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APR 11 2006

DEPARTMENT OF
WATER RESOURCES

April 11, 2006

Karl Dreher, Director
Idaho Department of Water Resources
322 E Front Street
P.O. Box 83720
Boise, ID 83720-0098

Re: Water Right Permit Nos. 01-7054, 37-7842, and Water Right Licenses
enumerated in the Swan Falls Water Right Agreement, dated October 25, 1984
and ratified by Idaho Code § 42-203B(5)

Dear Director Dreher:

The State of Idaho and Idaho Power Company have entered into the attached Stipulation dated April 11, 2006, which recognizes that the hydropower water rights listed in the Swan Falls Agreement are subordinate to Water Right Permit Nos. 01-7054 and 37-7842. We request that this Stipulation be filed in each of the relevant water right files and that you take such action as is necessary to reflect the Stipulation in each of the enumerated water rights.

Sincerely,



LAWRENCE G. WASDEN,
Attorney General
State of Idaho



JAMES C. TUCKER
Attorney for Idaho Power Company

Attachment

STIPULATION

The Idaho Power Company and the State of Idaho ("State") hereby stipulate and agree, by and through their respective undersigned counsel, as follows:

- 1) Stipulation Regarding Water Right Permit Nos. 01-7054 and 37-7842: Recognizing that Water Right Permit Nos. 01-7054 and 37-7842 are subject to the Swan Falls Settlement –
 - a) The Company agrees that its water rights are subordinated to water rights nos. 01-7054 and 37-7842 pursuant to the terms of the Swan Falls Agreement and will neither contest nor otherwise oppose the exercise of those water rights on the basis of priority, the Swan Falls Agreement, or I.C. §§ 42-234, 42-4201 and 42-4201A. The Company further agrees that those water rights may be exercised in a manner consistent with state law.
 - b) The parties agree that all provisions of the Swan Falls Agreement and the implementing legislation shall continue to apply to Water Right Permit Nos. 01-7054 and 37-7842, including I.C. §§ 61-539 and 61-540 for the benefit of Idaho Power Company.
 - c) The parties further agree that in the event that the Idaho Water Resource Board (IWRB) seeks to have said permits licensed or decreed, that the Company will not file a protest or objection in such proceedings, but that the State, in recognition of its obligations under the Swan Falls Agreement and state law, through the Idaho Department of Water Resources (IDWR), will appropriately investigate such permits to ensure that they meet applicable requirements and that the licensed or decreed water rights fully comply with state law.
- 2) Further Proceedings Relating to the Swan Falls Agreement. The parties agree that in the event that there are disagreements or disputes between the parties as to the interpretation or application of the Swan Falls Agreement that they will endeavor to resolve those disagreements through informal discussions and negotiation. In the event that the parties are unable to resolve

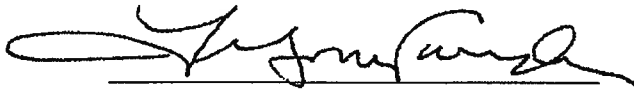
any such disagreements to their mutual satisfaction, either party, after notice to the other, may file a petition for declaratory relief with a court of appropriate jurisdiction to have the disagreement resolved and the Swan Falls Agreement interpreted and neither this Stipulation nor I.C. §§ 42-234, 42-4201, or 42-4201A shall act as a bar to the filing of such action.

- 3) Request for Recognition of the Stipulation. The parties agree to submit this Stipulation in all administrative and judicial proceedings involving the recognition of Water Right Permit Nos. 01-7054 and 37-7842 and to jointly present affidavits and such other evidence as may be required for the recognition of the Stipulation.
- 4) Defense of Stipulation. The parties agree to jointly support and defend the terms of the Stipulation against any and all objections or other challenges that may arise against the terms of the Stipulation in any administrative or judicial proceeding.
- 5) Stipulation Does Not Affect Statutory or Regulatory Authority. The parties agree that nothing in this Stipulation shall be construed or interpreted to affect the authority of the State as provided by constitution, statute or regulation. Nor shall this Stipulation be construed or interpreted to affect the rights of any person not a party to the Stipulation.
- 6) Stipulation Not to be Used Against Parties. Except as provided herein, neither party by entry into this Stipulation waives any legal position or arguments it may have regarding any legal disputes that may exist between the parties. Nothing in this Stipulation shall be construed as an admission against interest or tendered or used as evidence to support or oppose any party's claims or objections in any administrative or judicial proceeding, other than those seeking approval of the Stipulation, for interpretation, enforcement or administration of this Stipulation or for a purpose contemplated by Idaho Rule of Evidence 408.

- 7) Stipulation is Binding. The terms of this Stipulation shall bind and inure to the benefit of the respective successors of the parties.
- 8) Mutual Covenants of Authority. The parties represent and acknowledge that each of the undersigned is authorized to execute this Stipulation on behalf of the party they represent.
- 9) Non-Severability. The provisions of this Stipulation are not severable.
- 10) Triplicate Originals. This Stipulation is executed in triplicate. Each of the three Stipulations with an original signature of each party shall be an original.

The parties have executed this Stipulation on the date following their respective signatures.

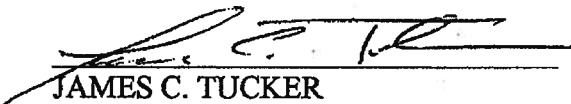
FOR THE STATE OF IDAHO, including THE IDAHO WATER RESOURCE BOARD:



LAWRENCE G. WASDEN,
Attorney General
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449
(208) 334-4126

Date: 4/11/06

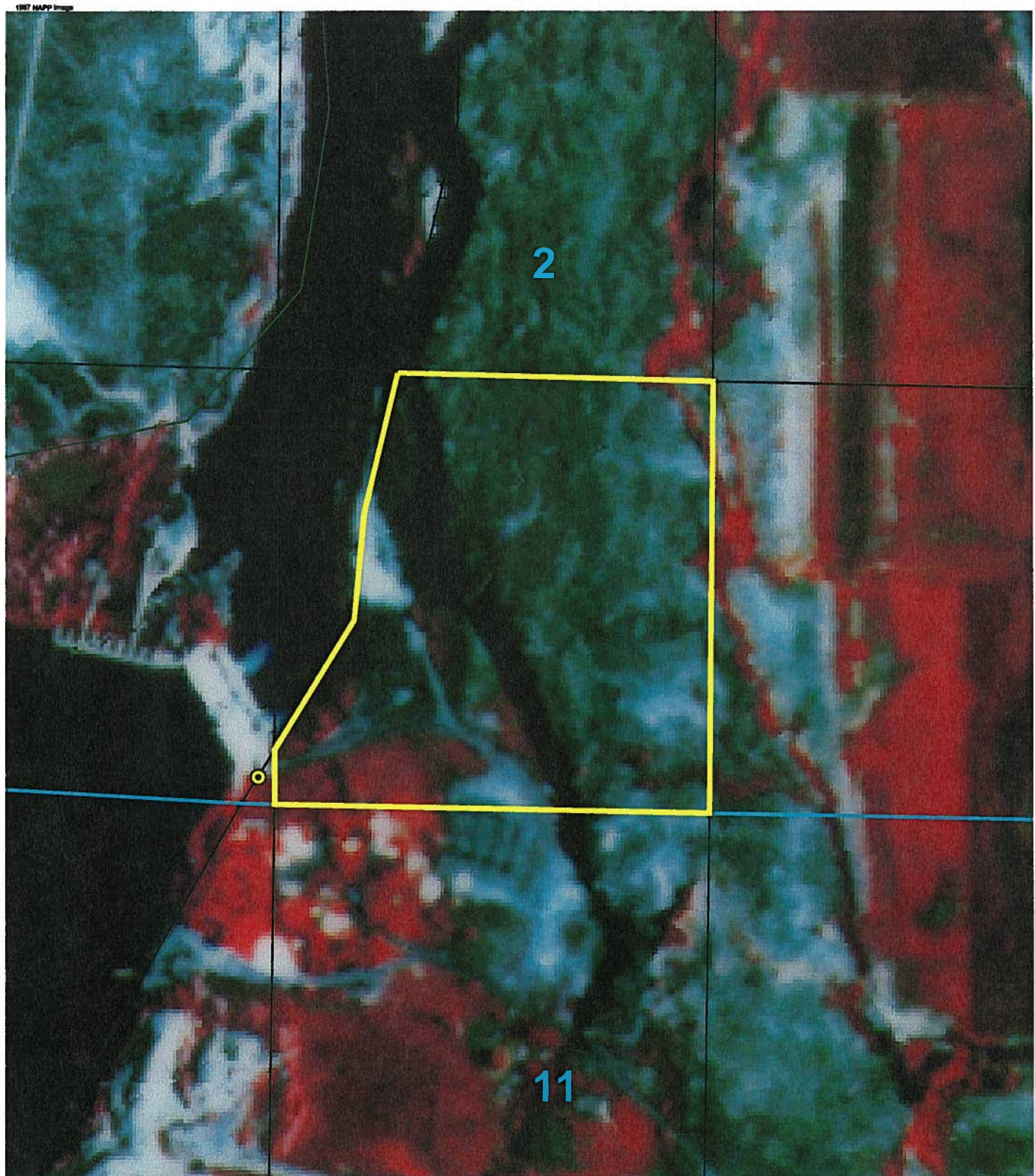
FOR IDAHO POWER COMPANY:



JAMES C. TUCKER
Idaho Power Company
P.O. Box 70
Boise, ID 83707
(208) 388-2112

Date: 4/11/06

Idaho Department of Water Resources

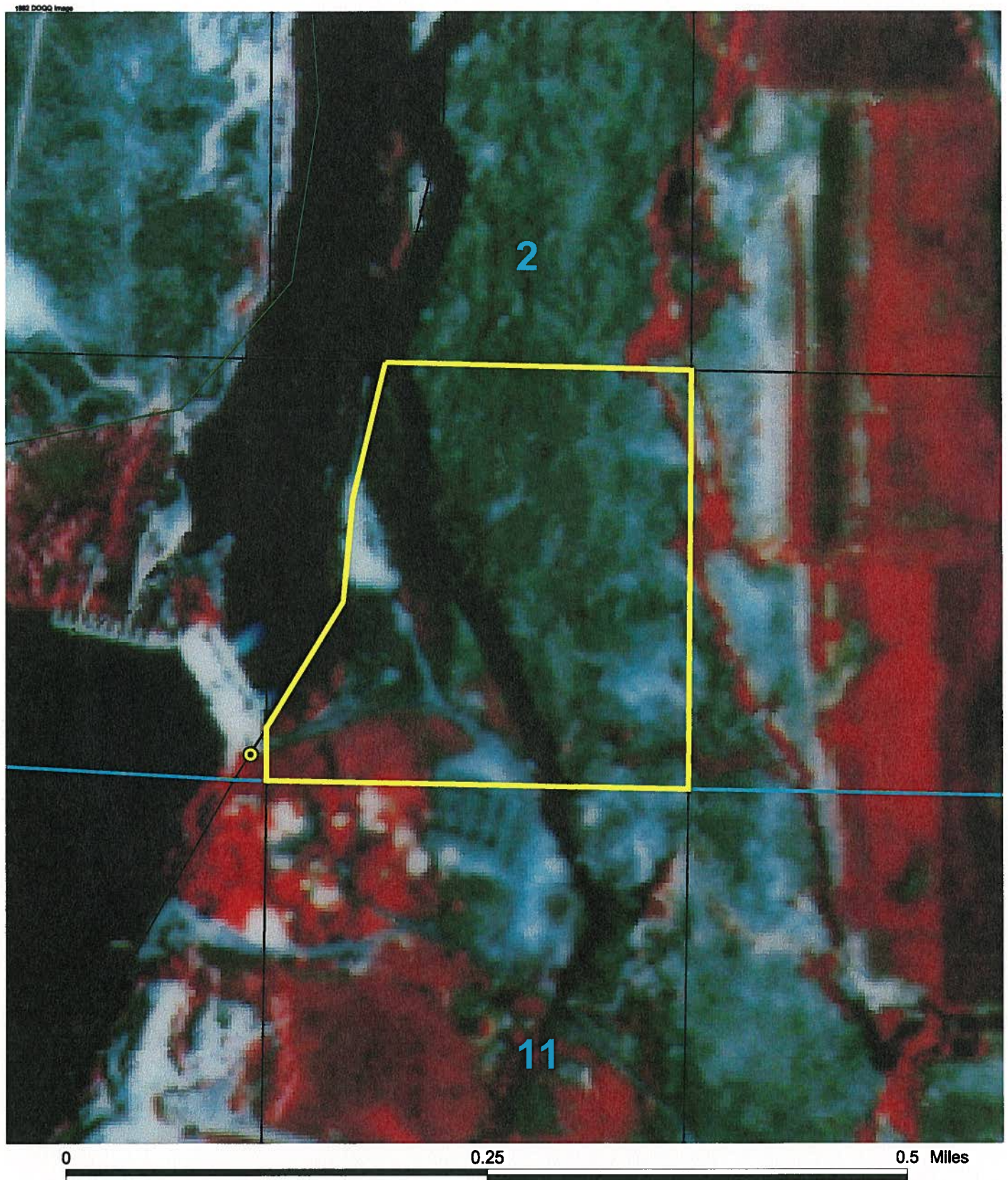


Claim Number: 2-2001B
Legal: T07S, R13E, S2 & 11
Reviewed By: SJR 10/31/05



-  Point of Diversion
-  Place of Use
-  Twin Falls taxlots
-  Sections
-  Quarter Quarter Lines

Idaho Department of Water Resources



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10/31/2005

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

RIGHT NUMBER: 2-2001B

NAME AND ADDRESS: IDAHO POWER CO
PO BOX 70
BOISE ID 83707

SOURCE: SNAKE RIVER

TRIBUTARY: COLUMBIA RIVER

QUANTITY: 1,300.000 CFS

PRIORITY DATE: 07/02/1908

POINT OF DIVERSION:

T07S R13E S2 SESWSW Lot 7 Within GOODING County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

POWER

01/01 12/31

1,300.000 CFS

PLACE OF USE: POWER Within GOODING County

T07S R13E S02 Lot 7 SESW

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

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

1. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000, 02-4001, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710 entitle the Company to unsubordinated average daily flows of 3900 c.f.s. from April 1 to October 31, and 5600 c.f.s. from November 1 to March 31, both to be measured at the Murphy U.S.G.S. gauging station immediately below Swan Falls. These flows are not subject to depletion by junior water right holders. (Exceptions to the Company's unsubordinated average daily flows are listed below in paragraphs 2 through 5.) The Murphy gauging station is located at latitude 43° 17' 31", Longitude 116° 25' 12", in T01S, R01W, S35, NWNESE, Boise Meridian, Ada County Hydrologic Unit 17050103, on the right bank 4.2 miles downstream from Swan Falls Power plant, 7.5 miles NE of Murphy, at river mile 453.5.

2. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000, 02-4001, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, when used in combination in amounts specified above shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the Idaho Department of Water Resources in accordance with State law unless the depletion violates the flows set forth in paragraph 1. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Company facilities shall not be considered in the calculation of the minimum daily stream flows set forth herein.

3. The rights listed in paragraphs 1 and 2 above are subordinate to the water rights of those persons dismissed from Idaho Power Co. v State of Idaho, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990) pursuant to the contract executed between the State and Company implementing the terms of I.C. §§ 61-539 and 61-540.

4. The rights listed in paragraphs 1 and 2 above are subordinate to those water rights with a priority date prior to October 1, 1984.

5. The portion of Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000, 02-4001, 02-10135, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710, in excess of the amounts set forth in paragraph 1 are held in trust by the state of Idaho, by and through the governor, for the use and benefit of the users of water for power purposes and of the people of the state of Idaho as provided for in the contract entered into by the governor and the Idaho Power Company on October 25, 1985 and ratified by the Idaho Legislature by Idaho Code § 42-203B(5).

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: BASIS OF CLAIM - License

Water Right 2-2001B

10/31/2005

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

LOWER SALMON FALLS POWER PLANT.

Point of diversion is also within Twin Falls County.

State of Idaho
Department of Water Resources

ADJUDICATION CLAIM ANALYSIS SHEET

Review by RS

Date 4/26/82

Right No. 02-2001 B

Claimant IDAHO POWER

Recommendation differs from claim:
(Document any differences)

☐ Yes

☒ No

☐ Disallow

Claim Details Verified Against:

Check (X or ✓) those searched. Circle records used for recommendation.
Include copies or memos where applicable to explain findings.

☒ License

☐ Previous Statutory Claim.

☐ Permits, valid or lapsed. Number(s) if different than above _____

☐ Decree. Name & date _____

☐ Conveyance Loss Calculations. See printout included.

☐ Title abstract. ☐ In file. Or, Name & location _____

☐ County records. ☐ In file. Or, Name & location _____

☐ Affidavits. ☐ In file.

☐ Posted Notices, Water Locations Notices. ☐ In file.

☐ Deed Records. ☐ In file. Or, Name & location _____

☐ Patent Records. ☐ In file. Or, Name & location _____

☐ Metzker Maps. Identify _____

☐ A.S.C.S. Records. Year & Photograph No. _____

☐ Irrigation Company/District Records. ☐ In file. Or Name & location _____

☐ Historical Books. Name(s) & location _____

☐ Interview(s). Attach conversation memorandum.

☐ Other _____

☐ _____

Field Exam Made: ☒ Yes ☐ No Date _____

☐ Adj. Report in file ☒ Beneficial Use Report in License (S.O.) File

Measurement _____ cfs. Amount recommended _____ cfs.

Type of measuring device: _____ Meter No. _____

Condition _____ Date _____ Time _____

Adjudication Photo(s) Used: Name or No. HAGERMAN, _____,

Field Photographs Taken ☐ Yes ☒ No

Memorandum in file ☒ Yes ☒ No

Remarks _____

To: 02-2001 LAHO PWR. Co LOWER CAIN FALLS.

Page 1

From: F. Luthy

Date: 1/7/85

SO. File Review 1st Eng. Rpt. 7/30/1913 For GREAT SHOSHONE & TWIN FALLS WTR PWA Co.
STATES Dam 960' Lgth.

SOUTH HALF POWERHOUSE WORKS NOT YET COMPLETE AS OF ABOVE DATE
NORTH HALF CONTAINED TWO COMPLETED UNITS.

HEAD DEVELOPED APPROX 35'.

2 UNITS INSTALLED RATED AT 2000 K.W. EACH.

MAXIMUM LOAD WAS ABOUT 1200 K.W. ON AVERAGE.

(IN ABOVE IS 1200 K.W. LOAD EACH UNIT OR TOTAL?)

WORKS SUPPOSEDLY CAPABLE OF DIVERTING 6000 CFS OR MORE

WALKER R. HEYDE, CHIEF CAREY ACT INSPECTOR MADE RPT.

APPLICATION FOR EXT OF TIME TO SUBMIT B/U PRF. FOR
PMT 3685 (02-2001) OF 2/15/1917 STATES THAT AT
THAT TIME APPROXIMATELY 1625 CFS HAD BEEN PUT TO
B/U. IT STATES ALSO THAT SINCE THE COMPANY HAD ONLY
OBTAINED TITLE TO THE RIGHT AS OF 7/31/1916 IN ORDER TO PUT
TO B/U THE REMAINING APPROX 4375 CFS, IT MUST APPLY
FOR AN EXTENSION OF TIME TO ORDER, HAVE CONSTRUCTED,
AND INSTALL LARGE & EXPENSIVE HYDRO-ELECTRIC UNITS

(IT APPEARS THAT THE DEPARTMENT ACCEPTED THIS 1625 CFS
AS SOMEWHERE NEAR TO ACTUALITY WITH A PAD OF 75 CFS
FOR CONTINGENCIES WHEN LICENSING 02-2001A FOR 1700 CFS.)

(ADDITIONALLY, WHAT HAPPENS TO PRIORITIES AND CFS ALLOWED
WHEN BY THEIR OWN ADMISSION ON JAN 15, 1917 ~~THEY SAID THEY HAD~~

[8 YRS 9 MOS. FROM DATE OF APPLICATION] THEY SAY THEY HAVE
ONLY PUT 1625 CFS TO B/U?)

I CANNOT DUPLICATE THEIR MINIMUM CFS TO PRODUCE ANY
OF THE DESCRIBED CONDITIONS IN QUEST 7, DEPOSITION OF
HOLDER 5/29/1919, USING $Q = \frac{K.W.}{.0846 \times H \times E}$ AND PLUGGING
IN VARIOUS POSSIBILITIES SUGGESTED ON THE DIFFERENT PROOFS, THE
CLOSEST I CAN COME TO 1615 CFS IS 4100 KW, 35' H.D., & .85
EFFICIENCY PRODUCING 1628.9 CFS. ALSO 3000 KW, 25' H.D., & .85
EFFICIENCY PRODUCES 1668.75 CFS.. THEY MAY HAVE BEEN USING
SOME CONSTANT FOR THEIR CALCULATIONS SLIGHTLY DIFFERENT, A HORSE-
POWER CONVERSION OR SOMETHING.

TO: 02-2001B

FROM: J. Noyes

DATE: January 23, 1985

RE: Supporting data in State office files Idaho Power Co. 02-2001B

Engineering Report R.S. Pierce, examiner reclamation refers to Unit #3 as 02-2001B and to Unit #1 and 2 as 02-2001A.

Unit #3 generator 3600 K.W.

Mr. Pierce excepted Idaho Power Co. cfs of 1300

Total diversion 3000 cfs

02-2001A 1700 cfs

02-2001B 1300 cfs

Apparently the reason for the split of this right was because Unit #1 and 2 were installed first and proof was submitted for 1700 cfs. That is the reason why the difference in priority dates.

There is no indication in the files how the cfs were determined for these two rights. In the majority of Idaho Power Co.'s rights, the Department examiner ^{accepted} ~~received~~ the proof reports for determining the cfs for the licenses. Before the Idaho Power rights are sent to the court, a thorough examination should be made to determine if the company is actually putting the water to beneficial use to the extent they claim.

See 02-2001A for further information

MEMORANDUM

TO: 02-2001 Idaho Power Co. Lower Swan Falls
FROM: F. Luthy ^{2/1/85}
DATE: January 23, 1985
RE: S.O. File Review

1st Engineer Report 7/30/1913 for Great Shoshone and Twin Falls Water
PWA Co.

States Dam 960' length

South Half Powerhouse Works not yet complete as of above data

North half contained two completed units

Head developed approximately 35'

2 units installed rated at 2000 K.W. each

Maximum load was about 1200 K.W. on average
(In above, is it 1200 K.W. load each unit or total?)

Works supposedly capable of diverting 6000 cfs or more

Walker R. Heyde, Chief Carey Act Inspector, made report

Application for Extension of Time to submit beneficial use proof for
Permit 3685 (02-2001) of February 15, 1917 states that at that time, approxi-
mately 1625 cfs had been put to beneficial use. It states also that since
the company had only obtained title to the rights as of July 31, 1916, in order
to put to beneficial use the remaining approximately 4375 cfs, it must apply
for an Extension of Time to order, have constructed, and install large and
expensive hydro-electric units.

It appears that the Department accepted this 1625 cfs as somewhere near
to actuality with a pad of 75 cfs for contingencies when licensing 02-2001A for
1700 cfs. Additionally, what happens to priorities and cfs allowed when, by
their own admission on January 15, 1917 (8 yrs., 9 mos. from date of application)
they say they have only put 1625 cfs to beneficial use?

TO: 02-2001
DATE: January 23, 1985
PAGE: 2

I cannot duplicate their minimum cfs to produce any of the described conditions in question 7, deposition of holder 5/29/1919. Using $Q = \frac{K.W.}{.0846 \times H \times E}$ and plugging in various possibilities suggested on the different proofs, the closest I can come to 1615 cfs is 4100 K.W., 35' HD., and .85 efficiency, producing 1668.75 cfs. Also 3000 KW, 25' HD. and .85 efficiency produces 1668.75 cfs. They may have been using some constant for their calculation slightly different, a horsepower conversion or something.

For proofs of July 1919, they have used 100 + % efficiency to calculate the cfs minimum. Probably is OK because the earlier one plus this one 1700 cfs + 1300 cfs still produce 3000 cfs, only one-half of amount applied for. The only fly in the ointment is all of these flows are observed only. No sign of any measured flows by engineers. If we had dimensions of Penstocks supplying the turbines, we have the approximate heads, we possibly could determine if the flows talked about are possible to the turbines.

Engineers report, October 1, 1919, states: Units 1 and 2, Steel gates 15' wide, 12' high, capacity 1700 cfs. Two double runner turbines with one 100 K.W. exciter each. Generators each 2000 K.W. states: Idaho Power Co. has used 1700 cfs through unit ?.

Other report (both by R.B. Pierce) states: Unit 3 has 3-8' x 12' gates, 1300 cfs capacity. 2-48" double runner turbines, one generator and 50 K.W. exciter. Generator 3600 K.W. states: Idaho Power has used 1300 cfs in unit.

Believe we need additional information that engineering types might use to calculate what flows have been put to beneficial use at lower Salmon Falls. I cannot believe that we should allow our report to the court to have recommendations based on the flimsy evidence I found in the engineers reports in File No. 02-2001.

TO: 02-2001
DATE: January 23, 1985
PAGE: 3

Also, I cannot find any explanation or justification why the licensing for this right was split into parts A and B. Someone else may be able to enlighten me by reading the info here. I surmise that possibly Idaho Power may not have had equipment in on the dates they intended to submit proof, but there is no information that I can discern to that effect. (Letter from Comm. of Recl., 10-24-1919 may explain split, but is not very clear.)

FOR PROOFS OF JULY 1919 THEY HAVE USED 100+70 EFFICIENCY TO CALCULATE THE CFS MINIMUM. PROBABLY IS OK BECAUSE THE EARLIER ONE PLUS THIS ONE 1700 CFS + 1300 CFS STILL PRODUCE 3000 CFS ONLY ONE-HALF OF AMOUNT APPLIED FOR. THE ONLY FLY IN OINTMENT IS ALL OF THESE FLOWS ARE OBSERVED ONLY. NO SIGN OF ANY MEASURED FLOWS BY ENGINEERS. IF WE HAD DIMENSIONS OF PENSTOCKS SUPPLYING THE TURBINES, WE HAVE THE APPROXIMATE HEADS, WE POSSIBLY COULD DETERMINE IF THE FLOWS TALKED ABOUT ARE POSSIBLE TO THE TURBINES.

ENGINEERS RPT OCT 1, 1919 STATES: UNITS 1 & 2, STEEL GATES 15' WIDE, 12' HIGH, CAPACITY 1700 CFS. TWO DOUBLE RUNNER TURBINES WITH ONE 100 K.W. EXCITER EACH. GENERATORS EACH 2000 K.W. STATES: IDAHO PWR CO. HAS USED 1700 CFS THROUGH UNIT. ??

OTHER REPORT (BOTH BY R.G. PIERCE) STATES: UNIT 3 HAS 3-8' X 12' GATES 1300 CFS CAPACITY. 2-48" DOUBLE RUNNER TURBINES, ONE GENERATOR, & 50 K.W. EXCITER. GENERATOR 3600 K.W. STATES: IDAHO POWER HAS USED 1300 CFS IN UNIT.

BELIEVE WE NEED ADDITIONAL INFO THAT ENGINEERING TYPES MIGHT USE TO CALCULATE WHAT FLOWS HAVE BEEN PUT TO B/U AT LOWER SALMON FALLS. I CANNOT BELIEVE THAT WE SHOULD ALLOW OUR REPORT TO THE COURT TO HAVE RECOMMENDATIONS BASED ON THE FLIMSY EVIDENCE I FOUND IN THE ENGINEERS REPORTS IN FILE OR-2001.

ALSO, I CANNOT FIND ANY EXPLANATION OR JUSTIFICATION WHY THE LICENSING FOR THIS RIGHT WAS SPLIT INTO PARTS A & B. SOMEONE ELSE MAY BE ABLE TO ENLIGHTEN ME BY READING THE INFO HERE. I SURMISE THAT POSSIBLY IDAHO PWR. MAY NOT HAVE HAD EQUIPMENT IN ON THE DATES THEY INTENDED TO SUBMIT PROOF, BUT THERE IS NO INFORMATION THAT I CAN DISCLOSE TO THAT EFFECT. (LETTER FROM COMM. OF RECL. 10/24/1919 MAY EXPLAIN SPLIT, BUT IS NOT VERY CLEAR.)

WATER RIGHT NUMBER 02-2001B

OWNER LAST NAME - IDAHO POWER CO. FIRST NAME -
ADDRESS LINE 1 - P. O. BOX 70 ADDRESS LINE 2 -
ADDRESS LINE 3 - CITY - ERISE
SOURCE - SNAKE RIVER TRIBUTARY OF - COLUMBIA RIVER
STATUS - PRIORITY - 02-02-1908 COUNTY - GOODING TOTAL DIV. RATE - 1300.0000-CFS
TOTAL DIV. VOLUME - .00 AFH TRFR/AMEND - WATER DIST. - 02 DLE/CAREY ACT - RIGHT BASIS - E
DIVERSION POINT - SESW 02 02S 13E LOT 02 REDIV - SESW 02 02S 13E LOT 08 REDIV -
FROM - 01-01 TO - 12-31 USE - POWER USE DIV. RATE - 1300.0000 CFS USE DIV. VOLUME - .00 AFH
USE - POWER PLACE OF USE - TWIN-07S ANG 13E SEC 02 TRACT SESW LOT 02 AC TOTAL ACRES 0
DECLREE NAME -
REMARKS - LOWER SALMON FALLS POWER PLANT. P/D ALSO IN TWIN FALLS CNTY.
NON IRRIG USE -
OTHER RIGHTS FOR SAME USE -
PROOF DUE - PERMIT/DENIED - PROTECTED - HEARING - OLD NO. -
PROOF MADE - ELD-EXAM - COND. OF APPROVAL -
DIVERSION MEANS - DAM.