

AFFIDAVIT OF DANA L. HOFSTETTER
RE: MOTION TO CONSOLIDATE -- 1

(4) Attached hereto as Exhibit B is a true and correct copy of a Deed to the City of Hailey defining and delimiting the City of Hailey's portion of Water Right No. 37-296. The City's portion of 37-296A is well defined as up to the first 131 miner's inches of the waters of Indian Creek during the irrigation season with the remainder of 37-296 belonging to ICROA, under Water Right No. 37-296B.

(5) Attached hereto as Exhibit C is a true and correct copy of the Water Right License for 37-7854 that I obtained from the Idaho Department of Water Resources' ("IDWR") Internet website.

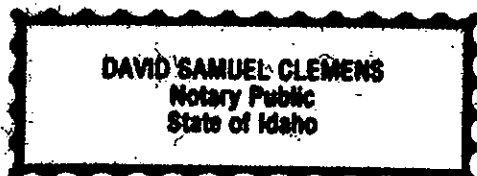
(6) On February 19, 2010, ICROA's Amended SRBA Claim Nos. 37-296B, 37-19740 and 37-21412 were filed with IDWR.

FURTHER YOUR AFFIANT SAYETH NOT.

DATED this 1st day of July, 2010.


Dana L. Hofstetter

SUBSCRIBED AND SWORN to before me this 1st day of July, 2010.




Notary Public in and for the State of Idaho
Residing at: Boise, ID
My Commission Expires: 7/18/2014

CERTIFICATE OF SERVICE

I hereby certify that I caused to be served a copy of the foregoing document (including any attachments) this 1st day of July, 2010, by the pre-paid method(s) indicated below to:

IDWR

Document Depository

P.O. Box 83720

Boise, Idaho 83720-0098

☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Patrick D. Brown

Hutchinson & Brown

104 Lincoln Street

P.O. Box 207

Twin Falls, Idaho 83303

☐ U.S. Mail ☐ Fed Ex ☐ Hand ☒ Fax

Craig Hobdey

P.O. Box 176

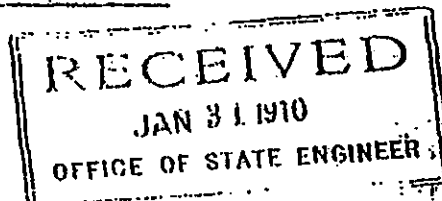
Gooding, Idaho 83330

☒ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax



Dana L. Hofstetter

In the District Court of the Fourth Judicial District
of the
State of Idaho, in and for the County of Lincoln.



B. C. Frost, et al.,

Plaintiffs,

vs.

Alturas Water Company, et al.,

Defendants.

DECREES.

This cause coming on to be heard this 6th day of October,
1909, upon the Report of F. J. Coven, Referee heretofore appointed for
the purpose of taking the testimony and making recommendations as to Find-
ings of Fact, Conclusions of Law and Decree, to be entered herein, and the
said F. J. Coven having filed his Report of the testimony taken, and his
recommendations as to Findings of Fact, Conclusions of Law, which have
heretofore been adopted, and the respective plaintiffs and defendants and
cross-complainants appearing herein by their respective counsel, and the
court being fully informed and advised in the premises, and having ordered
that judgment be entered in accordance with the Report and recommenda-
tions of the said Referee, Wherefore, by reason of the law and the report
and Findings of Fact and Conclusions of Law aforesaid,

It is Ordered, Adjudged and Decreed, that the several parties, plain-
tiffs and defendants herein named, do hereby judgment respectively for

JUN 14 1996

EXHIBIT

A

for use, for irrigation and other purposes, the following number for
water, equal to inches of water to be equivalent to a flow of
one cubic foot per second, as prescribed by the law of Idaho, from the
Bridges, and its tributaries, situated in the
County of Blaine, State of Idaho, their priorities to

as follows:

No.	Name	Date	Priority
1	Soldier Creek	Aug. 18, 1883	1st
2	Big Lost River	June 24, 1883	2nd
3	Big Lost River	June 24, 1883	3rd
4	Big Lost River	June 24, 1883	4th
5	Big Lost River	June 24, 1883	5th
6	Big Lost River	June 24, 1883	6th
7	Big Lost River	June 24, 1883	7th
8	Big Lost River	June 24, 1883	8th
9	Big Lost River	June 24, 1883	9th
10	Big Lost River	June 24, 1883	10th
11	Big Lost River	June 24, 1883	11th
12	Big Lost River	June 24, 1883	12th
13	Big Lost River	June 24, 1883	13th
14	Big Lost River	June 24, 1883	14th
15	Big Lost River	June 24, 1883	15th
16	Big Lost River	June 24, 1883	16th
17	Big Lost River	June 24, 1883	17th
18	Big Lost River	June 24, 1883	18th
19	Big Lost River	June 24, 1883	19th
20	Big Lost River	June 24, 1883	20th
21	Big Lost River	June 24, 1883	21st
22	Big Lost River	June 24, 1883	22nd
23	Big Lost River	June 24, 1883	23rd
24	Big Lost River	June 24, 1883	24th
25	Big Lost River	June 24, 1883	25th
26	Big Lost River	June 24, 1883	26th
27	Big Lost River	June 24, 1883	27th
28	Big Lost River	June 24, 1883	28th
29	Big Lost River	June 24, 1883	29th
30	Big Lost River	June 24, 1883	30th
31	Big Lost River	June 24, 1883	31st
32	Big Lost River	June 24, 1883	32nd
33	Big Lost River	June 24, 1883	33rd
34	Big Lost River	June 24, 1883	34th
35	Big Lost River	June 24, 1883	35th
36	Big Lost River	June 24, 1883	36th
37	Big Lost River	June 24, 1883	37th
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41	Big Lost River	June 24, 1883	41st
42	Big Lost River	June 24, 1883	42nd
43	Big Lost River	June 24, 1883	43rd
44	Big Lost River	June 24, 1883	44th
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71	Big Lost River	June 24, 1883	71st
72	Big Lost River	June 24, 1883	72nd
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91	Big Lost River	June 24, 1883	91st
92	Big Lost River	June 24, 1883	92nd
93	Big Lost River	June 24, 1883	93rd
94	Big Lost River	June 24, 1883	94th
95	Big Lost River	June 24, 1883	95th
96	Big Lost River	June 24, 1883	96th
97	Big Lost River	June 24, 1883	97th
98	Big Lost River	June 24, 1883	98th
99	Big Lost River	June 24, 1883	99th
100	Big Lost River	June 24, 1883	100th

10-20	10-20	220	inches	May 15	1885	Big Moon River
10-21	10-21	30		June 1	1885	
10-22	10-22	75		May 1	1893	
10-23	10-23	100		May 1	1893	
10-24	10-24	80		May 1	1893	
10-25	10-25	80		May 1	1893	
10-26	10-26	80		May 1	1893	
10-27	10-27	80		May 1	1893	
10-28	10-28	80		May 1	1893	
10-29	10-29	80		May 1	1893	
10-30	10-30	80		May 1	1893	
10-31	10-31	80		May 1	1893	
10-32	10-32	80		May 1	1893	
10-33	10-33	80		May 1	1893	
10-34	10-34	80		May 1	1893	
10-35	10-35	80		May 1	1893	
10-36	10-36	80		May 1	1893	
10-37	10-37	80		May 1	1893	
10-38	10-38	80		May 1	1893	
10-39	10-39	80		May 1	1893	
10-40	10-40	80		May 1	1893	
10-41	10-41	80		May 1	1893	
10-42	10-42	80		May 1	1893	
10-43	10-43	80		May 1	1893	
10-44	10-44	80		May 1	1893	
10-45	10-45	80		May 1	1893	
10-46	10-46	80		May 1	1893	
10-47	10-47	80		May 1	1893	
10-48	10-48	80		May 1	1893	
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10-60	10-60	80		May 1	1893	
10-61	10-61	80		May 1	1893	
10-62	10-62	80		May 1	1893	
10-63	10-63	80		May 1	1893	
10-64	10-64	80		May 1	1893	
10-65	10-65	80		May 1	1893	
10-66	10-66	80		May 1	1893	
10-67	10-67	80		May 1	1893	
10-68	10-68	80		May 1	1893	
10-69	10-69	80		May 1	1893	
10-70	10-70	80		May 1	1893	
10-71	10-71	80		May 1	1893	
10-72	10-72	80		May 1	1893	
10-73	10-73	80		May 1	1893	
10-74	10-74	80		May 1	1893	
10-75	10-75	80		May 1	1893	
10-76	10-76	80		May 1	1893	
10-77	10-77	80		May 1	1893	
10-78	10-78	80		May 1	1893	
10-79	10-79	80		May 1	1893	
10-80	10-80	80		May 1	1893	
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10-82	10-82	80		May 1	1893	
10-83	10-83	80		May 1	1893	
10-84	10-84	80		May 1	1893	
10-85	10-85	80		May 1	1893	
10-86	10-86	80		May 1	1893	
10-87	10-87	80		May 1	1893	
10-88	10-88	80		May 1	1893	
10-89	10-89	80		May 1	1893	
10-90	10-90	80		May 1	1893	
10-91	10-91	80		May 1	1893	
10-92	10-92	80		May 1	1893	
10-93	10-93	80		May 1	1893	
10-94	10-94	80		May 1	1893	
10-95	10-95	80		May 1	1893	
10-96	10-96	80		May 1	1893	
10-97	10-97	80		May 1	1893	
10-98	10-98	80		May 1	1893	
10-99	10-99	80		May 1	1893	
10-100	10-100	80		May 1	1893	

of Silver Creek, as of a prior and exclusive right, so long as
it will not obstruct or prevent the waters of Silver Creek
from passing through the Pecos Gate or said Gorge.

Q118 That R. F. Bull and Ross H. Bull are entitled to appropriate
water in their own right, as of a prior and exclusive right, so long
as it will not obstruct or prevent the waters of Silver Creek from
passing through the Pecos Gate or said Gorge, and continue to develop that amount
of water in said right.

Q119 That R. F. Bull and Ross H. Bull are entitled to appropriate a
certain amount of the waters of Silver Creek during the high water season
or at such other times as the waters of said creek are up in the
spring of the year, sufficient to run the mill situated on said
Silver Creek.

Q120

pectively awarded such use in the various actions and decrees to which they are parties, respectively; but that this right shall not be construed to be a double appropriation of the waters of said streams, and wherein the said parties are ~~awarded~~ such amounts in this decree, they and their successors in interest, respectively, shall be entitled to the use of only one of such rights, to-wit: either the right named in said decrees, or the right otherwise awarded in this decree.

It appearing to the court herein that the necessary costs, expenses and disbursements incurred in connection with the taking of the testimony in this action, and in the preparation and filing of the decree herein, together with the necessary costs and expenses of the distribution of the waters of said stream for the season of 1909, amount to the sum of approximately \$2700.00, in addition to the amounts heretofore paid by the respective parties to this action, and that there is filed herewith a tabulated statement apportioning such costs as near as may be among the various claimants and decreed rights in this action,

It is Therefore Further Ordered, that the various parties, plaintiffs and defendants herein, pay to the Clerk of this court the respective amounts set opposite their names in the said statement, for which execution may issue herein.

And it is Further Ordered, that none of the parties hereto, or their successors in interest, shall be entitled to the use of any water under the terms of this decree until the respective amounts as assessed in said statement shall be paid into court.

And it is Further Ordered, that each party hereto shall pay his own necessary costs for witnesses and other individual expenses.

Dated at Pocatello, Idaho, December 13th, 1909.

Alfred H. [Signature]

Presiding Judge.

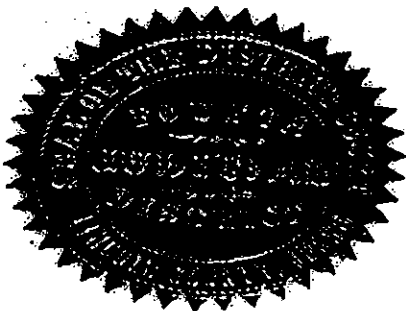
JUN 04 1996
-31-

State of Idaho :
County of Lincoln. : ss.

I, Harry W. Anderson, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Lincoln, do hereby certify that the foregoing is a true and correct copy of the original DECREE in the water case entitled "S.C. Frost, et al., Plaintiffs vs. Alturas Water Company, et al., Defendants," as filed by me on December 17, 1909, and recorded in book one Civil Judgement Record at page 159 and now on file in my office.

Given under my hand and the seal of said Court, this seventeenth day of December, A.D. 1909

Harry W. Anderson
Clerk



RECORDED
JUN 04 1996

5

39-NX

In the District Court of the Fourth Judicial District
of the
State of Idaho, in and for the County of Blaine.

A. Caldwell and Alturas Water Company,

Plaintiffs,

vs.

S. M. Tucker, Nancy M. Tucker, S. T. Tucker, Emma,

C. Tucker, George H. Knight, I. I. Lewis, and

Henry Guyer,

Defendants.

))) - - - - - (((

This cause came on regularly to be tried before the Court and a jury. The plaintiffs appeared by their counsel, F. E. Ensign and G. M. Parsons, and all of the defendants, except Lewis and Guyer, who did not answer nor appear at the trial, by their counsel, Lytleton Price and L. L. Sullivan. A general verdict was rendered against the plaintiffs and the jury also rendered a special verdict of facts submitted to it. The cause being thereupon argued and submitted to the Court for its decision and judgment and the Court being fully advised, after due deliberation it decided the same and filed its decision in writing and its findings of fact and conclusions of law. Wherefore, by reason of the law and the ~~facts~~ premises, it is ordered, adjudged and decreed: JUN 05 1996

That the defendant, Nancy M. Tucker, is the owner and entitled to the possession and use of all the waters of Indian Creek, a stream flowing into the Easterly side of Wood River Valley about 19 miles

above the town of Hailey, in Blaine County, Idaho. That neither of the plaintiffs has any right, title or interest in or to said water or any part thereof. ³⁷⁻¹²¹⁶ EXCEPT AND PROVIDED, however, that the Alturas Water Company has the right and is entitled to the use, during that part of the year when said waters are not necessarily and ~~properly~~ properly used and in use for the purpose of irrigation on the lands of said Nancy M. Tucker and the lands lying along said creek above the reservoir of said water company, of as much of said water as its pipe line will now convey from its said reservoir delivered through its system of mains and service connections to the town of Hailey which is hereby adjudged and decreed to it, to be used by it in said quantity and at the time stated. ^{12 P 98} 37-G-Frost Decree

It is further ordered that the defendants have and recover their costs and disbursements expended herein, taxed at Sixty eight & 90/100 dollars.

Dated, December 24, 1900.

C. O. Stockslager,

District Judge.

Certificate of True Copy.

STATE OF IDAHO,

County of Blaine, } ss.

I, W. F. Morse

Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Blaine, do hereby certify that the foregoing is a true and correct copy of the original Decree

in the above entitled action now on file of record in my office. Given under my hand and the seal of said Court, at office in Hailey, this, the 21st

day of July A.D. 1904

Attest:

By Geo. A. McLeod

Deputy

Clerk.

JUN 05 1996

JUN 05 1996

WEST COAST POWER CO. TO CITY OF HAILLEY

THIS INDENTURE, made this 31st day of August, 1944, between West Coast Power Company, a corporation, the party of the first part, and City of Hailley, a municipal corporation organized under the general laws of Idaho, the party of the second part

W I T N E S S E T H:

That the said party of the first part, for and in consideration of the sum of Ten Dollars and other valuable consideration to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, and convey unto the said party of the second part, and to its successors and assigns forever, all of the following described real property and interests in real property situate, lying, and being in the County of Blaine, and State of Idaho, particularly described as follows, to-wit:

The following described property in the southeast Quarter of the Northwest Quarter (SE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 9, Township 2 North, Range 18 East, Boise Meridian, to-wit: Commencing at the northwesterly corner of Lot 1, Block 54, Revised Plat of the Town (now City) of Hailley, running thence southwesterly on the southerly line of Silver Street, if extended, 150 feet to the initial point and point of beginning of the tract to be described; thence southeasterly at right angles with said Silver Street, if extended, 50 feet; thence southwesterly parallel with said Silver Street, if extended, 55 feet; thence northwesterly at right angles 50 feet to the southerly line of said Silver Street, if extended; thence northeasterly on the southerly line of said Silver Street, if extended, 55 feet, to the point of beginning; otherwise described as Tax Lot No. 14, in said section, on the tax records and records in the office of the county recorder of said County of Blaine.

Also the right to the use of the first 131 miner's inches flowing from the springs forming the sources of Indian Creek identified as a portion of the water of said creek decreed to Hailley Water & Power Company, by judgment entered in the District Court of the Fourth Judicial District of the State of Idaho in and for Lincoln County, in a case entitled "S. C. Frost et al v. Alturas Water Company et al.", commonly known as the Big Wood River Water Suit, said decree being recorded in Book 6 of Judgments at page 447 thereof among the records of Blaine County, Idaho. Also certain easements at Indian Springs and for underground conduits therefrom as set forth in

- (1) Triplicate original Contract for Easements with R. E. and Thet Buttram, Hailley, Idaho, dated March 11, 1930;
- (2) Certified copy of Right of Way Deed from R. E. and Thet Buttram, Hailley, Idaho, and State of Idaho through the State Department of Land Commissioners, dated April 17, 1930;
- (3) Original Agreement with R. E. and Thet Buttram, Hailley, Idaho, dated May 16, 1935, modifying above-mentioned right of way deed of April 17, 1930.

Also that certain easement for pipe line purposes granted May 14, 1935, by the Board of County Commissioners of Blaine County to West Coast Power Company, its successors and assigns.

together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the

EXHIBIT

B

Blaine No. 5206

said properties and premises, and every part and parcel thereof, with the appurtenances.

(Subsection f of Sec. 1808 of subchapter a of Chapter 11 of Chapter 31 of the I. R. Code provides that revenue stamps are unnecessary.)

TO HAVE AND TO HOLD, All and singular the said properties and premises, together with the appurtenances, unto the said party of the second part, its successors and assigns, forever.

IN WITNESS WHEREOF, the said party of the first part has caused this Indenture to be executed by its Vice President, and attested and its corporate seal thereunto affixed by its Secretary, both thereunto duly and fully authorized by the said party of the first part, on the date first above written.

(Corporate Seal)

WEST COAST POWER COMPANY

Attest: R. Kilday, Secretary.

By V. D. Vickery Vice President

STATE OF NEW YORK }
County of New York) ss.

On this 31st day of August, in the year 1944, before me, A Notary Public, personally appeared V. D. Vickery and R. Kilday, known to me to be respectively the Vice President and Secretary of West Coast Power Company, the corporation that executed the foregoing instrument, or the persons who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

(Notarial Seal)

William D. Harrington
Notary Public, Westchester County
Certificates filed in N. Y. Co. Clerk's
No. 909, Reg. No. 5738-5
Commission expires March 30, 1945

Filed for record at the request of J. J. McFadden at 3:00 o'clock P. M., September 22, 1944.

E. F. Thamm, Ex-officio Recorder.

No. 87589

WARRANTY DEED

WALTER LEE GALLIHER ET UX. TO O. W. GALLIHER ET UX.

THIS INDENTURE, made the 19th day of August, in the year of our Lord one thousand nine hundred and forty-three.

BETWEEN WALTER LEE GALLIHER and MARGARET GALLIHER, Husband and Wife, the parties of the first part, and O. W. GALLIHER and ELLA L. GALLIHER, Husband and Wife, the parties of the second part:

WITNESSETH: That the said parties of the first part, for and in consideration of the sum of One and - - - no/100 DOLLARS, and other valuable consideration, to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, do - - by these presents grant, bargain, sell, convey and confirm unto the said parties of the second part, and to their heirs and assigns forever, all those certain lots, pieces, or parcels of land situate, lying and being in the City of Hailey, County of Blaine, State of Idaho bounded and particularly described as follows, to-wit:

Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7) and Eight (8) in Block Sixty-four (64) in the City of Hailey, according to the official plat of said City of Hailey now on file in the office of the County Recorder of Blaine County, State of Idaho.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the rents, issues and profits thereof.

TO HAVE AND TO HOLD, all and singular, the above mentioned and described premises, together with the appurtenances, unto the said parties of the second part, and to their heirs and assigns forever. And the said parties of the first part, and their heirs, executors and administrators, the said premises in the quiet and peaceable possession of the said parties of the second part, their heirs and assigns, against the said parties of the first part, and their heirs, executors and administrators, and against all and every person or persons whomsoever, lawfully claiming or to claim the same, shall and will WARRANT, and by these presents forever DEFEND.

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 37-07854

Priority: July 23, 1980

Maximum Diversion Rate: 3.38 CFS
Maximum Diversion Volume: 2,450.0 AF

It is hereby certified that CITY OF HAILEY
115 S MAIN ST # H
HAILEY ID 83333 has complied with the terms and
conditions of the permit, issued pursuant to Application for Permit dated July 23, 1980; and has
submitted Proof of Beneficial Use on October 25, 1985. An examination indicates that the works have a
diversion capacity of 3.38 cfs of water from:

SOURCE

INDIAN CREEK SPRING

Tributary: BIG WOOD RIVER

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
POWER	01/01 to 12/31	3.38 CFS	2,450.0 AF

LOCATION OF POINT OF DIVERSION:

INDIAN CREEK SPRING SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 23, Twp 03N, Rge 18E, B.M., BLAINE County

PLACE OF USE: POWER

Twp Rge Sec	NE	NW	SW	SE	Totals
03N 18E 33	NE NW SW SE	NE NW SW SE	NE NW SW SE	NE NW SW SE	
	X				

CONDITIONS OF APPROVAL

1. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
2. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 37.
3. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
4. The diversion and use of water for hydropower purposes under this license is subject to review by the Director on or after June 14, 2020. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.
5. The rights for the use of water confirmed in this license shall be junior and subordinate to all rights for 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 any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this right.

EXHIBIT

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State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 37-07854

6. Use of water under this right shall be non-consumptive.
7. Rights 37-00296, 37-00717 and 37-01216 are also diverted through the point of diversion described above.
8. This right does not grant any right-of-way or easement across the land of another.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed and sealed this 30th day of September, 2005.


for **KARL J. DREHER**
Director