License ☒ Permit _____

Decree _____

If applicable provide IDWR Water Right Number From License No. 3188 Issued to Daniel Kirby

Court _____ Case Number _____ Decree Date _____

Plaintiff vs 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 _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments _____

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) _____ Date _____

_____ Date _____

For Organizations: I do solemnly swear or affirm that I am President

Title

of Atlanta Power Company, that I have signed the foregoing

Organization

document in the space below as its authorized signator of _____

Title

Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent

Lyman P. Stevenson

Title and Organization President, Atlanta Power Company

Date 9-14-98

State of Idaho/or _____)

County of ADA)

SS.

Subscribed and sworn (or affirmed) before me this 14th day of September 19 98

SEAL

Notary Public

Jan Phuntz

Residing at

Meridian ID

My Commission Expires

9-14-2000

Please Print Name

17. Notice of Appearance:

Notice is hereby given that I, _____ will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature _____

Address _____

Date _____

Last Name _____ Ident. Number _____

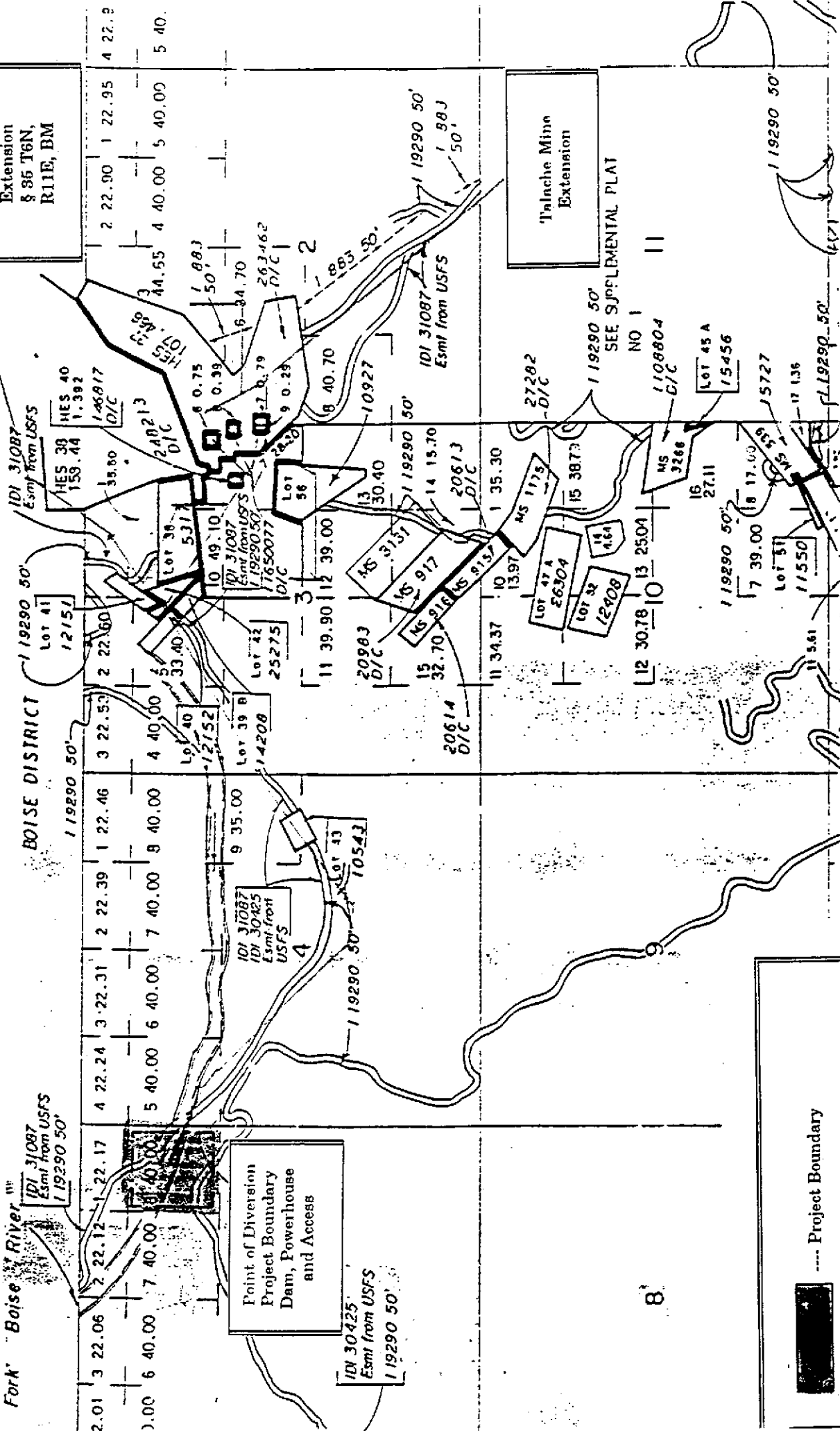
Copies White-State, Yellow-Claimant

Scale: 2 inches equals 1 mile

[illegible]

TOWNSHIP 5 NORTH RANGE 11 EAST OF THE BOISE MERIDIAN

ELMORE COUNTY 039



--- Project Boundary
 --- Transmission corridor 33' wide

 Elmore County *
 Middle Boise River *
 200 sec. ft. *
 Mining & Milling *
 Priority - 10-7-07 *

S T A T E O F I D A H O

Water License No. 3188.

WHEREAS, On the 7th day of October, A. D. 1907, DANIEL KIRBY, of Atlanta, County of Elmore and State of Idaho, duly made application (No. 4447) to me for a permit to use 200 cubic feet per second of the waters of Middle Boise River, County of Elmore, State of Idaho, for mining and milling purposes;

WHEREAS, On the 12th day of October, A. D. 1907, Permit No. 3188 was issued to said applicant for the diversion of said water, and providing for the completion of the works of diversion therein described on or before the 12th day of October, A. D. 1908, and for the application to beneficial use of said water on or before the 12th day of October, A. D. 1909, and,

WHEREAS, On the 3rd day of June, A. D. 1908, the holder of said permit duly made proof of the completion of adequate works for the diversion of 200 cubic feet per second of said waters, as evidenced by my Certificate No. 3188, dated July 13, 1908, confirming the completion of works of sufficient capacity for diverting and conveying to the place of intended use 200 cubic feet per second of water, with date of priority of October 7, 1907, and,

WHEREAS, On the 3rd day of June, A. D. 1908, proof was duly made of the application to beneficial use of 200 cubic feet per second of said water;

NOW, THEREFORE, By virtue of the authority vested in me by the laws of the State of Idaho, I hereby grant and confirm to DANIEL KIRBY, of Atlanta, Idaho, the holder and owner of said Permit No. 3188, a perpetual right, dating from October 7, 1907, to the use of 200 cubic feet per second of the waters of Middle Boise River, in the County of Elmore and State of Idaho, or so much thereof as may be necessary for the purposes hereinbelow mentioned, to be diverted at a point North 70°28' West 1690 feet from point of steep ledge on left bank of river at confluence of Middle Boise and Yuba rivers, and conducted to power house 300 feet below dam, for the purpose of mining and milling, subject, however, to the laws of the State of Idaho applicable to a license for the use of the waters of the State; and subject, also, to the local or community customs, rules and regulations which have been or may be adopted from time to time by a majority of the users from a common source of supply, and from which such water may be taken, when such rules and regulations have for their object the economical use of such water.

WITNESS, My hand and the seal of my office at Boise, Idaho,
 this thirteenth day of July, A. D. Nineteen Hundred and eight.

Jas. Stephenson, Jr.

State Engineer.

(SEAL)

Recorded July 13, 1908.

63 2063
 63 2063

RECEIPT
For Monies Paid
to the
Idaho Department of Water Resources

COPY

Receipt No: W024392

Date: 9/14/1998
Time: 13:22:11

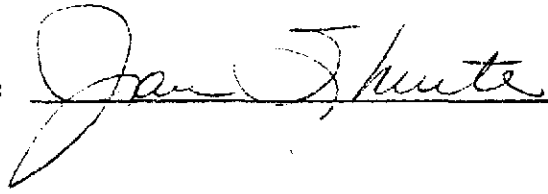
Received
From: ATLANTA POWER CO INC

Type of Payment	Program A cct	Amount
ADJUDICATION CLAIM FEE	41503 337 1155	754.50
CHECK 1035		
	Total	\$ 754.50

A63-02063

Water Right Numbers

Region: WESTERN

Signature: 

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-2063 V1

WATER RIGHT NUMBER: 63-2063 V1

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	ATLANTA POWER CO PO BOX 100 FAIRFIELD, ID 83327 (208)764-2310
Original Owner	DANIEL KIRBY ATLANTA, ID 83601

Priority Date: 10/07/1907

Basis: License

Status: Active

<u>Source</u>	<u>Tributary</u>
MIDDLE FORK BOISE RIVER	BOISE RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
POWER	01/01 to 12/31	200.000 CFS	
	<u>Total Diversion:</u>	200.000 CFS	

Location of Point(s) of Diversion

MIDDLE FORK BOISE RIVER ELMORE County	NE1/4NE1/4	Sec. 5, Twp 05N, Rge 11E, B.M.
--	------------	--------------------------------

Place of UseConditions of Approval:

1. 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 AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.

Remarks:

1. Place of Use POWER USE SERVES THE COMMUNITY OF ATLANTA, IDAHO.

Comments:Dates and Other Information:

NOTE: Deleted subordination clause per DRT.
JP

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-2063 V1

Dates and Other Information:

Decreed Date:
Enlargement Use Priority Date:
Enlargement Statute Priority Date:
Defendant:
Plaintiff:
Civil Case Number:
Judicial District:
Notice of Error Flag:
State or Federal: S
Owner Name Connector:
Water District Number: 63
Generic Max Rate Per Acre:
Generic Max Volume Per Acre:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Carey Act Number:
Mitigation Plan: False

08/06/2002

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-2063

NAME AND ADDRESS: ATLANTA POWER CO
PO BOX 100
FAIRFIELD ID 83327

SOURCE: MIDDLE FORK BOISE RIVER

TRIBUTARY: BOISE RIVER

QUANTITY: 200.00 CFS

PRIORITY DATE: 10/07/1907

POINT OF DIVERSION:

T05N R11E S5 NENE Within ELMORE County

PURPOSE AND

PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

POWER

01/01 12/31

200.000 CFS

PLACE OF USE:

POWER USE SERVES THE COMMUNITY OF ATLANTA, IDAHO.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE WATER RIGHT ACQUIRED UNDER THIS RIGHT FOR HYDROPOWER PURPOSES SHALL BE JUNIOR AND SUBORDINATE TO ALL RIGHTS TO THE USE OF WATER, OTHER THAN HYDROPOWER, WITHIN THE STATE OF IDAHO THAT ARE INITIATED LATER IN TIME THAN THE PRIORITY OF THIS RIGHT AND SHALL NOT GIVE RISE TO ANY RIGHT OR CLAIM AGAINST FUTURE RIGHTS TO THE USE OF WATER, OTHER THAN HYDROPOWER, WITHIN THE STATE OF IDAHO INITIATED LATER IN TIME THAN THE PRIORITY OF THIS RIGHT.

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 AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.

EXPLANATORY MATERIAL: License

02/28/2002

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-2063

NAME AND ADDRESS: ATLANTA POWER COMPANY
PO BOX 100
FAIRFIELD ID 83327

SOURCE: MIDDLE FORK BOISE RIVER

TRIBUTARY: BOISE RIVER

QUANTITY: 200.00 CFS

PRIORITY DATE: 10/07/1907

POINT OF DIVERSION:

T05N R11E S5 NENE Within ELMORE County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

POWER

01/01 12/31

200.000 CFS

PLACE OF USE:

POWER USE SERVES THE COMMUNITY OF ATLANTA, IDAHO.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE WATER RIGHT ACQUIRED UNDER THIS PERMIT FOR HYDROPOWER PURPOSES SHALL BE JUNIOR AND SUBORDINATE TO ALL RIGHTS TO THE USE OF WATER, OTHER THAN HYDROPOWER, WITHIN THE STATE OF IDAHO THAT ARE INITIATED LATER IN TIME THAN THE PRIORITY OF THIS PERMIT AND SHALL NOT GIVE RISE TO ANY RIGHT OR CLAIM AGAINST FUTURE RIGHTS TO THE USE OF WATER, OTHER THAN HYDROPOWER, WITHIN THE STATE OF IDAHO INITIATED LATER IN TIME THAN THE PRIORITY OF THIS PERMIT. ~~THE SUBORDINATION CONDITION IS INCLUDED IN THIS PRELIMINARY REPORT FOR DISCUSSION PURPOSES. CONCERNS ABOUT THIS INCLUSION SHOULD BE DISCUSSED WITH IDWR STAFF.~~ 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 AS MAY BE ULTIMATELY DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.

} delete for
Director's Rept.
Ja

EXPLANATORY MATERIAL: License

Shurte, Jan

From: Shurte, Jan
Sent: Wednesday, February 27, 2002 6:07 PM
To: Shurte, Jan
Subject: FW: Subordination clause

-----Original Message-----

From: Shurte, Jan
Sent: Wednesday, February 27, 2002 5:31 PM
To: Tuthill, Dave
Subject: Subordination clause

Hi Dave,

Per your phone message it appears we are to add the subordination condition on both the ~~Affowrock~~ ^{Anderson} 3614 and Atlanta 2063. However, we need to add another line basically stating that "The subordination condition is included in this preliminary report only for discussion purposes". Or something like that?

Final one "The subordination condition is included in this preliminary report for discussion purposes. Concerns about inclusion should be discussed with IDWR staff."

Jan

Shurte, Jan

From: Tuthill, Dave
Sent: Wednesday, February 27, 2002 5:06 PM
To: Shurte, Jan
Subject: FW: review of license files 63-2063 and 63-3614 for subordination language

Jan, per my voicemail.

Dave

-----Original Message-----

From: Spencer, Nick
Sent: Tuesday, February 26, 2002 5:00 PM
To: Tuthill, Dave
Subject: FW: review of license files 63-2063 and 63-3614 for subordination language

Dave, filter Vicky's information through what Clive said in his email and let me know your opinion as to how we should handle subordination. NBS

-----Original Message-----

From: Music, Vicky
Sent: Tuesday, February 26, 2002 4:39 PM
To: Spencer, Nick
Subject: review of license files 63-2063 and 63-3614 for subordination language

per your request to review the license files for agreements or license language re subordination of the above rights - sorry it took so long but the 3614 file was a big one.

63-2063

There is no subordination language in the license itself. The license was issued in 1908 for mining and milling purposes. An 8/00 FERC draft Environmental Assessment (EA) states that Atlanta Power file an application with FERC to license the existing hydropower plant. On page 15, the EA refers to an agreement between the IDFG and the applicant wherein the applicant agreed to subordinate a portion of their water right to ensure that flows remain available to IDFG for operation of the fishway. The agreement states that flows through the fishway can vary between a minimum of 3 cfs and a max of 12 cfs.

This agreement is not in the license file nor is there an FPC license.

63-3614

This is a US BOR water right for power and irr from storage [Anderson Ranch Reservoir], and storage for irr and power. This is a huge file and I reviewed most of the documents in it with the exception of the old project maps and the old contracts with various irr companies. I cannot find any subordination language anywhere.

Vicky L. Music
Office of the Attorney General
Paralegal - IDWR
(208) 327-7928

Confidentiality Notice: This e-mail may contain confidential and privileged information exempt from disclosure under applicable law. This message is intended only for the use of the individual or individuals identified above. If you have received this message by mistake, please notify the sender immediately by replying to this message. Please delete the message from your system and do not review, disclose, copy, or distribute any information contained or attached to the

message.. Thank You.

IDAHO DEPARTMENT OF WATER RESOURCES 11/09/2001
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

NAME AND ADDRESS: ATLANTA POWER COMPANY
PO BOX 100
FAIRFIELD ID 83327

SOURCE: MIDDLE FORK BOISE RIVER

TRIBUTARY: BOISE RIVER

QUANTITY: 200.00 CFS

PRIORITY DATE: 10/07/1907

POINT OF DIVERSION:

T05N R11E S5 NENE Within ELMORE County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

POWER

01/01 12/31

200.000 CFS

PLACE OF USE:

POWER USE SERVES THE COMMUNITY OF ATLANTA, IDAHO.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

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 AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.

EXPLANATORY MATERIAL: License

AJ5809NP
No. A63-02063

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT

DATE: 05/22/01
PAGE: 1

OWNER CODE: C
NAME & ADDRESS: ATLANTA POWER COMPANY
PO BOX 100
FAIRFIELD ID 83327
(208) 764-2310
PRIORITY DATE: 10/07/1907
WATER USE: POWER
DIVERSION RATE: 200,000 CFS
DIVERSION VOLUME: 200,000 CFS
TOTAL DIVERSION: 200,000 CFS

Water Source: BOISE RIVER, MIDDLE FORK
Tributary to: BOISE RIVER
Stage: LICENSE

ELMORE County

Point(s) of Diversion: T05N R11E S05 NENE

Place of Use Legal Description for: POWER

NE				NW				SW				SE			
NENE				NNW				NNW				NENE			
Lt				Ac				Lt				Ac			
T	R	S		Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac
05N	11E	2													
05N	11E	3													
05N	11E	4													
05N	11E	5													
05N	11E	11													
06N	11E	35													

POU County: ELMORE

Non-Irrigation Uses: POWER, SERVES COMMUNITY OF ATLANTA, IDAHO AND VICINITY

Remarks: GEN

DESC. OF DIVERTING WORKS: EXISTING DIVERSION IS FROM A ROCK FILLED DAM ACROSS THE MIDDLE FORK BOISE RIVER BELOW ITS CONFLUENCE WITH THE YUBA RIVER. WATER IS DIVERTED INTO A 60" FLUME FOR APPROX. 360' INTO A 24' X 40' HEADBOX, FROM WHICH IT FLOWS THROUGH A 36" PENSTOCK TO THE POWERHOUSE TO DRIVE A 250 HP FRANCIS TURBINE. THE ORIGINAL KIRBY DAM WASHED OUT IN 1991 AND WAS REPLACED BY THE EXISTING DAM IN 1992.
REMARKS FROM THE CLAIM: ATLANTA POWER COMPANY ACQUIRED ALL RIGHT TITLE AND INTEREST IN THIS HYDROPOWER RIGHT IN 1985 FROM HAROLD LANNING VIA WARRANTY DEED, A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT ACNOTE-NO WARRANTY DEED WAS ATTACHED TO THIS CLAIM). DIVERSION AND USE OF WATER UNDER THIS WATER RIGHT IS SUBJECT TO SUBORDINATION TO A WATER RIGHT TO BE HELD BY THE STATE OF IDAHO, DEPARTMENT OF FISH AND GAME FOR FISH PASSAGE AT KIRBY DAM, SUCH SUBORDINATION TO BE IN THE AMOUNTS AND DURING THE PERIODS PROVIDED BY THAT CERTAIN AGREEMENT BY AND BETWEEN ATLANTA POWER COMPANY, INC. AND THE STATE OF IDAHO, DEPARTMENT OF FISH AND GAME GOVERNING OWNERSHIP AND OPERATION OF KIRBY DAM FISH LADDER DATED EFFECTIVE JULY 31, 1998.

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

Misc: Water District Number: 63 Field Inspection Flag: Presumption Flag:

218

DATE: 05/22/01
PAGE: 1

IDAHO DEPARTMENT OF WATER RESOURCES
WATER RIGHT PROFILE REPORT

WR5809NP
No. 63-02063

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	DANIEL KIRBY ATLANTA ID 83601	10/07/1907	POWER	00/00 00/00	200.000 CFS	200.000 CFS
TOTAL DIVERSION:					200.000 CFS	

Stage: LICENSE
ELMORE County

Water Source: MIDDLE FORK, BOISE RIVER
Tributary to: BOISE RIVER
Point(s) of Diversion: T05N R11E S05 NENE

Pou County:

Remarks: GEN P/U & P/D INCOMPLETE. SEE FILE.
WATER USE FOR POWER PLANT TO OPERATE MINING & MILLING PROJECT.

Dates: App. Received: 10/07/1907
Proof Due Date: 10/07/1907
Exam Made Date: 08/21/1979
Licensed Date: 08/21/1979

Misc: Water District Number: 63 Field Exam Fee:



GIVENS PURSLEY LLP

LAW OFFICES

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Kenneth L. Pursley
Gregory J. Vietz
Conley Ward
Steven R. Weeks
Stephanie C. Westermaier

Raymond D. Givens
James A. McClure
OF COUNSEL

RECEIVED
SEP 14 1998
WATER RESOURCES
WESTERN REGION

September 1, 1998

Lynn Stevenson
Atlanta Power Company
P. O. Box 100
Fairfield, Idaho 83327

Matter: Atlanta Power
Our File: 2061-10

Dear Lynn:

Enclosed please find an original Notice of Claim to a Water Right Acquired Under State Law to be filed in the Snake River Basin Adjudication for Atlanta Power water right claim at Kirby Dam. As you will recall, one of the provisions of the Kirby Dam Fish Ladder Agreement between Atlanta Power and the State of Idaho was that Atlanta Power would file a claim for its water right in the SRBA which indicated that the Atlanta Power water right would be subordinated pursuant to the Fish Ladder Agreement. This Notice of Claim does so.

Please sign, date and have the claim notarized where indicated and file the original with the Department. The claim should be filed with the Idaho Department of Water Resources Western Region, 2735 Airport Way, Boise, ID 83705-5082. Also, you will need to submit a filing fee for the claim in the amount of \$810.18 (standard filing fee of \$50.00; \$3.50 per name plate kilowatt charge @ 187 kilowatts = \$654.50; \$50.00 late filing fee). Would you please ensure that the Notice of Claim is filed as soon as possible? Harriett Hensley at the Attorney General's Office has been asking for a copy of the filed claim. Please provide me with a copy for my files.

654.50 - 187KW
50.00 - PLAT FEE
50.00 - LATE FEE
\$ 754.50 TOTAL
NOT \$810.18

September 1, 1998
Page 2

If you have any questions concerning the enclosed, please contact me immediately.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael C. Creamer". The signature is fluid and cursive, with a large loop at the end.

Michael C. Creamer

MCC:dr
Enclosure

2061\10\CORR\STEVENSO.L09

 Elmore County
 Middle Boise River
 200 sec. ft.
 Mining & Milling
 Priority - 10-7-07

Post-it® Fax Note	7671	Date 11/09/01	# of pages 1
To Sue Beck		From Sunny Healey	
Co./Dept.		Co.	
Phone #		Phone #	
Fax #		Fax #	

STATE OF IDAHO

Water License No. 3188.

WHEREAS, On the 7th day of October, A. D. 1907, DANIEL KIRBY, of Atlanta, County of Elmore and State of Idaho, duly made application (To. 4447) to me for a permit to use 200 cubic feet per second of the waters of Middle Boise River, County of Elmore, State of Idaho, for mining and milling purposes; and

WHEREAS, On the 12th day of October, A. D. 1907, Permit No. 3188 was issued to said applicant for the diversion of said water, and providing for the completion of the works of diversion therein described on or before the 12th day of October, A. D. 1908, and for the application to beneficial use of said water on or before the 12th day of October, A. D. 1909, and,

WHEREAS, On the 3rd day of June, A. D. 1908, the holder of said permit duly made proof of the completion of adequate works for the diversion of 200 cubic feet per second of said waters, as evidenced by my Certificate No. 5189, dated July 15, 1908, confirming the completion of works of sufficient capacity for diverting and conveying to the place of intended use 200 cubic feet per second of water, with date of priority of October 7, 1907, and,

WHEREAS, On the 3rd day of June, A. D. 1908, proof was duly made of the application to beneficial use of 200 cubic feet per second of said water;

NOW, THEREFORE, By virtue of the authority vested in me by the laws of the State of Idaho, I hereby grant and confirm to DANIEL KIRBY, of Atlanta, Idaho, the holder and owner of said Permit No. 3188, a perpetual right, dating from October 7, 1907, to the use of 200 cubic feet per second of the waters of Middle Boise River, in the County of Elmore and State of Idaho, or so much thereof as may be necessary for the purposes hereinbelow mentioned, to be diverted at a point North 70°28' West 1690 feet from point of steep ledge on left bank of river at confluence of Middle Boise and Yuba rivers, and conducted to power house 300 feet below dam, for the purpose of mining and milling, subject, however, to the laws of the State of Idaho applicable to a license for the use of the waters of the State; and subject, also, to the local or community customs, rules and regulations which have been or may be adopted from time to time by a majority of the users from a common source of supply, canal or lateral from which such water may be taken, when such rules and regulations have for their object the economical use of such water.

WITNES, My hand and the seal of my office at Boise, Idaho,
 this thirteenth day of July, A. D. Nineteen Hundred and eight.

Jas. Stephenson, Jr.

State Engineer.

(SEAL)

Recorded July 13, 1908.

 62 2063
 62 2063