

John K. Simpson, ISB No. 4242
Travis L. Thompson, ISB No. 6168
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MAY 26 2010

**DEPARTMENT OF
WATER RESOURCES**

Attorneys for North Side Canal Company and Twin Falls Canal Company

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF	)	
APPLICATION FOR PERMIT & LICENSE	)	NORTH SIDE AND TWIN
NO. 01-07011	)	FALLS CANAL COMPANIES'
	)	WITNESS AND EXHIBIT
APPLICANT:	)	DISCLOSURE
Twin Falls Canal Company &	)	
North Side Canal Company	)	
	)	
	)	

At the hearing of this matter to be held June 2, and 3, 2010, the North Side and Twin Falls Canal Companies intend only to call Shelley Keen and cross-examine him concerning the contents of the pre-filed testimony submitted by him as a representative of the Idaho Department of Water Resources in this action. As a result, it is very likely that the hearing in this action will be completed on June 2, 2010.

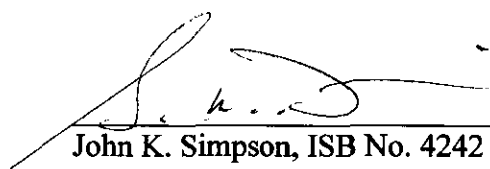
The following is a list of the exhibits that the Canal Companies may rely upon during the hearing. Copies of the Exhibits are attached.

- 1) Approved Application of the North Side and Twin Falls Canal Companies for hydropower water right no. 01-7011
- 2) The October 29, 1993, Beneficial Use Field Report submitted for water right no. 01-7011.

- 3) The Final Order Issuing License for water right no. 01-7011, dated October 20, 2008.
- 4) Two representative proposed decrees for water right nos. 02-100, and 02-4000B submitted to the SRBA court by Idaho Power Company and the State of Idaho.
- 5) An April 9, 1987 memorandum from L. Glen Saxton to the file for water right no. 01-7011.
- 6) Selected materials from the IDWR backfile for water right no. 65-12096.
- 7) A summary of hydropower water right permits not owned by Idaho Power Company and listing which rights have volumetric limitations, term review or subordination conditions included in the permits.
- 8) A summary of Basin 01 hydropower water right licenses listing which rights do and do not contain volumetric limits.
- 9) A summary of Idaho Power Company hydropower water rights statewide listing which do and which do not contain volume limitations.

Dated this 26th day of May, 2010.

BARKER ROSHOLT & SIMPSON LLP



John K. Simpson, ISB No. 4242

Travis L. Thompson, ISB No. 6168

Shelley M. Davis, ISB No. 6788

BARKER ROSHOLT & SIMPSON LLP

205 North Tenth Street, Suite 520

P.O. Box 2139

Boise, ID 83701-2139

Attorneys for North Side Canal Company and Twin Falls Canal Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of May, 2010, I served a true and correct copy of the foregoing document, **NORTH SIDE AND TWIN FALLS CANAL COMPANIES' WITNESS AND EXHIBIT DISCLOSURE**, upon the following persons via the method indication below:

✓ Director David K. Tuthill, Jr.
Idaho Department of Water Resources
322 E. Front St.
Boise, Idaho 83720-0098

☐ U.S. Mail, Postage Prepaid
☒ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Garrick Baxter
Idaho Atty. Gen. Office
P.O. Box 83720
Boise, ID 83720-0010
Fax No. (208) 854-8073

☐ U.S. Mail, Postage Prepaid
☒ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Hearing Officer Schroeder via electronic mail.

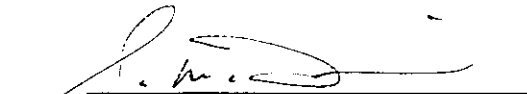

Shelley M. Davis

EXHIBIT NO. 1

AMENDED

Identification No. 61-1011

Application No. 61-1011

STATE OF IDAHO

DEPARTMENT OF WATER ADMINISTRATION

APPLICATION FOR PERMIT

To appropriate the Public Waters of the State of Idaho
(TYPE OR PRINT IN INK)

North Side Canal Company, 921 N. Lincoln Ave., Jerome, ID 83338

1. Name of applicant Twin Falls Canal Company, P. O. Box 326, Twin Falls, ID 83301
post office address _____

2. Source of water supply Snake River which is a tributary of Columbia River

3. a. Location of point of diversion is NE 1/4 of Sec. 28, T. 10S. R. 21 E. B.M. Twin Falls & Jerome County

Range 21 E. B.M. Twin Falls & Jerome County; additional points of diversion if any: _____

T.F. Canal diversion - NE 1/4 Sec. 29, T. 10S. R. 21 E. B.M. Twin Falls County

N.S. Canal diversion - SW 1/4 Sec. 28, T. 10S. R. 21 E. B.M. Jerome County, Idaho

b. If water is not consumed, it will be discharged into Snake River at a point in SE 1/4
of 1/4 of Section 29 Township 10 S. Range 21 E. B.M. Twin Falls & Jerome
Counties, Idaho.

4. Water will be used for the following purposes:

Amount 12,000 c/f/s for power purpose from Jan. 1 to Dec. 31 (both dates inclusive)

Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)

Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)

5. Total quantity to be appropriated: 12,000 c/f/s continuous flow * (Corrections made as per telephone conversatio
of 5/12/77) ADW

a. 12,000 c/f/s continuous flow cubic feet per second and/or

b. N/A acre feet per annum.

6. Proposed diverting works: 24,000 A/F for each day 12,000 c/f/s available

a. Description of ditches, flumes, pumps, headgates, etc. Use Milner Dam, construct penstocks and powerplant below dam; if any additional point utilized, water will be dropped by penstocks from T.F. Canal or N.S. Canal to powerplant adjacent to Snake River in river canyon.

b. Height of storage dam 44 feet, active reservoir capacity 18,000 acre feet; total reservoir capacity 18,000 acre feet, materials used in storage dam: concrete and earth fill
Period of year during which storage will occur _____ to _____ inclusive.

c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.

7. a. Time required for the completion of the works and application of the water to the proposed beneficial use is 5 years.

b. Estimated construction cost is \$20,000,000.00

8. Description of proposed uses:

a. If water is not for irrigation: N 1/2 & N 1/4 Sec. 29, T. 10S. R. 21, Jerome & Gooding Counties

(1) Give the place of use of water: 1/4 of 1/4 of Section 29 Township 10 S

Range 21 E. B.M. Alternate site is NE SE Sec. 16, T. 10S. R. 19, Twin Falls County.

(2) Amount of power to be generated: 143,000 hp under 150-200 feet of head.

(3) Alternate additional points of use would utilize up to 400 ft. of head.

(4) List number of each kind of livestock to be watered _____

(5) Name of municipality to be served _____, or number of families to be supplied with domestic water _____

If water is to be used for other purposes describe: Potential cooling for thermal power.

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[illegible]

c. Describe any other water rights used for the same purposes as described above.

Applicant has none.

- applicant to make this filing. If site determined to be on State or Federal lands,

appropriate land use permits will be sought. If private negotiations for purchase will be undertaken.

10. Remarks Cost feasibility reports being undertaken. This application is filed
in recognition of all prior existing water rights.

PAID OFF

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



BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

REPRODUCTION

(Applicant) North Side Canal Company
A President

(Applicant) Twin Falls Cabel Company
President

Proposed Priority 3/30/77

Received by AB Date 3-30-77 Time 4:20p.
Preliminary check by ADM Fee \$180.79-192.84-2192-14
Receipted by AB Date 4/8/77 3801, 9784422, 984.21
Publication prepared by AB Date 5/11/77
Published in Idaho News & North Idaho News
Publication dates 5/19 & 5/26/77
Publication approved AB Date 6/23/77
Priority reduced to _____ Reason _____

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Department of Water Resources
Southern District Office

Protests filed by: _____

Copies of protests forwarded by _____

Hearing held by _____ Date _____

Recommended for approval denial by AB

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER ADMINISTRATION

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 01-7011, and said application is hereby APPROVED.

1. Approval of said application is subject to the following limitations and conditions:

- SUBJECT TO ALL PRIOR WATER RIGHTS.
- Proof of construction of works and application of water to beneficial use shall be submitted on or before June 1, 19 82.
- Other: A measuring device of a type approved by the Director shall be permanently installed and maintained as part of the diverting works.

2. Denial of said application is for the following reasons: _____

Witness my hand this 29 day of June, 19 77.


Deputy Director

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Department of Water Resources

Department of Water Resources

Permit No. 01-7011

North Side Canal Company, Ltd.
 Comes now Twin Falls Canal Company of (address) _____
 921 North Lincoln Avenue, Jerome, Idaho 83338
 P. O. Box 326, Twin Falls, Idaho 83301 - and represents to the Director of
 the Idaho Department of Water Administration:

That he is the owner and holder of Permit to appropriate the Public Waters of the State of Idaho No. 01-7011, and requests that the permit and permit map be changed as follows:

1. Point of diversion: _____ 1. Sec. _____ Twp. _____
Rgr. _____. B. M. , County of _____. Other points of diversion:
(No Change)

2. Period and nature of use: (irrigation, domestic, stockwatering, industrial, etc.)

(No Change in period of nature of use)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)

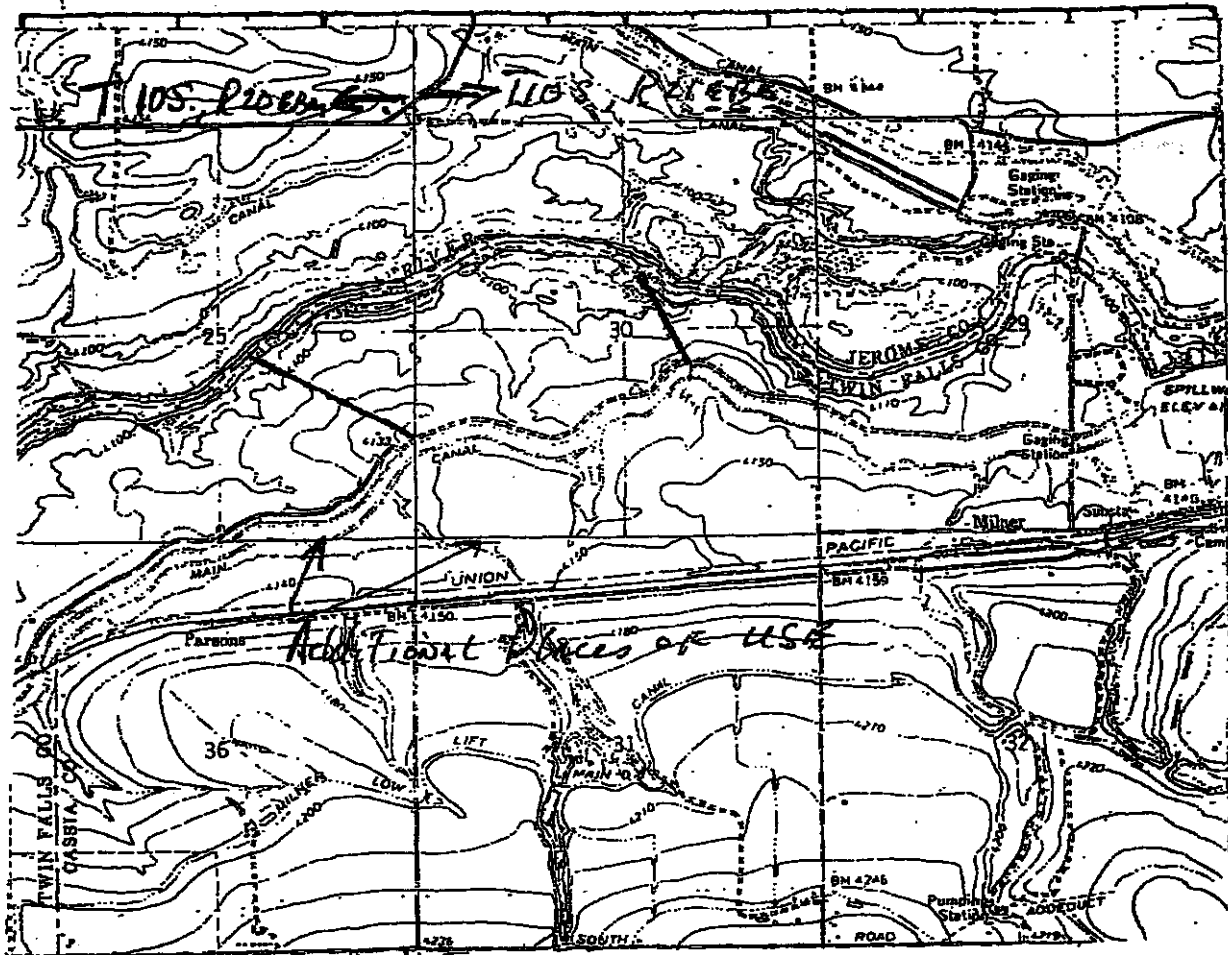
(cfs or acre feet per annum)

3. Place of use or land to be irrigated:

TWP	RANGE	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
			PURPOSE OF THIS AMENDMENT IS TO INCLUDE ADDITIONAL ALTERNATE POINTS OF BENEFICIAL USE FOR POWER PURPOSES.																
			#1: Lots 3, 4, 7 & 8, Sec. 30, T. 10 S., R. 21 E.B.M.																
			#2: NW 1/4, Sec. 25, T. 10 S. R. 20 E.B.M.																
			BOTH IN TWIN FALLS COUNTY, IDAHO																

Total number of acres to be irrigated

Complete the following map by showing land and point of diversion as proposed by this amendment. Show 10-acre subdivisions, townships, ranges and ditches.



Scale: 2 inches equal 1 mile

That no one will be injured by such change, and that such change will be made at permit holders own risk.

Signed at Twin Falls, Idaho this 14th day of September, 1977

John A. Roswell
(signature)

Holder of Power of Attorney
Twin Falls Canal Company and
North Side Canal Company, Ltd.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER ADMINISTRATION

Chief, Operations Bureau

Resources *ok*

I, BOBBY D. FLEENOR, ~~MANAGER~~ of the Department of Water ~~ADMINISTRATION~~ *jk*

hereby APPROVE the above application for amendment on Permit No. 01-7011.

Witness my hand this 28 day of September, 19 77

Bobby D. Fleenor
Director
Chief, Operations Bureau

PARRY, ROBERTSON, DALY & LARSON
LAWYERS

R. P. PARRY
T. H. ROBERTSON
JOHN H. DALY 1913-1988
BERT LARSON
C. S. MCINTYRE
JOHN R. COLEMAN
THOMAS G. NELSON
JOHN A. ROSHOLT
FRED D. DECKER
ROBERT C. PAINE
J. EVAN ROBERTSON

THE IDAHO FIRST NATIONAL BANK BUILDING
P. O. BOX 525
TWIN FALLS, IDAHO 83301

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MAY 4 1977

TELEPHONE
(208) 733-3722

OUR FILE NUMBER
Department of Water Resources
Southern District Office

May 3, 1977

Department of Water Resources
1041 Blue Lakes Blvd. North
Twin Falls, Idaho 83301

Attention: Alan Merritt

Re: Milner Dam Filing - TFCC-NSCC

Dear Alan:

Enclosed are redone pages 1 and 2 of the Milner Dam application. Also enclosed are original power of attorneys authorizing me to consent to amendments to the permits on behalf of both companies. Please keep copies of these available as they might concern other filings made by the companies.

If necessary to label page 1 "amended", please feel free to do so. Also double-check the changes that were made pursuant to our previous conversation.

Thanks for your cooperation.

Sincerely,

John A. Rosholt

JOHN A. ROSHOLT

MICROFILMED

AR:bg

nclosure

July 1, 1977

Re: Permit No. 01-7011

North Side Canal Company
921 Lincoln Ave.
Jerome, ID 83338

Twin Falls Canal Company
P. O. Box 326
Twin Falls, ID 83301

Dear Sirs:

Enclosed is a copy of your approved Application for Permit No. 01-7011. We direct your attention to the conditions of approval as listed on the fourth page.

Be sure to note that a special condition requiring you to install and maintain a measuring device at your point of diversion has been placed upon your permit. We are enclosing a letter describing different types of measuring devices accepted by this office.

Sincerely,

BOBBY D. FLEENOR
Chief, Water Rights

Enclosure: copy of permit

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EXHIBIT NO. 2



**CHARLES
BROCKWAY
ENGINEERING**

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OCT 29 1993

Department of Water Resources
Southern Region Office

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NOV 01 1993

Department of Water Resources

October 29, 1993

Mr. Loren Holmes
Idaho Department of Water Resources
220 Shoshone Street East
Twin Falls, ID 83301

Subject: Beneficial Use Examination-Milner Power Plant
Permit 01-7011 Twin Falls Canal Company and Northside Canal
Company

Dear Loren:

Enclosed is the completed Beneficial Use Field Report for the Milner
Power Plant under Permit 01-7011. Please let me know if additional
information is required.

Sincerely,

C.E. Brockway
C.E. Brockway P.E.

Enclosure

cc: Glen Brewer, Idaho Power Company
John Rosholt

CHARLES E.
BROCKWAY,
PHD., P.E.

706 SUNRISE
BOULEVARD
NORTH

TWIN FALLS,
IDAHO 83301

208•733•0938

MISSOURI DEPT

JAN 10 1994

EXHIBIT

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
BENEFICIAL USE FIELD REPORT

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Department of Water Resources

A. GENERAL INFORMATION

Permit No. 01-7011

1. Owner: North Side Canal Company
Twin Falls Canal Company

208 324-2319
Phone No. 208 733-6731

Current Address: _____

2. Accompanied by: Randy Hill

EXAM DATE: 10/6/93, 10/21/93

Address: Rt. 1 Box 144, Murtaugh ID 83344

Phone No. 432-6681

Relationship to Permit Holder: Chief Operator of Power Plant for Idaho Power Company

3. Source: Snake River tributary to Columbia River

B. OVERLAP REVIEW

1. Other water rights with the same place of use: None

2. Other water rights with the same point of diversion: Irrigation diversions from Milner Reservoir
(see appended list)

C. DIVERSION AND DELIVERY SYSTEM

1. Point(s) of Diversion:

Ident No.	Gov't Lot	¼	¼	¼	Sec.	Twp.	Rge.	County	Method of Determination/Remarks
		NE	SE		29	10S	21E	Twin Falls	USGS Quad - Main Power House
		SW	NW		28	10S	21E	Twin Falls	USGS Quad - Auxilliary Power House

2. Place(s) of Use:

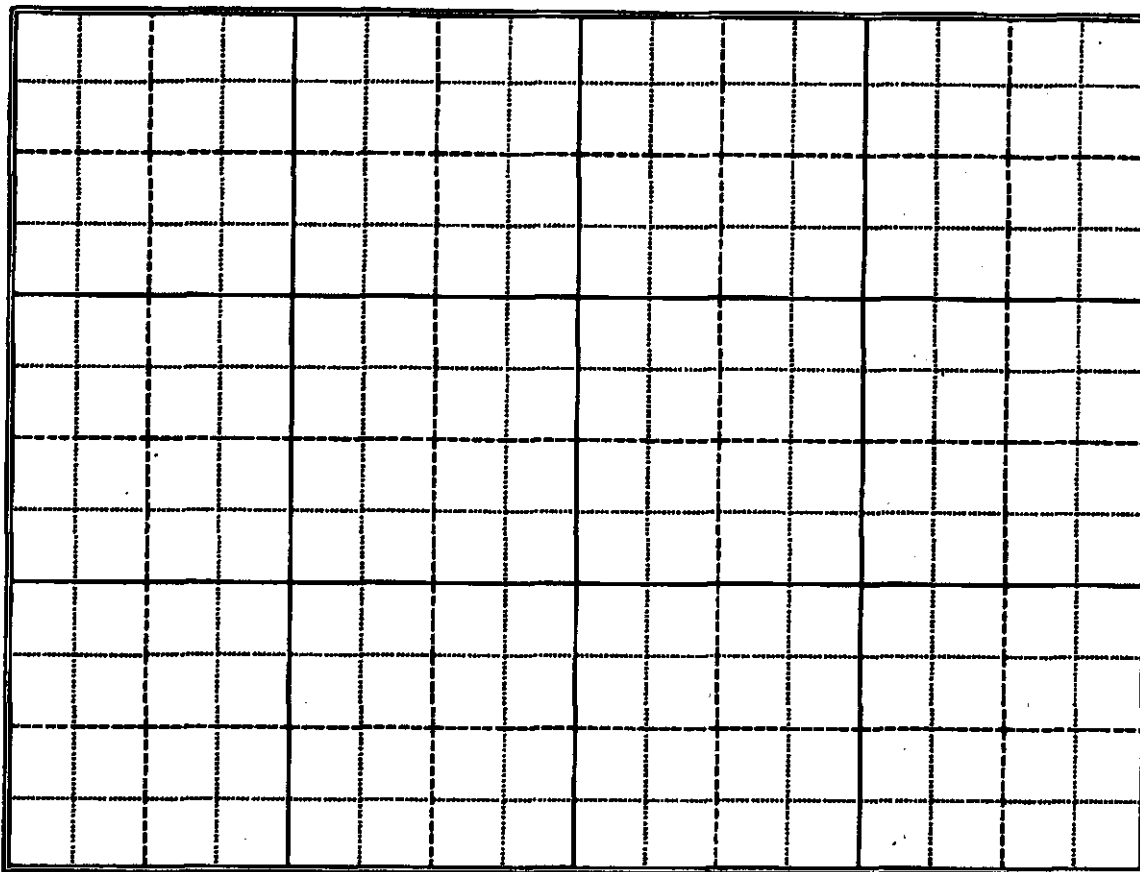
Indicate Method of Determination USGS Quad

TWP	RGE	SEC	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
10S	21E	30			P														
10S	21E	29				P													

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3. **Delivery System Diagram:** Indicate all major components and distances between components. Indicate weir size/ditch size/pipe I.d. as applicable. See attached exhibits A and B.



Scale 1" = _____

☒ Copy of USGS Quadrangle Attached Showing location(s) of point(s) of diversion and place(s) of use (required).

☐ Aerial Photo Attached (required for irrigation of 10+ acres)

☒ Photo of Diversion and System Attached

4.

Well or Diversion Identification No.*	Motor Make	Hp	Motor Serial No.	Pump Make	Pump Serial No. or Discharge Size

*Code to correspond with No. on map and aerial photo

D. FLOW MEASUREMENTS

1.

Measurement Equipment	Type	Make	Model No.	Serial No.	Size	Calib. Date
Acoustic Flow Meters		See attached narrative				
USGS Stream Gage						

2. Measurements: See narrative attached.

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E. NARRATIVE/REMARKS/COMMENTS

See attached narrative

Have conditions of permit approval been met? x yes no

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F. FLOW CALCULATIONS

Additional Computation Sheets Attached

Measured Method:

Acoustic flow meter - Data on Hydromet

Unit 1 4398.0 cfs

Unit 2 1091.2 cfs

5489.2

Unit 3 225.5

Total 5,714.7 cfs

G. VOLUME CALCULATIONS

1. Volume Calculations for Irrigation:

$V_{IR} = (\text{Acres Irrigated}) \times (\text{Irrigation Requirement}) =$ _____

$V_{DR} = [\text{Diversion Rate (cfs)}] \times (\text{Days in Irrigation Season}) \times 1.9835 =$ _____

$V = \text{Smaller of } V_{IR} \text{ and } V_{DR} =$ _____

2. Volume Calculations for Other Uses:

H. RECOMMENDATIONS

1. Recommended Amounts

Beneficial Use	Period of Use		Rate of Diversion Q (cfs)	Annual Volume V (afa)
	From	To		
Hydropower	Jan 1	Dec 31	5714.7	
Totals:			5714.7	

2. Recommended Amendments

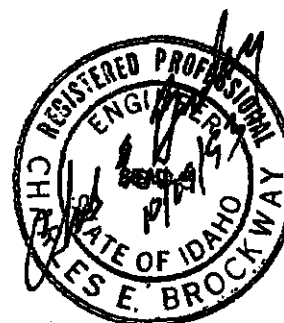
☒ Change P.D. as reflected above ☐ Add P.D. as reflected above ☐ None
☐ Change P.U. as reflected above ☐ Add P.U. as reflected above ☐ Other

I. AUTHENTICATION

Field Examiner's Name Charles E. Brockway Date 10/29/93

Reviewer _____ Date 11/10/93

JAN 10 1994



WATER RIGHTS EXAMINER'S REPORT NARRATIVE

Permit No. 01-7011 Amended

Owner: North Side Canal Company and Twin Falls Canal Company

Examiner: C.E., Brockway P.E.

Date: October 26, 1993

The field examination for beneficial use on Permit No 01-7011 was performed on October 6 and October 21, 1993. The examiner was accompanied on the site inspection by Mr. Randy Hill, Chief Operator for the Milner Power Plant.

The hydropower facility consists of two power houses diverting from the Snake River at Milner Dam. The main power house utilizes approximately 1.2 miles of an expanded Twin Falls Canal Company main canal as the forebay whereas the auxiliary power house diverts directly from Milner Reservoir on the north side of the radial gate spillway structure on the north side of the Snake River, see Exhibit A. The Twin Falls Canal Company main canal control gates are located just upstream of the penstock intake structure for the main power plant. No irrigation diversions occur upstream between the penstock intake structure and Milner Reservoir, however, numerous water rights for irrigation diversions from Milner Lake are on file (see attached list). The diversion for the main power house, Units 1 and 2, is from Milner Lake in the NE1/4, SE1/4 Sec 29 through the Twin Falls main canal to a point of redirection and use in the SW1/4 NE1/4, Sec 30 T10S R21E BM. The diversion for the auxiliary power house, Unit 3, is located in the SW1/4 NW1/4 Sec 28 T10S R21E BM with the power house in the SE1/4 NE1/4 Sec 29, see location map Exhibit A and USGS Quad sheet, Exhibit B.

The main power house includes two Kaplan turbine units, No 1 and No 2 and the auxiliary power house includes one vertical propeller unit with specifications as shown in Table 1.

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$$11,000 \frac{\text{ft}^3}{\text{sec}} \cdot 148 \text{ ft} \cdot 62.4 \frac{\text{lb}}{\text{ft}^3} \cdot 0.001356 \times = 46,530$$

$$X = \frac{46,530}{4,000 \cdot 148 \cdot 62.4 \cdot 0.001356} = 92.88 \text{ ft} \quad 90 \text{ ft} \quad 70 \text{ ft high?}$$

for combined
turbine/generator

9/21/95
Bm

Table 1 Generating Unit Specifications

Turbine	Unit 1	Unit 2	Unit 3
Serial No.	M220234-1	M220234-2	24
Net Head	148.0 ft	148.0 ft	56.4 ft
Rated Capacity	46,530 kW	11,540 kW	1130 HP.
Rated Discharge	4000 cfs	1000 cfs	200 cfs
Manufacture Date	19900	1990	1992
Manufacture	Toshiba Corp-Tokyo Japan	Toshiba Corp-Tokyo Japan	Hydro West Group Inc. Bellevue WA
Type	VK-1RS Variable blade Kaplan	VK-1RS Variable blade-Kaplan	Vertical Propeller
Minimum Discharge	800 cfs	150 cfs	
Generator			
Serial No.	210-9585	210-9586	911071-01
Rated Capacity	49,000KVA	12,700KVA	833 kW
Power Factor	0.95	0.95	
Normal Speed	200 rpm	400 rpm	604 rpm
Runaway Speed	540 rpm	1070 rpm	
Manufacture Date	1991	1991	1992
Manufacture	E B Power Generation Drammen, Norway	E B Power Generation Drammen, Norway	Ideal Electric Co Mansfield, Ohio
Type	SAV 540/130/36 Synchronous	Synchronous	Polyphase Induction Exposed

A 17 ft diameter and a 9 ft diameter penstock convey water from the forebay to the turbines in the main power house. Each penstock is equipped with an

JAN 10 1994

Accusonic flow meter located just upstream of the turbine units, see Exhibit C. Discharge from the auxiliary power house enters the Snake River below Milner Dam and is measured by the U.S. Geological Survey stream Gage, Snake River at Milner, located below the county road bridge approximately 1/4 mile downstream of the dam. Table 2 shows the specifications of each meter and the manufacturer's specification sheet is included as Exhibit D.

Table 2 Flow Meter Specifications

	Unit 1	Unit 2	Unit 3
Type	Acoustic	Acoustic	Rated Open Channel
Manufacturer	Accusonic Division ORE International Falmouth, Massachusetts	Accusonic Division ORE International Falmouth, Massachusetts	
Model	7410	7410	
Serial No.	479	478	
Rated Accuracy	±0.5 % w/8 paths	±0.5 % w/8 paths	
Service	U.S. Geological Survey Telemetered on Hydromet	U.S. Geological Survey Telemetered on Hydromet	U.S. Geological Survey Telemetered on Hydromet

The acoustic meters are checked by the U.S. Geological Survey using their portable acoustic meter. Periodic measurements are obtained by the U.S. G.S. field office in Twin Falls.

This exam was conducted during efficiency testing of the turbine-generator units. Both Unit 1 and Unit 2 were ramped up beginning the evening of October 20, 1993 and reached maximum generation flows between 1:00 and 2:00 p.m. on October 21, 1993. Unit 3 was operated at essentially constant flow of 225.45 cfs for the entire period. Exhibit E is the hydrograph of the flow of each of the three units obtained from the U.S. Bureau of Reclamation Hydromet system on October 22, 1993 and Exhibit F is the tabular discharge and combined discharge

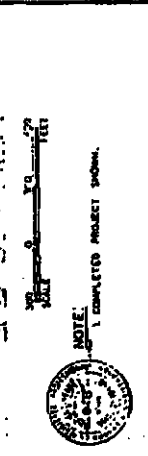
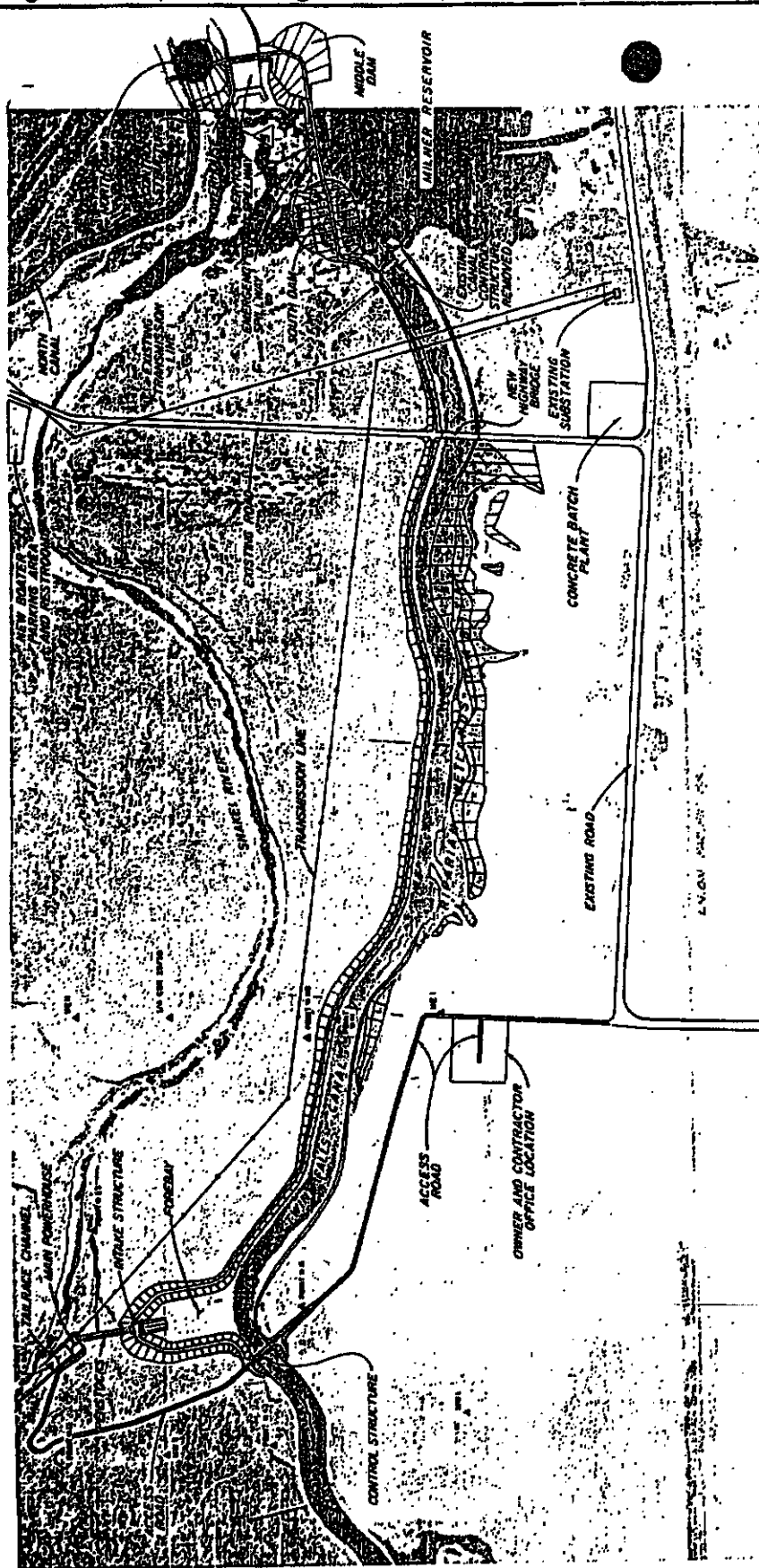
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for all units for the 24 hour period on October 21, 1993. The maximum combined flow of 5714.7 cfs occurred at 1:30 p.m. on October 21, 1993. No alternative discharge measurement method is available.

The certified USGS measurements are shown on the letter from Mike Campbell, Twin Falls Field Office Chief on Exhibit G. No measurements were made by the USGS during the field exam.

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EXHIBIT A PERMIT 01-7011 MILNER POWER PLANT



NOTE:
1. COMPLETED PROJECT SHOWN.

CONTROL POINTS

POINT	NORTH	EAST	ELEVATION
1	484.00	484.00	4,100.00
2	484.00	484.00	4,100.00
3	484.00	484.00	4,100.00
4	484.00	484.00	4,100.00
5	484.00	484.00	4,100.00
6	484.00	484.00	4,100.00
7	484.00	484.00	4,100.00
8	484.00	484.00	4,100.00
9	484.00	484.00	4,100.00
10	484.00	484.00	4,100.00
11	484.00	484.00	4,100.00
12	484.00	484.00	4,100.00
13	484.00	484.00	4,100.00
14	484.00	484.00	4,100.00
15	484.00	484.00	4,100.00
16	484.00	484.00	4,100.00
17	484.00	484.00	4,100.00
18	484.00	484.00	4,100.00
19	484.00	484.00	4,100.00
20	484.00	484.00	4,100.00
21	484.00	484.00	4,100.00
22	484.00	484.00	4,100.00
23	484.00	484.00	4,100.00
24	484.00	484.00	4,100.00
25	484.00	484.00	4,100.00
26	484.00	484.00	4,100.00
27	484.00	484.00	4,100.00
28	484.00	484.00	4,100.00
29	484.00	484.00	4,100.00
30	484.00	484.00	4,100.00
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70	484.00	484.00	4,100.00
71	484.00	484.00	4,100.00
72	484.00	484.00	4,100.00
73	484.00	484.00	4,100.00
74	484.00	484.00	4,100.00
75	484.00	484.00	4,100.00
76	484.00	484.00	4,100.00
77	484.00	484.00	4,100.00
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80	484.00	484.00	4,100.00
81	484.00	484.00	4,100.00
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98	484.00	484.00	4,100.00
99	484.00	484.00	4,100.00
100	484.00	484.00	4,100.00

SURVEY CONTROL POINTS:

POINT	NORTH	EAST	ELEVATION
1	484.00	484.00	4,100.00
2	484.00	484.00	4,100.00
3	484.00	484.00	4,100.00
4	484.00	484.00	4,100.00
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81	484.00	484.00	4,100.00
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95	484.00	484.00	4,100.00
96	484.00	484.00	4,100.00
97	484.00	484.00	4,100.00
98	484.00	484.00	4,100.00
99	484.00	484.00	4,100.00
100	484.00	484.00	4,100.00

OWNER AND CONTRACTOR OFFICE LOCATION

POINT	NORTH	EAST	ELEVATION
1	484.00	484.00	4,100.00
2	484.00	484.00	4,100.00
3	484.00	484.00	4,100.00
4	484.00	484.00	4,100.00
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14	484.00	484.00	4,100.00
15	484.00	484.00	4,100.00
16	484.00	484.00	4,100.00
17	484.00	484.00	4,100.00
18	484.00	484.00	4,100.00
19	484.00	484.00	4,100.00
20	484.00	484.00	4,100.00
21	484.00	484.00	4,100.00
22	484.00	484.00	4,100.

[illegible]

Place of Use	Use

EXHIBIT C
PERMIT 01-7011
MILNER POWER PLANT

NOTE
1. DRAWING TO BE APPROVED
AND SIGNED BY LIGHT 6000

JAN 10 1999

DELIVERED IN 24 HOURS

...the ...
...the ...
...the ...

JAN 10 1968

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POWER

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DAVID POWER COMPANY
TWIN FALLS CANAL COMPANY
NORTH SIDE CANAL COMPANY, LTD.
MILNER HYDROELECTRIC PROJECT

MORRISON-KNUDSEN ENGINEERS, INC.
A CORPORATION INCORPORATED IN CALIFORNIA
14100 - 15TH AVENUE, SAN FRANCISCO, CALIFORNIA 94134

[illegible]

**EXHIBIT D
PERMIT 01-7011
MILNER POWER
PLANT**

ACCUSONIC

Leaders in Acoustic Flow Measurement Systems

System Accuracy

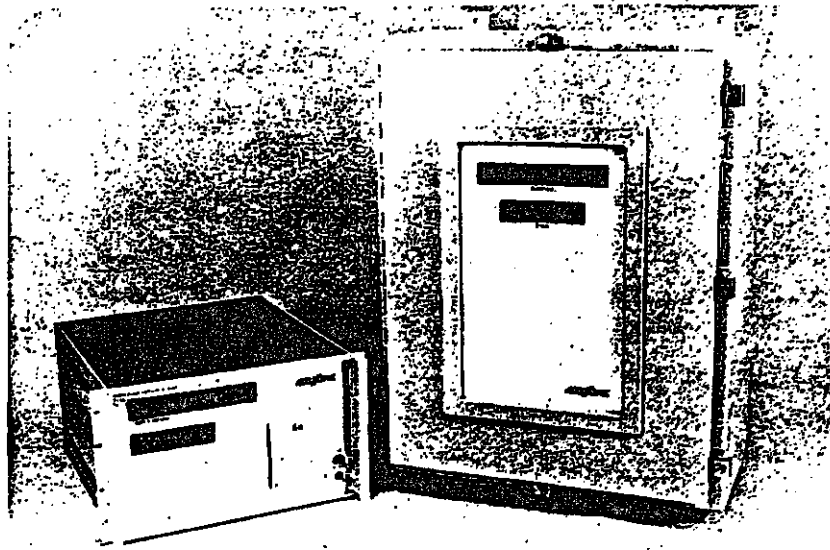
The accuracy of the rate indication and totalization of flow is specified to be plus or minus 0.5 percent of actual flow for all flows with velocity above 1 foot per second and up to maximum flow, provided the flowmeter is installed according to Accusonic specifications in a section of pipe with a minimum of ten diameters of upstream straight pipe. For installations having between four and ten diameters of straight pipe upstream of the meter section, four crossed paths (eight paths total) are required to maintain an accuracy of plus or minus 0.5 percent of flowrate.

To assure the specified accuracy, the flowmeter integrates the four velocities for each measurement plane (one for four path, two for four crossed paths) to calculate flowrate. Where crossed paths are used, the flowmeter software is designed to utilize velocity information from each plane of transducers to quantify and correct for crossflow.

Two Path System

For a two path system installed with eight diameters of straight pipe upstream and two diameters of straight pipe downstream, the accuracy of the rate indication and totalization of flow is specified to be plus or minus 1.5% of actual flow for all flows with velocity above 1 foot per second.

**FLOWMETER CONSOLE
MODEL 7410**



Power Requirement Options

115 VAC $\pm 10\%$, 50/60 Hz
220 VAC $\pm 10\%$, 50/60 Hz
100 VAC $\pm 10\%$, 50/60 Hz
12 VDC +2.7V -1.6V

Enclosure Options

NEMA 4 Wall Mount
NEMA 4X Wall Mount
Shock Mounted Portable
Chassis (for 19" Rack)
19" Rack Assembly

Enclosure Dimensions

NEMA 4 30" h x 24" w x 12" d
Shock Mounted Portable 24" h x 25" w x 27" d
Chassis 10.5" h x 19" w x 22" d

Measurement Options

Open Channel
Pipe Flowing Full
Pipe Flowing Partially Full

Display Options

14 Digit LED
8 Digit LED
Flowrate
Totalized Flow
System Status
Any Parameter or Variable

Standard Output Options

4-20mA Flowrate
RS-232 ASCII Ten Variable
Report Format
Pulsed Totalizer Output

Parameter Entry Options

Keypad
Keyboard
Tape Cassette

Number of Acoustic Paths

1 - 8

Number of Pipes

1 or 2*

Environmental Requirements

Storage:
0° - 140° F
0% - 95% Relative Humidity
Operation:
35° - 140° F**
0% - 95% Relative Humidity

Oscillator Frequency

80 MHz

Power Consumption

35W maximum

* With eight path, clamp-on systems or partially full pipes, only one pipe can be measured.
** Heaters and air-conditioners can be added to certain enclosures to expand this range.

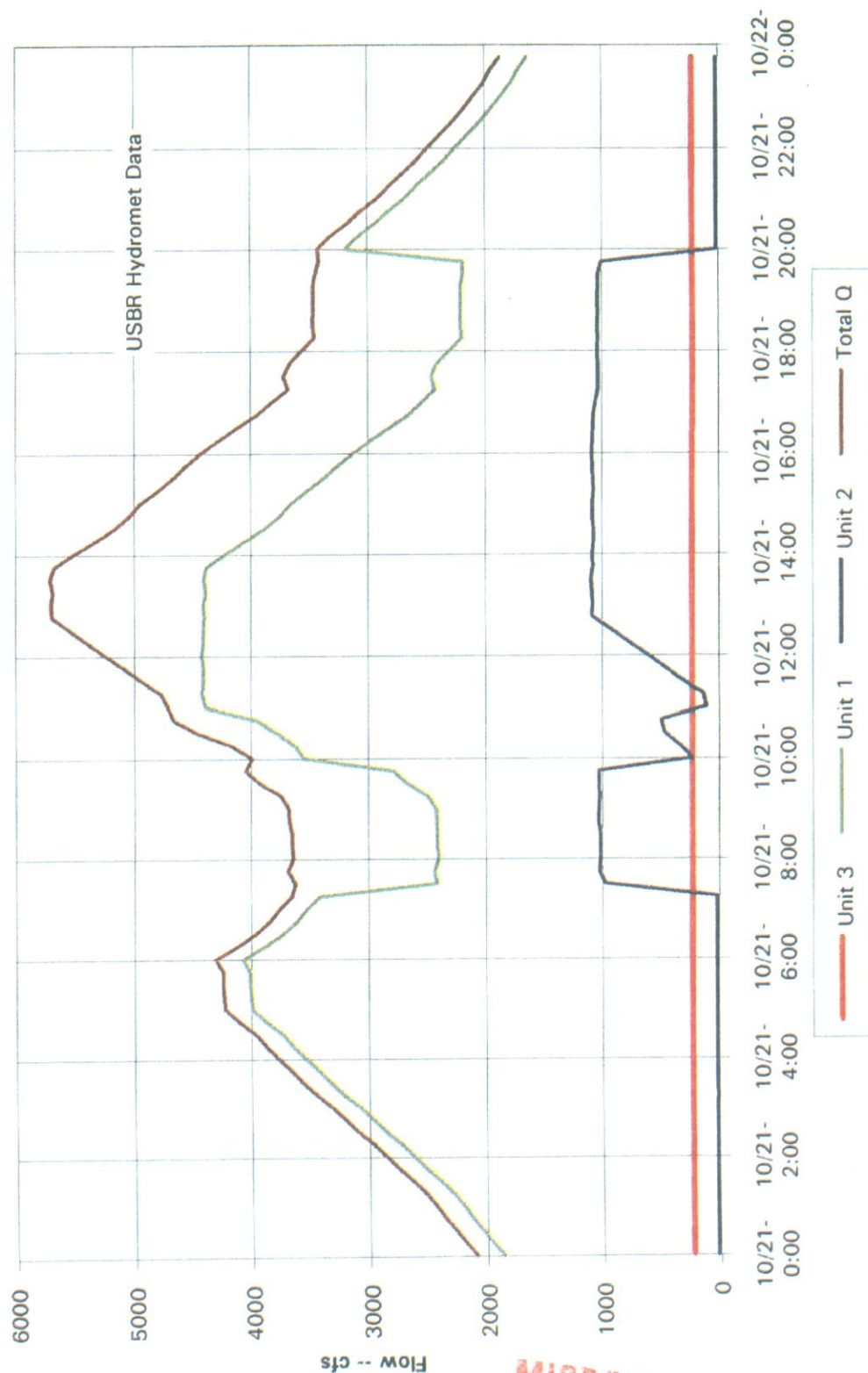
MILNER POWER

JAN 10 1994

EXHIBIT E PERMIT 01-7011 MILNER POWER PLANT

MILNER.XLC

Milner Dam -- Milner Hydropower Discharge Oct 21, 1993.



JAN 10 1994

EXHIBIT F PERMIT 01-7011 MILNER POWER PLANT

Milner Hydropower Facility				
Flow data from USBR Hydromet System - October 22, 1993				
Hydropower Plant				
Date - Time	Unit 3	Unit 1	Unit 2	Total Q
10/21-0:00	225.45	1852.28	14.29	2092
10/21-0:15	225.45	1946.27	14.29	2186.01
10/21-0:30	225.45	2029.3	13.92	2268.67
10/21-0:45	225.45	2119.66	13.92	2359.03
10/21-1:00	225.45	2195.36	13.92	2434.73
10/21-1:15	225.45	2283.27	13.92	2522.64
10/21-1:30	225.45	2393.16	14.29	2632.9
10/21-1:45	225.45	2510.38	14.29	2750.12
10/21-2:00	225.45	2617.82	13.92	2857.19
10/21-2:15	225.45	2721.61	13.92	2960.98
10/21-2:30	225.45	2849.81	13.92	3089.18
10/21-2:45	225.45	2958.7	13.92	3199.07
10/21-3:00	225.45	3074.48	13.92	3313.85
10/21-3:15	225.45	3203.9	10.62	3439.97
10/21-3:30	225.45	3318.68	14.29	3558.42
10/21-3:45	225.45	3413.92	14.29	3653.66
10/21-4:00	225.45	3529.91	13.92	3769.28
10/21-4:15	225.45	3633.7	13.92	3873.07
10/21-4:30	225.45	3730.15	13.92	3969.52
10/21-4:45	225.45	3869.35	13.92	4108.72
10/21-5:00	225.45	3986.56	13.92	4225.93
10/21-5:15	225.45	3996.33	14.29	4236.07
10/21-5:30	225.45	4004.88	13.92	4244.25
10/21-5:45	225.45	4006.1	14.29	4245.84
10/21-6:00	225.45	4065.93	13.92	4305.3
10/21-6:15	225.45	3882.78	13.92	4122.15
10/21-6:30	225.45	3725.27	14.29	3965.01
10/21-6:45	225.45	3601.95	13.92	3841.32
10/21-7:00	225.45	3518.92	13.92	3758.29
10/21-7:15	225.45	3411.47	13.92	3650.84
10/21-7:30	225.45	2418.8	975.09	3619.34
10/21-7:45	225.45	2438.34	1021.24	3685.03
10/21-8:00	225.45	2399.26	1013.55	3638.28
10/21-8:15	225.45	2413.92	1012.82	3652.19
10/21-8:30	225.45	2412.7	1012.45	3650.6
10/21-8:45	225.45	2420.02	1028.57	3674.04
10/21-9:00	225.45	2423.88	1026.74	3675.87
10/21-9:15	225.45	2496.72	1023.44	3744.61
10/21-9:30	225.45	2670.33	1027.11	3922.89
10/21-9:45	225.45	2793.65	1027.11	4046.21
10/21-10:00	225.45	3542.12	224.18	3991.75
10/21-10:15	225.45	3615.38	321.98	4162.81
10/21-10:30	225.45	3785.58	484.47	4455.48
10/21-10:45	225.45	3945.05	493.41	4663.91
10/21-11:00	225.45	4387.05	103.3	4715.8

10/21/93 11:00 AM

JAN 10 1994

10/21-11:15	225.45	4413.92	131.87	4771.24
10/21-11:30	225.45	4409.03	300.37	4934.85
10/21-11:45	225.45	4400.48	455.31	5081.24
10/21-12:00	225.45	4413.92	605.86	5245.23
10/21-12:15	225.45	4405.37	767.03	5387.85
10/21-12:30	225.45	4404.15	914.85	5544.25
10/21-12:45	225.45	4393.18	1081.32	5699.93
10/21-13:00	225.45	4400.48	1079.12	5705.05
10/21-13:15	225.45	4380.95	1081.88	5688.08
10/21-13:30	225.45	4398.04	1091.21	5714.7
10/21-13:45	225.45	4377.28	1076.56	5679.29
10/21-14:00	225.45	4217.33	1080.58	5523.36
10/21-14:15	225.45	4045.17	1087.76	5338.38
10/21-14:30	225.45	3877.8	1069.98	5173.31
10/21-14:45	225.45	3746.03	1078.92	5048.4
10/21-15:00	225.45	3852.01	1078.02	4955.48
10/21-15:15	225.45	3514.04	1068.5	4807.99
10/21-15:30	225.45	3377.29	1073.63	4676.37
10/21-15:45	225.45	3253.96	1078.92	4556.33
10/21-16:00	225.45	3120.88	1082.05	4428.38
10/21-16:15	225.45	2973.14	1078.75	4277.34
10/21-16:30	223	2819.28	1075.09	4117.38
10/21-16:45	223	2655.67	1067.76	3946.43
10/21-17:00	223	2540.9	1054.21	3818.11
10/21-17:15	223	2426.13	1029.3	3678.43
10/21-17:30	223	2462.76	1031.87	3717.63
10/21-17:45	223	2412.7	1031.5	3667.2
10/21-18:00	223	2301.58	1035.16	3559.74
10/21-18:15	223	2187.8	1032.6	3453.4
10/21-18:30	223	2208.79	1034.06	3465.85
10/21-18:45	223	2211.23	1030.04	3484.27
10/21-19:00	223	2205.13	1034.43	3462.56
10/21-19:15	223	2208.79	1031.87	3463.68
10/21-19:30	223	2191.89	1031.13	3445.82
10/21-19:45	223	2191.89	997.43	3412.12
10/21-20:00	223	3185.59	14.65	3423.24
10/21-20:15	223	3079.36	13.92	3316.28
10/21-20:30	223	2940.17	13.92	3177.09
10/21-20:45	223	2819.29	13.92	3056.21
10/21-21:00	223	2682.54	13.92	2919.46
10/21-21:15	223	2582.41	13.92	2819.33
10/21-21:30	223	2461.54	13.92	2698.46
10/21-21:45	223	2347.98	14.28	2585.27
10/21-22:00	223	2253.97	13.92	2490.89
10/21-22:15	223	2145.3	13.92	2382.22
10/21-22:30	223	2040.29	13.92	2277.21
10/21-22:45	223	1947.49	13.92	2184.41
10/21-23:00	223	1864.47	13.92	2101.39
10/21-23:15	223	1779	13.92	2015.92

RECEIVED
JAN 10 1994

JAN 10 1994

MILNER.XLS

10/21-23:30	223	1719.17	13.92	1956.09
10/21-23:45	223	1837.38	13.92	1874.28

RECEIVED
JAN 10 1994

JAN 10 1994



United States Department of the Interior

GEOLOGICAL SURVEY

U.S. Geological Survey, WRD

P.O. Box AC.

Twin Falls, ID 83303

Phone - 734-9168

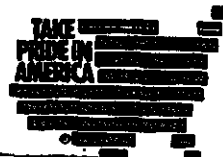


EXHIBIT G PERMIT 01-7011 MILNER POWER PLANT

October 6, 1993

Randy Hill
Milner Power Plant
Rt #1, Box 144
Murtangh, ID 83344

Dear Randy:

The following is a list of measurements made on the lower Milner Power Plant:

	<u>UNIT #1</u>	<u>UNIT #2</u>
Nov. 10, 1992	-----	408 cfs
Nov. 12, 1992	4090 cfs	0
Dec. 22, 1992	1040 cfs	0
Jan. 21, 1993	0	6.68 cfs
Feb. 1, 1993	0	566 cfs
Mar. 10, 1993	0	502 cfs
May. 21, 1993	2870 cfs	0
June 8, 1993	3900 cfs	960 cfs
July 29, 1993	1380 cfs	0

Please call if you have any questions.

Sincerely,

Mike Campbell
Field Office Chief

JAN 10 1994



Milner Main Power House



Milner Main Power House
Penstocks and Acoustic Flow Meter Taps

MILNER

JAN 10 1994

Permit 01-7011 Milner Hydro



Milner Main Power House
Forebay and Twin Falls Canal Co. Gates

JAN 10 1994

P.O.D.'s FROM MILNER
T. 10 S. R. 21 E.

<u>S 28</u>	<u>S 29</u>	<u>S 30</u>	<u>S 33</u>
01-04059	01-00212	-0-	-0-
01-00005	01-00213		
01-00016	01-00215		
01-02015	01-00220		
01-07123	01-07011		
01-07084B	01-00004		
01-07011	01-00010		
01-07010B	01-00209		
01-07010C	01-07071		
01-07010A	01-07011		
01-07011	01-07011		
01-07124	01-07063		
01-07022	01-07009		
01-07058	01-07011		
01-07011	01-00017		
01-07011	01-00009		
01-02069	01-02050		
	01-07068		
	01-07072		

JAN 10 1994

EXHIBIT NO. 3

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

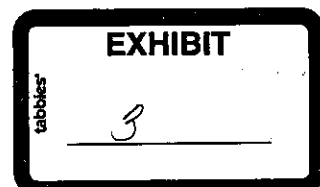
IN THE MATTER OF LICENSING WATER)	
RIGHT PERMIT NO. 01-7011 IN THE NAME)	
OF TWIN FALLS CANAL COMPANY AND)	FINAL ORDER
NORTH SIDE CANAL COMPANY)	
_____)	

On September 5, 2007, the Director of the Idaho Department of Water Resources ("Director" or "Department") issued a *Notice of Intent to Issue License* ("Notice") for water right permit no. 01-7011. Based upon the files of the Department in this matter and the Director's understanding of applicable law, the Director finds, determines and orders as follows:

FINDINGS OF FACT

I. Procedural Background

1. The North Side Canal Company and the Twin Falls Canal Company ("Canal Companies") filed with the Department on March 30, 1977, application for permit no. 01-7011 to appropriate 12,000 cfs of the public waters of the state of Idaho from the Snake River to be diverted at Milner Dam and conveyed to a power plant adjacent to the Snake River downstream from Milner Dam, to be used for hydropower generation purposes.
2. The Department published notice of application for permit no. 01-7011 on May 19 and 26, 1977, in accordance with the requirements of chapter 2, title 42, Idaho Code, and no timely protests to the application were filed in response to the published notice.
3. The Department issued water right permit no. 01-7011 (the "Milner Permit") to the Canal Companies on June 29, 1977, authorizing the diversion at Milner Dam of up to 12,000 cfs of water from the Snake River for hydropower purposes. The permit required that proof of beneficial use was to be submitted by June 1, 1982. The permit contained a condition requiring installation of a measuring device but did not contain a subordination condition.
4. On September 14, 1977, the Canal Companies filed an application for amendment of the Milner Permit to "include additional alternate points of beneficial use for power purposes." The Department approved the requested application for amendment of the permit on September 28, 1977.



5. On March 31, 1982, the Department approved an application for extension of time that extended the due date for proof of beneficial use to June 1, 1987.

6. On February 26, 1987, the Canal Companies filed a second request for extension of time. On approximately November 18, 1987, the Department approved the second extension of time request, extending the due date for proof of beneficial use to November 1, 1990. The extension of time approval states that it is approved with the following condition added to the permit:

The rights for use of water acquired under this permit shall be junior and subordinate to all other rights for the consumptive beneficial use of water, other than hydropower and groundwater recharge within the Snake River Basin of the state of Idaho that are initiated later-in-time than the priority of this permit and shall not give rise to any right or claim against any future rights for the consumptive beneficial use of water, other than hydropower and groundwater recharge within the Snake River Basin of the state of Idaho initiated later-in-time than the priority of this permit.

IDWR approval of *Request for Extension of Time* filed February 26, 1987. See Letter from former IDWR Director R. Keith Higginson to John Rosholt dated November 18, 1987.

7. On October 30, 1990, the Department approved a third application for extension of time that extended the due date for proof of beneficial use to May 1, 1992. The application for extension stated that the Federal Energy Regulatory Commission ("FERC") issued the Canal Companies and the Idaho Power Company a license for Milner Project No. 2899 on December 15, 1988 (45 FERC ¶ 61,423). The FERC found that the issuance of a license for the project is consistent with the zero minimum flow below the Milner Project required by the Idaho State Water Plan, "since the license would not require that minimum flows be provided below Milner." *Id.* at 28.

8. On April 28, 1992, the Department approved a fourth application for extension of time that extended the proof of beneficial due date to November 1, 1993.

9. The Canal Companies submitted proof of beneficial use for the Milner Permit on November 1, 1993, pursuant to Idaho Code § 42-217. The field examination report completed by Charles E. Brockway, P.E. on October 29, 1993, recommended that the water right be licensed for a total diversion rate of 5,714.7 cfs at Milner Dam for hydropower use at the power plant located below Milner Dam.

10. Proof of beneficial use having been submitted under the permit, the Department is prepared to issue a license for the water right pursuant to Idaho Code § 42-219. Counsel for the Canal Companies has orally requested that the Department issue a license for the water right.

11. The Department received written requests for notice for an opportunity to be heard on the form of the subordination condition to be included on the license for water right no. 01-7011 from the Bingham Ground Water District on January 11, 2007; from the Idaho Ground

Water Appropriators, Inc. on February 7, 2007, for and on behalf of its ground water districts and other members, represented by the law firm of Racine Olson Nye Budge & Bailey, Chartered; and from the Mud Lake Water Users, Independent Water Users, Jefferson Canal Co., Montevue Canal Co., and Producer's Canal Co., on April 16, 2007, represented by the law firm of Holden, Kidwell, Hahn & Crapo, P.L.L.C.

12. Following the request from the Canal Companies that a license be issued, the Department issued a *Notice of Intent to Issue License*, dated September 5, 2007, in which it stated that it was prepared to issue a license for the water right, pursuant to Idaho Code § 42-219. In the *Notice*, the Department advised the Permit Holders that it would accept and consider written comments from interested parties "addressing the form of the subordination condition that should be included on the license." Such comments were to be postmarked no later than October 10, 2007.¹

13. In response to the *Notice of Intent to Issue License*, the Department received written Comments from 39 water distribution entities addressing the form of the subordination condition that should be included on the license for water right no. 01-7011.

14. On September 28, 2007, the Canal Companies filed a *Petition for Peremptory Writ of Mandate* ("Petition") in district court, requesting an order prohibiting the Director from considering comments submitted pursuant to the *Notice* and compelling the Director to issue a license in conformance with the permit. The Department responded by filing a motion to dismiss which was granted on January 25, 2008.² The dismissal order of the district court was not appealed.

15. In their *Petition*, the Canal Companies alleged that based upon their compliance with the terms of the permit and the submission of proof of beneficial use in 1993, the permit represented a valid, enforceable and vested water right under Idaho Law. *Petition* at 15. The Canal Companies further alleged that the Department's "attempt to modify or add conditions that would now restrict the use of the water right at this point in time constitutes an unconstitutional and prohibited taking of [Canal Companies'] property without just compensation." *Id.*

16. The district court rejected the Canal Companies' argument that the issuance of the license by the Department following submission of proof of beneficial use is simply a ministerial act. *Writ Dismissal Order* at 10. The district court ruled:

Simply because there is a prior agreement in place with respect to the form of the subordination remark does not make the duty to issue the license ministerial. If a determination is made contrary to the terms of the agreement then the issue of the effect and enforceability of the agreement can still be raised with the Director and through judicial review if necessary.

Id.

¹ See Conclusion of Law 2, *infra*.

² *North Side Canal Co., et al v. Tuthill*, (5th Jud. Dist., Gooding Co. Case No. CV 2007-1093) (*Order Granting Motion to Dismiss Petition for Writ of Mandate* Jan. 25, 2008) (hereinafter "*Writ Dismissal Order*").

17. Canal Companies thereafter submitted to the Department a copy of their *Petition*, including the accompanying exhibits, as their comments for consideration by the Director in this matter. Letter to Director David R. Tuthill, Jr. from John K. Simpson (Jan. 31, 2008).

18. Canal Companies seek to have water right no. 01-7011 licensed with the same subordination condition as that in the Milner Permit, which subordinates water right 01-7011 "to all other rights for the consumptive beneficial use of water, other than hydropower and groundwater recharge within the Snake River Basin of the state of Idaho."³

19. If the Director were to issue the license for water right no. 01-7011 with the subordination condition sought by the Canal Companies, the right holder would be entitled to seek administration, including curtailment, of junior-priority recharge water rights diverting above Milner Dam.

20. In most years, requiring that a flow of 5,714 c.f.s. be available at Milner Dam before junior-priority recharge water rights located above Milner Dam would be allowed to divert would foreclose most recharge diversions upstream from Milner Dam for purposes of recharging the Snake River Plain aquifer.

II. The 1928 Constitutional Amendment

21. The constitutional debates over section 3 of article XV of the Idaho Constitution reflect that the delegates recognized that if hydropower uses of the state's water were not limited, hydropower potentially could preclude agricultural development.⁴

22. Renewed concerns involving the use of water for hydropower purposes in the 1920s led to an amendment of section 3, article XV of the Idaho Constitution adopted in 1928, which provides that "the state may regulate and limit the use [of water] for power purposes." Idaho Const. Art. XV, § 3 (including "Compiler's notes" for the 1928 amendment).

23. In 1985, in response to the Swan Falls controversy, the Idaho Legislature authorized the Director to subordinate a water right license for hydropower purposes to "subsequent upstream beneficial depletionary uses." Idaho Code § 42-203B(6).

III. The State Water Plan

24. Section 7 of Article XV of the Idaho Constitution was ratified in 1964 and amended in 1984, and provides for a "State Water Resource Agency" empowered to "formulate and implement a state water plan for optimum development of water resources in the public interest."

³ Water right permit no. 01-7011.

⁴ II PROCEEDINGS AND DEBATES OF THE CONSTITUTIONAL CONVENTION OF IDAHO 1889, 1125-26 (L.W. Hart ed., 1912).

There shall be constituted a Water Resource Agency, composed as the Legislature may now or hereafter prescribe [T]he State Water Resource Agency shall have power to formulate and implement a state water plan for optimum development of water resources in the public interest. The Legislature of the State of Idaho shall have the authority to amend or reject the state water plan in a manner provided by law.

Idaho Const. Art. XV, § 7.

25. In 1965 the Idaho Legislature thus established the Idaho Water Resource Board: "Pursuant to the provisions of article 15, section 7, of the constitution of the state of Idaho, there is hereby established as the constitutional water agency within the department of water resources the Idaho water resource board" Idaho Code § 42-1732. The Legislature has authorized the Idaho Water Resource Board to formulate "a comprehensive state water plan," subject to legislative approval:

The board shall, subject to legislative approval, progressively formulate, adopt and implement a comprehensive state water plan for conservation, development, management and optimum use of all unappropriated water resources and waterways of this state in the public interest. . . . The comprehensive state water plan shall be based upon studies and public hearings in affected areas at which all interested parties shall be given the opportunity to appear, or to present written testimony in response to published proposals for such policy programs and proposed designations.

Idaho Code § 42-1734A(1).

26. The "comprehensive state water plan" contemplated by the Idaho Constitution and Idaho Code § 42-1734A(1) is entitled the "Idaho State Water Plan," and was first adopted and published in 1976. In the 1976 Idaho State Water Plan, the Idaho Water Resource Board established, "after considering all current and potential uses of water on the main stem Snake River," an average daily protected flow of "0 cfs" at the U.S.G.S. Milner gaging station below Milner Dam. 1976 Idaho State Water Plan at 116 (Policy 32).⁵

27. In 1978, the Idaho Legislature enacted Idaho Code § 42-1736B, which provides, in part: "All future filings, permits and decrees on the unappropriated waters of this state shall be determined with respect to the effect such filings, permits and decrees will have on the minimum daily flow of the affected stream or river" Idaho Code § 42-1736B(1).

28. The 1982 revision of the Idaho State Water Plan reaffirmed the "0 cfs" minimum flow at Milner Dam. 1982 Idaho State Water Plan at 42 (Policy 32). The 1982 Idaho State Water Plan also provided that: "Applications for future water permits shall not be approved if

⁵ See *Idaho Power Co. v. State*, 104 Idaho 570, 574, 661 P.2d 736, 740 (1983) ("The state water plan was adopted by the Water Resource Board December 29, 1976, and was effective as the date of its adoption, without any legislative action.").

they are in conflict with the State Water Plan adopted by the Idaho Water Resource Board in the public interest." *Id.* at 21 (Policy 1).

29. In 1985, the Idaho Water Resource Board adopted amendments to the Idaho State Water Plan that were intended to implement the Swan Falls Agreement. The amendments provided, in part: "It is the policy of Idaho that the ground water and surface water of the [Snake River] basin be managed to meet or exceed a minimum average daily flow of zero measured at the Milner gaging station." "A Resolution" at 1, *In the Matter of Policy 32 of the State Water Plan* (Idaho Water Resource Board, Mar. 1, 1985). The 1985 amendments also provided: "The zero flow established at Milner means that river flows downstream from that point to Swan Falls Dam may consist almost entirely of ground-water discharge during portions of low-water years. The Snake River Plain aquifer which provides this water must therefore be managed as an integral part of the river system." *Id.* at 2. The Idaho Legislature ratified these amendments in 1985. 1985 Idaho Sess. Laws 514.⁶

30. The 1986 revision of the Idaho State Water Plan included the 1985 amendments substantially unchanged, although the policies were re-numbered. 1986 Idaho State Water Plan at 35 (Policy 5A). The 1986 revision of the Idaho State Water Plan also provided:

It is the policy of Idaho that approval of applications to appropriate the waters of the state shall be subject to the requirement that the use is in the public interest as set forth in the State Water Plan and by state law. Having been adopted as being in the public interest, the State Water Plan shall be considered when establishing the public interest for water allocations.

Id. at 20 (Policy 1B). The Idaho Legislature approved the 1986 Idaho State Water Plan. Sen. Con. Res. No. 108, 1987 Idaho Sess. Laws 818-19.

31. In 1988, the Idaho Legislature enacted Idaho Code § 42-1734B, which provides, in part, that all state agencies "shall exercise their duties in a manner consistent with the comprehensive state water plan. These duties include but are not limited to the issuance of . . . licenses" Idaho Code § 42-1734B(4).

32. The 1992 revision of the Idaho State Water Plan provided: "*The state recognizes that the exercise of water rights above Milner Dam has and may reduce the flow at the dam to zero.*" 1992 Idaho State Water Plan at 28 (Policy 5A) (emphasis in original). The explanatory text following Policy 5A stated: "The zero flow at Milner Dam is not a target or a goal to be achieved, and may not necessarily be desirable. It is, rather, a recognition of the current condition in which zero flow passes Milner Dam during certain periods of time." *Id.* Like the 1986 revision of the Idaho State Water Plan, the 1992 revision again provided that "[t]he Snake River Plain aquifer which provides this water [Snake River flows downstream from Milner Dam] must therefore be managed as an integral part of the river system." *Id.* Also like the 1986 revision, the 1992 revision of the State Water Plan provided:

⁶ Chapter 204 (Senate Bill 1205).

It is the policy of Idaho that approval of applications to appropriate the waters of the state shall be subject to the requirement that the use is in the public interest as set forth in the State Water Plan and by state law.

Having been adopted as being in the public interest, the State Water Plan shall be considered when establishing the public interest for water allocations.

Id. at 16 (Policy 1B) (emphasis in original). The 1992 revision of the Idaho State Water Plan was submitted to the Idaho Legislature for review and became effective sixty days following submission without legislative action pursuant to Idaho Const. Art. 15, § 7.

33. The current "Idaho State Water Plan" was adopted by the Idaho Water Resource Board in 1996. Through legislation ratifying the 1996 revision of the Idaho State Water Plan, the Legislature amended Policy 5B of the Plan to add: "The exercise of water rights above Milner Dam has and may reduce the flow at the dam to zero." 1997 Idaho Sess. Laws 67, 71. The language added by the Legislature is part of the Idaho State Water Plan's policy for "Snake River Minimum Flows." Idaho State Water Plan at 17 (Policy 5B).

34. Findings of Fact later determined to be Conclusions of Law are herein made as Conclusions of Law.

CONCLUSIONS OF LAW

1. Paragraphs 21 through 33 of the Director's findings of fact are incorporated herein by this reference in their entirety and made a part of the Director's conclusions of law. A threshold issue raised by the Canal Companies is whether the Director may consider comments submitted in response to the *Notice of Intent to Issue License*. The Canal Companies have asserted that the Director acted outside the scope of his authority by reopening the administrative record to comments after the protest period closed.⁷ Although the comments submitted are included in the agency record, they were not considered by the Director. As addressed below, the form of the subordination condition in the license for water right no. 01-7011 is controlled by and is based solely on provisions of state law and the Idaho State Water Plan.

2. The Director is statutorily authorized to issue water right licenses, but prior to issuing a license must be "satisfied that the law has been fully complied with":

Upon receipt by the department of water resources of all the evidence in relation to such final proof, it shall be the duty of the department to carefully examine the same, and *if the department is satisfied that the law has been fully complied with* and that the water is being used at the place claimed and for the purpose for which it was originally intended, the department shall issue to such user or users a license confirming such use.

Idaho Code § 42-219(1) (emphasis added).

⁷ *Writ Dismissal Order* at 5. The district court held that, "The *Notice* did not reopen a protest period nor did it give those submitting comments party status." *Id.* at 9.

3. Several statutory provisions specific to water right permits for power purposes are contained in Idaho Code §§ 42-206 through -209 requiring approval by the Director of any sale, transfer, assignment or mortgage of a permit to appropriate water for power purposes and setting forth consequences for failure to comply. Although the file for permit no. 01-7011 contains several documents suggesting that an interest in the permit may have been assigned, pledged or mortgaged as security for financing of the project or for other purposes, no document assigning, pledging or mortgaging the permit has been submitted by the Canal Companies or otherwise made available to the Department. For example, the file reflects that orders from FERC relating to the Milner project have been issued to Idaho Power Company and Milner Dam, Inc., although neither entity is shown in the Department file to hold any interest in permit no. 01-7011. *See Order Approving Transfer of License*, Project No. 2899 (FERC May 2 1989) ("Approval of the transfer is contingent upon transfer of the title of the properties under license"); *Order Approving Transfer of License*, Project No. 2899 (FERC February 10, 1992) (Transferring Canal Companies interest in FERC license to Milner Dam, Inc.).

4. The Director's licensing determinations must be consistent with the Idaho State Water Plan:

All state agencies shall exercise their duties in a manner consistent with the comprehensive state water plan. These duties include, but are not limited to the issuance of permits, *licenses*, and certifications; provided, however, that nothing in this chapter shall be construed to affect the authority of any state agency with respect to activities not prohibited by the comprehensive state water plan.

Idaho Code § 42-1734B(4) (emphasis added).

5. The Idaho State Water Plan provides, in part: "It is the policy of Idaho to insure that public interests, existing water rights, related settlement agreements, and the future water and energy needs of the State are considered *in hydropower licensing*." Idaho State Water Plan at 14 (Policy 4D) (emphasis added). The Idaho State Water Plan expressly recognizes that "[h]ydropower water rights may be limited to a specific term and subordinated to upstream depletionary uses [Idaho Code, 42-203B(6) and (7)]." *Id.* (brackets in original).

6. The Director is statutorily authorized to subordinate a water right license for hydropower purposes to "subsequent upstream beneficial depletionary uses" and "to limit a permit or license for power purposes to a specific term":

The director shall have the authority to subordinate the rights granted in a permit or license for power purposes to subsequent upstream beneficial depletionary uses. A subordinated water right for power use does not give rise to any claim against, or right to interfere with, the holder of subsequent upstream rights established pursuant to state law. The director shall also have the authority to limit a permit or license for power purposes to a specific term.

Subsection (6) of this section shall not apply to licenses which have already been issued as of the effective date of this act.

Idaho Code § 42-203B(6) (emphasis added).

7. The Director in exercising authority to limit a permit or license for power purposes to a specific term of years shall designate the number of years through which the term of the license shall extend considering multiple factors, including the term of the approved FERC license for the project. Idaho Code § 42-203B(7). The Director determines the expiration of the FERC Milner Project License on November 30, 2038 to be the appropriate term for the license of water right no. 01-7011.

8. Idaho Code § 42-203B(6), enacted in 1985, was an implementation of the State's constitutional authority to "regulate and limit" water rights for power purposes. *See* Idaho Code § 42-203B(1) ("The legislature finds and declares that it is in the public interest to specifically implement the state's power to regulate and limit the use of water for power purposes . . ."). 1985 Idaho Sess. Laws, ch. 17, § 2, p. 25-26; *see also Miles v. Idaho Power Co.*, 116 Idaho 635, 637, 778 P.2d 757, 759 (1989) ("Subsequently, our legislature enacted legislation to implement the [Swan Falls] agreement. *See* 1985 Idaho Sess. Laws, ch. 14-17 . . .").

9. Idaho Constitution, Article XV, § 3 provides: "The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied, *except that the state may regulate and limit the use thereof for power purposes.*" Emphasis added.

10. There is an extensive record of legislative history associated with the enactment of Idaho Code § 42-203B. *See, e.g.,* "Statement of Purpose" for 1985 Senate Bill 1008 ("This legislation would implement the state's authority under the 1928 amendment to Article 15, Section 3 of the Idaho Constitution to limit and regulate the use of water for power purposes Future hydropower water rights could be subordinated to future upstream beneficial uses").

11. Upon passing the legislation that enacted and codified the provisions of Idaho Code § 42-203B(6), the Idaho Senate unanimously adopted a "Statement of Legislative Intent" for the bill. JOURNAL OF THE STATE SENATE, ORGANIZATIONAL SESSION AND FIRST REGULAR SESSION OF THE FORTY-EIGHTH LEGISLATURE OF THE STATE OF IDAHO, 1985 at 58. The "Statement of Legislative Intent" states, in part: "*The Director of the Department of Water Resources is empowered as to all future licenses to subordinate the rights granted in either a permit or a license to subsequent upstream beneficial depletionary uses, to ensure the availability of water for such uses.*" *Id.* at 60 (emphasis added).

12. When explaining the legislation that became Idaho Code § 42-203B(6) to members of the Senate Resources and Environment Committee, the proponents of the legislation stated that the provision was intended "to make sure that as best we can foresee we do not get ourselves into another Swan Falls situation in the future." Minutes, Senate Resources and Environment Committee, January 18, 1985, p. 9 (Pat Kole); *see also id.* ("The primary reason I see [section 203B(6)] there is to avoid Swan Falls reoccurring again.") (Ken Dunn).

13. The Idaho Legislature has provided that:

For the purposes of the determination and administration of rights to the use of the waters of the Snake river or its tributaries downstream from Milner dam, no portion of the waters of the Snake river or surface or ground water tributary to the Snake river upstream from Milner dam shall be considered.

Idaho Code § 42-203B(2).

14. The subordination condition in the Milner Permit would permit a flow of 5,714 c.f.s. to pass from the Snake River upstream of Milner Dam to the Snake River downstream from Milner Dam and thereby potentially preclude future uses of water for recharge upstream from Milner Dam. The subordination condition in the Milner Permit would therefore impermissibly circumvent Idaho Code § 42-203B(2), as quoted above. Through this statute, the Legislature directed that for purposes of determining and administering hydropower water rights below Milner Dam, the waters above Milner Dam shall not be considered. If licensed with the subordination condition of the Milner Permit, water right no. 01-7011 would authorize the Canal Companies to demand that flows arising upstream from Milner Dam be delivered directly to the Snake River downstream from Milner Dam, albeit through diversion and conveyance works rather than by spilling the upstream flows over Milner Dam itself. The effect would be the same, however: the subordination condition in the Milner Permit would authorize water rights administration that would deliver flows of the Snake River arising upstream from Milner Dam directly to the Snake River downstream from Milner Dam. The subordination condition in the Milner Permit would effectively bridge the statutory divide the Legislature expressly created in Idaho Code § 42-203B(2), and undermine the Legislature's unambiguous directive that the Snake River upstream from Milner Dam and the Snake River downstream from Milner Dam be administered as separate sources and systems. Thus, including the subordination condition of the Milner Permit in the license for water right no. 01-7011 would be contrary to the plain language of Idaho Code § 203B(2).

15. For similar reasons, the subordination condition in the Milner Permit impermissibly conflicts with the Idaho Legislature's determination that "[t]he exercise of water rights above Milner Dam has and may reduce the flow at the dam to zero," and with the identical language in Policy 5B of the Idaho State Water Plan. 1997 Idaho Session Laws 71; Idaho State Water Plan at 17. Much of the time in most years, the Milner Permit subordination condition would require flows arising upstream of Milner Dam and otherwise available for recharge to instead be delivered to the Snake River downstream from Milner Dam. The result is that water rights for recharge above Milner Dam would not be allowed to divert unless water right no. 01-7011 was first being satisfied, requiring a flow of 5,714 cfs to be available for diversion around Milner Dam for delivery to the downstream power plant on the Snake River below the dam. Thus, including the subordination condition of the Milner Permit in the license for water right no. 01-7011 would be contrary to the plain language of section 1 of chapter 38 of the 1997 Idaho Session Laws, and would not be consistent with Policy 5B of the Idaho State Water Plan.

16. Policy 1J of the Idaho State Water Plan provides: "It is the policy of Idaho that managed recharge be encouraged, pursuant to state law." Idaho State Water Plan at 7. The Legislature has expressly ratified this policy. 1997 Idaho Session Laws 68. The subordination

condition in the Milner Permit would interfere with and potentially preclude diversions of water upstream from Milner Dam for meaningful recharge of the Snake River Plain aquifer much of the time in most years. Thus, including the subordination condition of the Milner Permit in the license for water right no. 01-7011 would discourage recharge and therefore would not be consistent with Policy 1J of the Idaho State Water Plan.

17. Policy 5H of the Idaho State Water Plan provides: "It is the policy of Idaho to seek to maintain spring flows in the American Falls and Thousand Springs reaches of the Snake River which will sustain beneficial uses of surface and ground water supplies in accordance with state law." Idaho State Water Plan at 19. The Legislature has expressly ratified this policy. 1997 Idaho Session Laws 71. Further, the "Comment" to Policy 5H of the Idaho State Water Plan states:

Spring discharge in the American Falls and Thousand Springs reaches of the Snake River are vital to the Snake River Basin and Idaho economy. The springs near American Falls provide an important part of Snake River flow appropriated by Magic Valley appropriators. In the Thousand Springs reach, spring flow is the only practical source of water for many of the state's aquaculture facilities. During portions of low-water years, river flows downstream from Milner Dam to the Murphy gaging station consist almost entirely of ground-water discharge from the Thousand Springs reach. *Maintaining these discharges should be the goal of water managers. Managed recharge of the aquifers and continued efforts to efficiently use ground water are two strategies for maintaining spring discharges in these reaches.*

Idaho State Water Plan at 19 ("Comment" to Policy 5H) (emphasis added).

18. Similarly, the "Comment" to Policy 1J of the Idaho State Water Plan states: *"Managed aquifer recharge may enhance spring flows and maintain desirable aquifer levels. Managed recharge should be monitored to document the beneficial effects on the state's water resources and to minimize any concerns or issues."* Idaho State Water Plan at 7 ("Comment" to Policy 1J) (emphasis added); *see also* Idaho State Water Plan at 6 ("Aquifers, in turn, serve as underground reservoirs, and can stabilize stream discharges during dry periods.") ("Comment" to Policy "1F - Conjunctive Management"). These provisions of the Idaho State Water Plan expressly contemplate that managed recharge is an important strategy to maintain, enhance and stabilize aquifer levels and spring discharges in the Thousand Springs reach. The subordination condition in the Milner Permit would be inconsistent with enhancing or stabilizing aquifer levels and/or spring discharges much of the time in most years in contravention of Policies 5H and 1J of the Idaho State Water Plan.

19. Including the subordination condition in the Milner Permit in the license for water right no. 01-7011 would also tend to create "another Swan Falls situation," the avoidance of which was a principal reason for empowering the Director, under Idaho Code § 42-203B(6), to subordinate hydropower water right permits and licenses. Minutes, Senate Resources and Environment Committee, January 18, 1985, p. 9. The issue in the Swan Falls controversy was whether certain hydropower water rights "should be subordinated to future appropriators to

encourage further development of agricultural uses, domestic, commercial, municipal or industrial (DCMI) uses, or other uses which would be beneficial to Idaho." JOURNAL OF THE STATE SENATE, ORGANIZATIONAL SESSION AND FIRST REGULAR SESSION OF THE FORTY-EIGHTH LEGISLATURE OF THE STATE OF IDAHO, 1985 at 58 (parenthetical in original). The Legislature resolved this issue with respect to future hydropower water rights by authorizing the Director to subordinate hydropower water right permits and licenses in order to prevent such water rights from having the effect of blocking "uses which would be beneficial to Idaho." *Id.* As discussed above, the Legislature and the Idaho Water Resource Board have determined that recharge uses upstream from Milner Dam are beneficial to Idaho, and including the subordination condition of the Milner Permit in the license for water right no. 01-7011 would potentially preclude recharge uses upstream of Milner Dam much of the time in most years. Thus, including the subordination condition of the Milner Permit in the license for water right no. 01-7011 would be inconsistent with the legislative intent that Idaho Code § 42-203B(6) be used to prevent "another Swan Falls situation."

20. The Idaho Legislature and the Idaho Water Resource Board have already carefully considered and weighed the policy questions implicit in the question of the form of the subordination condition for water right no. 01-7011. The Legislature has determined that the Snake River upstream from Milner Dam should be administered for purposes of hydropower generation separate and independent from the Snake River downstream of Milner Dam for purposes of determining and administering water rights above and below Milner Dam, and that the source of flows for water rights downstream from Milner Dam is limited to flows arising downstream from Milner Dam. The Legislature and the Idaho Water Resource Board have determined that flows at Milner Dam may be reduced to zero for purposes of satisfying water rights above Milner Dam, that flows downstream from Milner Dam are to be principally supplied by ground water discharge from the Snake River Plain aquifer, that the Snake River Plain aquifer and the Snake River must be managed as a single resource, and that managed recharge is an important component of the unified management regime necessary to maintain, enhance and stabilize aquifer levels, spring discharges and stream flows in the river-aquifer system. The Director is statutorily obligated to adhere to these determinations in issuing the license for water right 01-7011. Including the subordination condition of the Milner Permit in the license for water right 01-7011 would directly contravene these determinations.

21. The foregoing discussion demonstrates that full subordination of water right no. 01-7011 is consistent with Idaho Code §§ 42-234(2) and 42-4201A(2). Sections 42-234(2) and 42-4201A(2) do not specifically address the question of the determination and administration of water rights with respect to river flows upstream and downstream from Milner Dam. The general directive that recharge water rights shall be secondary to prior perfected rights does not control over specific legislative determinations and statutory provisions limiting the source of hydropower uses downstream from Milner Dam to flows arising downstream from Milner Dam, and providing that all flows arising above Milner Dam may be diverted for uses above Milner Dam. See *Mulder v. Liberty Northwest Ins. Co.*, 135 Idaho 52, 57, 14 P.3d 372, 377 (2000) ("A basic tenet of statutory construction is that the more specific statute or section addressing the issue controls over the statute that is more general."). For similar reasons, Idaho Code §§ 42-234(2) and 42-4201A(2) do not override or repeal Idaho Code §§ 42-203B(2), 42-1734B(4) or

1997 Idaho Session Laws chapter 38, section 1 by implication.⁸ See *Gooding County v. Wybenga*, 137 Idaho 201, 204, 46 P.3d 18, 21 (2002) ("Repealing or amending a statute by implication is disfavored in the law, and it will not be inferred absent a clear, legislative intent."). Rather, sections 42-234(2) and 42-4201A(2) must be interpreted harmoniously with Idaho Code §§ 42-203B(2), 42-1734B(4) and 1997 Idaho Session Laws chapter 38, section 1. See *State v. Barnes*, 133 Idaho 378, 380, 987 P.2d 290, 292 (1999) ("Statutes relating to the same subject matter, although in apparent conflict, are to be construed in harmony, if reasonably possible.") Interpreting sections 42-234(2) and 42-4201A(2) as prohibiting the Director from following the clear mandates of Idaho Code §§ 42-203B(2) and section 1 of chapter 38 of the 1997 Idaho Session Laws would unnecessarily introduce tension among statutes that can be construed harmoniously, for reasons previously discussed.⁹

22. The subordination condition proposed by the Canal Companies contravenes the applicable statutes and provisions of the Idaho State Water Plan in effect at the time. The above-quoted provisions of Idaho Code § 42-203B were in force in 1987, having been enacted in the 1985 and 1986 legislative sessions. Further, Idaho Code § 42-1736B(1) had been in force since 1978, and provided that "[a]ll future filings, permits and decrees on the unappropriated water of this state shall be determined with respect to the effect such filings, permits and decrees will have on the minimum daily flow of the affected stream or river" The minimum daily flow for the Milner gaging station under the Idaho State Water Plan at the time was "0 c.f.s.," and the plan provided that the Snake River Plain aquifer "must therefore be managed as an integral part of the [Snake] river system." 1986 Idaho State Water Plan at 35 (Policy 5A). The Idaho State Water Plan further provided at the time that "approval of applications to appropriate the waters of the state shall be subject to the requirement that the use is in the public interest as set forth in the State Water Plan" and "the State Water Plan shall be considered when establishing the public interest for water allocations." *Id.* at 20 (Policy 1B). Thus, for reasons similar to those discussed above, the subordination condition included in the permit in 1987 contravenes applicable statutes and the provisions of the Idaho State Water Plan.

23. In sum, the Director is authorized, by the Legislature's statutory implementation of the State's constitutional authority to regulate and limit water rights for power purposes, to subordinate a license for a hydropower water right. While the Director has discretion in exercising this authority, such discretion must be exercised by the Director consistent with his statutory obligation to ensure that the license complies with the applicable law and is consistent with the Idaho State Water Plan. As discussed above, the Idaho Legislature and the Idaho Water

⁸ See 1997 Idaho Sess. Laws 71 ("The exercise of water rights above Milner Dam has and may reduce the flow at the dam to zero.").

⁹ This conclusion is further supported by the fact that sections 42-234(2) and 42-4201A(2) provide that the recharge water rights shall be secondary to the hydropower water rights covered by the Swan Falls Agreement ("those water rights for power purposes that may otherwise be subordinated by contract entered into by the governor and Idaho power company on October 25, 1984") but do not make the recharge water rights secondary to the Milner hydropower water right, which had been permitted seven years earlier, in 1977. Thus, with respect to hydropower water rights—a special class of water rights that the State is constitutionally authorized to "regulate and limit"—normal rules of statutory construction would limit the application of sections 42-234(2) and 42-4201A(2) to the hydropower water rights covered by the Swan Falls agreement. See *Twin Falls County v. Cities of Twin Falls and Filer*, 143 Idaho 398, 402, 146 P.3d 664, 668 (2006) ("Idaho has recognized the rule of *expressio unius est exclusio alterius*—where a constitution or statute specifies certain things, the designation of such things excludes all others.").

Resource Board have expressly addressed and conclusively decided the policy matters raised by the question of the form of the subordination condition for the license for water right no. 01-7011. Thus, this question is controlled by affirmative enactments of the Idaho Legislature and the policies of the Idaho State Water Plan as ratified by the Idaho Legislature. In short, while the Director has discretion with respect to exercising his authority to subordinate a hydropower water right license under Idaho Code § 42-203B(6), the Director does not have discretion to ignore clear statutory language and provisions of the Idaho State Water Plan, or to approve subordination limitations that are directly contrary to them. For the reasons discussed above, the subordination condition in the Milner Permit is irreconcilably at odds with the cited statutes and policies of the Idaho State Water Plan. Accordingly, the Director concludes that the subordination condition for the license for water right no. 01-7011 should provide that the water right is subordinate to all subsequent upstream beneficial depletionary uses, other than hydropower, within the Snake River Basin of the state of Idaho and does not give rise to any claim against, or right to interfere with, any such junior-priority upstream rights established pursuant to state law. Idaho Code § 42-203B(6); Idaho State Water Plan at 14 ("Comment" to Policy 4D). The reference to "subsequent upstream beneficial depletionary uses" in the subordination condition includes uses for managed recharge which may deplete flows in the Snake River at Milner Dam.

24. The argument of the Canal Companies that their rights to the use of water under the Milner Permit vested upon the submission of proof of beneficial use to the Department in 1993 was rejected by the district court.¹⁰

ORDER

IT IS HEREBY ORDERED that water right no. 01-7011 authorizing the diversion of water from the Snake River for power purposes be licensed as follows:

Source:	Snake River
Beneficial Use:	Power
Period of Use:	01/01 to 12/31
Diversion Rate:	5,714.70 cfs
Diversion Volume:	2,390,000.0 AF
Points of Diversion:	NW1/4SW1/4 Sec. 28, Twp 10S, Rge 21E, B.M. L8 (NE1/4SE1/4) Sec. 29, Twp 10S, Rge 21E, B.M.
Places of Use:	NE1/4SE1/4 Sec. 29, Twp 10S, Rge 21E, B.M. L8 (SW1/4NE1/4) Sec. 30, Twp 10S, Rge 21E, B.M.

Conditions of Approval:

1. The diversion and use of water for hydropower purposes under this water right shall be subordinate to all subsequent upstream beneficial depletionary uses, other than

¹⁰ *Writ Dismissal Order* at 11-12 (Holding that following the beneficial use examination the issuance of the license is not a ministerial act and citing a series of Idaho cases holding that "a right to use the waters of this state remains inchoate until a license is actually issued by IDWR.")

hydropower, within the Snake River Basin of the state of Idaho that are initiated later in time than the priority of this water right and shall not give rise to any right or claim against any junior-priority rights for the depletionary or consumptive beneficial use of water, other than hydropower, within the Snake River Basin of the state of Idaho initiated later in time than the priority of water right no. 01-7011.

2. A measuring device of a type approved by the Department shall be permanently installed and maintained as part of the diverting works.
3. Use of water under this right shall be non-consumptive.
4. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
5. The diversion and use of water for hydropower purposes under this water right is subject to review by the Director after the date of expiration of Milner Project License No. 2899 (11/30/2038) issued by the Federal Energy Regulatory Commission. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.

IT IS FURTHER ORDERED that this is a final order of the agency. The right holder may file a petition for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law pursuant to Idaho Code § 67-5246.

IT IS FURTHER ORDERED that any person aggrieved by this decision shall be entitled to a hearing before the Director to contest the action taken provided the person files with the Director, within fifteen (15) days after receipt of written notice of the order, or receipt of actual notice, a written petition stating the grounds for contesting the action and requesting a hearing. Any hearing conducted shall be in accordance with the provisions of chapter 52, title 67, Idaho Code, and the Rules of Procedure of the Department, IDAPA 37.01.01. Judicial review of any final order of the Director issued following the hearing may be had pursuant to Idaho Code § 42-1701A(4).

DATED this 20th day of October 2008.


DAVID R. TUTHILL, JR.
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of October 2008, I caused a true and correct copy of the foregoing Order to be sent by U.S. Mail, postage paid to the following:

John A. Rosholt, Esq.
Travis L. Thompson, Esq.
Barker Rosholt & Simpson LLP
113 Main Avenue West, Suite 303
P.O. Box 485
Twin Falls, ID 83303-00485

John K. Simpson, Esq.
Barker Rosholt & Simpson LLP
1010 W. Jefferson, Suite 102
P.O. Box 2139
Boise, ID 83701-2139

Courtesy Copies

Randall C. Budge, Esq.
Racine Olson Nye Budge & Bailey
201 East Center Street
P.O. Box 1391
Pocatello, Idaho 83204-1391

Robert L. Harris, Esq.
1000 Riverwalk Dr. Suite 200
P.O. Box 50130
Idaho Falls, Idaho 83405

Craig B. Evans, Chairman
Bingham Ground Water District
1725 Riverton Road
P.O. Box 1268
Blackfoot, Idaho 83221

Lyle Swank, Manager
Department of Water Resources
Eastern Regional Office
900 North Skyline Dr., Ste A
Idaho Falls, ID 83402-1718

Allen D. Merritt, Manager
Department of Water Resources
Southern Regional Office
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301-3380



Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 1-07011

Priority: March 30, 1977

Maximum Diversion Rate: 5,714.70 CFS

Maximum Diversion Volume: 2,390,000.0 AF

It is hereby certified that NORTH SIDE CANAL CO LTD
921 N LINCOLN AVE
JEROME ID 83338

And

TWIN FALLS CANAL CO
PO BOX 326

TWIN FALLS ID 83301

TWIN FALLS ID 83301 have complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated March 30, 1977; and have submitted Proof of Beneficial Use on October 29, 1993. An examination indicates that the works have a diversion capacity of 5714.7 cfs of water from:

SOURCE

SNAKE RIVER

Tributary: COLUMBIA RIVER

and a water right has been established as follows:

BENEFICIAL USE

POWER

PERIOD OF USE

01/01 to 12/31

DIVERSION RATE

5,714.70 CFS

ANNUAL
DIVERSION VOLUME

2,390,000,0 AF

LOCATION OF POINT(S) OF DIVERSION:

SNAKE RIVER NW1/4SW1/4 Sec. 28, Twp 10S, Rge 21E, B.M.

TWIN FALLS County

SNAKE RIVER L8 (NE1/4SE1/4) Sec. 29, Twp 10S, Rge 21E, S.M.

TWIN FALLS County

PLACES OF USE: POWER

[illegible]

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 1-07011

CONDITIONS OF APPROVAL

1. The diversion and use of water for hydropower purposes under this water right shall be subordinate to all subsequent upstream beneficial depletionary uses, other than hydropower, within the Snake River Basin of the state of Idaho that are initiated later in time than the priority of this water right and shall not give rise to any right or claim against any junior-priority rights for the depletionary or consumptive beneficial use of water, other than hydropower, within the Snake River Basin of the state of Idaho initiated later in time than the priority of water right no. 01-7011.
2. A measuring device of a type approved by the Department shall be permanently installed and maintained as part of the diverting works.
3. Use of water under this right shall be non-consumptive.
4. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
5. The diversion and use of water for hydropower purposes under this water right is subject to review by the Director after the date of expiration of Milner Project License No. 2899 (11/30/2038) issued by the Federal Energy Regulatory Commission. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.

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 October, 2008.

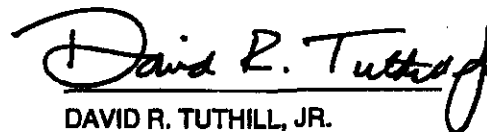

DAVID R. TUTHILL, JR.
Director

EXHIBIT NO. 4

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 02-00100

NAME & ADDRESS: IDAHO POWER COMPANY
PO BOX 83720
BOISE ID 83707

SOURCES: SNAKE RIVER Tributary: COLUMBIA RIVER
COVE CREEK Tributary: MALAD RIVER
MALAD RIVER Tributary: SNAKE RIVER
THOUSAND SPRINGS Tributary: SNAKE RIVER
SNOW BANK SPRINGS Tributary: SNAKE RIVER
CLEAR LAKE Tributary: SNAKE RIVER
SAND SPRINGS CREEK Tributary: SNAKE RIVER

QUANTITY: 2150.00 CFS

PRIORITY DATE: 01-17-1900

POINTS OF DIVERSION: T02S R01E S18 LOT 10 (SESWSE) Within Owyhee County
LOT 11 (NWSSESE) Within Ada County (Swan Falls Dam)
T09S R18E S31 LOT 8 (NESW) Within Twin Falls County
LOT 9 (NWSW) Within Jerome County (Shoshone Falls)
T10S R18E S04 LOT 2 (NWNW) Within Twin Falls County (Twin Falls)
LOT 3 (NENW)
T06S R12E S07 LOT 10 (SWNESE) Within Elmore County
LOT 5 (SWNESE) Within Gooding County (Bliss Dam)
T07S R13E S02 LOT 7 (SESW) Within Gooding County (Lower Salmon
LOT 8 (SWSW) Falls)
T08S R13E S02 LOT 1 (NWNW) Within Gooding County
LOT 2 (NWNW) Within Twin Falls County (Upper Salmon
Falls)
T06S R13E S25 SWSW Within Gooding County
S35 NENW
NENW (Injection)
NENW (Rediversion) (Malad River)
T06S R13E S25 SWSW Within Gooding County (Malad River)
T06S R13E S36 NWNW
T08S R14E S08 SWNWSW Within Gooding County
NESWSE
NWSWSE
SESWSE (Thousand Springs, Snowbank Springs)
T09S R14E S02 LOT 7 (NESWSE) Within Gooding County (Clear Lake)
T08S R14E S17 SENWSE Within Gooding County (Sand Springs
Creek)

PURPOSE AND PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
POWER 01-01 TO 12-31 2150.00 CFS

EXHIBIT

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Power generation is at Swan Falls Dam Power Plant, Shoshone Falls Power Plant, Twin Falls Power Plant, Bliss Dam Power Plant, Lower Salmon Falls Power Plant, Upper Salmon Falls Power Plant, Lower Malad Gorge Power Plant, Upper Malad Gorge Power Plant, Clear Lake Power Plant and Thousand Spring Power Plant.

PLACES OF USE:

POWER T02S R01E S18 LOT 11	Within Ada County (SESE) (Swan Falls Dam Power Plant)
POWER T09S R17E S36 LOT 15	Within Jerome County (NESE) (Shoshone Falls Power Plant)
POWER T10S R18E S04 LOT 3	Within Twin Falls County (NENW) (Twin Falls Power Plant)
POWER T06S R12E S07 LOT 5	Within Gooding County (NESE) (Bliss Dam Power Plant)
POWER T07S R13E S02 LOT 7	Within Gooding County (SESSE) (Lower Salmon Falls Power Plant)
POWER T08S R13E S02 LOT 4 S03 LOT 1 LOT 3	Within Twin Falls County (NWNW) (NENE) (NWNW) (Upper Salmon Falls Power Plant)
POWER T06S R13E S27 LOT 2	Within Gooding County (SWSW) (Lower Malad Gorge Power Plant)
POWER T06S R13E S35	Within Gooding County NENW (Upper Malad Gorge Power Plant)
POWER T08S R14E S08 Lot 3	Within Gooding County (NESW) (Thousand Springs Power Plant)
POWER T09S R14E S02 LOT 7	Within Gooding County (SWSE) (Clear Lake Power Plant)
POWER T08S R14E S08 LOT 3	Within Gooding County (NESW) (Thousand Springs Power Plant)

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

1. Water right nos. 02-00100, 02-02032A, 02-04000A, and 02-04001A collectively entitle Idaho Power Company to an unsubordinated water right, except as provided in paragraph nos. 3 and 4 below, to average daily flows of 3900 CFS from April 1 to October 31 and 5600 CFS from November 1 to March 31 as measured at the "Murphy Gaging Station" described below in paragraph no. 2. These flows are not subject to depletion, except for depletions caused by the lawful exercise of those water rights identified in paragraph nos. 3 and 4 below, and except for depletions resulting from any diversions or uses of the waters identified in paragraph 5 below. Water right nos. 02-00100, 02-02032A, 02-04000A, and 02-04001A are satisfied when the average daily flows set forth herein are met or exceeded. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Idaho Power Company facilities shall not be considered in the calculation of such flows. Flows of water purchased, leased, owned or otherwise acquired by Idaho Power Company from sources upstream of its power plants, including above Milner Dam, and conveyed to and past its plants below Milner Dam shall be considered fluctuations resulting from the operation of Idaho Power Company facilities.

2. The "Murphy Gaging Station" is located at latitude 43 degrees 17 minutes 31 seconds, longitude 116 degrees 25 minutes 12 seconds, 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, Idaho at river mile 453.5.

3. This water right is subordinate to the lawful exercise of water rights of those persons dismissed from Idaho Power Co. v. State of Idaho, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990).

4. This water right is subordinate to the lawful exercise of water rights of those persons who beneficially used water prior to October 1, 1984 and who filed an application or claim for said use by June 30, 1985.

5. For the purposes of the determination and administration of this water right, no portion of the waters of the Snake River or surface or ground water tributary to the Snake River upstream from Milner Dam shall be considered. This water right may not be administered or enforced against any diversions or uses of the waters identified in this paragraph.

6. This partial decree is consistent with the Swan Falls Agreement dated October 25, 1984, the Contract to Implement Chapter 259, Sess. Laws, 1983 dated October 25, 1984 and the Consent Judgments entered in Ada County Civil Cases Nos. 62237 (Mar. 9, 1990) and 81375 (Feb. 16, 1990). The Swan Falls Agreement dated October 25, 1984, shall not be merged into nor integrated with this partial decree, but shall remain in full force and effect independent of this partial decree.

7. This partial decree is subject to such general provisions necessary for the definition of the water 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. I.C. Section 42-1416(6).

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 02-4000B

NAME & ADDRESS: STATE OF IDAHO
TRUSTEE
STATEHOUSE
PO BOX 83720
BOISE ID 83720

SOURCE: SNAKE RIVER Tributary: COLUMBIA RIVER

QUANTITY: 90.00 CFS

PRIORITY DATE: 01-17-1900

POINT OF DIVERSION: T02S R01E S18 LOT 10 (SESWSE) Within Owyhee County
LOT 11 (NWSESE) Within Ada County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	POWER	04-01 TO 10-31	90.00 CFS

Power generation is at the Swan Falls Dam Power Plant.

PLACE OF USE: POWER Within Ada County
T02S R01E S18 LOT 11 (SESE)

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

1. Legal title to this water right is held in trust by the State of Idaho, by and through the Governor, for the benefit of Idaho Power Company as the user of the water for power purposes and for the benefit of the people of the State of Idaho. In addition to the subordination defined in paragraph nos. 4 and 5 below, this water right shall be subject to subordination to and depletion by future beneficial uses under water rights acquired pursuant to applicable state law, unless any such water right is unlawfully exercised or such use depletes or will deplete the average daily flow of the Snake River below 3900 CFS from April 1 to October 31 or below 5600 CFS from November 1 to March 31 as measured at the "Murphy Gaging Station" described below in paragraph no. 2. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Idaho Power Company facilities shall not be considered in the calculation of such flows. Flows of water purchased, leased, owned or otherwise acquired by Idaho Power Company from sources upstream of its power plants, including above Milner Dam, and conveyed to and past its plants below Milner Dam shall be considered fluctuations resulting from the operation of Idaho Power Company facilities.

2. The "Murphy Gaging Station" is located at latitude 43 degrees 17 minutes 31 seconds, longitude 116 degrees 25 minutes 12 seconds, in T01S R01W, S35, NWSESE, 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, Idaho at river mile 453.5.

3. Idaho Power Company, as user of the water for power purposes and a beneficiary of the trust referenced above, is entitled to use the water available at the facility identified herein to the extent of its actual beneficial use but not to exceed the "QUANTITY" set forth above, and to protect its rights to such use of the water as provided by state law against depletions or claims not in accordance with state law.

4. This water right is subordinate to the lawful exercise of water rights of those persons dismissed from Idaho Power Co. v. State of Idaho, Case No. 81375 (Fourth Judicial Dist. Feb. 16, 1990).

5. This water right is subordinate to the lawful exercise of water rights of those persons who beneficially used water prior to October 1, 1984 and who filed an application or claim for said use by June 30, 1985.

6. For the purposes of the determination and administration of this water right, no portion of the waters of the Snake River or surface or ground water tributary to the Snake River upstream from Milner Dam shall be considered. This water right may not be administered or enforced against any diversions or uses of the waters identified in this paragraph.

7. This partial decree is consistent with the Swan Falls Agreement dated October 25, 1984, the Contract to Implement Chapter 259, Sess. Laws, 1983 dated October 25, 1984 and the Consent Judgments entered in Ada County Civil Cases Nos. 62237 (Mar. 9, 1990) and 81375 (Feb. 16, 1990). The Swan Falls Agreement dated October 25, 1984, shall not be merged into nor integrated with this partial decree, but shall remain in full force and effect independent of this partial decree.

8. This partial decree is subject to such general provisions necessary for the definition of the water 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. I.C. Section 42-1416(6).

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

JOHN M. MELANSON
Presiding Judge
Snake River Basin Adjudication

EXHIBIT NO. 5

MEMORANDUM

Date: April 9, 1987 ←
To: File 01-7011
From: L. Glen Saxton
RE: ANALYSIS OF REQUEST FOR EXTENSION OF TIME REC'D 2-26-87

Past action in connection with permit 01-7011 is summarized as follows:

- June 29, 1977 - Permit was approved
- June 1, 1982 - Proof due
- March 31, 1982 - Extension of time granted based on due diligence designating June 1, 1987 as the new proof due date.
- Feb 26, 1987 - 2nd request for extension of time received.

The request for an extension of time requests a duration of approximately 6 years and 7 months (to Jan. 1, 1995) in which to submit the proof of beneficial use based on FERC related delays.

FERC related actions in connection with the permit are as follows:

- Nov. 5, 1980 - Application for preliminary permit submitted to FERC.
- August 12, 1981 - FERC order issued granting a preliminary permit to study the feasibility of the project.
- July 27, 1984 - Applic. for major license submitted to FERC. The application has not yet been acted upon.

Assuming FERC has not acted upon the app. for license by May 30, 1987 (proof due June 1, 1987), the delay caused by FERC will be about 2 years and 10 months. This is the amount of time for which the extension should be approved. If delayed further by FERC's inaction on the applic. for license, additional time can be requested for delays after June 1, 1987. The department should not consider the time in which the applicant or permit holder is studying the feasibility of a proposed project as a time

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EXHIBIT

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delay attributable to FERC.

The department should add a subordination condition to the request for extension of time if approved.

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EXHIBIT NO. 6

[Close](#)**IDAHO DEPARTMENT OF WATER RESOURCES**
Water Right Report

9/8/2009

WATER RIGHT NO. 65-12096

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	IDAHO POWER CO PO BOX 70 BOISE, ID 83707 (208)388-2905
Attorney	BARKER ROSHOLT & SIMPSON LLP 1010 W JEFFERSON STE 102 PO BOX 2139 BOISE, ID 83701-2139 (208)336-0700
Attorney	IDAHO POWER CO PO BOX 70 BOISE, ID 83707 (208)388-2905

Priority Date: 02/21/1978

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>

EXHIBIT

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NORTH FORK PAYETTE RIVER | PAYETTE RIVER

Beneficial Use	From	To	Diversion Rate	Volume
POWER	1/01	12/31	2000 CFS	642000 AFA
Total Diversion			2000 CFS	

Location of Point(s) of Diversion:

PAYETTE RIVER	NENE Lt 5	Sec. 26	Township 14N	Range 03E	VALLEY County
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POWER Use:

Hydropower Kilowatts: 12420

Place(s) of use:

Place of Use Legal Description: POWER VALLEY County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Ac
14N	03E	26	5	NENE							

Conditions of Approval:

1.	RIGHTS 65-02232, 65-02338A, 65-02338X AND 65-12096 WHEN COMBINED SHALL NOT EXCEED A TOTAL DAILY MAXIMUM DIVERSION VOLUME OF 4356 ACRE FEET
----	--

2.	THE RIGHTS FOR THE USE OF WATER CONFIRMED BY THIS RIGHT SHALL BE JUNIOR AND SUBORDINATE TO ALL RIGHTS FOR THE USE OF WATER OTHER THAN HYDROPOWER, WITHIN THE STATE OF IDAHO THAT ARE INITIATED LATER IN TIME THAN THE PRIORITY OF THIS RIGHT AND SHALL NOT GIVE RISE TO ANY RIGHT OR CLAIM AGAINST ANY FUTURE RIGHTS FOR THE USE OF WATER, OTHER THAN HYDROPOWER, WITHIN THE STATE OF IDAHO INITIATED LATER IN TIME THAN THE PRIORITY OF THIS RIGHT.
3.	THIS RIGHT DOES NOT CONSTITUTE IDAHO PUBLIC UTILITIES COMMISSION OR FEDERAL ENERGY REGULATORY COMMISSION APPROVAL THAT MAY BE REQUIRED.
4. C18	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.
5.	RIGHTS NO. 65-02232, 65-02338A AND 65-02338X ARE ALSO DIVERTED THROUGH THE POINT OF DIVERSION DESCRIBED ABOVE. THE HYDROPOWER FACILITY IS KNOWN AS CASCADE HYDROELECTRIC PROJECT.

Dates:

Licensed Date:

Decreed Date: 08/29/2002

Permit Proof Due Date: 5/1/1988

Permit Proof Made Date: 10/19/1984

Permit Approved Date: 4/8/1981

Permit Moratorium Expiration Date:

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:
Application Received Date: 02/21/1978
Protest Deadline Date:
Number of Protests: 0

Other Information:

State or Federal: S
Owner Name Connector: OR
Water District Number:
Generic Max Rate per Acre:
Generic Max Volume per Acre:
Civil Case Number:
Old Case Number:
Decree Plaintiff:
Decree Defendant:
Swan Falls Trust or Nontrust:
Swan Falls Dismissed:
DLE Act Number:
Cary Act Number:
Mitigation Plan: False

Close

State of Idaho
Department of Water Resources

Water Right License

AMENDED

AMENDED

WATER RIGHT NO. 65-12096

Priority: February 21, 1978

Maximum Diversion Rate: 2000.00 CFS

Maximum Diversion Volume: 642000.0 AF

This is to certify, that IDAHO POWER CO

PO BOX 70

BOISE ID 83707

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated February 21, 1978; and has submitted Proof of Beneficial Use on October 19, 1984. An examination indicates that the works have a diversion capacity of 2350.000 cfs of water from:

PAYETTE RIVER, NORTH FORK

tributary to PAYETTE RIVER

source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
POWER	01/01 to 12/31	2000.00 CFS	642000.0 AF

LOCATION OF POINT(S) OF DIVERSION: Lot 5 (NENE), Sec. 26, Township 14N, Range 03E
VALLEY County

PLACE OF USE: POWER

TWN RGE SEC

14N 03E 26 Lot 5 (NENE)

CONDITIONS OF APPROVAL AND REMARKS

1. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
2. Use of water under this right shall be non-consumptive.
3. The rights for the use of water confirmed in this license shall be junior and subordinate to all rights for the use of water other than hydropower, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any right or claim against any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this right.
4. Use of water under this water right will be regulated by the watermaster of State Water District No. 65.
5. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
6. The issuance of this right does not grant any right-of-way or easement across the land of another.

MICROFILMED
JAN 28 2000

State of Idaho
Department of Water Resources

Water Right License

AMENDED

AMENDED

WATER RIGHT NO. 65-12096

CONDITIONS OF APPROVAL AND REMARKS

7. Rights 65-02232, 65-02338A and 65-02338X are also diverted through the point of diversion described above.
8. The hydropower facility is known as Cascade Hydroelectric Project.
9. Rights 65-02232, 65-02338A, 65-02338X and 65-12096 when combined shall not exceed a total daily maximum diversion volume of 4356 acre feet.

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 administered in accordance with Idaho law and applicable rules of the Department of Water Resources. Signed and sealed this 14th day of

JANUARY, 2000.

Acting for

KARL J. DREHER, Director

MICROFILMED

JAN 28 2000

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

**IN THE MATTER OF WATER RIGHT
LICENSE NO. 65-12096 IN THE NAME
OF IDAHO POWER CO.**

**) ORDER GRANTING PETITION
) FOR RECONSIDERATION
)**

This matter having come before the Department of Water Resources (Department) as a petition to reconsider the issuance of a water right license, the Department makes the following Findings of Fact, Conclusions of Law, and Order

FINDINGS OF FACT

1. On November 8, 1999, the Department issued Water Right License No. 65-12096 (license) to Idaho Power Company (right holder) for the diversion and use of 2000 cfs of water from the North Fork of the Payette River in Valley County for power production purposes.
2. The license was issued as a preliminary order (order) of the Department pursuant to §67-5243, *Idaho Code*, and Rule 730 of the Department's Rules of Procedure (IDAPA 37.01.01.730).
3. On November 9, 1999, the Department mailed a true and correct copy of the order to the right holder.
4. Rule 730.02.a of the Department's Rules of Procedure (IDAPA 37.01.01.730.02.a.) provides in pertinent part as follows:

Any party may file a petition for reconsideration of this preliminary order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this order will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law.

5. Rule 300 of the Department's Rules of Procedure (IDAPA 37.01.01.300.) provides for the filing of documents by facsimile transmission (fax), but it also requires the original document to be mailed by the next working day.

6. The Department received a facsimile transmission of a petition for reconsideration of the order (petition) from James C. Tucker, the attorney for the right holder. The certificate of service printed on the petition indicates that it was sent by fax and by regular mail on November 23, 1999, *fourteen* days after service date of the order. The Department stamped the petition as received on Wednesday, November 24, 1999, *fifteen* days after the service date of the order.
7. The Department has not received the original petition
8. As indicated in the petition, the right holder seeks reconsideration of approval condition no. 7 listed on the license.

CONCLUSIONS OF LAW

1. The petition may or may not have been filed timely in accordance with Rule 730.02.a. of the Department's Rules of Procedure (IDAPA 37.01.01.730.02.a.).
2. In the absence of further evidence demonstrating that the petition was not filed timely, it is reasonable for the Department to regard the petition as timely.
3. The Department should grant the petition to provide an opportunity for evaluating the changes requested by the right holder.

ORDER

IT IS HEREBY ORDERED that the petition for reconsideration of the preliminary order issuing Water Right License No 65-12096 is **GRANTED** pursuant to §67-5243, *Idaho Code*, to provide the Department an opportunity to evaluate the changes requested by the right holder.

IT IS FURTHER HEREBY ORDERED that the Department retains jurisdiction to re-evaluate the timeliness of the petition if additional relevant evidence is presented.

Dated this 30th day of NOVEMBER, 1999.


NORMAN C. YOUNG
Administrator, Water Management Division

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 65-12096

Priority: February 21, 1978

Maximum Diversion Rate:

2000.00 CFS

Maximum Diversion Volume:

642000.0 AF

This is to certify, that IDAHO POWER CO

PO BOX 70

BOISE ID 83707

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated February 21, 1978; and has submitted Proof of Beneficial Use on October 19, 1984. An examination indicates that the works have a diversion capacity of 2350.000 cfs of water from:

PAYETTE RIVER, NORTH FORK

tributary to PAYETTE RIVER

source, and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
POWER	01/01 to 12/31	2000.00 CFS	642000.0 AF

LOCATION OF POINT(S) OF DIVERSION: Lot 5 (NENE), Sec. 26, Township 14N, Range 03E
VALLEY County

PLACE OF USE: POWER

TWN RGE SEC

14N 03E 26 Lot 5 (NENE)

CONDITIONS OF APPROVAL AND REMARKS

1. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
2. Use of water under this right shall be non-consumptive.
3. The rights for the use of water confirmed in this license shall be junior and subordinate to all rights for the use of water other than hydropower, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any right or claim against any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this right.
4. Use of water under this water right will be regulated by the watermaster of State Water District No. 65.
5. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
6. The issuance of this right does not grant any right-of-way or easement across the land of another.

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JAN 22 1986

State of Idaho
Department of Water Resources**Water Right License**

WATER RIGHT NO. 65-12096

CONDITIONS OF APPROVAL AND REMARKS

7. The diversion and use of water for hydropower purposes under this license is subject to review by the Director after the date of expiration of license 2848 issued by the Federal Energy Regulatory Commission. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.
8. Rights 65-02232, 65-02338A and 65-02338X are also diverted through the point of diversion described above.
9. The hydropower facility is known as Cascade Hydroelectric Project.
10. Rights 65-02232, 65-02338A, 65-02338X and 65-12096 when combined shall not exceed a total daily maximum diversion volume of 4356 acre feet.

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 administered in accordance with Idaho law and applicable rules of the Department of Water Resources. Signed and sealed this 8TH day of NOVEMBER, 1999.

SUPERSEDED

For KARL J. DREHER, Director

MICROFILMED

JAN 26 2000

ROSHOLT, ROBERTSON & TUCKER

Chartered
ATTORNEYS AT LAW

JOHN A. ROSHOLT
J. EVAN ROBERTSON
JAMES C. TUCKER
GARY D. SLETTE
JERRY V. JENSEN
JOHN K. SIMPSON
TIMOTHY J. STOVER
NORMAN M. SEMANKO

RECEIVED

JAN 13 2000

Department of Water Resources

Boise Office
1221 W IDAHO, SUITE 600
P.O. BOX 2139
BOISE, IDAHO 83701-2139
TELEPHONE (208) 336-0700
FAX (208) 344-6034
Email rosholt@mscra.net

Twin Falls Office
142 3rd AVENUE NORTH
P.O. BOX 1986
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 734-0700
FAX (208) 736-0041
jct@mscra.net

January 12, 2000

Norman C. Young
Administrator, Water Management Division
Idaho Department of Water Resources
1301 North Orchard Street
P.O. Box 83720
Boise, Idaho 83720-0098

Re: Water Right License # 65-12096 - Idaho Power Company

Dear Mr. Young:

I appreciate having the opportunity to meet with you and Phil Rassier to discuss the pending *Petition for Reconsideration* filed on behalf of the Idaho Power Company with regard to the above referenced water right license. As I explained during our meeting, the principal issue of concern to Idaho Power is *condition # 7* of the license that renders the license subject to review by the Director upon the expiration of the FERC license for the Cascade Project (Project #2848) and allows for either the cancellation of the water license or the deletion or addition of conditions under which the right may be exercised.

I understand that the basis for that condition is I. C. § 42-203B(7), which provides that the director may "limit a permit or license for power purposes to a specific term". While Idaho Power questions the constitutionality of that provision in light of Art. XV, Sec. 3 of the Idaho Constitution, it seems unnecessary to tackle that issue in light of the administrative history of this water right. As you know, § 42-203B was added to the Idaho Code in 1986. Our records indicate that the administrative process involving this license proceeded as follows:

Water right application filed -

February 21, 1978

IPC Petition for Immediate Issuance of Permit filed -

December 8, 1980 MICROFILMED

Application approved (POBU due 5/31/83) -

April 8, 1981 JAN 28 2000

Request for extension of time to file POBU -

March 23, 1983

Norman C. Young
January 12, 2000
Page 2

POBU filed -

October 19, 1984

Field exam completed -

July 30, 1986

File transferred to IDWR State office -

July 30, 1986

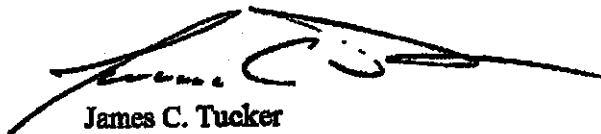
License issued -

November 8, 1999

It is clear from the above that a permit for the water right was issued in 1981 and Idaho Power complied with all administrative requirements for the issuance of the license by the end of October 1984, nearly two years prior to the enactment of § 42-203B(7) and fifteen years prior to the issuance of the license. Under these specific circumstances we consider the application of the term limitation in the license under § 42-203B to be inappropriate and would again request that *condition # 7* be removed.

Again, thank you for your consideration of this matter and we await your response. If we can offer anything further or answer any questions, please contact me.

Very truly yours,



James C. Tucker

cc: B. Stahman
N. Gardiner

MICROFILMED
JAN 28 2008

MEMORANDUM

DATE: January 10, 2000

TO: Water Right File 65-12096

FROM: Shelley W. Keen *SWK*

RE: Meeting to discuss the petition for reconsideration

On Friday, December 17, 1999, IDWR staff met with James C. Tucker to discuss his petition for reconsideration of Water Right License 65-12096. Representing IDWR were Norm Young, Phil Rassier, and Shelley Keen. Mr. Tucker said that Idaho Power Company is uncomfortable with the temporal provisions of the license. As a permanent property right it adds some value to the company's ledger sheet because it could be sold or transferred. For example, if Idaho Power Company does not retain the FERC license to operate at Cascade, it could still potentially retain and sell the water right license. However, if the water right license can be revoked its value is significantly diminished. As Mr. Rassier summarized, "If the FERC license is revoked, is there anything to prevent the state from re-allocating the water used under this license?"

Mr. Tucker also raised the following issues.

- Did the 1928 amendment to the Idaho Constitution really intend for Idaho Power Co. to have less ability to acquire property rights than other water appropriators? Mr. Tucker raised the question but indicated that he does not intend for this question to be pursued in this forum or at this time.
- Permit 65-12096 was issued five years before Section 42-203B(7), *Idaho Code*, was passed by the legislature. Can't Permit 65-12096 be excluded because of some "grandfather" consideration? The language of the statute seems pretty clear that there is no grandfather provision.
- Condition No. 7 on the license is rather broad. Can it be rewritten to describe in more detail the process through which the license might be canceled or changed? Mr. Young suggested wording similar to the statement placed in minimum stream flow licenses.

The meeting ended with Mr. Tucker promising to review an example of the minimum stream flow language and to make some suggestions to IDWR.

MICROFILMED

JAN 28 2000



CONSTITUTION OF THE STATE OF IDAHO

ARTICLE XV WATER RIGHTS

SECTION 3. WATER OF NATURAL STREAM -- RIGHT TO APPROPRIATE -- STATE'S REGULATORY POWER--PRIORITIES. The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied, except that the state may regulate and limit the use thereof for power purposes. Priority of appropriation shall give the better right as between those using the water; but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall (subject to such limitations as may be prescribed by law) have the preference over those claiming for any other purpose; and those using the water for agricultural purposes shall have preference over those using the same for manufacturing purposes. And in any organized mining district those using the water for mining purposes or milling purposes connected with mining, shall have preference over those using the same for manufacturing or agricultural purposes. But the usage by such subsequent appropriators shall be subject to such provisions of law regulating the taking of private property for public and private use, as referred to in section 14 of article I of this Constitution.

The Idaho Code is made available on the Internet by the Idaho Legislature as a public service. This Internet version of the Idaho Code may not be used for commercial purposes, nor may this database be published or repackaged for commercial sale without express written permission.

Available Reference: Search Instructions

The Idaho Code is the property of the state of Idaho, and is copyrighted by Idaho law, I C § 9-350. According to Idaho law, any person who reproduces or distributes the Idaho Code for commercial purposes in violation of the provisions of this statute shall be deemed to be an infringer of the state of Idaho's copyright.



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

November 30, 1999

**IDAHO POWER COMPANY
C/O JAMES C TUCKER
ROSHOLT, ROBERTSON & TUCKER
PO BOX 2139
BOISE ID 83701-2139**

RE: Petition for Reconsideration of Order issuing Water Right License 65-12096

Dear Mr. Tucker:

I have enclosed a copy of an order granting your petition for reconsideration of the preliminary order issuing Water Right License No. 65-12096. I think it would be useful to meet to discuss the concerns raised in your petition. I will direct my staff to contact you in a few days to schedule the meeting as soon as possible.

If you have any questions regarding this matter, please call me at 327-7900.

Sincerely,

Norman C Young
Administrator, Water Management Division

NCY:swk

Enclosure

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JAN 28 2000

IDAHO POWER COMPANY
Attorneys' Names and Addresses:

JAMES C. TUCKER
Rosholt, Robertson & Tucker
P. O. Box 2139
1221 West Idaho St., Suite 600
Boise, Idaho 83701-2139
(208) 336-0700
(208) 344-6034 - Fax
ISB# 2038

RECEIVED

NOV 24 1999

Department of Water Resources

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

In Re:

Water Right No. 65-121096

PETITION FOR RECONSIDERATION

TO: THE DIRECTOR OF THE IDAHO DEPARTMENT OF WATER RESOURCES

The Idaho Power Company, hereinafter the Petitioner, petitions the Director to reconsider that certain *preliminary order* issued in the form of a *Water Right License* for Water Right No. 65-12096. Specifically, the Petitioner seeks reconsideration of the following condition placed on such water right license:

7. The diversion and use of water for hydropower purposes under this license is subject to review by the Director after the date of expiration of license 2848 issued by the Federal Energy Regulatory Commission. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.

MICROFILMED

JAN 28 2000

The grounds for this petition are as follows:

1. The condition constitutes an unreasonable and unauthorized limitation on a water right appropriation as authorized by Article 15, § 3 of the Idaho Constitution.
2. And for such additional and further reasons as may be set forth by the Petitioner in this proceeding.

Dated this 23rd day of November, 1999


James C. Tucker
Rosholt, Robertson, & Tucker
Attorney for Idaho Power Company

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of November, 1999, I served a true and correct copy of the PETITION FOR RECONSIDERATION on the
DIRECTOR of the Idaho Department of Water Resources, via FAX and regular mail at:
1301 N. Orchard Str., P. O. Box 83720, Boise, Idaho 83720-0098.


Legal Assistant
Rosholt, Robertson & Tucker

MICROFILMED
JAN 28 2000

tive upstream beneficial users whose rights are acquired pursuant to state law, excluding compliance with the requirements of section 42-203C, Idaho Code.

(4) The user of water for power purposes as beneficiary of the trust established in subsections (2) and (3) of this section shall be entitled to use water available at its facilities to the extent of the water right, and to protect its rights to the use of the water as provided by state law against depletions or claims not in accordance with state law.

(5) The governor or his designee is hereby authorized and empowered to enter into agreements with holders of water rights for power purposes to define that portion of their water rights at or below the level of the applicable minimum stream flow as being unsubordinated to upstream beneficial uses and depletions, and to define such rights in excess thereof as being held in trust by the state under subsection (2) of this section. Such agreements shall be subject to ratification by law. The contract entered into by the governor and the Idaho Power Company on October 25, 1984, is hereby found and declared to be such an agreement, and the legislature hereby ratifies the governor's authority and power to enter into this agreement.

(6) The director shall have the authority to subordinate the rights granted in a permit or license for power purposes to subsequent upstream beneficial depletionary uses. A subordinated water right for power use does not give rise to any claim against, or right to interfere with, the holder of subsequent upstream rights established pursuant to state law. The director shall also have the authority to limit a permit or license for power purposes to a specific term.

Subsection (6) of this section shall not apply to licenses which have already been issued as of the effective date (July 1, 1985) of this act.

(7) The director in the exercise of the authority to limit a permit or license for power purposes to a specific term of years shall designate the number of years through which the term of the license shall extend and for purposes of determining such date shall consider among other factors:

(a) The term of any power purchase contract which is, or reasonably may become, applicable to, such permit or license;

(b) The policy of the Idaho public utilities commission (IPUC) regarding the term of power purchase contracts as administered by the IPUC under and pursuant to the authority of the public utility regulatory policy act of 1978 (PURPA);

(c) The term of any federal energy regulatory commission (FERC) license granted, or which reasonably may be granted, with respect to any particular permit or license for power purpose;

(d) Existing downstream water uses established pursuant to state law.

The term of years shall be determined at the time of issuance of the permit, or as soon thereafter as practicable if adequate information is not then available. The term of years shall commence upon application of water to beneficial use. The term of years, once established, shall not thereafter be modified except in accordance with due process of law. [I.C., § 42-203B, as added by 1985, ch. 17, § 2, p. 23 and ch. 224, § 1, p. 537; am. 1986, ch. 117, § 1, p. 308.]

MICROFILMED

JAN 28 2000



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

November 9, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

IDAHO POWER CO
PO BOX 70
BOISE ID 83707

RE: WATER RIGHT NO. 65-12096

Dear Water Right Holder(s):

The Department of Water Resources (the Department) has issued the enclosed license confirming that a water right has been established in accordance with the permit referenced above. The license is a preliminary order issued by the Department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department unless a party petitions for reconsideration or files an exception and/or brief as described in the enclosed information sheet.

Also, please note that water right owners are required to report any change of water right ownership and/or change of mailing address to the department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the department or visit the department's homepage on the Internet to obtain the proper reporting form.

If you have any questions, please call me at 208-327-7946.

Sincerely,

Shelley W. Keen
Water Rights Supervisor

SK:klt

Enclosure

MICROFILMED

JAN 28 2000

EXHIBIT

3

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

RIGHT NUMBER: 3-7018

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

SOURCE: SNAKE RIVER

TRIBUTARY: COLUMBIA RIVER

QUANTITY: 5,000.000 CFS

PRIORITY DATE: 12/24/1975

POINT OF
DIVERSION: T17N R05W S2 SESE Lot 3 Within WASHINGTON County
T08S R47E S25 NESE Lot 9 WM Within BAKER County, Oregon

Water is diverted by a dam that spans the Snake River between Idaho and Oregon.

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
POWER	1/01 12/31	5,000.000 CFS
Power generation is at the Brownlee Dam Power Plant.		

PLACE OF USE: POWER Within WASHINGTON County
T17N R05W S02 Lot 1 NESE

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.

The rights for the use of the waters under this permit shall be subordinate to and not prevent or interfere with any future upstream diversion and use of the waters of the Snake River and its tributaries for the irrigation of lands or other consumptive beneficial uses in the Snake River watershed.

This permit has been issued subject to Section 42-207, Idaho Code. In the event of its sale, transfer, assignment, or its being mortgaged, without a compliance with the provisions of this section, it shall be cancelled and revoked by the Director of the Department of Water Resources.

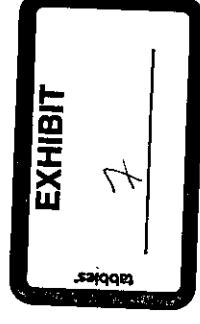
This right is conditioned upon completion of the appropriation in accordance with the statutory procedure for appropriation of water rights. This right remains subject to all conditions set forth in the permit upon which this right is based, and will be subject to all conditions set forth in the license issued by IDWR upon completion of the statutory appropriation process.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Permit

EXHIBIT NO. 7

NON-IPC PERMITS FOR HYDRO POWER

WR NUMBER	PROJECT NAME	PRIORITY DATE	DIVERSION RATE (CFS)	SOURCE	OWNER	TERM OR		SUB.
						REVIEW CONDITION (see legend below)	PROV. (below)	
1-7010B	Bypass	3-30-1977	3000	Snake River	Bypass Ltd	(1)	1	None
1-7010C	Y8	3-30-1977	3000	Snake River	Y8 Hydro	(1)	1	None
1-7010D	Wilson Lake	3-30-1977	3000	Snake River	Hazelton-Wilson Lake Joint Venture	(1)	1	None
1-7056	Minidoka Power Plant	8-7-1980	5875	Snake River	Dept. of Interior	None	2	None
1-7058	Dietrich Drop	9-15-1980	1180	Snake River	CHI-Black Canyon Inc.	(2)	1	None
1-7063	Lower Low Line	2-27-1981	2000	Snake River	BP Hydro Assn.	None	4	None
1-7071	Lateral 10	3-3-1982	100	Deep Creek, Snake River	Zions Credit Corp.	None	4	None
1-7124	Mile 28 Project	9-1-1993	1300	Snake River	Contractors Power Group, Inc.	(1)	1	None
11-7449	Unknown	9-16-1999	0.5	Skinner Creek	Frank Murdock	(3)	1	None
11-7592	Unknown	4-4-2008	5.0	Spring	City of Georgetown	(4)	1	None
13-7577	Unknown	11-4-1999	0.45	Maple Grove Hot Springs	Lou Clayton & Robert Timmons	None	1	None
15-7168	Unknown	5-19-1998	0.01	Spring	Ed & Barbara Pitcher	(3)	1	None



21-7212	Island Park Project	9-18-1980	960	Henry's Fork	Fall River Rural Electric Co-Op	(1)	1	None
21-7363	Ashton Dam	7-22-1985	433	Henry's Fork	Pacificorp	(3)	1	9,796 AFA* *has storage use
21-7375	Fall River Project	2-9-1988	500	Fall River	Marysville Hydro Partners	(5)	1	None
21-7382	Unknown	7-26-1988	0.67	Bunkhouse Spring	Henry Kopfinger	(3)	1	None
21-7566	Unknown	9-2-1997	6.0	Unnamed Stream	Steven Burk	(3)	1	None
21-13076	Chester Diversion Hydro Project	4-21-2008	4000	Henry's Fork	Symbiotics, LLC	(1)	1	None
29-7699	Portneuf River Hydro Project	5-9-1983	210	Portneuf River	Commercial Energy Management, Inc.	(1)	1	None
29-8238	Unknown	4-18-2000	0.5	Reese Creek	Paul H. Allen	(3)	1	None
29-13155	Unknown	5-10-2001	1.0	Spring	DeVere Tovey	(3)	1	None
29-13720	Unknown	8-16-2005	0.10	Lower Rock Creek	Tom Simko	(3)	1	None
31-7654	Ching Creek Project	2-16-1999	3.8	Ching Creek	Ching Creek LLC	(3)	1	None
32-7260	Blue Springs Ranch	12-7-1999	6.7	Blue Creek Springs	Blue Springs Ranch	(3)	1	None
32-13275	Unknown	8-1-2008	9.0	Middle Creek	John & Kathleen Young	(3)	1	None

36-7967	Unknown	2-24-1981	25.0	Unnamed Stream	Blind Canyon Aqua Ranch	(3)	1	None
36-8094	Pristine Springs*	6-28-1982	7.0	Groundwater	IWRB	None	1	None
*geothermal; located within Twin Falls Groundwater Management Area								
36-8310	Unknown	5-7-1986	85	Cedar Draw Creek	Blind Canyon Aqua Ranch	(3)	1	None
36-8597	Unknown	8-12-1991	150	Niagara Springs Creek	Rim View LLC	(6)	1	None
36-15959	Unknown	10-18-2001	240.3	Warm Creek	IWRB	(3)	1	None
37-7719	Mecham Farm (permit voided 2-2-2010)	6-16-1978	3.29	Waddington Springs	James Mecham	(3)	1	N/A
37-7826	Unknown	5-20-1980	10.0	Little Wood River	Todd Burkhart	None	4	None
37-7848	Magic Farms	8-14-1980	800	Big Wood River	Cook Electric, Inc.	(1)	1	None
37-7891	Faulkner Bros. Hydro	3-23-1981	54	Big Wood River, Snake River	Faulkner Bros. Hydro	(7)	1	None
37-8113	Unknown	6-2-1983	180	Little Wood River	Shorrock Hydro, Inc.	(1)	1	None
37-8178	Magic Reservoir	7-2-1984	250	Big Wood River	Magic Reservoir Hydroelectric, Inc.	(1)	1	None
37-8194	Unknown	12-8-1984	2.0	Groundwater	James Faulkner	(3) and 20-year trustwater Review	1	None

37-8262	Unknown	3-4-1986	120	Little Wood River	Shorock Hydro, Inc.	(1)	1	None
37-8389	Unknown	11-12-1988	300	Big Wood River	Magic Reservoir Hydroelectric, Inc.	(1)	1	None
37-8889	Unknown	6-22-1999	0.5	Croesus Creek	Scott Garvin	(3)	1	None
37-21297	Unknown	4-22-2004	500	Little Wood River	William Arkoosh	(1)	1	None
37-21771	Unknown	2-27-2006	3.05	Unnamed Stream	Stanley Standal	20-year trustwater review only	1	None
47-7367	Unknown	1-18-1977	9.0	Unnamed Stream	Lynn Babington	None	None	None
47-7485	Unknown	8-7-1978	12.0	Waste water	Jeff Wendland	None	None	None
47-7700	Unknown	2-10-1981	50	Mud Creek	H.K. Hydro LLC	None	4	None
47-7702	Unknown	2-10-1981	10	Unnamed Stream	H.K. Hydro LLC	None	4	None
47-7705	Unknown	2-17-1981	25	Groundwater	Donald Campbell	None	4	None
47-7714	Unknown	3-11-1981	2.0	Groundwater	Gary Stone	None	4	None
47-7721	Unknown	3-25-1981	3.0	Groundwater	Wayne Marshall	None	4	None
47-7726	Mud Creek Hydro	4-7-1981	25.0	Mud Creek	Terry White	(8)	3	None

47-7771	Rock Creek Hydro	12-27-1981	202	Rock Creek	BP Hydro Assn.	None	4	None
47-7792	Unknown*	2-12-1982	8.0	Groundwater	Wayne Marshall	None	4	None
*located within Banbury Hot Springs Groundwater Management Area								
47-7961	Unknown	9-21-1983	25.0	Unnamed Stream	Little Mac Power Company, Inc.	(1)	1	None
47-8271	Sahko Hydro Project	5-5-1991	20.0	Unnamed Stream, Wastewater	J.M. Miller	(3) and 20-year TW review	1	None
47-17094	Unknown	4-25-2003	3.1	Lateral 58	Jack Goodman	(3) and 20-year TW review	1	None
47-17279	Unknown	2-6-2006	5.0	Unnamed Stream	Jeff Wendland	(3)	1	None
63-9019	Lucky Peak	8-31-1977	5700	Boise River	BPBOC	(9)	3	None
63-9206	Mora Drop	1-6-1979	900	Boise River	BPBOC	None	None	None
63-9368	Reynolds Irrig. Dist.	4-17-1980	50	Groundwater	Spokane Bank for Cooperatives	None	None	None
63-10240	Arrowrock	6-11-1984	5470	Boise River	BPBOC	(1)	1	None
63-10385	Twin Springs	9-29-1986	2.0	Springs, Unnamed Stream	George Castle	(3)	1	None
63-11069	Lucky Peak	11-15-1989	2500	Boise River	BPBOC	(1)	1	None
63-31981	Unknown	2-9-2004	1.0	Robie Creek	Gerald White	(3)	1	None
63-32648	Unknown	4-20-2007	1.0	Thorn Creek	Richard Linhart	(3)	1	None

65-12709	Unknown	3-30-1984	2.45	Porter Creek	Randy Heffner	(3)	1	None
65-13621	Unknown	6-2-1995	0.5	Eddy Creek	Zane Wolff	(3)	1	None
65-22723	Unknown	11-5-2001	4.86	Deadwood River	Dept. of Interior	(3)	1	None

Legend for Review Conditions:

- (1) Review upon expiration of FERC license: The diversion and use of water under this right and any license subsequently issued is subject to review by the Director on the date(s) of expiration of any license issued by the Federal Energy Regulatory Commission. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.
- (2) Dietrich Drop #1-7058: The diversion and use of water under this right and any license subsequently issued is subject to review by the Director thirty-five (35) years from the date the water is first placed to beneficial use. The exact term of years shall be determined when a license is issued. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.
- (3) Director Retains Jurisdiction: The Director retains jurisdiction of this right in order to limit the use of water for hydropower generation purposes to a specific term of years as required by Section 42-203B(7), Idaho Code.
- (4) City of Georgetown #11-7592*: The diversion and use of water for hydropower purposes under this license is subject to review by the Director on or after March 1, 2021. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised. *(priority date 4-4-2008; permit approved 1-6-2010; POBU due 1-1-2011)
- (5) Fall River Project #21-7375: The diversion and use of water under this permit and any license subsequently issued is subject to review by the Director thirty-five (35) years from the date of issuance of this permit. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.
- (6) Niagara Springs (Rim View) #36-8597: The diversion and use of water under this permit and any license subsequently issued is subject to review by the Director thirty-five (35) years from the date of issuance of this right. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.
- (7) Faulkner Bros. Hydro #37-7891: The diversion and use of water under this permit and any license subsequently issued is subject to review by the Director thirty (30) years from the date of issuance of this permit. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.

(8) Mud Creek Hydro #47-7726: The diversion and use of water under this permit and any license subsequently issued is subject to review by the Director thirty (30) years from the date of issuance of this permit or the date of FERC approval expiration (if applicable). Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.

(9) Lucky Peak #63-9019: The diversion and use of water for hydropower purposes under this license is subject to review by the Director on June 1, 2030. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised. [Note: Preceding language is a condition on the approved permit; however, the IDWR online summary omits this condition and states that it is subject to Director review upon expiration of FERC license.]

Legend for Subordination Provisions:

1 - The water right acquired under this permit [**for hydropower purposes**]* shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this permit and shall not give rise to any right or claim against future rights to the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this permit. ***This language is sometimes included, sometimes not; when not included, power is the only use under the right.**

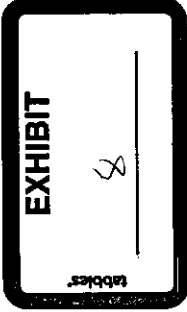
2 - This right shall be subject to future operation so that use of water under this right will not conflict or interfere with the future upstream diversion of water for irrigation or other beneficial consumption.

3 - Use of water under this right is subordinated to future diversion of water for irrigation or other consumptive beneficial uses.

4 - This project shall be operated in a manner that will not conflict or interfere with the future diversion of water for irrig. or other beneficial consumption.

EXHIBIT NO. 8

W/R NUMBER	BASIS	PRIORITY	AMOUNT	CURRENT OWNER	LICENSE VOLUME LIMIT
1 2014	Decreed	1907-12-03	485	CITY OF IDAHO FALLS	NONE
1 2017	Decreed	1908-09-03	1400	IDAHO POWER CO	NONE
1 2032	Decreed	1919-03-08	236	IDAHO POWER CO	NONE
1 2046	Decreed	1926-10-15	2000	IDAHO POWER CO	1,447,590 AFA
1 2047	Decreed	1927-10-28	500	CITY OF IDAHO FALLS	NONE
1 2049	Decreed	1936-02-14	1080	CITY OF IDAHO FALLS	NONE
1 7009	Decreed	1977-06-27	1300	SOUTH FORKS JOINT VENTURE	NONE
1 7011	License	1977-03-30	5714.7	NSCC; TFCC	2,390,000 AFA
1 7013	Decreed	1977-11-09	2600	CITY OF IDAHO FALLS	NONE
1 7014	Decreed	1977-11-09	4800	CITY OF IDAHO FALLS	NONE
1 7015	Decreed	1977-11-09	2600	CITY OF IDAHO FALLS	NONE



1	7018	License	1978-03-17	5000	CITY OF IDAHO FALLS	NONE
1	7022	License	1978-08-16	20	BP HYDRO ASSN	7,299.0 AFA
1	7023	Decreed	1979-02-15	1240	CITY OF IDAHO FALLS	NONE
1	7024	Decreed	1979-02-15	1460	CITY OF IDAHO FALLS	NONE
1	7051	License	1980-04-09	3000	PACIFICORP AN ORGEON CORP	3,000.0 AFA
1	7084 B	License	1984-12-03	3200	SE HAZELTON A LP	1,742,400 AFA
1	7084 C	License	1984-12-03	3200	HAZELTON/WILSON JOINT VENTURE	811,000 AFA

EXHIBIT NO. 9

IDAHO POWER WATER RIGHTS-HYDROPOWER-IDAHO											
PROJECT	WR	SRBA NO	PRIORITY	STAGE	SOURCE	AMOUNT	USE	POD	REMARKS	CONDITIONS	VOLUME LIMIT
AMERICAN FALLS	01-02017	A01-02017	09/03/1908	LICENSE	SNAKE RIVER	1400 CFS	POWER	7S,31E,S.31	SRBA CLAIM FILED 10/23/96		None
AMERICAN FALLS	01-02032	A01-02032	03/08/1919	LICENSE	SNAKE RIVER	4600 CFS	POWER	7S,31E,S.30,SWSE			None
AMERICAN FALLS	01-02046	A01-02046	10/15/1926	LICENSE	SNAKE RIVER	2000 CFS	POWER	7S,31E,S.30,SWSE			1,447,590 AFA
AMERICAN FALLS	01-07128	NONE	10/23/1996	APPLICATION	SNAKE RIVER	7,850 CFS	POWER	7S,31E,S.30,SWSE	FILING BASED UPON HISTORICAL USE & BASIN-WIDE #10 DECISION; PROTESTED		N/A
AMERICAN FALLS	01-10382	A01-10382	07/15/1901	BENEFICIAL USE	SNAKE RIVER	6,000 CFS	POWER	7S,31E,S.30,SWSE	SRBA CLAIM FILED 10/23/96		N/A
AMERICAN FALLS	01-10383	A01-10383	08/01/1901	BENEFICIAL USE	SNAKE RIVER	2,000 CFS	POWER	7S,31E,S.30,SWSE	SRBA CLAIM FILED 10/23/96		N/A
AMERICAN FALLS	01-10384	A01-10384	01/01/1929	BENEFICIAL USE	SNAKE RIVER	136 CFS	POWER	7S,31E,S.30,SWSE	SRBA CLAIM FILED 10/23/96		N/A
SWAN FALLS	02-00100	A02-00100	01/17/1900	DECREE	SNAKE RIVER	2150 CFS	POWER	2S,1E,S.18,SWSE,LOT 10	SUBORDINATED BY S.F. AGREEMENT		N/A
LOWER SALMON	02-02001A	A02-02001A	05/11/1908	LICENSE	SNAKE RIVER	1700 CFS	POWER	7S,13E,S.2,SESW	SUBORDINATED BY S.F. AGREEMENT		None
LOWER SALMON	02-02001B	A02-02001B	07/02/1908	LICENSE	SNAKE RIVER	1300 CFS	POWER	7S,13E,S.2,SESW	SUBORDINATED BY S.F. AGREEMENT		None
SWAN FALLS	02-02032	A02-02032	07/29/1919	LICENSE	SNAKE RIVER	4000 CFS	POWER	2S,1E,S.18,LOT 10	SUBORDINATED BY S.F. AGREEMENT		None
SHOSHONE FALLS	02-02036	A02-02036	08/09/1920	LICENSE	SNAKE RIVER	1000 CFS	POWER	9S,18E,S.31,LOT 9	SUBORDINATED BY S.F. AGREEMENT		None
TWIN FALLS	02-02056	A02-02056	04/02/1929	LICENSE	SNAKE RIVER	1050 CFS	POWER	10S,18E,S.4,SWNE,LOT 5	SUBORDINATED BY S.F. AGREEMENT		None
UPPER SALMON	02-02057	A02-02057	04/02/1929	LICENSE	SNAKE RIVER	6500 CFS	POWER	8S,13E,S.2,NWNE	SUBORDINATED BY S.F. AGREEMENT		None
LOWER SALMON	02-02059	A02-02059	03/20/1935	LICENSE	SNAKE RIVER	250 CFS	POWER	7S,13E,S.2,SESW	SUBORDINATED BY S.F. AGREEMENT		None

EXHIBIT

9

IDAHO POWER WATER RIGHTS-HYDROPOWER-IDAHO											
PROJECT	WR	SRBA NO	PRIORITY	STAGE	SOURCE	AMOUNT	USE	POD	REMARKS	CONDITIONS	VOLUME LIMIT
LOWER SALMON	02-02060	A02-02060	08/08/1946	LICENSE	SNAKE RIVER	14,000 CFS	POWER	7S, 13E, S.2, SESW	SUBORDINATED BY S.F. AGREEMENT		None
BLISS	02-02064	A02-02064	09/04/1947	LICENSE	SNAKE RIVER	12,000 CFS	POWER	6S, 12E, S.7, SESE, LOT 10	SUBORDINATED BY SWAN FALLS AGREEMENT		None
BLISS	02-02065	A02-02065	12/11/1947	LICENSE	SNAKE RIVER	3,000 CFS	POWER	6S, 12E, S.7, NESE, LOT 5	SUBORDINATED BY SWAN FALLS AGREEMENT		None
C.J. STRIKE	02-02080	A02-02080	06/21/1950	LICENSE	SNAKE RIVER	15,420 CFS	POWER	5S, 4E, S.34, SWNW, LOT 4			None
SWAN FALLS	02-04000	A02-04000	01/17/1900	LICENSE	SNAKE RIVER	1840 CFS	POWER	2S, 1E, S.18, SESE, LOT 11	SUBORDINATED BY S.F. AGREEMENT		None
SWAN FALLS	02-04001	A02-04001	04/17/1900	LICENSE	SNAKE RIVER	1460 CFS	POWER	2S, 1E, S.18, SWSE, LOT 10	SUBORDINATED BY S.F. AGREEMENT		None
TWIN FALLS	02-07375	NONE	04/09/1982	PERMIT	SNAKE RIVER	5000 CFS	POWER	10S, 18E, S.4, LOT 3	RELICENSING PROJECT; PROOF FILED 3/20/98		N/A
SWAN FALLS	02-07379	A02-07379	03/31/1982	PERMIT	SNAKE RIVER	6550 CFS	POWER	2S, 1E, S.18, LOT 10	PROOF MADE 4/1/96		N/A
BLISS	02-10135	A02-10135	09/04/1947	BENEFICIAL USE	SNAKE RIVER	3,500 CFS	POWER	6S, 12E, S.7, SESE	SRBA CLAIM FILED 10/23/96		N/A
HELL'S CANYON	03-02017	A03-02017	05/29/1964	LICENSE	SNAKE RIVER	9000 CFS	POWER	22N, 3W, S.16, SESE, LOT 1		30,000 cfs limit when combined with 3-2020	None
OXBOW	03-02019	A03-02019	06/19/1947	LICENSE	SNAKE RIVER	16,000 CFS	POWER	19N, 4W, S.20, SWSE			None
HELL'S CANYON	03-02020	A03-02020	05/18/1953	LICENSE	SNAKE RIVER	21,000 CFS	POWER	22N, 3W, S.16, SESE, LOT 1		30,000 cfs limit when combined with 3-2017	None
BROWNLEE	03-02023	A03-02023	10/17/1952	LICENSE	SNAKE RIVER	20,000 CFS	POWER	17N, 5W, S.2, SESE, LOT 3	BROWNLEE DAM		None
BROWNLEE	03-02024	A03-02024	02/11/1964	LICENSE	SNAKE RIVER	10,000 CFS	POWER	17N, 5W, S.2, SESE, LOT 3	BROWNLEE DAM		None

IDAHO POWER WATER RIGHTS-HYDROPOWER-IDAHO

PROJECT	WR	SRBA NO	PRIORITY	STAGE	SOURCE	AMOUNT	USE	POD	REMARKS	CONDITIONS	VOLUME LIMIT
OXBOW	03-02025	A03-02025	02/11/1964	LICENSE	SNAKE RIVER	14,000 CFS	POWER	19N,4W,S.20,NWSE			None
BROWNLEE	03-07018	NONE	12/24/1975	PERMIT	SNAKE RIVER	5,000 CFS	POWER	17N,5W,S.2,SESE,LOT 3	PROOF MADE 8/8/80; TO STATE IDWR OFFICE 2/9/88		N/A
HELL'S CANYON	03-10184	NONE	05/29/1964	BENEFICIAL USE	SNAKE RIVER	500 CFS	POWER	22N, 3W, S. 16, NESESE	EXCESS GENERATION CLAIM		N/A
THOUSAND SPRINGS	36-02013	A36-02013	11/20/1912	LICENSE; SRBA DECREE	THOUSAND SPRINGS	600 CFS	POWER	8S,14E,S.8,SWSE	SUBORDINATED BY SWAN FALLS AGREEMENT		None
CLEAR LAKES	36-02018	A36-02018	01/18/1919	LICENSE; SRBA DECREE	CLEAR LAKE	526 CFS	POWER	9S,14E,S.2,SESE	SUBORDINATED BY S.F. AGREEMENT		None
THOUSAND SPRINGS	36-02026	A36-02026	05/01/1916	LICENSE; SRBA DECREE	SAND SPRINGS	100 CFS	POWER	8S,14E,S.17,NWSE	SUBORDINATED BY SWAN FALLS AGREEMENT		None
LOWER MALAD	37-02128	A37-02128	11/25/1908	LICENSE	MALAD RIVER/COVE CREEK	700 CFS	POWER	6S,13E,S.35,NENW	SUBORDINATED BY S.F. AGREEMENT		None
UPPER MALAD	37-02471	A37-02471	05/14/1946	LICENSE	MALAD RIVER/COVE CREEK	900 CFS	POWER	6S,13E,S.36,NWNW	SUBORDINATED BY S.F. AGREEMENT		None
LOWER MALAD	37-02472	A37-02472	05/14/1946	LICENSE	MALAD RIVER	650 CFS	POWER	6S,13E,S.35,NENW	SUBORDINATED BY S.F. AGREEMENT		None
UPPER MALAD	37-20709	NONE	06/14/1948	BEN. USE	COVE CREEK, MALAD RIVER	100 CFS	POWER	6S,13E,S.25,SWSW & 6S,13E,S.36,NWNW	LATE CLAIM		N/A
LOWER MALAD	37-20710	NONE	10/11/1948	BEN. USE	MALAD RIVER	150 CFS	POWER	6S,13E,S.35,NENW	LATE CLAIM		N/A
CASCADE	65-02232	A65-02232	12/03/1918	DECREE; SRBA DECREE	PAYETTE RIVER, N.F.K.	50.0 CFS	POWER	14N,3E,S.26,LOT 5			N/A

IDAHO POWER WATER RIGHTS-HYDROPOWER-IDAHO

PROJECT	WR	SRBA NO	PRIORITY	STAGE	SOURCE	AMOUNT	USE	POD	REMARKS	CONDITIONS	VOLUME LIMIT
CASCADE	65-02338A	A65-02338A	08/24/1937	DECREE; SRBA DECREE	PAYETTE RIVER, N.FK.	125 CFS	POWER	14N,3E,S.26,LOT 5			None
CASCADE	65-02338X	A65-02338X	10/06/1925	DECREE; SRBA DECREE	PAYETTE RIVER, N.FK.	25.0 CFS	POWER	14N,3E,S.26,LOT 5			None
CASCADE	65-12096	NONE	02/21/1978	LICENSE; SRBA DECREE	PAYETTE RIVER, N.FK.	2000 CFS	POWER	14N,3E,S.26,NENE	PROOF MADE; TO STATE IDWR OFFICE 7/30/86		None