

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

37-20710

Date Received

4-10-2002

Receipt Number

50 24754

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

*James C Tucker's
EX-100-100-100
T.P.*

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) October 11, 1948

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

4. a. Location of existing point of diversion is: Township 06S Range 13E Section 35,
1/4 of NE 1/4 of NW 1/4, Govt. Lot, B.M., County of Gooding

Additional points of diversion if any: _____

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, 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 150 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 150 (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	27											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.
37-02472; 37-02128 or None ()

14. Remarks: Claim filed to reflect historical beneficial use. Lower Malad power plant.

Last Name IDAHO POWER COMPANY Ident No. _____

Copies: White - State, Yellow - Claimant

15. Basis of Claim (check one) Beneficial Use X 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 Title _____
of Idaho Power Company Organization _____, that I have signed the foregoing
document in the space below as Senior Attorney Title _____ of Idaho Power Company Organization _____
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 11/2/01

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

Subscribed and sworn (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.

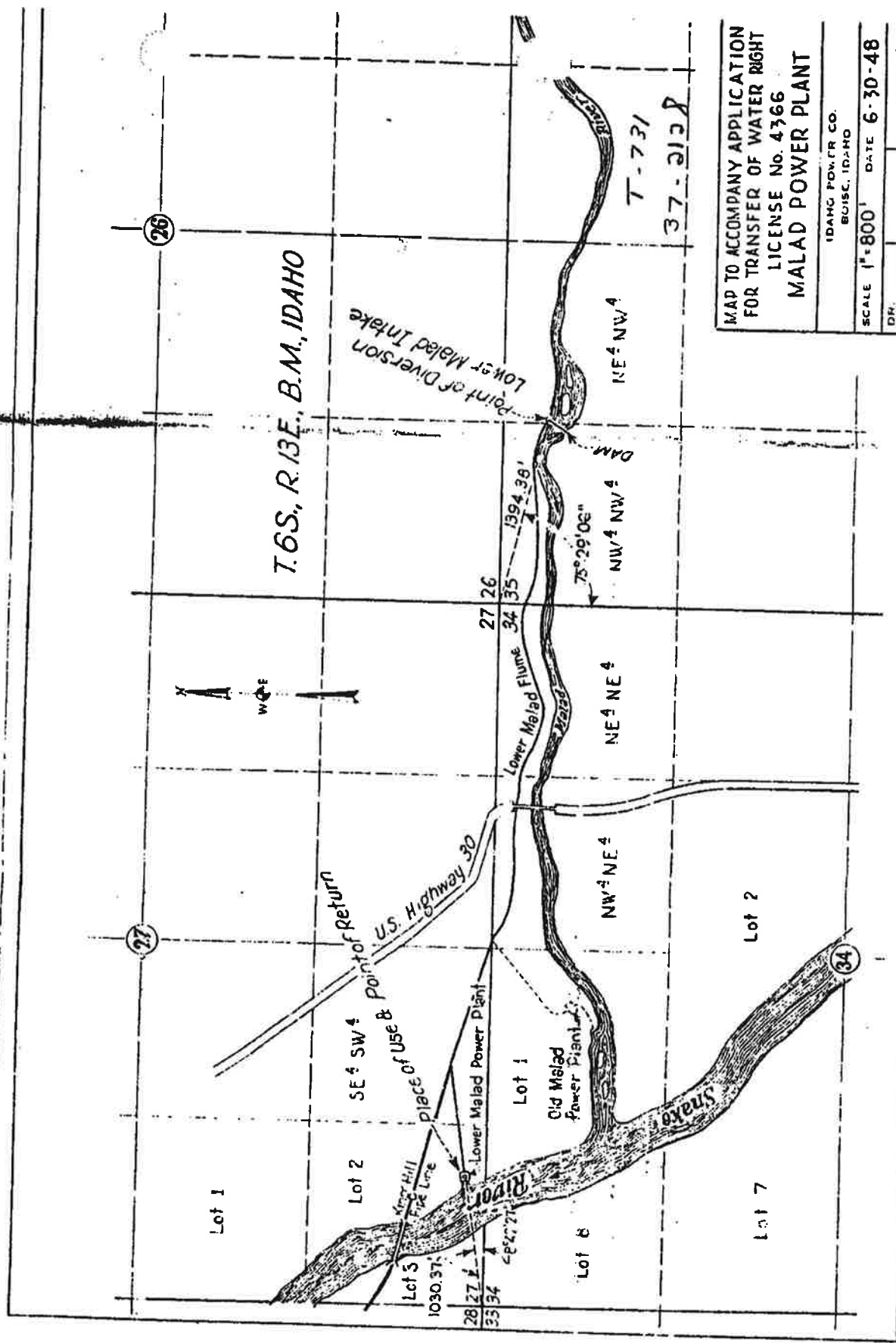
Signature _____

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

Date 11/02/01

Last Name IDAHO POWER COMPANY Ident. Number _____

C.ies White-State, Yellow-Claimant



MAP TO ACCOMPANY APPLICATION
FOR TRANSFER OF WATER RIGHT
LICENSE No. 4366
MALAD POWER PLANT

IDANG POWER CO.
BOISE, IDAHO

SCALE 1"=800' DATE 6-30-48

DR. J. K. L. 1-7525

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 Lower Malad plant has state licensed water rights, Lic. #s 37-02128 & 37-02472, in the total amount of 1350 cfs for power purposes at the Lower Malad plant, the turbine hydraulic capacity at the project is 1500 cfs, 150 cfs over and above the licensed amount of 1350 cfs.

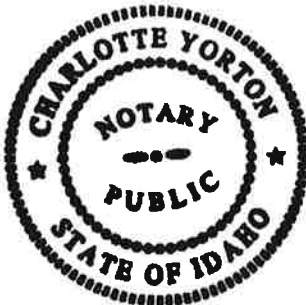
4. Advances in streamflow measurement technology and instrumentation in recent years has allowed IPC to make more accurate streamflow measurements in the power flume at Lower Malad revealing the true hydraulic capacity of the plant.
5. My review of IPC records further reveals that IPC has diverted this additional 150 cfs, for a total diversion of 1500 cfs, and that all of the water has been beneficially used, for power purposes at the Lower Malad plant since the plant came on line on October 11, 1948.
6. I have reviewed the attached SRBA beneficial use claim for an additional 150 cfs of water with a priority date of October 11, 1948, at the Lower Malad plant and believe that said claim accurately reflects the additional water usage over and above the licensed water rights at that site.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED: April 4, 2002

Jon Bowling
Jon Bowling

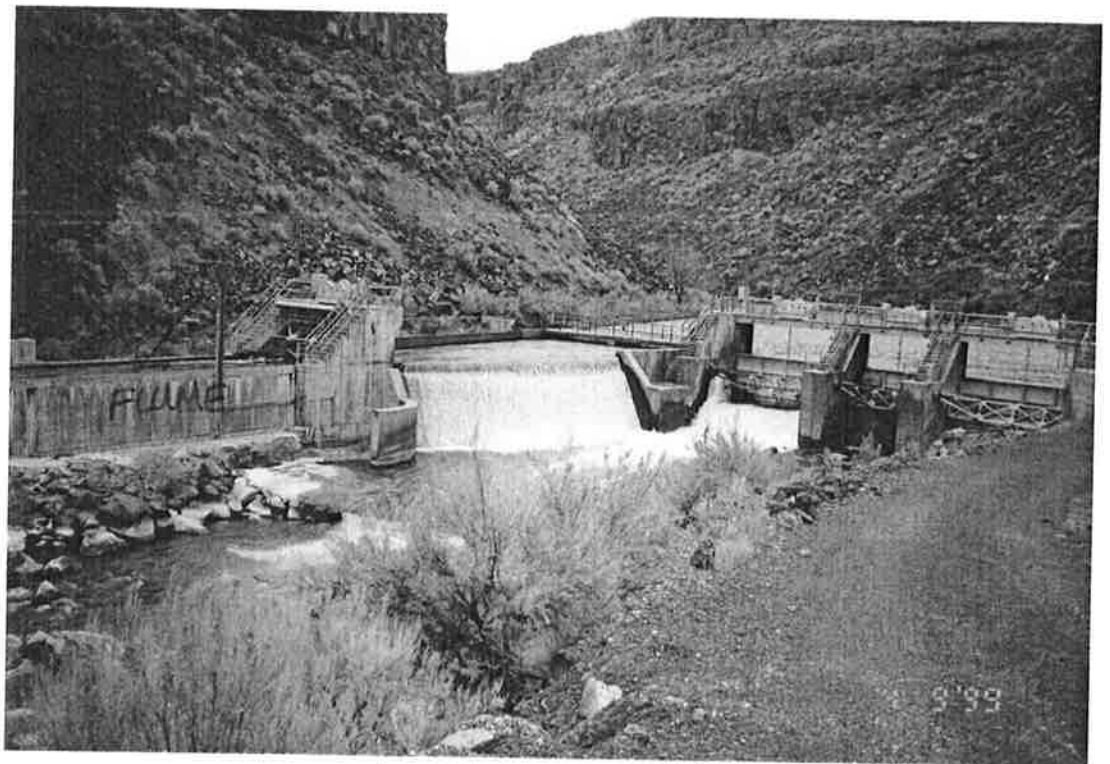
SUBSCRIBED AND SWORN to before me this 4th day of April,
2002.



Charlotte Yorton
NOTARY PUBLIC FOR IDAHO
Residing at: Boise, Idaho
My commission expires: 12/14/2007



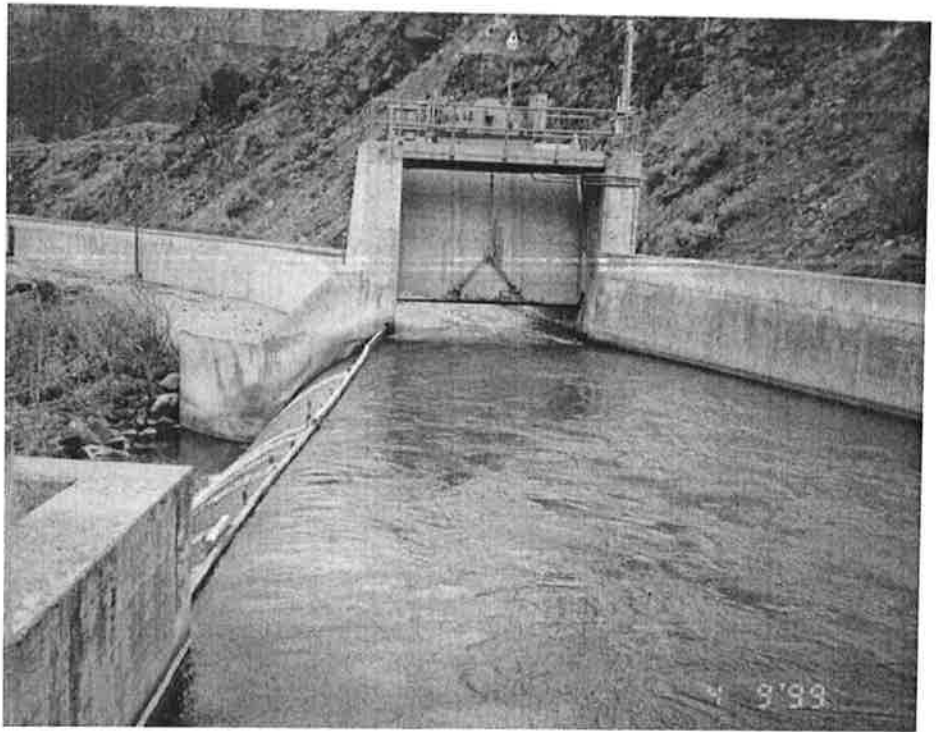
Upper Malad flume at confluence with Cove Creek.



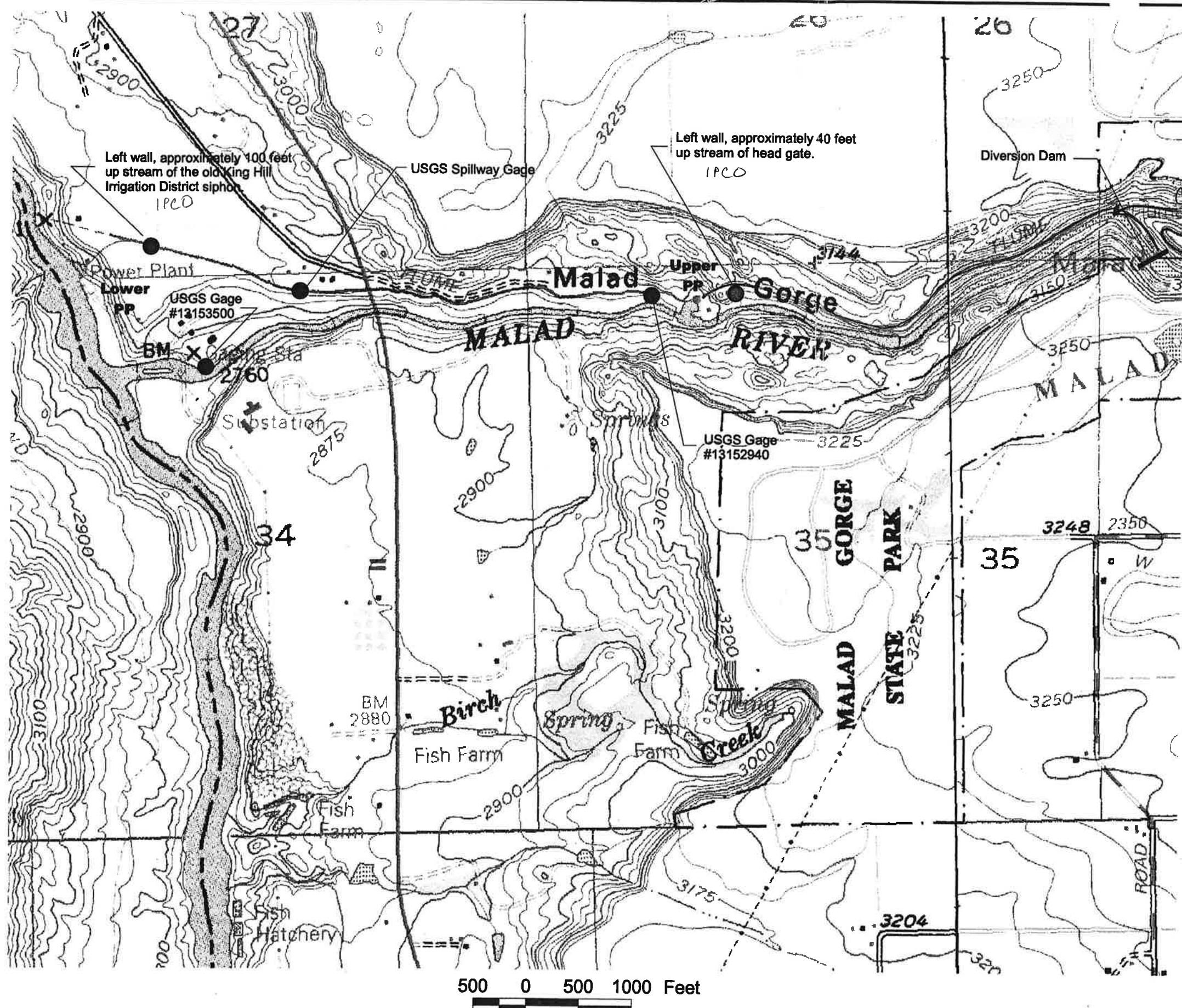
Upper Malad Diversion and Spillway



Upper Malad Plant, discharge pool, diversion
to lower flume & spill to river



Lower Malad flume at heading.



Upper Malad nr Bliss, Idaho

Location: Latitude 42°51'54", Longitude 114°52'58", in the NE1/4 NW1/4 Section 35, Township 6 South, Range 13 East, Gooding County, Idaho, hydrologic Unit 417040219 on the left wall and .07 miles upstream from the Upper Malad power plant.

Datum of Gage: 3020 from topographic map.

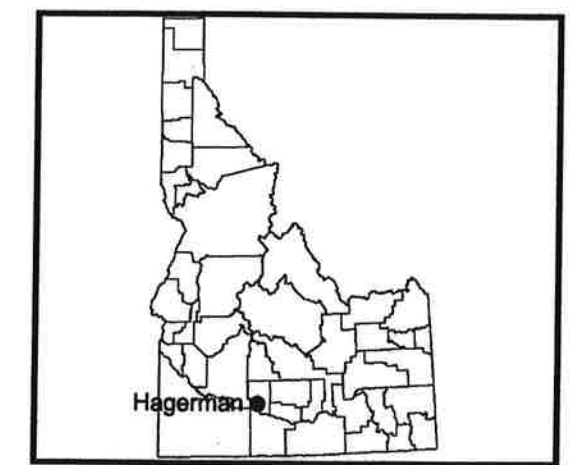
Lower Malad nr Bliss, Idaho

Location: Latitude 42°51'59", Longitude 114°54'10", in the SE1/4 SW1/4 of Section 27, Township 6 South, Range 13 East, Gooding County, Idaho, hydrologic Unit 417040219 on the left bank .1 miles upstream from the Lower Malad power plant.

Datum of Gage: 2895 from topographic map.

Legend

- Gage Station (IPCO Measurement Location)
- USGS Gage Station



Vicinity Map

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)

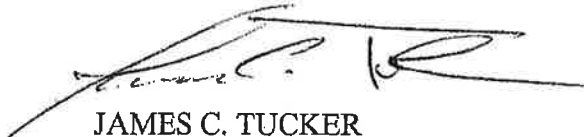
Dear Director Dreher:

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

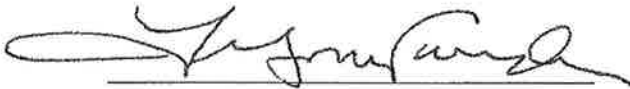
any such disagreements to their mutual satisfaction, either party, after notice to the other, may file a petition for declaratory relief with a court of appropriate jurisdiction to have the disagreement resolved and the Swan Falls Agreement interpreted and neither this Stipulation nor I.C. §§ 42-234, 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: 37-20710

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

SOURCE: MALAD RIVER

TRIBUTARY: SNAKE RIVER

QUANTITY: 150.000 CFS

PRIORITY DATE: 05/24/1950

POINT OF
DIVERSION: T06S R13E S35 NENW 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	150.000 CFS

PLACE OF USE: POWER Within GOODING County

T06S R13E S27 Lot 2 SESW

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

08/31/2005
RECEIVED
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: 37-20710

IDAHO POWER CO

PO BOX 70

BOISE ID 83707

Telephone Number: (208) 368-2781

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

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

(2) Priority Date

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

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

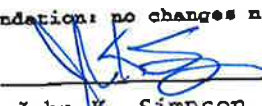
(2) Report priority date as claimed.

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

(1) Inconsistent with Swan Falls Agreement. (2) Priority date should be recommended as claimed. 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.

208-336-0700

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

05/03/2005

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

RIGHT NUMBER: 37-20710

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

SOURCE: MALAD RIVER

TRIBUTARY: SNAKE RIVER

QUANTITY: 150.000 CFS

PRIORITY DATE: 05/24/1950

POINT OF DIVERSION:

T06S R13E S35 NENW Within GOODING County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

POWER

01/01 12/31

150.000 CFS

PLACE OF USE:

POWER Within GOODING County

T06S R13E S27 Lot 2 SESW

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.

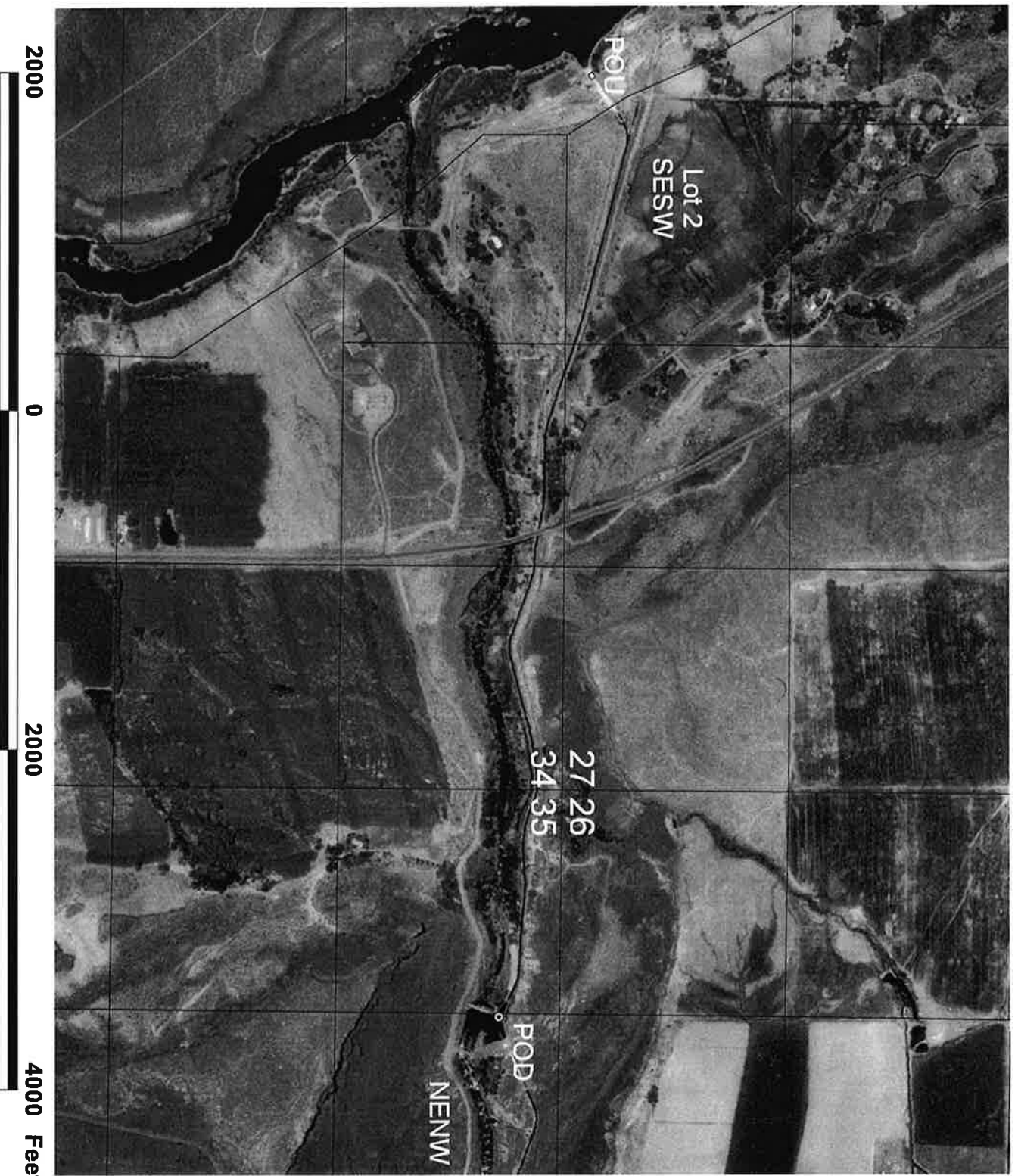
IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

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

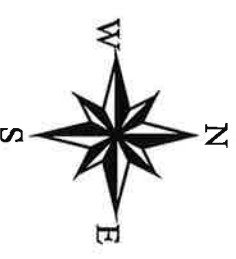
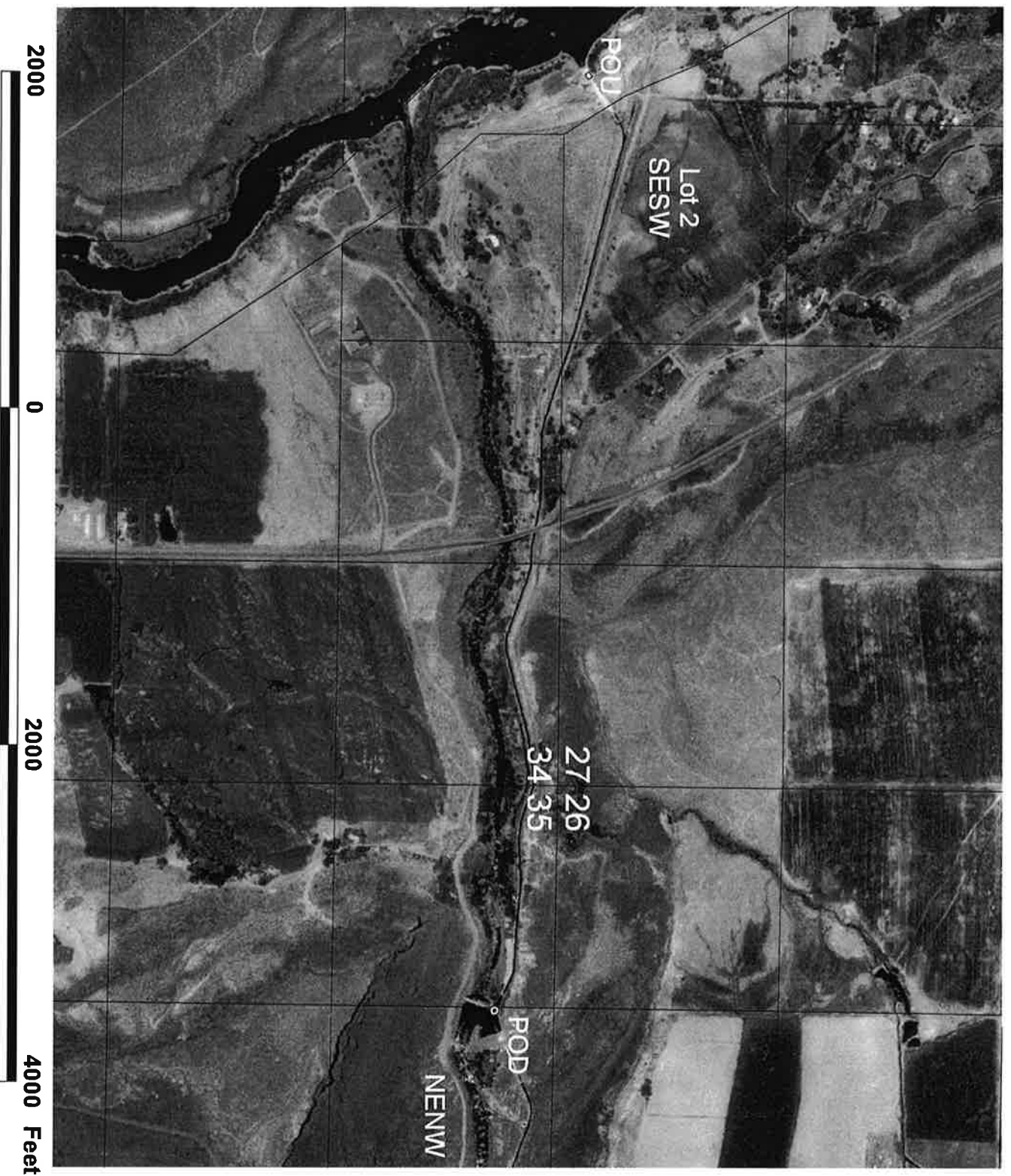
**37-2128, 37-2472 & 37-20710
Lower Malad Power Plant**

T06S R13E



**37-2128, 37-2472 & 37-20710
Lower 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.