

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: A37-02128

Date Received: 8/17/1988

Receipt No: C002945

Received By: _____

CA

RECEIVED

OCT 17 1988

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

Department of Water Resources

RECEIVED

JUN 13 1990

Department of Water Resources
Southern Region Office

1. Name: IDAHO POWER CO.
Address: P.O. BOX 70
BOISE, ID

83707

2. Date of Priority: NOV 25, 1908

3. Source: MALAD RIVER
COVE CREEK

Trib. to: SNAKE RIVER
MALAD RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
06S	13E	35	NE	NW			GOODING

5. Description of diverting works:
DIVERSION DAM, FLUME TO POWERHOUSE.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
POWER	01/01	12/31	700.000		

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

A.F.A.

8. Total consumptive use is

Acre Feet Per Annum.

9. Non-irrigation uses:

POWER PLANT
GENERATING CAPACITY 13500.0 KILOWATTS

10. Place of Use:

L 47250 + 50

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
06S	13E	27	SW	SW	2	POWER	

A37-02128

Page 1

Date: 08/19/88

MICROFILMED

FEB 23 1993

11. Place of use in counties: GOODING

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

13. Other Water Rights Used:
37-02472

14. Remarks:
LOWER MALAD POWER PLANT.

15. Basis of Claim: LICENSE
Water Right Number: 4366

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 Organizations:

I do solemnly swear or affirm that I am General Counsel and Secretary of
Idaho Power Company Title
Organization, that I have signed the foregoing
document in the space below as General Counsel and Secretary of
Idaho Power Company Title
Organization and that the statements contained in the
foregoing document are true and correct.

Rolt W. Stahl
Signature of Authorized Agent
General Counsel and Secretary
Idaho Power Company
Title and Organization

October 11, 1988

Date

State of Idaho)
County of Ada) SS.

Subscribed and sworn (or affirmed) before me this 11th day
of October 19 88

Danny L. Reynolds
Notary Public

Seal

Residing at Boise, Idaho

My Commission Expires 12/31/92

17. Notice of Appearance:

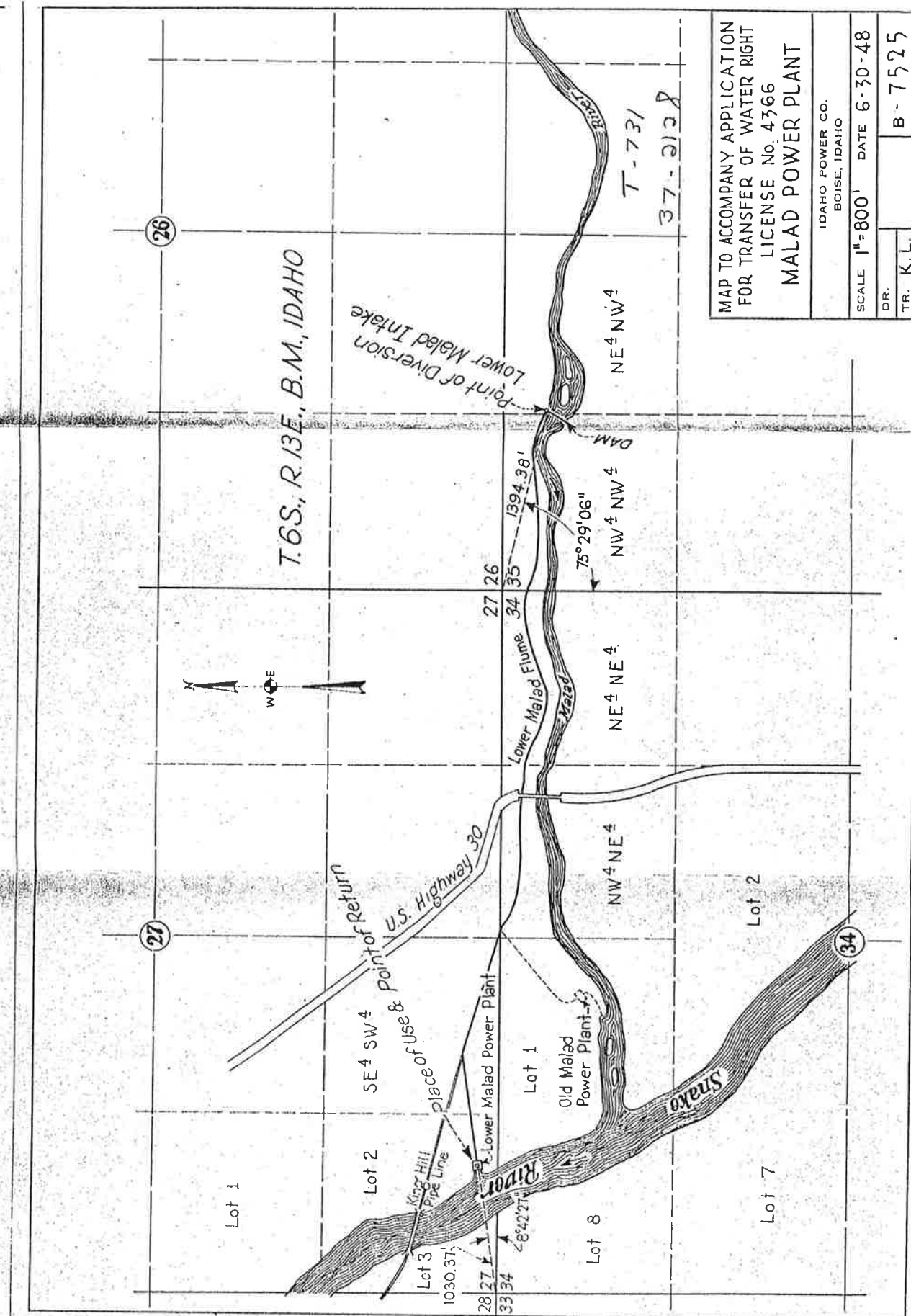
Notice is hereby given that I, THOMAS G. NELSON will be
Print Name

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 Thomas G. Nelson

Address Box 2139, Boise, Id 83701

Date 10/6/88



MAP TO ACCOMPANY APPLICATION FOR TRANSFER OF WATER RIGHT LICENSE No. 4366 MALAD POWER PLANT	
IDAHO POWER CO. BOISE, IDAHO	
SCALE 1"=800'	DATE 6-30-48
DR. K.L.	TR. B-7525

MICROFILMED
 FEB 23 1993

RECEIVED

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)

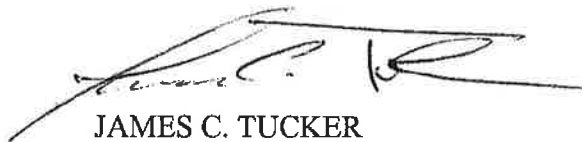
Dear Director Dreher:

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

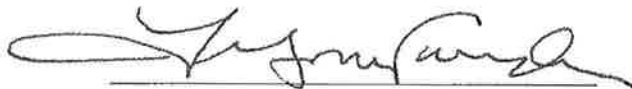
any such disagreements to their mutual satisfaction, either party, after notice to the other, may file a petition for declaratory relief with a court of appropriate jurisdiction to have the disagreement resolved and the Swan Falls Agreement interpreted and neither this Stipulation nor I.C. §§ 42-234,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

- B. Funding for a general adjudication of the Snake River Basin generally as set forth in Exhibit 2 attached hereto.
- C. Establishment of an effective water marketing system.
- D. Funding for hydrologic and economic studies, as set forth in Exhibit 3 attached hereto.
- E. Allocation of gains upon sale of utility property as set forth in Exhibit 4 attached hereto.
- F. Limitations on IPUC jurisdiction as set forth in Exhibit 5 attached hereto.
- G. Rulemaking and moratorium authority for Idaho Department of Water Resources generally as set forth in Exhibit 8 attached hereto.

7. Company's Water Right

State and Company agree that Company's water right shall be as follows (Bracketed names used below refer to Company projects):

- A. State Water License Numbers 36-2013 (Thousand Springs), 37-2128 & 37-2472 (Lower Malad), 37-2471 (Upper Malad), 36-2018 (Clear Lake), 36-2026 (Sand Springs), 02-2057 (Upper Salmon), 02-2001A, 02-2001B, 02-2059, 02-2060 (Lower Salmon), 02-2064, 02-2065 (Bliss), 02-2056 (Twin Falls), 02-2036 (Shoshone Falls), 02-2032, 02-4000, 02-4001, and Decree Number 02-0100 (Swan Falls) entitle the Company to an unsubordinated right of 3900 c.f.s. average daily flow from April 1 to October 31, and 5600 c.f.s. average daily flow 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. The Murphy gauging station is located at latitude 43° 17' 31", Longitude 116° 25' 12", in NW1/4NE1/4SE1/4 of Section 35 in Township 1 South, Range 1 West, Boise Meridian, Ada County Hydrologic Unit 17050103, on right bank 4.2 miles downstream from Swan Falls Power plant, 7.5 miles NE of Murphy, at river mile 453.5.
- B. The Company is also entitled to use the flow of the Snake River at its facilities to the extent of its actual beneficial use but not to exceed those amounts stated in State Water License Numbers 36-2013 (Thousand Springs), 37-2128 & 37-2472 (Lower Malad),

37-2471 (Upper Malad), 36-2018 (Clear Lake), 36-2026 (Sand Springs), 02-2057 (Upper Salmon), 02-2001A, 02-2001B, 02-2059, 02-2060 (Lower Salmon), 02-2064, 02-2065 (Bliss), 02-2056 (Twin Falls), 02-2036 (Shoshone Falls), 02-2032, 02-4000, 02-4001, and Decree Number 02-0100 (Swan Falls), but such rights in excess of the amounts stated in 7(A) shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the State in accordance with State law unless the depletion violates or will violate paragraph 7(A). Company retains its right to contest any appropriation of water in accordance with State law. Company further retains the right to compel State to take reasonable steps to insure the average daily flows established by this Agreement at the Murphy U.S.G.S. gauging station. 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. This paragraph shall constitute a subordination condition.

- C. The Company's rights listed in paragraph 7(A) and 7(B) are also subordinate to the uses of those persons dismissed from Ada County Case No. 81375 pursuant to the contract executed between the State and Company implementing the terms of I.C. §§ 61-539 and 61-540.
- D. The Company's rights listed in paragraph 7(A) and 7(B) are also subordinate to those persons who have beneficially used water prior to October 1, 1984, and who have filed an application or claim for said use by June 30, 1985.
- E. Company's ability to purchase, lease, own, or otherwise acquire water from sources upstream of its power plants and convey it to and past its power plants below Milner Dam shall not be limited by this agreement. Such flows shall be considered fluctuations resulting from operation of Company facilities.
- F. Upon implementation of this Agreement, State and Company shall consent to entry of decrees in Ada County Civil Case Nos. 62237 and 81375 that describe the Company's water right as provided in paragraphs 7(A) through 7(E).

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

11/01/2005

RIGHT NUMBER: 37-2128

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

SOURCE: COVE CREEK
MALAD RIVER
Point of injection and point of rediversion from the Malad River.

TRIBUTARY: MALAD RIVER
TRIBUTARY: SNAKE RIVER

QUANTITY: 700.000 CFS

PRIORITY DATE: 11/25/1908

POINT OF
DIVERSION: T06S R13E S25 SWSW Within GOODING County
T06S R13E S35 NENW Within GOODING County
T06S R13E S35 NENW Injection Within GOODING County
T06S R13E S35 NENW Rediversion Within GOODING County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
POWER	1/01 12/31	700.000 CFS

PLACE OF USE: POWER Within GOODING County
T06S R13E S27 Lot 2 SWSW

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

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.

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

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

05/03/2005

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

RIGHT NUMBER: 37-2128

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

SOURCE: COVE CREEK
MALAD RIVER

TRIBUTARY: MALAD RIVER
TRIBUTARY: SNAKE RIVER

Point of injection and point of redirection from the Malad River.

QUANTITY: 700.000 CFS

PRIORITY DATE: 11/25/1908

POINT OF DIVERSION:

T06S R13E S25 SWSW Within GOODING County
T06S R13E S35 NENW Within GOODING County
T06S R13E S35 NENW Injection Within GOODING County
T06S R13E S35 NENW Rediversion Within GOODING County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
POWER	1/01 12/31	700.000 CFS

PLACE OF USE: POWER Within GOODING County

T06S R13E S27 Lot 2 SWSW

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.

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

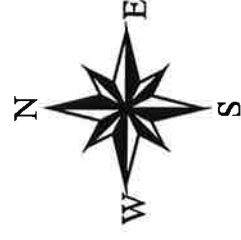
1. Right Nos. 02-0100, 02-2001A, 02-2001B, 02-2032, 02-2036, 02-2056, 02-2057, 02-2059, 02-2060, 02-2064, 02-2065, 02-4000, 02-4001, 36-2013, 36-2018, 36-2026, 37-2128, 37-2471, 37-2472, 37-20709, and 37-20710 entitle the Company to unsubordinated average daily flows of 3900 c.f.s. from April 1 to October 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. The Murphy gauging station is located at latitude 43° 17' 31", Longitude 116° 25' 12", in T01S, R01W, S35, NWNENE, 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, 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, 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).

EXPLANATORY MATERIAL: License

**37-2128, 37-2472 & 37-20710
Lower Malad Power Plant**



T06S R13E



C O P Y

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

In the Matter of the Application of)
IDAHO POWER COMPANY)
of Boise, Idaho)
For a Transfer of Water Right, in Water)
District No. 7-AB, Gooding County, Idaho)

ORDER GRANTING TRANSFER

No. 731

WHEREAS, On the 22nd day of November, 1948, at the Department of Reclamation of the State of Idaho, at Boise, Idaho, this matter of an application of Idaho Power Company, of Boise, Idaho, for a transfer of water right, came on regularly for hearing, pursuant to the published notice, in due and statutory form; and,

WHEREAS, No protest has been filed against the application, and the evidence filed by the applicant, with the application, shows that the water will be put to a higher and more beneficial use, and that no one will be injured thereby:

NOW, THEREFORE, IT IS HEREBY ORDERED That the said application be, and the same is HEREBY GRANTED, and that a Certificate of Transfer be issued to the applicant herein, as provided by the laws of the State of Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the official seal of the Department of Reclamation of the State of Idaho to be hereunto affixed, at Boise, Idaho, this 10th day of December, A.D. 1948.

Mark R. Kulp

MARK R. KULP
State Reclamation Engineer

T-731

37-2128

State of Idaho

License and Certificate of Water Right

Water License No. 4266

Water District No. 47

Amount 700,000 ft.

Priority 11-25-1908

THIS IS TO CERTIFY that Idaho Power Company, of Boise, Idaho, made application for a permit to appropriate the public waters of the State of Idaho, dated November 25, 1908; that Permit No. 4366 was issued under said application; that Certificate of Completion of works, with a carrying capacity of 1100 second feet, was issued thereunder on March 6, 1914, showing that said works were completed on the 21st day of February, 1914; and that on the 21st day of February, 1920,

Idaho Power Company

of Boise, State of Idaho, made proof to the satisfaction of the Commissioner of Reclamation, State Engineer of Idaho, of a right to the use of the waters of Malad River and Cove Creek, a tributary of Snake River, for the purpose of generating electrical power, under Use Permit No. 4366 of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Idaho, and is hereby confirmed by the Commissioner of Reclamation, State Engineer of Idaho and entered of record in Volume 5 of Licenses, at page 2570, on the 16th day of July, 1920;

The right hereby confirmed dates from November 25, 1908;

The Point of Diversion are located as follows: Malad River S. 12° 25' E. 2786' from quarter corner between Secs. 25-26, T. 6 S., R. 13 E., B.M.; Cove Creek S. 9° 56' E. 2183' dist. from the quarter corner between Secs. 25-26, T. 6 S., R. 13 E., B.M., County of Gooding.

That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed 700 cubic feet per second.

Description and location of use: at Malad Power Station, located S. 78° 10' W., 3265' from N.E. Cor. Sec. 34, T. 6 S., R. 13 E., B.M.

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, as provided by the laws of Idaho.

WITNESS the seal and signature of the Commissioner of Reclamation, State Engineer, affixed at Boise, Idaho, this 16th day of July, 1920

(SEAL)

W. G. Swendsen
Commissioner of Reclamation

Trans 731

37-2122

State of Idaho

License and Certificate of Water Right

Water License No. 4366

Amount 700 cu. ft.

Water District No. 47

Priority 11-20-1998

THIS IS TO CERTIFY that Idaho Power Company, of Boise, Idaho, made application for a permit to appropriate the public waters of the State of Idaho, dated November 25, 1908; that Permit No. 4366 was issued under said application; that Certificate of Completion of works, with a carrying capacity of 1100 second feet, was issued thereunder on March 6, 1914, showing that said works were completed on the 21st day of February, 1914; and that on the 21st day of February, 1920,

Idaho Power Company

of Boise, State of Idaho, made proof to the satisfaction of the Commissioner of Reclamation, State Engineer of Idaho, of a right to the use of the waters of Malad River and Cove Creek, a tributary of Snake River, for the purpose of generating electrical power under Use Permit No. 4366 of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Idaho, and is hereby confirmed by the State Engineer of Idaho and entered of record in Volume 5 of Licenses, at page 2570, on the 16th day of July, 1920;

The right hereby confirmed dates from November 25, 1908;

The Point of Diversion are located as follows: Malad River S. 12° 25' E. 2786' from quarter corner between Secs. 25-26, T. 6 S., R. 13 E., B. M.; Cove Creek S. 9° 56' E. 2183' dist. from the quarter corner between Secs. 25-26, T. 6 S., R. 13 E., B. M., County of Gooding.

That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed 700 cubic feet per second.

Description and location of use: at Malad Power Station, located S. 78° 10' W., 3265' from N.E. Cor. Sec. 34, T. 6 S., R. 13 E., B. M.

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, as provided by the laws of Idaho.

WITNESS the seal and signature of the Commissioner of Reclamation, State Engineer, affixed at Boise, Idaho, this 18th day of July, 1920

(SEAL)

W. G. Swendsen
Commissioner of Reclamation

Trans 731

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

Certificate of Water Right
Transferred Right No. 731

THIS IS TO CERTIFY THAT THE IDAHO POWER COMPANY of Boise, Idaho, is the owner of and using a certain water right in the amount of 700 cubic feet per second from Malad River and Cove Creek, with priority of November 25, 1908, as evidenced by License and Certificate of Water Right No. 4366, recorded in Volume 5 of Licenses on Page 2570 in the records of the Department of Reclamation of the State of Idaho.

That the point of use and return of said waters are now located at said Idaho Power Company's old Malad Power Plant, situated in Lot 1, Sec. 34, Twp. 6 S., Rge. 15 E. B.M.

And that now, upon the application of the Idaho Power Company, through its Vice President and Secretary, A. C. Inman, for the transfer of 700 cubic feet per second of said water, made before the State Reclamation Engineer of the State of Idaho, and said application having been granted, the right to the use of the 700 cubic feet per second of the waters of Malad River and Cove Creek at the above point of use and return is hereby abandoned, and the point of use and return under such right and to which the water right HEREBY CONFIRMED shall become appurtenant, by this certificate, for power purposes, are located at the new Lower Malad Power Plant situated in Lot 2, Sec. 27, Twp. 6 S., Rge. 15 E. B.M.

That said water is to be limited at any given time to an amount actually needed and beneficially used for such purposes, and shall not exceed the following amount, to-wit:

700 cubic feet per second, bearing
date of priority of November 25, 1908.

That the water right hereby transferred has heretofore been conducted from Malad River and Cove Creek to the first above described place of use in the reinforced concrete flume with point of diversion in the NE 1/4, Sec. 35, Twp. 6 S., Rge. 15 E.B.M.

That the water right hereby transferred will hereafter be conducted to the last above described place of use through the said flume and the extension thereof with the same point of diversion in the NE 1/4, Sec. 35, Twp. 6 S., Rge. 15 E. B.M.

That the right to the use of the water aforesaid, hereby confirmed, is restricted to the place of use last above described, as provided by the laws of the State of Idaho.

IN WITNESS WHEREOF, I have herunto set my hand, and caused the official seal of the Department of Reclamation of the State of Idaho to be hereunto affixed, at Boise, Idaho, this 10th day of December, 1948, A.D.

Mark R Kulp

MARK R. KULP
State Reclamation Engineer

T-731

37-2128

RECEIVED

08/31/2005 SEP 16 2005

Department of Water Resources

NOTICE OF ERROR
REPLY

Please type or print clearly, fill out this form completely and mail.

Return this reply form to IDWR by the deadline date printed below if you want IDWR to change your recommendation or you want to let IDWR know that you agree with its recommendation.

YOUR DEADLINE FOR RETURNING A NOTICE OF ERROR REPLY IS: September 16, 2005

Water right number: 37-2128

IDAHO POWER CO

PO BOX 70

BOISE ID 83707

Telephone Number: (208) 388-2781

1. Describe the portion of the proposed recommendation with which you disagree (e.g. priority date, period of use, source):

Remarks ("Other Provisions Necessary for Definition or Administration of this Water Right")

2. Describe the changes you wish to make in the proposed recommendation:

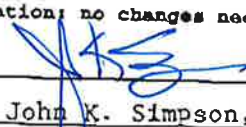
Remove paragraphs 1-5 of the above-referenced section.

3. Give a brief explanation as to why you disagree with these portions:

Inconsistent with Swan Falls Agreement. Please call for meeting to discuss.

☐ I AGREE with this proposed recommendation; no changes need to be made.

DATE: 9-16-2005

SIGNATURE: 

Please print your name: John K. Simpson, Attorney for Idaho Power Co.

Telephone: 208-336-0700

IDWR State Office, 322 E. Front St., PO Box 83720, Boise, ID 83702-0098

SCANNED

SEP 19 2005

NOTE TO FILE

From: Vikie Hancock

4/11/02

Regarding: Claim number 37-2128 and 37-2472

An additional claim for the Lower Malad Power Plant, **37-20710**, was filed by Idaho Power on 4/10/2002.

James C. Tucker
Bruce M. Smith
ROSHOLT, ROBERTSON & TUCKER
P. O. Box 2139
Boise, Idaho 83702-2139
Telephone: (208) 336-0700
4743p/shs/1-2-92

Steven L. Herndon
Assistant General Counsel
Idaho Power Company
P. O. Box 70
Boise, Idaho 83707

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.

CASE NO: 39576

The State of Idaho, ex rel.
A. Kenneth Dunn in his official
capacity as director of the
Idaho Department of Water
Resources,

NOTICE OF
APPEARANCE

Petitioner,

vs.

The United States; the State
of Idaho; and all claimants
to the use of water from the
Snake River Basin Water System,

Defendants.

* * * * *

COMES NOW, IDAHO POWER COMPANY, by and through its
attorneys, Steven L. Herndon, Assistant General Counsel of

MICROFILMED
FEB 23 1993

1 IDAHO POWER COMPANY, and James C. Tucker and Bruce M. Smith of
2 the firm of ROSHOLT, ROBERTSON & TUCKER, and, pursuant to Order
3 of this Court entered December 17, 1991, enters its appearance
4 in the above-captioned case.

5 DATED this 2nd day of January, 1992.

6 ROSHOLT, ROBERTSON & TUCKER

7 *for* James A. Rosholt
8 JAMES C. TUCKER

9 CERTIFICATE OF MAILING

10 I hereby certify that on this 2nd day of January,
11 1992, I caused to be served a true copy of the foregoing NOTICE
12 OF APPEARANCE by the method indicated below, and addressed to
13 each of the following:

14 Larry Echohawk
15 Attorney General
16 State of Idaho
Statehouse, Room 210
Boise, Idaho 83720

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy (Fax)

17 David Shaw
18 Adjudication Bureau Chief
19 Idaho Department of Water
Resources
1301 North Orchard
Statehouse Mail
20 Boise, Idaho 83720 (6 copies)

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy (Fax)

21 Peter C. Monson, Esq.
22 Assistant Attorney General
23 U.S. Department of Justice
Land and Natural Resources
Division
Indian Resources Section,
Rm. 6317
P. O. Box 44378
25 Washington, D.C. 20026-4378

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy (Fax)

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MICROFILMED
FEB 23 1993

1 Don A. Olowinski
2 HAWLEY, TROXELL, ENNIS
3 & HAWLEY
4 P. O. Box 1617
5 Boise, Idaho 83701

✓
U.S. Mail, Postage Prepaid
Hand Delivered
Overnight Mail
Telecopy (Fax)

for James A. Rosset
JAMES C. TUCKER

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MICROFILMED
FEB 23 1993

SD-33

Last Name: IDAHO POWER CO

STATE

S E L	First Name	O W N	Water Right No.	Priority Date	Source	Total Diversion	Use Code Desc
-	IDAHO POWER CO	-	-	-	-	-	-
-		C	A36-02704	01/31/1966	NIAGARA SPR	132.000	01 IRR 43 DOMEST 49 FIRE 19 FISH 28 POWER
-		C	A37-02128	11/25/1908	MALAD RIVER COVE CREEK	700.000	28 POWER
-		C	A37-02472	05/14/1946	MALAD RIVER	650.000	28 POWER
-		C	A63-03118	01/14/1958	GROUNDWATER	1.400	43 DOMEST 25 COOL
-		C	A63-03544	09/22/1966	GROUNDWATER	2.676	43 DOMEST 25 COOL 49 FIRE
-		C	A63-08142	05/13/1975	GROUNDWATER	0.060	01 IRR
-		C	A65-02232	12/03/1918	PAYETTE RIV	50.000	28 POWER
-		C	A73-02168	01/20/1967	PAHSIMEROI	10.000	19 FISH

(Enter=Continue)

(GOLD7=This Query)

(Menu _____)

MICROFILMED
FEB 23 1993

10/4/1988

SRBA CLAIMS RECEIVING CHECKLIST

CLAIMANT'S NAME Idaho Power Co.CLAIM IDENT. NO. A37-02128DATE RECEIVED 10-17-88 CK # 096556 AMOUNT \$ 24,129

- | | YES | NO |
|--|---|--------------------------|
| 1. Is the name and address complete with zip code? | ☒ | ☐ |
| 2. Is a priority date entered? | ☒ | ☐ |
| Is the water use exempt from the Permit requirements, or if it is not exempt, has a Permit been approved or a License issued?
A Permit is required: (1) for groundwater developed after March 25, 1963 (except single family domestic and stockwater wells using less than 13,000 gpd), or (2) for surface water developed after May 20, 1971 (except for instream stockwater). USE CARE IF CLAIM IS RETURNED. REFER TO ADJUDICATION MEMOS # 1 (ADJ. CLAIMS/APPLICATIONS) AND # 9 (REJECTION OF CLAIMS). EXPLAIN IN COMMENTS. | | |
| 3. (a) Is a source entered? | ☒ | ☐ |
| (b) Is a tributary to entered? (if required) | ☒ N/A | ☐ |
| 4. Is the legal description of the p.d. sufficient? | ☒ | ☐ |
| 5. Is there a description of the diverting works? | ☒ | ☐ |
| 6. Are the water uses appropriate for the form? The short form is limited to domestic and stockwater uses with direct diversion. All claims that include storage or instream stockwater must use long form. | ☒ | ☐ |
| Is the period of use included? | ☒ | ☐ |
| Is a quantity claimed for each use? | ☒ | ☐ |
| 7. Is a total quantity claimed entered? | ☒ | ☐ |
| 8. If required is a consumptive use entered? | ☒ N/A | ☐ |
| Is the consumptive use correct? | ☒ N/A | ☐ |
| 9. Are the non-irrigation uses listed properly? If this claim is on the short form, and more than one domestic use is listed, single ownership must be stated. If not under single ownership, each household must file a separate claim. See Adjudication Memo # 4. | ☒ | ☐ |
| 10. Is (are) the place(s) of use entered? | ☒ | ☐ |
| 11. Is (are) the county(ies) entered? | ☒ | ☐ |
| 12. Is the ownership of p.u. checked? | ☒ | ☐ |
| 13. Are other water rights listed or "none" checked? | ☒ | ☐ |
| 14. If required, are remarks correct? (If the claimant does not own the place of use, authority for filing the claim must be explained in the remarks.) | ☒ N/A | ☐ |
| 15. Is the basis of the claim checked? | ☒ | ☐ |
| 16. Is the claim signed by the claimant, and is the signature appropriate? (If an individual is the claimant, has that individual signed the claim, or if an organization is the claimant, is the organization signature block complete?) | ☒ | ☐ |
| Has the claim been signed, sealed, and dated by a notary? | ☒ | ☐ |
| Was this claim filed on time, or was an extension granted? | ☒ | ☐ |
| Is the fee enclosed correct? | ☒ | ☐ |
| If this claim is based on an existing water right, has the identification number been entered? | ☒ N/A | ☐ |
| Should this claim be receipted and data entered? | ☒ | ☐ |

Claim checked by: Comments: MICROFILMED
FEB 23 1993