

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: A37-02471

Date Received: 8/16/1988

Receipt No: 0002945

Received By: *CA*

RECEIVED
OCT 17 1988

**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

RECEIVED

Department of Water Resources

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

83707

JUN 13 1990

Department of Water Resources
Southern Region Office

2. Date of Priority: MAY 14, 1946

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 of	Lot	County
06S	13E	25		SW	SW		GOODING
		36		NW	NW		GOODING

5. Description of diverting works:
DIVERSION DAM, CONCRETE FLUME TO POWER HOUSE.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
POWER	01/01	12/31	900.000		

7. Total Quantity Appropriated is:
900.000 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 7200.0 KILOWATTS

425,200 + 50

A37-02471

Page 1

Date: 08/19/88

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FEB 23 1993

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10. Place of Use:

Township	Range	Section	1/4 of 1/4	Lot	Use	Acres
06S	13E	35	NE NW		POWER	

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:
NONE

14. Remarks:
UPPER MALAD POWER PLANT.

15. Basis of Claim: LICENSE
Water Right Number: 19863

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

Robert 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 1988

Samuel Z. Rydell
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

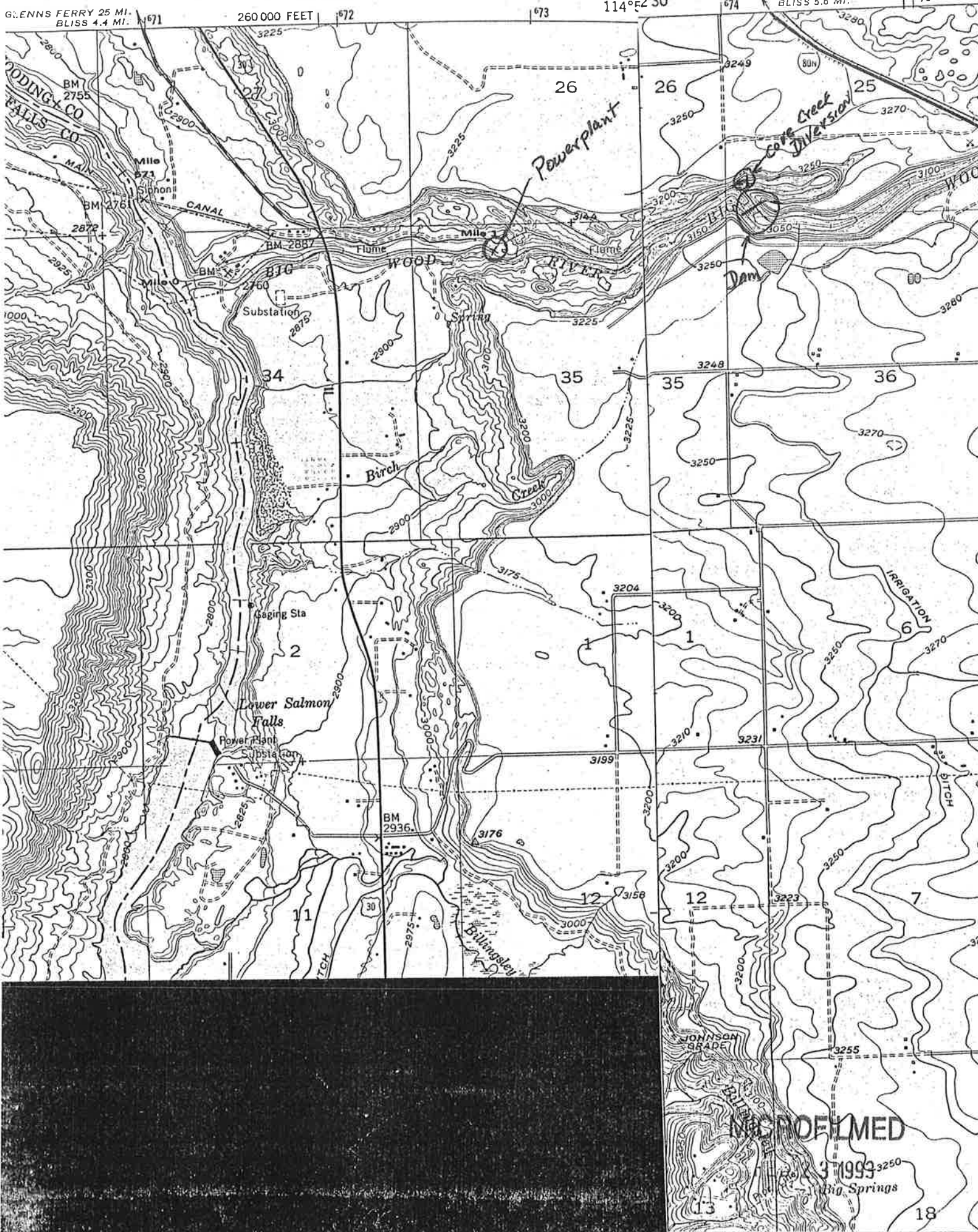
7.5 MINUTE SERIES (TOPOGRAPHIC)

GEOLOGICAL SURVEY

GLENN'S FERRY 25 MI.
BLISS 4.4 MI.

KING HILL 22 MI.
BLISS 5.6 MI.

675000m E. R



NOT FILMED

1993
Big Springs

10/4/1988

SRBA CLAIMS RECEIVING CHECKLIST

CLAIMANT'S NAME Idaho PowerCLAIM IDENT. NO. A37-02471DATE 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) | ☒ | ☐ |
| 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? | ☒ | ☐ |
| Is the consumptive use correct? | ☒ | ☐ |
| 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.) | ☒ | ☐ |
| 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? | ☒ | ☐ |
| Should this claim be receipted and data entered? | ☒ | ☐ |

Claim checked by: CA

Comments: _____

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JUL 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	R36-02082	12/10/1948		5.000	25 COOL
-		C	A02-02059	03/20/1935	SNAKE RIVER	250.000	28 POWER
-		C	A02-02064	09/04/1947	SNAKE RIVER	12000.000	28 POWER
-		C	A02-02065	12/11/1947	SNAKE RIVER	3000.000	28 POWER
-		C	A02-02080	06/21/1950	SNAKE RIVER	15420.000	28 POWER
-		C	A02-04000	01/17/1900	SNAKE RIVER	1840.000	28 POWER
-		C	A02-04001	04/17/1900	SNAKE RIVER	1460.000	28 POWER
-		C	A29-07414	07/19/1977	GROUNDWATER	0.020	43 DOMEST
-		C	A35-02557	01/26/1959	GROUNDWATER	2.680	07 INDUST
-		C	A37-02471	05/14/1946	MALAD RIVER	900.000	28 POWER
-					COVE CREEK		
-		C	A36-15358	11/20/1912	THOUSAND SP	0.330	01 IRR
-					SNOW BANK S		
-		C	A63-07945	03/07/1974	GROUNDWATER	0.890	07 INDUST
-							49 FIRE

(Enter=Continue)

(GOLD7=This Query)

(Menu _____)

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FEB 23 1993

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,
24 Rm. 6317
25 P. O. Box 44378
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. Roskoff
JAMES C. TUCKER

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MICROFILMED
FEB 23 1993

NOTE TO FILE

From: Vikie Hancock

4/11/02

Regarding: Claim number 37-2471

An additional claim for the Upper Malad Power Plant, **37-20709**, was filed by Idaho Power on 4/10/2002.

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)

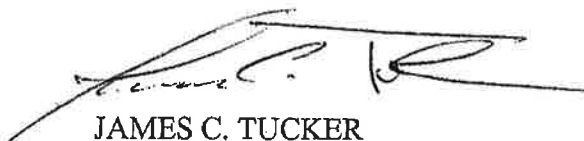
Dear Director Dreher:

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

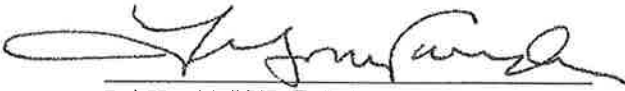
any such disagreements to their mutual satisfaction, either party, after notice to the other, may file a petition for declaratory relief with a court of appropriate jurisdiction to have the disagreement resolved and the Swan Falls Agreement interpreted and neither this Stipulation nor I.C. §§ 42-234,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

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

RIGHT NUMBER: 37-2471

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

SOURCE: COVE CREEK
MALAD RIVER

TRIBUTARY: MALAD RIVER
TRIBUTARY: SNAKE RIVER

QUANTITY: 900.000 CFS

PRIORITY DATE: 05/14/1946

POINT OF
DIVERSION: T06S R13E S25 SWSW Within GOODING County
T06S R13E S25 SWSW 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	900.000 CFS

PLACE OF USE: POWER Within GOODING County
T06S R13E S35 NENW

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.

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

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: BASIS OF CLAIM - License

05/03/2005

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

RIGHT NUMBER: 37-2471

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

SOURCE: COVE CREEK
MALAD RIVER

TRIBUTARY: MALAD RIVER
TRIBUTARY: SNAKE RIVER

QUANTITY: 900.000 CFS

PRIORITY DATE: 05/14/1946

POINT OF DIVERSION:

T06S R13E S25 SWSW Within GOODING County
T06S R13E S25 SWSW 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	900.000 CFS

PLACE OF USE: POWER Within GOODING County

T06S R13E S35 NENW

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.

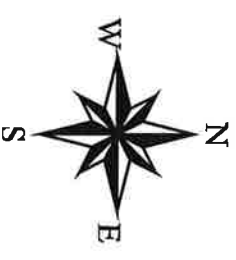
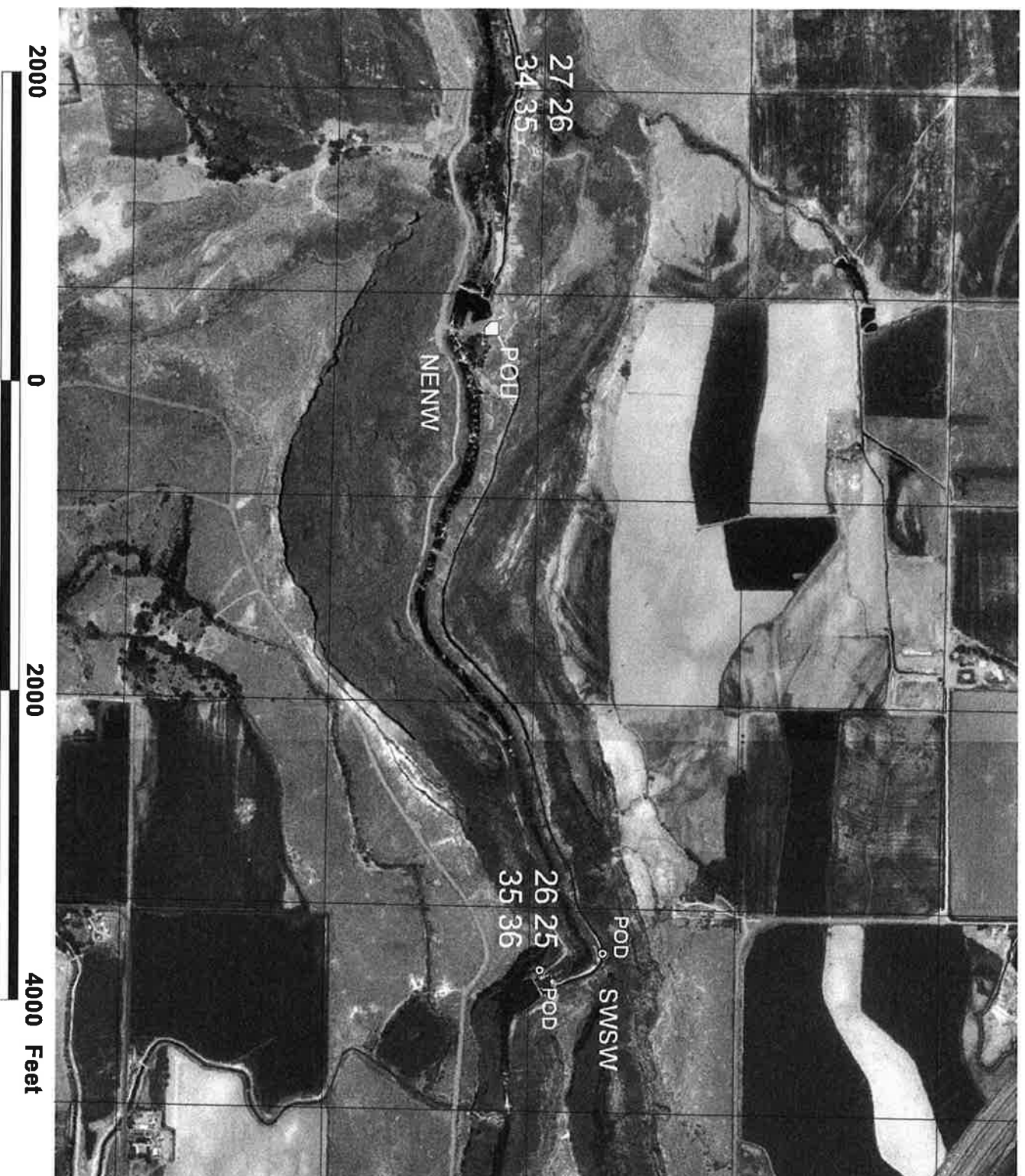
IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

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, NWNSE, 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

37-2471 & 37-20709 Upper Malad Power Plant

T06S R13E



State of Idaho

Amount 900 second feet.

Priority May 14, 1946.

THIS IS TO CERTIFY that MORRISON-KNUDSEN COMPANY, INC.

of Boise, Idaho, made application for a permit to appropriate the public waters of the State of Idaho, dated May 14, 1946; that Permit No. 19863 was issued under said application; that Certificate of Completion of works, with a carrying capacity of 900 second feet, was issued thereunder on October 26, 1948, showing that said works were completed on the 26th day of June, 1948; and that on the 26th day of June, 1948,

IDAHO POWER COMPANY, Assignee of Morrison-Knudsen Company, Inc.

of Boise, State of Idaho, made proof to the satisfaction of the State Reclamation Engineer of Idaho, of the right to use the waters of Malad River & Cove Creek, a tributary of _____, for the purpose of generation of electrical power, under Use Permit No. 19863 of the Department of Reclamation 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 Reclamation Engineer of Idaho and entered of record in Volume _____

8 of Licenses at page 4425 , on the 26 th day of October , 1948 ;

The right hereby confirmed dates from May 14, 1946 ;

The Point of Diversion is located in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 36 (From Maled River) and in the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 25/ (from Cove Creek), Tp. 6 S., R. 13 E., B. M. Gooding County

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 850 cubic feet per second from Maled River and 50 cubic feet per second from Cove Creek.

Description and location of use:

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
			Ideho Power Company's Upper Malad Hydro-electric Station, in the NE 1/4 NE 1/4 Section 35, Township 6 South, Range 13 East, B.M.		

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 State Reclamation Engineer, affixed at Boise, Idaho, this
26th day of October , 1948 .

MARK R. KULP

State Reclamation Engineer

(SEAL)

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: 37-2471

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:

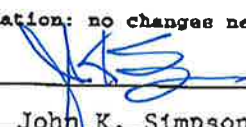
Remove paragraphs 1-5 of the above-referenced section.

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 83702-0096