

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 37-20709
Date Received: 4/10/2002
Receipt No:
Received By:

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

IDAHO POWER CO Phone: (208)388-2300
PO BOX 70
BOISE ID USA 83701-0070

2. Date of Priority: 06/14/1948

3. Source: MALAD RIVER Trib. to: SNAKE RIVER
COVE CREEK MALAD RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot		County	Type
06S	13E	36	NW	NW	GOODING	
06S	13E	25	SW	SW	GOODING	

5. Description of diverting works:

DIVERSION DAM, CONCRETE FLUME TO POWER HOUSE AT UPPER MALAD POWER PLANT

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
POWER	01/01	12/31	100	

7. Total Quantity Appropriated is:
100 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

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:

14. Remarks:

CLAIM FILED TO REFLECT HISTORICAL BENEFICIAL USE AT UPPER MALAD POWER PLANT.

SEE MAP IN FILE. SEE AFFIDAVIT OF JON BOWLING IN FILE.

OTHER WATER RIGHTS AT THE SAME PLACE AND FOR THE SAME PURPOSE OF USE DESCRIBED ABOVE: 37-2471.

15. Basis of Claim: Beneficial Use

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: 39356

Ident. Number

37-20709

Date Received

4-10-2002

Receipt Number

SO 24754

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

Jan 3 2003
Twin Falls

Please type or print clearly

1. Name of Claimant (s) Idaho Power Company Phone (208) 388-2112

Mailing Address P. O. Box 70, Boise, Idaho Zip 83701

2. Date of Priority (Only one (1) per claim) June 14, 1948

3. Source of water supply (a) Malad River & Cove Creek
which is tributary to (b) Snake River & Malad River

4. a. Location of existing point of diversion is: Township 06S Range 13E Section 25.
1/4 of SW 1/4 of SW 1/4, Govt. Lot, B.M., County of Gooding

Additional points of diversion if any: 06S, 13E, Sec. 36, NWNW

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

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

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

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

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

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well.

Diversion dam, concrete flume to power house.

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Power purposes from 1/1 to 12/31 amount 100 or _____
 For _____ purposes from _____ to _____ amount _____ or _____
 For _____ purposes from _____ to _____ amount _____ or _____
 For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 100 (cfs) and/or (b) _____ (acre feet)

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

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) Power

10. Description of place of use:

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

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

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
06S	13E	35				P													

Total number of acres irrigated -0-

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

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

13. Describe any other water rights used at the same place and for the same purposes as described above.
37-02471

or None ()

14. Remarks:

Claim filed to reflect historical beneficial use Upper Malad power plant.

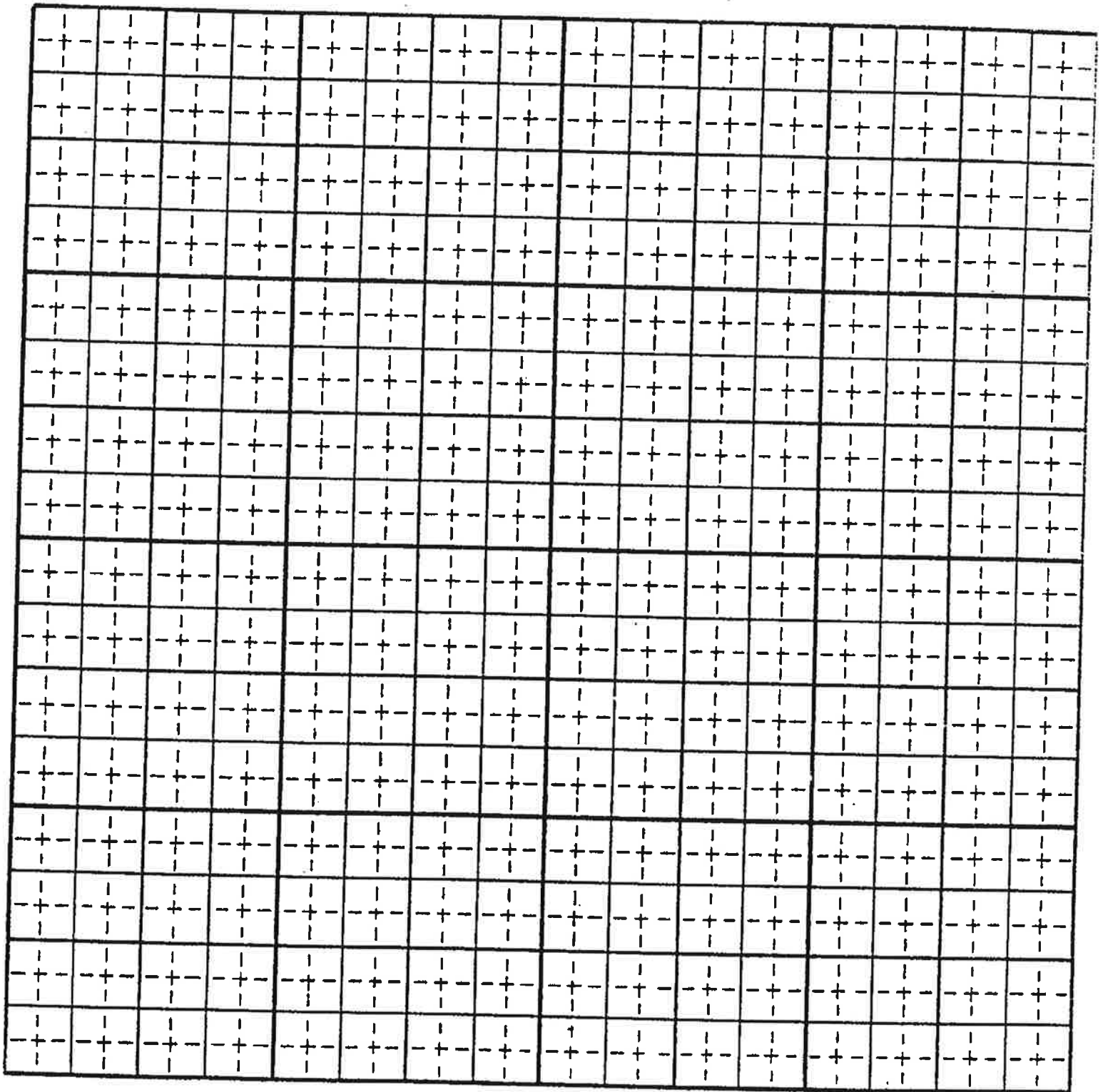
Last Name IDAHO POWER COMPANY Ident No. _____

Copies: White - State, Yellow - Claimant

Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.

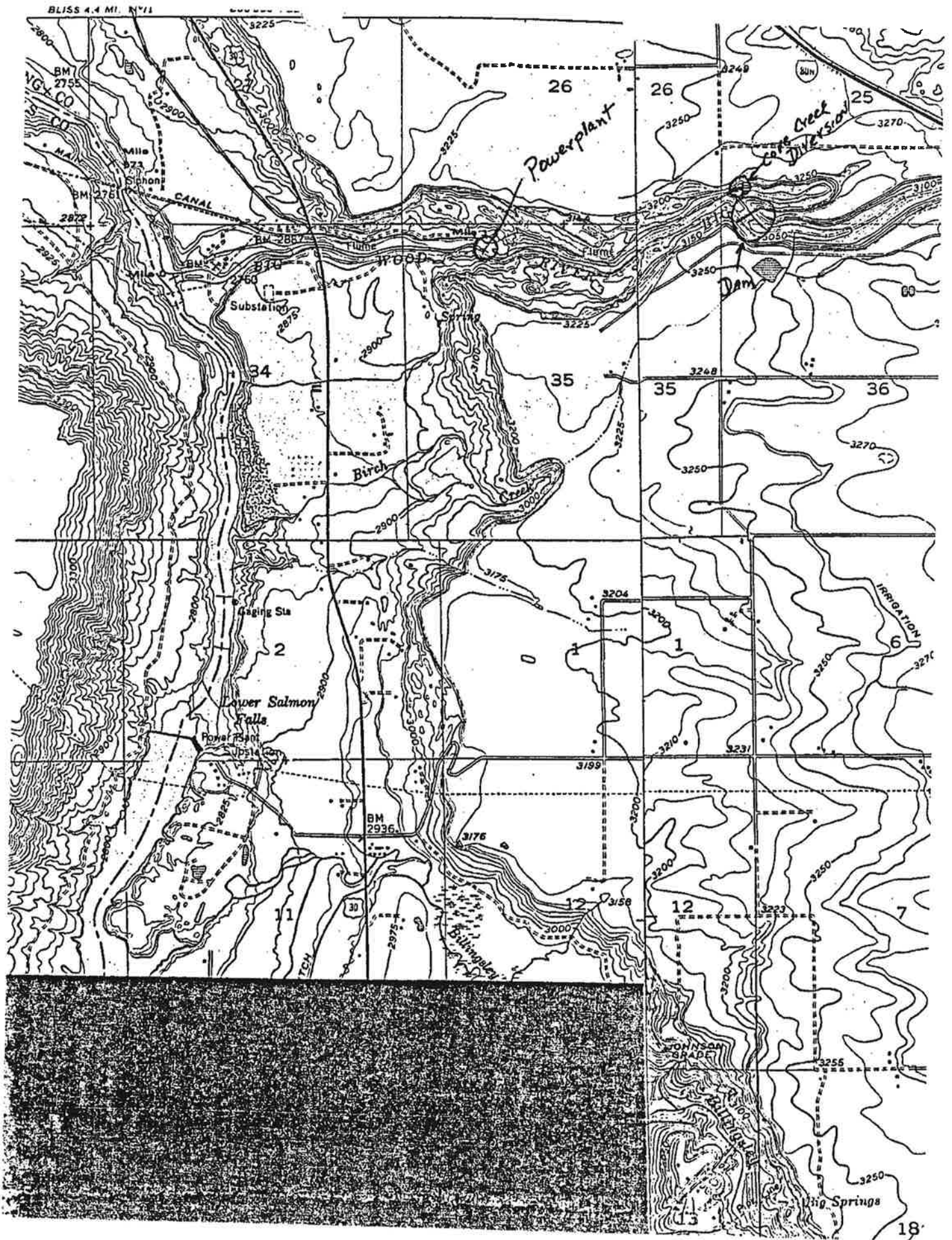
Scale: 2 inches equals 1 mile

(SEE ATTACHED)



Last Name Idaho Power Company Ident No. _____

Copies: Three-State, Yellow Claimant



15. Basis of Claim (check one) Beneficial Use ☒ Posted Notice _____ License _____ Permit _____
Decree _____
If applicable provide IDWR Water Right Number _____
Court _____ Case Number _____ Decree Date _____
Plaintiff vs Defendant _____

16. Signature (s)
(a.) By signing below, I/We acknowledge that I/We have received, read, and understand the form entitled
"How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____
wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments _____

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

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

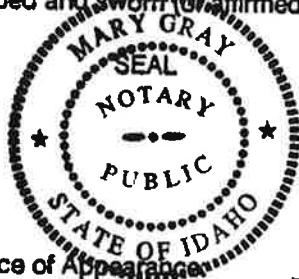
For Organizations: I do solemnly swear or affirm that I am _____ Senior Attorney _____
of Idaho Power Company _____, that I have signed the foregoing
document in the space below as _____ Senior Attorney _____ of Idaho Power Company _____
and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent _____

Title and Organization _____ Senior Attorney, Idaho Power Company Date 11/02/01

State of Idaho/or _____)
County of Ada _____) SS.

Subscribed and sworn to (or affirmed) before me this 2nd day of November 2001



Notary Public Mary Gray

Residing at Boise, ID

My Commission Expires 7/17/2004

Please Print Name

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

Signature _____

Address Idaho Power Company, P. O. Box 70, Boise, ID 83701

Date 11/02/01

Last Name IDAHO POWER COMPANY Identi Number _____

Copies White-Sure, Yellow-Claimant

STATE OF IDAHO

AFFIDAVIT OF JON BOWLING

1. I am an engineer with Idaho Power Company (IPC), assigned to the Water Management Department, and have been employed by IPC for 8 ½ years. In connection with the relicensing of various of IPC's hydroelectric projects in Idaho and the preparation and verification of water right claims filed in the Snake River Basin Adjudication for water use at those projects, IPC has undertaken a review of the status of the water rights held for power generation together with the use of water for such purposes at its hydroelectric projects.
2. In that regard, I am familiar with, and have conducted a review of, the records of IPC relating to the water rights held by IPC for its hydroelectric project on the Malad River [FERC Project # 2726, consisting of the Upper Malad and Lower Malad plants], as well as the current and historical use of water at those plants for the purpose of generating electrical energy. These records are kept in the regular course of business by IPC.
3. This review has revealed that while the Upper Malad plant has a state licensed water right, Lic. # 37-02471, in the amount of 900 cfs for power purposes at the Upper Malad plant, the turbine hydraulic capacity at the project is 1000 cfs, 100 cfs over and above the licensed amount of 900 cfs.
4. Advances in streamflow measurement technology and instrumentation in recent years has allowed IPC to make more accurate streamflow measurements in the power flume at Upper Malad revealing the true hydraulic capacity of the plant.

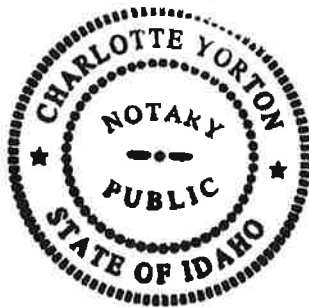
5. My review of IPC records further reveals that IPC has diverted this additional 100 cfs, for a total diversion of 1000 cfs, and that all of the water has been beneficially used, for power purposes at the Upper Malad plant since the plant came on line on June 14, 1948.
6. I have reviewed the attached SRBA beneficial use claim for an additional 100 cfs of water with a priority date of June 14, 1948, at the Upper Malad plant and believe that said claim accurately reflects the additional water usage over and above the currently licensed water rights at that site.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED: April 4, 2002

Jon Bowling
Jon Bowling

SUBSCRIBED AND SWORN to before me this 4th day of April,
2002.



Charlotte Yorton
NOTARY PUBLIC FOR IDAHO
Residing at: Boise, Idaho
My commission expires: 12/14/07

Payment Amount Date Received Region Status

Check Number 1091

Payer IDAHO POWER BY BARKER ROSHOLT & SIMPSON

Comment ADJUDICATION CLAIMS 37-20709 AND 37-20710

Free Detail

Amount	Description	Fund	FD	PCA	SO
\$100.00	ADJUDICATION FILING FEE	0337		44503	1155

Signature Line (Dept. Representative)

BARKER, RSHOLT & SIMPSON LLP
TWIN FALLS OFFICE
P O BOX 2139
BOISE, IDAHO 83701-2139

1091

92-372/1231 3636

Pay to the Order of IDWR P/S \$ 100.00
One hundred and no/100 Dollars

usbank.
1-800-US BANKS
usbank.com

PRIVATE FINANCIAL SERVICES

IPC-ADJ/MACAD BU Sharon D. Strubbe
1:123103729: [REDACTED] 1091

Hancock, Vikie

From: Tuthill, Dave
Sent: Thursday, April 11, 2002 4:03 PM
To: Hancock, Vikie
Cc: Shaff, Don; Susan Hamlin (E-mail); Jones, Doug
Subject: RE: NEW BASIN 37 CLAIMS - ID POWER

Vikie:

I reviewed the affidavits that you sent me from Jon Bowling of Power. These affidavits, dated April 4, 2002, address precisely the issues that I raised below. It appears that for both plants the need for additional water right rate of flow is based on better flow measurement techniques rather than the installation of different turbines or the modification of penstocks.

Based on Jon's affidavits I concur with Doug's recommendation to charge \$50 per claim.

Please place a reminder on the claims to be sure to add subordination language when we make our recommendations.

Thanks for the quick follow-up, and your thorough (as always) work, Vikie!

Dave

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

From: Hancock, Vikie
Sent: Thursday, April 11, 2002 11:32 AM
To: Tuthill, Dave
Subject: RE: NEW BASIN 37 CLAIMS - ID POWER

Dave,

I'm FAXing you copies of the Affidavits from IP engineer Jon Bowling.

Vikie

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

From: Tuthill, Dave
Sent: Thursday, April 11, 2002 10:32 AM
To: Hancock, Vikie; Shaff, Don; Hamlin Nygard, Susan
Cc: Jones, Doug
Subject: RE: NEW BASIN 37 CLAIMS - ID POWER

Vikie,

Thanks for forwarding the question.

I recommend that we request that Idaho Power send us a letter or a report describing the relationship between rate of flow and kilowatts generated for each of the power plants -- as configured now and as changed from the date of first installation (historic modifications to the plants). In our request to IPCO we can state that the reasons for the request are to evaluate the fees and to evaluate the validity of the new claims.

Based on this information we will better be able to identify appropriate fees.

Don, Doug or Susan might have another take -- this is my first impression.

Take Care,

Dave

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

From: Hancock, Vikie
Sent: Thursday, April 11, 2002 10:21 AM

To: Shaff, Don; Tuthill, Dave
Subject: NEW BASIN 37 CLAIMS - ID POWER

Don and Dave,

I just received two new claims from Idaho Power: 37-20709 & 37-20710. I have some questions as to the fees that should be charged for these claims, which are based upon Beneficial Use above and beyond previously filed claims based upon licensed rights.

Licensed right 37-2471 = new claim 37-20709 at Upper Malad Power Plant
Licensed rights 37-2128 & 37-2472 = new claim 37-20710 at Lower Malad Power Plant

Idaho Power asserts that these claims reflect additional cfs historically used at the two power plants on the Malad River to generate the capacity approved by each license, but do not assert any additional generating capacity. An affidavit submitted with each claim states that since the plants went on line more water than licensed has been used to generate the same amount of power at these two plants. The priority dates of both new claims are in 1948.

I checked the 1988 receipt #C002945 for the prior claims and it appears that the fees covered the generating capacity then claimed at the two plants. Since our filing fees are based on the generating capacity, not diversion rate, Doug suggested I charge a filing fee of \$50 per claim. I also waived the late fees as Second Round Notice has not gone out on basin 37. The \$50 filing fee seemed consistent with the fees charged for 37-2128 (\$47,300) and 37-2472 (\$50) which were both claimed for generation at Lower Malad.

Doug and I told the secretary who submitted the claims that we would ask for an opinion from our State Office and that there may be additional fees due. Please let me know if you agree with the fees I charged for filing, and also about the waiver of late fees. If you want to read the affidavit let me know and I'll FAX it up to you.

Thanks -

Vikie

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)

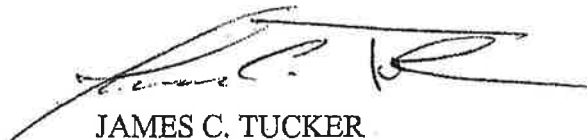
Dear Director Dreher:

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

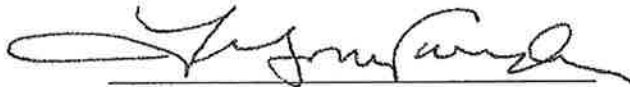
any such disagreements to their mutual satisfaction, either party, after notice to the other, may file a petition for declaratory relief with a court of appropriate jurisdiction to have the disagreement resolved and the Swan Falls Agreement interpreted and neither this Stipulation nor I.C. §§ 42-234,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

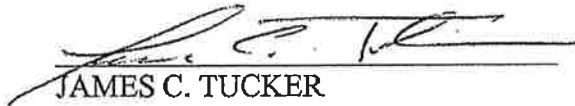
FOR THE STATE OF IDAHO, including THE IDAHO WATER RESOURCE BOARD:



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: 37-20709

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

SOURCE: COVE CREEK
MALAD RIVER

TRIBUTARY: MALAD RIVER
TRIBUTARY: SNAKE RIVER

QUANTITY: 100.000 CFS

PRIORITY DATE: 06/14/1948

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	01/01 12/31	100.000 CFS

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

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 - Beneficial Use

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: 37-20709

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:

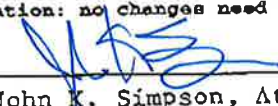
Remove paragraphs 1-5 of the above-referenced section.

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

05/03/2005

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

RIGHT NUMBER: 37-20709

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

SOURCE: COVE CREEK
MALAD RIVER

TRIBUTARY: MALAD RIVER
TRIBUTARY: SNAKE RIVER

QUANTITY: 100.000 CFS

PRIORITY DATE: 06/14/1948

POINT OF DIVERSION:

T06S R13E S25 SWSW Within GOODING County

T06S R13E S25 SWSW Within GOODING County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

POWER

01/01 12/31

100.000 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.

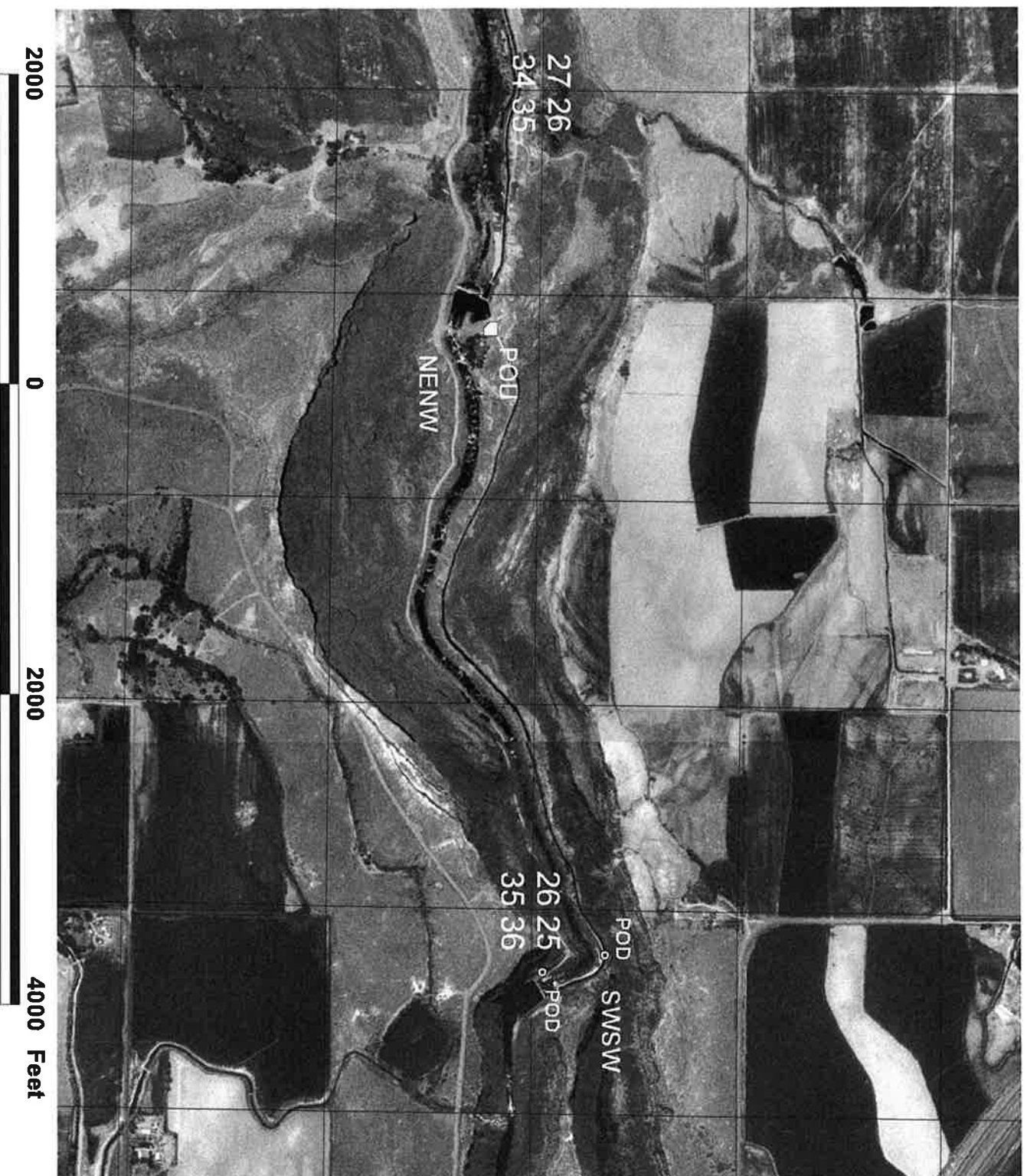
IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

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, 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, 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: Beneficial Use

37-2471 & 37-20709 Upper Malad Power Plant

T06S R13E



To: AJ Files 37-20709 and 37-20710

From: Carter Fritschle

Re: Priority Dates of Idaho Power's Beneficial Use Rights claimed for the Malad Gorge Power Plants

The permitted amount for right no. 37-2471 at the Upper Malad Gorge Power Plant was 900 cfs and the licensed amount is 900 cfs.

Idaho Power claimed an additional 100 cfs for the upper plant on claim no. 37-20709 for a total 1000 cfs at the upper plant. The priority date claimed is the date the upper plant came online, and it is prior to the field exam date for permit 37-2471. However, because the permit was limited to 900 cfs, a license for a greater amount was not possible even if it was being beneficially used at the time the permit was examined for licensing.

Therefore, the additional 100 cfs can be recommended for the beneficial use claim no. 37-20709 with the priority date of June 14, 1948, the date the plant came on line and the water was first beneficially used to generate power.

The permitted amount for right no. 37-2472 at the Lower Malad Gorge Power Plant was 1450 cfs, and licensed amount is 650 cfs, recognizing the 700 cfs from license no. 37-2128 with a priority date of November 25, 1908 is already accounted for.

Idaho Power claimed an additional 150 cfs for the lower plant on claim no. 37-20710 for a total of 1500 cfs at the lower plant. The priority date claimed is October 11, 1948. The first field exam for the license at the lower plant was conducted August 19, 1948, and the field examiner's notes on this exam were erased or have faded away. A second exam was conducted about two years later that is very vague, and it gives the plant a capacity of either 1150 cfs (100% efficiency) or 1250 cfs (85% efficiency). The 1350 cfs (700 cfs + 650 cfs) seems to have been taken from the proof of beneficial use statements and a letter from Idaho Power, because after the first exam we issued a Certificate of Completion of Works for 1250 cfs.

Idaho Power has claimed an additional 150 cfs for the lower plant with a priority date of October 11, 1948 which is after the first field exam. A letter from Idaho Power stating a capacity of approximately 1350 cfs is dated June 15, 1949. A second field exam was conducted May 23, 1950, and the license was issued September 29, 1950.

Since the permit was for more water than what was licensed, the earliest priority date that can be recommended for claim no. 37-20910 is the day after the second field exam was conducted for right no. 37-2472, which results in a priority date of May 24, 1950.