

02/20/2003

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

RIGHT NUMBER: 37-7920

NAME AND ADDRESS: STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
STATEHOUSE MAIL
PO BOX 83720
BOISE ID 83720-0098

SOURCE: MALAD RIVER

TRIBUTARY: SNAKE RIVER

QUANTITY: 39.000 CFS

PRIORITY DATE: 06/19/1981

This minimum streamflow shall be junior and subordinate to all consumptive use rights diverted from groundwater within the Snake River Aquifer tributary to the Malad River, held in trust by the State of Idaho, which may be approved or diverted later in time than the priority of this right. Approval of this minimum streamflow right shall not give rise to any right or claim against any future rights to the consumptive use of groundwater held in trust by the State of Idaho initiated later in time than the priority of this right to the extent that such uses are within the limits established pursuant to the Swan Falls Agreement, the Idaho State Water Plan, and Chapter 2, Title 42, Idaho Code.

POINT OF DIVERSION:

T06S R13E S34 NENW Lot 1 End of Stream Flow Within GOODING County

T06S R13E S35 NENW Begin of Stream Flow Within GOODING County

T06S R13E S35 NWNW Begin of Stream Flow Within GOODING County

This minimum instream flow begins at the downstream side of the Idaho Power Company diversion structure located on or near the line separating the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 35, Township 6 South, Range 13 East, B. M., from the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 35, Township 6 South, Range 13 East, B. M., and ends downstream approximately one (1) mile at the confluence of the Malad River with the Snake River in Lot 1 (NE $\frac{1}{4}$ NW $\frac{1}{4}$) Section 34, Township 6 South, Range 13 East, B. M.

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
MINIMUM INSTREAM FLOW	1/01 12/31	39.000 CFS

The purpose of this minimum stream flow is to maintain trout rearing and spawning habitat.

Use of water under this right shall be non-consumptive.

PLACE OF USE:

The Place of Use is within the reach between the beginning instream point and the ending instream point described for the points of diversion for this right.

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.

Upon the future finding and order of the Director that gauging stations are required to maintain the approved minimum flow on the Malad River, such measuring devices shall be permanently installed and maintained as specified by the Department.

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

The Board, upon receiving a request, or upon its own initiative, may petition the Director for an amendment to the right. The petition must set forth any significant change in circumstances and evidence of the public interest supporting the proposed amendment. The Director will notify the general public and specific persons or known interested parties of the proposed change, and conduct a hearing for the purpose of determining whether the right should be amended in the public interest. The burden of proof at the hearing shall be upon the persons or parties seeking the amendment to establish that the amendment of the right would be in the public interest.

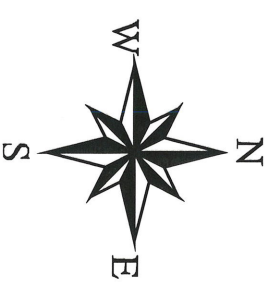
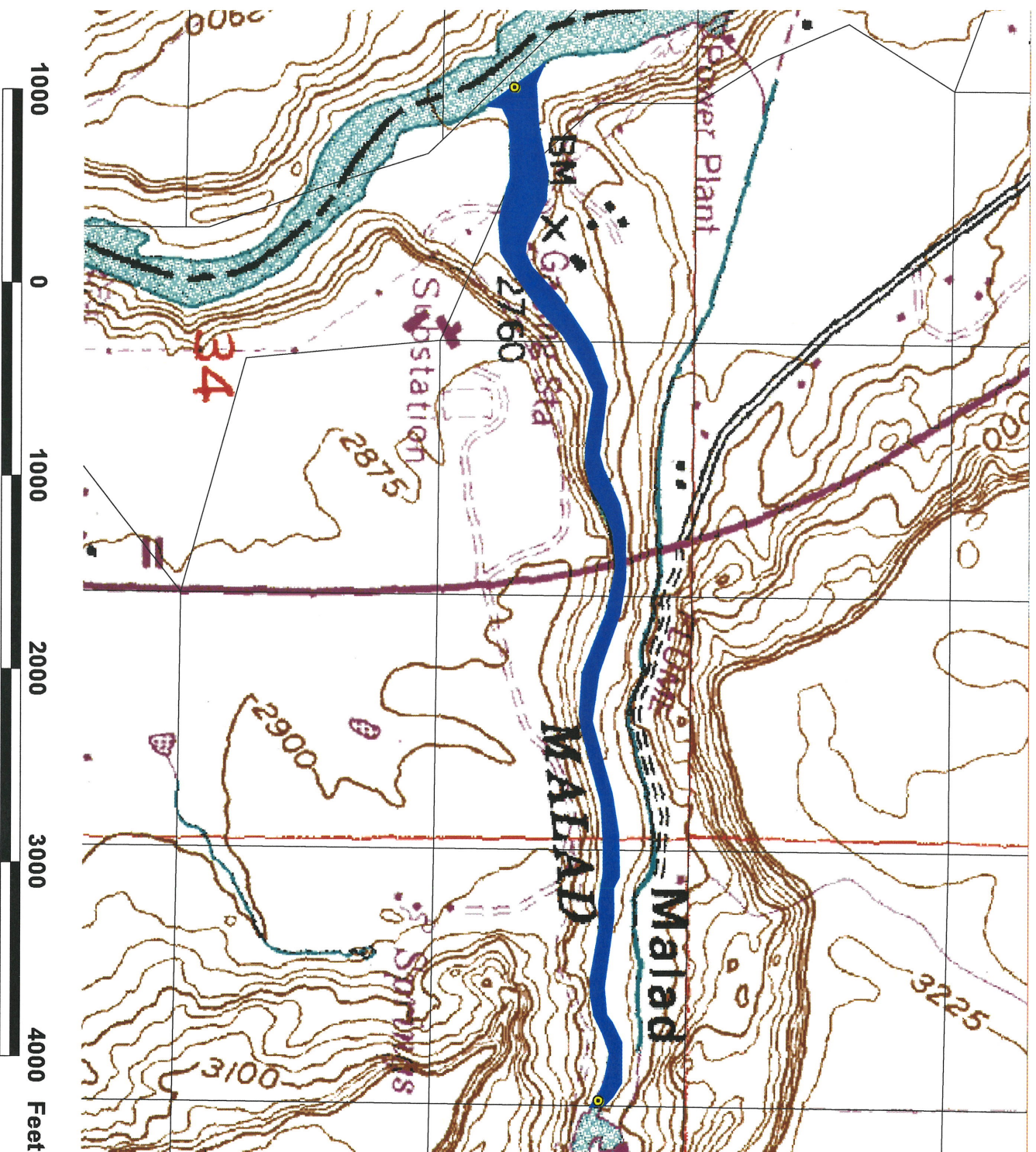
EXPLANATORY MATERIAL: License

Use of water under this right shall recognize and allow the continued beneficial diversion of water for irrigation or other purposes under any prior existing water right established by diversion and application to beneficial use or by an application, permit, or license on file or issued by the Director under the provisions of Chapter 2, Title 42, Idaho Code, with the priority of water right date earlier than 6/19/1981.

Use of water under this water right will be regulated by the watermaster of State Water District No. 37.

37-7920

T06S R13E
S34 & S35



CLF 02/20/03

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: A37-07920
Date Received: 7/26/1990
Receipt No: 6018452
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: STATE OF IDAHO 208-327-7900
Address: IDAHO WATER RESOURCE BOARD
STATEHOUSE
BOISE, ID 83720

2. Date of Priority: JUN 19, 1981

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

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
06S	13E	34		NE	NW		GOODING
		35		NW	NE		GOODING

5. Description of diverting works:

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
MINIMUM INSTREAM FLOW	01/01	12/31	39.000		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
06S	13E	34	NE	NW		MIF	

11. Place of use in counties: GOODING

12. Do you own the property listed above as place of use? NO

13. Other Water Rights Used:

14. Remarks:

P/D & P/U BETWEEN POINTS LISTED ABOVE. UPON THE FUTURE FINDING & ORDER OF THE DIRECTOR THAT GAGING STATIONS ARE REQUIRED TO MAINTAINED THE APPROVED MIN. FLOW ON THE MALAD RIVER, SUCH DEVICES SHALL BE PERMANENTLY INSTALLED & MAINTAINED AS SPECIFIED BY THE DEPT. PROOF OF INSTREAM B/U OF THE MIN. STREAM FLOW APPROPRIATED SHALL BE SUBMITTED TO THE DEPT. WITHIN 5 YRS. AFTER THE PERMIT APPROVAL IS FINALLY EFFECTIVE. PROOF SHALL BE LIMITED TO SUBMITTAL OF FLOW DATA SHOWING THAT THE PERMITTED FLOWS ARE CAPABLE OF BEING MAINTAINED & SHALL INCLUDE AT LEAST 3 YRS. OF FLOW DATA FOR THE WATER COURSE. USE OF WATER UNDER THIS PERMIT SHALL RECOGNIZE & ALLOW THE CONTINUED BENEFICIAL DIVERSION & USE OF WATER FOR IRRIGATION OR OTHER PURPOSES UNDER ANY PRIOR EXISTING WATER RT. ESTABLISHED BY DIVERSION & APPLICATION TO BENEFICIAL USE OR BY AN APPLICATION, PERMIT OR LICENSE ON FILE ISSUED BY THE DIRECTOR UNDER THE PROVISIONS OF CHAPTER 2, TITLE 42, I.C., WITH THE PRIORITY OF WATER RIGHT DATE EARLIER THAN 6/19/81, THE PRIORITY OF THIS PERMIT. THIS PERMIT FOR MIN. STREAM FLOW SHALL BE JUNIOR & SUBORDINATE TO ALL CONSUMPTIVE USE RTS. DIVERTED FROM GROUNDWATER WITHIN THE SNAKE RIVER PLAIN AQUIFER TRIBUTARY TO THE MALAD RIVER, HELD IN TRUST BY THE STATE OF IDAHO, WHICH MAY BE APPROVED OR DIVERTED LATER IN TIME THAN THE PRIORITY OF THIS PERMIT. APPROVAL OF THIS PERMIT SHALL NOT GIVE RISE TO ANY RT. OR CLAIM AGAINST ANY FUTURE RTS. TO THE CONSUMPTIVE USE OF GROUNDWATER HELD IN TRUST BY THE STATE OF IDAHO INITIATED LATER IN TIME THAN THE PROPOSED PRIORITY OF THIS PERMIT & ANY SUBSEQUENT LICENSE TO THE EXTENT THAT SUCH USES ARE WITHIN THE LIMITS ESTABLISHED PURSUANT TO THE SWAN FALLS AGREEMENT, THE IDAHO STATE WATER PLAN, & CHAPTER 2, TITLE 42, I.C. THE DIRECTOR RETAINS JURISDICTION TO REVIEW & AMEND ANY & ALL PARAMETERS OF THIS PERMIT & SUBSEQUENT LICENSE. ANY PERSON SEEKING REVIEW & AMENDMENT OF THE PERMIT OR LICENSE SHALL FILE A PETITION WITH THE DIRECTOR, WHICH SHALL INCLUDE THE AMENDMENT SOUGHT, THE REASONS FOR THE AMENDMENT, & A STATEMENT OF THE CHANGE IN CIRCUMSTANCES SINCE THE PERMIT OR LICENSE WAS ISSUED OR LAST REVIEWED THAT MERIT A REVIEW OF THE PERMIT OR LICENSE. A COPY OF THE PETITION SHALL BE SERVED UPON THE HOLDER OR THE PERMIT OR LICENSE. THE HOLDER OF THE PERMIT OR LICENSE MAY FILE AN ANSWER TO THE PETITION, WHICH MUST BE FILED WITHIN 21 DAYS AFTER SERVICE OF THE PETITION UPON THE PERMIT OR LICENSE HOLDER. IF AFTER A PRELIMINARY HEARING, THE DIRECTOR FINDS THAT A SIGNIFICANT CHANGE IN CIRCUMSTANCES HAS OCCURRED & THAT SUFFICIENT REASONS EXIST FOR EXERCISING RETAINED JURISDICTION UNDER THIS CONDITION, THE DIRECTOR SHALL ISSUE AN ORDER SETTING FORTH THE CHANGE IN CIRCUMSTANCES & REASONS MERITING REVIEW OF THE PERMIT OR LICENSE, & SHALL GIVE NOTICE THEREOF TO THE HOLDER

14. Remarks: Continued

OF THE PERMIT OR LICENSE, THE PUBLIC GENERALLY, & SPECIFIC PERSONS OR PARTIES KNOWN BY THE DIRECTOR TO BE INTERESTED. THE DIRECTOR SHALL THEREAFTER CONDUCT A HEARING FOR THE PURPOSE OF DETERMINING WHETHER THE PERMIT OR SUBSEQUENT LICENSE SHOULD BE AMENDED IN THE PUBLIC INTEREST. THE BURDEN OF PROOF AT THE HEARING SHALL BE UPON THE PERSON OR PARTY SEEKING THE AMENDMENT TO ESTABLISH THAT THE PERMIT OR LICENSE SHOULD BE AMENDED TO SATISFY THE PUBLIC INTEREST. THE APPLICATION HEREBY APPROVED BY THE DIRECTOR SHALL BE SUBMITTED TO THE IDAHO LEGISLATURE BY THE 5TH DAY OF THE NEXT REGULAR LEGISLATIVE SESSION & THE DIRECTOR'S APPROVAL SHALL NOT BECOME FINALLY EFFECTIVE UNTIL APPROVED BY THE LEGISLATURE PURSUANT TO THE PROCEDURE PROVIDED BY SECTION 42-1503, I.C.

15. Basis of Claim: PERMIT

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 Chairman of
Title
Idaho Water Resource Board, that I have signed the foregoing
Organization
document in the space below as Chairman of
Title
Idaho Water Resource Board and that the statements contained in the
Organization
foregoing document are true and correct.

[Signature]
Signature of Authorized Agent

Chairman Idaho Water Resource Board
Title and Organization

8/3/90
Date

State of Idaho)
County of Ada) SS.

Subscribed and sworn (or affirmed) before me this 3 day

of August 19 90

[Signature]
Notary Public

Seal

Residing at Emmett

My Commission Expires 5/30/99

BEFORE THE WATER RESOURCE BOARD
OF THE STATE OF IDAHO

IN THE MATTER OF THE)
SNAKE RIVER BASIN WATER)
RIGHT ADJUDICATION)

A RESOLUTION TO FILE
ADJUDICATION CLAIMS AND
PAY FILING FEES

WHEREAS, the Snake River Basin Water Right Adjudication has been commenced by order of the Court dated November 19, 1987; and,

WHEREAS, under the provisions of Chapter 15, Title 42, Idaho Code, the Idaho Water Resource Board is the holder of certain instream water rights; and,

WHEREAS, the Idaho Water Resource Board desires to file claims in the Snake River Basin Adjudication for all water right permits held by the Board as provided by Section 42-1421, Idaho Code; and,

WHEREAS, all claims filed with the Director of the Idaho Department of Water Resources as a part of the adjudication must be accompanied by the appropriate filing fee as set out in Section 42-1414, Idaho Code; and,

WHEREAS, by Resolution of June 23, 1989 the Board directed that annual budget requests be made to the Legislature for an appropriation to pay adjudication claim fees for water rights held by the Board and that upon receipt of the necessary funds the Board will file the appropriate adjudication claims; and,

WHEREAS, the Legislature did appropriate \$74,200 to be used by the Board during fiscal year 1991 to pay the first installment of the filing fees for the claims listed below.

NOW, THEREFORE BE IT RESOLVED that the Idaho Water Resource Board, through its Chairman, files the following claims to water rights as part of the Snake River Basin Adjudication and directs the fees for those claims be taken from the money appropriated for that purpose to be paid to the Department of Water Resources.

<u>Number</u>	<u>Instream Right</u>
21-07282	Henrys Fork
-36-07820	Blind Canyon Springs
73-07045	Pahsimeroi River
-41-07046	Rock Creek, East Fork
-37-07849	Silver Creek
-37-07919	Big Wood River
-37-07920	Malad River (Big Wood)
22-07370	Bitch Creek
21-07283	Warm River
-41-07074	Rock Creek, East Fork
21-07355	Warm River
65-12733	Payette River, SF & Main
-36-08307	Minnie Miller Springs

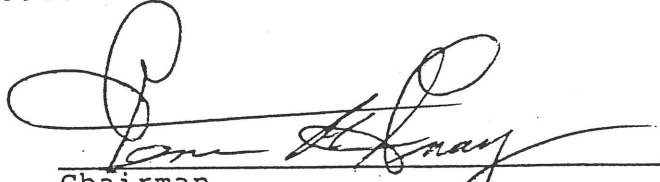
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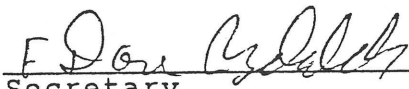
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- 36-08330
- 47-08073
- 36-08337
- 36-08374

Crystal Springs
Shoshone Creek
Box Canyon Springs
Crystal Springs

DATED this 3 day of August, 1990.


Chairman
Idaho Water Resource Board

ATTEST 
Secretary

State of Idaho
Department of Water Resources

Amended

Water Right License

Amended

WATER RIGHT NO. 37-07920

Priority: June 19, 1981

Maximum Diversion Rate: 39.00 CFS

It is hereby certified that STATE OF IDAHO
IDAHO WATER RESOURCE BOARD
STATEHOUSE MAIL
PO BOX 83720
BOISE ID 83720-0098

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated June 19, 1981, and has submitted Proof of Beneficial Use on March 6, 1992. A minimum instream flow in

SOURCE

MALAD RIVER

Tributary: SNAKE RIVER

has been established as follows:

BENEFICIAL USE

MINIMUM INSTREAM FLOW

PERIOD OF USE

1/01 to 12/31

DIVERSION RATE

39.00 CFS

LOCATION OF MINIMUM INSTREAM FLOW REACH:

MALAD RIVER NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 35, Twp 6S, Rge 13E, B.M. GOODING County and/or
NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 35, Twp 6S, Rge 13E, B.M. GOODING County (Beginning of Reach)

MALAD RIVER L1 NE $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 34, Twp 6S, Rge 13E, B.M. GOODING County (Ending of Reach)

CONDITIONS OF APPROVAL

1. Use of water under this water right will be regulated by the watermaster of State Water District No. 37.
2. Use of water under this right shall be non-consumptive.
3. This minimum instream flow shall be junior and subordinate to all consumptive use rights diverted from groundwater within the Snake River Aquifer tributary to the Malad River, held in trust by the State of Idaho, which may be approved or diverted later in time than the priority of this right. Approval of this minimum instream flow right shall not give rise to any right or claim against any future rights to the consumptive use of groundwater held in trust by the State of Idaho initiated later in time than the priority of this right to the extent that such uses are within the limits established pursuant to the Swan Falls Agreement, the Idaho State Water Plan, and Chapter 2, Title 42, Idaho Code.
4. Use of water under this right shall recognize and allow the continued beneficial diversion of water for irrigation or other purposes under any prior existing water right established by diversion and application to beneficial use or by an application, permit, or license on file or issued by the Director under the provisions of Chapter 2, Title 42, Idaho Code, with the priority of water right date earlier than 6/19/1981.
5. Upon the future finding and order of the Director that gauging stations are required to maintain the approved minimum flow on the Malad River, such measuring devices shall be permanently installed and maintained as specified by the Department.

State of Idaho
Department of Water Resources
Water Right License

Amended

Amended

WATER RIGHT NO. 37-07920

CONDITIONS OF APPROVAL continued

6. The Board, upon receiving a request, or upon its own initiative, may petition the Director for an amendment to the right. The petition must set forth any significant change in circumstances and evidence of the public interest supporting the proposed amendment. The Director will notify the general public and specific persons or known interested parties of the proposed change, and conduct a hearing for the purpose of determining whether the right should be amended in the public interest. The burden of proof at the hearing shall be upon the persons or parties seeking the amendment to establish that the amendment of the right would be in the public interest.
7. This minimum instream flow begins at the downstream side of the Idaho Power Company diversion structure located on or near the line separating the NE $\frac{1}{4}$ NW $\frac{1}{4}$, Section 35, Township 6 South, Range 13 East, B. M., from the NW $\frac{1}{4}$ NW $\frac{1}{4}$, Section 35, Township 6 South, Range 13 East, B. M., and ends downstream approximately one (1) mile at the confluence of the Malad River with the Snake River in Lot 1 (NE $\frac{1}{4}$ NW $\frac{1}{4}$) Section 34, Township 6 South, Range 13 East, B. M.
8. The purpose of this minimum instream flow is to maintain trout rearing and spawning habitat.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed and sealed this 20th day of DECEMBER, 2002.


KARL J. DREHER
Director