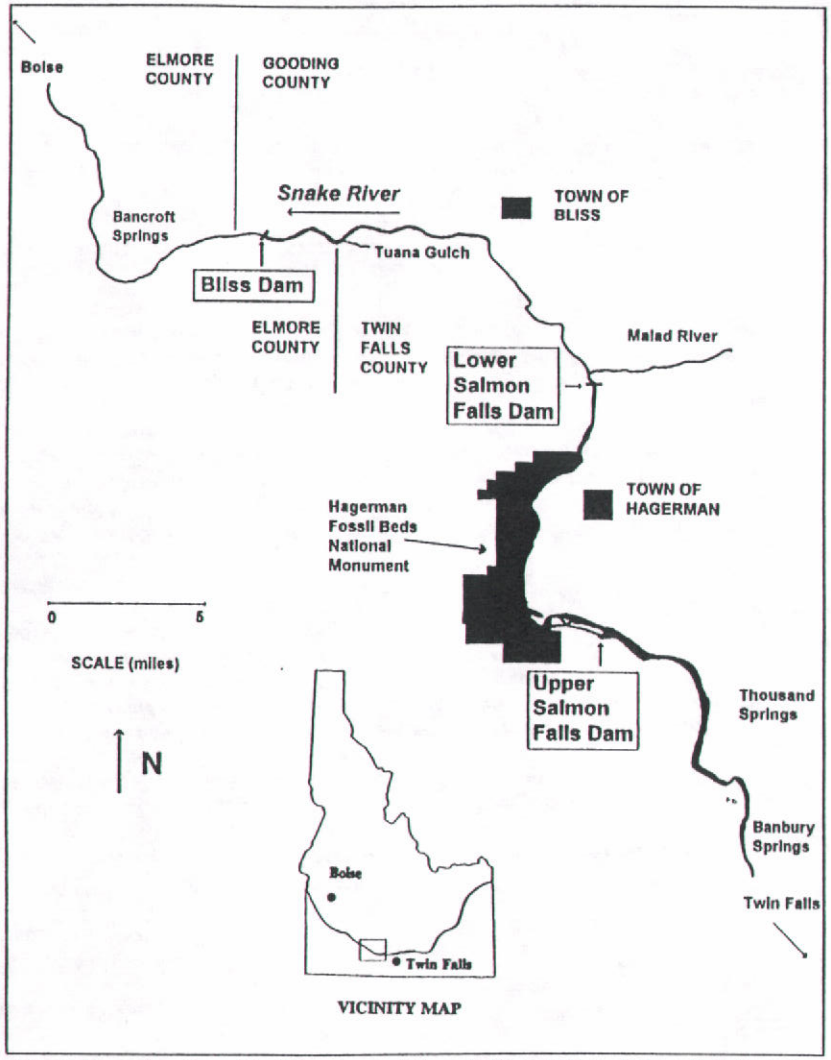


Figure 2. Location of the Bliss, Lower Salmon Falls, and Upper Salmon Falls Projects.

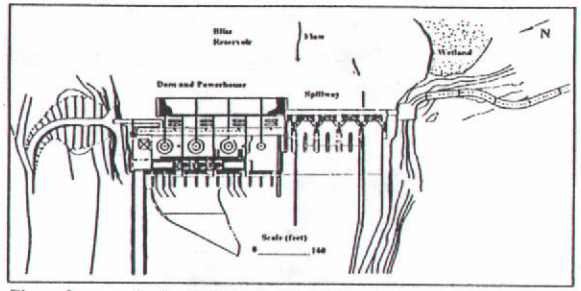


Figure 3. Project facilities for the Bliss Project (Source: Idaho Power, as modified by staff).

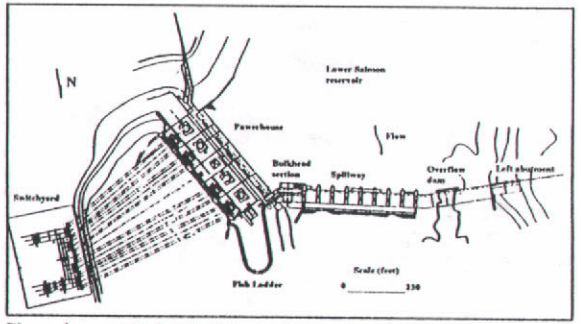


Figure 4. Project facilities for the Lower Salmon Falls Project (Source: Idaho Power, as modified by staff).

- Two 138-kV primary transmission lines (0.10- and 0.15-mile-long) from the switchyard to the King substation

The **Upper Salmon Falls Project** (figure 5) consists of:

- A 1,620-foot-long, 14-foot-high concrete dam, consisting of a 240-foot-long gated spillway section; a 610-foot-long gravity dam with flashboards; a 275-foot-long intake structure; and a 420-foot-long abutment gravity section

- A *5.8*-mile-long, 50-acre reservoir at elevation 2,878.2 feet msl, with a total storage capacity of 600 acre-feet

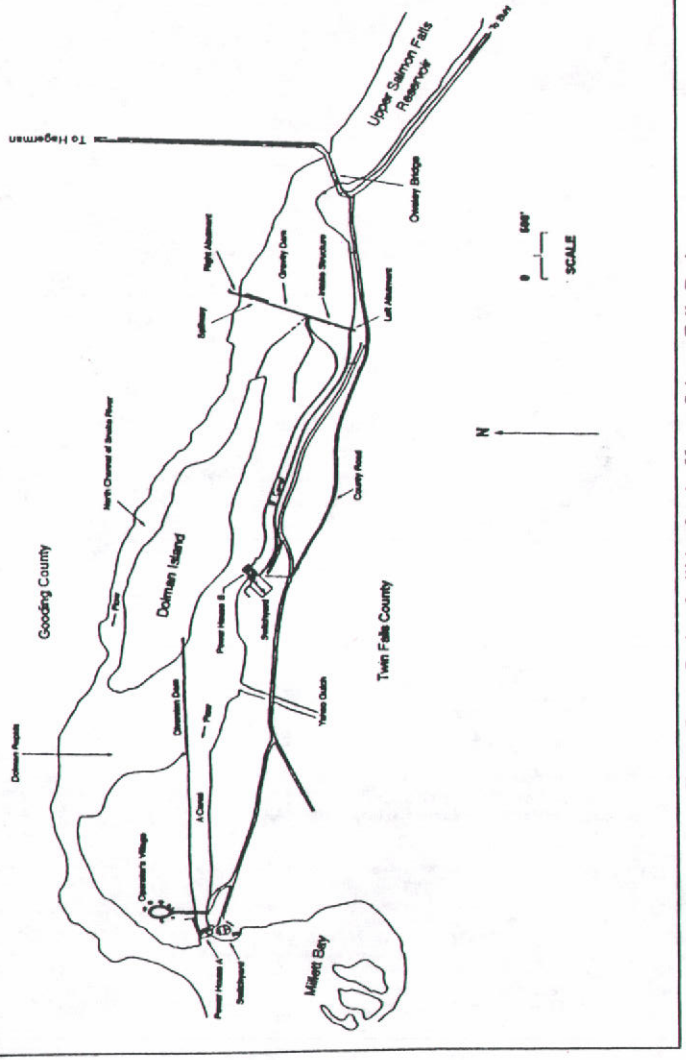


Figure 5. Project facilities for the Upper Salmon Falls Project.

- A 3,200-foot-long, concrete-lined canal
- A 1,380-foot-long, diversion structure across Dolman Rapids, separating the north channel from the main channel of the Snake River
- Two powerhouses (A and B), with a total capacity of 34.5 MW producing about 321 GWh annually
- A 1.8-mile-long bypassed reach

3.1.2 Proposed Project Operation

Figure 6 shows, schematically, the river-mile location, reservoir size, plant hydraulic capacity, and method of operation for the Bliss, Lower Salmon Falls, and Upper Salmon Falls Projects on the middle Snake River. Except for automating some of the plant operations, as described below, Idaho Power is not proposing any changes to the existing mode of operation.

Bliss Project

The Bliss powerhouse was automated in 1995 and is currently staffed 8 hours a day. During the unmanned periods the plant is controlled remotely, by an operator stationed at Idaho Power's Boise Bench Dispatch Center, located southeast of Boise.

Idaho Power operates the Bliss Project to help meet its peak hourly system loads; over a 24-hour period project releases are equal to inflow to the reservoir. The reservoir is maintained between elevation 2654.0 and 2649.0 feet msl. Operating within this range provides 1,250 acre-feet of useable storage.

Lower Salmon Falls

The Lower Salmon Falls Project is manually operated, with personnel on duty 24 hours per day, seven days a week. The project is operated to maintain reservoir levels between the elevations of 2792.0 and 2798.0 feet msl. With 4,100 acre-feet of useable storage, Idaho Power operates the project to help meet short-term (hourly) peak system loads. Idaho Power ***automated the project*** in 1996 for remote operation from the Boise Bench Dispatch Center. After automation, operators will be on-site eight hours per day and on call during the remaining time.

- Provide buffer zones at developed recreation facilities and special resource value areas--through such things as signs, safety/no wake buoys, and fencing--to ensure public safety and protect natural resources

- Consult with resource agencies every 10 years to decide if a needs assessment is necessary for reviewing the adequacy of the recreation plan

- Provide monetary assistance to the National Park Service to enhance environmental education and visitor information in the Hagerman Fossil Beds National Monument and Upper Salmon Falls and Lower Salmon Falls project vicinities.

3.1.4 Additional Study Requests

In response to the notice of tendering of the application for the Bliss, Lower Salmon Falls, and Upper Salmon Falls Projects, issued on January 4, 1996, nine entities filed 75 study requests (appendix B).

3.2 Shoshone Falls Project

3.2.1 Project Facilities

The project, initially built between 1901 and 1909, involves *4.85* acres of lands administered by BLM. Major facilities (figure 7) include:

- A 779.6-foot-long (average height of 16 feet) concrete diversion dam located above the crest of Shoshone Falls, consisting of four sections separated by rock islands, three of which function as uncontrolled overflow spillway sections, and a fourth, 380-foot-long gated spillway section fitted with 5-foot-high wooden slide gates

- A 1.8-mile-long, 86-acre reservoir at normal operating elevation of 3,354.5 feet msl, with a total storage capacity of 1,500 acre-feet and a usable storage of *374* acre-feet

- A 450-foot-long tunnel and 120-foot-long, 10-foot-diameter penstock

- A powerhouse located on the north bank of the river downstream of Shoshone Falls with three units with a total generating capacity of 12.5 MW, producing about 110 GWh annually

- A 100-foot-long tailrace

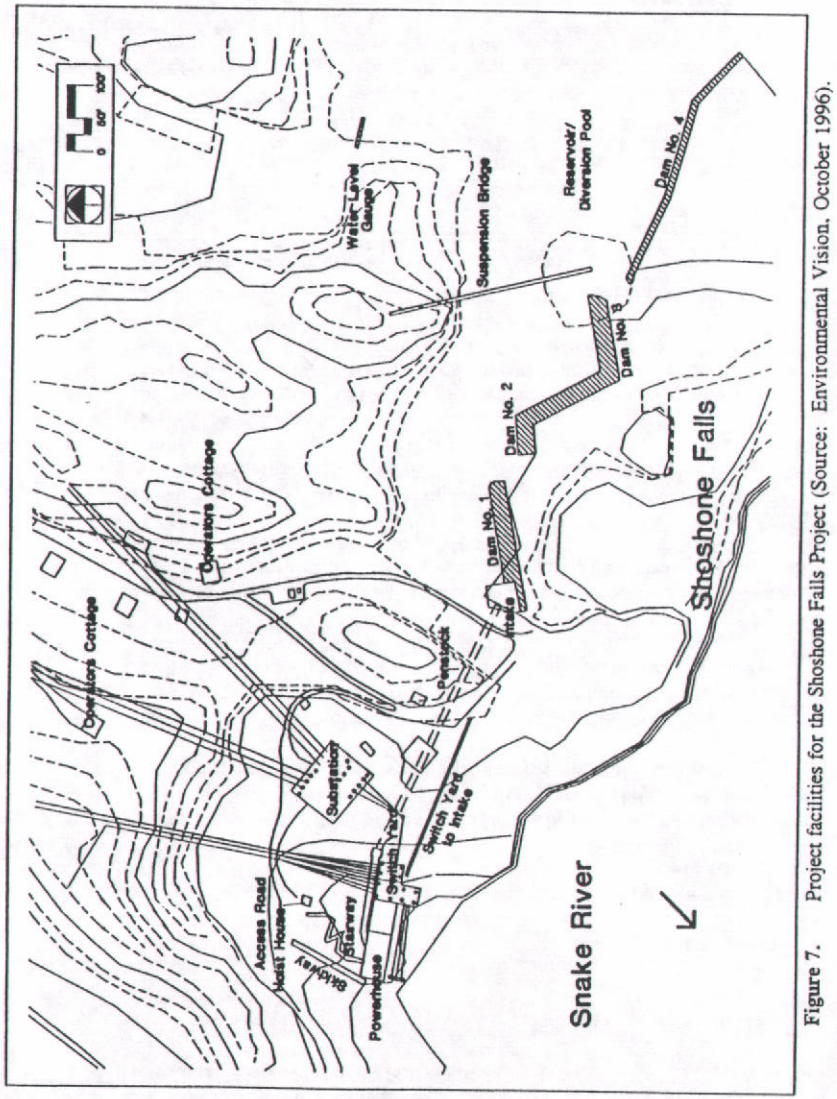
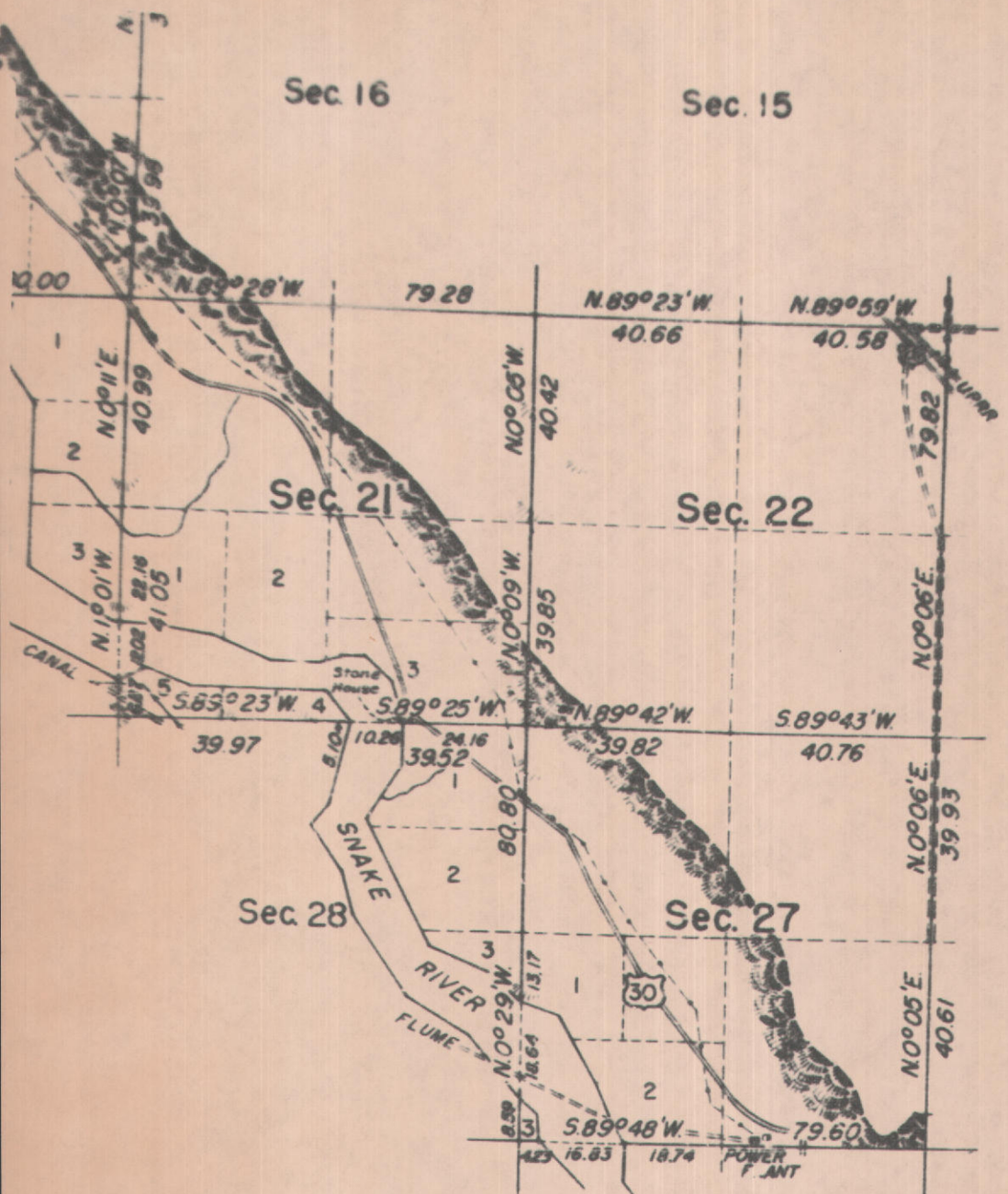


Figure 7. Project facilities for the Shoshone Falls Project (Source: Environmental Vision, October 1996).



Latitude 42° 52' N.
Longitude 114° 53' W.

Area Resurveyed, 2,417.79 Acres.

10 5 0 10 20 40 80

Scale in Chains

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

Certificate of Water Right
Transferred Right No. 731

THIS IS TO CERTIFY THAT THE IDAHO POWER COMPANY of Boise, Idaho, is the owner of and using a certain water right in the amount of 700 cubic feet per second from Malad River and Cove Creek, with priority of November 25, 1908, as evidenced by License and Certificate of Water Right No. 4366, recorded in Volume 5 of Licenses on Page 2570 in the records of the Department of Reclamation of the State of Idaho.

That the point of use and return of said waters are now located at said Idaho Power Company's old Malad Power Plant, situated in Lot 1, Sec. 34, Twp. 6 S., Rge. 13 E. B'M.

And that now, upon the application of the Idaho Power Company, through its Vice President and Secretary, A. C. Inman, for the transfer of 700 cubic feet per second of said water, made before the State Reclamation Engineer of the State of Idaho, and said application having been granted, the right to the use of the 700 cubic feet per second of the waters of Malad River and Cove Creek at the above point of use and return is hereby abandoned, and the point of use and return under such right and to which the water right HEREBY CONFIRMED shall become appurtenant, by this certificate , for power purposes, are located at the new Lower Malad Power Plant situated in Lot 2, Sec. 27, Twp. 6 S., Rge. 13 E. B.M.

That said water is to be limited at any given time to an amount actually needed and beneficially used for such purposes, and shall not exceed the following amount, to-wit:

700 cubic feet per second, bearing
date of priority of November 25, 1908.

That the water right hereby transferred has heretofore been conducted from Malad River and Cove Creek to the first above described place of use in the reinforced concrete flume with point of diversion in the NE¼NW¼, Sec. 35, Twp. 6 S., Rge. 13 E.B.M.

That the water right hereby transferred will hereafter be conducted to the last above described place of use through the said flume and the extension thereof with the same point of diversion in the NE¼NW¼ Sec. 35, Twp. 6S., Rge. 13 E. B.M.

That the right to the use of the water aforesaid, hereby confirmed, is restricted to the place of use last above described, as provided by the laws of the State of Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the official seal of the Department of Reclamation of the State of Idaho to be hereunto affixed, at Boise, Idaho, this 10th day of December, 1948, A.D.

MARK R. KULP
State Reclamation Engineer

T-731

37-2128

AFFIDAVIT OF PUBLICATION

NOTICE FOR PUBLICATION

Notice is hereby given that Idaho Power Company, a corporation having its principal place of business at 1220 Idaho Street, Boise, Idaho, has applied to the State Reclamation Engineer of the State of Idaho for a certificate authorizing it to change the place of use and point of return of 700 cubic feet per second of the waters of Malad River and Cove Creek, in Gooding County, Idaho, evidenced by License No. 4366 issued to said Idaho Power Company, from said company's old Malad Power Plant, located in Lot 1 of Section 27, Township 6 South, Range 13 East, Boise Meridian, to the Company's new Lower Malad Power Plant, located in Lot 2 of said Section 27, Township 6 South, Range 13 East, Boise Meridian, in Gooding County, Idaho; and that on Monday, the 22d day of November, A.D. 1948, at the hour of 10 o'clock A.M., at the offices of the Department of Reclamation in the State Capitol Building at Boise, Idaho, before the State Reclamation Engineer, or his authorized agent, the opportunity will be given to any and all persons to appear and present for his consideration any reason or reasons why a certificate should ot be issued authorizing such transfer.

Dated at Boise, Idaho, this 25th day of October, 1948.

Mark R. Kulp, State Reclamation Engineer. 51-52

STATE OF IDAHO }
County of Gooding } ss.

I, **Leland G. Burress**, do solemnly swear that I am the printer and publisher of THE GOODING LEADER, a weekly newspaper of general circulation, published once each week at Gooding, Idaho; that the notice attached hereto was published in said newspaper two consecutive weeks, the first publication having been made on the 4th day of Nov., 1948, and the last publication having been made on the on the 11th day of Nov, 1948, that said notice was published in the regular and entire issue of every number of the paper during that period and time of publication, and that the said notice was published in the newspaper proper, and not in the supplement thereof.

That said newspaper has been printed and published continuously in **Gooding, Gooding County, Idaho**, for a period of more than 78 weeks prior to the first publication of the attached notice.

Leland G Burress

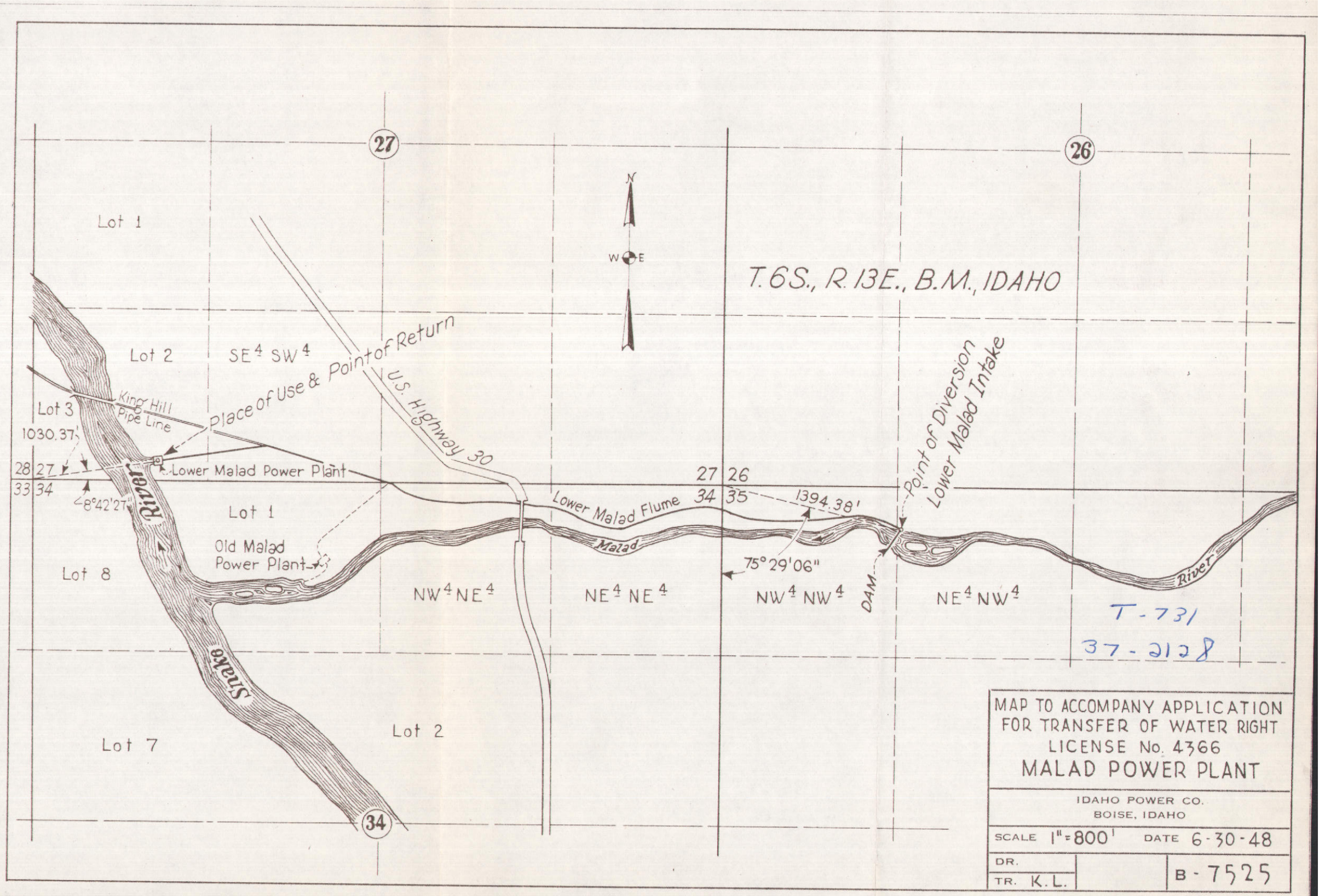
Subscribed and sworn to before me this 12th day of November, 1948.

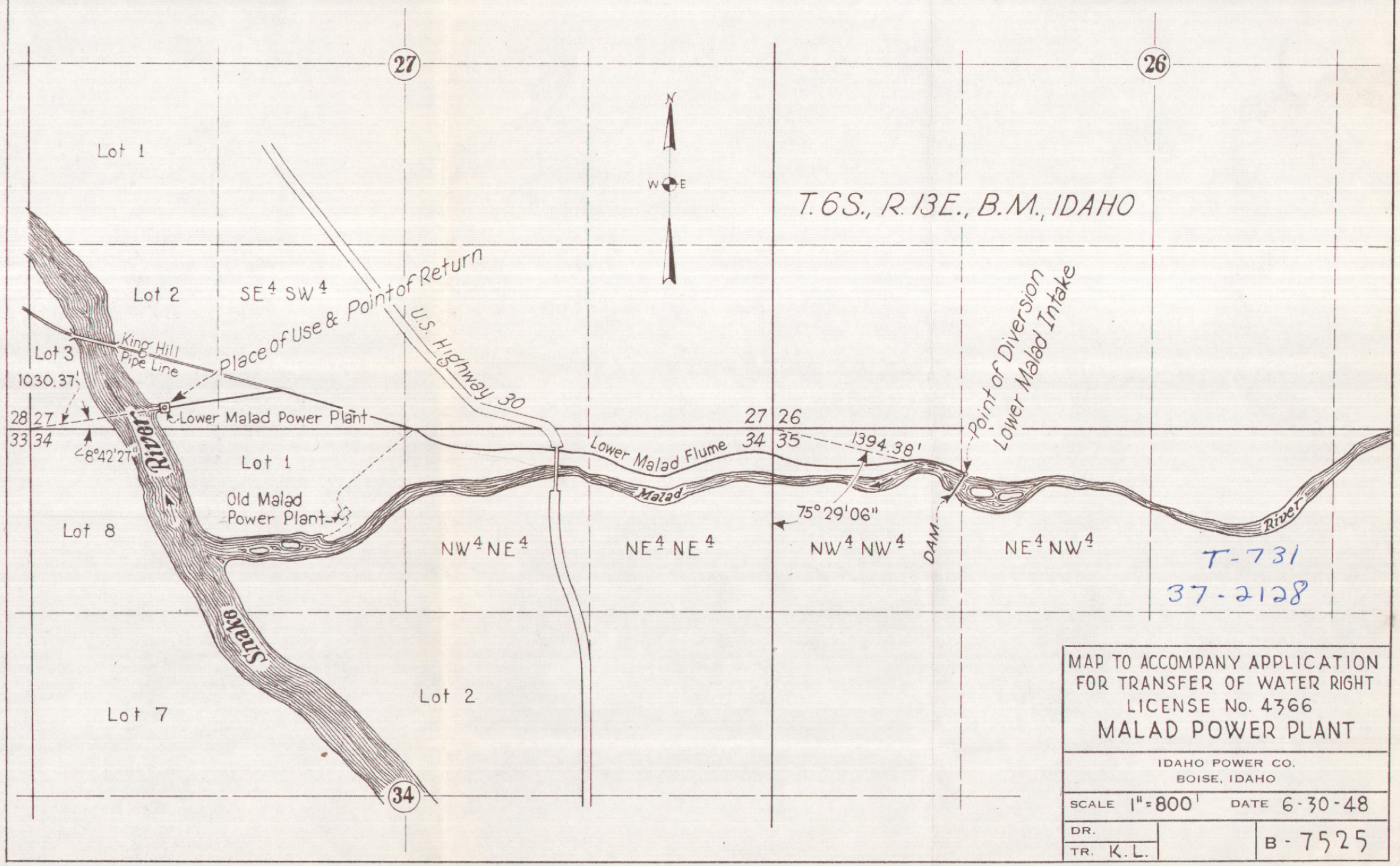
Helen J. Smith

Notary Public.

T-731

37-2128


27
26
N
W
E
T.6S., R.13E., B.M., IDAHO
Lot 1
Lot 2
SE¼ SW¼
King Hill Pipe Line
Place of Use & Point of Return
U.S. Highway 30
Lot 3
1030.37'
28 27
33 34
Lower Malad Power Plant
Point of Diversion Lower Malad Intake
27 26
34 35
1394.38'
Lower Malad Flume
Malad River
Lot 1
Old Malad Power Plant
Lot 8
NW¼ NE¼
NE¼ NE¼
NW¼ NW¼
NE¼ NW¼
DAM
75°29'06"
Snake River
Lot 7
Lot 2
34
T-731
37-2128
MAP TO ACCOMPANY APPLICATION FOR TRANSFER OF WATER RIGHT
LICENSE No. 4366
MALAD POWER PLANT
IDAHO POWER CO.
BOISE, IDAHO
SCALE 1"=800' DATE 6-30-48
DR.
TR. K.L.
B-7525



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

IDAHO POWER CO.
BOISE, IDAHO

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

DR.
TR. K.L.

B-7525

State of Idaho

License and Certificate of Water Right

Water License No. 4366

Water District No. 47

Amount 700 sec.ft.

Priority 11-25-1908

THIS IS TO CERTIFY that Idaho Power Company of Boise, Idaho, made application for a permit to appropriate the public waters of the State of Idaho, dated November 25, 19 08; that Permit No. 4366 was issued under said application; that Certificate of Completion of works, with a carrying capacity of 1100 second feet, was issued thereunder on March 6, 1914, showing that said works were completed on the 21st day of February, 1914; and that on the 21st day of February, 1920,

Idaho Power Company

of Boise, State of Idaho, made proof to the satisfaction of the ~~State Engineer~~ Commissioner of Reclamation of Idaho, of a right to the use of the waters of Malad River and Cove Creek, tributary to Snake River, for the purpose of generating electrical power, under Use Permit No. 4366 of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Idaho, and is hereby confirmed by the ~~State Engineer~~ Commissioner of Reclamation of Idaho and entered of record in Volume 5 of Licenses, at page 2570, on the 16th day of July, 19 20;

The right hereby confirmed dates from November 25, 19 08;

The Points of Diversion are located as follows: Malad River S.12°25'E.2786' from quarter corner between Secs.25-26, T.6 S.,R.13 E.,B.M.; Cove Creek S.9°56'E.2183' dist.from ~~in the ¼ ¼ Sec. Tp. R. B.M.~~ the quarter corner between Secs.25-26,T.6 S.,R.13 E.,B.M.,County of Gooding.

That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed 700 cubic feet per second.

Description and location of use: at Malad Power Station, located S.78° 10' W.,3265' from N.E.Cor. Sec.34, T.6 S., R.13 E., B.M. Trans# 731

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, as provided by the laws of Idaho.

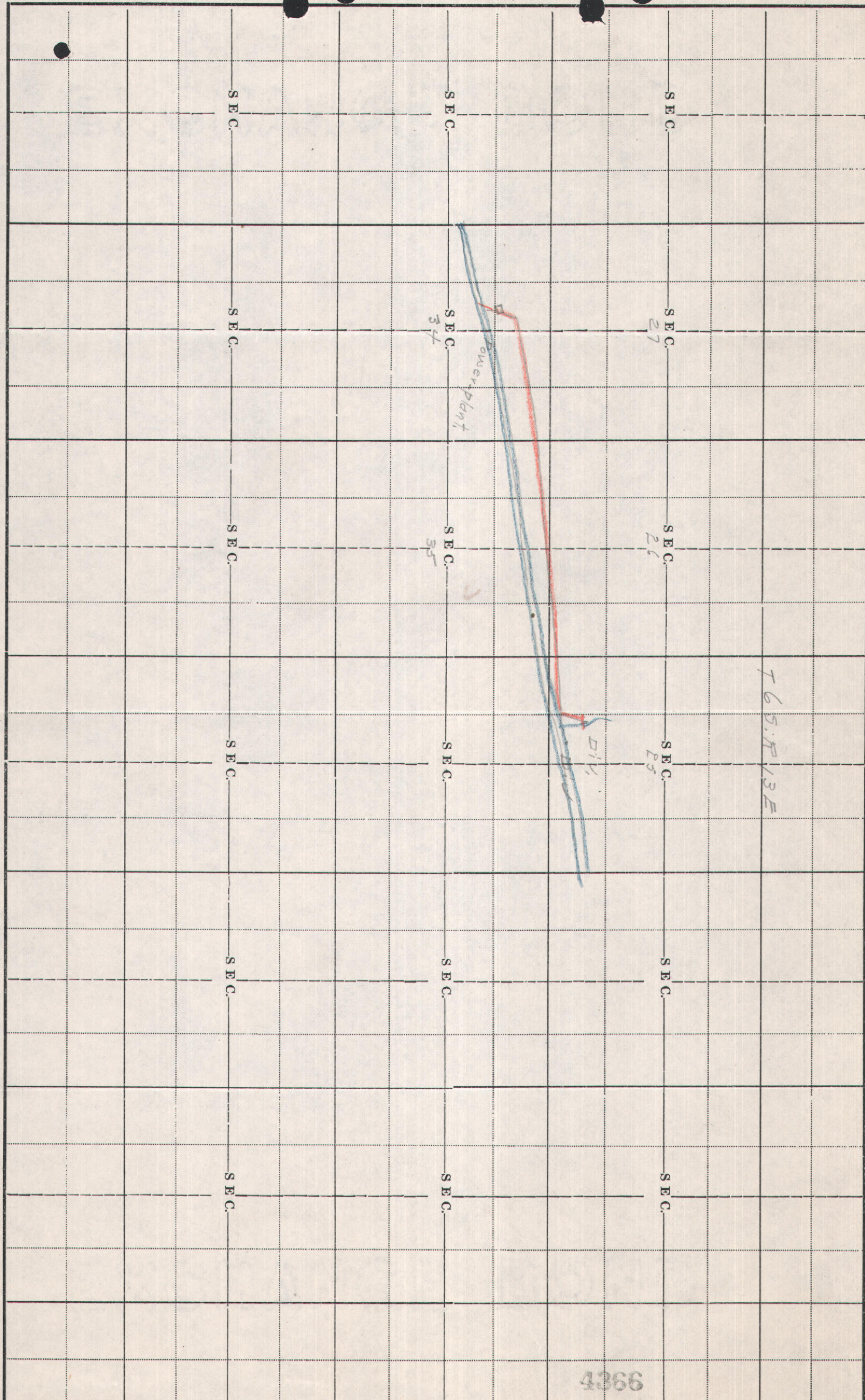
WITNESS the seal and signature of the ~~State Engineer~~ Commissioner of Reclamation, affixed at Boise, Idaho, this 18th day of July, 19 20

(SEAL)

W. G. Swendsen,
~~State Engineer~~ Commissioner of Reclamation

37-2128

NAME OF APPLICANT Idaho Power Co. # 4366



SCALE: 2 INCHES=1 MILE. DRAW PLAN IN INK.

PUBLISHER'S AFFIDAVIT

COUNTY OF GOODING, } ss.
STATE OF IDAHO }

NOTICE OF PROOF OF APPLICATION OF WATER TO BENEFICIAL USE.

Notice is hereby given that at 10 a. m. on the 21st day of February, 1920, at Boise, County of Ada, State of Idaho, before E. C. Kiersted, Notary Public, proof will be submitted of the application to beneficial use of 700 cubic feet per second of the waters of Malade River and Cove Creek in accordance with the terms and conditons of Permit No. 4366 heretofore issued by the State Engineer of the State of Idaho.

1. The name and postoffice address of the person or corporaiton holding said permit are Idaho Power Company, P. O. Box 1537, Boise, Idaho.
2. The use to which said water has been applied is generating electrical energy.
3. The amount applied to beneficial use is 700 cubic feet per second.
4. The place where said water is used (if for irrigation, give full and accurate description of the lands irrigated) is at Malade Power Station, at a point S, 78 degrees 10 minutes West 3265 feet from NE corner of Sec. 34, in Twp. 6 S., of Range 13 E., B. M.
5. The name of the canal or ditch or other works by which said water is conducted to such place of use is Malade Power Station.
6. The right to take water from such works is based upon Permit No. 4366.
7. The source of supply from which such water is diverted is Malade River and Cove Creek.
8. The date of the priority which said user is prepared to establish is November 25, 1908.

5-8 W. G. SWENDSEN.
Commissioner of Reclamattion.

F. F. Swan, being first duly sworn, deposes and says that he is Publisher of THE GOODING LEADER, a weekly newspaper printed and published continuously and uninterruptedly at the City of Gooding, in said County and State for at least seventy-eight consecutive weeks prior to the first publication of the attached notice, and having a general circulation in said county; that a notice, of which the annexed is a true copy, was published in the said newspaper for at least Four consecutive issues, commencing with the issue dated January 22, 1920.

and ending with the issue dated February 12, 1920

in the regular and entire issue of said paper and not in any supplement thereof.

F. F. Swan
Affiant's Signature.

Subscribed and sworn to before me this 13th day of February, 1920

Notary Public.

Residence Gooding, Idaho

My commission expires Feb 10th 1921

RECEIVED
FEB 25 1920
DEPARTMENT OF RECLAMATION

4366

Copy

IN THE OFFICE OF THE STATE ENGINEER,

OF THE STATE OF IDAHO.

GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY, a corporation,
Plaintiff,
& Contestant,
vs. PETITION.
IDAHO POWER AND LIGHT COMPANY, a corporation,
Defendant,
& Contestee.

Comes now the plaintiff, the petitioner and contestant herein, and states:

1.

That the above named plaintiff and contestant herein is a corporation organized and existing under the laws of the State of Delaware and duly authorized and empowered to do business in the State of Idaho, at both the present time and at all the times hereinafter mentioned.

That plaintiff is the owner and holder of Permit No. 8627 for the diversion of the waters of the Malade River taken out by D. C. MacWatters, and by him transferred to the plaintiff herein; that said permit bears a later date than the permit No. 4366 hereinafter mentioned; that the point of diversion of said Permit 8627 is approximately five hundred (500) feet down stream from the point of diversion of the said Permit 4366 and that the diversion under Permit 4366 is adverse to the diversion under Permit 8627.

2.

That the Idaho Power and Light Company is a corporation organized under the laws of the State of Nevada and doing business in the State of Idaho.

3.

That on the 25th day of November, 1908, Application No. 5904 was made by A. M. Wrench for leave to appropriate 1100 cubic feet per second of the waters of the Malade River and tributaries, including Cove Creek in the County of Lincoln, now the County of

4366

Gooding, State of Idaho; that the point of diversion for said waters was located in the Northwest Quarter of the Northwest Quarter of Section Thirty-six (36), Township Six (6) South, Range Thirteen (13) East, Boise Meridian; that the course of the conduit described in said application extended in a northerly or northwesterly direction through the southwest Quarter of the southwest Quarter of Section Twenty-five (25), and thence westerly and southwesterly through the Southeast Quarter of the Southeast Quarter of Section Twenty-six (26), and the North Half (N½) of the Northeast Quarter (NE¼) of Section Thirty-five (35), and the North Half of the Northwest Quarter of Section Thirty-five (35), and the South Half of the Southwest Quarter of Section Twenty-six (26), the South half of the Southeast Quarter of Section Twenty-seven (27), the Northwest Quarter of the Northeast Quarter, of Section Thirty-four (34) and Lot One (1) in Section Thirty-four (34), where a power house was located. As set forth in said application, said water was desired for power purposes;

That said application for permit was returned for correction on December 25th, 1908, and the corrected application was received February 22nd, 1909; that said application was approved on said day and numbered as Permit 4366 in the office of the State Engineer of the State of Idaho;

That under the terms and conditions of said permit, it was required that the whole of the work specified in said permit should be completed on or before February 22nd, 1914. Reference is hereby made to the records and files in the State Engineer's Office with reference to Permit 4366 for a more complete description of the work to be done thereunder.

- 4.

That the said A. M. Wrench on or about the 6th day of March, 1911, conveyed all of his rights under said Water Permit 4366 to a corporation organized under the Laws of the State of Colorado known as The Beaver River Power Company, and thereafter, on or about the 30th day of August, 1913, said corporation conveyed all of its rights in and to said Permit 4366 to the Idaho Power and Light Company, a

corporation, organized and existing under the laws of the State of Nevada, and that said corporation is the owner and holder of all rights under said Permit 4366, as may now exist, having also purchased the interest of other persons therein.

5.

That the defendant and contestee herein and its predecessors in interest, including the said A. M. Wrench, have failed to complete the entire construction work called for under the terms and conditions of said Permit 4366 within the time specified within said Permit in the following particulars, to wit:

That said permit described a conduit to be constructed for the use of water from the point of diversion in Sections Thirty-six (36) and Twenty-five (25), Township Six (6) South, Range Thirteen (13) East, Boise Meridian, extending north along and above the north bank of the Malade River as shown and designated on the map accompanying the application for said permit now on file in the State Engineer's office, to a point in Lot One (1), in Section Twenty-seven (27), where power was to be generated; that along the route of the conduit as shown upon the map filed with said permit and as described in said permit and under the terms thereof, the said A. M. Wrench and his successors in interest, including the defendant herein, have constructed a flume from the point of diversion in Section Thirty-six (36), upon and along the north bank of the Malade River to a point approximately four hundred (400) feet west of the east line of the northeast Quarter of the northwest quarter of Section Thirty-five (35), Township Six (6) South, Range Thirteen (13) East, Boise Meridian, and no further, and that the conduit set forth and described in said Permit 4366 is completed to said point in the Northeast Quarter of the Northwest Quarter, and no further. That said conduit ends at this point and does not extend to the point of intended use as indicated in said permit; that there is no pressure box, pen-stock or other appliance for the use of the water necessary for the power development; that the work has not been completed as provided in said permit and has not been completed so as to make any power develop-

ment whatever.

WHEREFORE, Petitioner prays that in pursuance of law a time for hearing be fixed and that on such hearing, said Water Permit No. 4366 be canceled and annulled, and that petitioner may have all proper relief.

GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY,

By_____

STATE OF IDAHO,)
) ss.
COUNTY OF ADA.)

S. H. HAYS being first duly sworn deposes and says that he is the attorney for Plaintiff and Contestant herein; that he has read the foregoing Petition and knows the contents thereof and that the same is true of his own knowledge except as to the matters and things therein stated to be upon information or belief and that as to those matters, he believes it to be true.

That affiant makes this verification for the reason that all of the officers and agents of the Plaintiff corporation are absent from the County of Ada wherein affiant resides.

_____

SUBSCRIBED AND SWORN TO before me this _____ day of May, 1914.

_____

Notary Public.

4366

HAWLEY, PUCKETT & HAWLEY
ATTORNEYS AND COUNSELLORS
BOISE, IDAHO

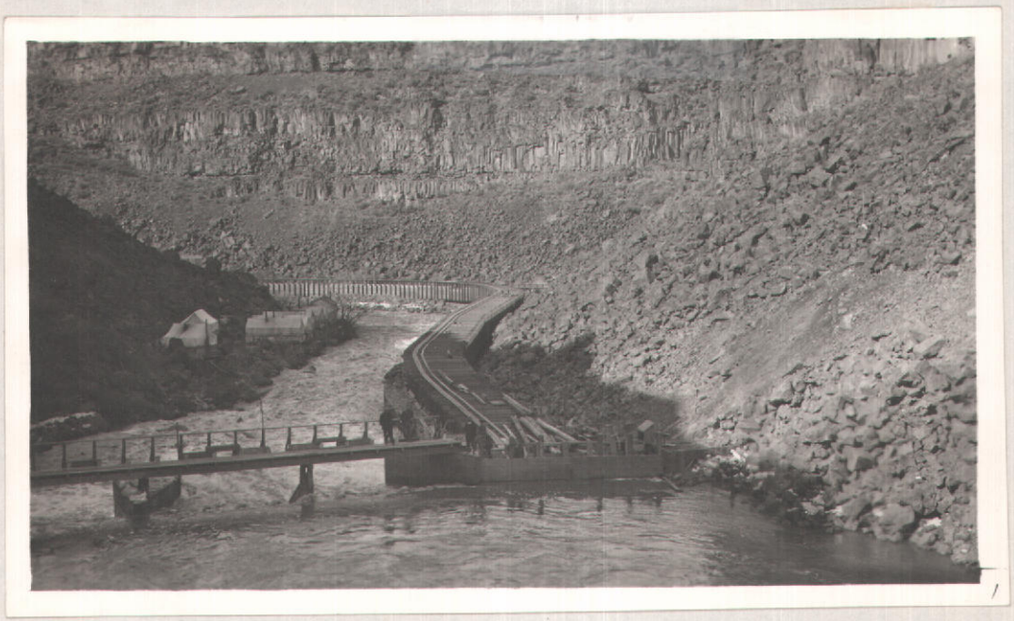
Fee rec'd March 6 - 15.

The upper flume at this time was carrying about 10 cubic feet per second, but the day before this the flume was carrying about one-third its capacity. The lower flume, although nearly full of water was held up by checks and was flowing about one-half its capacity. The pressure box and that portion of the penstock from the pressure box to the power site, also the power house and its tail race, are not as yet started on the upper site.

The enclosed blue print shows by means of red arrows the position and direction that the following views were taken.

Examination made February 21-22, 1914.

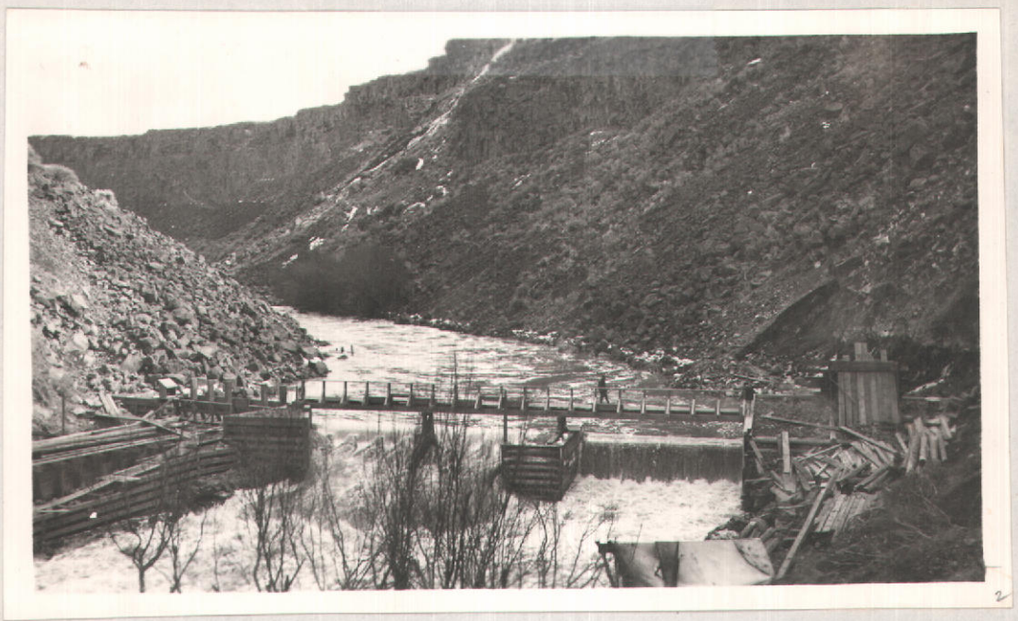
Walter R Heyd
Chief Carey Act Engineer.



View No. 1,

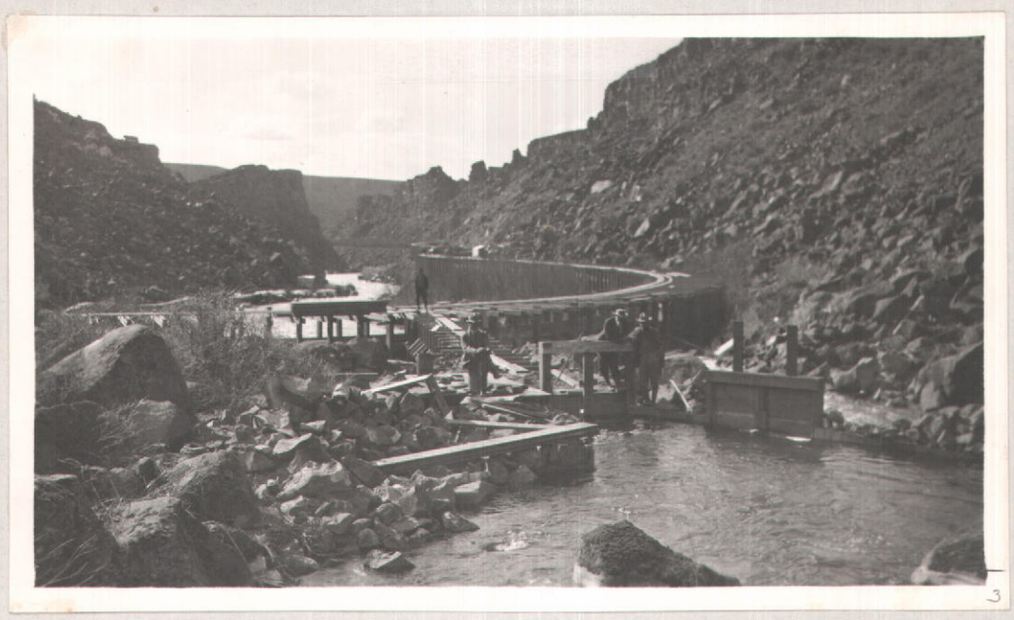
Shows downstream view of upper diversion.

4366



View No. 2

shows upstream view of upper diversion.



View No. 3.

Shows downstream view of Cove creek diversion.

4366



View No. 4

Shows the upstream view of lower end of upper flume.



View No. 5

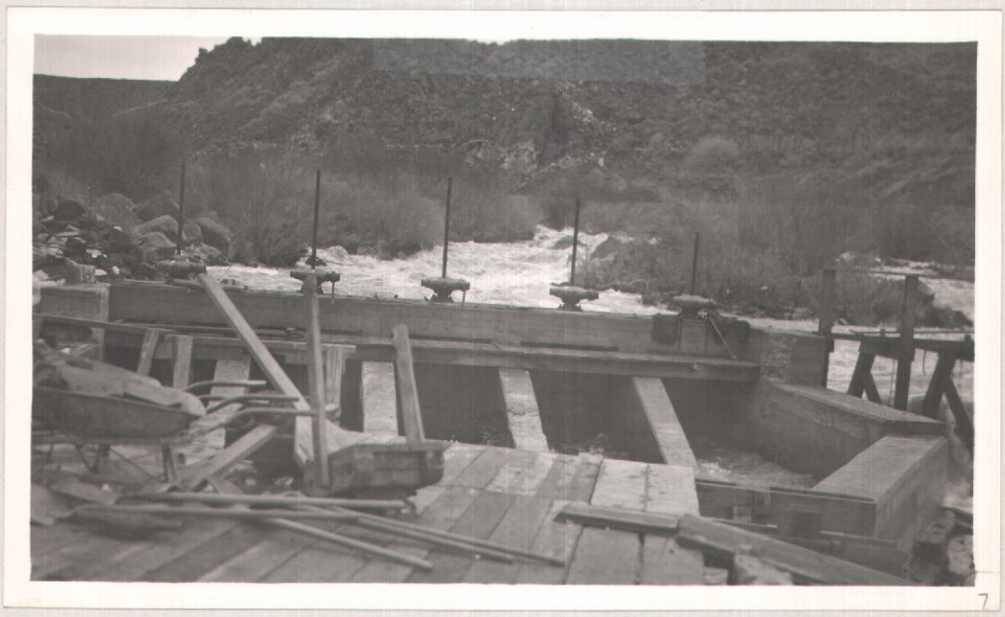
Shows lower end of upper flume.

4366



View No. 6

Shows Lower diversion.



View No. 7

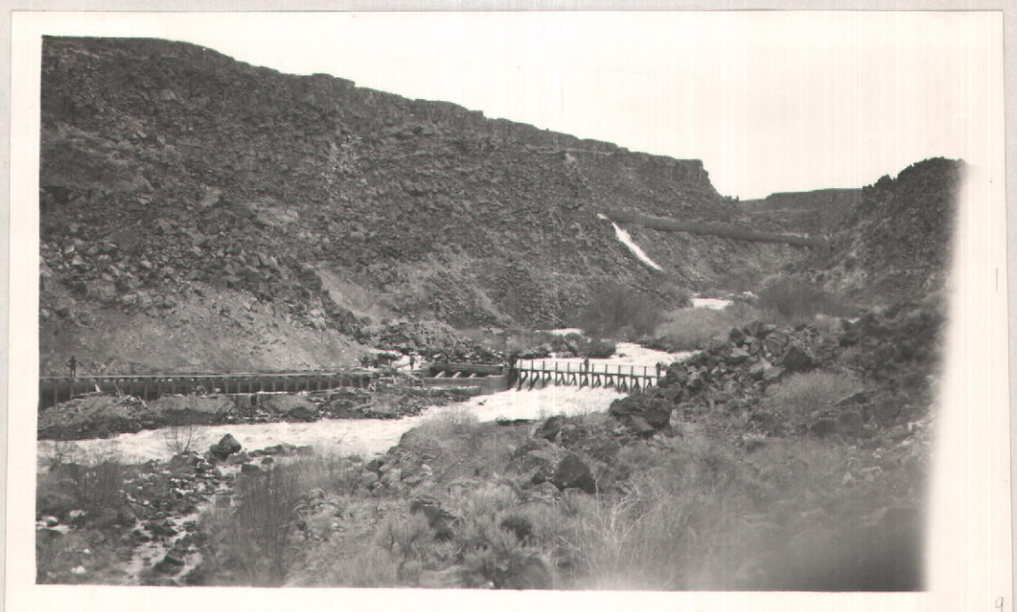
Shows up stream view of lower headgates.

4366



View No. 8

Shows lower diversion.



View No. 9.

Shows upstream view of lower diversion showing upper flume.

4366



View No. 10

Shows downstream view of lower diversion.



View No. 11

Shows downstream view showing spillway in lower flume.

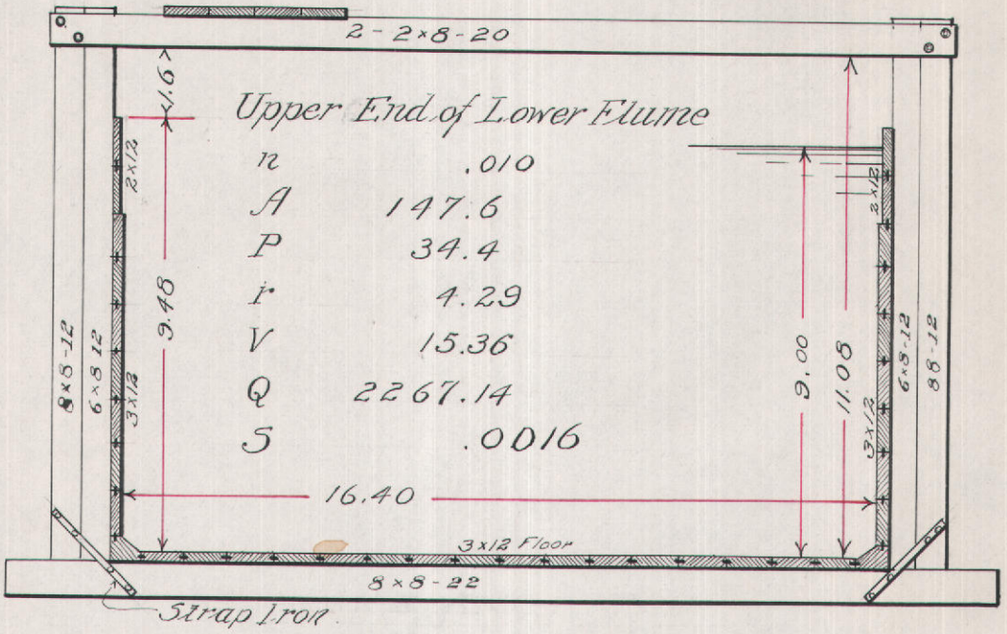
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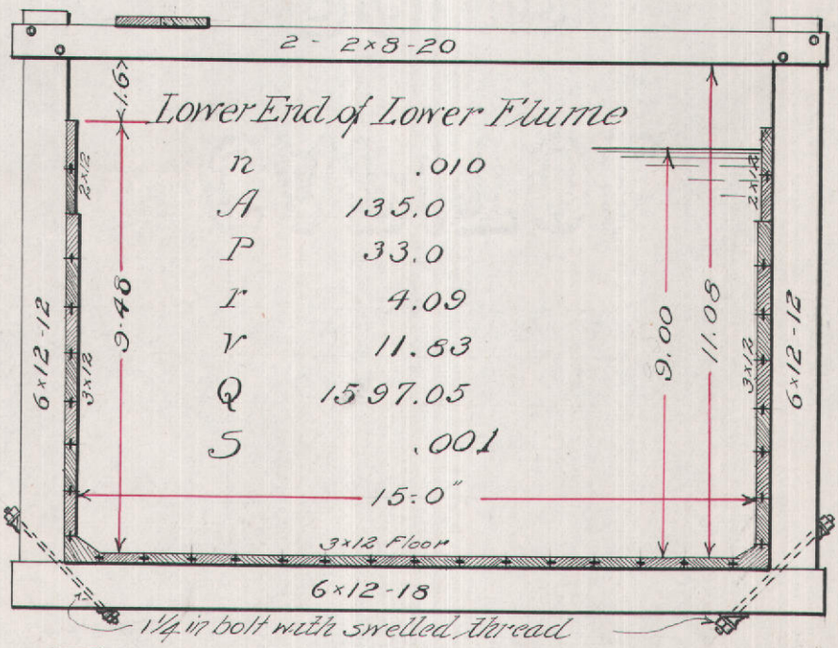


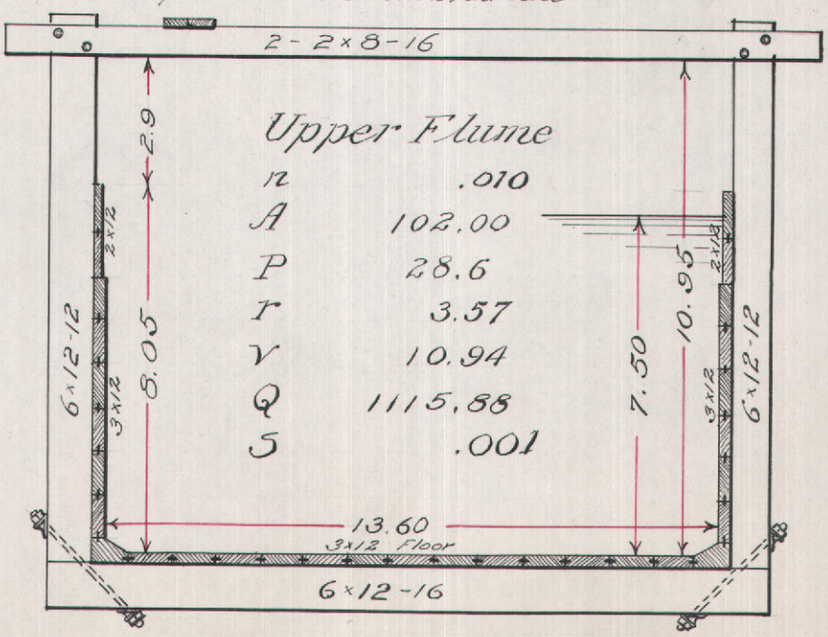
View No. 12

Shows downstream view showing penstock and power house at the end of lower flume

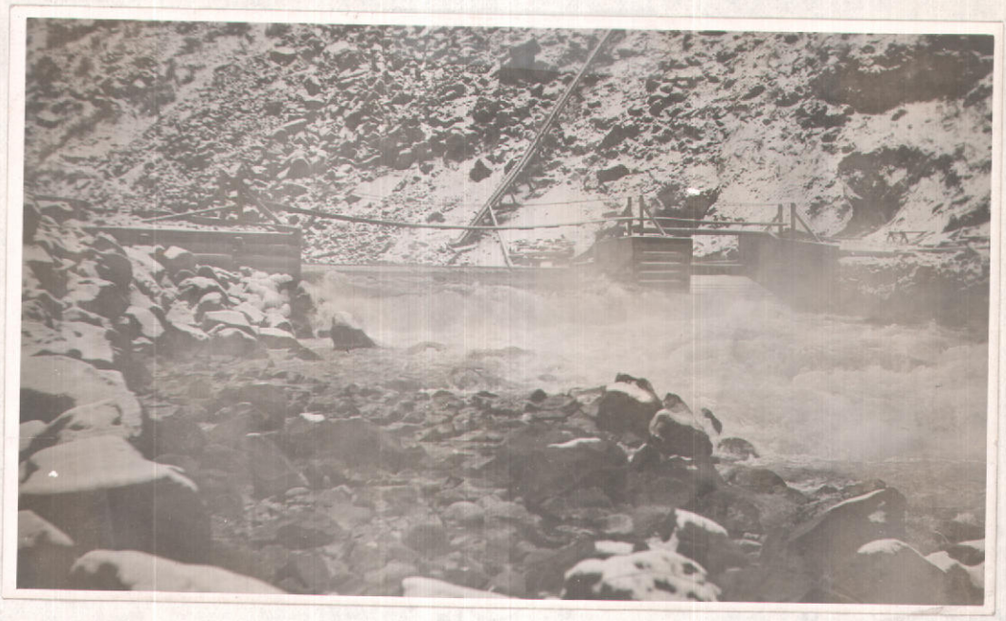
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2 - 2×8 - 20
Upper End of Lower Flume
n .010
A 147.6
P 34.4
r 4.29
V 15.36
Q 2267.14
S .0016
1.67
9.48
16.40
9.00
11.08
2×12
3×12
6×8-12
8×8-12
8×8-22
3×12 Floor
Strap Iron


2 - 2×8 - 20
Lower End of Lower Flume
n .010
A 135.0
P 33.0
r 4.09
V 11.83
Q 1597.05
S .001
1.67
9.48
15:0"
9.00
11.08
2×12
3×12
6×12-12
6×12-18
3×12 Floor
1¼ in bolt with swelled thread


2 - 2×8 - 16
Upper Flume
n .010
A 102.00
P 28.6
r 3.57
V 10.94
Q 1115.88
S .001
2.9
8.05
13.60
7.50
10.95
2×12
3×12
6×12-12
6×12-16
3×12 Floor

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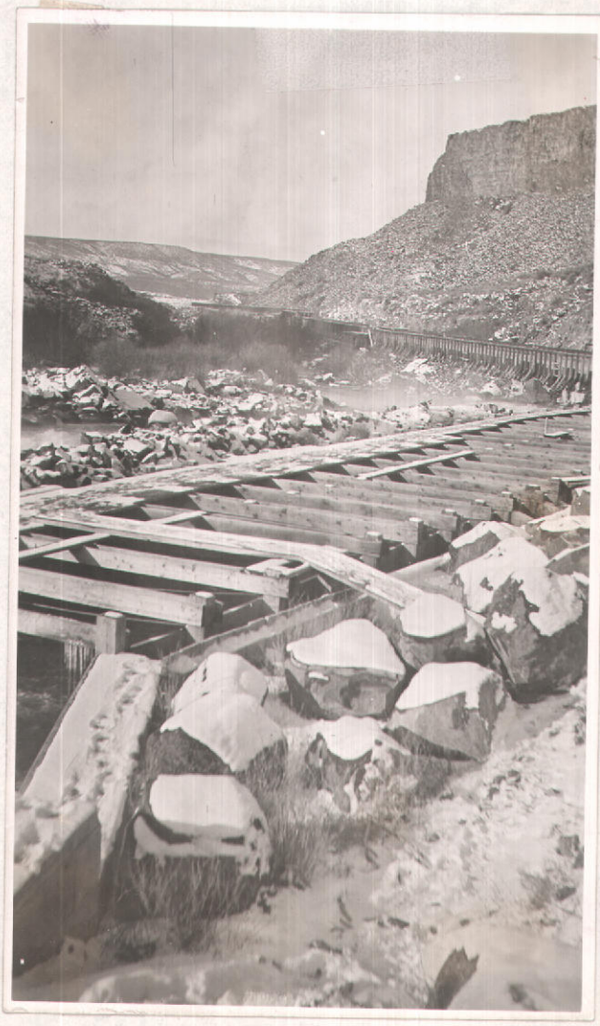
E X H I B I T "B"



E X H I B I T "C"



E X H I B I T "D"



E X H I B I T "E"



E X H I B I T "F"

EXHIBIT A.

COPY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF LINCOLN.

The Idaho-Nevada Power Company,
Plaintiff,
vs.
Lucien L. Nunn, Addison M. Wrench, The Beaver River Power Company, The American Trust & Savings Bank, as Trustee, and the Continental and Commercial Trust and Savings Bank, as Trustee,
Defendants.

COMPLAINT.

The plaintiff complains and on information and belief alleges:

First: That on or about the first day of September, 1906, the defendant Lucien L. Nunn, well knowing that the Electric Bond & Share Company, a corporation organized under the laws of the State of New Jersey, controlled certain Applications and Permits to divert and utilize the waters of the Snake River in the State of Idaho, as well as an Application to divert and utilize the waters of the Malade River in said State, hereinafter more particularly described as Permit No. 2300, represented to one James Campbell that he, the said Nunn, had also acquired certain valuable water rights on said Rivers for the joint benefit of himself and the said Campbell, and requested the said Campbell to arrange for consolidating the rights which the said Nunn claimed to have acquired, and was seeking to acquire, with the rights then controlled by the Electric Bond & Share Company.

Second. That on said date, one S. Z. Mitchell was the Vice-President and active executive officer of the Electric Bond & Share Company aforesaid, and on, to-wit, the 21 day of September, 1906, an agreement in writing was entered into between the said Campbell and Mitchell in words

and figures as follows, to-wit:

"MEMORANDUM OF AGREEMENT, made this 21st day of September, 1906, by and between JAMES CAMPBELL, party of the first part, and E. Z. MITCHELL, party of the second part; WITNESSETH AS FOLLOWS:

"L. L. Nunn and his associates, and the Electric Bond and Share Company and its associates own certain interests in and options upon water powers and electro-hydraulic plants upon the Snake and Malade Rivers in Idaho, and are negotiating for and expect to acquire certain additional water powers and plants upon the said rivers; the powers and plants referred to being generally known as the North Fork, American Falls, Island Plant, Twin Falls, Shoshone Falls, Augur Falls, Upper Salmon Falls, Lower Salmon Falls and Malade River.

"The parties hereto deem it for the interest of all parties concerned that the present interests and ownerships in the said water powers and plants, belonging to the said Nunn and his associates and the said Electric Bond and Share Company and its associates, shall be united on the basis of actual cost, and that any additional properties acquired shall be acquired and developed in their common interest, and have therefore agreed together to recommend and endeavor to carry out the following plan:

"1. All the interests, rights and ownerships in the properties referred to, belonging to or controlled by L. L. Nunn and his associates and the Electric Bond and Share Company and its associates, shall be transferred to a syndicate or corporation to be formed, and at a relative valuation determined by the actual cash

cost of such interests and ownerships to the respective parties, and, in payment for such transfer, participations or interests in such syndicate or in the securities of such corporation shall be granted to the said Munn and his associates and the said Electric Bond & Share Company and its associates, pro rata in proportion to the actual cash cost to them respectively of the interests, rights and ownerships so transferred.

"II. The parties hereto will, as soon as may be practicable, submit each to the other all reports and statements and the results of all investigations in their possession or accessible to them, pertaining to the rights and properties in question, in order that each may be satisifed as to the cost of such as are at present owned, and that the acquisition of additional rights and properties may be decided upon in the light of all knowledge accessible to the parties hereto and their associates.

"IN WITNESS WHEREOF, the parties hereto have signed this agreement the day and year first above written.

JAMES CAMPBELL.

S. Z. MITCHELL."

which said agreement was made at the City of New York in the State of New York.

Third: Thereafter, on or about November 10, 1906, the defendant Munn, seeking to secure to himself the possession of and the spending of the funds of the proposed syndicate interests, wrote to the said Mitchell substantially representing that the rights and titles owned or controlled by the Electric Bond & Share Company to utilize the waters of the State of Idaho flowing in the Snake River were defective or of little value; that the Malade River was "the cream

of the Idaho field"; that he held title to the use of the waters flowing in the Malade River superbr in time and in right to the title thereto held by the Electric Bond & Share Company; that he was then proceeding with the work on the ground for the purpose of maintaining and perfecting his rights in and to the use of Malade River water; that he expected to deliver power therefrom the following summer; that he understood "the joint syndicate interests" were to be under his charge; that he had had the confidence of a large clientele for more than a quarter of a century and that he had a large organization, including able legal, engineering and construction departments; that he could not be expected to merely cooperate with those sent out or employed by the said Electric Bond & Share Company; that if such employes came into the field, it must be to report to him and it must be left to his discretion whether he should or should not retain such as had been previously employed to look after the interests of the Electric Bond & Share Company; that his (Bunn's) loyalty to his clients and trusts must be above suspision, and complained that said Mitchell had not furnished him with written authority nor given him a statement showing the condition of the holdings controlled by the said Electric Bond & Share Company, nor the engineering data on which the estimates of value were based.

Fourth: That by said representations and other similar representations, the said defendant Bunn induced the said S. Z. Mitchell and the said James Campbell to enter into the following agreement, made at the City of New York in the State of New York, in words and figures following, to-wit:

"It is proposed to organize under the laws of Colorado THE IDAHO-NEVADA POWER COMPANY, having a Board of eight Directors, four to be selected by the Electric

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Bond & Share Company and its associates, and four by James Campbell, and his associates. At the organization of the company, James Campbell is to be elected President, Copley Amory, Vice-President, and L. L. Nunn, General Manager. To this company shall be quit-claimed the water rights and power interests in Idaho now owned or controlled by the Electric Bond & Share Company and associates, including those on the North Fork of the Snake River, at American Falls, Island Sheals, Augur, Shoshone, Twin, Upper Salmon and Lower Salmon Falls on the Snake River, and those on the Malade River; as well as those in Idaho owned and controlled by said Campbell, Nunn and associates, including those on the Malade River and at Twin Falls aforesaid (the latter subject to a certain agreement with Messrs. Lyman and Bagley), but excepting the Bear Lake and Bear River water rights and power interests of said Campbell, Nunn and associates.

"The capital stock of the company shall be $7,500,000, of which $2,500,000 shall be six per cent. preferred and $5,000,000 common stock. The preferred stock shall be cumulative after January 1, 1910, be preferred in liquidation as well as earnings and be subject to redemption at any time at 120% of par.

"The Electric Bond & Share Company and its associates have expended to date, including all obligations on its interests to be conveyed, and including an agreed allowance for general expenses, fifty-two thousand one hundred seventy-three and 50/100 ($52,173.50) dollars, and said Campbell, Nunn and associates have expended to date on their interests to be conveyed, and including a similar allowance, eighty thousand four hundred ninety-three and 10/100 ($80,493.10) dollars, and the

Electric Bond & Share Company is to pay in cash to L. L. Nunn, as General Manager, the further sum of twenty-eight thousand three hundred nineteen and 60/100 (28,319.60) dollars. There shall be issued to the Electric Bond & Share Company, for the water rights, power interests and cash as aforesaid, $100,000 in preferred stock and $1,000,000 in common stock, and like amounts to said Campbell, Nunn and associates for their interests as aforesaid. The remaining stock, preferred and common, shall remain in the company's treasury, subject to the action of the Board of Directors.

"The stock issued to the parties hereto is to be pooled so as to provide for the election of four Directors to be selected by the Electric Bond & Share Company and four by Campbell, Nunn and associates.

"L. L. Nunn is to make examinations and estimate and advise at an early date how much cash will be required for the conservation, management and development of said properties. Each party shall have the right to furnish one-half of such cash, taking therefor preferred stock of the company at eighty per cent of its par value.

"The above is agreed to by the Electric Bond & Share Company, subject to the approval of the Executive Committee or Board of Directorsof that Company.

S. Z. MITCHELL,
as Vice-President, Electric Bond & Share Co.

L. L. NUNN.

Dated, New York, April 5, 1907.

James Campbell."

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Fifth: That at the time of the making of said last mentioned agreement, the Electric Bond & Share Company control-

led the following water right on the Malade River in the State of Idaho, to-wit:

Permit No. 2300, approved October 6, 1906, recorded at page 2300 of Book 7 of Permits of the official records in the office of the State Engineer of the State of Idaho, issued by said State Engineer to C. M. Jackson to divert for power purposes one thousand cubic feet of water per second of time from the Malade River in Lincoln County at a point on said River S. 82° 13' W. 3085.8 feet from the witness corner to the N.E. corner of Sec. 35, Twp. 6 S., R. 13 E., B.B.& M., and to return the same to the Snake River through a tail race immediately below a point situate S. 64° 49' W. 3660 feet from N.W. Cor. of Sec. 35, Twp. 6 S., R. 13 E., B.B.& M.

And at the time of the making of said last mentioned agreement, the defendant Munn jointly with the said Campbell were the owners of the following Permits to utilize the waters of the Malade River:

Permit No. 713, approved July 5, 1904, recorded at Page 713 of Book 3 of Permits of the official records in the office of the State Engineer of the State of Idaho, issued by said State Engineer to W. B. Slick and James W. Slick to divert for power purposes eleven hundred cubic feet of water per second of time from the Malade River in Lincoln County, Idaho, at a point on said River N. 77° 12' E. 1602 feet from the S.W. Cor. of Sec. 25, Twp. 6 S., R. 13 E., B.B.& M., and to return the same to the said River at a point S. 79° 40' E. 1524 feet from the S.W.Cor. of Sec. 26, in Twp. 6 S., R. 13 E., B.B.& M.

Permit No. 2524, approved January 26, 1907, recorded at Page 2524 of Book 8 of Permits of the official records in the office of the State Engineer of-

the state of Idaho issued by said State Engineer to Sumner Sameon to divert for power purposes twelve hundred cubic feet of water per second of time from the Malade River in Lincoln County, Idaho, at a point on the North bank of said Malade River above the intake of the canal-way of the Glenns Ferry Land & Irrigation Company, Ltd. S. 78° 30' E. 1476 feet from the N.E.Cor. of Sec. 27, Twp. 6 S., R. 13 E., B.B.& M., and to return the same to the Snake River at a point on Snake River whence the N.W. Cor. of Sec. 35, Twp. 6 S., R. 13 E., B.B.& M. bears S. 86° 45' E. 4678 feet.

Sixth: Thereafter the Executive Committee of the Board of Directors of said Electric Bond & Share Company approved said agreement of April 5, 1907, and pursuant thereto, the plaintiff was duly organized under the laws of the State of Colorado, with a capital stock of $7,500,000.00, divided into twenty-five hundred preferred shares and five thousand common shares, each of the par value of one hundred dollars, and with full authority, under its charter, to acquire water rights, lands, easements and all other property, real and personal, necessary or incident to the generation and marketing of electrisal power in the said State of Idaho, for the purpose of taking over from the said Munn, Campbell and said Electric Bond & Share Company their title and interests, as provided in said agreement. Thereupon, directors and officers of the plaintiff corporation were duly chosen in accordance with the provisions of said agreement, and the defendant Munn was duly elected and has since remained a director and the Manager of the plaintiff corporation, as well as a member of the Executive Committee of its Board of Directors, and as Manager of said corporation at all times since his election as such Manager has been entrusted and charged with the work and duty of guarding, protecting and

advancing plaintiff's interests and property rights, including the perfecting of its titles and rights to the use of the waters of the Malade River aforesaid, as well as charged with the duty of acquiring for and on behalf of plaintiff corporation such other rights to use the waters of said State of Idaho as were required by the plaintiff to carry out the objects and purposes for which it was organized and to advance its interests as aforesaid, and the said defendant Munn faithfully promised to protect, conserve and advance the interests and property rights of the plaintiff corporation, and from time to time since his election as Manager he, the defendant Munn, has represented to the plaintiff corporation that he was faithfully discharging the duties incumbent on him as aforesaid.

Seventh: On April 29th, 1907, said Munn made draft on and on May 3d, 1907, received from said Campbell the sum of thirty thousand dollars on account of said agreement of April 5, 1907; that immediately after the organization of the plaintiff corporation, the said Electric Bond & Share Company caused a deed to be signed and acknowledged conveying to the plaintiff corporation all the right, title and interest then controlled by the Electric Bond & Share Company and its associates aforesaid in and to the water rights aforesaid desired by the plaintiff corporation to be conveyed to it, and delivered such deed to the plaintiff corporation for recording so soon as by complying with the laws of the State of Idaho it was authorized to take titles and lawfully to transact business in said State; and, at the same time, in partial satisfaction of its covenant in said agreement to pay to the plaintiff corporation the sum of $28,319.60, paid into the treasury of the plaintiff corporation the sum of eight thousand dollars, and on or about the 25th day of May, 1907, also paid to the said defendant Munn, as Manager, and for the use of the

plaintiff corporation, the further sum of ten thousand dollars, to be used by him in paying the expense of filing in Idaho the Articles of Incorporation of the plaintiff Company, the certificate of appointment of its agent and designation of its place or places of business within the State of Idaho, and whatever else was required by the laws of said State in order to enable the plaintiff corporation to hold title to realty and do business within the limits of said State, as well as in paying additional expenses, which he, as such Manager, would incur on behalf of the corporation, in doing and performing the various acts and things necessary to protect, perfect and hold in and for the benefit of the plaintiff corporation its water rights and property interests; save and except if it should appear on examination by him that any right to the use of water conveyed or to be conveyed to plaintiff corporation, should prove valueless, then the said Munn was not required to perfect or protect the same; that said Electric Bond & Share Company has at all times since the incorporation of the plaintiff Company on to-wit, the fifth day of June, 1907, been ready and willing, and is now ready and willing, to pay to the plaintiff the balance due from it, to-wit, the sum of $10,319.60, whenever the said Munn shall comply with the terms and provisions of the agreement of April 5, 1907, on his part to be complied with; and plaintiff has been ready and willing at all times since its incorporation to designate its agent and place of business within the State of Idaho in manner required by the laws of the State of Idaho upon the filing of certified copy of its Articles of Incorporation in the State of Idaho.

Eighth: Although repeatedly requested so to do by the plaintiff corporation, the defendant Munn at the time of the organization of the plaintiff corporation and ever since, has failed, neglected and refused to file a certified

copy of its Articles of Incorporation as required by the laws of Idaho as aforesaid, and the plaintiff has been compelled to file and has filed said Articles as provided by the laws of the State of Idaho, and is now authorized to acquire title to real and personal property and carry on its business in the State of Idaho. Nevertheless, the defendant Munn, although repeatedly requested so to do, has neglected and refused and still refuses to convey to the plaintiff corporation the water rights hereinabove described which by said agreement he had covenanted to convey to it, or to account in any manner for the ten thousand dollars of its funds so received by him, but during the year 1908, he, the said Munn, acquired from the United States in his own name certain rights-of-way for an electrical power plant to be situated on the Malade River in the N.E.¼ of the N.W.¼ of Sec. 35, Twp. 6 S., R. 13 E., B.B.& M. in said Lincoln County, including rights-of-way for a generating station building, machine shop and laboratory, a quarters building, a store house and a barn, to be used in connection with the use of the waters of said Malade River to be diverted under said Permit No. 713, said rights-of-way being particularly described as follows, to-wit:

(a) For said Station Building: Commencing at a point whence the N.W. Cor. of Sec. 35, T. 6 S., R. 13 E., B.B.& M. bears N. 76° 37' W. 1565 feet; thence S. 52° 20' E., 90 feet; thence N. 37° 40' E., 120 feet; thence N. 52° 20' W., 90 feet; thence S. 37° 40' W., 120 feet; containing 10,800 sq. feet.

(b) For said Machine Shop and Laboratory: Commencing at a point whence the N.W. Cor. of Section 35, T. 6 S., R. 13 E., B.B.& M. bears N. 79° 24' W. 1406 feet; thence S. 52° 20' E., 50 feet; thence N. 37° 40' E., 100 feet; thence N. 52° 20' W., 50 feet; thence S. 37° 40' W., 100 feet, containing 5,000 sq. feet.

(c) For said Quarters Building: Commencing at a point whence the N.W. Cor. of Sec. 35, T. 6 S., R. 13 E., B.B.& M. bears N. 83° 58' W., 1710 feet; thence S. 52° 20' E., 70 feet; thence N. 37° 40' E., 50 feet; thence N. 52° 20' W., 70 feet; thence S. 37° 40' W., 50 feet, containing 3,500 sq. feet.

(d) for said Storehouse: Commencing at a point whence the N.W. Cor. of Section 35, T. 6 S., R. 13 E., B.B. & M. bears N. 85° 32' W., 1481 feet; thence S. 52° 20' E., 40 feet; thence N. 37° 40' E., 100 feet; thence N. 52° 20' W., 40 feet; thence N. 37° 40' W., 100 feet, containing 1,200 sq. feet.

(e) For said Barn: Commencing at a point whence the N.W. Cor. of Sec. 35, T. 6 S., R. 13 E., B.B.& M. bears N. 83° 51' W., 1890 feet; thence East 60 feet; thence North 30 feet; thence West 60 feet; thence South 30 feet; containing 1,200 sq. feet.

Ninth: On to-wit: the 25th day of November, 1908, the defendant Munn, as Manager of the plaintiff corporation, caused a certain Application for a Permit to use the waters of the said Malade River in the said Lincoln County, Idaho, for power purposes, to be filed in the office of the State Engineer of said State in the name of the defendant Addison M. Wrench, (who has been for many years past and now is an associate, partner and agent of the said Munn) but for the use and benefit of the plaintiff corporation, and at its expense, and by and with the consent of the said Wrench and with full knowledge on his part of the purpose of such filing, and pursuant to such Application a Permit, designated as Permit No. 4366, to use the waters of the Malade River was, on February 22, 1909, issued by the said State Engineer in the name of the said Addison M. Wrench, by which the owner of said Permit was authorized to divert from the said Malade River and its tributaries eleven hundred cubic feet per second of time of the waters thereof at a point on the said Malade River S. 81° 20' E. 720 feet from the S.E. Cor. of Sec. 26, Twp. 6 S., R. 13 E., B.B.& M., and at a point on Cove Creek N. 32° 30' W. 600 feet from the N.E. Cor. of Sect 35, Twp. 6 S., R. 13 E., B.B.& M., to be used for the generation of electrical power and returned to said River at a point which bears S. 77° 30' W. 3450 feet from the S.E. Cor. of Sec. 27, Twp. 6 S., R. 13 E., B.B.& M.

Tenth: On or about the first day of February, 1909, one Charles H. Hammett, and the Kings Hill Irrigation & Power

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Company and the Malad Power Company, corporations organized under the laws of the State of Nevada, or some one or more of them, claimed to be the legal or equitable owners and in possession of the water rights and titles to land hereinafter mentioned as having been conveyed by them or some one or more of them to defendant Munn, and on said last mentioned day the said Munn, as Manager of the plaintiff corporation, entered into an understanding with one Charles H. Hammett, the Kings Hill Irrigation & Power Company and the Malad Power Company aforesaid, whereby for and in consideration of the confirming in said Kings Hill Irrigation & Power Company by said Munn of a paramount title of record in and to the use of three hundred cubic feet per second of time of the waters of the Malade River for irrigation and domestic uses, to be ~~delivered~~ diverted at the point of intake to the canal then established by said Kings Hill Irrigation & Power Company on said River, and the payment by said Munn of $10,000.00 in cash and the further payment of twenty-five thousand shares of the capital stock of the corporation which the said Munn represented was to generate power on said River, or in lieu of said twenty-five thousand shares the sum of $12,500.00, the said Hammett, and the two corporations last above mentioned, were immediately to convey to said Munn all their rights in and to the use of the waters of said Malade River, as well as an undivided three-quarters interest in and to the dam, canal-way and rights-of-way therefor of the Kings Hill Irrigation & Power Company and the Malad Power Company aforesaid and also all tracts of land in Lincoln County, Idaho, then owned by said Charles H. Hammett and said corporations, any one or more of them, in Sections 25, 26, 27, 34, 35 and 36 in Twp. 6 South, Range 13 East, B.B.& M., and also to cause to be conveyed at any time within two years by good and sufficient warranty deed Lot one in Section 34, Twp. 6 South, Range 13 East, B.B.& M. in said Lincoln County.

Thereafter, pursuant to the understanding aforesaid, and on or about the fourteenth day of February, 1909, the said Munn executed a deed to the said Kings Hill Irrigation & Power Company, whereby he confirmed in said Company the paramount title of record to the right to use three hundred cubic feet per second of time of the waters of said Malade River for irrigation and domestic purposes, to be diverted by said Kings Hill Irrigation & Power Company at the intake of its canal aforesaid, the right to the use of which three hundred second feet was then solely the property of and held by the said Munn for the use of the plaintiff, and also paid unto the said Hammett, the Kings Hill Irrigation & Power Company and the Malad Power Company the sum of $10,000.00

And in further consummation of said understanding and in conformity therewith, and on or about the twelfth day of February, 1909, the Kings Hill Irrigation & Power Company conveyed to and confirmed in the said Malad Power Company all of its rights to use the waters of said Malade River for power purposes, together with certain lands and rights-of-way then owned or possessed by it for use in connection therewith, and on or about the 13th day of February, 1909, the said Malad Power Company conveyed to the said Munn the following described lands and rights to divert and utilize the waters of the said Malade River:

"That certain water appropriation made on the 26th day of March, 1902, by one Herman Rapp and one Ernest Pearson for the diversion of 500 cubic feet per second of water from the Malade River at a point on the right bank of the Malade River situated about 1195.5 feet S. 75° 22' E. from the S.W. corner of Section 27, Twp. 6 S. of Range 13 E., B.M.& M., appearing of record at Page 248 of Book 1 of Water Rights in the official records of Lincoln County aforesaid; also that certain appropriation made by the Glenns Ferry Land & Irrigation Company, Limited, on the 7th day of August, 1902, for the diversion and appropriation of 500 cubic feet per second of the waters of said river and to be diverted at or near the point above described; also that certain water right and permit to divert and appropriate water, granted by the State Engineer of the State of Idaho on the 23d day of January, 1904, to F. J. Hagenbarth and

R. J. Chields, and evidenced by Permit No. 438 issued by said State Engineer for 1,100 cubic feet per second, the same to be diverted at or near the point above described.

"Also an undivided three-fourths interest in and to those certain pieces and parcels of land situated, lying and being in the County of Lincoln, State of Idaho, used and intended to be used as a right of way for the dam, canal, flume and ditches required for diverting and carrying the said water hereinbefore mentioned, which said right of way is more particularly described as follows:

A strip of land 200 feet wide lying 100 feet on each side of the following described line; Beginning at a point S. 76° 55' E. 1,251.8 feet from the N.W. corner of Sec. 34, Twp. 6 S., R. 13 E., B.B.& M.; thence S. 8° W. 250 feet; also the following line: Beginning at said point lying S. 76° 55' E. 1,251.8 feet from said N.W. corner of said Sec. 34; thence N. 8° E. 50 feet; also a strip of land 100 feet wide lying 50 feet on each side of the following centre line beginning at a point in the N.W.¼ of the N.E.¼ of Sec. 35, said Township and Range, S. 76° 55' E. 1,251.8 feet from the N.W. corner of said Sec. 34; thence N. 60° 51' W. 100 feet; thence S. 84° 56' W. 257 feet; thence N. 715 feet; thence N. 58° 7' W. 128 feet; thence S. 89° 55' W. 260 feet; thence S. 74° 2' W. 644 feet; thence N. 69° 32' W. 298 feet; thence N. 72° 23' W. 187 feet; thence S. 89° 52' W. 128 feet; thence N. 74° 25' W. 127 feet; thence S. 89° 17' W. 269 feet; thence N. 87° W. 457 feet; thence N. 77° 35' W. 169 feet; thence N. 49° 37' W. 73 feet; thence N. 70° 36' W. 700 feet; thence N. 75° 28' W. 1,616 feet more or less to head of syphon pipe of Kings Hill Irrigation & Power Company across Snake River.

"Also those certain lands, pieces and parcels of land situated, lying and being in the County of Lincoln, State of Idaho, bounded and particularly described as follows, to-wit:

Commencing at the Government meander corner at the southwest corner of Lot 2, Sec. 27, Twp. 6 S., R. 13 E., B.B.& M.; thence North 33° 00' East 290.8 feet to a point which is the place of beginning; thence North 75° 28' West 588 feet more or less to a point on the water's edge of the east side of Snake River; thence along said east water's edge of Snake River, North 42° 50' west 80 feet; thence continuing along said water's edge North 18° 00' West 134 feet; thence continuing along said water's edge North 7° 18' West 400 feet; thence continuing along said water's edge North 22° 56' West 100 feet; thence East 200 feet more or less to a point 120 feet West of the Government meander line on the West side of said Lot 2; thence South 31° 00' East 340 feet; thence East 120 feet to a point on the said Government meander line; thence South 24° 30' East along said meander line 443 feet more or less to a point 50 feet at right angles to and on the Southerly side of the centre line of the ditch or flume of the Kings Hill Irrigation & Power Company; thence South 75° 28' East parallel to said centre line 93.4 feet more or less; thence South 125.3 feet more or less to a point on the said meander line, which is the place of beginning, containing 6.7 acres more or less, with all water rights belonging to same and the right to use ditches of one V. V. Carico on his other lands to carry water to the lands above described.

"Those certain premises, pieces and parcels of land situated in said County of Lincoln and State of Idaho, and particularly described as follows:

Beginning at the Northeast corner of the N.W. ¼ of the N.E.¼ of Sec. 34, Twp. 6 South, Range 13 East, B.B.& M., thence West along the North line of said Sec. 34 to the Northwest corner of said N.W.¼ of the N.E.¼ of said Sec. 34; thence South along the West line of said N.W¼ of the N.E.¼ of Sec. 34, 155 feet; thence South 77° 35' East 442 feet; thence South 84° 05' East to a point on the East line of said N.E.¼ of the N.E.¼; thence North along said East line of the N.W.¼ of the N.E.¼ of Sec. 34 to place of beginning, being 8-1/10 acres more or less."

Also any and all other real property, water rights, lands and improvements thereon of whatsoever kind, situate in Lincoln County, Idaho, and owned by the said Malad Power Company at the date of the conveyance last above mentioned.

The said conveyance of the Malad Power Company to the said Munn was conditioned, however, upon the said Munn's permitting the Kings Hill Irrigation & Power Company, its successors and assigns, to divert as aforesaid and utilize for domestic and irrigation purposes the said three hundred cubic feet per second of time of the waters of the Malade River.

And in further consummation of said understanding and on or about the 16th day of February, 1909, the said Charles H. Hammett executed and delivered to the said Munn a deed whereby he conveyed to said Munn, his heirs and assigns, all his right to use the waters of the said Malade River and also all rights-of-way and real property then owned or possessed by the said Hammett in Sections 25, 26, 27, 34, 35 and 36, in Twp. 6 South, Range 13 East, B.B.& M. in said Lincoln County, Idaho, but for lack of knowledge of the specific property then owned by the said Hammett, the plaintiff is unable at the time of the filing of this complaint to give a more accurate description of the property and rights acquired by the said Munn under and by virtue of the said conveyance.

And in further consummation of said understanding and on or about the 14th day of February, 1909, the defendant

Munn entered into a further agreement with the said Hammett whereby said Hammett agreed to acquire from the United States Government title to the following described land situate in said Lincoln County, to-wit: Lot No. 1, in Section 34, Twp. 6 South, Range 13 East, B.B.& M., to be used as a power station site in connection with all or any of the Permits and appropriations for the use of the waters of the said Malade River for power purposes hereinabove described. Thereafter, during the year 1911, the said Munn settled in full his obligation to the said Hammett, Kings Hill Irrigation & Power Company and the Malad Power Company under the understanding between them aforesaid by the payment to the said Hammett of the further sum of $6,500.00 and at the same time said Munn released the said Hammett from all further obligation on the part of the said Hammett to acquire the title to the property last above described, but, with the intent to deceive and defraud the plaintiff, instead of cancelling the said agreement with the said Hammett, the said Munn took from him an assignment of all said Hammett's rights under said agreement in the name of one Frank Noon, an agent of the said Munn, and thereupon in order to acquire the title to said land for the purpose aforesaid, the said Munn caused a scrip entry to be made therefor in the United States Land Office at Hailey, Idaho, in the name of Albert E. Woodhouse who in making said scrip entry acted solely as the agent and for and on behalf of said Munn.

Eleventh: That subsequent to the organizing of the plaintiff corporation, the defendant Munn permitted all the said titles which were to be conveyed to the plaintiff to utilize the waters of the Snake River to lapse and become void and worthless; and with the intent to defraud the plaintiff and defeat its rights and destroy its property, the defendant Munn failed, neglected and refused to do the work

required by the laws of the State of Idaho to maintain and perfect the right to utilize the water of the Malade River under the said Jackson Permit, No. 2300, with the view and for the purpose of making the title obtained under the Hamson Permit, which he had on the 29th day of January, 1907, caused to be conveyed to him personally, paramount and superior to the title under the said Jackson Permit; and notwithstanding said Munn was obligated under the said agreement of April 5, 1907, and notwithstanding it was his duty, to convey or cause to be conveyed to this plaintiff the said Slick Permit, No. 713, and the said Hamson Permit, No. 2524, and the said Wrench Permit, No. 4366, and all titles aforesaid acquired by him from or through said Hammett, said Kings Hill Irrigation & Power Company and said Malad Power Company, he, the said Munn, on or about the 6th day of March, 1911, in pursuance of a conspiracy between himself and the said Wrench to defraud the plaintiff, and in consideration of a large sum of money, as plaintiff is informed and believes, amounting to more than seventy-five thousand dollars, and for other good and valuable considerations, the amounts of which are unknown to the plaintiff, then and there paid to them, or one of them, by the defendant The Beaver River Power Company, a corporation organized under the laws of the State of Colorado, fraudulently conveyed or caused to be conveyed to the said Wrench all of the rights to the use of the waters of the Malade River for power purposes, the record title to which then stood in his own name, together with all lands, rights-of-way, easements and other property which he had acquired for use in connection therewith, as hereinabove set forth, and immediately thereafter the said Wrench fraudulently conveyed or caused to be conveyed to the defendant The Beaver River Power Company all of the water-rights,

lands and property conveyed or caused to be conveyed to him, the said Wrench, by the said Munn as aforesaid, together with the right to use the waters of said Malade River for power purposes under and by virtue of said Permit No. 4366, the record title to which then stood in his (the said Wrench's) name but which said Wrench held for the use and benefit of the plaintiff as aforesaid; and the said Munn and Wrench have converted to their own use the moneys and other considerations so received by them from the said The Beaver River Power Company in exchange for such conveyances; that at and prior to the time of the conveyance from the said Wrench to the said The Beaver River Power Company as aforesaid, the defendant Munn was a Director and President of said The Beaver River Power Company and through him and its other officers and Directors the said The Beaver River Power Company had full knowledge of the rights and interest of the plaintiff corporation in the said water-rights, lands and easements so conveyed to it and of the obligation on the part of the said Munn and of the said Wrench to convey the same to the plaintiff.

Twelfth: That on or about the sixth day of March, 1911, the said The Beaver River Power Company filed for record in the office of the County Recorder of said Lincoln County a certain Deed of Trust, dated July 1, 1908, and executed by it on or about that time, whereby it conveyed to the defendant The American Trust and Savings Bank, a corporation organized under the laws of the State of Illinois, as Trustee, certain real and personal property in the State of Utah, as well as all property and property rights which it might thereafter acquire, to secure the payment of its negotiable bonds, aggregating the principal sum of eight hundred thousand dollars, issued by the said corporation substantially contemporaneously with the execution by it of said Deed of

4366

Trust; that said Deed of Trust is duly recorded at Pages 239 and 283 of Book 16 of Mortgages of the official records of Lincoln County, Idaho; that the negotiable bonds executed by the said The Beaver River Power Company aforesaid, or a large part thereof, have been deposited with and are now held by the said The American Trust and Savings Bank, as Trustee, subject to the terms and provisions of said Deed of Trust and, as the plaintiff is informed and believes, the said Trustee is, under and by virtue of the said after acquired property clause in said Deed of Trust, claiming a lien upon the water rights, lands and easements conveyed by the said Munn and Wrench to The Beaver River Power Company as aforesaid.

Thirteenth: That thereafter, on or about the second day of October, 1911, the said The Beaver River Power Company executed and delivered to the defendant, Continental & Commercial Trust & Savings Bank, a corporation organized under the laws of Illinois, a certain other Deed of Trust, whereby it conveyed to the said Continental & Commercial Trust & Savings Bank, as Trustee, all of the property conveyed to it, or caused to be conveyed to it, by the said Munn and Wrench, as hereinabove set forth, to secure the payment of negotiable bonds issued by the said The Beaver River Power Company; that the Deed of Trust last above mentioned is recorded at Page 320 of Book 16 of Mortgages of the official records in the office of the County Recorder of said Lincoln County, Idaho, and as the plaintiff is informed and believes, the negotiable bonds exected by the said The Beaver River Power Company as aforesaid or a large part thereof havebeen deposited with and are now held by the said Continental & Commercial Trust & Savings Bank, as Trustee, subject to the terms and provisions of said Deed of Trust, and the said Trustee is claiming a lien upon the water-rights,

lands and easements conveyed or caused to be conveyed to the said The Beaver River Power Company by the said Munn and Wrench as aforesaid.

Fourteenth: Plaintiff further states that although it has repeatedly made demand upon the defendant Munn so to do, he has wholly failed and refused to account for the funds so paid to him for the plaintiff's use and benefit, or to render any statement of expenditures which he has made in connection with the maintenance, acquisition and development of the property, water rights and easements hereinabove particularly described, and that for such reason the plaintiff can not state the amount of such expenditures, if any there were, except as herein set forth; or the amount, if any there is, due from it to the said defendant Munn on account of expenditures made by him from his personal funds for the purpose of acquiring, maintaining, protecting or developing said property rights. Nevertheless, plaintiff hereby offers to do and perform whatever equity demands of it in the premises and to pay to the said Munn whatever amount of money, if any, on an accounting between this plaintiff and said defendant may be found by this Honorable Court to be due him.

WHEREFORE, the plaintiff prays that the defendants Munn and Wrench may be decreed to hold in trust for the plaintiff and compelled to convey, or cause to be conveyed to it, the title to such of said lands, water rights, rights-of-way, Permits and easements hereinabove mentioned as now remain in them or under their control; that The Beaver River Power Company may be decreed to hold in trust for the plaintiff and compelled to convey to it all property, rights and franchises hereinabove mentioned conveyed or caused to be conveyed to it by the defendants Munn and Wrench, or either of them, as herein set forth; that The American Trust & Sav-

ings Bank, as Trustee, and the Continental & Commercial Trust & Savings Bank, as Trustee, may be required to set forth what interest, if any, they have in all or any part of the property hereinabove mentioned; that the two Deeds of Trust executed by the said The Beaver River Power Company to The American Trust and Savings Bank and to the Continental & Commercial Trust & Savings Bank as aforesaid be set aside and held for naught as against all the property, rights and franchises in the foregoing complaint mentioned and decreed to create no lien thereon or on any part thereof; that if on final hearing of this cause it shall appear that the title to any of said property has been lost to the plaintiff because of the same having been conveyed to an innocent purchaser for value, the defendants Munn and Wrench may be compelled to account to the plaintiff for the value of the property so lost, as well as to account to the plaintiff for all moneys and benefits which they have or either of them has received therefor or therefrom; that the defendant Munn may be required to account to the plaintiff for all moneys so advanced to him for the use and benefit of the plaintiff Company; that plaintiff prays for all other and further relief which to this Court shall appear to be equitable and just, as well as for costs of suit.

(Signed) Story Steigmeyer
Residing at Salt Lake City, Utah.

" Raymond L. Givens
Residing at Boise, Idaho.

Attorneys for Plaintiff.

STATE OF IDAHO, :
: ss.
County of Ada, :

Raymond L. Givens, being first duly sworn, says: I am the resident attorney of the plaintiff corporation and make this verification because all officers of the plaintiff corporation are absent from the County where I reside and where this verification is made. I have read the foregoing complaint and know the contents thereof and the same is true to my knowledge except as to the matters which are therein stated on information and belief, and as to those matters I believe it to be true.

(signed) Raymond L. Givens.

Subscribed and sworn to before me on the 9th day of December, 1911.

(signed) Charles E. Winstead,
Notary Public.

(N.P. Seal)

Complaint filed December 11th, 1911, at 9 A.M.

(Signed) Harry W. Anderson
Clerk.

STATE ENGINEER'S OFFICE,

STATE OF IDAHO.

GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY, a corporation,
Contestant.

vs.

A. M. WRENCH, THE IDAHO NEVADA POWER COMPANY, a corporation, the BEAVER RIVER POWER COMPANY, a corporation, and the AMERICAN TRUST AND SAVINGS BANK, a corporation,

Contestees.

A F F I D A V I T.

Received and filed for record in the office of the State Engineer at Boise, Idaho, at
M. JAN 13 1916 19
W. A. Robinson
STATE ENGINEER.

STATE OF IDAHO,)
) ss.
COUNTY OF ADA.)

F. C. HORN being first duly sworn deposes and says that, as shown by the records in the office of the State Engineer of the State of Idaho, water permit No. 4366 was taken out by A. M. Wrench for the diversion of 1190 second feet of the waters of the Malade River; that said application was filed November 25th, 1908, and a permit thereafter issued on said application;

That under the terms of said permit, it was required that one-fifth (1/5) of the work therein specified be completed by August 22nd, 1911; that under said permit, the estimated cost of the works is five hundred thousand ($500,000.00) dollars; that said works described in said permit consisted of a diverting dam in said Malade River and a flume or pipes, gates and apparatus necessary for the control of the water and conducting the same to the place of intended use; that under said permit, the height of the dam in said stream was to be twenty-two (22) feet, the length on top three hundred twenty-five (325) feet, the length of the conduit nineteen hundred fifty-two (1952) feet, all of which more fully appears in the said permit on file in the office of the State Engineer of the State of Idaho.

That under the aforesaid Permit, No. 4366, no work had been done on or prior to the 26th day of August, 1911, so far as affiant has been able to discover or ascertain after a careful examination of

the ground, exceping the placing of some piers and abutments in the Malade River at a point near the place of diversion stated in said permit and that the work done under said permit on the 26th day of August, 1911, was less than one-tenth (1/10) of the entire work necessary to divert the water and bring it to the place of use and that the cost of the work done on said date was less than five thousand ($5,000.00) dollars.

F. H. Horn.

SUBSCRIBED AND SWORN TO before me this 2nd day of January 1912.

W. J. Abbs

Notary Public.



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Letter / Parcel No. 205

P. O.,

Received for registration OCT 24 1911, 191, from State Eng.

addressed to Am Wrenn Salt Lake Utah

4366

1 class postage prepaid.

Postmaster, per

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Letter } No. 6604 P. O.,
Parcel }

OCT 24 1911

Received for registration ____, 191 , *from* State Eng.

addressed to Beaver River Ry. Co.

c/o Jess B. Hawley Boise Ida

4363

____ *class postage prepaid.*

Postmaster, per [illegible]

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6202

Letter / Parcel No. 4366

P. O., OCT 24 1911

Received for registration 1 , 191 , from State Eng.

addressed to Ida-West Pwr Co, Boise Idaho

1 class postage prepaid.

Postmaster, per

U. S. Registered Mails go to every post office in the world.
Letters and parcels may be registered at any post office or at any post-office station, and by rural carriers throughout their routes. Letters will be registered by letter carriers in the residential districts of cities.

6207

Letter / Parcel No.

P. O., 4366

Received for registration OCT 24 1911, 191 , from State Eng.

addressed to L. Shuman Telluride Colo

1 class postage prepaid.

Postmaster, per Sol S

STATE ENGINEER'S OFFICE,

STATE OF IDAHO.

GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY, a corporation organized under the laws of the State of Delaware.

Contestant.

vs.

The Idaho Nevada Power Co.,
A. M. WRENCH, L. L. NUNN, the BEAVER RIVER POWER COMPANY, a corporation, organized under the laws of the State of Colorado, and the AMERICAN TRUST AND SAVINGS BANK, a corporation,

Contestees.

CONTEST PETITION.

TO THE HONORABLE STATE ENGINEER

OF THE STATE OF IDAHO:

The Great Shoshone and Twin Falls Water Power Company, a corporation, organized under the laws of the State of Delaware, being the holder of Water Permit No. 6558, originally issued to P. B. Carter for the diversion of a thousand second feet of the waters of the Malade River, in Lincoln County, State of Idaho, said permit dating from May 28th, 1910, hereby enters contest against Permit No. 4366, issued to A. M. Wrench for eleven hundred (1,100) second feet of the waters of the said Malade River, dating from November 25th, 1908, and states as follows:

1st. That Permit 6558, under which contestant claims was issued with a priority dating from May 28th, 1910, said date being the original date of the filing of the application for the permit; that bond was regularly filed and said Permit regularly issued and under the provisions of said permit, one-fifth of the work thereunder is required to be completed by the 10th day of March, 1913; that after the issuance of said permit, the same was granted and conveyed to the contestant herein by said P. B. Carter to whom the same was issued.

That Permit No. 4366, which is hereby contested, was issued

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for and on behalf of and for the sole use of The Idaho-Nevada Power Co.)
to A. M. Wrench, the application being filed November 25th, 1908, and that under said permit, it was required that one-fifth of the work therein specified be completed by August 22nd, 1911; that under said permit, the estimated cost of the works is five hundred thousand dollars ($500,000.00) and said works described in said Permit consisted of a diverting dam and flume or pipe, gates and apparatus necessary for the control of the water;

That under said permit, the height of the dam is to be twenty-two (22) feet, the length on top three hundred twenty-five (325) feet; that the length of the conduits is to be nineteen hundred fifty-two (1952) feet, all of which more fully appears in the said permit on file in the office of the State Engineer to which reference is hereby made.

2nd. That under the aforesaid Permit 4366, no work had been done on or prior to the 26th day of August, 1911, excepting the placing of some piers and abutments in the Malade River at a point near the place of diversion stated in the permit and that the work done under said Permit at the present time is less than one-tenth (1/10) of the entire work necessary to divert the water and bring it to the place of use, and that the cost of the work already done is less than five thousand ($5,000.00) dollars.

3rd. That petitioner is informed that L. L. Munn and the Beaver River Power Company, a corporation organized under the laws of the State of Colorado, claim some interest in this permit, and that the American Trust and Savings Bank, a corporation organized under the laws of the State of Illinois, has an interest in said water right as mortgagee.

WHEREFORE, petitioner prays that this petition may be filed, that due notice thereof may be given and that further proceedings may be had as required by law and that said Permit No. 4366 may be canceled.

GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY,

By J. Hays
Attorney.

4366

STATE OF IDAHO, }
COUNTY OF ADA. } ss.

S. H. HAYS being first duly sworn deposes and says that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be upon information or belief and that as to those matters, he believes it to be true.

That this verification is made by the attorney for contestant for the reason that all of the officers of the contestant are absent from the County of Ada, where affiant resides.

S. H. Hays

SUBSCRIBED AND SWORN TO before me this 24th day of October, 1911.

[illegible]
Notary Public.

I, J. H. Brown, an engineer in regular practice in the State of Idaho for six years last past, do hereby certify that I have examined the works constructed under Permit 4366, issued by the State Engineer of the State of Idaho, to A. M. Wrench, and am of the opinion that the matters stated in the above and foregoing petition are true and correct.

J. H. Brown

4366

No 41 Aug 22 1911

4366

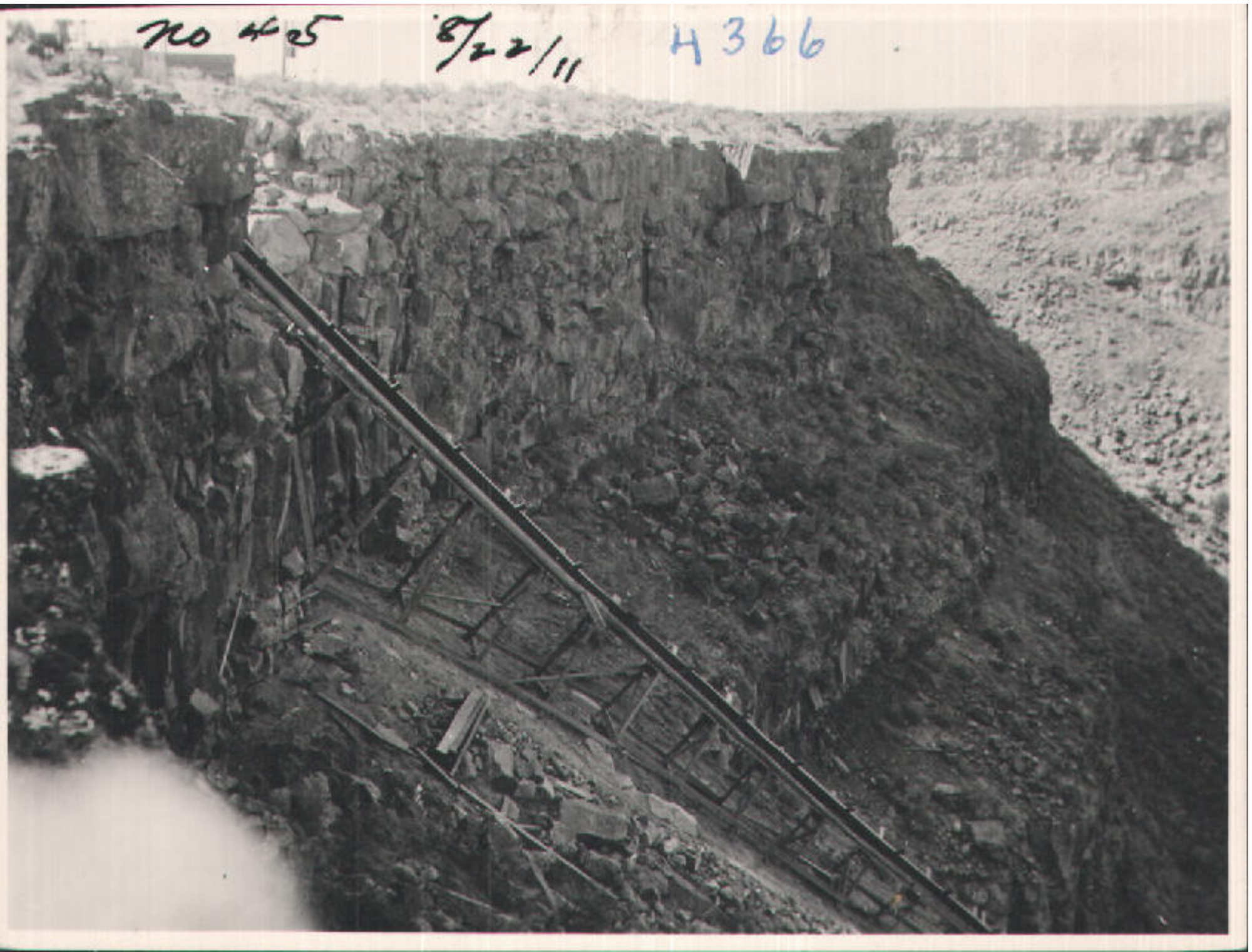



No 40 Aug 22 1911
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4366

No 43 8/22/11 H 366

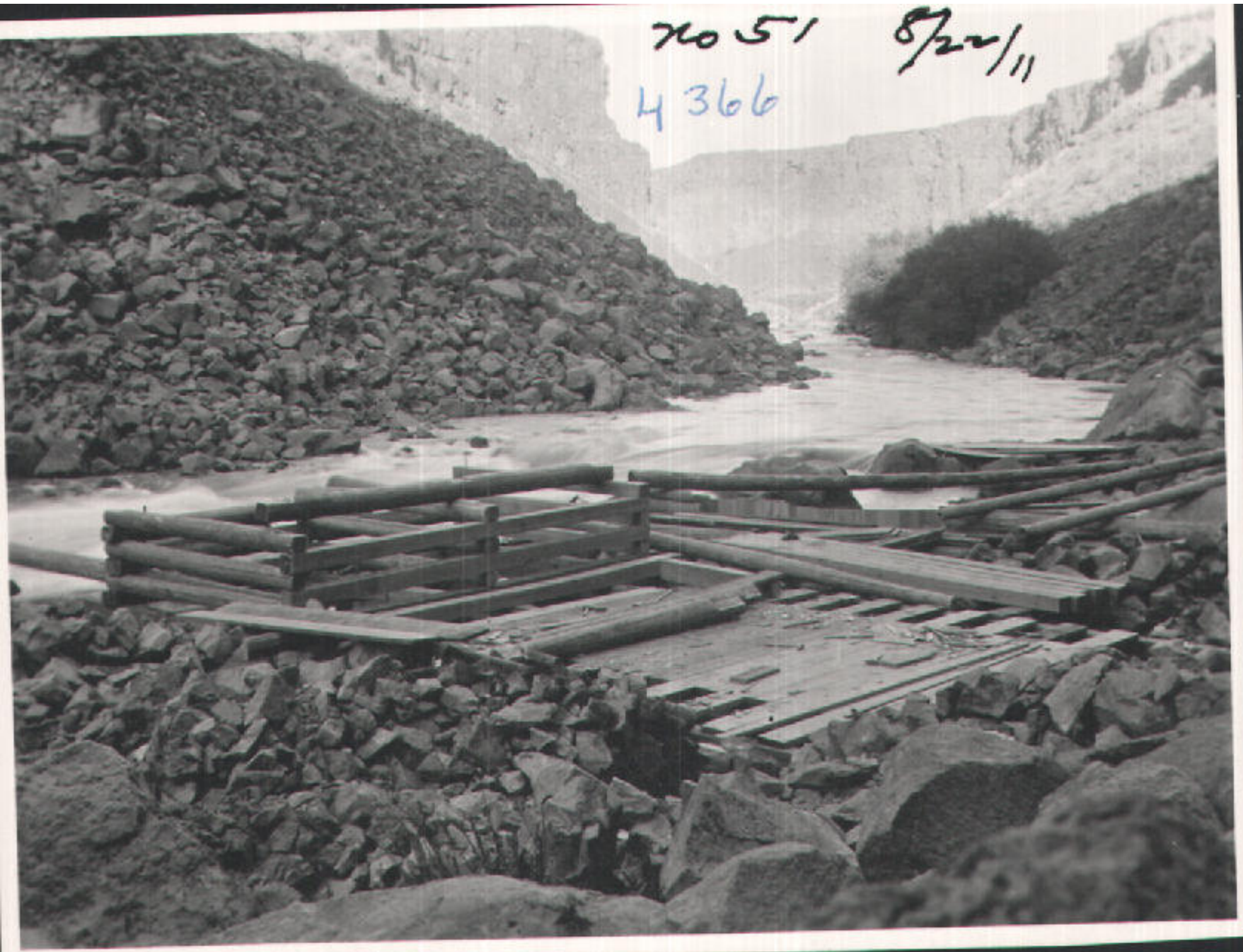


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4366




No. 50
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4366


7051 8/22/11
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H 3666



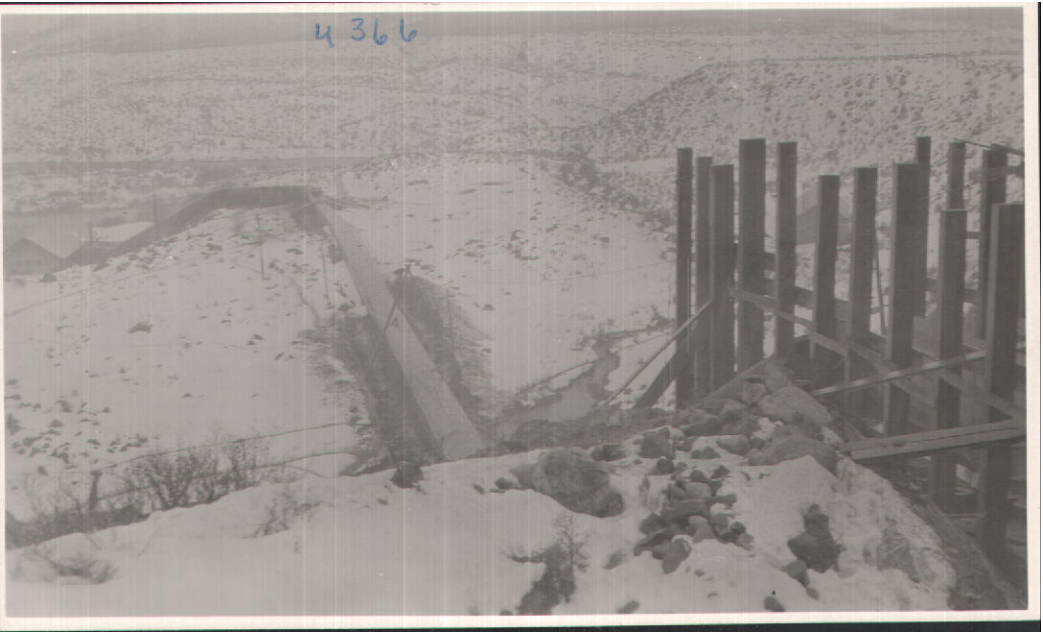

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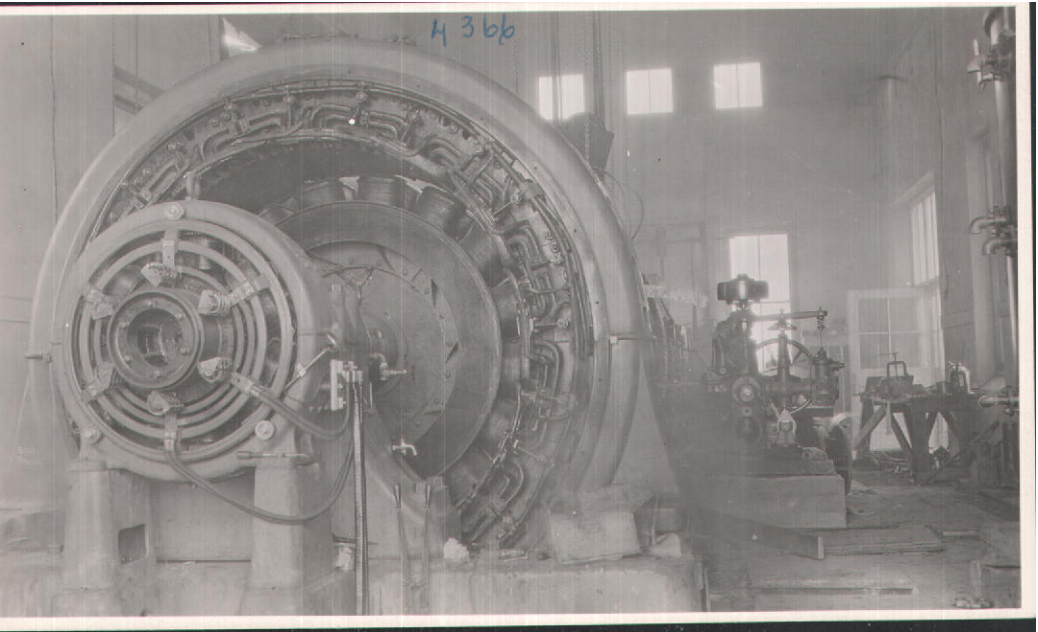

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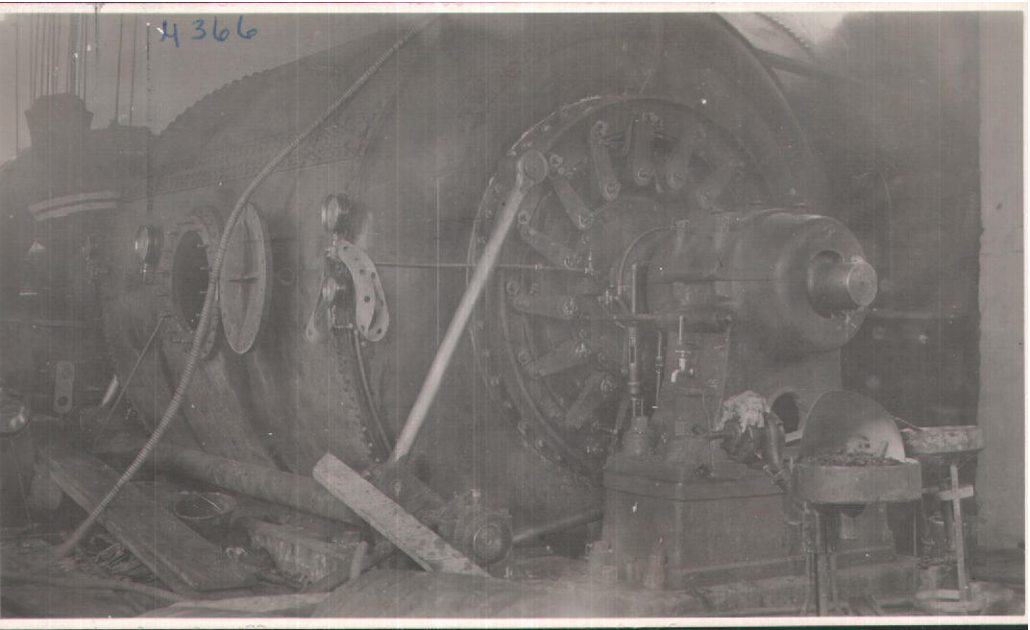

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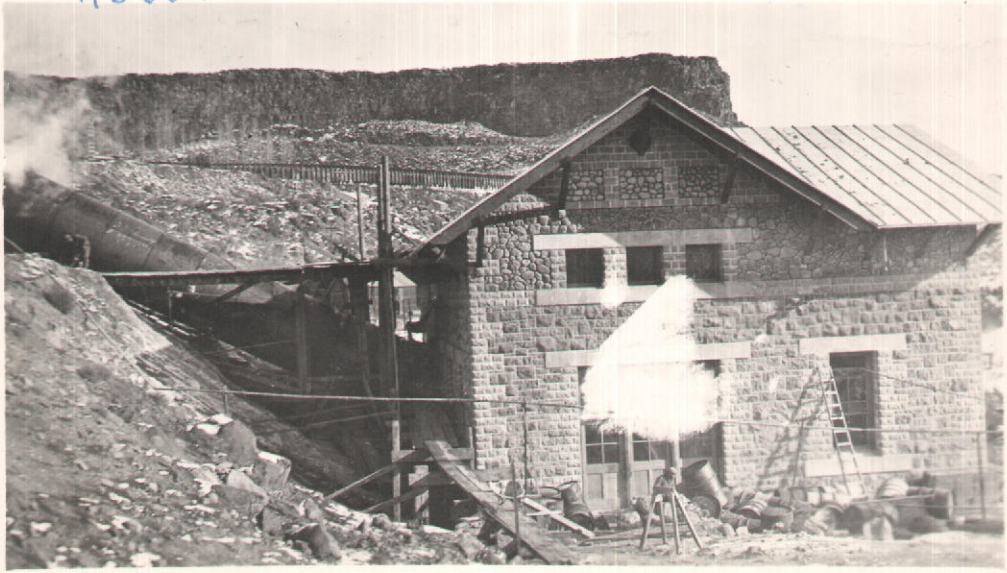

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REGISTRY RETURN RECEIPT.

Form 1548.

Received from the postmaster registered article, the original number of which appears on the reverse side of this card.

4366

Date of delivery July 28, 19 11

(To be filled in by person signing receipt.)

A. L. Branch

When delivery is made to an agent of the addressee, both addressee's name and agent's signature must appear in this receipt.

(Signature or name of addressee.)

(Signature of addressee's agent.)

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Post Office Department

OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300.

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BOISE JUL 28 11-AM 19 11 IDAHO

Postmark of Delivering Office and Date of Delivery.

RETURN TO:

State Engineer

(Name of sender.)

Street and Number, or Post Office Box,

4366

BOISE,

IDAHO.

This card must be neatly and correctly made up and addressed at the post office where the article is registered. The postmaster who delivers the registered article must see that this card is properly signed, legibly postmarked, and mailed to the sender, without envelope or postage.

Form No. 150

State of Idaho

ENGINEERING DEPARTMENT

BOISE

JAS. STEPHENSON, JR.,
ENGINEER

NOTE

That in order to keep this permit in force a bond in the sum of $ 2,200.00 must be filed in the office of the State Engineer on or before April 23,1909.

conditioned upon faithfully carrying to completion the works of diversion as specified in said permit and in the application therefor.

JAS. STEPHENSON, JR.,

State Engineer.

4366

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 27, 2002

RECEIVED
DEC 02 2002

OFFICE OF ENERGY PROJECTS

Project No. 2726 - Idaho
Malad Hydroelectric Project
Idaho Power Company

L. Lewis Wardle, Project Manager
Hydro Relicensing Department
Idaho Power Company
1221 W. Idaho Street, P.O. Box 70
Boise, ID 83707

Reference: Malad Project No. 2726 – Deficiency Letter

Dear Mr. Wardle:

Your license application filed on July 29, 2002, fails to conform to the Federal Energy Regulatory Commission's (Commission's) regulations. A deficiency in your application is identified in the attachment. Under Section 16.9 (b)(2) of the regulations you have 90 days from the date of this letter to correct the deficiency.

If the correction of the deficiency causes other parts of the application to be inaccurate, that part must also be revised and refiled by the due date. Please be aware that further requests for additional information may be sent to you at any time before final action is taken on your application.

Within 5 days of receipt, provide a copy of this letter to all agencies with which you need to consult in response to this deficiency request. When you file the requested information with the Commission, you must provide a complete copy of the information to each agency consulted pursuant to section 16.8 of the regulations.

Please file an original and 8 copies of the above information with: Magalie Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please call John Blair at (202) 502-6092 if you have any questions.

Sincerely,

Jennifer Hill, Branch Chief
Hydro West Group 1

Enclosure: Malad Project No. 2726
Deficiency Letter

cc: Service list
Public file

type of farming, the estimated payment capacity for the East Greenacres Unit has been derived from the farm budget for the representative 120-acre dairy farm summarized in table 4. The labor-management method of analysis was used. As derived by this method, payment capacity represents the residual income available for water charges after payment of farm expenses and after deducting equity accumulation, value of operator and family labor, and management return from the gross farm income. The following tabulation shows the derivation of the irrigators' payment capacity using the representative farm budget for the 120-acre dairy farm.

TABLE 4.—FARM ORGANIZATION AND FINANCIAL SUMMARY FOR REPRESENTATIVE FARMS

Item		960-acre dryland wheat farm (1) [1]	120-acre irrigated dairy farm (3) [1]
Land use:			
Alfalfa hay	acres		64
Barley—nurse crop	do		17
Winter wheat	do	460	
Summer fallow	do	460	
Rotation pasture	do		32
Farmstead and waste	do	40	7
Total		960	120
Livestock: Dairy cows	number	0	36
Farm investment	dollars	101,950	58,960
Farm income:			
Crops	do	18,377	670
Livestock	do		1,689
Livestock products	do		15,919
Farm perquisites	do	837	963
Total		19,214	19,241
Farm expenses:			
Interest on investment	dollars	4,078	2,358
Hired labor	do		2,018
Taxes	do	1,252	830
Other	do	10,510	7,871
Total		15,840	13,077
Net farm income		3,374	6,164

[1] Farm budget number.

Item:	*Amount*
Gross farm income	$19,241
Less farm expenses (including interest)	13,077
Net farm income	6,164
Less equity accumulation	590
Less family and operators labor return	3,272
Less management return	616
Payment capacity, total	1,686
Payment capacity, per acre	14.05

Recommended water charge

A $13 per acre water charge is recommended for irrigation service to full service and supplemental service lands. This would allow the water users about 10 percent contingency allowance. A uniform charge for all irrigable lands regardless of present irrigation status is

ATTACHMENT
Malad Project No. 2726
Deficiency Letter

Your application fails to comply with sections 4.51 (b) and 4.51 (g) of the Commission's regulations which require Exhibits A and F, respectively, to include a description and drawings of all major project facilities. Your application discusses the Cove Creek diversion facilities in several places but no such facilities are included in these exhibits or shown on Exhibit G of the application. In order for us to fully understand and assess the project, please revise Exhibits A, F and G to include the information on the Cove Creek diversion facilities required by the regulations. If any changes in the project boundary are required to incorporate the Cove Creek diversion, you must show such changes on the revised Exhibit G. You have 90 days to correct this deficiency and file the revised exhibits with the Commission. Please file complete exhibits, not just the information added to the exhibits.

In addition to Exhibits A, F and G, Exhibits B and E must be corrected and the following information provided:

Exhibit B— Describe the water available at the Cove Creek diversion structure and the quantity diverted throughout the year. Please provide this information as a flow frequency diagram depicting both the available and diverted flow. Also provide the maximum capacity of the diversion structure and describe what happens to water that is not diverted from Cove Creek.

Exhibit E (Section E.1.8)—Incorporate the Cove Creek diversion into the discussion of project operation.

Exhibit E (Section E.2)—Discuss the water quality standards applicable to Cove Creek, including the timing of the salmonid spawning standards, if applicable, and a description of Cove Creek's water quality.

Exhibit E (Section E.3)—Describe the Cove Creek channel and the watercourse used by water not diverted into the upper Malad flume. This should include the length of the reach between the diversion dam and Malad River, a description of any fish passage obstructions and barriers, and a description of aquatic and riparian habitat below the diversion structure.

IDAHO POWER
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IDAHO POWER COMPANY
P.O. BOX 70
BOISE, IDAHO 83707

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Department of Water Resources

37-2471
37-2128

Lewis Wardle
Project Manager
Hydro Relicensing Department

(208) 388-2964
(208) 388-6902 (fax)
e-mail lwardle@idahopower.com

December 6, 2002

Karl Dreher
Idaho Department of Water Resources
1301 North Orchard Street
Boise, ID 83706-2237

RE: FERC's Letter dated November 27, 2002 regarding the *Malad Hydroelectric Project: New License Application* (FERC No.2726) Deficiency Letter

Dear Karl Dreher:

Please find enclosed a copy of the letter received by Idaho Power Company (IPC) on December 2, 2002 regarding a deficiency in the *Malad Hydroelectric Project New License Application* that was filed in July of this year. As required by the FERC in the letter, IPC is informing you of this notice and initiating consultation with your agency regarding this matter.

In the letter, the FERC has requested that IPC provide more information regarding the Cove Creek spring resource and hydrology. The Cove Creek spring is diverted into the upper Malad flume for generation purposes. If your agency has information that would help IPC respond to the FERC's letter, please provide IPC with that information within 30 days of the date of this letter. Thank you for taking the time to respond to this letter.

Please contact me at the numbers listed above, if you have any questions regarding this request for information.

Sincerely,

L. Lewis Wardle

Enclosure: FERC letter dated November 27, 2002
Consulting Agency Distribution List

CC: Magalie Salas (FERC)
Relicensing Team (IPC)

Idaho Power Company
New License Application
Malad Hydroelectric Project
(FERC No. 2726)
Cove Creek Consultation

Doug Abderhalden	Idaho Department of Environmental Quality
Doug Howard	Idaho Department of Environmental Quality
Scott Grunder	Idaho Department of Fish and Game
Steve Huffaker	Idaho Department of Fish and Game
Dave Parrish	Idaho Department of Fish and Game
Fred Partridge	Idaho Department of Fish and Game
Karl Dreher	Idaho Department of Water Resources
Dan Tomich	Idaho Department of Water Resources
Jim Esch	U.S. Fish and Wildlife Service
Robert Ruesink	U.S. Fish and Wildlife Service

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C.

Office of Hydropower Licensing

Project Nos. 503, 1971,
1975-014, 2055, 2061-004,
2726, 2777-007, 2778-005

DATE: DEC 18 1997

MEMORANDUM TO: The Party Addressed

SUBJECT: Scoping document 2 for the (1) cumulative analysis of the Snake River Basin and (2) the project-specific analysis for the Bliss Project (FERC No. 1975-014), Lower Salmon Falls Project (FERC No. 2061), Upper Salmon Falls Project (FERC No. 2777), and Shoshone Falls Project (FERC No. 2778-005)--Idaho

The Federal Energy Regulatory Commission is evaluating issues associated with new licenses for the continued operation of the Bliss, Lower Salmon Falls, Upper Salmon Falls, and Shoshone Falls Hydroelectric Projects, located on the Snake River in Twin Falls, Elmore, Gooding, and Jerome Counties, Idaho, along with the cumulative effects of these four projects and four other Idaho Power Company projects (C.J. Strike, Upper and Lower Malad, Hells Canyon, and Swan Falls Projects).

Scoping Document 2 is enclosed for your information. We revised Scoping Document 1, dated June 1997, based on your written comments. Key changes to Scoping Document 1 are identified in italicized, bold type.

We will be issuing an additional information request and responding to pending additional study requests shortly.

You may direct questions to Alan Mitchnick at (202) 219-2926, or John Blair at (202) 219-2845.

Attachment: Scoping Document 2

SCOPING DOCUMENT 2

I. CUMULATIVE ANALYSIS OF THE SNAKE RIVER BASIN

and

II. PROJECT-SPECIFIC ANALYSIS

BLISS PROJECT (P-1975)
LOWER SALMON FALLS PROJECT (P-2061)
UPPER SALMON FALLS PROJECT (P-2777)
SHOSHONE FALLS PROJECT (P-2778)

December 1997

Federal Energy Regulatory Commission
Office of Hydropower Licensing
Washington, D.C.

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Department of Water Resources

37-02128

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SCOPING DOCUMENT 2

I. CUMULATIVE ANALYSIS OF THE SNAKE RIVER BASIN

II. PROJECT-SPECIFIC ANALYSIS

Bliss (P-1975)
Lower Salmon Falls (P-2061)
Upper Salmon Falls (P-2777)
Shoshone Falls (P-2778)

1.0 INTRODUCTION

On December 20, 1995, Idaho Power Company (Idaho Power) filed license applications with the Federal Energy Regulatory Commission (Commission) for the continued operation and maintenance of the existing Bliss, Lower Salmon Falls, and Upper Salmon Falls Hydroelectric Projects.[1] Idaho Power filed an application for the Shoshone Falls Project on May 29, 1997. These four projects are located within a 57-mile-long reach of the Snake River. Between November 1998 and June 2008, Idaho Power Company is expected to file applications to relicense an additional four projects (7 dams) in the Snake River Basin. The location of the eight projects is shown in figure 1 and summarized in table 1.

The Commission, under the authority of the Federal Power Act (FPA),[2] may issue licenses for up to 50 years for the construction, operation, and maintenance of non-federal hydroelectric developments.

Under the Commission's regulations, issuing a licensing decision for any project first requires preparation of either an Environmental Assessment (EA) or Environmental Impact Statement (EIS), in accordance with the National Environmental Policy Act (NEPA) of 1969.[3]

---

1 The licenses for the Lower Salmon Falls and Bliss Projects expire on December 23, 1997, and February 28, 1998, respectively. The Commission authorized the advancement of the expiration date of the Upper Salmon Falls Project from May 31, 1999, to November 1, 1998.

2 U.S.C. Sect. 791(a)-825(r).

3 Pub. L. 91-190. 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, §4(b), Sept. 13, 1982

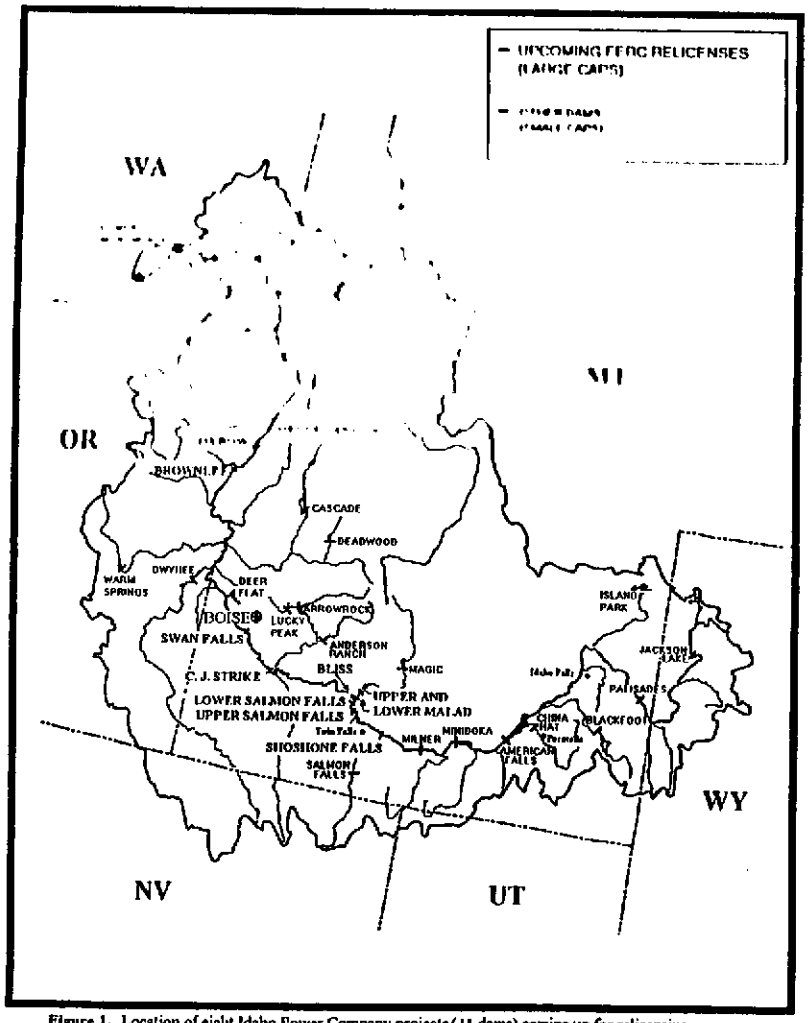


Figure 1. Location of eight Idaho Power Company projects (11 dams) coming up for relicensing in next 15 years along with other selected dams in the Snake River Basin.

Table 1. Description of Idaho Power relicense projects.

Project Name		Location	FERC No.	Expected Filing Date*	Snake River mile
Bliss		mainstem Snake River, about 6 miles west of Bliss, in Gooding, Twin Falls, and Elmore Counties, Idaho	1975	December 1995	560.0
Lower Salmon Falls		mainstem Snake River, about 2 miles north of Hagerman, in Gooding and Twin Falls Counties, Idaho	2061	December 1995	573.0
Upper Salmon Falls		mainstem Snake River, about 3 miles south of Hagerman, in Gooding and Twin Falls Counties, Idaho	2777	December 1995	580.0
Shoshone Falls		mainstem Snake River, about 4 miles east of Twin Falls, in Jerome and Twin Falls Counties, Idaho	2778	May 1997	615.0
C.J. Strike		mainstem Snake River about 20 miles southwest of Mountain Home, in Owyhee County, Idaho	2055	Nov. 1998	494.0
Upper and Lower Malad	Upper Malad development	Malad River, lowermost part of project located 300 feet from the confluence with the Snake River, about 2 miles south of Hagerman and 3 miles north of Bliss, in Gooding County, Idaho	2726	July 2002	enters the Snake River at river mile 571.5
	Lower Malad development				
Hells Canyon	Brownlee development	mainstem Snake River, in Washington and Adam Counties, Idaho, and Wallowa and Baker Counties, Oregon	1971	July 2003	284.6
	Oxbow development				272.2
	Hells Canyon development				247.0
Swan Falls		mainstem Snake River, about 35 miles south of Boise, Ada and Owyhee Counties, Idaho	503	June 2008	458.0

* Commission regulations require applicants for a new license to file an application at least 2 years prior to expiration of the project license.

We have concluded that issuing licenses for the first four projects would be a major federal action significantly affecting the quality of the human environment--thus we would prepare a multi-project EIS for these four projects.

Approaches to Site-specific and Cumulative Impacts

Evaluating cumulative effects of the Idaho Power projects in the Snake River Basin provides a challenge given that four applications have already been filed and applications for the remaining four projects will be filed during the next 12 years. In developing approaches for assessing cumulative impacts, staff considered the following factors--the timing of the expiration of the licenses, the geographic location of these projects, and the availability of data with which to conduct a cumulative impact assessment.

Because of the substantial interest in relicensing the Snake River projects, staff initially prepared a discussion paper outlining two approaches (approaches A and B), held a public meeting, and solicited comments. Based on the comments, we agreed to delay selection of an approach until after scoping. We also added two additional approaches (approaches C and D) to Scoping Document 1. The four approaches are summarized below. (See appendix A for more detailed information on the approaches.)

Approach A--Staff would prepare a site-specific EIS for the Bliss, Lower Salmon Falls, Upper Salmon Falls, and Shoshone Falls Projects, which would include a cumulative analysis of all eight Idaho Power relicense projects--but only for resources affected by the first four projects (anadromous fish would be deferred). Separate environmental documents would be prepared for the remaining projects (C.J. Strike, Upper and Lower Malad, Hells Canyon, and Swan Falls Projects) as these applications are filed; additional or revised cumulative analyses would be included as appropriate.

Approach B--Staff would first conduct a basin-wide cumulative analysis for all resources, then proceed with site-specific EIS's tiering off the cumulative analysis. The analysis would stand apart from, but be integrated with, separate and more detailed EIS's covering the project-specific impacts of the projects. The cumulative analysis would be updated as new information is developed.

Approach C--Staff would initiate a basin-wide cumulative analysis for all resources (as in approach B), but would simultaneously begin preparation of the project-specific EIS for the Bliss, Lower Salmon Falls, Upper Salmon Falls, and Shoshone Falls (as in approach A). Both documents would be issued concurrently. Subsequent environmental documents would tier off of the cumulative analysis.

Approach D--similar to C, but staff would produce separate reports for certain key resources.[4]

Scoping Comments

In response to SD1, we received six recommendations on the approach (see Section 2.2). Idaho Department of Fish and Game recommended approach A, but recommended that we proceed now with multi-project analysis for sturgeon and anadromous fish. The National Marine Fisheries Service prefers approach B. Idaho Power recommends approach C because it believes that this approach best addresses its concern with the potential for extensive reopeners. The Forest Service also recommends approach C, but requests that study plans for the Hells Canyon Project that are relevant to the cumulative analysis be identified and deferred until the cumulative analysis is completed. The Environmental Protection Agency supports a combination of approaches A and B by using either approach C or D. American Rivers et al. favors approach D. Interior, although not endorsing a specific approach, recommends that the Commission should begin the cumulative effects analysis now, with initiation of the site-specific analysis for the first four projects.

Although no consensus on the approach was reached during scoping, it is clear that there is little support for any approach that substantially delays consideration of the first four projects and that there is support for beginning a cumulative analysis on the anadromous fish issue now.

Selected Approach

We have selected approach A, along with an initiation of a review of anadromous fish issues involved in the relicensings of the Idaho Power projects.

Using this approach, we would minimize the delays in acting on the first four relicense applications; analyze cumulative effects on the resources affected by these projects; and evaluate projects located close to each other at the same time to the extent possible. Separate reports (or appendices) on certain cumulative issues (e.g., water quality) would be issued simultaneously with the DEIS where appropriate.

We see no need to analyze the anadromous fish issue in detail[5] in the environmental document for the first four projects for the following reasons:

---

[4] *American Rivers approach contemplates the Commission issuing annual licenses with protection measures in the event the cumulative analysis is delayed. In the past, the Commission has only conditioned annual licenses in extraordinary circumstances.*

[5] *The EIS will include a limited analysis of the anadromous fish issue, focusing primarily on the reservation of authority needed to address future anadromous fish passage issues.*

- *The relationship between the first four projects and the downstream projects in terms of anadromous fish is limited given the limited storage of these four projects and the downstream obstacles that must be overcome before serious consideration can be given to restoring anadromous fish upstream of Bliss dam*

- *Any unresolved anadromous fish issues (such as future fish passage) at the first four projects can be dealt with through reopeners*

- *Information on anadromous fish for the Hells's Canyon Project is incomplete--Idaho Power is just initiating its relicensing studies (most won't be complete until 2000-2001)*

- *The Bureau of Reclamation's Snake River Resources Review, which would provide information that could be used by the Bureau to alter operation of its projects--and thus could significantly affect the timing and quantity of flows in the project reaches--won't be completed until 2000*

- *The National Marine Fisheries Service's existing Biological Opinion on endangered Snake River salmon species will be reissued after 1998*

Although we do not plan to initiate a cumulative analysis of anadromous fish at this time, we do not plan to ignore the anadromous fish issue. We will initiate a preliminary review of the anadromous fish issues associated with the relicensing of the Idaho Power projects. Given the great regional interest and the expected controversy in this issue, getting an early start evaluating the anadromous fish issue would be prudent. Our early involvement will allow us to: evaluate information and study needs; coordinate with the collaborative team and with the Bureau of Reclamation's Snake River resources review; and develop analytical tools earlier in the process. This effort will compliment and be coordinated with the Commissions's discussions with the National Marine Fisheries Service on the impacts of the Hells Canyon Project on listed salmon species.[6]

Concerning reopeners, we have determined that the need for reopeners to address unresolved issues for the first four projects would be limited. Based on a review of scoping comments and our preliminary analysis, potential reopeners would likely be limited to fish passage questions.

We will hold workshops and work with the Snake River Relicensing Collaborative resource workgroups as necessary to better define issues and develop analytical techniques to

[6] *Letter from James J. Hoecker, Chairman, Federal Energy Regulatory Commission, Washington, D.C., to William Stelle, Jr., Regional Administrator, National Marine Fisheries Service, Seattle, Washington, December 3, 1997.*

deal with certain issues (such as water quality modeling) for both the cumulative analysis and anadromous fish review.

Questions concerning Snake River relicensing should be directed to Alan Mitchnick, Chief, Lands Review Section, West Branch, FERC, at (202) 219-2826, *or John Blair, Snake River Relicensing Environmental Coordinator, FERC, at (202) 219-2845.*

2.0 SCOPING

Scoping is the process used to identify issues, concerns, and opportunities associated with a proposed action.

2.1 Purposes of Scoping

The purposes of the scoping process are as follows:

- Invite participation of federal, state, and local agencies, Indian tribes, and other interested persons to identify significant environmental and socioeconomic issues related to the proposed action

- Determine the depth of analysis and significance of issues to be addressed in the EIS

- Identify how the projects would or would not contribute to cumulative impacts to the project area and the Snake River Basin

- Identify reasonable alternatives to the projects that we should evaluate

- Eliminate from detailed study the issues and resources that don't require detailed analysis during review of the projects

We issued Scoping Document 1 (SD1) on June 5, 1997,[7] *to enable appropriate resource agencies, Indian tribes, and other interested parties to more effectively participate in and contribute to the scoping process. In SD1, we requested clarification of preliminary issues concerning the Bliss, Lower Salmon Falls, Upper Salmon Falls, and Shoshone Falls Projects and the Cumulative Analysis of the Snake River Basin and identification of any new issues that needed to be addressed in the environmental documents. We revised SD1*

[7] *Copies of SD1 were mailed to all entities included in appendix E on June 11, 1997. A notice of intent to prepare an EIS and conduct scoping meetings and a site visit was published in the Federal Register on June 11, 1997 (volume 62, no. 112, pp. 31815-31816), and in local newspapers on July 1, and July 8, 1997.*

following the scoping meetings and after reviewing comments filed during the scoping comment period. Scoping Document 2 presents our current view of issues and alternatives to be considered in the EIS. Additions are in bold and italic type.

2.2 Scoping Meetings and Written Comments

We conducted two scoping meetings concerning project-specific impacts associated with the Bliss, Lower Salmon Falls, Upper Salmon Falls, and Shoshone Falls Projects--on July 15, 1997, in Twin Falls, Idaho, and on July 17, 1997, in Boise, Idaho. We also held a separate scoping meeting on July 18, 1997, in Boise, Idaho, regarding the cumulative analysis of Idaho Power's eight relicense applications in the Snake River Basin. Announcement of the scoping meetings and site visit was published in local newspapers and in the Federal Register. A court reporter recorded the scoping meetings.

We also held a site visit to the Bliss, Lower Salmon Falls, Upper Salmon Falls, and Shoshone Falls Projects on July 16, 1997.

In addition to comments received at the scoping meetings, the following entities filed written comments on scoping document 1:

Entity	Date of Letter
Duane Reynolds	July 6, 1997
Middle Snake River Recreation Work Group	July 13, 1997
Vince Thompson	July 15, 1997
Dana Olson-Elle	July 15, 1997
Magic Valley Fly Fishers	July 16, 1997
Country Club Estates	July 21, 1997
Elmore County Wildlife Club	August 5, 1997
Twin Falls Area Chamber of Commerce	August 11, 1997
Idaho Department of Water Resources	August 14, 1997
Columbia River Inter-Tribal Fish Commission	August 14, 1997
Twin Falls County Parks and Recreation Advisory Commission	August 14, 1997
Environmental Protection Agency	August 14, 1997
American Rivers, Idaho Rivers United, Hells Canyon Preservation Council, Idaho Conservation League, Idaho Wildlife Federation, Friends of the Earth, and Federation of Fly Fishers	August 15, 1997

Entity	Date of Letter
Idaho Power Company	August 15, 1997
Wallowa-Whitman National Forest	August 15, 1997
Idaho Departments of Fish and Game and Parks and Recreation	August 15, 1997
George Coiner	August 15, 1997
Nez Perce Tribal Executive Committee	August 18, 1997
Department of the Interior	September 3, 1997
Oregon Department of Fish and Wildlife	October 23, 1997
National Marine Fisheries Service	November 10, 1997

All comments received are part of the Commission's official file for the projects. Copies of the official file are available through the Records and Information Management System (RIMS) in the Public Reference Room. Copies can also be obtained by writing or faxing (202-208-2320) your request to the Public Reference Room at the following address:

Federal Energy Regulatory Commission
Public Reference & Files Maintenance Branch
888 First Street, NE, Room 2-A
Washington, DC 20426
Attention: Mr. William G. McDermott, Chief

After careful consideration of all scoping input, we've revised SD1. Our responses to comments and any respective changes in the scoping document are shown as bold type. The general concerns raised by participants in the scoping process are summarized below by subject area. The summaries don't include every oral and written comment made during the scoping process. For instance, we have not addressed comments that are recommendations for specific information requests or license conditions. Such comments will be addressed in future additional information requests and in the EIS. We will request final terms, conditions, recommendations, and comments when we issue our Ready for Environmental Analysis notice after all additional information that we may request is filed.

Project-specific Issues

<u>No Action Alternative</u>

Many commenters (Interior, Nez Perce Tribal Executive Committee, American Rivers et al.) disagree with our no-action alternative. They believe that the no-action alternative should be license denial.

The no-action alternative is a difficult concept to apply to relicensing.[8] Because there could be very serious socioeconomic and environmental impacts from license denial, our position has and continues to be that license denial, which would involve project retirement, is an action alternative; whereas, continued project operation under the terms of the existing license (status quo) is the better fit for the no-action concept in relicensing. The existing conditions represent the results of implementing past resource management decisions, and we agree with the Council on Environmental Quality's (CEQ) interpretation that in such a case, "no action" represents "no change" from current management direction.[9]

Baseline

Many entities continue to recommend that the environmental baseline must be the pre-project environment.[10] This issue has been addressed previously (see appendix A).

Project Retirement

EPA and American Rivers et al. recommend that we consider the alternative of project retirement in the project-specific EIS, but provided no specifics as to what project retirement should entail.

Because of the agency comments, we will examine project retirement in the project-specific EIS for the projects, but we do not believe that it's reasonable to look at dam removal. We provide additional support for not evaluating dam removal as a reasonable alternative in Section 3.3.4.

Thousand Springs Project

Interior recommends that the Commission investigate the benefits of removing Idaho Power's unlicensed Thousand Springs Hydroelectric Project, located upstream of the Upper Salmon Falls Project. This project is not under the Commission's jurisdiction, and thus the Commission has no authority to remove this project.

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8 *For a detailed discussion of this issue, see Public Service Company of New Hampshire Order granting application for a new license, 68 FERC ¶61,177 (August 1, 1994).*

9 *Council on Environmental Quality, Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations (40 CFR 1500-1508), printed in Federal Register volume 46, no. 55, pp. 18026-18038, March 23, 1981.*

10 *The Commissions's policy on baseline is found in the following two orders for the Cushman Project (FERC No. 460): (1) Declaratory order on nature of proceeding on application for a subsequent license after a minor part license expires, 67 FERC ¶61,152 (May 4, 1994); and (2) Order granting intervention and denying rehearing, 71 FERC ¶61,381 (June 22, 1995).*

Economic Evaluation of Non-power Resources

EPA and American Rivers et al. recommend including an economic evaluation of non-power resources for comparison with the value of project power. We consider this recommendation to be directed towards our methods of analyses and outside the issue-identification purposes of this scoping document. We would, however, include the economic value of environmental resources in our analyses, if we can reasonably determine what they are, and if this information would help us decide what level of enhancement to recommend.

Cumulative Issues

Non-FERC-jurisdictional Upper Basin Projects

The Columbia River Inter-Tribal Fish Commission commented that we should evaluate various alternative operational and structural configurations of non-jurisdictional hydroelectric and non-hydroelectric developments, including those of the Bureau of Reclamation and U.S. Army Corps of Engineers in the upper basin, in order to provide augmented flows for anadromous fish:

> *The EIS should provide alternatives that assure the timely passage of upper Snake irrigation water through all dams in the upper Snake Basin so that water can be delivered to best benefit anadromous fish production needs downstream of the projects...FERC should also identify alternatives that address the basin-wide modifications of federal and private dam operations to determine how flows for anadromous fish production can be provided.*

American Rivers et al. (Conservation Groups) " state:

> *The Conservation Groups believe that a rigorous analysis of existing water management above Milner Dam and in the major tributaries is required to determine how water management can be improved to reduce the environmental impacts caused by the lethal combination of low flows and hydroelectric dams, and to determine if there are opportunities for Idaho Power to increase flows through water acquisition or rental...the Conservation Groups recommend that FERC consult closely with the Bureau of Reclamation and the Idaho Department of Water Resources, to ensure that all relevant information is considered and potential flow improvement measures identified.*

The Federal Power Act only provides the Commission with the exclusive authority to issue and condition licenses for nonfederal hydropower projects on navigable waterways and federal lands. The Commission does not have authority to issue and condition licenses for non-hydropower projects, any federally operated project, or non-federal hydropower projects on unnavigable waters. Accordingly, the Commission does not have the authority to direct

The no-action alternative is a difficult concept to apply to relicensing.[8] Because there could be very serious socioeconomic and environmental impacts from license denial, our position has and continues to be that license denial, which would involve project retirement, is an action alternative; whereas, continued project operation under the terms of the existing license (status quo) is the better fit for the no-action concept in relicensing. The existing conditions represent the results of implementing past resource management decisions, and we agree with the Council on Environmental Quality's (CEQ) interpretation that in such a case, "no action" represents "no change" from current management direction.[9]

Baseline

Many entities continue to recommend that the environmental baseline must be the pre-project environment.[10] This issue has been addressed previously (see appendix A).

Project Retirement

EPA and American Rivers et al. recommend that we consider the alternative of project retirement in the project-specific EIS, but provided no specifics as to what project retirement should entail.

Because of the agency comments, we will examine project retirement in the project-specific EIS for the projects, but we do not believe that it's reasonable to look at dam removal. We provide additional support for not evaluating dam removal as a reasonable alternative in Section 3.3.4.

Thousand Springs Project

Interior recommends that the Commission investigate the benefits of removing Idaho Power's unlicensed Thousand Springs Hydroelectric Project, located upstream of the Upper Salmon Falls Project. This project is not under the Commission's jurisdiction, and thus the Commission has no authority to remove this project.

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the actions of many projects in the Snake River Basin, including projects owned and operated by the Bureau of Reclamation and the U.S. Army Corps of Engineers and all non-hydropower projects. Therefore, we will not assume the role of lead agency in developing, analyzing, and directing alternative structural and/or operational configurations of non-jurisdictional projects in the Snake River Basin.

We will, however, evaluate how the eight Idaho Power projects could be operated to be consistent with all relevant federal or state comprehensive plans for improving, developing, or conserving the waters of the Snake River Basin. In long plans for augmenting flows for anadromous fish [illegible] we will evaluate how the operation of the Idaho Power projects could be modified [illegible] the Bureau of Reclamation [illegible] plans and projects [illegible] be found in [illegible]

Basin wide Flow Augmentation

Idaho Department of Water Resources commented that the relicensing process is not intended to impose a reallocation of water in ways that interfere with proprietary water rights."

Idaho Departments of Fish and Game and Recreation and Parks commented that the Commission "intended to examine the effects of all salmon-related flow augmentation actions throughout the Snake River Basin whether or not the flow augmentation was related to the relicensing of the Idaho Power projects."

Our evaluation of flow augmentation will be limited to evaluating how flow augmentation would change baseline conditions in the Idaho Power reach; how Idaho Power projects could be coordinated with the flow augmentation; what changes are needed at the Idaho Power projects; and the effects of these changes on economic and environmental resources.

Watershed Analysis

The Forest Service requests that a watershed analysis be conducted for the Hells Canyon Project and that riparian/wetland habitat, bald eagles, peregrine falcons, MacFarlane's four-o clock, and native grassland and shrubs be evaluated at the 5th field hydrologic unit. The Forest Service suggests that a watershed analysis is a necessary part of the cumulative analysis.

The Forest Service's request for a watershed analysis for all of these resources focuses on the Hells Canyon Project area--thus we will defer consideration of a watershed analysis. Our cumulative effects analysis for MacFarlane's four-o-clock will be addressed in

the EIS prepared for Hells Canyon because of this species' restricted distribution in the Snake River to a portion of Hell's Canyon.

3.0 IDAHO POWER RELICENSES AND ALTERNATIVES

3.1 Bliss, Lower Salmon Falls, and Upper Salmon Falls Projects

The Bliss Project, built in 1941, involves 183.95 acres of Bureau of Land Management (BLM) land. The Lower Salmon Falls Project, built in 1910 involves 29.2 acres of BLM land and 58.06 acres of National Park Service (NPS) land (Hagerman Fossil Beds National Monument). The Upper Salmon Project, built in 1910, doesn't involve any federal lands. The location of the three projects is shown in figure 2.

3.1.1 Project Facilities

The **Bliss Project** (figure 3) consists of:

- A 364-foot-long, 38-foot-high concrete gravity dam and 216-foot-long spillway
- A 5-mile-long, 255-acre reservoir at elevation 2,654.0 feet above mean sea level (msl), with a total storage capacity of 11,100 acre-feet
- A powerhouse (integral with the dam) with a total capacity of 75 megawatts (MW), producing about 493 gigawatthours (GWh) annually
- A 10.5-mile-long, 138-kilovolt (kV) primary transmission line

The **Lower Salmon Falls Project** (figure 4) consists of:

- A 700-foot-long, 38-foot-high dam, consisting of a 31-foot-long powerhouse section, a 97-foot-long concrete bulkhead section, which includes an intake to the fish ladder; a 312-foot-long gated spillway section; a 180-foot-long overflow dam section, and an 80-foot-long left (west) abutment
- A 6.6-mile-long, 750-acre reservoir at elevation 2,798.0 feet msl, with a total storage capacity of 10,900 acre-feet
- A powerhouse with a total capacity of 60 MW producing about 343 GWh annually

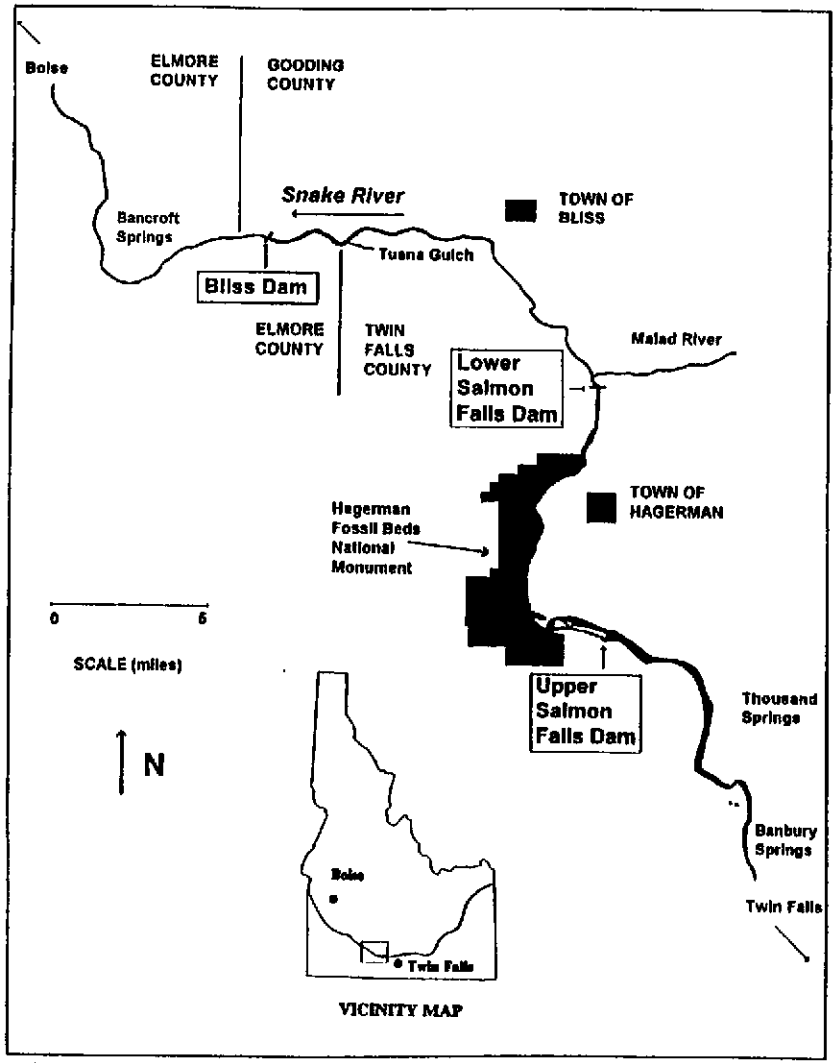


Figure 2. Location of the Bliss, Lower Salmon Falls, and Upper Salmon Falls Projects.

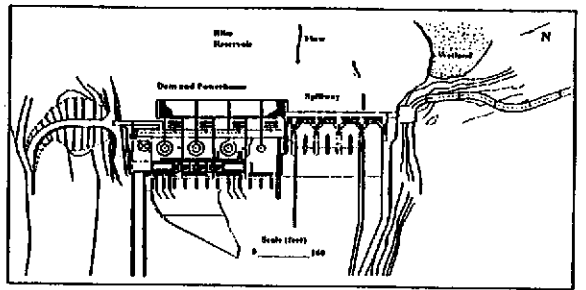


Figure 3. Project facilities for the Bliss Project (Source: Idaho Power, as modified by staff).

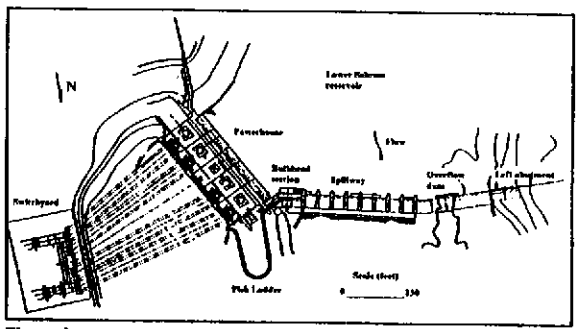


Figure 4. Project facilities for the Lower Salmon Falls Project (Source: Idaho Power, as modified by staff).

- Two 138-kV primary transmission lines (0.10- and 0.15-mile-long) from the switchyard to the King substation

The Upper Salmon Falls Project (figure 5) consists of:

- A 1,620-foot-long, 14-foot-high concrete dam, consisting of a 240-foot-long gated spillway section; a 610-foot-long gravity dam with flashboards; a 275-foot-long intake structure; and a 420-foot-long abutment gravity section

- A 5.8-mile-long, 50-acre reservoir at elevation 2,878.2 feet msl, with a total storage capacity of 600 acre-feet

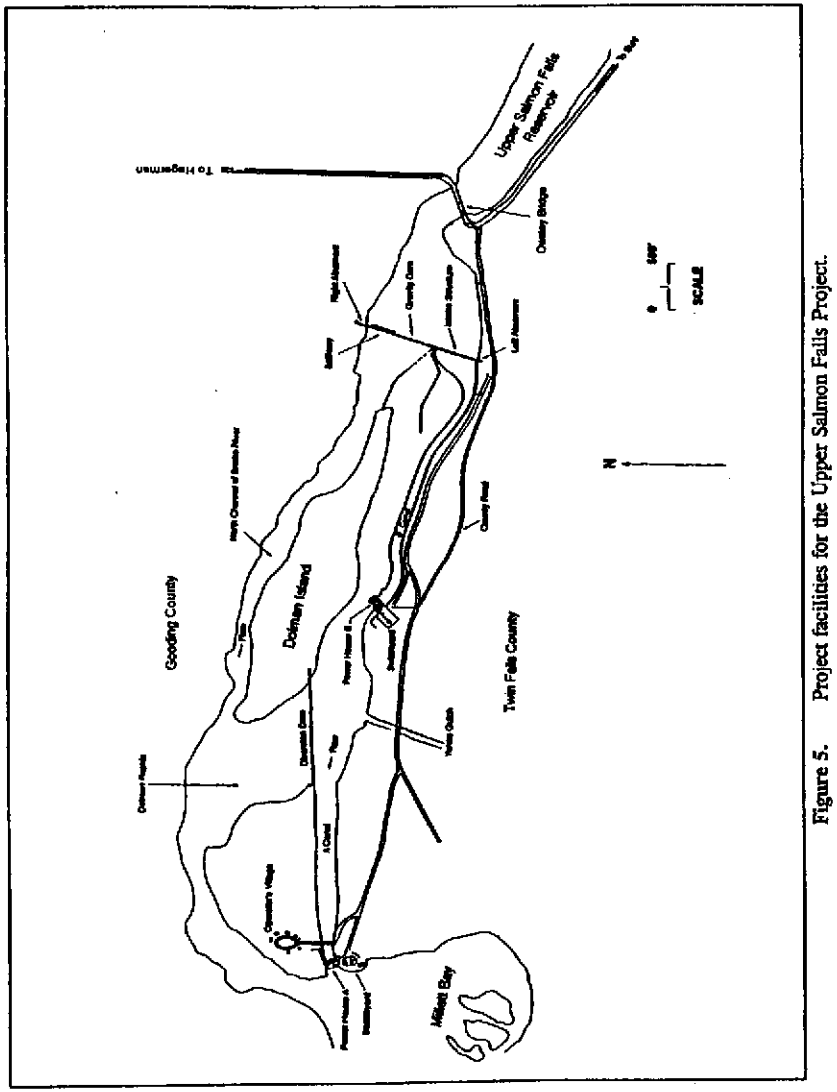


Figure 5. Project facilities for the Upper Salmon Falls Project.

- A 3,200-foot-long, concrete-lined canal
- A 1,380-foot-long, diversion structure across Dolman Rapids, separating the north channel from the main channel of the Snake River
- Two powerhouses (A and B), with a total capacity of 34.5 MW producing about 321 GWh annually
- A 1.8-mile-long bypassed reach

3.1.2 Proposed Project Operation

Figure 6 shows, schematically, the river-mile location, reservoir size, plant hydraulic capacity, and method of operation for the Bliss, Lower Salmon Falls, and Upper Salmon Falls Projects on the middle Snake River. Except for automating some of the plant operations, as described below, Idaho Power is not proposing any changes to the existing mode of operation.

Bliss Project

The Bliss powerhouse was automated in 1995 and is currently staffed 8 hours a day. During the unmanned periods the plant is controlled remotely, by an operator stationed at Idaho Power's Boise Bench Dispatch Center, located southeast of Boise.

Idaho Power operates the Bliss Project to help meet its peak hourly system loads; over a 24-hour period project releases are equal to inflow to the reservoir. The reservoir is maintained between elevation 2654.0 and 2649.0 feet msl. Operating within this range provides 1,250 acre-feet of useable storage.

Lower Salmon Falls

The Lower Salmon Falls Project is manually operated, with personnel on duty 24 hours per day, seven days a week. The project is operated to maintain reservoir levels between the elevations of 2792.0 and 2798.0 feet msl. With 4,100 acre-feet of useable storage, Idaho Power operates the project to help meet short-term (hourly) peak system loads. Idaho Power ***automated the project*** in 1996 for remote operation from the Boise Bench Dispatch Center. After automation, operators will be on-site eight hours per day and on call during the remaining time.

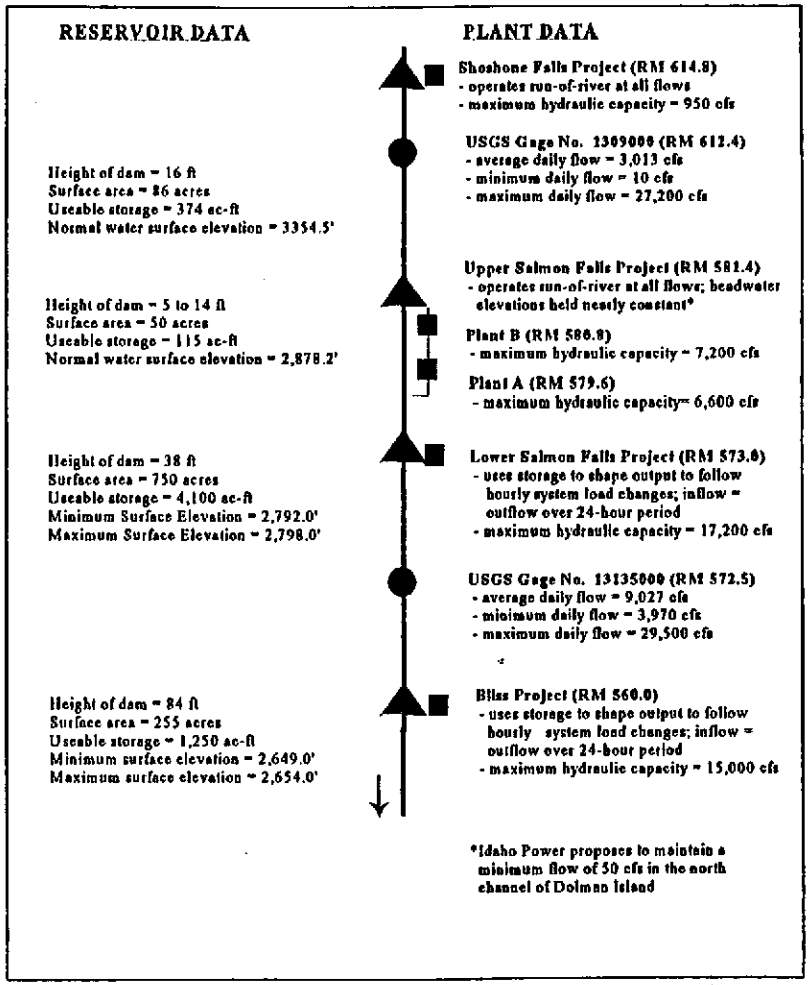


Figure 6. Reservoir and plant data for the Bliss, Lower Salmon Falls, Upper Salmon Falls, and Shoshone Falls Hydroelectric Projects.

Upper Salmon Falls

The Upper Salmon Falls Project has two powerhouses: plant A is located 1.8 miles downstream of the Upper Salmon Falls dam and plant B is about 0.6 mile below the dam. Plant A is manned 24 hours a day and plant B is manned from 7:30 a.m. to 4:30 p.m.; when plant B is not manned, it is controlled remotely from plant A. Idaho Power ***automated plant A in 1997, and plans to automate plant B in 1998.***

Idaho Power proposes to continue to operate the Upper Salmon Falls Project run-of-river under all river flow conditions. Except for minor fluctuations caused by changing inflows, headwater elevation is held constant at 2841.3 feet msl at Plant A and 2878.2 feet msl at Plant B. The project reservoir provides a useable storage of 115 acre-feet.

3.1.3 Proposed Protection and Enhancement Measures

Idaho Power proposes to operate the projects as described above, with the following protection and enhancement measures. These measures are discussed in detail in volume 6 of the technical appendices of the license applications.

Water Quality and Quantity

- Continue its involvement in the Middle Snake River *Watershed* Management Plan
- Harvest aquatic macrophytes at all three projects
- Provide a minimum flow of 50 cfs in the north channel at the Upper Salmon Falls Project
- Monitor temperature and dissolved oxygen at all three projects to ensure that state standards are met

Aquatic Resources

- Stock fish in Bliss (undetermined numbers of warmwater fish species), Lower Salmon Falls (23,000 catchable-sized rainbow trout), and Upper Salmon Falls (6,000 catchable-sized rainbow trout) reservoirs
- Continue its involvement in the development of a white sturgeon conservation plan
- Protect spring habitat for aquatic endangered species, Idaho species of special concern, and rainbow trout spawning

- Continue its involvement in the development of a snail conservation plan

Terrestrial Resources

- Preserve, enhance, and manage 76 acres of the 425-acre Thousand Springs Preserve, now owned and operated by The Nature Conservancy, which supports sensitive riparian habitats, springs, and sensitive plants (Idaho Power has contributed about $500,000 towards the purchase of the preserve.)

- Implement the following enhancement/protection measures at Banbury Springs: (1) protect the rare water birch (*Betula occidentalis*) community from further degradation, (2) revegetate disturbed areas, and (3) monitor the revegetation efforts and the continued health of the forest

- Provide long-term protection of the riparian vegetation associated with Dolman Rapids through continued maintenance of the barbed wire fence Idaho Power constructed in 1992 to prevent cattle from straying into the riparian vegetation and entering the streambed

- Preserve riparian resources on the applicant's existing landholdings at Bancroft Springs, Lower Salmon Falls, and Tuana Gulch by: (1) developing a land management plan for each area, (2) removing grazing through fencing or agreements with the Bureau of Land Management, (3) revegetating severely disturbed areas, (4) installing sediment traps at Tuana Gulch, and (5) maintaining and monitoring revegetated areas

- Provide additional protection to heron rookeries by protecting and enhancing habitat conditions of islands owned by Idaho Power

- Create a preserve for chatterbox orchid (*Epipactus gigantea*) at Banbury Springs

- Create a preserve for Torrey's blazingstar (*Mentzelia torreyi* var. *acerosa*) at Tuana Gulch

- Enhance weed control on Idaho Power lands

Aesthetic Resources

- Preserve and protect the aesthetic value of Bancroft Springs, Banbury Springs, and Thousand Springs

- Prepare an Aesthetic Resource Protection Plan

- At Upper Salmon Falls, landscape an area immediately adjacent to an existing visitor overlook

Cultural Resources

- Implement cultural resources management plans to maintain the historical integrity of cultural resources at the projects

- Establish a 375-acre cultural research preserve to protect prehistoric and historic archeological sites in the preserve, and to support innovative archeological research that would be applicable to other projects

- Construct and maintain interpretive kiosks to educate the public about Native American use of the project areas

Recreational Resources

- Continue to operate and maintain the Upper Salmon Falls powerhouse 'A' picnic area

- Enhance the Owsley Bridge boat launch facility by enlarging the parking area, installing a vault toilet, improving the boat ramp and dock facilities, graveling the parking area, and redesigning traffic patterns within the facility

- Enhance the Lower Salmon Falls Park by increasing the parking area, providing a new restroom facility, improving the boat ramp and dock facilities, paving roads and parking areas, adding a group picnic shelter, landscaping, and redesigning traffic patterns within the park

- Enhance the Lower Salmon Falls whitewater access below the Lower Salmon Falls dam by graveling the parking area, providing a portable toilet (seasonal), and improving the float boat ramp

- Enhance the Snake/Malad Rivers whitewater access site by enlarging the parking area, providing a portable toilet (seasonal), and improving the float boat ramp

- Enhance the Bliss reservoir boat launch access area by obtaining a long-term lease of the property, enlarging the parking area, providing a vault toilet and additional picnic sites, and improving the boat ramp and dock

- Continue to operate and maintain the existing Bliss day-use park facility

- Provide buffer zones at developed recreation facilities and special resource value areas--through such things as signs, safety/no wake buoys, and fencing--to ensure public safety and protect natural resources

- Consult with resource agencies every 10 years to decide if a needs assessment is necessary for reviewing the adequacy of the recreation plan

- Provide monetary assistance to the National Park Service to enhance environmental education and visitor information in the Hagerman Fossil Beds National Monument and Upper Salmon Falls and Lower Salmon Falls project vicinities.

3.1.4 Additional Study Requests

In response to the notice of tendering of the application for the Bliss, Lower Salmon Falls, and Upper Salmon Falls Projects, issued on January 4, 1996, nine entities filed 75 study requests (appendix B).

3.2 Shoshone Falls Project

3.2.1 Project Facilities

The project, initially built between 1901 and 1909, involves *4.85* acres of lands administered by BLM. Major facilities (figure 7) include:

- A 779.6-foot-long (average height of 16 feet) concrete diversion dam located above the crest of Shoshone Falls, consisting of four sections separated by rock islands, three of which function as uncontrolled overflow spillway sections, and a fourth, 380-foot-long gated spillway section fitted with 5-foot-high wooden slide gates

- A 1.8-mile-long, 86-acre reservoir at normal operating elevation of 3,354.5 feet msl, with a total storage capacity of 1,500 acre-feet and a usable storage of *374* acre-feet

- A 450-foot-long tunnel and 120-foot-long, 10-foot-diameter penstock

- A powerhouse located on the north bank of the river downstream of Shoshone Falls with three units with a total generating capacity of 12.5 MW, producing about 110 GWh annually

- A 100-foot-long tailrace

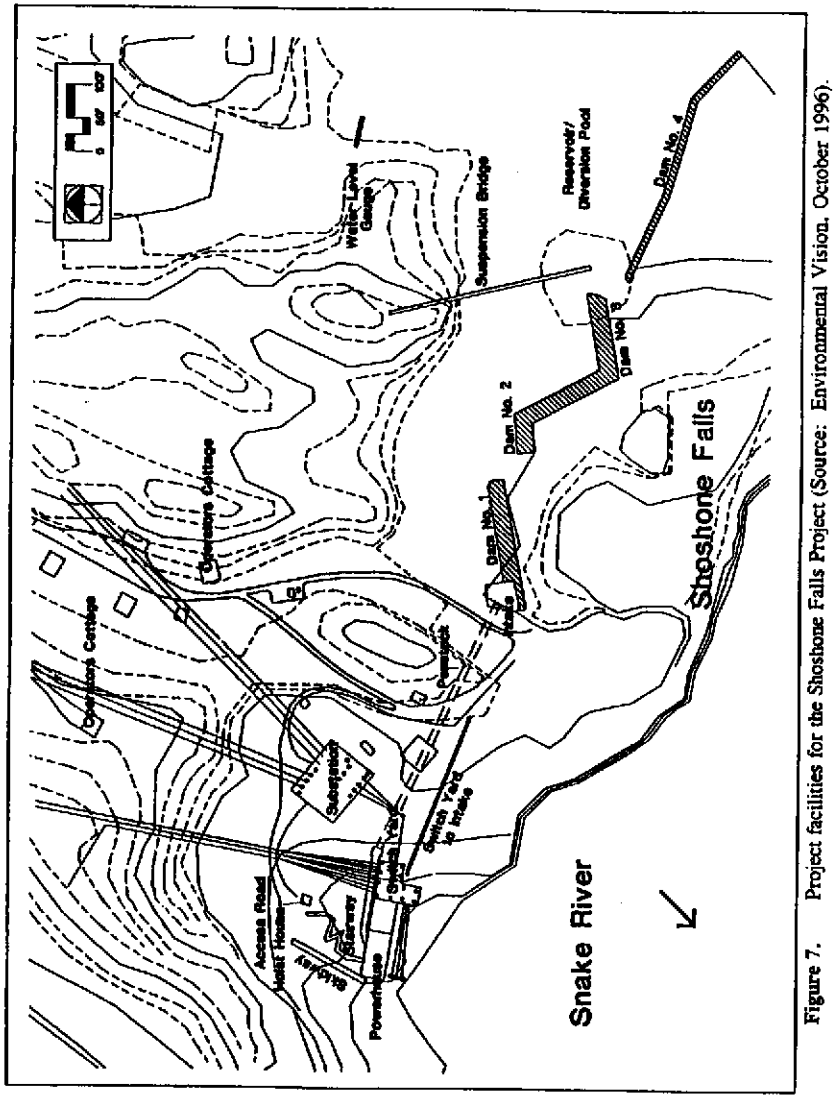


Figure 7. Project facilities for the Shoshone Falls Project (Source: Environmental Vision, October 1996).

3.2.2 Proposed Project Operation

The Shoshone Falls Project is manually operated, with personnel on duty eight hours a day. Idaho Power proposes to continue operating the project run of river by controlling the flow through the project to maintain the headwater elevation at or at the crest of the overflow spillway. The headwater elevation is [illegible] and the plant personnel are on-call when the plant is unmanned. [illegible] and made the plant in 1928 enabling remote operation [illegible]

All of the [illegible] capacity [illegible] power the [illegible] figure 4.

3.2.3 Proposed Protection and Enhancement Measures

Water Quality and Quantity

- Adopt and fully implement the Middle Snake River *Watershed* Management Plan
- Monitor water temperature and dissolved oxygen in powerhouse releases from June 15 through October 15

Aquatic Resources

- Establish a sport fishery in the reservoir by annually stocking 2,500 catchable-sized trout

Terrestrial Resources

- Develop artificial wetlands at the LQ and LS Drains

Aesthetic Resources

- Assure a minimum flow over the falls of 300 cfs from April 1 through *Labor Day* during daylight hours

Cultural Resources

- Construct signs depicting history of hydropower development in the project area
- Conduct limited data recovery at rock shelters within the project area

- Construct interpretive kiosks on Native American presence in the project area
- Develop a permanent exhibit at the Herrett Museum, College of Southern Idaho, Twin Falls, and a traveling exhibit to depict contributions of Euro-Americans and Chinese miners to local history
- Document and remove stone operator's cottage 072

Recreational Resources

- Invest $50,000 toward recreational facility enhancements in the vicinity of the Shoshone Falls Project area
- Match, dollar for dollar, expenditures toward recreational or viewing opportunities in Shoshone Falls Park
- Develop and implement an interpretation and information plan for the public

3.2.4 Additional Study Requests

On June 13, 1997, the Commission issued a notice requesting additional study requests for the Shoshone Falls Project. We received requests for three studies from Idaho Department of Fish and Game (appendix B).

3.3 Alternatives

3.3.1 Staff's Modification to Idaho Power's Proposed Action

We will consider alternative mitigation and enhancement measures not proposed by the applicant. Alternative measures could include recommendations by resource agencies, other organizations, Indian tribes, the general public, or the staff. We will assess the environmental effects of these measures. To the extent that these measures would reduce the power production from the proposed project, we will evaluate the costs and any fossil-fueled-generation contributions to airborne pollution.

Specifically, we will consider recommending that the projects operate run-of-river at all times to reduce environmental impacts associated with wide and/or rapid fluctuations in the project reservoirs and in downstream river sections. Environmental, economic, and operational consequences of this alternative will be evaluated.

We will develop a preferred alternative for the projects based on a balancing of the expected benefits and costs of the proposed action and the recommendations provided by all stakeholders.

3.3.2 Project Retirement (No Dam Removal)

This alternative would involve denial of the relicense application and surrender or termination of the existing license with appropriate conditions. This alternative would involve retaining the dams and reservoirs and disabling or removing equipment used to generate power. Project works would remain in place and could be used for historic or other purposes. This would require the Commission to identify another government agency willing and able to assume regulatory control and supervision of the remaining facilities (such as project dams, lakes, and existing recreational facilities).

3.3.3 No Action

Under the no-action alternative, the projects would continue to operate under the terms and conditions of their existing licenses, and no new environmental protection, mitigation, or enhancement measures would be implemented. We will use this alternative to establish the baseline environmental *and economic* conditions for comparison with other alternatives.

3.3.4 Alternatives Considered But Eliminated from Detailed Study

At present, we are proposing to eliminate the following alternatives from detailed study in the EIS.

Project Retirement (Dam Removal)

Under this alternative, project retirement would be accomplished by removing one or more of the project dams. This alternative would involve surrender or termination of the existing license or licenses with appropriate conditions. Existing recreation facilities would be operated and maintained by other entities or removed. Project retirements with dam removal would have the following effects.

- ***The energy generated by one or more of the projects would be lost. .. Historically, the four projects have produced about 1,267 GWh of electricity per year. If the energy was no longer available, it would have to be replaced by an alternative source of energy with its associated environmental effects (including emissions of air pollutants)***

- ***Project-generated employment and project-generated tax revenues would be lost***

- ***The environmental enhancements currently proposed by Idaho Power (see sections 3.1.3 and 3.2.3), including preservation of spring habitat and recreational enhancements, and any additional enhancement measures required by the Commission, would be foregone***

- ***Short-term increases in downstream turbidity and sedimentation and temporary increases in noise, dust, exhaust emissions, and traffic in the project vicinity during dam removal activities would result***

- ***Loss of over 1,000 acres of flatwater would result if all four projects were removed--the existing recreational benefits attributed to one or more project's reservoirs (water skiing, swimming, boating, fishing) would be lost or substantially reduced, with related economic losses to local communities***

- ***Use of existing recreational facilities (picnic areas, restrooms, boat ramps, etc.) operated and maintained by Idaho Power would be lost if not taken over and managed by other entities***

- ***The irrigation pump station at Lower Salmon reservoir may be made inoperable***

- ***Removal of the dams would increase riverine habitat by as many as 20 miles, benefiting fish, wildlife, and riparian resources; recreational opportunities (rafting, kayaking, fishing) associated with riverine conditions would increase, with related economic benefits to local communities***

- ***Cessation of operation would eliminate impacts associated with water-level fluctuations in reservoirs and in downstream reaches, benefiting fish and riparian habitats***

- ***Visual benefits would result from removal of project structures and transmission lines***

- ***If one or more of the project dams were removed, then improved fish passage and survival would result***

We are not aware of any agency or commenter recommending removal of any or all of the four project dams.

Based on the above, we don't believe dam removal is a reasonable alternative in this case.

Federal Government Takeover

We don't consider federal takeover to be a reasonable alternative. Federal takeover of the project would require congressional approval. While that fact alone wouldn't preclude further consideration of this alternative, there is currently no evidence showing that a federal takeover should be recommended to Congress. No party has suggested that federal takeover would be appropriate and no federal agency has expressed interest in operating the project.

Nonpower License

A nonpower license is a temporary license that the Commission would terminate whenever it determines that another governmental agency will assume regulatory authority and supervision over the lands and facilities covered by the nonpower license. At this point, no agency has suggested a willingness or ability to do so. No party has sought a nonpower license and we have no basis for concluding that the project should no longer be used to produce power. Thus, we don't consider a nonpower license a realistic alternative to relicensing in this circumstance.

3.4 Description of Idaho Power Relicenses with Applications Not Yet Filed

The following is a description of the other Idaho Power projects that will be evaluated in any cumulative analysis.

3.4.1 Upper and Lower Malad Project

The project, built in 1948, is located on the Malad River--the lowermost part of the project is located about 400 feet from the confluence with the Snake River. The project is located adjacent to the Malad Gorge State Park. No federal lands are affected.

The upper development includes:

- A 150-foot-long concrete gravity dam with a maximum height of about 18 feet
- An estimated 10-acre-foot reservoir at elevation 3,013 feet msl
- A 4,600-foot-long concrete flume
- A powerhouse with one unit with a generating capacity of 8,270 kW
- A 0.6-mile, 46-kV transmission line

The lower development includes:

- A 160-foot-long concrete gravity dam with a maximum height of 16 feet
- An estimated 10-acre-foot reservoir at elevation 2,884.3 feet msl
- A 5,450-foot-long concrete flume
- A powerhouse with one unit with a generating capacity of 13,500 kW

The project is operated run-of-river. A minimum flow of 70 cfs is released from each development.

3.4.2 C.J. Strike Project

The project, built in 1951, involves 3,019 acres of BLM land (Snake River Birds of Prey Natural Area). Major facilities include:

- A 3,220-foot-long dam with a maximum height of 115 feet
- A reservoir impounding 32 miles of the Snake River and 7 miles of the Bruneau River, with an area of 7,500 acres and a gross storage of 250,000 acre-feet
- A powerhouse with 3 units with total capacity of 82.8 MW
- Two 138-kV transmission lines spanning a total of 90 miles

The project is operated for peaking generation.

3.4.3 Swan Falls Project

The project, constructed in 1901, involves 211 acres of BLM land within the Birds of Prey Natural Area. A new powerhouse became operational in 1994. Major facilities include:

- A 1,218-foot-long concrete and rockfill dam, consisting of a 440-foot-long spillway section, a 290-foot-long powerhouse section, a 22.5-foot-long intermediate dam section, and a 111.2-foot-long new powerhouse section
- A 900-acre reservoir with a length of 27 miles and gross storage of 4,800 acre-feet at full pool of 2,314 feet msl
- A powerhouse with two units with a total capacity of 25 MW
- A 1.2-mile-long, 138-kV transmission line

The project is operated to reregulate flows from the upstream C.J. Strike Project. A minimum flow of 5,000 cfs is released from April through September and 4,000 cfs from October through March.

3.4.4 Hells Canyon Project

The Hells Canyon Project involves 9,194 acres of federal land administered by the Forest Service (FS) (Payette and Wallowa National Forests and the Hells Canyon National Recreation Area) and the Bureau of Land Management. The Brownlee, Oxbow, and Hells Canyon developments were constructed in 1957, 1958, and 1965, respectively.

The Brownlee development includes:

- A 1,380-foot-long earth and rockfill dam with a maximum height of 395 feet
- A 14,621-acre, 58-mile-long reservoir with a total storage of 1,420,000 acre-feet and usable storage of 975,318 acre-feet at normal maximum elevation of 2077.0 feet msl (minimum elevation of 1976.0 feet msl)
- A powerhouse containing five units with a total generating capacity of 585.4 MW
- About 485 miles of 230-kV and 77.9 miles of 345-kV transmission line

The Oxbow development includes:

- A 945-foot-long earth and rockfill dam with a maximum height of 209 feet
- A 1,150-acre, 12-mile-long reservoir with a total storage of 53,386 acre-feet and usable storage of 11,100 acre-feet at normal maximum elevation of 1805.0 feet msl (minimum elevation of 1795.0 feet msl)
- A powerhouse containing four units with a total generating capacity of 190 MW
- About 75 miles of 230-kV transmission line

The Hells Canyon development includes:

- A 994-foot-long concrete gravity dam with a maximum height of 320 feet
- A 2,412-acre, 25-mile-long reservoir with a total storage of 167,720 acre-feet and usable storage of 23,060 acre-feet at normal maximum elevation of 1688.0 feet msl (minimum elevation of 1678.0 feet msl)

- A powerhouse containing three units with a total generating capacity of 391.5 MW
- 21.9 miles of 69-kV and 37.9 miles of 230-kV transmission line
- A fish trap

The three developments are operated in close coordination. Brownlee drives the operation of the entire complex. Brownlee is normally operated to meet daily load shaping. Oxbow is closely coordinated with the operation of the upstream Brownlee plant, and typically functions as a reregulating dam. Hells Canyon typically follows the general daily load shape. The project is also operated for navigation, flood control, and anadromous fish protection. Operation is subject to the 1980 Hells Canyon Settlement Agreement concerning anadromous fish mitigation.[11]

4.0 CUMULATIVE ENVIRONMENTAL ISSUES

According to the Council on Environmental Quality's Regulations for implementing NEPA (50 CFR §1508.7), an action may cause cumulative impacts on the environment if its impacts overlap in space and/or time with the impacts of other past, present, and reasonably foreseeable future actions, regardless of what agency or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time, including hydropower and other land and water development activities.

Site-specific analyses have the potential to overlook the big picture. For some resources, it may be necessary to look at more than one Idaho Power project or other actions in the basin to understand the relationship between unrelated actions or to develop a comprehensive solution to an existing resource problem. Examples that illustrate the importance of a cumulative look are presented in the box below.

Evaluating cumulative impacts is an iterative process. Issues will be refined based on preliminary analyses and new information. Further workshops will be needed to better develop issues and analyses.

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[11] Order approving uncontested offer of settlement, February 27, 1980, 10 FERC ¶ 61,190.

BENEFITS OF CUMULATIVE LOOK

Comprehensive solution--In some cases a solution to a resource problem may depend on more than one project. For example, the need for fish passage at an upstream dam may be contingent upon passage at a downstream dam; creation of a multi-day boating trip may require facilities at more than one project; and wildlife enhancement at more than one project may be more effective if lumped together into one larger parcel.

Additive effects--Multiple activities can affect common resources. Adding the impacts or enhancement measures can give an idea of how the activities collectively impact a resource or contribute to meeting management goals for that resource.

Interactions between actions--It is important to look at the interactions of actions. For example, changes in flow at upstream projects may have positive or negative effects at lower projects; and improvement in water quality at upstream projects may eliminate the need for improvement measures at downstream projects.

Tradeoffs--There may be multiple solutions to issues in a basin. A cumulative look can aid in reaching the most effective solution to a resource issue in the basin. For example, a need for one recreational access point may be more cost-effective or desirable at a particular project rather than at any of the other projects.

4.1 Description of the Snake River Basin

The Snake River, the largest tributary of the Columbia River, flows over 1,000 miles from its origin in Yellowstone National Park (elevation 9,840 feet msl) to its confluence with the Columbia River (elevation 340 feet msl). The Snake River flows through much of Idaho and parts of Wyoming, Utah, Nevada, Oregon, and Washington (figure 2). The river drains 109,000 square miles and transports an average of 37 million acre-feet of water each year.

4.2 Evaluating Cumulative Effects

4.2.1 Identifying Cumulatively Affected Resources

Resources are selected based on:

- Whether the resource has been cumulatively affected or is likely to be affected by multiple projects or other activities in the basin
- The economic, ecological, recreational, and ***cultural*** value of the resource
- The national, regional, or local significance of the resource
- The degree of agency/public concern
- Basin-wide management plans

The goal is to narrow the scope by eliminating resources that are not relevant to the proposed actions or the eventual licensing decisions or if issues can be adequately addressed at the project-specific level (i.e., no need for a multi-project or comprehensive solution is needed). Resources are also eliminated if the potential cumulative effects or benefits are likely to be inconsequential.

The resources we selected to be included in a cumulative analysis are found in section 4.3.

4.2.2 Determining Geographic Scope

The geographic scope defines the physical limits or boundaries of the proposed actions' effects (positive and negative) on a resource. The scope will be based on how the projects interact with, affect, or are affected by other hydropower and non-hydropower activities in the basin. If the scope is too narrow, opportunities for resource mitigation or enhancement or the status or importance of the resource can be missed; if the scope is too broad, licensing decisions can be confounded by impact issues beyond the Commission's control. Not every resource will have the same geographic scope or emphasis.

Our analysis will generally focus on the mainstem Snake River roughly from Milner dam to the confluence with the Lower Granite reservoir ("affected reach") because:

- The reach physically includes the area of the eight Idaho Power relicense projects
- The reach includes the zone of effect of the eight projects, including the downstream effects of storage at the Hells Canyon Project
- This is the segment where the Commission, through its licensing authority, can actually do something
- Flows below Milner dam are typically reduced to about 200 cfs and are replenished downstream as a result of significant spring flows, irrigation return flows, and tributary inflow[12]

We will also be looking at upstream and downstream activities, but in less detail. For example, the effect of existing and future upstream flow regulation, both diversions and storage, on flow-dependent resources (water quality, fish habitat, riparian habitat, etc.) in the affected reach will be considered. Where necessary to understand the context of the resource

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[12] The 1993 Idaho State Comprehensive Water Plan recognizes that the exercise of water rights above Milner dam has and may reduce flow at the dam to 0 cfs.

in the basin, the discussion of historic impacts will be broader (e.g., the discussion of the loss of riparian habitat will include the entire basin ***and the loss of or blockage of access to fish habitats of key species, including white sturgeon, salmon, and steelhead, will extend to the Snake River tributaries to the extent of the particular species' historical range***).

For anadromous fish, the downstream scope will be ***extended to the mouth of the Snake River***, to include efforts to improve salmon passage at the Corps of Engineer's lower Snake River projects.

One resource will have more localized scope:

Mollusc habitat--the area of examination will encompass the Snake River Basin from Banbury Springs to ***Grandview***. This scope corresponds to the scope of the U.S. Fish and Wildlife Service recovery plan.

4.2.3 Determining Temporal Scope

The temporal scope defines the time limits or boundaries that will be considered in the analysis and will include past, present, and future actions and their effects on each resource that could be cumulatively affected. We will look at past impacts that have occurred to the degree that information is available and necessary in establishing the value or uniqueness of the resource. Is the resource increasing, decreasing, or stable? Is pre-project information needed to understand the continuing impacts on a resource and establish reasonable mitigation and enhancement measures? To determine how far to look in the future, we evaluate how long project-specific effects will last and time frames for future reasonably foreseeable actions.

For the purposes of our analysis, the temporal scope will look about 45 years into the future (through a potential 30-year new license term for the Swan Falls Project), concentrating on the effect on the resources from these reasonably foreseeable future actions.

4.2.4 Determining Actions to Include in the Analysis

Past and ongoing actions in the basin include: construction of dams and reservoirs for hydropower, irrigation, and flood control; irrigation, industrial, and municipal water diversions and discharges; agricultural development; grazing; logging; aquaculture; and recreational development (see appendix C).

Past activities that have affected or will likely affect the cumulative resource of concern will be incorporated into the analysis. Understanding past actions and their effects on resources can be important to understanding the consequences of future actions. The effects of past and present activities are reflected in the existing environment and provide a context for determining the value and importance of the resource and the potential for cumulative impacts.

For future actions, we will look at those actions that will potentially affect the cumulative resources and that are within the selected geographic boundary or time frames. Speculative or undefined future actions will be excluded.

A description of ongoing and future activities within the Snake River Basin is found in appendix C. The primary future actions that could potentially affect the relicensing of the Idaho Power Projects include:

- BR's Snake River Resources Review
- National Marine Fisheries Service's (NMFS's) Biological Opinion on Operation of the Federal Power System and future opinions
- NMFS's proposed recovery plan for Snake River salmon
- Northwest Power Planning Council's Columbia River Basin Fish and Wildlife Program
- FS's and BLM's Interior Columbia Basin Ecosystem Management Project
- Idaho's total daily maximum load plans for the middle Snake River

A list of plans on file with the Commission is found in appendix D.

4.3 Cumulative Effects Resources/Issues

The key cumulative effects issues for the Snake River basin are summarized in table 2.

Based on our preliminary review of Idaho Power's license applications, comments received from agencies and other interested groups, input from the Snake River Relicensing Collaborative Team's resource work groups, and preliminary staff analysis, we've tentatively identified the resources/issues listed below as being potentially cumulatively affected (positively or negatively) by the Idaho Power relicense projects in combination with other hydropower and non-hydropower activities in the Snake River Basin. ***Based on the criteria outlined in figure 8, we refined the list of resources and issues (described below) that will be included in our cumulative analysis.***

For each resource, we discuss the specific cumulative resource issues involved and the relationship to the Idaho Power relicenses. ***All the issues described below, with the exception of the anadromous fish issue, will be evaluated as part of the EIS for the first four projects. Anadromous fish and MacFarlane's four-o-clock will be deferred until future environmental documents.***

Table 2. Key cumulative effects issues in the Snake River Basin.*			
Issues	**Cause**	**Resources Affected**	**Effects**
Degradation of water quality	flow modifications, agricultural development, urbanization, hydroelectric development, industrial development, impoundments, municipal waste, flood control, mining, forestry, aquaculture, habitat conversion	anadromous fish, native resident fish ***(includes white sturgeon, bull trout, and redband trout)***, listed snails, benthic invertebrates, amphibians, bald eagle, aquatic furbearers, aquatic birds, contact recreation, aesthetics	reduced habitat quality; nuisance aquatic plant growth; reduced visual quality ***and recreational experience***
Flow modification (timing and volume)	timing: hydroelectric development, flow augmentation, flood control, dam operations, irrigation (diversions, pumping, and return flows) volume: hydroelectric development, irrigation, municipal water consumption, agricultural development, aquaculture, mining, impoundments	anadromous fish spawning and rearing habitat, native resident fish ***(includes white sturgeon, bull trout, and redband trout)***, listed snails, riparian vegetation, riparian vegetation, recreational use, aesthetics, cultural resources	habitat loss; unsuitable water temperature; alteration of sediment transport, resulting in the loss of spawning habitat and loss of sand and gravel bar recruitment; ***and diminished aesthetic quality***
Aquatic habitat loss, alteration, and fragmentation	habitat loss: channelization, levee construction, irrigation, impoundments, mining, logging, removal of riparian vegetation, road construction, clearing of stream channels, irrigation return waters, urbanization fragmentation: creation of barriers (dams, water quality barriers)	anadromous fish, native resident fish ***(includes white sturgeon, bull trout, and redband trout)***, listed snails, riparian vegetation	direct habitat loss: loss of habitat for spawning, rearing, and migration resulting from reduced water velocities; accumulation of sediments; poor water quality; loss of wetlands and riparian vegetation; increased competition from exotic species fragmentation: genetic isolation, isolation from critical life stage habitats, loss of metapopulation structure, increased susceptibility to local extinctions or extirpation

Table 2 (cont.). Key cumulative effects issues in the Snake River Basin.			
Issues	**Cause**	**Resources Affected**	**Effects**
Loss of anadromous ecosystem	hydroelectric development, irrigation, flood control, and other factors	juvenile anadromous salmonids, other resident fish species, black bear, aquatic furbearers, eagles, insects, aquatic plants, riparian plants	loss of nutrient source for fish and invertebrates and wildlife food supply provided by salmon carcasses
Riparian/wetland habitat loss, alteration, and fragmentation	irrigation/water diversions, urbanization, hydroelectric power generation, industrial development, impoundments, flood control, mining, habitat conversion, grazing, recreational use	anadromous and resident fish, native/rare plant communities, seeps, springs, island habitats, bald eagles, aquatic furbearers, birds, insects, big game thermal cover, neotropical migrants	habitat loss: declines in abundance of wetland and riparian habitats, noxious weed infestations, decreased biodiversity and productivity fragmentation: isolation from critical life stage habitats, loss of metapopulation structure, increased susceptibility to local extinctions or extirpation, decreased biodiversity and productivity
Native grassland and shrubland loss, alteration, and fragmentation	agricultural development, industrial development, impoundments, mining, habitat conversion, grazing, roads, transmission lines, recreational use	native/rare plant communities, big game foraging and wintering habitat, birds, and small mammal habitat	habitat loss: declines in abundance of upland habitats and associated wildlife species, noxious weed infestations, decreased biodiversity and productivity fragmentation: isolation from critical life stage habitats, loss of metapopulation structure, increased susceptibility to local extinctions or extirpation, decreased biodiversity and productivity

* Based on input from the Snake River Relicensing Collaborative's Resource Work Groups.

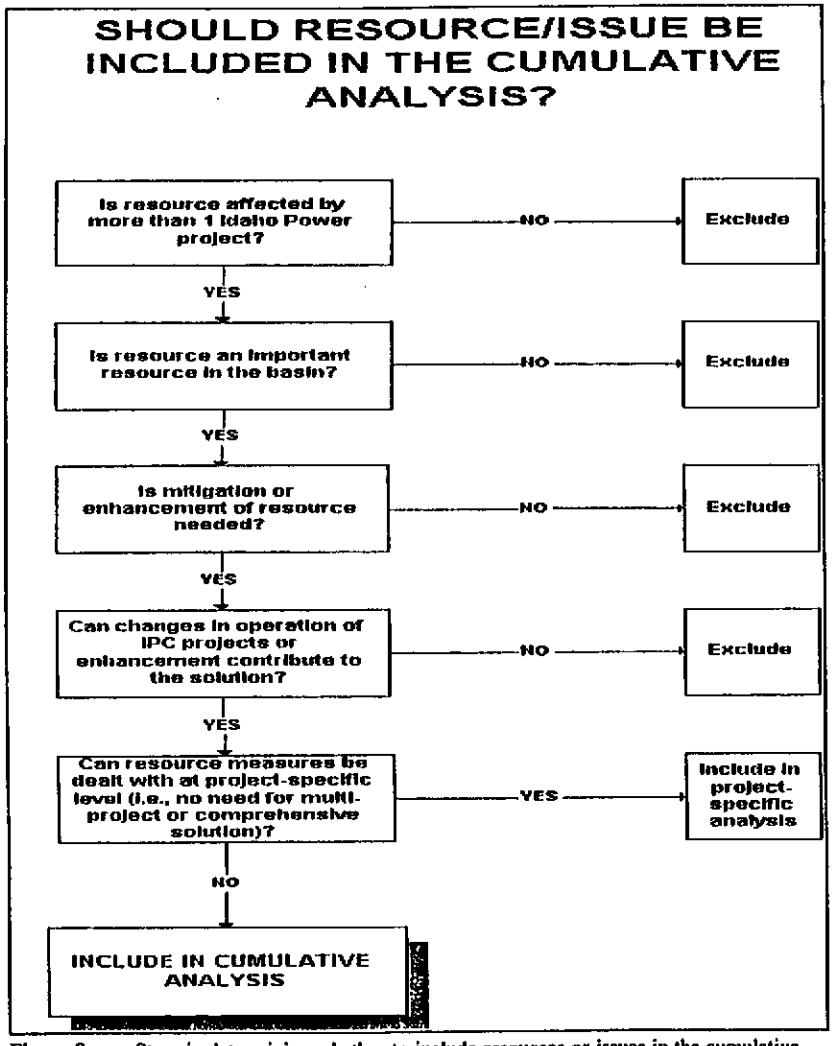


Figure 8. Steps in determining whether to include resources or issues in the cumulative analysis.

4.3.1 Water Quality

- Effects of degraded water quality ***(including macrophyte growth)*** on fish, snails, aquatic dependant wildlife, aesthetics, and recreation
- How the Idaho Power ***projects' effects on flow timing and volume*** contribute to water quality problems (dissolved oxygen, heavy metals and toxic sediment, nutrients, temperature, ***total dissolved gases***) in the basin
- How the Idaho Power projects could be operated in combination with other actions in the basin to help meet water quality goals for fish habitat, snail habitat, aesthetics, and recreational use and opportunities
- How operation of the Idaho Power projects could be coordinated with future actions, such as the Middle Snake River Watershed Management Plan and future flow augmentation, to improve water quality or increase flows in the basin

4.3.2 Sediment Transport

- ***How the*** Idaho Power ***projects' effects on flow timing and volume contribute to*** erosion and sediment deposition and the associated effects on fish habitat, stream bank integrity, island, sand bar and beach formation/loss, cultural resources, and fossil deposits

4.3.3 Resident Fish (white sturgeon, Shoshone sculpin, rainbow trout, bull trout, *and redband trout*)

- How resident fish are affected by: barriers to upstream and downstream migration ***(including habitat fragmentation effects)***; project peaking flows and ramping rates; fish entrainment and turbine related mortalities; and water quality
- What measures are needed to protect and enhance resident fish populations (passage, flows, etc.)
- The effects of future changes in the timing and quantity of flow in the basin on resident fish

4.3.4 Anadromous Fish (spring/summer and fall chinook salmon, sockeye salmon, steelhead, and lamprey)[12]

- How the Hells Canyon, Swan Falls, and C.J. Strike Projects could be operated to enhance flows (timing, quantity) for anadromous fish habitat in the Snake River Basin above and below Hells Canyon Dam and for salmon migration
- What factors are preventing the restoration of anadromous fish upstream of Hells Canyon dam (habitat and food availability, water quality, passage, etc.), is upstream restoration feasible, and what measures are necessary at Idaho Power projects (upstream and downstream passage, habitat improvements, flows, etc.) in combination with other measures in the basin, to allow the restoration of anadromous fish
- How the Idaho Power hatchery program would contribute to the efforts to restore anadromous fish in the basin and what modifications may be needed
- How anadromous fish restoration would affect other resources (resident fish, wildlife, insects, and riparian and aquatic plants)
- How operation of Idaho Power Projects could be coordinated with other actions in the basin to provide flows for anadromous fish and improve passage at downstream dams

4.3.5 Federally Listed Aquatic Molluscs (the endangered Idaho springsnail, Utah valvata snail, Snake River physa snail, and Banbury Springs lanx, and the threatened Bliss Rapids snail)

- The effects of instream flows, water quality, and sediment transport on the quality and quantity of aquatic mollusc habitat.
- What changes in operation of the Bliss, Lower Salmon Falls, and Upper Salmon Falls Projects are needed to protect and enhance mollusc habitat
- How operation of the Idaho Power Projects could be coordinated with other actions in the basin, such as the Snake River Aquatic Species Recovery Plan

[13] *As previously discussed, anadromous fish won't be discussed in detail in the EIS for the Bliss, Lower Salmon Falls, Upper Salmon Falls, and Shoshone Falls Projects, but will be addressed in subsequent environmental documents.*

4.3.6 Riparian/Wetland Habitat

- How the Idaho Power projects interact with other activities in the basin to reduce and alter riparian/wetland habitat, seeps, and springs
- The effects of altered flows and reduced and fragmented riparian/wetland habitat on abundance and connectivity of native/rare plant communities, aquatic furbearer habitat, waterfowl nesting cover, thermal cover for big game, and habitat for neotropical migrants and other birds
- The effects of altered flow and reduced and fragmented riparian/wetland habitat on noxious weed infestation
- The effects of future changes in the timing and quantity of flow in the basin on riparian/wetland habitat and the effects on riparian/wetland associated wildlife
- What measures are needed to protect and enhance riparian/wetland habitat

4.3.7 *Terrestrial Threatened and Endangered Species*

- The effects of altered flows and other activities in the basin on ***germination and*** survival of ***native cottonwood trees, which are important sources of nest, perch, and roost sites for bald eagles***
- ***The effects of icing that results from altered flows and impounded conditions at the reservoirs on available foraging habitat for bald eagles***
- The effects of human disturbances, ***including changes in human access patterns and types of human activities associated with the project impoundments, transmission line maintenance, road use, and recreation***, on bald eagles, ***peregrine falcons, and MacFarlane's four-o'clock***[14]
- The secondary effects of ***project operations (i.e.***, water quality, fish resources, ***and avian prey)*** on forage bases ***of the bald eagle and peregrine falcon***

[14] *As previously discussed, MacFarlane's four-o-clock won't be discussed in detail in the EIS for the Bliss, Lower Salmon Falls, Upper Salmon Falls, and Shoshone Falls Projects, but will be addressed in the Hells Canyon EIS.*

4.3.8 Native Grasslands and Shrublands

- How the Idaho Power projects interact with other activities in the basin to reduce and alter native grassland and shrublands
- The effects of reduced and fragmented native grassland and shrubland habitat on abundance and connectivity of native/rare plant communities, big game winter range and forage, and habitat for birds and small mammals
- How Idaho Power land management practices and policies interact with other basin-wide activities to affect noxious weed infestation in native grassland and shrubland habitats

4.3.9 Recreational Use Patterns

- How changes in reservoir management and flow changes for anadromous fish and other resources could affect recreational use patterns in the basin

4.3.10 Developmental Resources

- The additive effects of environmental enhancement measures on the economics of continuing to operate the projects ***and the cost-effectiveness of operational changes designed for non-power benefits***
- How operational changes for environmental purposes affect other developmental purposes, such as flood control
- How changes at Idaho Power's projects, in combination with potential reductions in generation at other hydropower projects throughout the basin, could affect the power resources that serve the region, ***and how these effects would affect consumers on a community, county, and Bureau of Economic Analysis area scale***

4.3.11 Air Quality

- Additive effects of reduced generation at the Idaho Power projects on the need for additional alternative sources of generation and the resulting increases in emissions of air pollutants ***in the Snake River Basin and, specifically, relative to Forest Service Class I Airsheds (associated with wilderness areas) and other National Forest System Lands***

5.0 PROJECT-SPECIFIC RESOURCE ISSUES

A preliminary list of resource issues and concerns that we have identified for analysis in an EIS is presented below. Those issues identified by an asterisk (*) will be analyzed for cumulative impact, as well as project-specific effects. In analyzing the issues, we will evaluate various measures to mitigate, protect, or enhance the resources. This list is not intended to be exhaustive or final, but is an initial listing of issues that have been raised and could be potentially significant. For convenience, the issues have been grouped by resource categories.

5.1 Bliss, Lower Salmon Falls, and Upper Salmon Falls Projects

We have determined that there are no issues dealing with geology and soils, given the minimal amount of soil disturbance associated with relicensing these projects.

5.1.1 Water Quality

- •* Effects of the projects' ***operations*** on water temperature, dissolved oxygen, nutrient levels, ***and sediment transport***
- •* ***Effects of the projects' operations on algal production and the distribution of nuisance plants and their associated effects on water quality***

5.1.2 Aquatic Resources

- •* ***Effects of project operations on aquatic invertebrates in riverine and reservoir sections***
- •* Effects of entrainment and turbine mortality on white sturgeon and other resident fish at the three projects
- •* Effects of the project dams on the movement of migratory and non-migratory fish species
- Effects of project-induced water level fluctuations from load-following operations on habitat for aquatic resources in the project reservoirs and downstream of each project
- Effects of instream flows on the quantity and quality of aquatic habitat for fish and other aquatic resources in the Dolman Rapids ***and North Channel*** bypassed reaches of the Upper Salmon Falls Project and downstream of the ***Lower Salmon Falls and Bliss*** Projects

- Effects of project facilities and operations on the deposition of fine sediments in impounded areas as it relates to fish spawning habitat

- * Effects of project facilities and operations on the supply of and transport of spawning gravel downstream of the project dams

- * ***What measures are needed to address the future passage of anadromous fish in the project areas***

- ***Whether monitoring is necessary to determine the effects of protection, mitigation, and enhancement measures on fishery resources***

- ***Effect of the Bliss Project on the Elmore County Wildlife Club fish-rearing pond***

5.1.3 Terrestrial Resources

- * Effects of project-induced water level fluctuations from load-following operations on riparian and wetland vegetation, both in the impounded and unimpounded areas

    - Do project operations favor the establishment of Russian olive and other non-native species in the riparian zone?

    - How do project-related changes in flow regimes affect regeneration of riparian tree species, specifically cottonwoods?

    - Whether project operations should be modified to benefit riparian habitat structure and function?

- * Whether modifications should be made to Idaho Power's current grazing policies to benefit riparian resources on project lands

- ***Effects of project operation and maintenance (e.g. road use and transmission line corridor maintenance) on rare plants and rare plant communities.***

- ***Effects of project operation and maintenance on key wildlife species***

- * Adequacy of proposed protection and enhancement measures, ***including noxious weed control***, and whether additional enhancement measures are necessary to benefit ***upland***, riparian, ***wetland***, and spring habitats and the wildlife inhabiting these habitats

- Adequacy of proposed measures to protect rare plants (chatterbox orchid, Torrey's blazingstar) and rare plant communities (water birch, hackberry)

5.1.4 Threatened and Endangered Species

- * Direct and indirect effects of fluctuating water levels from the projects' load-following operations on the federally listed aquatic molluscs: the endangered Idaho springsnail *(Pyrgulopsis idahoensis)*, Utah valvata snail (*Valvata utahensis*), Snake River physa snail (*Physa natricina*), and Banbury Springs lanx (undescribed *Lanx*), and the threatened Bliss Rapids snail (*Taylor concha serpenticola*)

- * Effects of instream flows and sediment transport on the quality and quantity of aquatic habitat for federally listed molluscs

- * ***Direct and indirect effects of project operation and maintenance (including fluctuating water levels from the projects' load-following operations, transmission line maintenance, and road use) on the federally threatened bald eagle and endangered peregrine falcon***

5.1.5 Aesthetic Resources[15]

- Effect on visual resources from Idaho Power's grazing policies for project lands ***owned by Idaho Power***

- Effect of water level fluctuations caused by project operations on the aesthetics of the Bliss, Lower Salmon Falls, and Upper Salmon Falls reservoirs, ***including shoreline sloughing***

- Visual impacts of the Lower Salmon Falls Project facilities and operations as viewed from recreation areas and the Hagerman Fossil Beds National Monument, particularly the proposed visitor center, overlooks, and trails

- Visual impacts of the Upper Salmon Falls Project facilities and operations as viewed from Hagerman Fossil Beds National Monument, particularly the overlooks and trails

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15 ***The issues "Visual impacts of the Upper Salmon Falls Project facilities and operations as viewed from the picnic area at powerhouse A" and "Visual impacts of the Bliss Project facilities and operations as viewed from recreation sites" were deleted based on discussions at the July 17, 1997, scoping meeting.***

- Effect of the flow regime on the aesthetic characteristics of the Upper Salmon Falls Project's bypassed reach

5.1.6 Cultural Resources

- Effects of the projects on archeological and historic sites and what measures are necessary to comply with the National Historic Preservation Act

5.1.7 Recreation and Land Use[16]

- Whether Idaho Power should develop a float boat put-in directly downstream of Bliss dam

- ***Whether Idaho Power should develop a river access site for recreational boating at the Bancroft Springs area***

- Whether a new take-out site for whitewater boaters on the popular Hagerman (Wiley) Reach of the Snake River is needed as a result of the 1993 Wiley landslide

- •* Effects of fluctuating water levels from the projects' load following operations on the erosion of fossils at the Hagerman Fossil Beds National Monument

- Whether Idaho Power should participate in any efforts to establish a recreational trail along the Snake River, and if so, how

- Whether Idaho Power should provide monetary assistance ($5,000 per year) to the NPS, as proposed, to enhance environmental education and research at the Hagerman Fossil Beds National Monument

- Whether the Dolman Island/Falls area should be granted a "protected" land use designation under Idaho Power's land management plan, as recommended by Idaho Power

5.1.8 Developmental Resources

Some of the proposed environmental enhancement measures would change how the projects are operated, thereby reducing the value of the projects for electric power production. Other measures would require direct expenditures by Idaho Power, increasing the cost of

[16] ***The issue "Effects of fluctuating water levels from the projects' load following operations on boating and fishing on the reservoirs and in the reaches downstream of the projects" was deleted based on discussion at the July 17, 1997, scoping meeting.***

operation and decreasing the cost advantage of the projects compared to other sources of power that could be used to meet the electricity needs of Idaho Power's customers. In the EIS, we would consider how the following would affect project generation or cost:

- Effects of providing minimum continuous flows in the Dolman Rapids reach and downstream of project dams on project generation and the value of project power

- Effects of reducing reservoir water surface fluctuations on load following capabilities and the value of project power

- Effects of funding various studies or providing additional protection and enhancement measures on the cost of project power

5.2 Shoshone Falls Project

5.2.1 Water Quality

- •* Effects of the project*'s operation* on water temperature, dissolved oxygen, gas supersaturation, and nutrient levels

5.2.2 Aquatic Resources

- •* Effects of the project (water temperature, total dissolved gas levels) on downstream white sturgeon populations between Shoshone Falls and Upper Salmon Falls Projects

- Effects of the project on reservoir fishes and the desirability of stocking the reservoir with trout or other species

5.2.3 Terrestrial Resources

- •* Adequacy of proposed protection and enhancement measures and whether additional enhancement measures are necessary to benefit riparian resources and spring habitats and the wildlife inhabiting these habitats

5.2.4 Aesthetic Resources

- Effects of the project's flow regime on the aesthetic characteristics of Shoshone Falls and what flows are necessary to adequately enhance the visual quality of the falls

- Visual impacts of the project facilities (dam structures, powerhouse, substation, and transmission lines) as seen from the existing and proposed recreation sites, particularly the overlooks

5.2.5 Cultural Resources

- [illegible]

5.2.6 [illegible]

- [illegible]
- [illegible]

5.2.7 *Socioeconomics*

- ***Effects of the existing, proposed, and other alternative flow regimes over Shoshone Falls on visitation, the local economy, and tax revenues to local governments***

5.2.8 Developmental Resources

- Effects of funding various studies or providing additional protection and enhancement measures on the cost of project power

6.0 SCHEDULE

The short-term schedule for initial processing of the Bliss, Lower Salmon Falls, Upper Salmon Falls, and Shoshone Falls Projects and completing scoping is provided below. The long-term schedule will be developed after we finalize the cumulative effects approach (see appendix A).

SCHEDULE		
Milestone	Target Date	
	Bliss, Lower Salmon Falls, and Upper Salmon Falls Projects	Shoshone Falls Project
Applications filed	December 20, 1995	May 29, 1997

Notice requesting additional study requests (ASR's)	January 4, 1996 (due 2/20/96)	June 13, 1997 (due 7/28/97)
Applications accepted	June 7, 1996	October 16, 1997
Notice requesting interventions	June 24, 1996 (due 8/29/96)	October 21, 1997 (due 12/18/97)
Scoping document 1 issued	June 5, 1997 (comments due August 18, 1997)	
Scoping meetings/site visits	July 16-18, 1997	
Scoping document 2 issued	December 1997	
ASR's addressed	January 1998	
Additional information request issued	January 1997 (due 1/99)	
DEIS	Summer/Fall 1999	
FEIS	Spring 2000	

6.0 DRAFT EIS OUTLINE

The tentative outline for the EIS for the Bliss, Lower Salmon Falls, Upper Salmon Falls, and Shoshone Falls Projects is as follows:

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7.0 DISTRIBUTION LIST

Copies of this scoping document were sent to agencies, organizations, and individuals on the service list, FERC mailing list for the Bliss, Lower Salmon Falls, Upper Salmon Falls, and Shoshone Falls Projects, and Snake River Relicensing Collaborative Team mailing list (see appendix E).

Description of Approaches

Evaluating cumulative effects of the Idaho Power projects in the Snake River Basin provides a challenge given that four applications have already been filed and applications for the remaining four projects will be filed during the next 12 years. In developing approaches for assessing cumulative impacts, the following factors must be considered--the timing of the expiration of the licenses, the geographic location of these projects, and the availability of data with which to conduct a cumulative impact assessment.

We describe four possible approaches below.

[illegible] section 4 of scoping document 2.

APPENDIX A

APPROACHES TO CUMULATIVE IMPACTS IN SNAKE RIVER BASIN
revised June 1997

In December 1996, the staff prepared a discussion paper titled *"Approaches to Cumulative Analysis for the Snake River Basin,"* outlining two possible approaches for evaluating the cumulative effects of relicensing the eight Idaho Power projects.[1] These and other approaches are discussed in detail later in this appendix.

The staff conducted a meeting in Boise, Idaho, on February 4, 1997, to solicit input from federal and state agencies, Indian tribes, non-governmental organizations, the licensee, and the public on the approaches. About 75 people attended the meeting.

At the meeting, representatives of the Snake River Relicensing Collaborative Team commented that they were unable to recommend a specific approach until the range of cumulative effect issues that needs to be addressed is known. They recommended the following steps before deciding on an approach:

- Conduct scoping for the cumulative effects analysis
- Scoping should be done as soon as possible, using the Collaborative Team work groups as technical advisors
- Identify cumulative effects issues for the Middle Snake projects (Bliss, Lower Salmon Falls, Upper Salmon Falls, and Shoshone Falls Projects)
- Develop the approach based on scoping

Idaho Power was hesitant to agree to a particular approach until they know the scope of the issues that may require reopeners.

Following the meeting, written comments were received from the following entities:

Entity	Date of Letter
Idaho Wildlife Federation	March 5, 1997
Oregon Department of Fish and Wildlife	March 5, 1997

[1] Copies of the discussion paper are available from Alan Mitchnick at (202) 219-2826.

These analyses would build upon or tier[1] off the previous analyses. Additional resources that could be cumulatively affected would be evaluated as necessary and multi-project issues would be expanded and updated. Ultimately, the series of analyses would represent a comprehensive evaluation of cumulative impacts of the Idaho Power relicense projects.

Approach B

This approach would involve the preparation of one basin-wide cumulative effects analysis for the area of effect of all the Idaho Power relicense projects before any project-specific assessments are begun. The cumulative analysis would also be used to determine the appropriate groupings for processing the individual projects and the [illegible]

Wallowa County Court	March 5, 1997
Environmental Protection Agency	March 5, 1997
Shoshone-Bannock Tribes	March 5, 1997
Columbia Inter-Tribal Fish Commission	March 5, 1997
American River/Idaho Rivers United	March 5, 1997
Department of the Interior	March 5, 1997
Middle Snake Regional Water Resource Commission	March 5, 1997
Idaho Power Company	March 6, 1997
Idaho Department of Environmental Quality	March 6, 1997
Nez Perce Tribal Executive Committee	March 6, 1997
National Marine Fisheries Service	March 21, 1997

Summary of Comments Received on the Approaches

We've summarized the written comments below, followed by our response to the comments in *italics*.

General Comments

(1) Many commentors supported the collaborative teams recommendations.

We agree that scoping would provide a better information base on which to determine an approach. Accordingly, we will conduct scoping on both the project-specific issues associated with the Bliss, Lower Salmon Falls, Upper Salmon Falls, and Shoshone Falls Projects and the basin-wide cumulative issues prior to deciding on the approach.

(2) Many of the commentors, although not endorsing a particular approach, liked the early assessment of the earlier filed applications under approach A and the comprehensive aspects of approach B. Most believed that the project-specific analysis of the first filed application could proceed concurrently with the cumulative analysis.

We developed an additional approach that takes into consideration many of the comments (see approach C below).

(3) American Rivers/Idaho Rivers United was the only commentor that provided an alternative approach for the Commission's consideration. They recommend that cumulative impacts be analyzed in a series of individual, stand-alone studies addressing specific resources. This approach is supported by Oregon Department of Fish and Wildlife.

We will further explore this approach (see approach D below).

(4) Many of the comments were based on incorrect understanding of the two approaches.

(4a) Many commented that they believed that the cumulative analysis under approach A would only look at cumulative effects of the projects being evaluated in multi- or single project documents and would ignore the effects of the [illegible] applications. Thus, they believe that the analysis is project based [illegible]

This [illegible]

basin (as in approach B), but, instead of waiting until the cumulative assessment is complete, we would concurrently prepare a project-specific, multi-project EIS for the Bliss, Lower Salmon Falls, Upper Salmon Falls, and Shoshone Falls Projects (as we would in approach A). Subsequent NEPA documents would tier off of the cumulative analysis. This approach allows us to move forward with the first four projects concurrently with a cumulative effects analysis.

Approach D

The following are selected excerpts from the American Rivers and Idaho Rivers United proposal.[4]

> Cumulative impacts would be analyzed in a series of individual, stand-alone studies addressing specific resources that are or may be affected by cumulative impacts.
>
> The individual cumulative impact studies would form the basis for the evaluation of cumulative impacts in each project-specific NEPA document. In other words, the project-specific NEPA documents would tier to or incorporate only relevant individual cumulative impact analyses. The cumulative impact study results, including proposed remedial/protective measures, would then be used to identify specific action alternatives and remedial/protective measures in the project-specific NEPA document.
>
> Each cumulative impact analysis would be designed to identify the causes of resource degradation at a broad spatial scale and over time, and to identify remedial and protective measures to restore and conserve the resource. The studies would identify interactions between Idaho Power's dams and other human activities in the Basin that degrade resources and identify remedial and protective measures at the scale of the analysis (e.g., increase flows by a specified amount, provide passage to potential spawning habitat, restore riparian habitat). Project-specific measures (e.g., the identification of how to provide passage to habitat or how to manage flows at a specific dam) would be analyzed in the project-specific NEPA documents.
>
> Scoping of cumulative impact studies should begin immediately, and studies commence as soon thereafter as possible. The project(s)-specific NEPA documents would go forward as scheduled. If a particular cumulative impacts analysis was not complete in time to prepare a project-specific NEPA document as scheduled, there would be two options. First, if the missing information could substantially alter the alternatives under consideration, the project-specific analyses and final licensing decision would be stayed, and annual licenses would be issued with interim mitigation. If the missing information would not substantially alter the alternatives, then a specific "reopener" would be included in the project license to allow for post-licensing modification.

Comparison of Approaches

The primary difference between approaches A and B is that approach A reviews

[4] See the March 5, 1997, letter from Rob Masonis, American Rivers, 400 East Pine Street, Suite 225, Seattle, Washington 98122. A copy of the complete filing is available from the Commission.

define that reserved authority as narrowly and with as much specificity as possible..."

Reopeners create uncertainty for licensees and are not to be used as a substitute for reasoned decision-making. Environmental documents must contain sufficient information to evaluate the environmental and economic consequences of a project. Use of reopeners will not be feasible in all cases.

Conditioning Annual Licenses

project-specific as well as cumulative impacts from the beginning, while approach B focuses on basin-wide cumulative impacts before starting any project-specific documents. Mitigation and enhancement measures could be required at an earlier date under approach A than under approach B.

Approach C incorporates some of the points in approaches A and B. It would allow the project-specific analyses of the earlier filed applications to proceed simultaneously with preparation of a cumulative analysis for the basin.

Approach D is similar to approach C except it envisions separate studies for each resource instead of one document exploring all the cumulatively affected resources.

APPENDIX B

SUMMARY OF ADDITIONAL STUDY REQUESTS
Bliss (FERC No. 1975), Lower Salmon Falls (FERC No. 2061),
Upper Salmon Falls (FERC No. 2777), and Shoshone Falls (FERC No. 2778) Projects

#	Agency	Study Request	Cross ref.
		Bliss, Lower Salmon Falls, and Upper Salmon Falls Projects	
1	FWS	Stream habitat and flow studies related to white sturgeon	13, 22, 28, 36, 64
2	FWS	White sturgeon habitat needs	4, 13, 22-24, 28, 30, 31, 60, 61, 64
3	FWS	Instream flow study downstream of Bliss dam	28, 32, 36, 64
4	FWS	Fish passage for salmon and steelhead and anadromous fish reintroduction feasibility study	2, 12, 23, 30, 35, 60, 66
5	FWS	Analysis of the effects of load following on fish and wildlife and their habitat from upper end of Upper Salmon Falls to upper end of C.J. Strike	8, 14, 22, 27, 28, 61
6	FWS	Sediment and nutrient dynamics	14, 20, 28, 29, 36, 54, 63, 64
7	FWS	Consideration of the Thousand Springs Project's effects on listed species and other terrestrial and aquatic fish and wildlife and their habitats	19, 51, 53
8	FWS	Effects of flow fluctuation on wildlife and their habitats	5, 27
9	FWS	Effects of project construction and operation on wildlife and their habitats--i.e. verification of HEP modeling results	
10	FWS	Habitat evaluation procedures study--effects in scrub-shrub habitat, and comparison of before and after conditions at Upper Salmon Falls	
11	FWS	Accurate valuation of proposed protection, mitigation, and enhancement plans for wildlife--i.e. accurate comparison of HUs lost to project construction to HUs gained from PM&E measures	26
12	FWS	Satisfaction of protection, mitigation, and enhancement needs--i.e. agreement on method to determine type and level of mitigation needed	4, 12, 36, 63-66
13	FWS	Cumulative effects study of serial impoundments on the Snake River on fish and wildlife species in all project areas due to be relicensed in foreseeable future	1, 2, 28, 52-62, 70
14	EPA	Detailed water quality and quantity description	5, 6, 20, 36, 63, 64

SUMMARY OF ADDITIONAL STUDY REQUESTS
Bliss (FERC No. 1975), Lower Salmon Falls (FERC No. 2061),
Upper Salmon Falls (FERC No. 2777), and Shoshone Falls (FERC No. 2778) Projects

#	Agency	Study Request	Cross ref.
15	ECWC	Determine fish stocking at Glenns Ferry to mitigate loss of rearing ponds	
16	IDPR	Hagerman reach river access take-out	19
17	IDPR	Bliss dam river access and recreation use survey below Bliss dam	47
18	IDPR	Suitability analysis of a river access site at Bancroft Springs	48
19	IDPR	Inclusion of the recreation and access facilities at Thousand Springs in the three project license area	7, 46, 51
20	IDEQ	Impacts on nutrient processing and sediment dynamics	6, 14, 29, 36, 54, 55, 63, 64
21	IDEQ	Explanation of water quality analysis methodology and additional data analysis on existing data to explain project impacts on water quality	
22	IDFG	Effects of load following on downstream biological communities--downstream of Lower Salmon Falls Dam and Bliss dam	1, 2, 5, 28, 61
23	IDFG	Improving passage for rainbow trout and white sturgeon	2, 4, 30, 60
24	IDFG	Preventing entrainment for white sturgeon	2, 31
25	IDFG	Detailed wildlife protection and enhancement plan for each parcel proposed by IPC	
26	IDFG	Evaluation of terrestrial habitat units gained through proposed mitigation	11
27	IDFG	Describe and quantify current and future load following operation and their effect on riparian vegetation and associated wildlife	5, 8, 37
28	AR/IRU	Biological effect of load following at Bliss and Lower Salmon Falls--effects on fish and invertebrate communities	1, 2, 3, 5, 6, 13, 22, 61
29	AR/IRU	Effects of flow regulation on sediment transport	6, 20, 36, 54, 63, 64
30	AR/IRU	Fish passage--need and feasibility of passage for white sturgeon, rainbow trout, and other species of interest	2, 4, 23, 60
31	AR/IRU	Fish entrainment	2, 24
32	AR/IRU	Bliss reach IFIM	3, 36, 64
33	AR/IRU	Limiting factors analysis in free-flowing reaches--determine factors limiting cold-water fish production and the role dams play	
34	AR/IRU	Aquatic habitat inventory (pre-project and current)	58

SUMMARY OF ADDITIONAL STUDY REQUESTS
Bliss (FERC No. 1975), Lower Salmon Falls (FERC No. 2061),
Upper Salmon Falls (FERC No. 2777), and Shoshone Falls (FERC No. 2778) Projects

#	Agency	Study Request	Cross ref.
35	AR/IRU	Anadromous fish reintroduction potential	4, 66
36	AR/IRU	Flow augmentation--need and options for additional flows to benefit aquatic systems	1, 3, 6 12, 14 20, 29, 32, 53, 54, 64
37	AR/IRU	Effects of flow regulation on riparian vegetation	5, 8, 27
38	AR/IRU	Site evaluations for wetland construction or restoration and riparian vegetation restoration	72
39	AR/IRU	Wildlife HEP along free-flowing reaches	
40	AR/IRU	Evaluation of opportunities for protecting spring habitats	
41	AR/IRU	Economic and power effects of eliminating load-following at Bliss and Lower Salmon Falls	
42	AR/IRU	Cost evaluation of proposed protection, mitigation, and enhancement measures	
43	AR/IRU	Aesthetic effects of Upper Salmon Falls, Lower Salmon Falls, and Bliss Projects	45
44	AR/IRU	Documentation of attempts to obtain historical records and information regarding pre-construction environmental conditions	
45	NPS	Aesthetic evaluation of the impacts of the three projects	43
46	NPS	Bliss Bridge/Hagerman reach boating access	16, 19
47	NPS	Boating access below Bliss dam	17
48	NPS	Public access to the Snake River across from Bancroft Springs	18
49	NPS	Bell Rapids access on the Lower Salmon Falls reservoir	
50	NPS	Multi-day boating trip potential for the Snake River	
51	NPS	Inclusion of the Thousand Springs Project and area--consider these resources in additional studies of recreation needs and opportunities	7, 19
52	CBFWA	Geomorphology--cumulative project effects on mainstem river geomorphology and resulting effects on ecological processes	13, 64
53	CBFWA	Hydrology-cumulative project effects on mainstem river flow regimes and resulting effects on ecological processes	7, 13, 36, 64
54	CBFWA	Sediment dynamics-cumulative project effects on mainstem river sediment recruitment and transport and resulting effects on biophysical processes	6, 13, 20, 29, 36, 63, 64

SUMMARY OF ADDITIONAL STUDY REQUESTS
Bliss (FERC No. 1975), Lower Salmon Falls (FERC No. 2061),
Upper Salmon Falls (FERC No. 2777), and Shoshone Falls (FERC No. 2778) Projects

#	Agency	Study Request	Cross ref.
55	CBFWA	Water quality-cumulative project effects on mainstem river water quality and quantity and resulting effects on biophysical processes	13, 20, 59, 63, 64
56	CBFWA	Fish inventory--characterization of pre- and post-project fish resources and habitat in the mainstem river and cumulative project impacts on resources	13, 59, 64
57	CBFWA	Aquatic invertebrate inventory of the mainstem river from Milner to Lower Granite	13, 59, 64
58	CBFWA	Aquatic habitat inventory--assessment of pre- and post-project habitat conditions in mainstem river from Milner to Lower Granite	13, 34, 59, 64
59	CBFWA	Evaluation of trophic relationships of the mainstem river and adjacent riparian, wetlands, and uplands from Milner to Lower Granite	13, 55-58, 64
60	CBFWA	Fish passage--need and opportunities to provide fish passage at all projects between Hells Canyon and Shoshone Falls	2, 4, 13, 23, 30, 64
61	CBFWA	Assessment of water level fluctuation effects on aquatic species from Shoshone Falls dam to Hells Canyon and at the Malad projects	2, 5, 13, 22, 28, 64
62	CBFWA	Assessment of IPC's anadromous fish mitigation program	13
63	CBFWA	Water quality protection, mitigation, and enhancement--needs and opportunities on mainstem river from Milner to Lower Granite	6, 12, 14, 20, 29, 54, 55
64	CBFWA	Flow related protection, mitigation, and enhancement	1, 2, 3, 6, 12, 14, 20, 29, 32, 36, 52-60
65	CBFWA	Evaluation of options to shape releases from Brownlee reservoir and provide more water to meet instream targets in the lower Snake River	12
66	CBFWA	Anadromous fish reintroduction	4, 12, 35
67	CBFWA	Develop monitoring criteria for assessing ecological health--integrative monitoring protocol for evaluating PM&E measures and river's health	
68	CBFWA	Vegetation inventory, mapping, and assessment--pre- and current-project vegetation along mainstem river from Milner to Lower Granite	
69	CBFWA	Wildlife inventory of all IPC lands from Milner to Lower Granite	
70	CBFWA	Wildlife habitat inventory and assessment--pre- and current-project habitat conditions from Milner to Lower Granite	13
71	CBFWA	Identification and assessment of operation-related wildlife impacts	

SUMMARY OF ADDITIONAL STUDY REQUESTS Bliss (FERC No. 1975), Lower Salmon Falls (FERC No. 2061), Upper Salmon Falls (FERC No. 2777), and Shoshone Falls (FERC No. 2778) Projects			
#	Agency	Study Request	Cross ref.
72	CBFWA	Wetlands and riparian protection, mitigation, and enhancement needs on all lands between Milner and Lower Granite	38
73	CBFWA	Wildlife protection, mitigation, and enhancement needs on all lands between Milner and Lower Granite	
74	CBFWA	Inventory and analysis of land ownership and use within 1 mile of mainstem and major tributaries from Milner to Lower Granite	
75	CBFWA	Assessment of project-controlled flows and water levels on aquatic recreation	
Shoshone Falls Project			
1	IDFG	Sturgeon population status in the Shoshone Falls Project reach	
2	IDFG	Evaluation of total dissolved gas supersaturation below Shoshone Falls	
3	IDFG	Evaluation of the feasibility of acquisition of Devil's Corral for a fish and wildlife protection, mitigation, or enhancement measure	

Study Requestors:

AR/IRU	American Rivers/Idaho Rivers United (3/19/96)
CBFWA	Columbia Basin Fish and Wildlife Authority (9/23/95; adopted by FWS and AR/IRU)
ECWA	Elmore County Wildlife Club (2/12/96)
EPA	Environmental Protection Agency (3/18/96)
FWS	U.S. Fish and Wildlife Service (3/18/96)
IDEQ	Idaho Department of Environmental Quality (3/19/96)
IDFG	Idaho Department of Fish and Game (3/19/96; 7/28/97)
IDPR	Idaho Department of Parks and Recreation (3/19/96)
NPS	National Park Service (3/19/96)

DESCRIPTION OF PAST, PRESENT, AND FUTURE ACTIONS IN THE SNAKE RIVER BASIN

C.1 Description of Past and Ongoing Actions in the Snake River Basin

Water Resource Development in the Snake River Basin

There are 23 dams on the mainstem that impound nearly 50 percent of the river. These facilities are described in table C-1.

The Bureau of Reclamation's (BR) projects are largely found in the upper part of the basin. BR operates 21 storage reservoirs in the basin, including four projects on the mainstem (Jackson, Palisades, American Falls, and Minidoka). Hydropower projects operated by BR include Minidoka (Snake River), Palisades (Snake River), Anderson Ranch (South Fork Boise River), Boise River diversion (Boise River), and Black Canyon (Payette River); hydropower at Arrowrock (Boise River), Cascade (North Fork Payette River), American Falls (Snake River), and Island Park (Henry's Fork) is licensed by the Commission.

Idaho Power's projects are located in the middle part of the basin. In addition to the eight relicense projects discussed in this document, Idaho Power operates the American Falls, Milner, Twin Falls, Cascade, Thousand Springs, and Clear Lake Projects--the last two are unlicensed.

The Corps of Engineers' (Corps) projects are found mainly in the lower basin. The Corps operates four projects on the mainstem (Lower Granite, Little Goose, Lower Monumental, and Ice Harbor), along with Lucky Peak (Boise River) and Dworshak (North Fork Clearwater River) reservoirs on tributaries; all these projects have hydropower (hydropower facilities at Lucky Peak are licensed by the Commission).

Including the Idaho Power projects, the Commission has issued 53 licenses and 69 exemptions for projects operating in the Snake River Basin, including 12 projects on the mainstem (see table C-1).

Water resource development in the basin has significantly modified the quantity and timing of flows in the basin. The largest storage facilities, with a total storage capacity of 9.6 million acre-feet, are described in table C-2.

Table C-1. Dams located on the mainstem Snake River, listed in order from upstream to downstream.

Dam	Owner	FERC Project No.	Year Built	Generating Capacity (megawatts)	Gross Head (feet)	Reservoir length (miles)	Reservoir area (acres)	Snake River mile
Upstream of Idaho Power Relicenses								
Jackson	Bureau of Reclamation	--	1906	none	--	12	25,540	988.9
Palisades	Bureau of Reclamation	--	1957	127.3	244	20 (mainstem) 18 (tributaries)	16,150	901.6
Idaho Falls-upper	City of Idaho Falls	2842	1930	8.0	20	2	100	804.7
Idaho Falls--city	City of Idaho Falls	2842	1913	8.0	21	1	50	798.1
Idaho Falls--lower	City of Idaho Falls	2842	1940	11.0	20	2	100	793.6
Gem State	City of Idaho Falls	2952	1989	22.6	200	4	305	786.8
American Falls	Bureau of Reclamation	2736[1]	1926[2]	92.3	88	20	56,000	714
Minidoka	Bureau of Reclamation	--	1909	13.6	48	14	11,850	675
Milner	Twin Falls and North Side Canal Companies	2899[3]	1992	59.4	152	22	3,000	639
Twin Falls	Idaho Power Company	18	1935	52.1	142	1	96	618
Idaho Power Relicense Reach								
Shoshone Falls	Idaho Power Company	2778	1907	12.5	212	1.2	60	615
Upper Salmon Falls	Idaho Power Company	2777	1937	powerhouse A--18.0 powerhouse B--16.5	powerhouse A--44 powerhouse B--36	1	50	581.4
Lower Salmon Falls	Idaho Power Company	2061	1949	60.0	59	6.6	750	572.9
Bliss	Idaho Power Company	1975	1949	75.0	70	5	255	560
C.J. Strike	Idaho Power Company	2055	1952	82.8	88	39	7,500	492
Swan Falls	Idaho Power Company	503	1901[4]	25.0	25	27	900	456
Brownlee	Idaho Power Company	1971	1958	585.4	272	60	14,621	285

Table C-1 (cont.). Dams located on the mainstem Snake River, listed in order from upstream to downstream.

Dam	Owner	FERC Project No.	Year Built	Generating Capacity (megawatts)	Gross Head (feet)	Reservoir length (miles)	Reservoir area (acres)	Snake River mile
Oxbow	Idaho Power Company	1971	1961	190.0	122	12	1,150	273
Hells Canyon	Idaho Power Company	1971	1967	391.5	221	55	15,000	248
Downstream of Idaho Power Relicenses								
Lower Granite	U.S. Army Corps of Engineers	--	1975	810.0	100	43.9	8,900	107.5
Little Goose	U.S. Army Corps of Engineers	--	1970	810.0	98	37.2	10,025	70.3
Lower Monumental	U.S. Army Corps of Engineers	--	1969	810.0	99	28.7	6,600	41.6
Ice Harbor	U.S. Army Corps of Engineers	--	1961	602.9	98	31.9	9,200	9.7

[1] Hydropower projects operated by Idaho Power Company

[2] Hydropower completed in 1978.

[3] Hydropower operated by Idaho Power Company and Milner Dam, Inc.

[4] New powerhouse completed in 1994.

Table C-1. Dams located on the mainstem Snake River, listed in order from upstream to downstream.

Dam	Owner	FERC Project No.	Year Built	Generating Capacity (megawatts)	Gross Head (feet)	Reservoir length (miles)	Reservoir area (acres)	Snake River mile
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Palisades	Bureau of Reclamation	--	1957	127.3	244	20 (mainstem) 18 (tributaries)	16,150	901.6
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American Falls	Bureau of Reclamation	2736[1]	1926[2]	92.3	88	20	56,000	714
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Idaho Power Relicense Reach								
Shoshone Falls	Idaho Power Company	2778	1907	12.5	212	1.2	60	615
Upper Salmon Falls	Idaho Power Company	2777	1937	powerhouse A--18.0 powerhouse B--16.5	powerhouse A--44 powerhouse B--36	1	50	581.4
Lower Salmon Falls	Idaho Power Company	2061	1949	60.0	59	6.6	750	572.9
Bliss	Idaho Power Company	1975	1949	75.0	70	5	255	560
C.J. Strike	Idaho Power Company	2055	1952	82.8	88	39	7,500	492
Swan Falls	Idaho Power Company	503	1901[4]	25.0	25	27	900	456
Brownlee	Idaho Power Company	1971	1958	585.4	272	60	14,621	285

Table C-1 (cont.). Dams located on the mainstem Snake River, listed in order from upstream to downstream.

Dam	Owner	FERC Project No.	Year Built	Generating Capacity (megawatts)	Gross Head (feet)	Reservoir length (miles)	Reservoir area (acres)	Snake River mile
Oxbow	Idaho Power Company	1971	1961	190.0	122	12	1,150	273
Hells Canyon	Idaho Power Company	1971	1967	391.5	221	55	15,000	248
Downstream of Idaho Power Relicenses								
Lower Granite	U.S. Army Corps of Engineers	--	1975	810.0	100	43.9	8,900	107.5
Little Goose	U.S. Army Corps of Engineers	--	1970	810.0	98	37.2	10,025	70.3
Lower Monumental	U.S. Army Corps of Engineers	--	1969	810.0	99	28.7	6,600	41.6
Ice Harbor	U.S. Army Corps of Engineers	--	1961	602.9	98	31.9	9,200	9.7

[1] Hydropower projects operated by Idaho Power Company

[2] Hydropower completed in 1978.

[3] Hydropower operated by Idaho Power Company and Milner Dam, Inc.

[4] New powerhouse completed in 1994.

Water Use

Dominant water uses in the Snake River Basin are:

- Irrigation diversions--occur throughout the basin; more than 14 million acre-feet of water is diverted by canals and pumps
- Hydropower diversions (non-consumptive)--occur throughout the basin, except the Salmon River Basin; the greatest diversions occur in the lower part of the basin
- Commercial, domestic, industrial, livestock, and private use--these uses combined make up about 5 percent of water use in the basin

Land Use

Major land uses in the Snake River include:

- Agriculture--about 85 percent of all irrigated agriculture in Idaho occurs in the Snake River plain, totaling over 3 million acres
- Livestock grazing--occurs primarily in the central part of the basin
- Logging--occurs primarily in the headwaters and Salmon River Basin
- Mining--occurs throughout the basin, but usually not in proximity to the mainstem of the Snake River.

The extent and location of agriculture, grazing, and logging can be seen to some degree from land cover/land use patterns (table C-3).

Other Actions

Other ongoing actions in the Snake River Basin include:

- Aquaculture--approximately 70 percent of the commercially produced trout in the United States are produced in the 60 to 70 hatcheries that use natural spring water from the north shore of the Snake River near Twin Falls.
- Agricultural runoff--occurs throughout the basin except in wilderness and mountainous areas
- Recreation--heavy recreational use occurs at the large reservoirs and lakes throughout the basin

Table C-2. Storage facilities (greater than 100,000 acre-feet) located upstream of Hells Canyon dam.

Facility	Stream	Owner[1]	Storage Capacity (thousands of acre-feet)	Year Storage Began
Jackson Lake	Snake River	BR	847	1906
Palisades reservoir	Snake River	BR	1,400	1956
American Falls reservoir	Snake River	BR	1,700	1926
Lake Walcott	Snake River	BR	107	1906
C.J. Strike reservoir	Snake River	Idaho Power	250	1952
Brownlee reservoir	Snake River	Idaho Power	1,469	1958
Hells Canyon	Snake River	Idaho Power	176	1967
Island Park reservoir	Henrys Fork	BR	127	1938
Ririe reservoir	Willow Creek	Corps	100	1975
Blackfoot reservoir	Blackfoot River	BIA	413	1910
Salmon Falls Creek reservoir	Salmon Falls Creek	Salmon River Canal Co.	182	1910
Magic reservoir	Big Wood River	Big Wood Canal Co.	191	1909
Lake Owyhee	Owyhee River	BR	1,122	1933
Anderson Ranch reservoir	South Fork Boise River	BR	464	1945
Arrowrock reservoir	Boise River	BR	286	1917
Lucky Peak Lake	Boise River	Corps	307	1954
Lake Lowell	Boise River	BR	177	1908
Warm Springs reservoir	Malheur River	BR	190	1919
Cascade reservoir	North Fork Payette River	BR	703	1947
Deadwood reservoir	Deadwood River	BR	160	1930

[1] BIA = Bureau of Indian Affairs; BR = Bureau of Reclamation; Corps = U.S. Army Corps of Engineers; Idaho Power = Idaho Power Company.

Table C-3. Dominant land uses in the Snake River Basin, by geographic region.

Land use	Geographic region						
	Headwaters Snake	Upper Snake	Middle Snake--Boise River	Middle Snake-Powder River	Lower Snake	Salmon River	Clearwater River
agriculture (%)	4.9	31.6	14.6	27.4	50.3	15.8	16.8
range (%)	3.3	48.3	62.2	29.9	20.2	16.5	0.3
forest (%)	86.8	18.1	20.1	41.8	28.1	62.4	82.2



C.2 Planned and Future Actions in the Snake River Basin

Various management plans are being developed that may affect the resources of the Snake River. Of particular importance are plans to secure additional flows from the upper Snake River Basin to improve downstream salmon passage, future plans to restore anadromous fish upstream of Hells Canyon, measures to recover federally listed aquatic snail species, plans to improve water quality in the middle Snake River, plans for groundwater recharge in the Hagerman Valley area, growth of irrigated agriculture in the basin, and the results of ongoing water adjudications in the basin. A preliminary list of management plans, recommendation documents, and potential future actions is found in appendix D. Some of the primary actions in terms of their potential effect on the Idaho Power project areas and other FERC projects are described below.

Primary Basin-wide Actions

Snake River Resources Review--BR is preparing a comprehensive review of the operation of its projects upstream of the Idaho Power projects. Their goal is to develop a single model to guide project operation and enable better management of water and related resources in the Snake River Basin. The review began in 1995 and is expected to be completed in 2000. Any changes in upstream BR projects, such as increased flows, would likely have an effect on the river reaches affected by the Idaho Power relicenses.

NMFS Proposed Recovery Plan for Snake River Salmon--General tasks that could interact with the Idaho Power projects include: providing adequate instream flows to rebuild salmon populations; reducing loss of juvenile fish through flow augmentation and improved water management; reducing loss of listed species associated with poor water quality; and restoring chinook salmon by introducing them into historic habitat (one element of the plan concerns the feasibility of reintroducing Snake River fall chinook into native habitat upstream of the Hells Canyon Complex).

NMFS Biological Opinion (BO)--The BO for the federal Columbia River power system calls for BR to secure additional water for flow augmentation after 1998 as may be necessary to further reduce human-caused mortality of endangered salmon in the Snake River. A new BO, which will be issued in 1999, could include a different set of reasonable and prudent measures.

Northwest Power Planning Council's Columbia River Basin Fish and Wildlife Program--The program calls for, among other things, an additional 1,000,000 acre-feet of storage for juvenile salmon migration from the Snake River Basin.

Interior Columbia Basin Ecosystem Management Project--FS and BLM are developing an ecosystem-based strategy for management of lands under their jurisdiction in the Upper Columbia River Basin in Idaho, Montana, Utah, Nevada, Wyoming, and parts of Washington. The strategy will focus on ecosystem health, including its forest, rangeland, and aquatic/riparian, landscape and social/economic components, with emphasis on population viability and sustainability of threatened, endangered, and sensitive species. The draft EIS is due to be issued in 1997. The Idaho Power relicenses affect both FS and BLM lands.

Total Daily Maximum Load (TDML) Plans for the mid-Snake River--TDML plans are required for water quality limited reaches. Phase I plans involve total phosphorous; subsequent plans will consider, among others, sediment and nitrogen reduction. These plans have the potential to significantly improve water quality in the section of the Snake River between Milner dam and King Hill, Idaho, which includes five of the Idaho Power relicenses.

FERC Projects in Snake River Basin

Environmental protection measures that have been proposed for the Bliss, Lower Salmon Falls, Upper Salmon Falls, and Shoshone Falls Projects (see sections 3.1.3 and 3.2.3) and additional potential measures for these four projects along with the other four Idaho Power projects up for relicensing (table 1), should enhance many of the resources that have been cumulatively affected in the basin.

In addition to the eight Idaho Power projects up for relicense, there are other potential new hydropower development and other relicensing activity in the basin. There are four applications for license involving new construction pending before the Commission (table C-4). Four existing licenses expire between 1996 and 2010 (table C-5). Further, the Auger Falls Project (FERC No. 4797)[1] was licensed in 1991, but construction has not yet begun.

Table C-4. Pending applications for new hydropower construction in the Snake River Basin.

Project Name	Project No.	Location	Status	Comments
Sahko	11060	near Filer, Idaho	scoping completed; awaiting additional information	on existing irrigation ditch
Shelley	5090	Snake River, downstream of Idaho Falls, Idaho	Commission order denying license issued September 1997	25-foot-high, 300-foot-long dam across Snake River; 2.7-mile-long reservoir
Dworshak Small Hydro	10819	North Fork Clearwater River, near Orofino, Idaho	final EA issued June 1997	at water intake for Dworshak fish hatchery
Swift Creek	1651	Salt River Basin, Utah	final EA issued; awaiting Commission decision	existing project inoperable due to avalanche; proposal to repair and increase capacity

[1] The Auger Falls Project would involve the construction of an 18-foot-high, 340-foot-long dam across the Snake River, about 0.25 mile downstream from Twin Falls, Idaho, and would have a generating capacity of 43.6 MW.

Table C-5. Hydropower licenses in the Snake River Basin that expire between 1996 and 2010, in addition to the Idaho Power projects.

Project name	Project no.	Location	Licensee	Capacity (kW)	Expiration year
Rock Creek	1986	Rock Creek, Powder River Basin, Baker County, Oregon	Oregon Trail Electric Consumers Cooperative	800	1996[1]
Strawberry[2]	2032	Strawberry Creek, Salt River Basin, Wyoming	Lower Valley Power and Light	1,500	1999
Ponds Lodge	1413	Buffalo River, Fremont County, Idaho	Buffalo Hydro L.C.	250	2004
Hettinger	3041	Smith Creek, South Fork Salmon River, Idaho	MacKay Bar Corp.	12	2010

[1] The licensee did not file an application to relicense the project--the license expired on June 29, 1996. An application was filed by Douglas W. Pegar on February 28, 1997.

[2] Application filed on September 25, 1996.

APPENDIX D

LIST OF MANAGEMENT PLANS AND POTENTIAL FUTURE ACTIVITIES RELEVANT TO THE SNAKE RIVER BASIN
(revised December 1997)

- Bonneville Power Administration, Army Corps of Engineers, Bureau of Reclamation. Columbia River system operation review--final environmental impact statement. November 1995.
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- *Forest Service. Sheep Creek section 7 watershed. Assessment of ongoing and proposed activities. Final report. Wallowa-Whitman National Forest. 1994.*
- *Forest Service. Snake River section 7 watershed. Assessment of ongoing and proposed activities. Final report. Wallowa-Whitman National Forest. 1994.*
- *Forest Service. Deep Creek section 7 watershed. Assessment of ongoing and proposed activities. Final report. Payette National Forest. 1994.*
- Gooding, Jerome and Lincoln Counties. Coordinated Water Resources Management Plan.
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- Idaho Division of Environmental Quality. The Middle Snake River watershed management plan--public review draft no. 2. Twin Falls Regional Office. October 23, 1996.

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Doug Schnaub
Southern Idaho Flat Tire Association
409 Fruitland Avenue
Buhl, ID 83316

Larrey Anderson
Anderson Camp
742 Falls View
Twin Falls, ID 83301

Licensee

Mr. Craig Jones
Idaho Power Company
P.O. Box 70
Boise, ID 83707-6426

Ms. Elaine Kleckner
Idaho Power Company
P.O. Box 70
Boise, ID 83707-6426

Mr. Allan Ansell
Idaho Power Company
P.O. Box 70
Boise, ID 83707-6426

Mr. Chris Randolph
Idaho Power Company
P.O. Box 70
Boise, ID 83707-6426

Mr. Dwayne Weed
Idaho Power Company
P.O. Box 70
Boise, ID 83707-6426

RECEIVED
FEB 18 1997
Department of Water Resources

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D. C. 20426

FEB 12 1997

37-2471
37-2472
37-2128

Project Nos. 503, 1971, 1975, 2055, 2061, 2726, 2777, 2778--Idaho
Idaho Power Company

To The Party Addressed:

In early January, we mailed you a copy of a discussion paper titled "*Approaches to Cumulative Analysis for the Snake River Basin Relicensing,*" and notified you of a February 4, 1997, meeting in Boise, Idaho, to discuss the approaches. A number of entities have requested 30 days to provide written comments on the various approaches.

As we stated at the February 4, 1997, meeting, you will have 30 days to file written comments. Comments are due no later than **March 6, 1997.**

If you have any questions concerning this matter, please contact Mr. Alan Mitchnick at (202) 219-2826.

Sincerely,

J. Mark Robinson
Director, Division of
Licensing and Compliance

Distribution:
(1) Snake River relicensing collaborative team mailing list
(2) Bliss, Lower Salmon Falls, and Upper Salmon Falls Projects mailing list

NO. FILED 4:15
A.M. P.M.
MAR 9 1990
JOHN BASTIDA CLERK
BY Kathleen Martinez
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

* * * * * * * * * *

IDAHO POWER COMPANY, a corporation,

Plaintiff,

vs.

STATE OF IDAHO, IDAHO DEPARTMENT OF WATER RESOURCES, et al.

Defendants.

Case No. 62237

CONSENT JUDGMENT

* * * * * * * * * *

Upon stipulation of Plaintiff and the State Defendants, and good cause appearing;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Idaho Power Company's water rights shall be as follows (bracketed names below refer to Company projects):

A. State Water License Numbers 36-2013 (Thousand Springs), 37-2128 & 37-2472 (Lower Malad), 37-2471 (Upper Malad), 36-2018 (Clear Lake), 36-2026 (Sand Springs), 02-2057 (Upper Salmon), 02-2001A, 02-2001B, 02-2059, 02-2060 (Lower Salmon), 02-2064, 02-2065 (Bliss), 02-2056 (Twin Falls), 02-2036 (Shoshone Falls), 02-2032, 02-4000, 02-4001, and Decree Number 02-0100 (Swan

Falls) entitle the Company to an unsubordinated right of 3900 c.f.s. average daily flow from April 1 to October 31, and 5600 c.f.s. average daily flow from November 1 to March 31, both to be measured at the Murphy U.S.G.S. gauging station immediately below Swan Falls. These flows are not subject to depletion. The Murphy gauging station is located at latitude 43°17'31", Longitude 116°25'12", in NW1/4 NE1/4 SE1/4 of Section 35 in Township 1 South, Range 1 West, Boise Meridian, Ada County Hydrologic Unit 17050103, on right bank 4.2 miles downstream from Swan Falls Power Plant, 7.5 miles NE of Murphy, at river mile 453.5.

B. The Company is also entitled to use the flow of the Snake River at its facilities to the extent of its actual beneficial use, but not to exceed those amounts stated in State Water License Numbers 36-2013 (Thousand Springs), 37-2128 & 37-2472 (Lower Malad), 37-2471 (Upper Malad), 36-2018 (Clear Lake), 36-2026 (Sand Springs), 02-2057 (Upper Salmon), 02-2001A, 02-2001B, 02-2059, 02-2060 (Lower Salmon), 02-2064, 02-2065 (Bliss), 02-2056 (Twin Falls), 02-2036 (Shoshone Falls), 02-2032, 02-4000, 02-4001, and Decree Number 02-0100 (Swan Falls), but such rights in excess of the amounts stated in 1(A) shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the State in accordance with State law unless the depletion violates or will violate paragraph 1(A). Company retains it right to contest any appropriation of water in accordance with State law. Company further retains the right to compel State to take reasonable steps to insure the average daily flows established by this Agreement at the Murphy U.S.G.S. gauging station. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Company facilities shall not be considered in the calculation of the minimum daily stream flows set forth herein. This paragraph shall constitute a subordination condition.

C. The Company's rights listed in paragraph 1(A) and 1(B) are also subordinate to the uses of those persons dismissed from Ada County Case No. 81375 pursuant to the

contract executed between the State and Company implementing the terms of Idaho Code §§61-539 and 61-540.

D. The Company's rights listed in paragraph 1(A) and 1(B) are also subordinate to those persons who have beneficially used water prior to October 1, 1984, and who have filed an application or claim for said use by June 30, 1985.

E. Company's ability to purchase, lease, own, or otherwise acquire water from sources upstream of its power plants and convey it to and past its power plants below Milner Dam shall not be limited by this agreement. Such flows shall be considered fluctuations resulting from operation of Company facilities.

2. The above-captioned case is hereby dismissed without prejudice as to all remaining defendants other than the State Defendants.

3. The above-captioned case is hereby dismissed with prejudice as against the State defendants as to all claims of plaintiff not resolved by the decisions of the Idaho Supreme Court reported as Idaho Power Company v. State of Idaho, 104 Idaho 570, 661 P.2d 736 and 104 Idaho 575, 661 P.2d 741 (1983) or by the entry of this Judgment.

4. The Swan Falls Agreement, dated October 25, 1984, shall not be merged into nor integrated with this Judgment, but shall remain in full force and effect independent of this Judgment.

5. Each and all parties shall bear their own costs.

DATED this 7th day of March, 1990

DISTRICT JUDGE

37-2471 lic 37-2128 lic

RECEIVED
MAY 20 1983
Department of Water Resources

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

23 FERC ¶62,217

Idaho Power Company) Project No. 2726-001

ORDER APPROVING REVISED EXHIBITS J, K, L, AND M

(Issued May 16, 1983)

Idaho Power Company, Licensee for the Upper and Lower Malad Project, FERC Project No. 2726, filed on March 24, 1980, revised Exhibits J, K, L, and M pursuant to Articles 25 and 28 of its license. 1/

Article 25 requires the Licensee to file a revised Exhibit L to show the Lower Malad Diversion Dam as built. Article 28 requires the Licensee to file revised Exhibits J, K, and M to include the 46-kV Upper Malad Powerhouse to Hagerman Substation Transmission Line within the project boundary. The Exhibit L drawings show that the Lower Malad Diversion Dam was constructed in substantial conformance with the Exhibit L drawings approved as part of the license, and that there were no changes in the diversion dam design that would affect the safety or adequacy of the project. The Exhibits J, K, and M have been revised to include the transmission line within the project boundary. Project lands have increased by 0.67 acre. No Federal lands are involved.

The revised Exhibits J, K, L, and M conform to the Commission's regulations and will be approved. Approval of the exhibits is an administrative action and would not be a major Federal action significantly affecting the quality of the human environment.

It is ordered that:

(A) The revised Exhibit M entitled "General Description and Specifications of Equipment, Revision #1", consisting of two typewritten pages, filed March 24, 1980, is approved and

---

1/ Authority to act on this matter is delegated to the Director, Office of Electric Power Regulation, under §375.308 of the Commission's regulations, 18 C.F.R. §375.308 (1981), FERC Statutes and Regulations ¶30,238. This order may be appealed to the Commission by any party within 30 days of its issuance pursuant to Rule 1902, 18 C.F.R. 385.1902, FERC Statutes and Regulations ¶29,052, 47 Fed. Reg. 19014 (1982). Filing an appeal and final Commission action on that appeal are prerequisites for filing an application for rehearing as provided in Section 313(a) of the Act. Filing an appeal does not operate as a stay of the effective date of this order or of any other date specified in this order, except as specifically directed by the Commission.

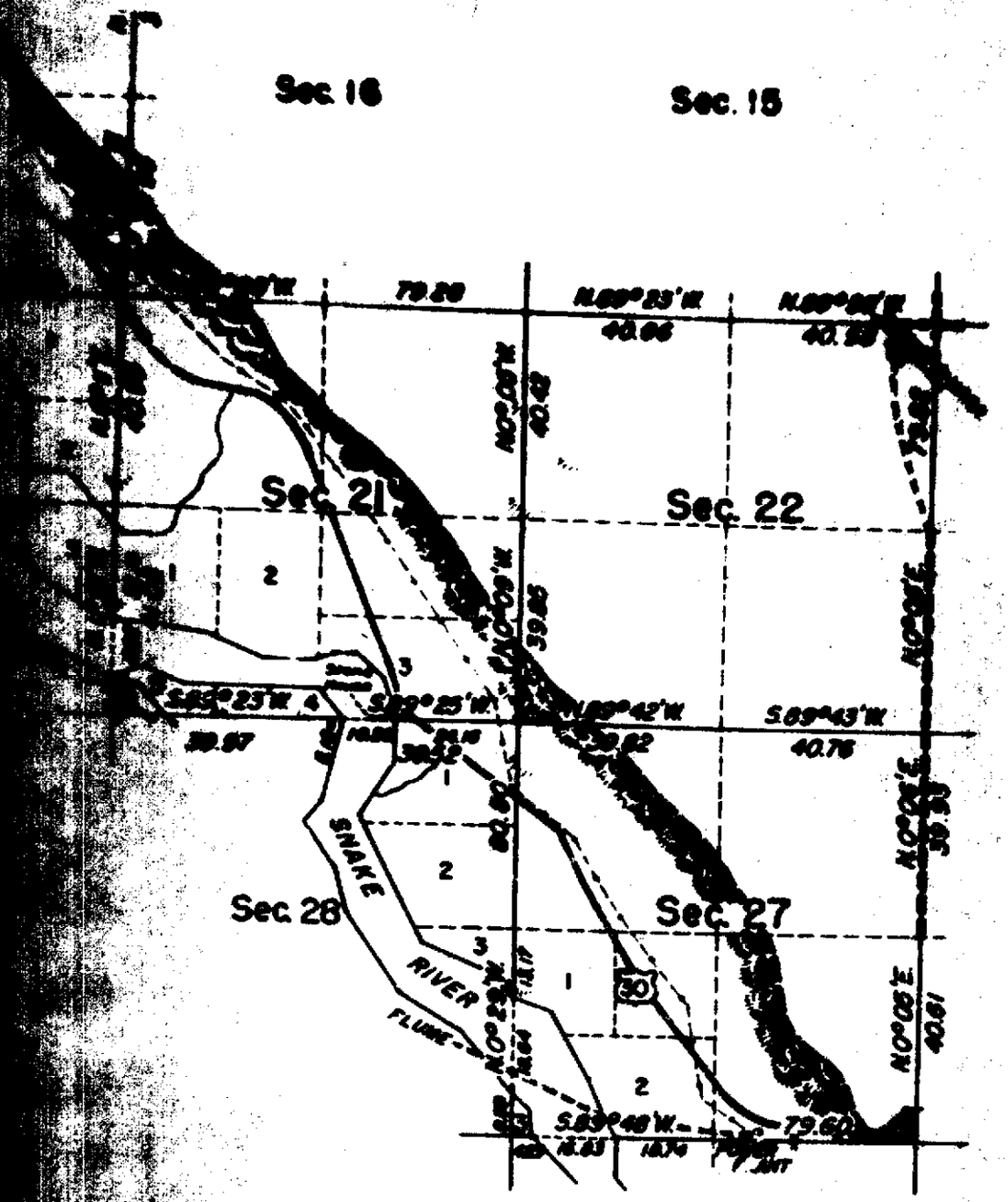
made a part of the license for Project No. 2726, superseding the Exhibit M that was approved in the Order Issuing License, issued August 9, 1979.

(B) The following exhibit drawings are approved and made a part of the license for Project No. 2726 superseding the drawings indicated:

EXHIBIT	FERC NO. 2726-	SHOWING	SUPERSEDING FERC NO. 2726-
J-1	17	General Map	11
J-2	18	Vicinity Map of Interconnected Transmission System	10
K-1	19	Project Boundary	16
L-1	20	Topography	3
L-2	21	Powerhouse Area, Plan, Elevations and Section	4
L-3	22	Dam, Flume & Flume Intake Plans & Sections	7
L-4	23	Dam, Flume & Flume Intake Plans & Sections	14

(C) Within 90 days from the date of issuance of this order, Licensee shall file originals of the approved exhibit drawings reproduced on silver or gelatin 35 mm microfilm mounted on Type D (3 1/4" x 7 3/8") aperture cards. In addition, Licensee shall file two Diazo-type duplicate aperture cards for each drawing. The FERC drawing numbers shall be shown in the margin below the title block of the microfilmed drawings, and also in the upper right corner of each aperture card.

Lawrence R. Anderson
Director, Office of Electric
Power Regulation



Area Resurveyed, 2,417.79 Acres.

0 5 0 10 20 40

Scale in Chains

December 14, 1948

Idaho Power Company
1220 Idaho Street
Boise, Idaho

Attention: Mr. A. C. Inman

Dear Mr. Inman:

We enclose certificate of transfer of 700 cubic feet per second of water from Malad River and Cove Creek from the Company's old Malad Power Plant to the new Lower Malad Power Plant, located in Lot 2, Sec. 27, Twp. 6 S., Rge. 13 E. B.M.

A copy of this transfer certificate is also being sent to Mr. Mans Coffin, Watermaster, for his information.

We also enclose Departmental Receipt No. 21074 for the $1.00 recording fee.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Roy W. Thompson
Supervisor of Water Distribution

T/gt
Encls.

CC: Mans Coffin

T-731

37-2128

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

In the Matter of the Application of IDAHO POWER COMPANY of Boise, Idaho	)	ORDER GRANTING TRANSFER
For a Transfer of Water Right, in Water District No. 7-AB, Gooding County, Idaho	)	No. 731

WHEREAS, On the 22nd day of November, 1948, at the Department of Reclamation of the State of Idaho, at Boise, Idaho, this matter of an application of Idaho Power Company, of Boise, Idaho, for a transfer of water right, came on regularly for hearing, pursuant to the published notice, in due and statutory form; and,

WHEREAS, No protest has been filed against the application, and the evidence filed by the applicant, with the application, shows that the water will be put to a higher and more beneficial use, and that no one will be injured thereby:

NOW, THEREFORE, IT IS HEREBY ORDERED That the said application be, and the same is HEREBY GRANTED, and that a Certificate of Transfer be issued to the applicant herein, as provided by the laws of the State of Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the official seal of the Department of Reclamation of the State of Idaho to be hereunto affixed, at Boise, Idaho, this 10th day of December, A.D. 1948.

MARK R. KULP
State Reclamation Engineer

T-731

37-2128

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

Certificate of Water Right
Transferred Right No. 731

THIS IS TO CERTIFY THAT THE IDAHO POWER COMPANY of Boise, Idaho, is the owner of and using a certain water right in the amount of 700 cubic feet per second from Malad River and Cove Creek, with priority of November 25, 1908, as evidenced by License and Certificate of Water Right No. 4366, recorded in Volume 8 of Licenses on Page 2570 in the records of the Department of Reclamation of the State of Idaho.

That the point of use and return of said waters are now located at said Idaho Power Company's old Malad Power Plant, situated in Lot 1, Sec. 34, Twp. 6 S., Rge. 13 E. B.M.

And that now, upon the application of the Idaho Power Company, through its Vice President and Secretary, A. C. Inman, for the transfer of 700 cubic feet per second of said water, made before the State Reclamation Engineer of the State of Idaho, and said application having been granted, the right to the use of the 700 cubic feet per second of the waters of Malad River and Cove Creek at the above point of use and return is hereby abandoned, and the point of use and return under such right and to which the water right HEREBY CONFIRMED shall become appurtenant, by this certificate, for power purposes, are located at the new Lower Malad Power Plant situated in Lot 2, Sec. 27, Twp. 6 S., Rge. 13 E. B.M.

That said water is to be limited at any given time to an amount actually needed and beneficially used for such purposes, and shall not exceed the following amount, to-wit:

700 cubic feet per second, bearing
date of priority of November 25, 1908.

That the water right hereby transferred has heretofore been conducted from Malad River and Cove Creek to the first above described place of use in the reinforced concrete flume with point of diversion in the NE¼NW¼, Sec. 35, Twp. 6 S., Rge. 13 E.B.M.

That the water right hereby transferred will hereafter be conducted to the last above described place of use through the said flume and the extension thereof with the same point of diversion in the NE¼NW¼ Sec. 35, Twp. 6S., Rge. 13 E. B.M.

That the right to the use of the water aforesaid, hereby confirmed, is restricted to the place of use last above described, as provided by the laws of the State of Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the official seal of the Department of Reclamation of the State of Idaho to be hereunto affixed, at Boise, Idaho, this 10th day of December, 1948, A.D.

MARK R. KULP
State Reclamation Engineer

T-731

37-2128

IDAHO POWER COMPANY

BOISE, IDAHO

November 26, 1948

RECEIVED
NOV 1 1948
Department of Reclamation

Mr Mark R Kulp
State Reclamation Engineer
State House
Boise, Idaho

Dear Mr Kulp:

I am enclosing herewith Affidavit of Publication from The Gooding Leader showing publication in two issues of the notice of our application for certificate of change of place of use and point of return of 700 cubic feet per second of the waters of Malad River and Cove Creek, as now evidenced by our License No 4366. Duplicate receipted bill for cost of publication is also enclosed, together with check in the amount of $1 to cover fee for issuance of the above certificate.

Very truly yours,

A C Inman
Secretary

ACI:mb
Encl (3)

T-731
37-2128

AFFIDAVIT OF PUBLICATION

NOTICE FOR PUBLICATION

Notice is hereby given that Idaho Power Company, a corporation having its principal place of business at 1220 Idaho Street, Boise, Idaho, has applied to the State Reclamation Engineer of the State of Idaho for a certificate authorizing it to change the place of use and point of return of 700 cubic feet per second of the waters of Malad River and Cove Creek, in Gooding County, Idaho, evidenced by License No. 4366 issued to said Idaho Power Company, from said company's old Malad Power Plant, located in Lot 1 of Section 27, Township 6 South, Range 13 East, Boise Meridian, to the Company's new Lower Malad Power Plant, located in Lot 2 of said Section 27, Township 6 South, Range 13 East, Boise Meridian, in Gooding County, Idaho; and that on Monday, the 22d day of November, A.D. 1948, at the hour of 10 o'clock A.M., at the offices of the Department of Reclamation in the State Capitol Building at Boise, Idaho, before the State Reclamation Engineer, or his authorized agent, the opportunity will be given to any and all persons to appear and present for his consideration any reason or reasons why a certificate should ot be issued authorizing such transfer.

Dated at Boise, Idaho, this 25th day of October, 1948.

Mark R. Kulp, State Reclamation Engineer.

51-52

STATE OF IDAHO
County of Gooding } ss.

I, **Leland G. Burress**, do solemnly swear that I am the printer and publisher of THE GOODING LEADER, a weekly newspaper of general circulation, published once each week at Gooding, Idaho; that the notice attached hereto was published in said newspaper two consecutive weeks, the first publication having been made on the 4th day of Nov., 1948, and the last publication having been made on the on the 11th day of Nov, 1948, that said notice was published in the regular and entire issue of every number of the paper during that period and time of publication, and that the said notice was published in the newspaper proper, and not in the supplement thereof.

That said newspaper has been printed and published continuously in **Gooding, Gooding County, Idaho,** for a period of more than 78 weeks prior to the first publication of the attached notice.

Leland G Burress

Subscribed and sworn to before me this

17th day of November, 1948.

Helen J. Smith

Notary Public.

T-731

37-2128

STATEMENT RENDERED EVERY THIRTY DAYS

THE GOODING LEADER

And GOODING INDEPENDENT Combined

One Newspaper • One Coverage • One Cost

Gooding, Idaho, Nov. 24, 1948 194

Account of

Idaho Power Company
Boise, Idaho

ADVERTISING—

Weeks of Month	1st	2nd	3rd	4th	5th	Total	Rate	Cost
DISPLAY, Col. Inches								

JOB PRINTING AND SUPPLIES

NOTICE FOR PUBLICATION. Mark R. Kulp, state reclamation engineer, Idaho Power application for certificate authorizing change, the place of use and point of return of 700 cubic feet per second of waters of Malad river and Cove creek. License No. 4366 issued to Idaho Power from old Malad plant. First publication Nov. 4; second and last publication Nov. 11. 41 lines @ 10¢ and 5¢ $6.15

Paid 11-24-48 Per RQ

T-731

37-2128

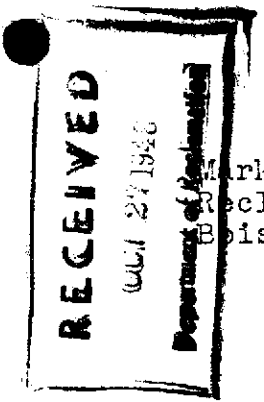
Gooding, Idaho
October 26, 1948

Gentlemen:

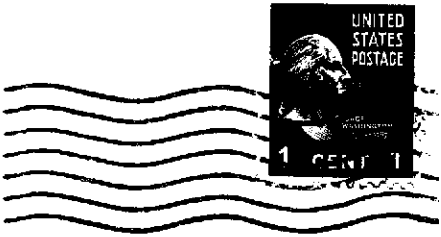
We have received your Notice of Publication in accordance with the Idaho Power Co. We will send you first issue so that you may check same.

Yours very truly,
The Gooding Leader
The GOODING LEADER
Leland G. Burress
Editor-Publisher

T-731
37-2128







Mark R. Kulp
Reclamation Engineer
Boise, Idaho

October 25, 1948

The Gooding Leader
Gooding, Idaho

Gentlemen:

We enclose notice to be published once a week for two consecutive weeks beginning with your issue of November 5, 1948.

The cost of the publication is to be paid by the Idaho Power Company, to whom please send affidavit of publication when same is completed.

Please acknowledge receipt of this notice and furnish this Department with a copy of your first issue containing the notice in order that we may check same.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A/gt
Enc.

T-731
37-212P

NOTICE FOR PUBLICATION

Notice is hereby given that Idaho Power Company, a corporation having its principal place of business at 1220 Idaho Street, Boise, Idaho, has applied to the State Reclamation Engineer of the State of Idaho for a certificate authorizing it to change the place of use and point of return of 700 cubic feet per second of the waters of Malad River and Cove Creek, in Gooding County, Idaho, evidenced by License No 4366 issued to said Idaho Power Company, from said Company's old Malad Power Plant, located in Lot 1 of Section 27, Township 6 South, Range 13 East, Boise Meridian, to the Company's new Lower Malad Power Plant, located in Lot 2 of said Section 27, Township 6 South, Range 13 East, Boise Meridian, in Gooding County, Idaho; and that on Monday, the 22d day of November, A.D.1948, at the hour of 10 o'clock A. M., at the offices of the Department of Reclamation in the State Capitol Building at Boise, Idaho, before the State Reclamation Engineer, or his authorized agent, the opportunity will be given to any and all persons to appear and present for his consideration any reason or reasons why a certificate should not be issued authorizing such transfer.

Dated at Boise, Idaho, this 25th day of October, 1948.

Mark R Kulp

MARK R. KULP
State Reclamation Engineer.

(Two publications required. Date of hearing must be at least 5 days after last publication.)

T-731

37-2128

October 25, 1948

Mens H. Coffin, Watermaster
Water Districts Nos. 7 AB & 11 AB
Shoshone, Idaho

Dear Mr. Coffin:

We enclose herewith application of the Idaho Power Company for transfer of water right.

Under the statutes such applications must be approved or disapproved by the water master and you will note that Mr. Inman has attached a form to be signed by you in this connection if the transfer meets with your approval.

Very truly yours,

MARK R. KULP
State Reclamation Engineer
By

Chief Clerk

A/gt
Enc.

T-731
37-2128

APPLICATION FOR TRANSFER OF WATER RIGHT

STATE OF IDAHO)
) ss
COUNTY OF ADA)

A C INMAN, being first duly sworn, deposes and says:

That he is the Vice-President and Secretary of Idaho Power Company, and makes this affidavit and application for and on behalf of Idaho Power Company, applicant herein; that said Company is duly qualified to do business in and under the laws of the State of Idaho, and is the owner of the water right hereinafter referred to and concerning which this application for transfer is made;

That said Idaho Power Company, applicant herein, is the owner of and using that certain water right, bearing date of priority of November 25, 1908, for 700 cubic feet per second of the waters of Malad River and Cove Creek, in Gooding County, State of Idaho, evidenced by License No 4366, issued to Idaho Power Company, applicant herein, by the Commissioner of Reclamation of the State of Idaho, dated July 16, 1920, as entered of record in Volume 5 of Licenses at page 2570, in the records of the office of the Department of Reclamation of the State of Idaho;

That said waters are diverted from the said Malad River at a location approximately 1,395 feet distant from the northwest corner of Section 35, and in the Northeast Quarter of the Northwest Quarter (NE¼NW¼) of said Section 35, Township 6 South, Range 13 East, Boise Meridian, in Gooding County, Idaho;

That for many years past, and up to and including October 1, 1948, said waters were conducted by applicant from said point of diversion in a reinforced concrete flume to the Company's old Malad Power Plant, located in Lot 1 of Section 34, Township 6 South, Range 13 East, Boise Meridian, where the same have been continuously used for the purpose of generating electric power and energy for many years last past;

That applicant, Idaho Power Company, has constructed a new power plant known as the Lower Malad Power Plant, located approximately 1,030 feet distant from the southwest corner of Section 27, in Lot 2 of said Section 27, Township 6 South, Range 13 East, Boise Meridian, in said Gooding County, Idaho, and desires to change the place of use and point of return of the said 700 cubic feet per second of said waters from the present old Malad Power Plant to the new Lower Malad Power Plant, and will convey said waters thereto from said point of diversion (which point of diversion is not changed), by means of said concrete flume and an extension thereof, to the said Lower Malad Power Plant; that said new plant was completed and placed in operation on October 1, 1948, since which said date said waters, and the entire 700 cubic feet per second thereof represented by License 4366,

T-731 37-2128

have been beneficially used in generating electrical power and energy at said new point of use in said new Lower Malad Power Plant;

That the reasons for making such transfer are that said Lower Malad Power Plant is a new and larger and more modern and efficient hydroelectric power plant than the old Malad Power Plant and that the said 700 cubic feet per second of said waters, together with other and additional waters of the Malad River (reference is made to applicant's Permit No 19864) are necessary for use, and will be used to greater advantage in said new Lower Malad Power Plant for the production and generation of larger amounts of electric power and energy required by applicant in its business as a public utility and in supplying the requirements of its customers in the State of Idaho;

That said works for the diversion and conveyance of said waters to the place of use at said Lower Malad Power Plant have been completed, reference being made to Certificate of Completion of Works issued to applicant by the State Reclamation Engineer under applicant's Permit No 19864, on October 2, 1948, and to the records in the office of the Department of Reclamation of the State of Idaho with respect thereto;

That the point of return of said waters will be directly from said Lower Malad Power Plant to the Snake River at the location of the power plant as aforesaid; that there is attached hereto and made a part of this application a map showing the respective locations of the power plants, works and facilities hereinabove referred to and described;

That applicant desires to change the place of use and point of return of said 700 cubic feet per second of said waters as hereinabove set forth, and applicant alleges, and your affiant states, that no person or party will be injured by such transfer.

WHEREFORE, applicant and your affiant respectfully request that the State Reclamation Engineer of the State of Idaho issue to Idaho Power Company, applicant herein, the proper certificate authorizing such transfer to be made, in accordance with Section 41-216 of Idaho Code Annotated, as amended.

(Sgd) A. C...

Subscribed and sworn to before me this 22d day of October, 1948.

(NOTARIAL SEAL)

(Sgd) Geo H Petersen
Notary Public,
Residing at Boise, Idaho.
My Commission expires: July 20, 1949

T-731

37-2128

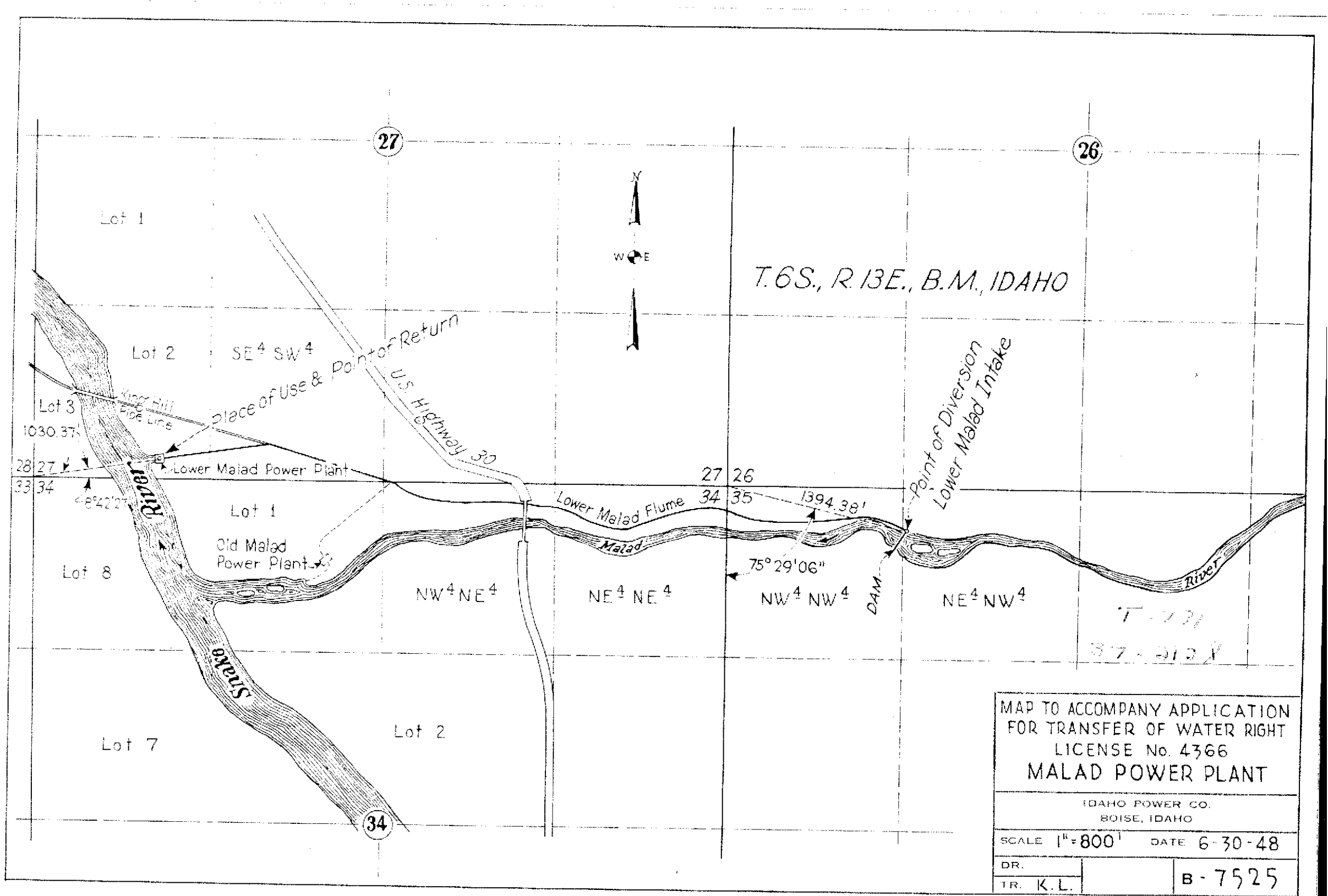
STATE OF IDAHO)
) ss
COUNTY OF LINCOLN)

I, _____, Water Master of Water District No 7-AB, whose Post Office address is Shoshone, Idaho, have read the attached and foregoing affidavit and application of Idaho Power Company, and, of my own knowledge, believe the same to be true as to all matters therein alleged, and that no one will be injured by the transfer prayed to be authorized; and I hereby endorse my approval of said petition.

Dated at Shoshone, Idaho, this _____ day of _____, 1948.

_____
Water Master, District No 7-AB

T-731
37-2128


27
26
N
W E
T.6S., R.13E., B.M., IDAHO
Lot 1
Lot 2
SE¼ SW¼
Lot 3
1030.37'
River Hill Pipe Line
Place of Use & Point of Return
U.S. Highway 30
Lower Malad Power Plant
28 27
33 34
S 8°42'27" E
Snake River
Lot 1
Old Malad Power Plant
Lot 8
NW¼ NE¼
NE¼ NE¼
27 26
34 35
Lower Malad Flume
1394.38'
Malad River
75°29'06"
DAM
Point of Diversion Lower Malad Intake
NW¼ NW¼
NE¼ NW¼
Lot 7
Lot 2
34
MAP TO ACCOMPANY APPLICATION FOR TRANSFER OF WATER RIGHT LICENSE No. 4366
MALAD POWER PLANT
IDAHO POWER CO.
BOISE, IDAHO
SCALE 1"=800' DATE 6-30-48
DR.
TR. K.L.
B-7525

IDAHO POWER COMPANY

BOISE, IDAHO

October 22, 1948

RECEIVED
Department of Reclamation

State Reclamation Engineer
Department of Reclamation
State House
Boise, Idaho

Dear Sir:

Re: Water License No 4366 -
700 cfs Malad River

With reference to the above water license, and pursuant to Section 41-216, Idaho Code Annotated, I am enclosing herewith original and one copy of application of Idaho Power Company for transfer of water right, to cover the change in place of use and point of return from the Company's old Malad power plant to the location of the new Lower Malad power plant, which was completed and placed in operation on October 1, 1948.

The copy of the application is for transmittal to Mr Coffin, who I understand is Water Master of the District, from whom notification of approval must be obtained as provided in the above section of the statutes, and for such purpose there is also enclosed an extra copy of a form of notification, which may be used if desired.

Also enclosed are two copies of proposed Notice for Publication, in which date for protest or hearing is fixed on Monday, November 22, 1948, as per instructions from your office.

You are authorized to have the enclosed notice published in two issues of The Gooding Leader, at our expense, the last publication date to be more than five days prior to the date of hearing.

Very truly yours,

A. C. Inman

A C Inman
Secretary

ACI:mb
Encl

T-731

37-2128

APPLICATION FOR TRANSFER OF WATER RIGHT

STATE OF IDAHO)
) ss
COUNTY OF ADA)

A C INMAN, being first duly sworn, deposes and says:

That he is the Vice-President and Secretary of Idaho Power Company, and makes this affidavit and application for and on behalf of Idaho Power Company, applicant herein; that said Company is duly qualified to do business in and under the laws of the State of Idaho, and is the owner of the water right hereinafter referred to and concerning which this application for transfer is made;

That said Idaho Power Company, applicant herein, is the owner of and using that certain water right, bearing date of priority of November 25, 1908, for 700 cubic feet per second of the waters of Malad River and Cove Creek, in Gooding County, State of Idaho, evidenced by License No 4366, issued to Idaho Power Company, applicant herein, by the Commissioner of Reclamation of the State of Idaho, dated July 16, 1920, as entered of record in Volume 5 of Licenses at page 2570, in the records of the office of the Department of Reclamation of the State of Idaho;

That said waters are diverted from the said Malad River at a location approximately 1,395 feet distant from the northwest corner of Section 35, and in the Northeast Quarter of the Northwest Quarter ($NE\frac{1}{4}NW\frac{1}{4}$) of said Section 35, Township 6 South, Range 13 East, Boise Meridian, in Gooding County, Idaho;

That for many years past, and up to and including October 1, 1948, said waters were conducted by applicant from said point of diversion in a reinforced concrete flume to the Company's old Malad Power Plant, located in Lot 1 of Section 34, Township 6 South, Range 13 East, Boise Meridian, where the same have been continuously used for the purpose of generating electric power and energy for many years last past;

That applicant, Idaho Power Company, has constructed a new power plant known as the Lower Malad Power Plant, located approximately 1,030 feet distant from the southwest corner of Section 27, in Lot 2 of said Section 27, Township 6 South, Range 13 East, Boise Meridian, in said Gooding County, Idaho, and desires to change the place of use and point of return of the said 700 cubic feet per second of said waters from the present old Malad Power Plant to the new Lower Malad Power Plant, and will convey said waters thereto from said point of diversion (which point of diversion is not changed), by means of said concrete flume and an extension thereof, to the said Lower Malad Power Plant; that said new plant was completed and placed in operation on October 1, 1948, since which said date said waters, and the entire 700 cubic feet per second thereof represented by License 4366,

T-731 37-2128

have been beneficially used in generating electrical power and energy at said new point of use in said new Lower Malad Power Plant;

That the reasons for making such transfer are that said Lower Malad Power Plant is a new and larger and more modern and efficient hydroelectric power plant than the old Malad Power Plant and that the said 700 cubic feet per second of said waters, together with other and additional waters of the Malad River (reference is made to applicant's Permit No 19864) are necessary for use, and will be used to greater advantage in said new Lower Malad Power Plant for the production and generation of larger amounts of electric power and energy required by applicant in its business as a public utility and in supplying the requirements of its customers in the State of Idaho;

That said works for the diversion and conveyance of said waters to the place of use at said Lower Malad Power Plant have been completed, reference being made to Certificate of Completion of Works issued to applicant by the State Reclamation Engineer under applicant's Permit No 19864, on October 2, 1948, and to the records in the office of the Department of Reclamation of the State of Idaho with respect thereto;

That the point of return of said waters will be directly from said Lower Malad Power Plant to the Snake River at the location of the power plant as aforesaid; that there is attached hereto and made a part of this application a map showing the respective locations of the power plants, works and facilities hereinabove referred to and described;

That applicant desires to change the place of use and point of return of said 700 cubic feet per second of said waters as hereinabove set forth, and applicant alleges, and your affiant states, that no person or party will be injured by such transfer.

WHEREFORE, applicant and your affiant respectfully request that the State Reclamation Engineer of the State of Idaho issue to Idaho Power Company, applicant herein, the proper certificate authorizing such transfer to be made, in accordance with Section 41-216 of Idaho Code Annotated, as amended.

A. J. Truman

Subscribed and sworn to before me this 22d day of October, 1948.

Geo. N. Peterson
Notary Public,
Residing at Boise, Idaho.
My Commission expires: July 20, 1949

(NOTARIAL SEAL)

T-731

37-2128

STATE OF IDAHO)
) ss
COUNTY OF LINCOLN)

I, Mans H. Coffin, Water Master of Water District No 7-AB, whose Post Office address is Shoshone, Idaho, have read the attached and foregoing affidavit and application of Idaho Power Company, and, of my own knowledge, believe the same to be true as to all matters therein alleged, and that no one will be injured by the transfer prayed to be authorized; and I hereby endorse my approval of said petition.

Dated at Shoshone, Idaho, this 28th day of October, 1948.

Mans H. Coffin
Water Master, District No 7-AB

T-731
37-2128

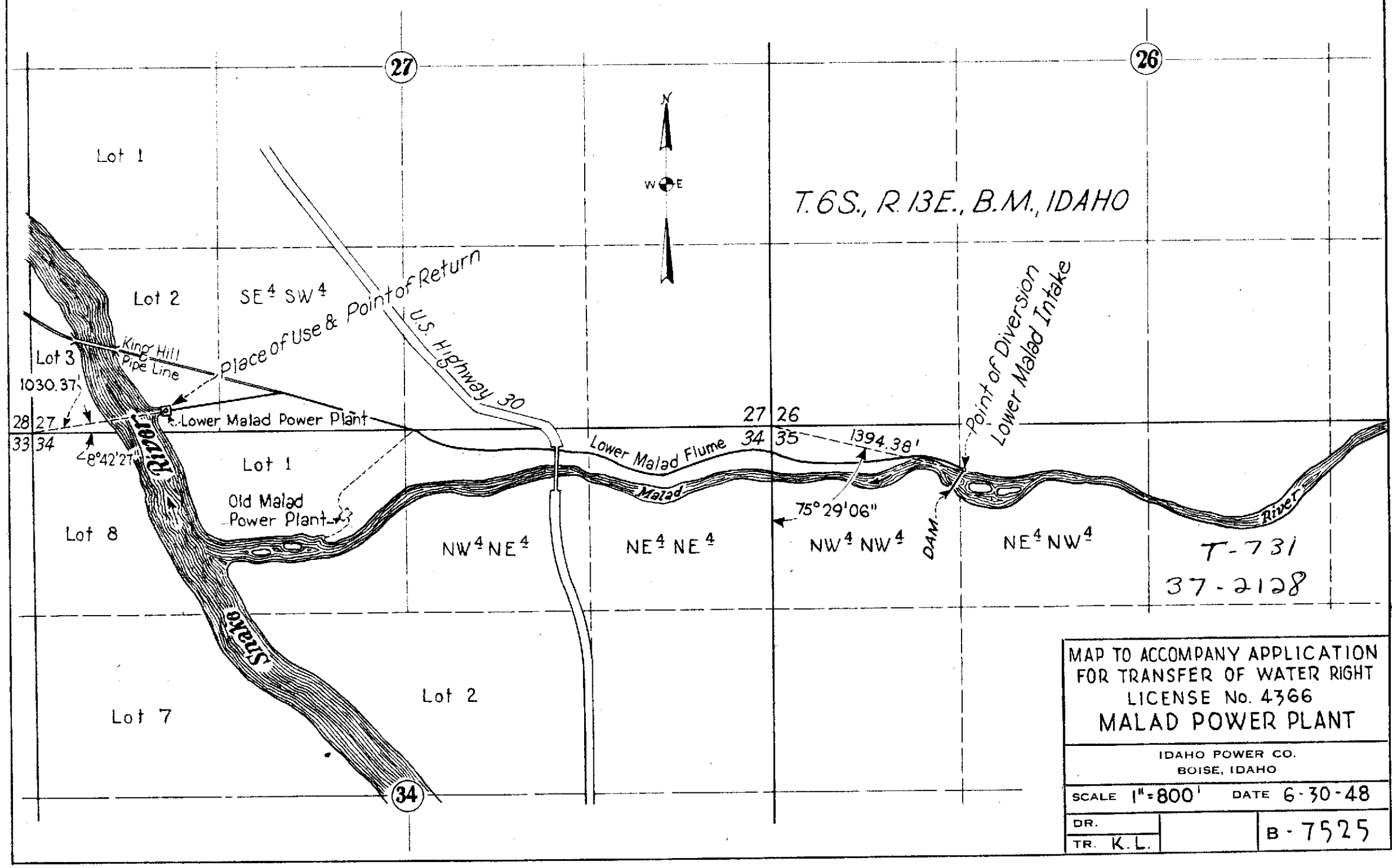
STATE OF IDAHO)
) ss
COUNTY OF LINCOLN)

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Dated at Shoshone, Idaho, this 28th day of October, 1948.

Mans H. Coffin
Water Master, District No 7-AB

T-731
37-2128


27
26
34
N
W
E
Lot 1
Lot 2
SE¼ SW¼
Lot 3
1030.37'
28 27
33 34
King Hill Pipe Line
Place of Use & Point of Return
U.S. Highway 30
Lower Malad Power Plant
Old Malad Power Plant
Lot 8
Lot 7
Lot 1
Lot 2
NW¼ NE¼
NE¼ NE¼
NW¼ NW¼
NE¼ NW¼
Snake River
Lower Malad Flume
27 26
34 35
1394.38'
75°29'06"
Malad River
DAM
Point of Diversion
Lower Malad Intake
T.6S., R.13E., B.M., IDAHO
T-731
37-2128
MAP TO ACCOMPANY APPLICATION
FOR TRANSFER OF WATER RIGHT
LICENSE No. 4366
MALAD POWER PLANT
IDAHO POWER CO.
BOISE, IDAHO
SCALE 1"=800' DATE 6-30-48
DR.
TR. K.L.
B-7525

RETURN TO STATE RECLAMATION ENGINEER

STATE OF IDAHO)
) ss
COUNTY OF LINCOLN)

I, Mans H. Coffin, Water Master of Water District No 7-AB, whose Post Office address is Shoshone, Idaho, have read the attached and foregoing affidavit and application of Idaho Power Company, and, of my own knowledge, believe the same to be true as to all matters therein alleged, and that no one will be injured by the transfer prayed to be authorized; and I hereby endorse my approval of said petition.

Dated at Shoshone, Idaho, this 28th day of October, 1948.

Mans H. Coffin
Water Master, District No 7-AB

T-731
37-2128

State of Idaho

License and Certificate of Water Right

Water License No. 4366

Water District No. 36

Amount 700 sec.ft.

Priority 11-25-1908

THIS IS TO CERTIFY that Idaho Power Company

of Boise, Idaho, made application for a permit to appropriate the public waters of the State of Idaho, dated November 25, 19 08; that Permit No. 4366 was issued under said application; that Certificate of Completion of works, with a carrying capacity of 1100 second feet, was issued thereunder on March 6, 19 14, showing that said works were completed on the 21st day of February, 19 14; and that on the 21st day of February, 19 20,

Idaho Power Company

of Boise, State of Idaho, made proof to the satisfaction of the Commissioner of Reclamation of Idaho, of a right to the use of the waters of Malad River and Cove Creek, tributary to Snake River, for the purpose of generating electrical power, under Use Permit No. 4366 of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Idaho, and is hereby confirmed by the Commissioner of Reclamation of Idaho and entered of record in Volume 5 of Licenses, at page 2570, on the 16th day of July, 19 20;

The right hereby confirmed dates from November 25, 19 08;

The Point of Diversion is located as follows: Malad River S.12°25'E.2786' from quarter corner between Secs.25-26, T.6 S.,R.13 E.,B.M.; Cove Creek S.9°56'E.2183' dist.from the quarter corner between Secs.25-26,T.6 S.,R.13 E.,B.M.,County of Gooding.

That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed 700 cubic feet per second.

Description and location of use: at Malad Power Station, located S.78° 10' W.,3265' from N.E.Cor. Sec.25, T.6 S., R.13 E., B.M.

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, as provided by the laws of Idaho.

WITNESS the seal and signature of the Commissioner of Reclamation, affixed at Boise, Idaho, this 18th day of July, 19 20

(SEAL)

W. G. Swendsen
Commissioner of Reclamation

No. 5904. 37-2128

APPLICATION FOR PERMIT

To Appropriate the Public Waters of the State of Idaho

1. Name of applicant: A.M. Wrench

   Postoffice address: 415 McCormick Bldg., Salt Lake City

   County: Salt Lake State: Utah

2. The quantity of water claimed is 1100 cubic feet per second.

3. Source of water supply: Malade River and tributaries, including Cove Creek

   County of Lincoln

4. Location of point of diversion: From Malade River at point S. 81° 20' E., 720 feet from S.E. Cor. Sec. 26., T. 6 S.R. 13 E. B.B. and M., from Cove Creek at point N. 32° 30' E., 600 feet from N.E. cor. of Section 35, T. 6 S.R. 13 E.B.B. & M.

5. To be used for:

   II. Mining, power, manufacturing or transportation purposes:

   (a) To be used for: generating power for beneficial uses.

   (b) Amount of power to be generated: 30000 horse power.

   (c) At what point: S. 78° 10' W., 3265 ft. from N.E. cor. sec. 34 T. 6 S.R. 13 E. B B & M

   (d) Is water to be returned to any stream : Yes

   (e) If so, name stream and locate point of return: Malade river at point which bears S. 77° 30' W., 3450 ft., from S.E. cor. sec. 27 T. 6 S.R. 13 E.B.B. and M.

6. Estimated cost of works: $500,000.00

7. Description of works for diversion:

   I, Kind of works: Diverting reservoir, dam, flume or pipe flow-line, pressure pipe, gates and apparatus for control.

   II. Dimensions of works:

   (a) Height of dam 22 feet, length of dam at top 325 feet, length of dam at bottom 216 feet. Material used in construction: Timber Crib - rock fill, concrete or stone.

   (b) Capacity of reservoir: 264 acre feet.

   (c) Size of headgate: Width 30 feet, height 10 feet.

   (d) Conduit flume or pipe, width at bottom if flume 14 feet, width at water line 14 feet, depth of water 10 feet. Diameter of pipe 180 inches. Average grade per mile is 5.1744 feet. Length of conduit is 1.952 miles, and it crosses the following quarter sections: NW¼ Sec. 36, SW¼ Sec. 25, SE¼ Sec. 26, NE¼ and NW¼ Sec. 35, SW¼ Sec. 26. SE¼ Sec. 27 and NE¼ and NW¼ (Lot 1) sec. 34, in T. 6 S.R. 13 E.B.B. & M., to point described in 5 II (c) above which is the point of intended use.

8. Time required for the completion of the construction of such work is five years.

JONES EUREKA LEAF, PAT. FEB. 7, 1905

PIONEER STDY. & PTG. CO., TACOMA—88128

4366

9. Time required for the complete application of the water to the proposed use is four additional years.

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

A.M. Wrench,

Applicant.

By.Fredrick Steigmeyer,....Agent.

Remarks: 50 sec. ft. will be diverted from Cove Creek and 1050 sec. ft., from the Malade River. The data given in 7-II- (a),(b), (c) and (d) relates to the Malade river diversion; Cove creek diversion will be accomplished by dam fifteen feet high, lehgth of dam at top eighty-two feet,length of dam at bottom seventy-four feet. Material used in construction, crib, rock-filled; capacity of reservoir, 106 acre feet; size of head-gate, width 6 ft., height 5 ft., conduit, flume or pipe; width at bottom if flume, 5 ft., width at water line 5 ft., depth of water, 4 ft., diameter of pipe : 48 inches. Average grade per mile is 5.28 ft., Length of conduit is 0.234 miles and it crosses the SW¼ of Sec. 25. T. 6 S.R. 13 E.B.B. & M., to main conduit (See map) thence to point of use and return;

The Malade River diversion is in NW¼ of Sec. 36. T. 6. S.R. 13 E.B. B & M; the Cove Creek diversion in SW¼ of Sec. 25,T. 6 S.R. 13 E. B. B. & M., the points of use and return in the NW¼ of Sec. 34. T. 6 S.R. 13 E. B.B. & M., all in Lincoln County, Idaho.

APPROVAL OF STATE ENGINEER.

The number of this permit is 4366.

Date of first receipt of application: 3.00 p.m. November 25,1908

Returned to applicant for correction: December 25,1908.

Corrected application received February 22,1909

Recorded in Book 12, Page 4366. Approved February 22,1909.

This is to certify that I have examined the within application for a permit to appropriate the public waters of the State of Idaho and hereby grant the same, subject to the following limitations and conditions:

Good and sufficient bond to be filed in the sum of $2,200.00 on or before April 23,1909.

One-fifth of the work above specified to be completed on or before August 22,1911.

The whole of said work to be completed on or before February 22,1914.

The time for proof of beneficial use of water appropriated in accordance herewith extended to February 22,1918.

Witness my hand this twenty-second day of February,1909.

Jas. Stephenson Jr.
State Engineer

Boise, Idaho. Sept 14th, 1910.

TO WHOM IT MAY CONCERN:

Notice is hereby given that the Application for Permit to appropriate the public waters of the State of Idaho, made in the name of A. M. Wrenbh, on the 25th day of November, 1908, being application for Permit No. 5904, approved on February 22, 1909, by the State Engineer of the State of Idaho, as Permit No. 4366, was filed for and on behalf of and for the sole use of The Idaho Nevada Power Company, a corporation organized under the laws of the State of Colorado, and that said permit is claimed as the property of said corporation.

THE IDAHO NEVADA POWER COMPANY

By. A. Carpenter,
Attorney & Agent.

Received and filed for record in the office of the State Engineer at Boise, Idaho, at 3:30 P.M. Sep 15 1910.

D. C. Martin,

State Engineer
FMC

D E E D

This indenture made this 6th day of March, in the year of our Lord one thousand nine hundred eleven by and between A. M. Wrench of Salt Lake City, County of Salt Lake, State of Utah, hereinafter designated as the party of the first part, and The Beaver River Power Company, a corporation of the State of Colorado, hereinafter designated as the party of the second part:

WITNESSETH: That the said party of the first part for and in consideration of the sum of $75,000., lawful money of the United States of America, by said party of the second part paid to the said party of the first part and other valuable consideration, has granted, bargained, sold and conveyed and does by these presents grant, bargain, sell and convey unto the said party of the second part and its successors and assigns, all water rights and water appropriations and right to divert and utilize the waters of the Malade River in Lincoln County, Idaho, now owned, claimed and held by the party of the first part, inclusive of the following water rights and water appropriations:

That certain water appropriation made on the 26th day of March, 1902, by one Hermann Rapp and one Earnest Pearson for the diversion of 500 cubic feet per second of water from the Malade River at a point on the right bank of the Malade River situated about 1195.5 feet S. 75° 22' E. from the S.W. corner of Section 27, Twp. 6 So. of Range 13 E. B. M.; also that certain appropriation made by the Glenns Ferry Land & Irrigation Company, Limited, on the 7th day of August, 1902, for the diversion and appropriation of 500 cubic feet per second of the waters of said river and to be diverted at or near the point above described; also that certain water right [illegible] and permit to divert and appropriate water, granted by the State Engineer of the State of Idaho on the 23rd day

of January, 1904, to F. J. Hagenbarth and R. J. Shields, and evidenced by Permit No. 438, issued by said State Engineer for 1,100 cubic feet per second, the same to be diverted at or near the point above described.

Also the right, title and interest in and to that permit for the appropriation of public waters of the State of Idaho, issued to the said party of the first part by the State Engineer of said State and by him approved on the 22nd day of February, 1909, and recorded on Page 4366 of Book 12 of Water Permits in the office of the said State Engineer in Boise, Idaho, said permit being numbered 4366.

The said party of the first part does by these presents further grant, bargain, sell and convey unto the said party of the second part, its successors and assigns, an undivided three-fourths interest in and to those certain pieces and parcels of land situated, lying and being in the County of Lincoln, State of Idaho, used and intended to be used as a right-of-way for the dam, canal, flume and ditches required for diverting and carrying the said water hereinbefore mentioned, which said right of way is more particularly described as follows:

A strip of land 200 feet wide lying 100 feet on each side of the following described line: Beginning at a point S. 76° 55' E. 1,251.8 feet from the N. E. corner of Sec. 34, twp. 6 S. R. 13 E., B. M.; thence S. 8° W. 250 feet; also beginning at said point lying S. 76° 55' E. 1251.8 feet from said N. E. corner of said Sec. 34; thence N. 8° E. 50 feet; also a strip of land 100 feet wide lying 50 feet on each side of the following centre line beginning at a point in the NW¼ of the NW¼ of Sec. 35, said Township and Range, S. 76° 55' E. 1,251.8 feet from the N. E. corner of said Sec. 34; thence N. 60° 51' W. 100 feet; thence S. 84° 56' W. 257 feet; thence W. 715 feet; thence N. 58° 7' W. 128 feet; thence S. 89° 55' W. 260 feet; thence S. 74° 2' W. 644 feet; thence N. 69°32' W. 298 feet; thence N. 72°23' W. 187 feet; thence S. 89° 52' W. 128 feet; thence N. 74° 25' W. 127 feet; thence S. 89° 17' W. 269 feet; thence N. 87° W. 457 feet; thence N. 77° 35' W. 169 feet; thence N. 49° 37' W. 73 feet; thence N. 70° 36' W. 700 feet; thence N. 75° 28' W. 1,616 feet more or less to head of syphon pipe of Kings Hill Irrigation & Power Company across Snake River.

Also all those certain lands, pieces and parcels of land situated, lying and being in the County of Lincoln, State of Idaho, bounded and particularly described as follows, to-wit:

Commencing at the Government meander corner at the southwest corner of Lot 2, Sec. 27, Twp. 6 S., Range 13 E., B. M.; thence North 33° 00' West 290.8 feet to a point which is the place of beginning; thence North 75° 28' West 588 feet more or less to a point on the water's edge of the east side of Snake River; thence along said wast water's edge of Snake River, North 42° 50' West 80 feet; thence continuing along said water's edge North 18° 00' West 134 feet; thence continuing along said water's edge North 7° 18' West 400 feet; thence continuing along said water's edge North 22°56' West 100 feet; thence East 200 feet more or less to a point 120 feet West of the Government meander line on the West side of said Lot 2; thence South

31° 00' East 340 feet; thence East 120 feet to a point on the said Government meander line; thence South 24° 30' East along said meander line 443 feet more or less to a point 50 feet at right angles to and on the southerly side of the centre line of the ditch or flume of the Kings Hill Irrigation & Power Company; thence South 75° 28' East parallel to said centre line 93.4 feet more or less; thence South 125.3 feet more or less to a point on the said meander line, which is the place of beginning, containing 6.7 acres more or less, with all water rights belonging to same and the right to use ditches of one V. V. Carico on his other lands to carry water to the lands above described.

Also those certain premises, pieces, and parcels of land situated in said County and State and particularly described as follows:---

Beginning at the North East corner of the NW¼ of the NE¼ of Sec. 34, Twp. 6 South, Range 13 East, B. M., thence West along the North line of said Sec. 34, to the Northwest corner of said NW¼ of the NE¼ of said Sec. 34; thence South along the West line of said NW¼ of the NE¼ of Sec. 34, 155 feet; thence South 77° 35' East 442 feet; thence South 84° 05' East to a point on the East line of said NW¼ of the NE¼; thence North along said East line of the NW¼ of the NE¼ of Sec. 34 to place of beginning, being 8 1/10 acres more or less.

Also any and all other real property, water rights, lands and improvements thereon of whatsoever kind owned by the party of the first part in Lincoln County, Idaho.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, all and singularly, the said premises and properties hereinbefore described, together with all appurtenances unto the said party of the second part, its successors, grantees and assigns forever.

IN WITNESS WHEREOF, the said party of the first part has hereunto subscribed his name and affixed his seal the day and year first above written.

A. M. Wrench

WITNESS as to the execution and delivery of the foregoing deed.

A. E. Park.

STATE OF UTAH,)
) ss
COUNTY OF SALT LAKE.)

On this 6th day of March, A. D. 1911, before me, B. A. Cummings, a notary public in and for the said County, personally appeared A. M. Wrench, known personally to me to be the party who executed the above instrument and acknowledged to me that he executed same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.

My commission expires November 17th, 1911.

B. A. Cummings,

(SEAL)

Notary Public in and for the County of Salt Lake, State of Utah.

Received and filed for record in the office of the State Engineer at Boise, Idaho, at 10.oo a.m. January 3, 1912.

A. E. Robinson,

State Engineer

D E E D

THIS INDENTURE, Made this 30th day of August, 1913, between The Beaver River Power Company, a Colorado corporation, hereinafter called 'Beaver Company', and Idaho Power and Light Company, a Nevada corporation, hereafter called 'Idaho Company', WITNESSETH, THAT:

BEAVER COMPANY, for and in consideration of the sum of one thousand ($1,000) dollars, to it in hand paid by Idaho Company, and other good and valuable considerations, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey, unto the said Idaho Company and its successors and assigns all of said Beaver Company's estate, right, title and interest, as well in law as in equity, in and to the following described property situate in the counties of Ada, Canyon, Owyhee, Elmore, Blaine, Twin Falls, Lincoln, and Gooding, in the State of Idaho, to-wit:

That certainwater appropriation made on the 26th day of March, 1902, by one Herman Rapp and one Earnest Pearson for the diversion of 500 cubic feet per second of water from the Malade river at a point on the right bank of the Malade river situated about 1195.5 feet S. 75° 22' E. from the S. W. Corner of Sec. 27, Twp. 6 S. of Range 13 E. B. M.; also that certain appropriation made by the Glenns Ferry Land & Irrigation Company, Limited, on the 7th day of August, 1902, forthe diversion and appropriation of 500 cubic feet per second of the waters of said river and to be diverted at or near the point above described; also that certain water right and permit to divert and appropriate water, granted by the State Engineer of the State of Idaho, on the 23rd day of January, 1904, to F. J. Hagenbarth and R. J. Shields, and evidenced by permit No. 438 issued by said State Engineer for 1100 cubic feet per second, the same to be diverted at or near the point above described.

All that certain water right and permit to divert and appropriate the waters of Malade river in Gooding County(formerly Lincoln county) Idaho, granted by the State Engineer of the State of Idaho to A. H. Wrench on February 22, 1909, and evidenced by Permit No. 4366 recorded in the office of said State Engineer in Book 12, at page 4366, to which record reference is hereby made for a more particular description of the said water right and permit.

All that certain water right and permit to divert and appropriate the waters of Malade river in Gooding county, (formerly Lincoln County), Idaho, granted by the State Engineer of the State of Idaho, to E. P. Bacon on November 18, 1911, and evidenced by Permit No. 7842 recorded in the office of said State Engineer in Book 24 at page 7842, to which record reference is hereby made for a more particular description of the said water right and permit.

A right of way for the construction and maintenance of a dam, flume, tramway, roads and camp over and across the following described tracts of land in Section thirty-six (36) in Township Six (6) South of Range Thirteen (13) East of Boise Meridian in Gooding County, Idaho, to-wit:

Beginning at Corner No. 1 which is a point on the N. line of Sec. 36, T. 6 S. R. 13 E. B. M., whence the NW. corner of said section bears South 89°58' W. 369.6 feet, thence S. 19° and 25' E. 130 feet to Cor. No. 2, thence S. 52° and 39' E. 250 feet to Cor. No. 3,
thence N. 37° and 31' E. 346.9 feet to Cor. No. 4, which is a point on the north line of the above mentioned section, thence S. 89° and 58' W. 452.7 feet, more or less to Cor. No. 1, the point of beginning, in Sec. 36, T. 6 S., R. 13 E., B. M. This tract of land contains about 1.63 acres.

A strip of land, the side lines of which are parallel to and lying 25' on each side of the following center line:

Beginning with Cor. No. 1, a point nn the W Sec. Line of Sec. 36, T. 6 S., R. 13 E. B. B. & M., whence the NW. Cor. of said Sec. 36 bears N. 0° 18' E., 540.8', thence N. 78° 05' E. 207.7' to corner No. 2; thence N. 89° 20' E. 300' to corner No. 3; thence S. 86° 05' E. 535' to Corner No. 4; thence N. 76° 55' E. 150'to Cor. No. 5; thence S. 70° 35' E. 250' to Corner No. 6, thence N. 89° 55' E. 465' to Corner No. 7; thence S. 88° 05' E. 250' to corner No. 8; thence N. 80° 55' E. 300' to Corner No. 9; thence N. 61° 55' E. 300' to corner No. 10; thence N. 76° 55' E. 600' to corner No. 11; thence N. 89° 25' E. 300' to Cor. No. 12; thence S. 87° 15' E. 300' to Cor. No. 13; thence N. 85°45' E. 160' to Cor. No. 14; thence N.54° 45' E. 200' to Cor. No. 15; thence N. 74° 15' E. 300' to Corner No. 16; thence S. 87° 55' E. 300' to corner No.17; thence N. 83° 25' E. 200' to Cor. No. 18; thence N. 70° 57' E. 165' more or less to Cor. No. 19 which is a point on the N. Line of the aforementioned Sec. 36; whence the NE. Cor. of said Sec. bears N. 89° 58' E. 120'. This tract 'B' containing 0.04 acres.

Beginning at Cor. No. 1, a point on the S. E. boundary line of tract 'a' and from which the N. W. Cor. of Sec. 36, T. 6 S., R. 13 E., B. B. & M. bears N. 70° 10' W. 688 feet more or less, thence N. 37° 31' E. 50.8' to Cor. No. 2, thence S. 62° 31' E. 449' to Cor. No. 3, thence S. 5° 14' W. 112' to Cor. No. 4, thence N. 84° 46' W. to Cor. No. 5, a point on the north boundary line of Tract 'B' thence N. 5° 14' E. 78' to Cor. No. 6, thence N. 62° 31' W. 424', more or less to Cor. No. 1, to the point of beginning. This tract 'C' containing 0.61 acres.

Beginning at Cor. No. 1, which is identical with Cor. No. 5 of Tract "B", and whence the NW. cor. of Sec. 36, bears N. 67° 09' W. 1280.8', thence S. 225.7', to Cor. No. 2, thence W. 400' to Corner No. 3, thence N. 211.5 feet to Cor. No.4, a point on the center line of Tract 'B', thence along said center line to Cor. No. 1, the point of beginning. This tract 'D' containing 1.88 acres.

Beginning at Cor. No. 1, from which the NW. Cor. of Sec. 36, T. 6 S., R. 13 E., B. B. & M, bears N. 40° 50' W. 620 feet, more or less, which is a point on the north boundary line of Tract 'b', thence N. 18° 10' E. 110' to Cor. No. 2, thence S. 71° 50' E. 75 feet to Cor. No. 3; thence N. 18° 10' E. 160' more or less to Cor. No. 4, which is a point on the SW. boundary line of Tract 'A', thence S. 71° 50' E. 50' to Cor. No. 5, thence S. 18° 10' W. 160' to Cor. No. 6, thence S. 71° 50' E. 75' to Cor. No. 7, thence S. 18° 10' W. 50' more or less to cor. No. 8, which is a point on the north boundary line of Tract 'B', thence N. 86° 05' W. 105' to Corner No. 9, which is a point on the North boundary line of Tract 'B', thence S. 89° 20' W. 105 feet more or less to Cor. No. 1, the point of beginning. This tract 'E' containing 0.58 acres.

A right of way for water conduit over the following described tract of land situated in Gooding county in the Government sub-division hereinafter mentioned, to-wit:

A tract of land 25 feet on each side of the following described center line; commencing at a point from which the quarter section corner common to Section 25 and 26, Township 6 South, Range 13 East, B. M., bears north 14° 39' West a distance of 2838.5 feet; thence North 49°00' West 169 feet; thence North 49° 00' West 161 feet to a point on the line betweenSections 25 and 36, Township 6 South, Range 13 East, B. M., from which the southwest corner of Section 25 is distant 590 feet, which is the point of beginning; thence North 24° 49' West 316.27 feet; thence North 49° 59' West 114.73 feet; thence South 89° 23' West 86 feet; thence South 62°55' West 169 feet; thence South 51° 43' West 10.78 feet; thence South 51° 43' West 125.52 feet to a point on the line common to Section 25 and 26, Township 6 South, Range 13 East, B. M., from which the southwest corner of Section 25 is distant 387.5.feet; thence South 77° 23' West 263.70 feet; thence South 53° 19' West 100 feet; thence South 62° 39' West 272.5 feet; thence South 72° 05' West 231.1 feet; thence South 72° 05' West 410 feet to a point on the line common to Sections 26 and 35, Township 6 South, Range 13 East, B. M., from which the southeast corner of Section 26 bears North 89° 50' East 890 feet; thence South 45° 21' West 486.4 feet; thence South 47° 14' West 224.85 feet; thence South 83°31' West 263.55 feet; thence North 70° 23' West 162.85 feet; thence North 79° 46' West 100 feet; thence North 63° 18'

West 244.45 feet; thence North 65° 36' West 138.30 feet; thence North 65° 36' West 166' to a point on the line common to the Northwest quarter of the Northeast quarter and the Northeast quarter of the Northwest quarter of Section 35, Township 6 South, Range 13 East, B. M., from which the south quarter corner of Section 26 bears North 00° 20' West a distance of 410 feet; thence North 71° 47' West 311 feet; thence North 65°07' West 189 feet; thence North 75° 55' West 100 feet; thence South 77° 25' West 100 feet; thence South 33° 01' West 372.73 feet; thence South 84° 09' West 178.56 feet to the initial point of the flume already constructed along the north side of the said Malade river, from which point the Northwest corner of Section 35, Township 6 South, Range 13 East, B. M., bears North 70° 25' West 139.92 feet; comprising the following acreage, to-wit: in the North East quarter of the Northwest quarter of Section 35, Township 6 South, Range 13 East, B. M., 1.627 acres; in the North half of the North east quarter of Section 35, Township 6 South, Range 13 East, B. M. 2.33 acres; in the Southwest quarter of the Southwest quarter of Section 25, Township 6 South, Range 13 East, B. M., 1.139 acres; in the Southeast quarter of the Southeast quarter of Section 26, Township 6 South, Range 13 East, B. M., .982 acres.

A right of way for power station and attendant buildings over the following described tracts of land in the Northeast quarter of the Northwest quarter of Section thirty-five (35), in Township six (6) South of Range thirteen (13) East of Boise Meridian, in Gooding county, Idaho, to-wit:

(A) Commencing at Station 1, the initial point of the survey, identical with the terminal point thereof, whence the Northwest corner of Section 35, Township 6 South, Range 13 East, B. M., bears North 76° 57' West 1565 feet; thence South 52° 20' East 90 feet;thenceNorth 37° 40' East 120 feet; thence North 52° 20' West 90 feet; thence South 37° 40' West 120 feet, containing .24 acres.

(B) Commencing at Station 1, the initial point of the survey, identical with the terminal point thereof, whence the Northwest corner of Section 35, Township 6 South, Range 13 East, B. M., bears North 79° 24' West 1406 feet; thence South 52° 20' East 50 feet; thence North 37° 40' East 100 feet; thence North 52° 20' West 50 feet; thence South 37° 40' West 100 feet, containing .116 acres.

(C) Commencing at Station 1,the initial point of the survey, identical with the terminal point thereof, whence the Northwest corner of Section 35, Township 6 South, Range 13 East, B. M., bears North 83° 58' West 1710 feet; thence South 52° 20' East 70 feet; thence North 37° 40' East 50 feet; thence North 52° 20' West 70 feet; thence South 37° 40' West 50 feet, containing .08 acres.

(d) Commencing at Station 1, the initial point of the survey, identical with the terminal point thereof, whence the Northwest corner of Section 35, Township 6 South, Range 13 East, B. M., bears North 85° 32' West 1481 feet; thence South 52° 20' East 40 feet; thence North 37° 40' East 100 feet; thence North 52° 20' West 40 feet; thence South 37° 40' West 100 feet, containing .025 acres.

(E) Commencing at Station 1, the initial point of the survey, identical with the terminal point thereof, whence the Northwest corner of Section 35, Township 6 South, Range 13 East, B. M., bears North 83° 51' West 1890 feet; thence East 60 feet; thence North 30 feet; thence West 60 feet; thence South 30 feet, containing .025 acres.

The total area in the above described tracts is.486 acres.

Said right of way having been granted to L. L. Munn by the approval of maps by the Secretary of the Interior under date of June 22, 1907, as appears from the records of the United States Land Office at Hailey, Idaho, to which records reference is hereby made.

An undivided three-fourths (3/4) interest in a right of way for a dam, canal, flume, and ditches over the following described lands in Gooding county Idaho, to-wit:

A strip of land 200 feet wide lying 100 feet on each side of the following described line: Beginning at a point S. 76° 55' E. 1,251.8 feet from the N. E. Corner of Section 34, Twp. 6 S., R. 13 E., B. M.; thence South 8° W. 250 feet; also beginning at said point lying S. 76° 55' E. 1251.8 feet from said N. E. corner of said Sec. 34; thence N. 8° E. 50 feet; also a strip of land 100 feet wide lying 50 feet on each side of the following center line beginning at a point in the NW¼ of the NW¼ of Sec. 35, said Twp. and Range, S. 76° 55' E. 1251.8 feet from the N. E. Corner of said Sec. 34; thence N. 60° 51' W. 100 feet; thence S. 84° 56' W. 257 feet; thence W. 715 feet; thence N. 58° 7' W. 128 feet; thence S. 89° 55' W. 260 feet; thence S. 74° 2' W. 644 feet; thence N. 69° 32' W. 298 feet; thence N. 72° 23' W. 187 feet; thence S. 89° 52' W. 128 feet; thence N. 74° 25' W. 127 feet; thence S. 89° 17' W. 269 feet; thence N. 87° W. 457 feet; thence N. 77° 35' W. 169 feet; thence N. 49° 37' W. 73 feet; thence N. 70° 36' W. 700 feet; thence N. 75° 28' W. 1616 feet more or less to head of syphon pipe of Kings Hill Irrigation & Power Company across Snake River.

The following described parcels of land in Gooding county, Idaho, to-wit:

Lot one of Section 34, Township 6 South, Range 13 East, B. M.

Beginning at the N. E. Corner of the NW¼ of the NE¼ of Sec. 34, Twp. 6 S., R. 13 E., B. M., thence West along the N. line of said Sec. 34 to the NW corner of said NW¼ of

the NE¼ of said Sec. 34; thence South along the West line of said NW¼ of the NE¼ of Sec. 34; 155 feet; thence South 77° 35' East 442 feet; thence South 84° 05' East to a point on the East line of said NW¼ of the NE¼; thence N. along said East line of the NW¼ of the NE¼ of Sec. 34, to place of beginning, being 8 1/10 acres more or less.

Commencing at the Government meander corner at the Southwest corner of Lot 2, Sec. 27, Twp. 6S. R. 13 E. B. M.; thence N. 33° 00' W. 290.8 feet to a point which is the place of beginning; thence North 75° 28' West 588 feet more or less to a point on the water's edge of the east side of Snake River; thence along said east water's edge of Snake river, N. 42° 50' W. 80 feet; thence continuing along said water's edge N. 18° 00' W. 134feet; thence continuing along said water's edge N. 7° 18' W. 400 feet; thence continuing along said water's edge N. 22° 56' W. 100 feet; thence E. 200 feet more or less to a point 120 feet W. of the Government meander line on the W. side of said Lot 2; thence S. 31° 00' E. 340 feet; thence E. 120 feet to a point on the said Government meander line; thence S. 24° 30' E. along said meander line 443 feet more or less to a point 50 feet at right angles to and on the southerly side of the center line of the ditch or flume of the Kings Hill Irrigation & Power Company; thence S. 75° 28' E. parallel to said center line 93.4 feet more or less; thence S. 125.3 feet more or less to a point on the said meander line, which is the place of beginning, containing 6.7 acres more or less, with all water rights belonging to same and the right to use ditches of one V. V. Carico on his other lands to carry water to the lands above described.

The following described tract of land in Gooding County, Idaho:

A parcel of land containing ¼ acre., located in Lot 4 (SW¼ SW¼) of Sec. 31, Twp. 5 S., R. 15 E. B. M., described as follows: Beginning at the 1/16 cor. stone at the NE. Corner of the SW¼ SW¼ Sec. 31, T. 5 S., R. 15 E. B. M., thence S. 0° 04' E. 126 feet, thence S. 89° 46' W. 86.43, feet, thence N. 0° 04' W. 126 feet; thence N. 89° 46' E. 86.43 feet to point of beginning, and all water decreed to said land from Little Wood River, said amount of water being one quarter acreage in. of water.

The following described tract of land in Elmore County, Idaho:

Beginning at the quarter section corner between Sections 29 and 30, T. 5 S., R. 10 E., B. M., extending N. 180 feet, thence E. 60 feet, thence S.180 feet, thence W. 60 feet, to point of beginning, the whole containing one-quarter acre, more or less, and being situate in the SW¼ of the NW¼ of Section 29.

The following described tract of land in Elmore County, Idaho:

Beginning at a point from which the quarter corner between Sections 19 and 30 of Twp. 3 S., R. 7 E. B. M. bears N. 38° 15' E. a distance of 840 feet; from thence running S. 104 feet; thence West 208 feet; thence N.104 feet; thence E. 208 feet to the point of beginning. The said land being situated in the S½ of the NE¼ of the NW¼ of Sec. 30, T. 3 S., R. 7 E. B. M.

The following described tract of land in Ada county, Idaho:

All that part of Block eleven (11) of Riverside Addition to Boise, Ada County, Idaho, lying south of the right of way of the Oregon Short Line Ry. Co., as the same appears on the official plat of said Riverside Addition on file in the Recorder's office of said Ada County, Idaho, to which reference is hereby made for a more defeinite description thereof.

The following described tract of land in Ada County, Idaho:

Beginning at a point twenty-five (25) feet south of the NW corner of the NE¼ of the NW¼ of Sec.18, Twp. 3 N., R. 1 E., B. M., thence running East parallel to Section line between Secs. 7 and 18, a distance of 165 feet, thence running S. 120 feet, thence running W. 165 feet, thence running N. 120 feet to a place of beginning, containing 454/1000 acres, more or less.

It is understood that a strip of land fifteen feet in width, extending the full length on the extreme eastern end of the above described tract shall be regarded as public property of the village of Meridian, subject however to a permanent easement of right of way for the uses of the party of the second part, whenever the land bordering on the E. and S. of said entire tract shall have been platted and accepted by the village of Meridian as an Addition to said Village.

The following described tract of land in Canyon County, Idaho:

Lots one (1), and two (2) and three (3) in Block sixteen (16), Dorman's Addition to Caldwell, Idaho, as shown by the recorded map and plat thereof now on file in the Recorder's office of Canyon County, Idaho.

Those certain transmission lines extending from the power station on the Malade river on Lot one (1) of Section thirty-four (34) of Township six (6) South, of Range thirteen (13) East of Boise Meridian, to the substation in the city of Boise, Idaho, located on the portion of Block eleven (11) of Riverside Addition to Boise, Ada County, Idaho, above described; from the said substation in the City of Boise, Idaho to the substation in the City of Caldwell, Idaho, situated on the above described lots in Dorman's Addition to the city of Caldwell, Canyon County, Idaho; and from said power station

on the Malade River above described to the tract of land above described in lot four (4) ($SW\frac{1}{4}$ $SW\frac{1}{4}$) of Section thirty-one (31) in Township five (5) South of Range fifteen (15) East of Boise Meridian, near the city of Gooding, Gooding County, Idaho, together with all rights of way over and easements in the lands over which such transmission lines are constructed, for theerection, maintenance, and operation of such transmission lines, and of additional transmission lines, and of a telephone line.

All dams, headgates, flumes, pressure boxes, pipe lines, conduits, buildings, machinery, apparatus, furniture and fixtures, of whatsoever kind situated on and appurtenant to any of the properties above described, not including material s and supplies not yet embraced by physical attachment and use in the grantors power system.

All franchises and privileges of whatsoever kind now owned or claimed by Beaver Company in any of the above named counties in the State of Idaho which are transferable without the consent of the grantor of such franchises and privileges, together with all under ground and overhead distribution systems, erected, operated or maintained under any such franchises and privileges; and also that certain franchise granted to said Beaver Company by ordinance numbered one hundred forty-nine (149) of the Townof Nyssa, Malheur County, Oregon.

Also all other water rights, real estate, rights of way, licenses, easements and other property rights of whatsoever kind, whether real, personal, or mixed, now owned or claimed by said Beaver Company in any of the above named counties in the State of Idaho, and forming a part of the power system now owned and operated by it in said counties, but not including materials and supplies not yet embraced by physical attachment and use in said power system, or bills and accounts receivable, or cash on hand, or books and records, or appliances and merchandise for sale.

TOGETHER With all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD ALL and singular the said premises together with the appurtenances unt the said Idaho Company, its successors and assigns forever.

IN WITNESS WHEREOF, said The Beaver River Power Company has caused this instrument to be executed in its behalf by its undersigned officers thereunto lawfully authorized and its corporate seal to be hereunto affixed as of the day and year first above written.

THE BEAVER RIVER POWER COMPANY,

(SEAL) BY F. C. Noon, President.

ATTEST:

H. R. Waldo,

Acting Secretary.

STATE OF ILLINOIS,)
) ss.
County of Cook.)

On this 12th day of September, 1913, before me, E. H. Spurrier, a Notary Public in and for said county, personally appeared F. C. Noon, known to me to be the President of the corporation that executed the within instrument and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

E. H. Spurrier,

(SEAL) Notary Public.

My Commission Expires January 2, 1916.

Received and filed for record in the office of the State Engineer at Boise, Idaho, at 2:30 P. M., December 19, 1913.

F. P. King,
State Engineer.

Proof of completion of works made February 21, 1914.
Certificate of Completion of Works issued March 6, 1914.

Permit No. 4366.

CERTIFICATE OF COMPLETION OF WORKS.

To All Whom It May Concern:

This is to certify that Idaho Power and Light Company, of Boise, County of Ada, and State of Idaho, the holder of Permit No. 4366, issued upon Application No. 5904, bearing date of priority of November 25, 1908, authorizing the diversion of 50 second feet of the waters of Cove Creek and 1050 second feet of the waters of Malade River, County of Gooding, State of Idaho, for power purposes, has fully complied with the provisions of the laws of the State of Idaho relating to the proof of completion of the works of diversion set out and described in said Permit; that said works are adequate for diverting and conveying to the place of intended use 1100 second-feet of the waters of Cove Creek and Malade River; that the points of diversion of said waters are as follows: From Cove Creek at a point which is S. 9° 56' E. 2183 feet distant from the quarter corner between sections 25 and 26, T. 6 S., R. 13 E. B. M. and from Malade River at a point S. 12° 25' E. 2786 feet distant from the quarter corner between sections 25 and 26, T. 6 S., R. 13 E. B. M; that there are two points of use of said water, described as follows: First:- S. 76° 57' E. 1565 feet from the N. W. corner of Section 35, T. 6 S., R. 13 E. B. M.; Second:- S. 35° 07' W. 710 feet from the north quarter corner of section 34, T. 6 S., R. 13 E. B. M.; that the point of return of said water to Malade River is S. 69° 05' E. 2230 feet from the N. W. corner of Section 34, T. 6 S., R. 13 E. B. M.

Witness my hand this 6th day of March, A. D. 1914.

F. F. King,

State Engineer of the State of Idaho.

EXTENSION OF TIME

Upon proper request of Wm. T. Wallace, Vice President and General Manager of the Idaho Power Company, a Maine Corporation, holders of Permit No. 4366, I have, this 5th day of December, 1917, extended the time for beneficial use of water thereunder to the 22nd day of February, 1920.

J. H. SMITH,

State Engineer.

STATE OF IDAHO)
)ss.
COUNTY OF GOODING)

I, C. L. Miller, the duly qualified Recorder of Gooding County, Idaho, do hereby certify as follows, to-wit:

1. That a certain deed, dated July 31, 1916, by Idaho Power and Light Company, a corporation of the State of Nevada, to Electric Investment Company, a corporation of the State of Delaware, was filed for record in my office as such Recorder on August 14, 1916, and was duly recorded on that day in Book 3 of Deeds, at Page 24.

2. That the property conveyed by said deed includes the following:

All of the lands and property, real and personal, franchises, rights of the Idaho Power and Light Company situated and located in the Counties of Ada, Canyon, Elmore, Gooding, Lincoln, Owyhee and Twin Falls in the State of Idaho, including that certain hydro electric power plant situated upon the Malad River in Gooding County, in the State of Idaho, with all real estate, water rights and other property appurtenant thereto or connected therewith;***** also all other property, real, personal and mixed, now owned by the Idaho Power and Light Company and wheresoever situated, including (without in anywise limiting or impairing, by the enumeration of the same, the scope and intent of the foregoing or of any general description contained in this indenture) all lands, rights of way, water rights, water appropriations, rights to the use of water and franchises.

3. That a certain deed, dated July 31, 1916, by Electric Investment Company, a corporation of the State of Delaware, to Idaho Power Company, a corporation of the State of Maine, was filed for record in my office on the 14th day of August, 1916, and was on that day duly recorded in Book 3 of Deeds of the records of said Gooding County, Idaho, at Page 26.

4. That the property conveyed by said deed includes the following:

"VII

All the lands, premises and property, real and personal, franchises and rights situated and located in the counties of Ada, Canyon, Elmore, Gooding, Lincoln, Owyhee and Twin Falls, in the State of Idaho, conveyed to Electric Investment Company, by that certain deed dated July 31, 1916, made by Idaho Power & Light Company, a Nevada corporation, as grantor, to Electric Investment Company, now of record, or about to be recorded, in said counties, to which said deed reference is hereby made for a more particular description of said real estate, franchises, and rights."

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of my office this 4" day of December, 1917.

C. L. Miller

Recorder.

(SEAL)

By L. Davis,
Deputy.

Received and filed for record in the office of the State Engineer, at Boise, Idaho, at 9:00 A. M. December 8, 1917.

J. H. SMITH,

State Engineer.

LICENSE ISSUED FOR 7.0 SEC. FT.
P 2570

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

Certificate of Water Right
Transferred Right No. 731

THIS IS TO CERTIFY THAT THE IDAHO POWER COMPANY of Boise, Idaho, is the owner of and using a certain water right in the amount of 700 cubic feet per second from Malad River and Cove Creek, with priority of November 25, 1908, as evidenced by License and Certificate of Water Right No. 4366, recorded in Volume 5 of Licenses on Page 2570 in the records of the Department of Reclamation of the State of Idaho.

That the point of use and return of said waters are now located at said Idaho Power Company's old Malad Power Plant, situated in Lot 1, Sec. 34, Twp. 6 S., Rge. 13 E. B'M.

And that now, upon the application of the Idaho Power Company, through its Vice President and Secretary, A. C. Inman, for the transfer of 700 cubic feet per second of said water, made before the State Reclamation Engineer of the State of Idaho, and said application having been granted, the right to the use of the 700 cubic feet per second of the waters of Malad River and Cove Creek at the above point of use and return is hereby abandoned, and the point of use and return under such right and to which the water right HEREBY CONFIRMED shall become appurtenant, by this certificate , for power purposes, are located at the new Lower Malad Power Plant situated in Lot 2, Sec. 27, Twp. 6 S., Rge. 13 E. B.M.

That said water is to be limited at any given time to an amount actually needed and beneficially used for such purposes, and shall not exceed the following amount, to-wit:

700 cubic feet per second, bearing
date of priority of November 25, 1908.

That the water right hereby transferred has heretofore been conducted from Malad River and Cove Creek to the first above described place of use in the reinforced concrete flume with point of diversion in the NE¼NW¼, Sec. 35, Twp. 6 S., Rge. 13 E.B.M.

That the water right hereby transferred will hereafter be conducted to the last above described place of use through the said flume and the extension thereof with the same point of diversion in the NE¼NW¼ Sec. 35, Twp.6S., Rge. 13 E. B.M.

That the right to the use of the water aforesaid, hereby confirmed, is restricted to the place of use last above described, as provided by the laws of the State of Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the official seal of the Department of Reclamation of the State of Idaho to be hereunto affixed, at Boise, Idaho, this 10th day of December, 1948, A.D.

Mark R Kulp

MARK R. KULP
State Reclamation Engineer

T-731

37-2128

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

In the Matter of the Application of IDAHO POWER COMPANY of Boise, Idaho	ORDER GRANTING TRANSFER
For a Transfer of Water Right, in Water District No. 7-AB, Gooding County, Idaho	No. 731

WHEREAS, On the 22nd day of November, 1948, at the Department of Reclamation of the State of Idaho, at Boise, Idaho, this matter of an application of Idaho Power Company, of Boise, Idaho, for a transfer of water right, came on regularly for hearing, pursuant to the published notice, in due and statutory form; and,

WHEREAS, No protest has been filed against the application, and the evidence filed by the applicant, with the application, shows that the water will be put to a higher and more beneficial use, and that no one will be injured thereby:

NOW, THEREFORE, IT IS HEREBY ORDERED That the said application be, and the same is HEREBY GRANTED, and that a Certificate of Transfer be issued to the applicant herein, as provided by the laws of the State of Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the official seal of the Department of Reclamation of the State of Idaho to be hereunto affixed, at Boise, Idaho, this 10th day of December, A.D. 1948.

Mark R. Kulp

MARK R. KULP
State Reclamation Engineer

T-731
37-2128

July 21, 1920.

Re: Permit 4366.

Idaho Power Company,
Boise, Idaho. Attention Mr. Kiersted.

Gentlemen:

I am enclosing herewith water license issued under the above numbered permit, together with receipt for fees paid.

Yours very truly,

W. G. Swendsen,
Commissioner of Reclamation,

By:_____

CMB:M

4366

Form 28

REPORT OF ENGINEER

This proof is for Beneficial Use In Water District No. 47

1. State name of applicant and number of permit: Idaho Power Co.- Permit 4366
2. State source of water supply: Malad River and Cove Creek
3. Location of point of diversion: Malad River- S. 12° 25' E., 2786' dist. from quarter corner between Secs. 25-26- T.6S.-R.13 E.B.M.
Cove Cr.- At a point which is S. 9° 56' E., 2183' dist. from quarter corner between Secs. 25-26- T. 6 S., R. 13 E., B.M.
4. Describe works as they exist, giving dimensions and capacities of same:
Wood and concrete dam, 12 ft. H. 250 ft. Long. 2 conc. H.G. 7' x 12' each. Steel Tainter Gates. Wood flume, 15' B. 8' D. 4000 ' long. Steel pipe, 8 to 11 ft. to power-house. 11 ft. steel turbine,-7500 H.P. 1-5500 K.V.A. generator.
Head 125 ft. Developes 5200 K.V.A. - 6900 H.P.
Concrete power-house.
5. State whether or not water has been turned into works of diversion: Yes.
6. Give exact location of lands to be irrigated. If proof is for beneficial use, give exact number of acres under cultivation in each forty-acre tract. (Describe manner and place of use if for other than irrigation): At Malad Power Station, at a point S. 78° 10' W., 3265 ft. from NE Cor. Sec. 34, T. 6 S., R. 13 E.,B.M.
7. Submit map on enclosed plat, showing location and details of above description.
8. How many parties conduct water in this system? Two.
9. Give names and amount of each right: Idaho Power Co.
King Hill Irrigation Dist.
10. What large stream would the water here appropriated finally reach? Snake River.
11. Describe the various tributaries en route, from point of diversion to the principal drainage stream: From power-house to Malad River to Snake River.

Remarks:

This examination was made on the 26 day of May 1920.

(Signed) L.R. Innett. Examiner.

4366

OVER

(This report must be sworn to when not made by an attache of the office.)

STATE OF IDAHO, }
County of ..... } ss.

....., being first duly sworn, deposes and says that the statements contained in the within report are correct to the best of his knowledge and belief.

Subscribed and sworn to before me this ..... day of ..... 19.....

My commission expires ....
Notary Public.

Idaho Power Co.
Boise,
Permit 4566

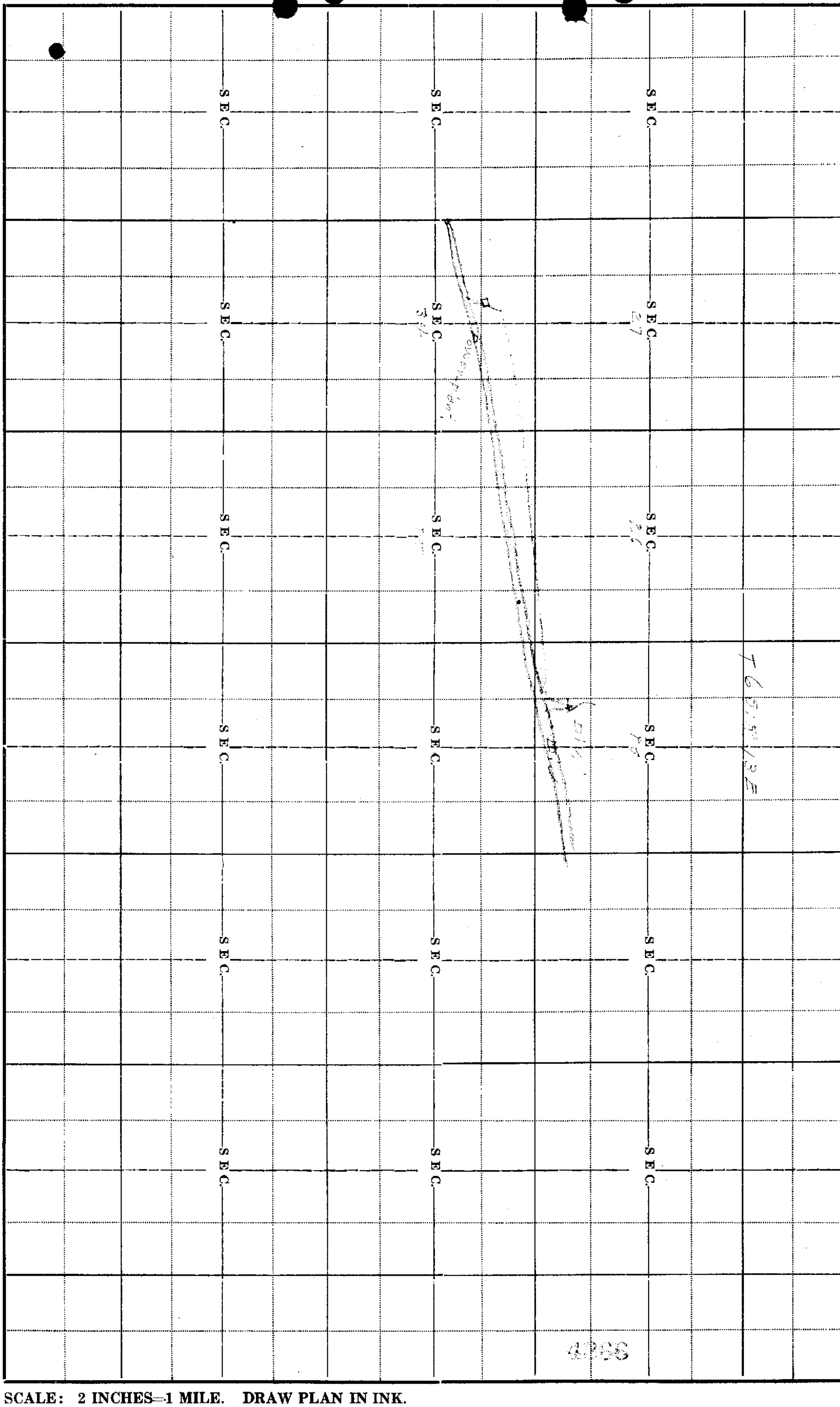
25-6 S 1/3 E

Dist. 47

Instructions to Examiners

1. **Examiners will not be permitted to examine any of the receipts in the office pertaining to this permit. They are to furnish a report of the facts and conditions as they exist, from their own observations and inquiries.**
2. Always carefully note the location of the point of diversion, and accurately plat same.
3. Find out how many parties own right in the ditch or canal and give their names and amount of right.
4. When proof is for beneficial use, carefully check up the number of acres actually irrigated in each forty and accurately plat same.
5. Make a map showing the correct location of streams and ditches, and the irrigated lands, and any adjacent permanent landmarks, such as towns, lakes, large streams and public roads.
6. If any unusual conditions are discovered, make a plain statement of them under remarks.
7. Always see the holder, if possible, and go over the whole ground with him, and make your report only upon actual existing facts and conditions.

NAME OF APPLICANT [illegible]



SCALE: 2 INCHES=1 MILE. DRAW PLAN IN INK.

February 28th, 1920.

Re Permit 4366

Mr. E. C. Hersted,

c/o Idaho Power Company,

Boise, Idaho.

Dear Sir:—

We are in receipt of the depositions and affidavit of publication and a check for fees in the sum of $5.00 for proof of beneficial use of water under the above numbered permit. This will be held here without further action until the examination can be made by an engineer from this office, after which license will be issued.

Very truly yours,

W. G. SWENDSEN,

Commissioner of Reclamation

By _____

4366

FORM 16 CAPITAL NEWS PUB. CO. 13713

ORIGINAL

PERMIT No. 4366

Proof of Application of Water to Beneficial Use

DEPOSITION OF HOLDER

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. W. R. Putnam; Boise, Idaho; Vice President & General Manager; P. O. Box 1537.

Ques. 2. If acting in behalf of a corporation, state its name, principal place of business (if a foreign corporation, give name and postoffice of statutory agent), your position with reference to same, and your authority for appearing in its behalf.

Ans. Idaho Power Company; Augusta, Maine; Vice President & General Manager; Vice President.

Ques. 3. State number and date of permit, and date of priority you propose to establish under the permit.

Ans. 4366; February 22, 1909; November 25, 1908.

Ques. 4. State source of water supply and give exact location of point of diversion.

Ans. Malade River and Cove Creek; from Malade at point S. 12° 25' E. 2786 ft. from 1/4 corner between Sections 25 and 26, Twp. 6 S., R. 13 E. B. M.; from Cove Creek at point S. 9° 56' E. 2183 ft. from same corner.

Ques. 5. Describe your works of diversion, and state amount of water they are capable of conveying from point of diversion to place of use, and give name of canal or ditch or other works by which water is conducted to such place of use.

Ans. Rock-filled crib dam 103 ft. long, with concrete cut-off walls; timber flume about 4050 ft. long, 15.2 ft. wide, 7.5 ft. high; steel penstock about 817 ft. long, of which about 605 ft. are 8 ft. diameter and 212 ft. are 9.5 ft. diameter. Over 800 cu. sec. Commonly known as Kings Hill flume.

Ques. 6. State for what purpose water is used and describe place of use. (If for irrigation, name each subdivision in which used, and number of acres in each subdivision that have **actually** been irrigated with said water.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. Development of power; Malade Power Station.

Ques. 7. If for other than irrigation purposes, state how applied, amount of horse power generated, etc.

Ans. Through one Allis-Chalmers Horizontal Incased Turbine directly connected to one 5500 KVA generator; about 7500 H. P.

Ques. 8. What is the minimum amount of water required for the use specified above?

Ans. About 700 cu. sec.

Ques. 9. If you are not the person or representative of the corporation to whom above mentioned permit was originally issued, please state how ownership was acquired by present holder.

Ans. By deed from previous owner.

4366

Ques. 10. State when, how, in what amount and to what extent the water diverted under above mentioned permit has been used.

Ans. Constant since February 1912, excepting for repair, etc., shut-down; In development of electrical energy; about 700 cu. sec.; to full extent.

Ques. 11. State when, how, in what amount and to what extent waters other than those diverted under the above mentioned permit have been diverted and applied to beneficial use upon the lands herein described. Give full particulars regarding such other appropriations and rights claimed thereunder.

Ans. Not applicable.

(Sign) C. W. Trenham

I hereby certify that the foregoing testimony was read to the above subscribed before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in Boise, County of Ada State of Idaho, on this 21st day of February A. D. 19---

E. Kierstead
Notary Public
Residing at Boise Idaho

4266

Form 17 The deposition of two witnesses, on this form, taken ... tely, required in each case. ORIGINAL

Permit No. 4366

Proof of Application of Water to Beneficial Use

DEPOSITION OF WITNESS

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. C. R. Burky

Age 38; Jerome, Idaho; Civil Engineer; Jerome, Idaho.

Ques. 2. Are you acquainted with Idaho Power Company, the holder of Permit No. 4366? How long have you known him and where does he reside?

Ans. Four Years; Main Office, Boise, Idaho

Ques. 3. Have you read or heard read said Permit No. 4366, and are you familiar with its provisions and conditions?

Ans. Yes

Ques. 4. State source of water supply, place of diversion, and describe works for conveying water from point of diversion to place of use.

Ans. Malade River at a point S. 76° 57' E. 1565 feet from NW Corner Section 35 Twp. 6 S., R. 13 E., Diversion Dam, wooden flume, steel pipe line and apparatus for control.

Ques. 5. How many second-feet of water do you estimate said works will safely conduct to place of use, and how much water have you seen being so conveyed?

Ans. One thousand second feet.

Ques. 6. State for what purpose water is used and at what place. (If for irrigation, give each subdivision in which water has been used and number of acres irrigated in each subdivision.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. Water is used to generate power at Power Plant, located S. 35° 07' W., 710 feet from N. 1/4 Corner, Section 34, Twp. 6 S., R. 13, E.

Ques. 7. If for power or other purposes than irrigation, state how water has been applied and to what extent.

Ans. Water applied for generating power using Allis-Chalmers 38" double runner center discharge horizontal turbine, directly connected with a 5500 K.V.A. Generator and a fifty K.W. Exciter. Water is applied to the extent of 675 second feet, generating 5200 K.W.

Ques. 8. (If for irrigation) state character of land that has been reclaimed, and give your estimate of the amount of water required for its profitable cultivation.

4366

Ans.

Ques. 9. Have you any interest in the works, water or lands above mentioned? If so, in what way and to what extent?

Ans. No.

Ques. 10. State when, how, in what amount and to what extent you have witnessed the application to beneficial use of water diverted under said permit.

Ans. January 29, 1920; Witnessed 5200 K.W. being generated at Power House with the above delivery of water; 675 feet.

(Sign) C B Burky

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me in Boise, County of Ada State of Idaho, on this 21st day of February A. D. 1920.

E Meister
Notary Public.
Residing at Boise Idaho.

My commission expires April 22, 1920.

4366

Form 17 The deposition of two witnesses, on this form, taken ...rately, required in each case

Permit No. 4366

Proof of Application of Water to Beneficial Use

DEPOSITION OF WITNESS

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. Joseph Miller Burkett.

Age 39; Boise, Idaho; Civil Engineer, c/o Commissioner of Reclamation.

Ques. 2. Are you acquainted with Idaho Power Company, the holder of Permit No. 4366? How long have you known him and where does he reside?

Ans. Four years; Main Office, Boise, Idaho.

Ques. 3. Have you read or heard read said Permit No. 4366, and are you familiar with its provisions and conditions?

Ans. Yes.

Ques. 4. State source of water supply, place of diversion, and describe works for conveying water from point of diversion to place of use.

Ans. Malade River, at a point S. 76° 57' E. 1565 feet from NW Corner Section 35 Twp. 6 S., R. 13 E., Diversion Dam, wooden flume, steel pipe line and apparatus for control.

Ques. 5. How many second-feet of water do you estimate said works will safely conduct to place of use, and how much water have you seen being so conveyed?

Ans. One thousand second feet.

Ques. 6. State for what purpose water is used and at what place. (If for irrigation, give each subdivision in which water has been used and number of acres irrigated in each subdivision.) State whether cultivated or natural meadow land and the nature of all improvements which have been made as a direct result of said use.

Ans. Water is used to generate power at Power Plant, located S. 35° 07' W., 710 feet from N 1/4 Corner, Section 34, Twp. 6 S., R. 13 E.

Ques. 7. If for power or other purposes than irrigation, state how water has been applied and to what extent.

Ans. Water applied for generating power using Allis-Chalmers 38" double runner center discharge horizontal turbine, directly connected with a 5500 K.V.A. Generator and a fifty K. W. Exciter. Water is applied to the extent of 675 second feet, generating 5200 K.W.

Ques. 8. (If for irrigation) state character of land that has been reclaimed, and give your estimate of the amount of water required for its profitable cultivation.

Ans.

4366

Ques. 9. Have you any interest in the works, water or lands above mentioned? If so, in what way and to what extent?

Ans. No.

Ques. 10. State when, how, in what amount and to what extent you have witnessed the application to beneficial use of water diverted under said permit.

Ans. January 30, 1920; Witnessed 5200 K.W. being generated at Power House with the above delivery of water; 675 second feet.

(Sign) Joseph Miller Burkett

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me in Boise, County of Ada State of Idaho, on this 21st day of February A. D. 1920.

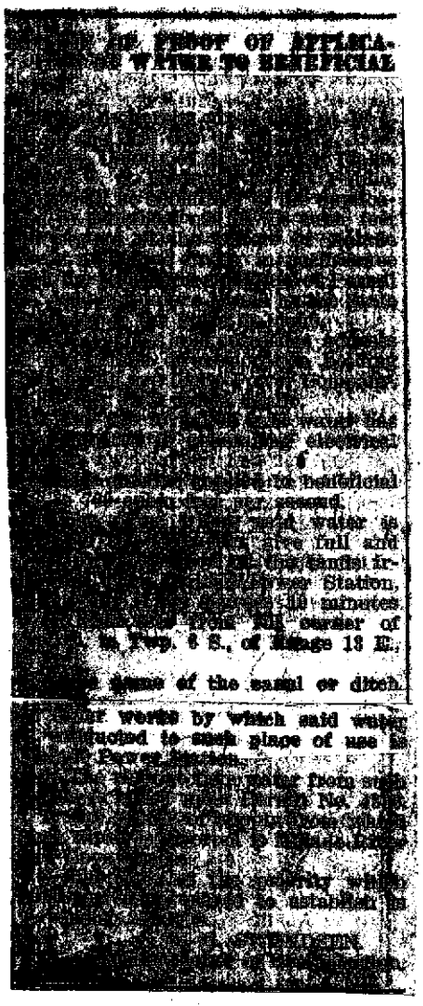
E. C. Kiersted
Notary Public
residing at Boise Idaho.

My commission expires April 22, 1920.

4366

PUBLISHER'S AFFIDAVIT

COUNTY OF GOODING, } *ss.*
STATE OF IDAHO }



F. F. Swan, , being first duly sworn, deposes and says that he is Publisher of THE GOODING LEADER, a weekly newspaper printed and published continuously and uninterruptedly at the City of Gooding, in said County and State for at least seventy-eight consecutive weeks prior to the first publication of the attached notice, and having a general circulation in said county; that a notice, of which the annexed is a true copy, was published in the said newspaper for at least Four consecutive issues, commencing with the issue dated January 22, 1920.

and ending with the issue dated February 12, 1920

in the regular and entire issue of said paper and not in any supplement thereof.

F. F. Swan
Affiant's Signature.

Subscribed and sworn to before me this 13th day of February 1920

Notary Public.

Residence Gooding, Idaho

My commission expires Feb 10th 1921

RECEIVED
FEB 1920
DEPARTMENT OF RECLAMATION

4366

Form No. 22

State of Idaho

ENGINEERING DEPARTMENT

BOISE

INSTRUCTIONS

PROOF OF BENEFICIAL USE

Idaho Power Company.
P. O. Box 1537,
Boise, Idaho.
c/o E. C. Kiersted,
Boise, Idaho.

Boise, Idaho,
Feb. 11, 1920.

Dear Sir:

I enclose herewith the following forms to be used in connection with proof of application of water to beneficial use under Permit No. 4366

Deposition of Permit Holder,
Depositions of Two Witnesses.

In submitting this proof the following instructions should be CAREFULLY followed out, since failure to do so may result in the loss of the permit holder's rights:

1. On February 21, 1920, the date set for the proof of application of water to beneficial use, the enclosed deposition forms (one for permit holder and one each for two witnesses) should be filled out and sworn to at Boise, Idaho, before E. C. Kiersted, Notary Public.

2. When the depositions have been taken they should be mailed to this office, together with affidavit of publication of notice. When these have been received, together with report of examining engineer, you will be further advised as to fees due before issuing license.

Yours truly,

W. G. Swendsen
~~Engineer~~
Commissioner of Reclamation

4366

(P. O.) Gooding, Idaho

(Date) January 17, 1920.

Commissioner of Reclamation, Boise.

Dear Sir:

I have your letter of January 17, 1920 enclosing notice of proof under Permit No. 4366 which will be published as you request, beginning with our issue of January 22, 1920.

F. F. Swan

Gooding Leader

4366

Form 10

NOTICE FOR PUBLICATION

NOTICE OF PROOF OF APPLICATION OF WATER TO BENEFICIAL USE

Notice is hereby given that at 10 a. m. on the 21st day of February, 1920, at Boise, County of Ada, State of Idaho, before R. C. Kiersted, Notary Public, proof will be submitted of the application to beneficial use of 700 cubic feet per second of the waters of Malade River and Cove Creek in accordance with the terms and conditions of Permit No. 4366 heretofore issued by the State Engineer of the State of Idaho.

1. The name and postoffice address of the person or corporation holding said permit are Idaho Power Company, P. O. Box 1537, Boise, Idaho.

2. The use to which said water has been applied is Generating electrical energy

3. The amount applied to beneficial use is 700 cubic feet per second

4. The place where said water is used (if for irrigation, give full and accurate description of the lands irrigated) is at Malade Power Station, at a point S. 78° 10' West 3265 feet from NE corner of Sec. 34, in Twp. 6 S., of Range 13 E.B.M.

5. The name of the canal or ditch or other works by which said water is conducted to such place of use is Malade Power Station

6. The right to take water from such works is based upon Permit No. 4366

7. The source of supply from which such water is diverted is Malade River and Cove Creek

8. The date of the priority which said user is prepared to establish is November 25, 1908.

W. G. Swendsen,
Commissioner of Reclamation.

~~State Engineer.~~

D-47

4366

a/21/20

January 14, 1920.

Re: Permit #4366.

Mr. E. C. Kierstad,
Special Agent, Idaho Power Co.,
Boise, Idaho.

Dear Sir:—

Reference is had to your letter of the 9th inst., your file No. 81-10-1, relative to proof of beneficial use of water under the above numbered permit. A copy of the notice or proof will be mailed to the Gooding Leader for the required four weeks publication prior to February 21st and deposition blanks will be mailed to you.

Very truly yours,

W. G. SWENDSEN,

Commissioner of Reclamation.

By_____

Gooding Leader

4366

a/21/20

January 14, 1920.

Re: Permit #4366.

Mr. E. C. Kierstad,
Special Agent, Idaho Power Co.,
Boise, Idaho.

Dear Sir:--

Reference is had to your letter of the 9th inst., your file No. 81-10-1, relative to proof of beneficial use of water under the above numbered permit. A copy of the notice of proof will be mailed to the Gooding Leader for the required four weeks publication prior to February 21st and deposition blanks will be mailed to you.

Very truly yours,

W. G. SWENDSEN,

Commissioner of Reclamation.

By_____

Gooding Leader

4366

IDAHO POWER COMPANY

BOISE, IDAHO

IN REPLY PLEASE REFER
TO FILE NO. 81-10-1

January 9, 1920.

Mr. W. G. Swendsen,
Commissioner of Reclamation,
Boise, Idaho.

Dear Mr. Swendsen:

Enclosed herewith please find Notice for Publication of our intention to prove beneficial use of water under Water Permit #4366 upon the Malade River.

If agreeable to you, please have this published in the Gooding Leader so that the required number of appearances may be issued prior to February ~~22~~ 21 1920, the date when proof will be offered.

Very truly,

E. C. Winsted

Special Agent.

ECK/G
Encl.

RECEIVED
JAN 12 1920
DEPARTMENT OF RECLAMATION

4366

December 13, 1917.

Re: Permit No. 4366.

Mr. Wm. [illegible]. Wallace,
Vice President and General Manager,
Idaho Power Company,
Boise, Idaho.

Dear Sir:

Your application for extension of time for beneficial use of water under the above permit has been duly approved, setting February 22d,1920 as the date for making said proof.

Very truly yours,

J. H. SMITH,

State Engineer.

By

CB/ B

4366

Form 3

OFFICE OF STATE ENGINEER

RECEIVED
DEC 5 1917
OFFICE OF STATE ENGINEER

Permit No. 4366

Application for Extension of Time for Beneficial Use Proof.

STATE OF IDAHO
County of Ada } ss.

Wm. T. Wallace, Vice President and General Manager of the Idaho Power Company, a Maine corporation, being first duly sworn upon his oath deposes and says:

THAT said Idaho Power Company is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho, No. 4366

THAT under the terms and conditions of said permit, proof of beneficial use thereunder was required to be made by February 22nd, 1918

THAT said corporation has heretofore put to beneficial use 640 second feet of water

THAT, for the following reasons, said corporation is unable to put to beneficial use within the required time, the remainder of the water appropriated under said permit, to-wit: That said Idaho Power Company did not acquire title to said Permit No. 4366 until July 31, 1916 and that since that time the abnormal conditionsprevailing have made it practically impossible to to put to a beneficial use the remaining 460 second feet under the terms of said permit within the time previded therein.

WHEREFORE, said Idaho Power Company asks that the State Engineer extend the time for the making of proof of beneficial use under said permit to February 22nd, 1920

And further, deponent saith not.

Wm. T. Wallace

Subscribed and sworn to before me this 30th day of November, 1917

E. C. Lever
Residing at Boise, Ida. Notary Public.

My commission expires Oct 13 - 1919

Date of receipt at office of State Engineer December 5th, 1917.

APPROVAL OF STATE ENGINEER

I, J. H. Smith, State Engineer of the State of Idaho, hereby extend the time for the making of proof of beneficial use under Permit to Appropriate the Public Waters of the State of Idaho, No. 4366, to February 22nd, 1920.

Witness my hand this 5th day of December, 1917.

4366

J. H. Smith
State Engineer.

Form No. 9

State of Idaho

ENGINEERING DEPARTMENT

BOISE

Idaho Power & Light Co.
Boise, Idaho.

Nov. 1, 1917.

Dear Sir:

I enclose herewith blank notice of proof of Application of Water to Beneficial Use under your Permit No. 4366, which kindly fill out and return to me at least 60 days before the date upon which you wish to submit proof. The date of the proof is set out in your permit, and if proof is submitted subsequent to that your priority will be advanced a time equal to the difference of the time between the date proof should have been submitted and the date it is submitted.

Yours truly,

J. H. SMITH,
State Engineer

4366

P 4366

In the letter of June 2nd, from Mr. Hays, with reference to contest petition, it is to be noted that he states that Section 3259 of the Revised Codes was repealed by the Act of March 11, 1909, relative to contest proceedings. If his contention is correct the repeal is by implication only. I do not think that this position can be maintained. Section 3259 provides an appeal from the State Engineer's decision on proof of completion of works by any person aggrieved by the State Engineer's decision therein and this appeal is to be taken after the State Engineer's final decision relative to the proof of completion. The Contest Act of 1909 under which Mr. Hays is now attempting to proceed, replaced and specifically repealed Section 3256 of the Revised Codes, which was the original contest statute. Section 3256 was originally enacted in the same Bill in which Section 3259 was enacted. Hence it is plain to be seen that the two Sections cover entirely different proceedings. The original contest statute, however, only included contests for the cancellation of Permits for failure to perform one-fifth of the work in one-half the time allowed by the Permit for the completion of the whole work.

In 1909 a Bill was drawn to amplify the scope of the contest proceedings to include the cancellation of Permits for failure to complete the work within the time set out in the Permit, it having been noted in this office that the original contest statute was not sufficiently broad in its scope, but it never was intended that this Section should repeal Section 3259, as this would necessarily lead to require the State Engineer to hear a contest for the cancellation

of a Permit on the ground of failure to complete the works after the State Engineer had accepted proof of completion of works and issued his certificate thereunder, a condition of affairs which would certainly place the State Engineer in a peculiar, not to say a ridiculous position.

As to the 1909 Act, I would say that it was drawn by Judge McLane, now of the firm of Cavanah-Blake and McLane, and myself, and certainly was not intended to repeal Section 3259, otherwise, in the repealing caluse, this Section should have been included along with 3256.

The facts simply are these of the present case: that the petitioner having failed to avail himself of the statutory period within which to perfect his appeal from the State Engineer's decision in granting a certificate of completion, now attempts to come in under a statute and revive his appeal by asking the State Engineer to entertain a contest on the grounds that the works were not completed in face of the fact that the State Engineer has already declared, by his certificate, that the works were completed.

Boise, Idaho, June 5, 1914.

Permit No. 4366.

Hon. S. H. Hays, Lawyer,
Boise, Idaho.

Dear Sir:--

I have had under consideration your letter of the 2nd inst. with reference to contest proceedings in the above, and in reply would say that I am still of the opinion, as stated in my letter of the 20th ult., that having passed upon the question of completion of works under this permit, and having issued certificate of completion thereunder, I could not, at this time, entertain a petition for cancellation of the permit on the ground that the works have not been completed.

Very truly yours,

State Engineer.

K/L

4366

SAMUEL H. HAYS
ATTORNEY AT LAW
310-314 BOISE CITY NATIONAL BANK BLDG
BOISE, IDAHO

June 2, 1914.

RECEIVED
JUN - 3 1914
OFFICE OF STATE ENGINEER

Hon. Frank P. King,
State Engineer,
Boise, Ida.

Dear Sir:

I have your letter of May 20th in regard to Permit 4366 and beg to suggest the following:

Final proof has been made on this permit, the five year period having expired. Under Section 3259 of the Revised Codes, ordinarily action would be taken by anyone sufficiently interested within sixty days, but after the passage of Section 3259 of the Revised Codes, the act of March 11, 1909, quoted in your letter, was adopted. This introduced a new feature into the law. It provided not only for a contest in case of a failure to do one-fifth of the work within the proper time but it also provided that in case the person "shall fail to complete the entire construction work within the time specified in his permit, said permit may be canceled and voided by the State Engineer as herein provided at the instance of any person or persons holding any permit for the diversion of water from the same stream, such permit postdating the permit which is sought to be canceled".

Prior to this time, in case of failure to do the entire amount of work, proceedings as I have stated would undoubtedly be taken under Section 3259, but as this act is subsequent and provides the method of proceeding in case of failure to complete the work, it would seem to cover the ground fully.

The complaint heretofore sent you proceeded upon this theory, that is, it was sent you under the terms of this act and we again enclose it herewith with the request that you proceed in accordance with the act of March 11, 1909; that you set a day for hearing the matter, not less than sixty nor more than ninety days so that after your decision, the matter can be taken into court.

Just what office the notice given of final proof on a water permit has is a matter not yet passed on by the courts. It has some analogy given to the notice of final proof on a piece of land under the Land Office practice but under the Land Office practice, a protest may be filed against a final proof at any time before patent. If that analogy holds good here, then a proceeding may be taken under the act of March 11, 1909, at any time after the time fixed when the work should be completed and before the license has issued.

At any rate, our request is that this complaint be acted on in the regular manner as prescribed in the Laws of 1909, so that we may take it into court and have it determined.

Yours truly,

S H Hays

4366

SHH/MA

Boise, Idaho, May 20, 1914.

Permit No. 4366.

Hon. S. H. Hayes, Lawyer,
Boise, Idaho.

Sir:--

This is to acknowledge receipt of youre of the 19th inst. accompanied by Petition in duplicate on the part of the Great Shoshone and Twin Falls Water Power Company asking that the State Engineer cancel and annul Permit 4366, title to same now shown of record to be in Idaho Power and Light Company.

The records of this office show that on the 6th day of March, 1914, Certificate of Completion was issued by the State Engineer under the above Permit No. 4366. Section 1, of House Bill No. 223, approved March 11, 1909, provides as follows:

> "Section 1. If the holder of a Permit to Appropriate the public waters shall fail to comply with the requirements of his Permit as to the commencing of work or the filing of bond thereunder, or the completion of one-fifth (1/5) of the construction work within one-half (½) the time allowed for the entire completion of such construction work, or shall fail to complete the entire construction work within the time specified in his Permit, said Permit may be cancelled and voided by the State Engineer as herein provided at the instance of any person or persons holding any Permit for the diversion of water from the same stream (such Permit post dating the Permit which is sought to be cancelled)."

In my opinion I would not be justified in entertaining at this time a petition for cancellation of the Permit upon the grounds that the Permit holder has failed "to complete the entire construction work within the time specified in his Permit" in view of the fact that on the 6th day of March I issued a certificate to the effect that the construction work under said Permit had been completed. If the certificate of completion, as issued, was erroneous it seems to me that it should be taken

4366

should be attacked by appeal to the District Court as provided in Section 3259 of the Revised Codes. Further, I feel that all matters pertaining to the completion of works and proof thereunder in connection with Permit 4366 passed beyond my jurisdiction upon the issuance of the Certificate of Completion, and that my action in the premises can only be questioned by a court of proper jurisdiction and not by myself as State Engineer.

For these reasons it appears to me that I would have no power to consider the allegations set forth in your petition and for that reason it would be useless for me to set a date for hearing. I accordingly herewith return your petition without action.

Very truly yours,

State Engineer.

Enc. Petition in duplicate.
W/L

4366

Boise, Idaho, May 20, 1914.

Permit No. 4366.

Hon. S. H. Hays, Lawyer,
Boise, Idaho.

Sir:--

This is to acknowledge receipt of yours of the 19th inst. accompanied by Petition in duplicate on the part of the Great Shoshone and Twin Falls Water Power Company asking that the State Engineer cancel and annul Permit 4366, title to same now shown of record to be in Idaho Power and Light Company.

The records of this office show that on the 6th day of March, 1914, Certificate of Completion was issued by the State Engineer under the above Permit No. 4366. Section 1, of House Bill No. 223, approved March 11, 1909, provides as follows:

"Section 1. If the holder of a Permit to Appropriate the public waters shall fail to comply with the requirements of his Permit as to the commencing of work or the filing of bond thereunder, or the completion of one-fifth (1/5) of the construction work within one-half ($\frac{1}{2}$) the time allowed for the entire completion of such construction work, or shall fail to complete the entire construction work within the time specified in his Permit, said Permit may be cancelled and voided by the State Engineer as herein provided at the instance of any person or persons holding any Permit for the diversion of water from the same stream (such Permit post dating the Permit which is sought to be cancelled)."

In my opinion I would not be justified in entertaining at this time a petition for cancellation of the Permit upon the grounds that the Permit holder has failed "to complete the entire construction work within the time specified in his Permit" in view of the fact that on the 6th day of March I issued a certificate to the effect that the construction work under said Permit had been completed. If the certificate of completion, as issued, was erroneous it seems to me that it

4366

should be attacked by appeal to the District Court as provided in Section 3259 of the Revised Codes. Further, I feel that all matters pertaining to the completion of works and proof thereunder in connection with Permit 4366 passed beyond my jurisdiction upon the issuance of the Certificate of Completion, and that my action in the premises can only be questioned by a court of proper jurisdiction and not by myself as State Engineer.

For these reasons it appears to me that I would have no power to consider the allegations set forth in your petition and for that reason it would be useless for me to set a date for hearing. I accordingly herewith feturn your petition without action.

Very truly yours,

State Engineer.

Enc. Petition induplicate.
W/L

4366

IN THE OFFICE OF THE STATE ENGINEER,

OF THE STATE OF IDAHO.

GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY, a corporation,
Plaintiff,
& Contestant,
vs.

IDAHO POWER AND LIGHT COMPANY, a corporation,
Defendant,
& Contestee.

PETITION.

Comes now the plaintiff, the petitioner and contestant herein, and states:

1.

That the above named plaintiff and contestant herein is a corporation organized and existing under the laws of the State of Delaware and duly authorized and empowered to do business in the State of Idaho, at both the present time and at all the times hereinafter mentioned.

That plaintiff is the owner and holder of Permit No. 8627 for the diversion of the waters of the Malade River taken out by D. C. MacWatters, and by him transferred to the plaintiff herein; that said permit bears a later date than the permit No. 4366 hereinafter mentioned; that the point of diversion of said Permit 8627 is approximately five hundred (500) feet down stream from the point of diversion of the said Permit 4366 and that the diversion under Permit 4366 is adverse to the diversion under Permit 8627.

2.

That the Idaho Power and Light Company is a corporation organized under the laws of the State of Nevada and doing business in the State of Idaho.

3.

That on the 25th day of November, 1908, Application No. 5904 was made by A. M. Wrench for leave to appropriate 1100 cubic feet per second of the waters of the Malade River and tributaries, including Cove Creek in the County of Lincoln, now the County of

Gooding, State of Idaho; that the point of diversion for said waters was located in the Northwest Quarter of the Northwest Quarter of Section Thirty-six (36), Township Six (6) South, Range Thirteen (13) East, Boise Meridian; that the course of the conduit described in said application extended in a northerly or northwesterly direction through the southwest Quarter of the southwest Quarter of Section Twenty-five (25), and thence westerly and southwesterly through the Southeast Quarter of the Southeast Quarter of Section Twenty-six (26), and the North Half (N½) of the Northeast Quarter (NE¼) of Section Thirty-five (35), and the North Half of the Northwest Quarter of Section Thirty-five (35), and the South Half of the Southwest Quarter of Section Twenty-six (26), the South half of the Southeast Quarter of Section Twenty-seven (27), the Northwest Quarter of the Northeast Quarter, of Section Thirty-four (34) and Lot One (1) in Section Thirty-four (34), where a power house was located. As set forth in said application, said water was desired for power purposes;

That said application for permit was returned for correction on December 25th, 1908, and the corrected application was received February 22nd, 1909; that said application was approved on said day and numbered as Permit 4366 in the office of the State Engineer of the State of Idaho;

That under the terms and conditions of said permit, it was required that the whole of the work specified in said permit should be completed on or before February 22nd, 1914. Reference is hereby made to the records and files in the State Engineer's Office with reference to Permit 4366 for a more complete description of the work to be done thereunder.

That the said A. M. Wrench on or about the 6th day of March, 1911, conveyed all of his rights under said Water Permit 4366 to a corporation organized under the laws of the State of Colorado known as The Beaver River Power Company, and thereafter, on or about the 30th day of August, 1913, said corporation conveyed all of its rights in and to said Permit 4366 to the Idaho Power and Light Company, a

corporation, organized and existing under the laws of the State of Nevada, and that said corporation is the owner and holder of all rights under said Permit 4366, as may now exist, having also purchased the interest of other persons therein.

5.

That the defendant and contestee herein and its predecessors in interest, including the said A. M. Wrench, have failed to complete the entire construction work called for under the terms and conditions of said Permit 4366 within the time specified ~~within~~ in said Permit in the following particulars, to wit:

That said permit described a conduit to be constructed for the use of water from the point of diversion in Sections Thirty-six (36) and Twenty-five (25), Township Six (6) South, Range Thirteen (13) East, Boise Meridian, ~~extending~~ extending north along and above the north bank of the Malade River as shown and designated on the map accompanying the application for said permit now on file in the State Engineer's office, to a point in Lot One (1), in Section Twenty-seven (27), where power was to be generated; that along the route of the conduit as shown upon the map filed with said permit and as described in said permit and under the terms thereof, the said A. M. Wrench and his successors in interest, including the defendant herein, have constructed a flume from the point of diversion in Section Thirty-six (36), upon and along the north bank of the Malade River to a point approximately four hundred (400) feet west of the east line of the northeast Quarter of the northwest quarter of Section Thirty-five (35), Township Six (6) South, Range Thirteen (13) East, Boise Meridian, and no further, and that the conduit set forth and described in said Permit 4366 is completed to said point in the Northwest Quarter of the Northwest Quarter, and no further. That said conduit ends at this point and does not extend to the point of intended use as indicated in said permit; that there is no pressure box, pen-stock or other appliance for the use of the water necessary for the power development; that the work has not been completed as provided in said permit and has not been completed so as to make any power develop-

ment whatever.

WHEREFORE, Petitioner prays that in pursuance of law a time for hearing be fixed and that on such hearing, said Water Permit No. 4366 be canceled and annulled, and that petitioner may have all proper relief.

GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY,

By J H Hays Attorney

STATE OF IDAHO,)
) ss.
COUNTY OF ADA.

S. H. HAYS being first duly sworn deposes and says that he is the attorney for Plaintiff and Contestant herein; that he has read the foregoing Petition and knows the contents thereof and that the same is true of his own knowledge except as to the matters and things therein stated to be upon information or belief and that as to those matters, he believes,it to be true.

That affiant makes this verification for the reason that all of the officers and agents of the Plaintiff corporation are absent from the County of Ada wherein affiant resides.

J H Hays

SUBSCRIBED AND SWORN TO before me this 19th day of May, 1914.

Quarton

Notary Public.

4366

Copy

IN THE OFFICE OF THE STATE ENGINEER,

OF THE STATE OF IDAHO.

GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY, a corporation,
Plaintiff,
& Contestant,

vs.

PETITION.

IDAHO POWER AND LIGHT COMPANY, a corporation,
Defendant,
& Contestee.

Comes now the plaintiff, the petitioner and contestant herein, and states:

1.

That the above named plaintiff and contestant herein is a corporation organized and existing under the laws of the State of Delaware and duly authorized and empowered to do business in the State of Idaho, at both the present time and at all the times hereinafter mentioned.

That plaintiff is the owner and holder of Permit No. 8627 for the diversion of the waters of the Malade River taken out by D. C. MacWatters, and by him transferred to the plaintiff herein; that said permit bears a later date than the permit No. 4366 hereinafter mentioned; that the point of diversion of said Permit 8627 is approximately five hundred (500) feet down stream from the point of diversion of the said Permit 4366 and that the diversion under Permit 4366 is adverse to the diversion under Permit 8627.

2.

That the Idaho Power and Light Company is a corporation organized under the laws of the State of Nevada and doing business in the State of Idaho.

3.

That on the 25th day of November, 1908, Application No. 5904 was made by A. M. Wrench for leave to appropriate 1100 cubic feet per second of the waters of the Malade River and tributaries, including Cove Creek in the County of Lincoln, now the County of

4366

Gooding, State of Idaho; that the point of diversion for said waters was located in the Northwest Quarter of the Northwest Quarter of Section Thirty-six (36), Township Six (6) South, Range Thirteen (13) East, Boise Meridian; that the course of the conduit described in said application extended in a northerly or northwesterly direction through the southwest Quarter of the southwest Quarter of Section Twenty-five (25), and thence westerly and southwesterly through the Southeast Quarter of the Southeast Quarter of Section Twenty-six (26), and the North Half (N½) of the Northeast Quarter (NE¼) of Section Thirty-five (35), and the North Half of the Northwest Quarter of Section Thirty-five (35), and the South Half of the Southwest Quarter of Section Twenty-six (26), the South half of the Southeast Quarter of Section Twenty-seven (27), the Northwest Quarter of the Northeast Quarter, of Section Thirty-four (34) and Lot One (1) in Section Thirty-four (34), where a power house was located. As set forth in said application, said water was desired for power purposes;

That said application for permit was returned for correction on December 25th, 1908, and the corrected application was received February 22nd, 1909; that said application was approved on said day and numbered as Permit 4366 in the office of the State Engineer of the State of Idaho;

That under the terms and conditions of said permit, it was required that the whole of the work specified in said permit should be completed on or before February 22nd, 1914. Reference is hereby made to the records and files in the State Engineer's Office with reference to Permit 4366 for a more complete description of the work to be done thereunder.

4.

That the said A. M. Wrench on or about the 6th day of March, 1911, conveyed all of his rights under said Water Permit 4366 to a corporation organized under the laws of the State of Colorado known as The Beaver River Power Company, and thereafter, on or about the 30th day of August, 1913, said corporation conveyed all of its rights in and to said Permit 4366 to the Idaho Power and Light Company, a

corporation, organized and existing under the laws of the State of Nevada, and that said corporation is the owner and holder of all rights under said Permit 4366, as may now exist, having also purchased the interest of other persons therein.

5.

That the defendant and contestee herein and its predecessors in interest, including the said A. M. Wrench, have failed to complete the entire construction work called for under the terms and conditions of said Permit 4366 within the time specified within said Permit in the following particulars, to wit:

That said permit described a conduit to be constructed for the use of water from the point of diversion in Sections Thirty-six (36) and Twenty-five (25), Township Six (6) South, Range Thirteen (13) East, Boise Meridian, extending north along and above the north bank of the Malade River as shown and designated on the map accompanying the application for said permit now on file in the State Engineer's office, to a point in Lot One (1), in Section Twenty-seven (27), where power was to be generated; that along the route of the conduit as shown upon the map filed with said permit and as described in said permit and under the terms thereof, the said A. M. Wrench and his successors in interest, including the defendant herein, have constructed a flume from the point of diversion in Section Thirty-six (36), upon and along the north bank of the Malade River to a point approximately four hundred (400) feet west of the east line of the northeast Quarter of the northwest quarter of Section Thirty-five (35), Township Six (6) South, Range Thirteen (13) East, Boise Meridian, and no further, and that the conduit set forth and described in said Permit 4366 is completed to said point in the Northeast Quarter of the of the Northwest Quarter, and no further. That said conduit ends at this point and does not extend to the point of intended use as indicated in said permit; that there is no pressure box, pen-stock or other appliance for the use of the water necessary for the power development; that the work has not been completed as provided in said permit and has not been completed so as to make any power develop-

ment whatever.

WHEREFORE, Petitioner prays that in pursuance of law a time for hearing be fixed and that on such hearing, said Water Permit No. 4366 be canceled and annulled, and that petitioner may have all proper relief.

GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY,

By _____

STATE OF IDAHO,)
) ss.
COUNTY OF ADA.

S. H. HAYS being first duly sworn deposes and says that he is the attorney for Plaintiff and Contestant herein; that he has read the foregoing Petition and knows the contents thereof and that the same is true of his own knowledge except as to the matters and things therein stated to be upon information or belief and that as to those matters, he believes it to be true.

That affiant makes this verification for the reason that all of the officers and agents of the Plaintiff corporation are absent from the County of Ada wherein affiant resides.

_____

SUBSCRIBED AND SWORN TO before me this _____ day of May, 1914.

_____

Notary Public.

4366

SA[illegible] H. HAYS
A[illegible]NEY AT LAW
310-314 Boise[illegible]Y NATIONAL BANK BLDG
B[illegible]E, IDAHO

May 19, 1914.

State Engineer,

Boise,

Idaho.

Dear Sir:

I enclose herewith a petition in the case of the Great Shoshone & Twin Falls Water Power Company vs. the Idaho Power & Light Company to cancel Water Permit 4366 of record in your office.

Yours truly,

SHH/MA

P#366

4366

Form 2

THE WESTERN UNION TELEGRAPH COMPANY

INCORPORATED

25,000 OFFICES IN AMERICA. CABLE SERVICE TO ALL THE WORLD

THEO. N. VAIL, PRESIDENT — BELVIDERE BROOKS, GENERAL MANAGER

RECEIVER'S No.	TIME FILED	CHECK

SEND the following message subject to the terms on back hereof, which are hereby agreed to

Boise, Idaho, Feb. 21, 1914. 191

To L. A. Owens,

Bliss, Idaho.

Have team ready to meet me on number ten.

Walter P. Heyde,

Charge State Engineer's office account.

4366

4366

ALL MESSAGES TAKEN BY THIS COMPANY ARE SUBJECT TO THE FOLLOWING TERMS WHICH ARE HEREBY AGREED TO

To guard against mistakes or delays, the sender of a message should order it REPEATED, that is, telegraphed back to the originating office for comparison. For this, one-half the unrepeated message rate is charged in addition. Unless otherwise indicated on its face, THIS IS AN UNREPEATED MESSAGE AND PAID FOR AS SUCH, in consideration whereof it is agreed between the sender of the message and this Company as follows:

1. The Company shall not be liable for mistakes or delays in the transmission or delivery, or for non-delivery, of any UNREPEATED message, beyond the amount received for sending the same; nor for mistakes or delays in the transmission or delivery, or for non-delivery of any REPEATED message, beyond fifty times the sum received for sending the same, *unless specially valued;* nor in any case for delays arising from unavoidable interruption in the working of its lines; *nor for errors in cipher or obscure messages.*

2. In any event the Company shall not be liable for damages for any mistakes or delay in the transmission or delivery, or for the non-delivery of this message, whether caused by the negligence of its servants or otherwise, beyond the sum of FIFTY DOLLARS, at which amount this message is hereby valued, unless a greater value is stated in writing hereon at the time the message is offered to the Company for transmission, and an additional sum paid or agreed to be paid based on such value equal to one-tenth of one per cent. thereof.

3. The Company is hereby made the agent of the sender, without liability, to forward this message over the lines of any other Company when necessary to reach its destination.

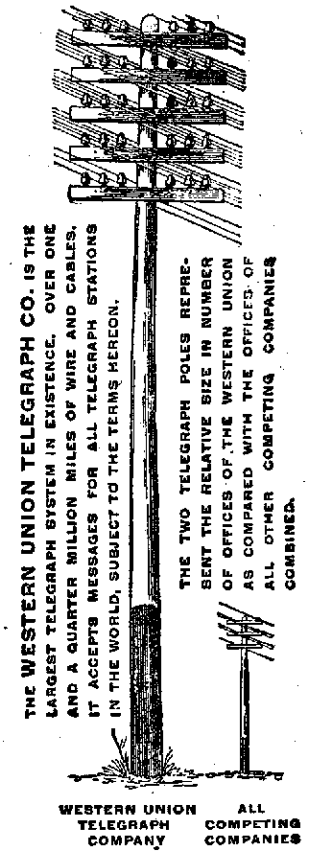
4. Messages will be delivered free within one-half mile of the Company's office in towns of 5,000 population or less, and within one mile of such office in other cities or towns. Beyond these limits the Company does not undertake to make delivery, but will, without liability, at the sender's request, as his agent and at his expense, endeavor to contract for him for such delivery at a reasonable price.

5. No responsibility attaches to this Company concerning messages until the same are accepted at one of its transmitting offices; and if a message is sent to such office by one of the Company's messengers, he acts for that purpose as the agent of the sender.

6. The Company will not be liable for damages or statutory penalties in any case where the claim is not presented in writing within sixty days after the message is filed with the Company for transmission.

7. *No employee of the Company is authorized to vary the foregoing.*

THEO. N. VAIL, PRESIDENT — BELVIDERE BROOKS, GENERAL MANAGER



MONEY TRANSFERRED BY TELEGRAPH AND CABLE TO ALL THE WORLD

PERMIT No. 4366

PROOF OF COMPLETION OF WORKS

Deposition of Witness

RECEIVED
FEB 2 1 1914
OFFICE OF STATE ENGINEER

Ques. 1. State your name, Age, residence, occupation and post office address.

Ans. C. J. Franklin; 47 years; Boise, Idaho; Engineer; Boise, Idaho.

Question 2. Are you acquainted with the Idaho Power & Light Company the holder of Permit No. 4366, authorizing the diversion of 1100 second feet of the waters of Malade river and its tributaries in Gooding county, Idaho for power purposes?

Ans. I am acquainted with the officers of this corporation, and know that its principal place of business is Boise, Idaho.

Ques. 3. Have you read or heard read said Permit No. 4366, and are you familiar with its terms and conditions?

Ans. I am.

Ques. 4. Are the works of diversion fully completed and of sufficient capacity to convey the entire amount of water set out in the permit from point of diversion to place of use?

Ans. They are.

Ques. 5. Describe the works of diversion as they now exist, and give your estimate of their capacity?

Ans. (a) Crib dam across Malade River and Love Creek

(b) Upper Flume: 4 headgates, 5 feet wide by 6 feet high. The size of flume inside is 13 feet 6 inches wide by 8 feet high. This flume has a uniform grade throughout of 1 foot in 1000 feet. The coefficient of roughness is .010. The inside of the flume is smooth lumber. At 7.5 feet depth the flume will carry 1102 C. F. S. This flume is 4,824.4 feet in length on the center line and ends at the proposed pressure box.

(c) Lower flume: This flume is constructed with a borken grade line, 4 headgates 5 feet wide by 6 feet high.

Size of flume: Inside from Station 0+00 to Station 10+75 is 16 feet 4 inches in width by 9 feet 6 inches in heighth. This portion of the flume has a grade of 1.6 feet in 1000 feet. Coefficient of roughness is .010. Inside of flume is smooth lumber. At 9 feet depth this flume will carry 2,259 C. F. S. From Station 10+75 to Station 41+33 a distance of 3,058 feet, the inside of the flume is 15 feet six inches in width by 9 feet 6 inches in height. The grade is 1 foot in 1,000 feet. At 9 feet depth this section will carry 1663 C. F. S. The total length of the lower flume is 4,133 feet and it ends at the pressure boxes now constructed.

The plan of development is set forth and described in the blue print map attached to the affidavit of the owner of this permit filed in this matter.

E. J. Franklin

I hereby cerify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in Boise, county of Ada, state of Idaho, on this 2nd day of February, 1914.

Chas. W. Mack
Notary Public.

4305

PERMIT NO. 4366.

PROOF OF COMPLETION OF WORKS

DEPOSITION OF WITNESS

HAWLEY, PUCKETT & HAWLEY
ATTORNEYS AND COUNSELLORS
BOISE, IDAHO

PERMIT No. 4366

PROOF OF COMPLETION OF WORKS

Deposition of Witness

RECEIVED
FEB 21 1914
OFFICE OF STATE ENGINEER

Ques. 1. State your name, Age, residence, occupation and post office address.

Ans. P. N. Nunn; 54 years; New York City; Engineer; present P. O. Address, Boise, Idaho.

Question 2. Are you acquainted with the Idaho Power & Light Company the holder of Permit No. 4366, authorizing the diversion of 1100 second feet of the waters of Malade river and its tributaries in Gooding county, Idaho for power purposes?

Ans. I am acquainted with the officers of this corporation, and know that its principal place of business is Boise, Idaho.

Ques. 3. Have you read or heard read said Permit No. 4366, and are you familiar with its terms and conditions?

Ans. I am.

Ques. 4. Are the works of diversion fully completed and of sufficient capacity to convey the entire amount of water set out in the permit from point of diversion to place of use?

Ans. They are.

Ques. 5. Describe the works of diversion as they now exist, and give your estimate of their capacity?

Ans. (a) Crib dam across Malade River and Cove Creek

(b) Upper Flume: 4 headgates, 5 feet wide by 6 feet high. The size of flume inside is 13 feet 6 inches wide by 8 feet high. This flume has a uniform grade throughout of 1 foot in 1000 feet. The coefficient of roughness is .010. The inside of the flume is smooth lumber. At 7.5 feet depth the flume will carry 1102 C. F. S. This flume is 4,824.4 feet in length on the center line and ends at the proposed pressure box.

(c) Lower flume: This flume is constructed with a borken grade line, 4 headgates 5 feet wide by 6 feet high. 4366

Size of flume: Inside from Station 0+00 to Station 10+75 is 16 feet 4 inches in width by 9 feet 6 inches in heighth. This portion of the flume has a grade of 1.6 feet in 1000 feet. Coefficient of roughness is .010. Inside of flume is smooth lumber. At 9 feet depth this flume will carry 2,259 C. F. S. From Station 10+75 to Station 41+33 a distance of 3,058 feet, the inside of the flume is 15 feet six inches in width by 9 feet 6 inches in height. The grade is 1 foot in 1,000 feet. At 9 feet depth this section will carry 1663 C. F. S. The total length of the lower flume is 4,133 feet and it ends at the pressure boxes now constructed.

The plan of development is set forth and described in the blue print map attached to the affidavit of the owner of this permit filed in this matter.

I. A. Stevens

I hereby cerify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me, at my office in Boise, county of Ada, state of Idaho, on this 24th day of February, 1914.

Isaac W. Mack
Notary Public

PERMIT NO. 4366.

PROOF OF COMPLETION OF WORKS.

DEPOSITION OF WITNESS.

HAWLEY, PUCKETT & HAWLEY
ATTORNEYS AND COUNSELLORS
BOISE, IDAHO

PERMIT NO. 4366.

PROOF OF COMPLETION OF WORKS.

Deposition of Holder.

RECEIVED
FEB 2 1914
OFFICE OF STATE ENGINEER

Ques. 1. State your name, age, residence, occupation and postoffice address.

Ans. E. P. Bacon; 41 years, Boise, Idaho, General Manager of Idaho Power & Light Company; Boise, Idaho.

Ques. 2. If acting in behalf of a corporation, state its name, principal place of business, your position with reference to same, and your authority for appearing in its behalf.

Ans. (a) Idaho Power '& Light Company,
(b) Boise, Idaho,
(c) General Manager,
(d) As part of my duties under my employment as General Manager.

Ques. 3. State number and date of Permit, the amount of water you are authorized to divert, source and point of diversion.

Ans. (a) Permit No. 4366, applied for on the 25th day of November, 1908, and issued on the 22nd day of February, 1909.

(b) 1100 second feet of the waters of Malade River and its tributaries, of which 1050 feet is to be diverted from Malade River and 50 feet from its tributary, Cove Creek.

(c) Point of diversion of waters of Malade River is N. 12° 25' West 2786.1 feet to the quarter corner between Section 25 and 26, Township 6 South, Range 13 East, B.M. Cove Creek is North 9[illegible]° 56' West 2182.5 feet to the quarter corner between Section 25 and 26, Township 6 South, Range 13 East, B.M.

Ques. 5. State whether or not the water has been turned into your works of diversion, and, if so, when and to what extent.

Ans. Water was turned into the lower portion of the works of diversion, commonly known as the lower flume, and continually diverted there-through beginning with approximately the 10th of April, 1911 The amount of water turned into said lower portion of said works of diversion is 1663 C.F.S. Water was turned into the upper portion of the works of diversion about the 15th day of Februaty, 1914, that the amount has been gradually increased until the 21st day of February, 1914, at which time about 1100 C.F.S. are flowing in said upper works of divession.

Ques. 6. State whether or not the works of diversion are fully completed, and whether or not they comply in all respects with the terms of the permit.

Ans. The works of diversion are fully completed. The line of conduit as described in the original map attached to the permit has been changed and the plan of development in one station as described in said map has been changed to a two stage development, all of which appears from the blue print map accompanying this affidavit, which map is entitled, 'Map Showing Works of Diversion Completed under Permit No. 4366.'

Ques. 7. If the works of diversion do not comply with all the terms of your permit, state fully those particulars in which there is any variance.

Ans. (For answer see Answer to Question 6)

Ques. 8. (a) Crib dam across Malade river and Cove creek.

(b) Upper Flume: 4 headgates, 5 feet wide by 6 feet high. The size of flume inside is 13 feet 6 inches wide by 8 feet high. This flume has a uniform grade throughout of 1 foot in 1000 feet. The coefficient of roughness is .010. The inside of the flume is smooth lumber. At 7.5 feet depth the flume will carry 1102 C.F.S. This flume is 4,824.4 feet in length on the center line and ends at the proposed pressure box.

(c) Lower flume: This flume is constructed with a broken grade line, 4 headgates 5 feet wide by 6 feet high. Size of Flume: Inside ~~xxxxx~~ from Station 0+00 to Station 10+75 is 16 feet 4 inches in width by 9 feet 6 inches in heighth. This portion of the flume has a grade of 1.6 feet in 1000 feet. Coefficient of roughness is .010. Inside of flume is smooth lumber. At 9 feet depth this flume will carry 2,259 C. F. S. From Station 10+75 to Station 41+33 a distance of 3,058 feet, the inside of the flume is 15 feet 6 inches in width by 9 feet 6 inches in height. The grade is 1 foot in 1,000 feet. At 9 feet depth this section will carry 1663 C. F. S. The total length of the lower flume is 4,133 feet and its ends at the

pressure boxes now constructed.

The plan of development is set forth and described in the blue print map attached to the affidavit of the owner of this permit filed in this matter.

Total cost of works of diversion is approximately $150,000.

I hereby certify that the foregoing testimony was read to the above subscriber before its signing, that I believe him to be the person he represents himself to be, and that said testimony was subscribed and sworn to before me in Boise, Ada county, state of Idaho, on this 21st day of February, A. D. 1914.

Notary Public

My Commission Expires July 11, 1915.

PERMIT NO. 4366.

PROOF OF COMPLETION OF WORKS.

DEPOSITION OF HOLDER.

HAWLEY, PUCKETT & HAWLEY
ATTORNEYS AND COUNSELLORS
BOISE, IDAHO

ENGINEER'S REPORT

on the

COMPLETION OF WORKS

of the

IDAHO POWER AND LIGHT COMPANY

Permit No. 4366.

The permit is for 1050 cubic feet per second from the Malad river and 50 cubic feet per second from Cove creek, a tributary of the Malad.

The water of the Malad river is diverted from a point which is S. 12°25' E. 2786 feet distant from the ¼ corner between Sections 25 and 26 T. 6 S. R. 13 E. The water of Cove creek is diverted from a point which is S. 9°56' E. 2183, distant from the ¼ corner between sections 25 and 26 T. 6 S. R. 13 E. B. M.

The flume on the upper grade is 4825 feet long. The dam at the head is a rock filled timber crib on which flash boards are used. The headgate consists of 9 gates 4'0" wide of the flashboard type. The elements of the flume are shown in the following drawing.

The lower flume is of wooden construction, about 4100 feet long. The elements are shown on a plan attached.

The dam at the head is a rock filled timber crib with concrete cutoff walls and abutments. The headgate is of concrete with wooden gates. There are 5 gates, 5 feet wide. There is a flash board system across the dam so as to get the required head at the headgates. The lower end of the flume empties into a steel pipe penstock 8 feet in diameter which operates the present plant. The lower flume, besides carrying the 1100 second foot ~~velocity~~ which the permit calls for, must also carry the 300 second feet used by the King Hill Irrigation and Power Company.

4366

The upper flume at this time was carrying about 10 cubic feet per second, but the day before this the flume was carrying about one-third its capacity. The lower flume, although nearly full of water was held up by checks and was flowing about one-half its capacity. The pressure box and that portion of the penstock from the pressure box to the power site, also the power house and its tail race, are not as yet started on the upper site.

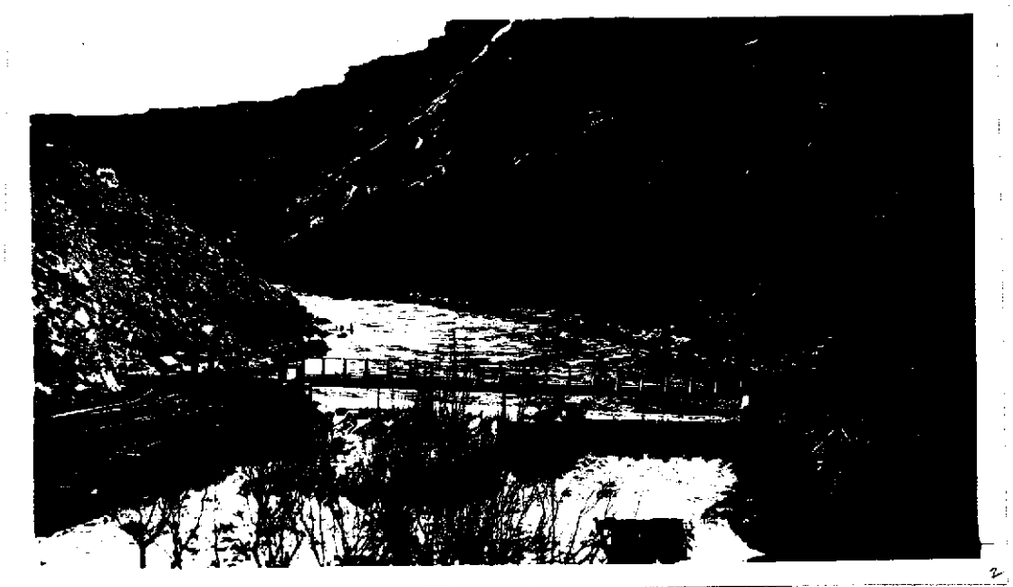
The enclosed blue print shows by means of red arrows the position and direction that the following views were taken.

Examination made February 21-22, 1914.

Walter R Hoyt
Chief Carey Act Engineer.

View No. 1,

Shows downstream view of upper diversion.



View No. 2

shows upstream view of upper diversion.



View No. 3.

Shows downstream view of Cove creek diversion.



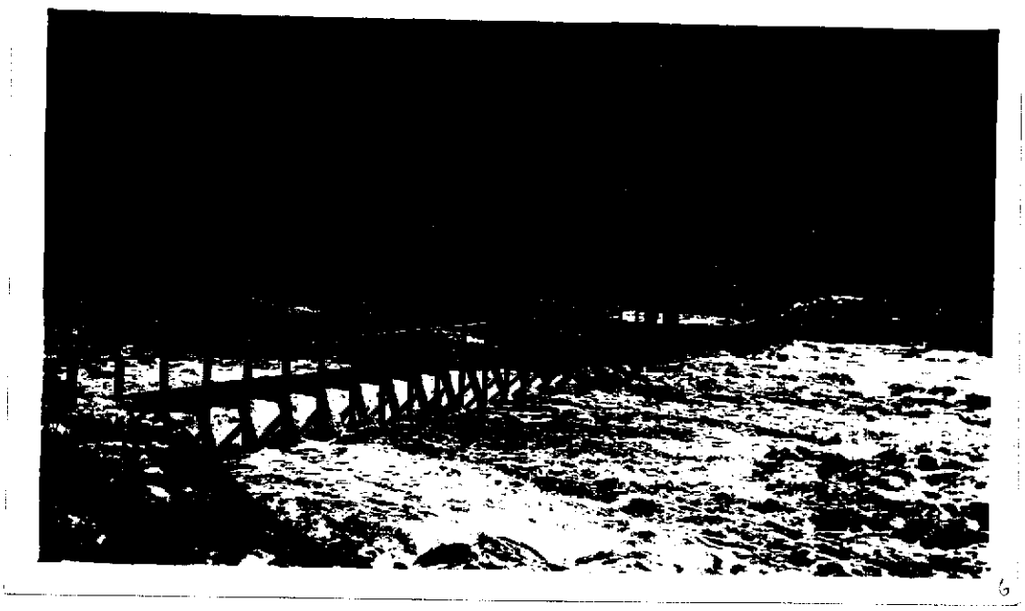
View No. 4

Shows the upstream view of lower end of upper flume.



View No. 5

Shows lower end of upper flume.



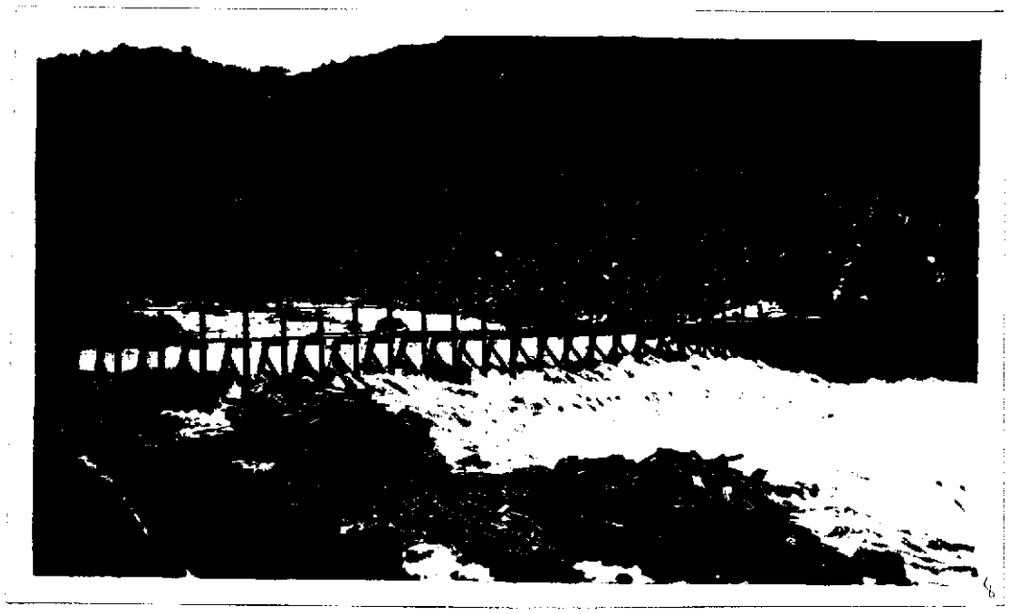
View No. 6

Shows Lower diversion.



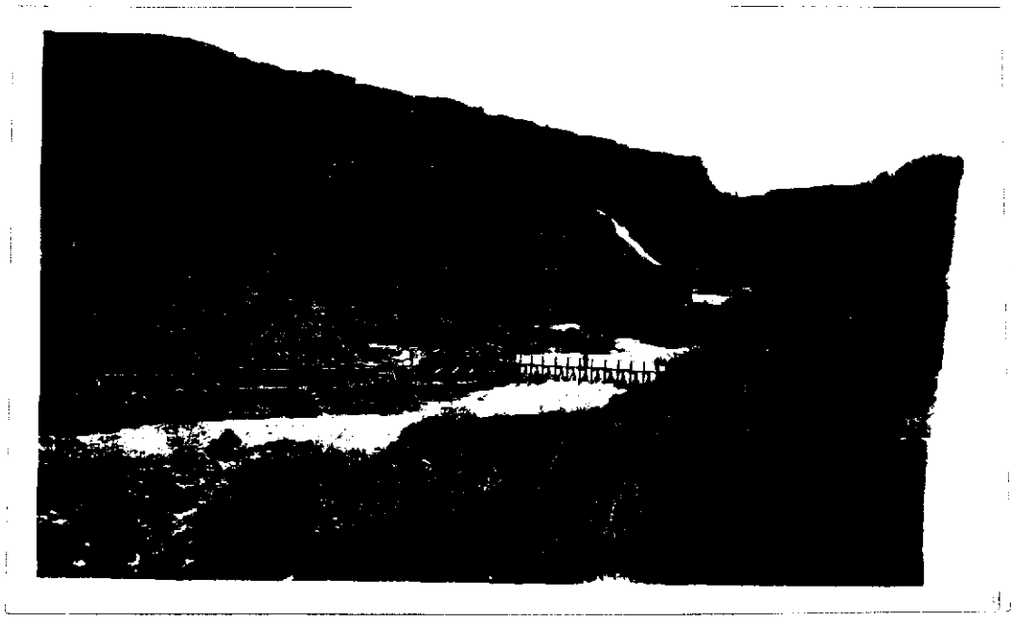
View No. 7

Shows up stream view of lower headgates.



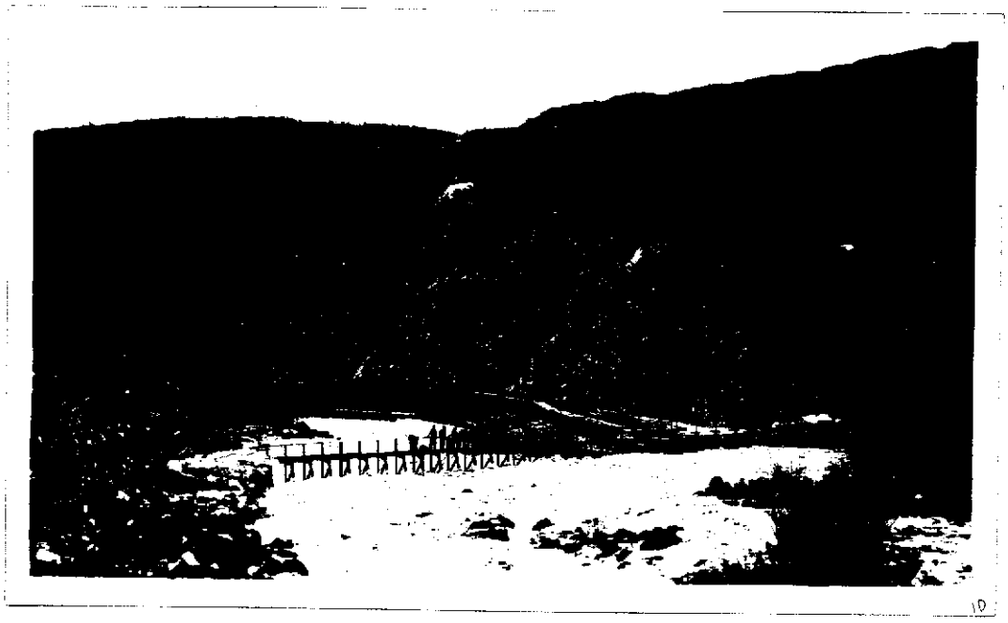
View No. 8

Shows lower diversion.



View No. 9.

Shows upstream view of lower diversion showing upper flume.



View No. 10

Shows downstream view of lower diversion.



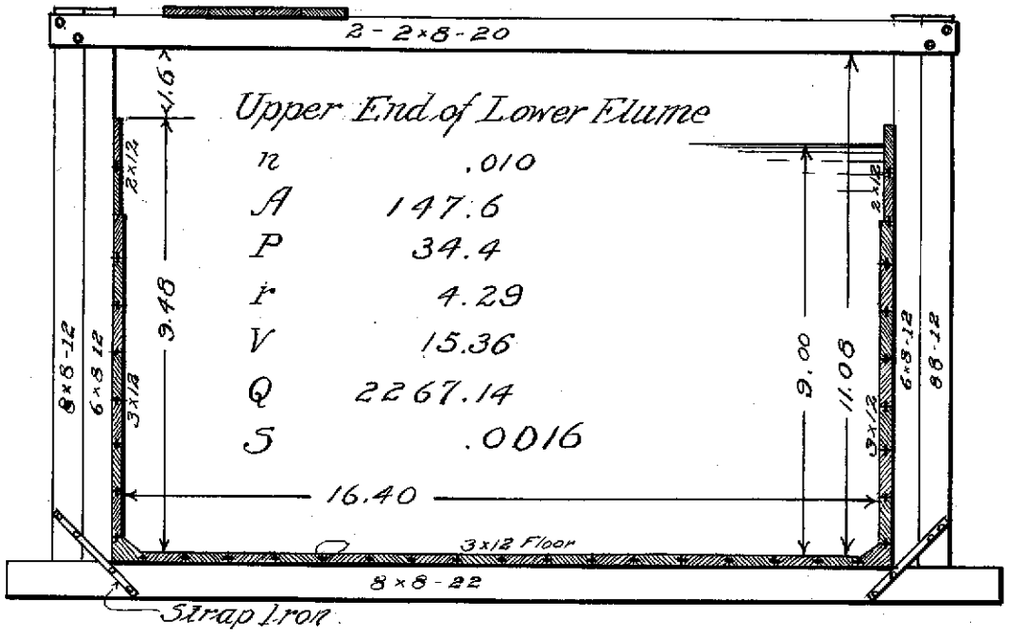
View No. 11

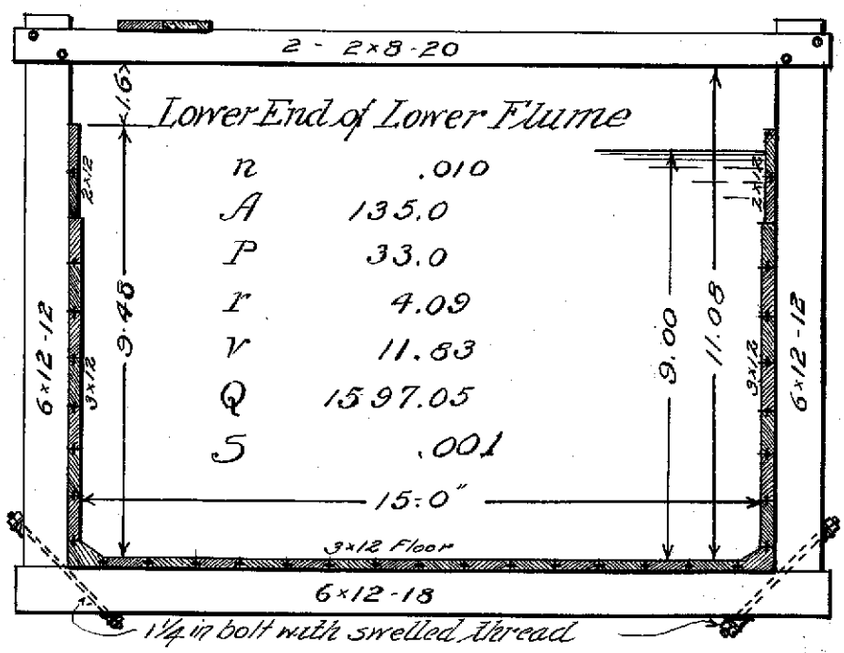
Shows downstream view showing spillway in lower flume.

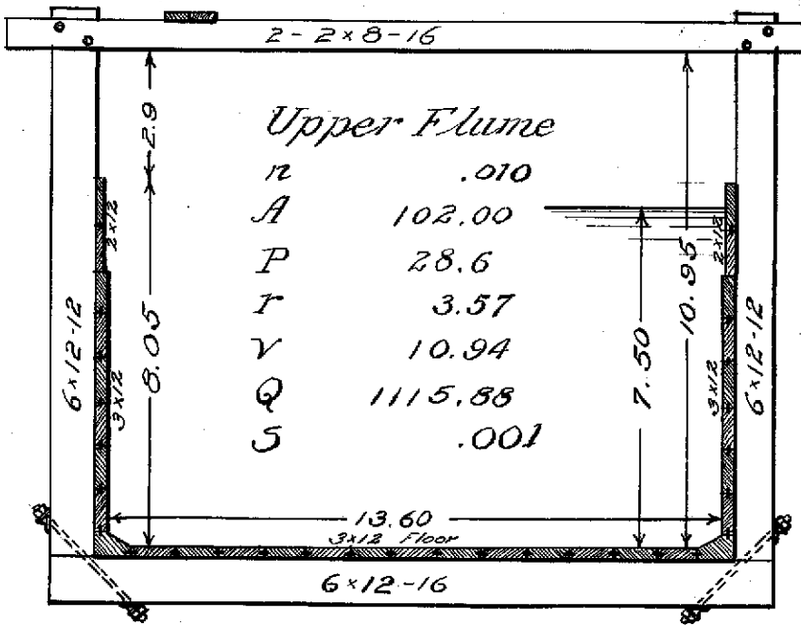


View No. 12

Shows downstream view showing penstock and power house at the end of lower flume


2 - 2×8 - 20
1.6
2×12
9.48
8×8-12
6×8-12
3×12
Upper End of Lower Flume
n .010
A 147.6
P 34.4
r 4.29
V 15.36
Q 2267.14
S .0016
9.00
11.08
3×12
6×8-12
8×8-12
16.40
3×12 Floor
8×8-22
Strap Iron


2 - 2×8 - 20
1.6
2×12
9.46
6×12-12
3×12
Lower End of Lower Flume
n .010
A 135.0
P 33.0
r 4.09
V 11.83
Q 1597.05
S .001
9.00
11.08
3×12
6×12-12
15:0"
3×12 Floor
6×12-18
1¼ in bolt with swelled thread


2 - 2×8 - 16
2.9
2×12
6.05
6×12-12
3×12
Upper Flume
n .010
A 102.00
P 28.6
r 3.57
V 10.94
Q 1115.88
S .001
7.50
10.95
3×12
6×12-12
13.60
3×12 Floor
6×12-16

State of Idaho

A. E. ROBINSON
STATE ENGINEER

ENGINEERING DEPARTMENT
BOISE

INSTRUCTIONS

PROOF OF COMPLETION OF WORKS

Idaho P.& L.Co.

Chas. W. Mack,
Boise, Idaho

Boise, Idaho, January 20, 1914

Dear Sir:

I enclose herewith the following forms to be used in connection with proof of completion of works under your permit No. 4366.

Deposition of Permit Holder,

Depositions of Two Witnesses.

In submitting this proof the following instructions should be CAREFULLY followed out, since failure to do so may result in the loss of your rights:

1. On Feb. 21st, the date set for proof of completion of works, the enclosed deposition forms (one for permit holder and one each for two witnesses) should be filled out and sworn to, at Boise, before Chas. W. Mack, notary public.

2. When the depositions have been taken they should be mailed to this office, together with affidavit of publication of notice and fee of $5.00, where amount claimed does not exceed 10 second feet. Where more than 10 second feet is claimed, the fee required is 30 cents per second foot. When these have been received, together with report of the examining engineer, if everything is properly executed, Certificate of Completion of Works will issue.

Yours truly,

A. E. ROBINSON,
State Engineer.

F.P.KING, xxxxxxxxxxx

4366

(P. O.) Boarding

(Date) Jan 14/14

RECEIVED
JAN 16 1914
OFFICE OF STATE ENGINEER

State Engineer, Boise,

Dear Sir:

I have your letter of Jan 7 enclosing Notice of Proof of Completion of Works under Permit No. 4366 which will be published as you request, beginning with our issue of Jan 16

R N Stinson
The Leader

4366

Form 8

Notice of Publication

Notice is hereby given that at 2 P. M., on the 21st day of February 1914, at Boise County of Ada, State of Idaho, before Chas. W. Mack, Notary Public proof will be submitted of the completion of works for the diversion of 1100 cubic feet per second of the waters of Malade River in accordance with the terms and conditions of a certain permit heretofore issued by the State Engineer of the State of Idaho.

1. The name of the person or corporation holding said permit is Idaho Power and Light Company.

2. The postoffice address of such person or principal place of business of such corporation is Boise, County of Ada, State of Idaho.

3. The number of such Permit is 4366, and the date set for the completion of such work is Feb. 22, 1914.

4. Said water to be used for power purposes.

5. Said works of diversion will be fully completed on the date set for such completion, and the amount of water which said works are capable of conducting to the place of intended use, in accordance with the plans accompanying the application for such permit, is 1100 cubic feet per second.

6. ~~The amount of lands for which said water is to be used is ... acres, particularly described as follows:~~ The place of use of said water is S. 78° 10' W. 3265 ft. from N.E.cor. Sec. 34, T. 6 S., R. 13 E.B.M.

4366

F. P. KING, State Engineer.

Publication sent to Ralph

apl 18, 1912

IN THE DISTRICT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF IDAHO, SOUTHERN DIVISION.

° °

GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY, a corporation, Plaintiff, °

vs. ° N O T I C E.

A. M. WRENCH, L. L. NUNN, IDAHO POWER AND LIGHT COMPANY, et al., Defendants. °

° °

To the STATE ENGINEER of the
State of Idaho:

You are hereby notified that the plaintiff ~~has~~ filed a bill in equity in this court on april 18, 1912 for the purpose of procuring the cancellation of the Wrench Water Permit No. 4366, calling for the diversion of water in Section 36, Township 6 South, Range 13 East, on the Malade River, in Gooding County, Idaho, for the reason that one-fifth of the work of construction as contemplated in the application for such permit to construct such works, was not completed on or before August 22nd, 1911, as provided by statute. That said suit is still pending and undetermined.

A. L. Richardson
Clerk of the District Court of the United States, for the District of Idaho.

Dated February 19th, 1914.

RECEIVED
FEB 19 1914
OFFICE OF STATE ENGINEER

4366

Boise, Idaho, December 24, 1913.

Permit No. 4366.

Idaho Power and Light Co.,
Boise, Idaho.

Gentlemen:--

Am herewith returning Deed under above numbered Permit, the same having been recorded in this office. Please to remit $5.00, recording fees.

Very truly yours,

F. P. KING,

State Engineer.

By _____

Enc. Deed.
B/L.

4366

NOTICE OF PUBLICATION

RECEIVED
DEC 22 1913
OFFICE OF STATE ENGINEER

Notice is hereby given that at 2 P.M., on the 21st day of February, 1914, at Boise City, County of Ada, State of Idaho, before Chas. W. Mack, a Notary Public, proof will be submitted of the completion of works for the diversion of 1100 cubic feet per second of the waters of Malade River in accordance with the terms and conditions of a certain permit heretofore issued by the State Engineer of the State of Idaho.

1. The name of the person or corporation holding said permit is Idaho Power and Light Company.
2. The postoffice address of such person or principal place of business of such corporation is Boise City, County of Ada, State of Idaho.
3. The number of such Permit is 4366, and the date set for the completion of such work is Feb. 22, 1914.
4. Said water to be used for power purposes.
5. Said works of diversion will be fully completed and the amount of water which said works are capable of conducting to the place of intended use, in accordance with the plans accompanying the application for such permit is 1100 cubic feet per second.

4366

F. P. King, State Engineer.

IDAHO POWER CO.

The Beaver River Power Company

Idaho Department

Boise, Idaho

Dec. 19, 1913.

State Engineer,

Boise, Idaho.

Dear Sir:

You are hereby authorized and requested to have the attached notice published at our expense in the Gooding Leader, Gooding, Idaho, published in the County in which the works are situated.

RECEIVED
DEC 22 1913
OFFICE OF STATE ENGINEER

Idaho Power and Light Company

By _____

General Manager

I hereby certify that the facts set forth in the attached notice are true.

_____

Engineer

HRW/LJ

4285

State of Idaho

ENGINEERING DEPARTMENT

BOISE

F. P. KING,
STATE ENGINEER

INSTRUCTIONS

PROOF OF COMPLETION OF WORKS

Beaver River Power Co.,
Boise, Ida.

Boise Idaho, Nov. 11, 1913.

Dear Sir:

I enclose herewith blank form upon which to give notice that you are prepared and desire to submit proof of completion of works under your permit No. 4366.

This form should be filled out and mailed to the State Engineer at least 60 days before the date upon which it is to be submitted, which proof MUST be made on or before Feb. 22, 1914.

Upon receipt of this blank properly filled out, notice must be published a period of four weeks prior to the date of proof.

The proof may be submitted at any place convenient to you and two witnesses, where there is a Notary Public or other officer authorized to administer oaths.

The certificate to be issued under this proof will not give a perpetual right to the use of water for which application was made, as it only confirms the completion of works of a capacity to divert and convey to the place of intended use a certain amount of water. The law requires that another proof be submitted when the water has been fully applied to a beneficial use, at which time license is issued for the amount of water actually in use. Information in regard to this last proof will be furnished on request.

Yours truly,

F. P. KING,

State Engineer

4366

FORM 1. 2M. 2-13-11

Great Shoshone and Twin Falls Water Power Co.

W. S. KUHN, PRESIDENT
D. C. MacWATTERS, VICE-PRES. AND GEN'L MGR.

MILNER, IDAHO. Feb.5th,1912.

E-I Pwr.

EXAMINATION OF WORKS UNDER PERMIT NO. 4366-

RECEIVED
FEB - 6 1912
OFFICE OF STATE ENGINEER

Mr. A.B.Robinson,

State Engineer,

Boise, Idaho.

Dear Sir:

I acknowledge receipt with thanks, your favor of the 24th ult. with statement of expenses incurred in the examination of works under Permit No. 4366, also your check in the sum of $65.10, covering the amount of our deposit unspent.

Yours very truly,

D. C. MacWatters

Vice-Pres. & Gen'l.Manager.

4366

Boise, Idaho, Jan. 24, 1912.

Re Permit No. 4366.

Great Shoshone-Twin Falls Water Power Co.,
c/o S. H. Hays, Boise, Idaho.

Gentlemen:--

I am pleased to enclose check for $63.10, which is the balance unexpended in the examination of the works made in connection with Permit No. 4366. The expenses incurred by this office in this connection, are shown in the following copy of a bill rendered by F. M. Carhart, the engineer who made the examination for me.

Boise, Idaho, January 19th, 1912.

A. E. Robinson, State Engineer,

To.

F. M. Carhart, Dr.

To. 5½ days services on examination in connection with contest on Permit #4366.....$82.50

Expenses..... 4.40

TOTAL $86.90

Rec'd Payment
Jan. 19, 1911.
F.M.Carhart.

This amount deducted from the check for $150, which you forwarded me on the 5th, leaves $63.10.

Very truly yours,

R/B
Enc. Check.

4366

BEFORE THE STATE ENGINEER OF IDAHO

AT BOISE, IDAHO.

IN THE MATTER OF CONTEST FOR THE CANCELLATION OF PERMIT TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF IDAHO, NO. 4366, UNDER THE PROVISIONS OF HOUSE BILL 223, APPROVED MARCH 11, 1909.

GREAT SHOSHONE & TWIN FALLS WATER POWER COMPANY, a corporation organized under the laws of the State of Delaware,

CONTESTANT,

-VS-

A. M. WRENCH, THE IDAHO-NEVADA POWER COMPANY, a corporation organized and existing under the laws of the State of Colorado; L. L. NUNN, THE BEAVER RIVER POWER COMPANY, a corporation organized under the laws of the State of Colorado, and THE AMERICAN TRUST & SAVINGS BANK, a corporation,

CONTESTEES.

IN THE MATTER OF CANCELLATION

To GREAT SHOSHONE & TWIN FALLS WATER POWER COMPANY,
CONTESTANT,

and

A. M. WRENCH, THE IDAHO-NEVADA POWER COMPANY, L. L. NUNN, THE BEAVER RIVER POWER COMPANY, and THE AMERICAN TRUST & SAVINGS BANK,
CONTESTEES.

4366

GREETING:-

You, and each of you, are hereby notified that I have this day ordered that Permit No. 4366, issued by the State Engineer on February 22, 1909, and based upon application for Permit No. 5904, filed in the office of the State Engineer at Boise, Idaho, on November 25th, 1908, BE NOT CANCELLED. This order is made pursuant to the provisions of House Bill No. 223, approved March 11th, 1909, contest thereunder having been filed, as required by law, by said Great Shoshone-Twin Falls Water Power Company, a corporation organized under the laws of the State of Delaware. This order is made in accordance with the following facts:-

That on August 22nd, 1911, the date on which one-fifth of the works of diversion were required to be constructed, there had been labor performed, and material furnished to accomplish this diversion, at a cost and fair value of $58,794.17; and that the estimated total cost and fair value of said diversion works would be $137,989.10, one-fifth of which amount would be $27,597.82.

It is further held that the contention of the Contestant that labor be performed and material furnished having a cost and fair value of one-fifth of the estimated cost of said works of diversion is not sustained. The

main purpose to be accomplished is the diversion of the water for the purpose set out in the permit, and, so long as this is accomplished in such a manner as to conserve the waters appropriated, it is immaterial what the cost of the diversion should be, or whether or not it agrees with the estimated cost given in the permit. If the argument of the Contestant be followed to its logical conclusion, an applicant, who had completed his works for diversion, having the capacity stated in his permit, would be liable to have his permit voided if he had not actually expended the full sum stated as estimated cost of his works.

Any party aggrieved by the decision herein rendered has ninety (90) days from the date of this order and notice in which to commence action or appeal, as by law provided, in the District Court of the county in which the intended point of diversion under said permit is located.

SIGNED, At Boise, Idaho, this 19th day of January, 1912.

W. E. Robinson

State Engineer.

JAMES H. HAWLEY. WM H. PUCKETT. JESS B. HAWLEY.
LAW OFFICES OF
HAWLEY, PUCKETT & HAWLEY
BOISE, IDAHO.

4364

January 19, 1912.

State Engineer,

Boise, Idaho.

Dear sir:-

Enclosed you will find check for $1.50 for recording deed E. M. Wrench to the Beaver River Power Company.

Yours very truly,

Jess Hawley

JBH/M

Enc. 1.

RECEIVED
JAN 20 1912
OFFICE OF STATE ENGINEER

4366

Boise, Idaho, January 19, 1912.

Received from State Engineer, copy of State Engineer's decision in the matter of contest for the cancellation of permit to appropriate the public waters of the State of Idaho, No. 4366, under the provisions of House Bill 223, Approved March 11, 1909.

Great Shoshone & Twin Falls Water Power Co
By [illegible]

4366

1

4366

$ 60 1/8 19

Received from F. M. CARHART.

60 Dollars.

for Seat Boise to Elfas

4366 C.Z. Maxwell Coupe

$ 1 35 Jan 13 19 17

Received from F. M. CARHART.

One 35 Dollars.

Bkfast

4366 W.P. Fehr Atty

$ 50 Jan 15 19 17

Received from F. M. CARHART.

50 Dollars.

Lunch

4366 A Kellen Hotel

$ 60 Jan 16 19 17

Received from F. M. CARHART.

60 Dollars.

Pullman seat.

4366

$ 1.45 June 16 1917

Received from F. M. CARHART.

One 45/100 Dollars.

Dues

Leonard Bull

4366 Dues 359

F. M. CARHART
CIVIL, HYDRAULIC AND IRRIGATION ENGINEER
ASSOC. MEM. AM. SOC. C. E.

Boise, Idaho, January 19th, 1912.

A. E. Robinson, State Engineer,

To

F. M. Carhart, Dr.

To 5½ days services on examination in connection with contest on Permit #4366...$82.50

Expenses..... 4.40

TOTAL.....$86.90

Rec'd Payment.
Jan 19 "1911
F M Carhart.

P#4366

4366

Jan. 18, 1912.

Permit 4366-438

Jess B. Hawley,
Boise, Idaho.

Sir:-

Am returning you herewith deed of above water rights, same having been recorded in this office. Please to remit $1.50 recording fee.

Very truly yours,

State Engineer.

Deed

By...

4366

IN THE OFFICE OF THE STATE ENGINEER

FOR THE STATE OF IDAHO,

AT BOISE, IDAHO.

IN THE MATTER OF CONTEST FOR THE CANCELLATION OF PERMIT NO. 4366 TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF IDAHO, UNDER THE PROVISIONS OF HOUSE BILL 223 APPROVED MARCH 11, 1909.

Great Shoshone and Twin Falls Water Power Company, a corporation organized under the laws of the State of Deleware,

Contestant,

vs.

A.M.Wrench, The Idaho-Nevada Power Company, a corporation organized under the laws of the State of Colorado, L.L.Nunn, The Beaver River Power Company, a corporation organized under the laws of the State of Colorado, and the American Trust and Savings Bank, a corporation.

Contestees

Received and filed for record in the office of the State Engineer at Boise, Idaho, at 2 P.M. - 1912

W. G. Robinson
STATE ENGINEER.

AFFIDAVIT

STATE OF IDAHO)
(ss.
County of Ada)

On this eighteenth day of January, 1912, appeared before me, the undersigned Notary Public, duly appointed, commissioned, qualified and acting in and for the County of Ada in the State of Idaho, George L. Swendsen, to me personally known, who being first duly sworn, deposes and says, as follows;

" My name is George L Swendsen, I am of lawful age. I am the engineer who on January third last made and filed an affidavit in the above entitled cause. I make this further affidavit in compliance the request of The State Engineer of Idaho, to furnish other and additional information more clearly to set forth all facts; that attached hereto, marked Exhibit "A", and hereby made a part hereof, is a map showing the approximate location of the two dams, and the grade, flumeway, and canal mentioned in my said affidavit of January third last; that attached hereto and marked "Exhibits B, C, D, and E " respectively and hereby made a part hereof, are photographs taken by myself showing the upper dam, part of the grade leading therefrom, the lower dam, and part of the canal or flume leading therefrom, respectively; that said work was done on behalf of or acquired on

behalf of and for the true owner for the diversion of waters of the Malade River and tributaries, under and in compliance with the terms of Permits which were, have remained and are, so this affiant is informed and believes, the property of the Idaho-Nevada Power Company, including Permit 4366; That also attached hereto, marked "Exhibit F" and hereby made a part hereof, is a photograph taken by myself of the power station which was being builded, but which was not completed, on August 22nd last; that the ten thousand horse-power mentioned in my affidavit of January third last is my estimate of the peak, momentary, overload capacity of the generator of said power plant; that I have read the Affidavit of Robert Fairbanks, filed in this cause on January third last; that the reference therein to dams, Mr Fairbanks could refer to no other dams on the Malade river than to dams in my said affidavit of January third last and also herein mentioned, inasmuch as there are two dams only on or across said Malade river, under which the waters mentioned in said Wrench Permit, No. 4366, can or may be diverted.

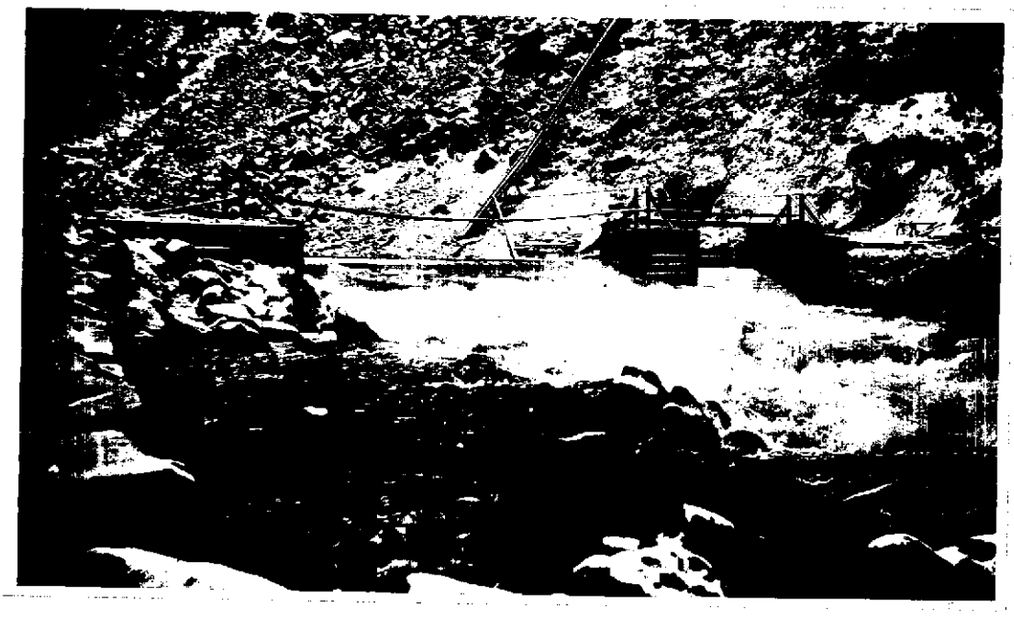
George L Swendsen

Subscribed and sworn to before me this eighteenth day of January, A.D. 1912.

Edna L. Hice
Notary Public
in and for the County of Ada
State of Idaho.

My commission expires Nov. 13-1913

4366



E X H I B I T "B"



E X H I B I T "C"



E X H I B I T "D"



E X H I B I T "E"



E X H I B I T "F"

OFFICE OF THE STATE ENGINEER

At Boise, Idaho.

IN THE MATTER OF CONTEST FOR THE CANCELLATION OF PERMIT No. 4366 TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF IDAHO, UNDER THE PROVISIONS OF HOUSE BILL 223, APPROVED MARCH 11, 1909.

Received and filed for record in the office of the State Engineer at Boise, Idaho, at ... M. ... 19...

... STATE ENGINEER.

To,

Great Shoshone and Twin Falls Water Power Company, a corporation organized under the laws of the State of Delaware,

Contestant,

-vs.-

A. M. Wrench, The Idaho-Nevada Power Company, a corporation, organized and existing under the laws of the State of Colorado, L. L. Nunn, The Beaver River Power Company, a corporation, organized under the laws of the State of Colorado, and the American Trust and Savings Bank, a corporation,

Contestees.

AFFIDAVIT OF ROBERT FAIRBANKS.

STATE OF IDAHO,)
) ss.
County of Lincoln)

ROBERT FAIRBANKS, being first duly sworn, deposes and says:

That he is the identical Robert Fairbanks, who as the Manager in charge of development of The Beaver River Power Company, made affidavit in the above entitled matter on the 3rd day of January, 1912; that this affidavit has been prepared for the purpose of answering the questions which were at the time of hearing of said contest, asked by the State Engineer. That said affiant is familiar with the cost and fair value of the works constituting the development of The Beaver River Power Company, under Permit

4366

No. 4366.

The works contemplated for the complete utilization of the waters concerned in said permit consist of a grade, flume, control gates and diversion dam, above the present intake of what is commonly known as the King Hill flume. The grade and flume will extend from the diversion dam situated near the Southeast quarter of Section 26, Township 6 South of Range 13 East, B. M., and to a point in the Northwest quarter of Section 35 about 640 feet east of the westerly boundary of Section 35. From this last named point the water will be carried by a pipe line into a hydro electric generating plant, from which the waters will be discharged into a water way connecting with that flume and water way commonly known as the King Hill flume. In addition to this work and construction there will be two hydro electric generating plants with their complete equipment sufficient to generate in the neighborhood of 5,000 horse power.

II.

The following answers are given to the questions heretofore asked by the State Engineer and are the estimates of the affiant herein as to the cost and fair value of the works described in the various questions:

III

The diversion dam and work done on the Malad river which bears approximately South 81° 21' East 720 feet from the Southeast corner of Section 26, Township 6 South, Range 13 East, B. M. is of the estimated cost and fair value of over $5,400.00

4366

IV.

The grade leading from said dam extending in a westerly direction to a point in the Northwest quarter of Section 35, about 640 feet east of the easterly boundary

of Section 35, is of the estimated cost and fair value of over $24.000.00

V.

The grade and flume lying in Section 34, beginning near the east boundary line of Section 34 and leading westerly a distance of about 5,000 feet to the end thereof, is of the estimated cost and fair value of over $.42.500.00

VI.

The grade for pressure pipe from the end of the above mentioned flume to the power house of The Beaver River Power Company, is of the estimated cost and fair value of over $.1.300.00

VII.

The estimated cost of all works necessary to complete the diversion contemplated by The Beaver River Power Company under Permit No. 4366, exclusive of hydro electric generating machinery is $.70.500.00

VIII.

That the estimated cost and fair value of all work done prior to August 22, 1911, and to be utilized as construction work under the terms of Permit No. 4366 is the sum of over $200,000.00, which includes about $60.000.00 expended in hydro electric generating machinery.

Your affiant having knowledge of the plans of the Beaver River Power Company in its development of the water of Malad River permitted under said permit, states that in his judgment and opinion the entire cost of the development including two power stations with their necessary equipment will be about the sum of $600.000.00

4366

Further affiant sayeth not.

A. Fairbanks

Subscribed abd sworn to before me this 17th day of January, 1912. R. A. Crawford

Notary Public.

F43 48

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF IDAHO, SOUTHERN DIVISION.

IDAHO POWER AND LIGHT COMPANY a corporation,

Plaintiff,

vs.

GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY, a corporation, LEE GLASS, J. H. LINDSAY and JAMES E. SUTTON.

Defendants.

DIETRICH, District Judge:

The conclusions which I have reached in this case may be briefly stated as follows:

1. The plaintiff (meaning the plaintiff and its predecessors in interest), has never acquired title to any of the lands described in its bill. For its canal or flume right of way it relies chiefly upon the operation of Sections 2339 and 2340 of the Revised Statutes of the United States. But it is thought that these provisions have been so modified by subsequent legislation upon the subject that they no longer apply to a case of this character. United States v. Utah Power & Light Co. (C. C. A. 8th Circuit), 208 Fed. 821 (Adv. Sheets). Even were a different view taken of the law, still it must be held that the plaintiff has not shown such diligence as would entitle it to perfect the right, which it attempted to initiate by the construction of the grade in 1906 and 1907.

As to the "Station Site" the license obtained in 1907 under the provisions of the Act ofFebruary 15, 1901, (31 Stat. 390), lapsed upon the issuance of the patent to the Northern pacific

Railway Company. It is quite immaterial to inquire whether the general regulation of the Department providing for the termination of such permits upon the issuance of patent was a wise exercise of discretion. The Secretary of the Interior had the power to make the regulation, the approval of the plaintiff's application was expressly made subject thereto, and in accepting the privilege it necessarily consented to the conditions upon which the same was granted.

2. Under all the circumstances of the case I am inclined to the view that plaintiff should be accorded the right to acquire by purchase, if possible, or, failing in that, by proceedings in eminent domain, the right of way upon which the grade was constructed. That it has always been its purpose to utilize this right of way is not open to doubt, and such purpose was made manifest before the defendant disclosed its intention to appropriate the same to a public use. True, the defendant from an early date indicated an intention to utilize the waters of the stream for a public purpose, but the question here pertains to the occupancy for such purpose of this particular strip of land, and its use does not seem to have been contemplated in the defendant's earlier plans. It is therefore, thought that final decree should be withheld, and the existing injunction continued in force for a reasonable length of time to enable the plaintiff to acquire title.

In adopting this course I am not to be understood and yielding to the contention that a court will under all circumstances protect a public services corporation in its possession of land when such possession is without right, although for a public purpose. Where the possession has been taken in good faith under the mistaken belief that it is rightful or that the owner has no objection,

the rule invoked by theplaintiff rests upon sound reason; and there may be exceptional cases where considerations of public convenience will move the court to prevent the temporary interruption of a service which would necessarily ensue in case the corporation is ejected from property, the possession of which it has wrongfully taken. But because a corporation has the right to acquire property upon the payment of a just compensation the rule invoked should not be so liberally applied that the private owner must stand guard and resist entry upon his premises by force and arms, lest he be held to have waived his right of possession. It is hardly necessary to say that I find here no wilful trespass. Possession was first taken when most of the right of way claimed was public land, and when the plaintiff entertained the not wholly unreasonable belief that the statute cited conferred upon it the right to occupy the same. In the case of the Thorpe homestead consent was secured from the entryman, and while the conditions were not complied with there is not shown a flagrant disregard of the owner's rights.

As to the contention that the plaintiff's water permit or license was initiated upon state land, and is therefore invalid, it is thought that the showing made is insufficient to warrant such a holding. Whatever view may be taken of the validity of the attempted conveyance by the State Land Board, in a suit of this character between private individuals, where it does not appear that the state is objecting, or even has objected, a holding that the appropriation was invalid in its inception and that, therefore, the plaintiff should not be permitted to acquire a right of way for its conduit would be unwarranted. The two recent decisions of the state Supreme Court in Marshall v. Niagra Springs Co., 22 Idaho 144 and Tobey v. Bridgewood, 22 Idaho 577, much relied upon by the defendant, while of interest, do not go so far.

Different considerations are presented in the case of the so-called station site. Actual possession thereof was never taken by the plaintiff, nor was any work done thereon, or improvements made. True, some of the tracts now sought were definitely described in the application for the license granted by the Secretary of the Interior in 1907, but, as already stated, this license terminated upon the issuance of the Northern Pacific patent. Moreover, it must be found that the plaintiff abandoned the entire site, for it could have had no value in and had no relation to the plan of development exhibited in the application for the Wrench Permit, which was finally corrected and returned to the State Engineer's Office in its present form on February 22, 1909, after notice had been received from the Land Office of the approval of the station site. Plainly, therefore, when this amended application was sent in the plaintiff could no longer have entertained the purpose of utilizing the site. So far as appears the public and the defendant had no notice of the plaintiff's subsequent decision to adopt the two-unit plan of development under the Wrench permit, and hence to have a station at this point, until 1912, when in the course of the proceedings in the contest instituted in the State Engineer's Office by the defendant, the change of plan was first expressly announced; but even then there was no such formal selection of station site lands as would be binding upon the parties. So that when this suit was commenced the defendant held the title in fee simple to the whole of the northeast quarter of the northwest quarter of Section 35, which embraces all the lands claimed by the plaintiff for its station site purposes. The latter was without title, legal or equitable, to any portion thereof, it had placed no improvements thereon, and it did not have actual possession. At most it could properly claim

only that at one time it had had the right to the possession of a portion thereof under a revocable license, and that it was its intention at some time to use a site of some description in that vicinity for the completion of its project. Obviously, such being the facts, the injunction was improvidently granted and should be dissolved.

To avoid misapprehension it should be added that it does not necessarily follow that the plaintiff has not the right by proceedings in eminent domain to ex-appropriate lands for its necessary uses. It is held only that the court will not by an injunctive order put a public service corporation into the possession of lands to which it has no right or title, or in the absence of cogent reasons of public conveyance protect it in such possession. Whether under the circumstances plaintiff may acquire any part of the northeast quarter of the northwest quarter of Section 35, and, if so, what part, is a question which may more appropriately be adjudicated in a condemnation proceeding.

Accordingly the injunction will be dissolved in so far as it purports to give the plaintiff possession of any land other than the right of way for the plaintiff's conduit along the line of the so-called Telluride Grade, and as thesuch right of way it will be continued in force for 40 days from the date hereof for the purpose of giving the plaintiff an opportunity to acquire title by a purchase, and, if unsuccessful in that course, to institute proper proceedings in eminent domain; with leave to apply, at the end of such period, upon a showing then to be made, for a further continuance of the injunction.

Dated Feb. 17, 1914.

P. 4366

OFFICE OF THE STATE ENGINEER,

Boise, Idaho, January 18th, 1912.

Received and filed for record in the office of the State Engineer at Boise, Idaho, at ___ M. ___ 19__

STATE ENGINEER.

Hon. A. E. Robinson,

State Engineer,

Boise, Idaho.

Re: CONTEST FOR CANCELLATION, PERMIT #4366,

A. M. WRENCH.

Sir:-

Pursuant to my appointment under Section 3256 of the Revised Codes as the engineer to make an examination of the facts in the above contest, I beg to submit to you herewith a report of such facts as pertain to the amount of money expended by the contestee on the construction work in the Malad River Canyon up to August 22nd, 1911; and, also, an estimate of the total cost to complete such work so far as diversion alone is concerned.

The estimate of expenditures to August 22nd, 1911, is based as follows:-

1. FLUME: Upon unit prices for material actually paid by this company.
2. TELLURIDE GRADE: My own estimate of the yardage as obtained after taking cross-sections of same every 50 feet.
3. UPPER DAM: Estimate of the company's engineer, Mr. Waters, as to the amount of work done on this dam, including the material

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on the ground, and which, if the views herewith submitted are correct, which are purported to have been taken upon this date, is probably a reasonable estimate.

The estimate for the completion of the diversion works is based upon unit prices for material, labor, etc., at this site.

While the following figures are only preliminary, I believe them to be reasonably accurate as to the amount of money necessary to expend in the prosecution of this work:-

ESTIMATE OF EXPENDITURES TO AUGUST 22nd, 1911

UNIT PRICES:

Lumber for flume	at	$24.00	per M
Erection	at	20.00	" "
Haul	at	3.75	" "
Bolts, nails, etc	at	3.60	" "
Total		$51.35	

KING HILL FLUME:

526,000 ft. of lumber at $51.35 per M	$27,010.10	
Regrading, tearing out of old flume, etc	3,000.00	
	$30,010.10	
10% for engineering and incidentals	3,001.00	
Total		$33,011.10

TELLURIDE GRADE:

2.1 yds per ft.-4850 lineal foot at $2.00 per yd.. 20,360.00

UPPER DAM:

Estimate of company's engineer (See views attached) 5,423.07

TOTAL EXPENDITURES.....$58,794.17

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ESTIMATE OF TOTAL COST OF DIVERSION WORKS

Upper Dam	$ 8,000.00
Excavation of Telluride Grade	20,360.00
Flume on Telluride Grade, 876,000' of lumber	44,982.60
Excavation for extension of Telluride Grade, 155' at $4.20 per foot	651.00
Pipe connecting upper and lower grades, 150,000# steel pipe at 5½¢	8,250.00
Excavation for pipe, 450' at $3.00 per foot	1,350.00
Backfill for pipe	1,000.00
Flume on King Hill Grade down to pressure box (See August 22nd, 1911 Estimate)	33,011.10
Pressure Box, racks, gate stand, etc	1,500.00
Excavation for pressure box, pipe and thrust block	1,000.00
287,000# steel pipe to Power House at 5½¢	15,785.00
Backfill for pipe	500.00
Thrust block, 200 cu. yds concrete at $8.00	1,600.00
TOTAL COST	$137,989.10

Respectfully submitted,

W. W. Barhart

Civil Engineer.

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C/F

IN THE MATTER OF CONTEST FOR CANCELLATION OF PERMIT #4366.

This matter coming before the State Engineer at 3:00 P.M., January 18th, 1912, having been postponed from January 12th, 1912.

F. M. Carhart, appointed under Section 3256 of the Revised Codes, submitted an estimate of expenditures to August 22nd, 1911, with an estimate of total cost of diversion works.

Affidavits were submitted by Geo. L. Swendsen and Robert Fairbanks.

Mr. P. B. Carter, as attorney for the Great Shoshone & Twin Falls Water Power Company, made the following statement:-

"The Session Laws of Idaho, 1909, Page 300, prescribes that, if the holder of a permit to appropriate the public waters shall fail to comply with the requirements of its permit as to the commencing of work or the filing of bond thereunder, or the completion of one-fifth of the construction work within one-half of the time allowed for the entire completion of such construction work * * * *, said permit may be cancelled, etc."

Under this statute, one-fifth of the work must be done within one-half of the time mentioned in the permit, which is two and one-half years. The esti-

mated cost in the permit is $500,000. One-fifth fo this work, under the permit, must be done within two and one-half years, or $100,000. This has not been done."

A. P. Robinson
State Engineer

Copy

In the Matter of Contest
for the Cancellation of
Permit No. 4366, to Appro-
priate the Public Waters
of the State of Idaho.

Great Shoshone and Twin Falls Water Power Company,
Contestant.

vs.

A. M. Wrench, et al., Contestees.

Receipt is hereby acknowledged of the sum of $150.00, deposited by the contestant herein to guarantee expenses incidental to an inspection and examination in connection with the above entitled contest.

Signed at Boise, Idaho, this 8th day of January, 1912.

C. E. Robinson
State Engineer.
By Herbert Wm
Chief Clerk.

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THE MATTER OF CONTEST FOR CANCELLATION OF
PERMIT NO. 4366.

Memorandum.

Boise, Idaho, January 12, 1912.

This matter coming up before the State Engineer at 10 A. M. January 3rd, 1912, certain affidavits were presented which did not state sufficient facts that a fair decision could be rendered, it was requested from each of the parties appearing that they have their engineer make an estimate of costs of the specified work.

The hearing was postponed until 10 A. M. January 18th, 1912.

The State Engineer also ordered that an examination be made of the work done under the permit in question by an engineer designated by him, and ordered that the Great Shoshone-Twin Falls Water Power Company, the contestant, make a deposit of the sum of $150, the cost of this examination.

W. G. Robinson

R/B

State Engineer

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Boise, Idaho, Jan. 3, 1912.

Re Cancellation of Permit #4366

Great Shoshone-Twin Falls
Water Power Company,
c/o Hon. S. H. Hays,
Boise, Idaho.

Dear Sir:--

This is to inform you that I have this day directed an examination to be made of the work performed under permit #4366, which examination I estimate will cost $150. In compliance with Section 2, House Bill 223, Session Laws of 1909, you will deposit with me this sum for the purpose of paying the costs of this examination, and if it is found that the amount so deposited is in excess of the cost, such excess will be returned to you.

Very truly yours,

State Engineer

R/B

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IN THE

OFFICE OF STATE ENGINEER

AT BOISE, IDAHO.

IN THE MATTER OF CONTEST FOR THE CANCELLATION OF PERMIT NO. 4366 TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF IDAHO, UNDER THE PROVISIONS OF HOUSE BILL 223, APPROVED MARCH 11, 1909.

Great Shoshone and Twin Falls Water Power Company, a corporation organized under the laws of the State of Delaware,

Contestant,

-vs-

A. M. Wrench, The Idaho-Nevada Power Company, a corporation organized under the laws of the State of Colorado, L. L. Nunn, The Beaver River Power Company, a corporation organized under the laws of the State of Colorado and the American Trust & Savings Bank, a corporation,

Contestees.

AFFIDAVIT.

STATE OF UTAH,
County of Salt Lake, ss.

On this Second day of January, 1912, appeared before me, F. E. Bowman, the undersigned Notary Public, duly appointed, commissioned, qualified and acting in and for the County of Salt Lake, State of Utah, Frederick Steigmeyer, to me personally known, who being first duly sworn, deposes and says, as follows:

"My name is Frederick Steigmeyer. I am of lawful age, and a member of the law firm of Story & Steigmeyer, Boston Building, Salt Lake City, Utah. There is pending in the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Lincoln, a certain action wherein The Idaho-Nevada Power Company, one of the contestees in the above entitled matter, is plaintiff, and Lucien L. Nunn, Addison M. Wrench, The Beaver River Power Company, The American Trust & Savings Bank, as Trustee, and the Continental & Commercial Trust and Savings Bank, as Trustee, are defendants; that said Wrench, The Beaver River Power Company and The American Trust & Savings Bank are contestees in the above entitled contest matter; that said action in the District Court

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aforesaid involves the ownership of the Permit No. 4366 to appropriate the public waters of the State of Idaho, being the Permit which the contestant in the above entitled matter seeks to have cancelled; that hereto attached, marked Exhibit "A" and hereby made a part of this affidavit, is a copy of the complaint in said action pending in the District Court aforesaid; that this affidavit is made by affiant as an attorney for The Idaho-Nevada Power Company, the contestee above mentioned, and to be filed with the State Engineer of the State of Idaho at his office in Boise City, Idaho, as a part of the evidence and record submitted in the above entitled contest matter by said The Idaho-Nevada Power Company, the contestee above mentioned.

Frederick D. Sigmon

Subscribed and sworn to before me on this second day of January, 1912.

My commission expires Mar. 8-1913

J. E. Bamum

Notary Public in and for Salt Lake County, State of Utah.

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Received and filed for record in the office
of the State Engineer at Boise, Idaho, at
12 o'C. M. Jan 5 1912
W. G. Robinson
STATE ENGINEER.

1-1-S-W.

EXHIBIT A.

COPY

IN THE [illegible] COURT OF THE [illegible] JUDICIAL DISTRICT OF

[illegible], IN AND FOR THE COUNTY OF [illegible].

The Idaho-Nevada Power Company,		
Plaintiff,		
vs.		
Lucien L. Nunn, Edison L. French, The Denver River Power Company, The American Trust & Savings Bank, as Trustee, and the Continental and Commercial Trust and Savings Bank, as Trustee,		COMPLAINT.
Defendants.		

The plaintiff complains and on information and belief alleges:

First: That on or about the first day of September, 1916, the defendant Lucien L. Nunn, well knowing that the Electric Bond & Share Company, a corporation organized under the laws of the State of New Jersey, controlled certain applications and permits to divert and utilize the waters of the Snake River in the State of Idaho, as well as an application to divert and utilize the waters of the Palisade River in said State, hereinafter more particularly described as Permit No. 2370, represented to one James Campbell that he, the said Nunn, had also acquired certain valuable water rights on said rivers for the joint benefit of himself and the said Campbell, and requested the said Campbell to arrange for consolidating the rights which the said Nunn claimed to have acquired, and was seeking to acquire, with the rights then controlled by the Electric Bond & Share Company.

Second. That on said date, one A. E. Mitchell was the Vice-President and active executive officer of the Electric Bond & Share Company aforesaid, and on, to-wit, the 21st day of September, 1916, an agreement in writing was entered into between the said Campbell and Mitchell in words

and figures as follows, to-wit:

"MEMORANDUM OF AGREEMENT, made this 21st day of September, 1916, by and between JAMES CAMPBELL, party of the first part, and L. L. MITCHELL, party of the second part; WITNESSETH AS FOLLOWS:

"L. L. Munn and his associates, and the Electric Bond and Share Company and its associates own certain interests in and options upon water powers and electro-hydraulic plants upon the Snake and Malade Rivers in Idaho, and are negotiating for and expect to acquire certain additional water powers and plants upon the said rivers; the powers and plants referred to being generally known as the North Fork, American Falls, Island Plant, Twin Falls, Shoshone Falls, Upper Salmon Falls, Lower Salmon Falls and Malade River.

"The parties hereto deem it for the interest of all parties concerned that the present interests and ownerships in the said water powers and plants, belonging to the said Munn and his associates and the said Electric Bond and Share Company and its associates, shall be united on the basis of actual cost, and that any additional properties acquired shall be acquired and developed in their common interest, and have therefore agreed together to recommend and endeavor to carry out the following plan:

"1. All the interests, rights and ownerships in the properties referred to, belonging to or controlled by L. L. Munn and his associates and the Electric Bond and Share Company and its associates, shall be transferred to a syndicate or corporation to be formed, and at a relative valuation determined by the actual cash

cost of such interests and ownerships to the respective parties, and, in payment for such transfer, participations or interests in such syndicate or in the securities of such corporation shall be granted to the said Munn and his associates and the said Electric Bond & Share Company and its associates, pro rata in proportion to the actual cash cost to them respectively of the interests, rights and ownerships so transferred.

"II. The parties hereto will, as soon as may be practicable, submit each to the other all reports and statements and the results of all investigations in their possession or accessible to them, pertaining to the rights and properties in question, in order that each may be satisfied as to the cost of such as are at present owned, and that the acquisition of additional rights and properties may be decided upon in the light of all knowledge accessible to the parties hereto and their associates.

"IN WITNESS WHEREOF, the parties hereto have signed this agreement the day and year first above written.

JAMES CAMPBELL.

E. W. MITCHELL."

which said agreement was made at the City of New York in the State of New York.

Third: Thereafter, on or about November 1st, 1906, the defendant Munn, seeking to secure to himself the possession of and the spending of the funds of the proposed syndicate interests, wrote to the said Mitchell substantially representing that the rights and titles owned or controlled by the Electric Bond & Share Company to utilize the waters of the State of Idaho flowing in the Snake River were defective or of little value; that the Salmon River was "the cream

of the Idaho field"; that he held title to the use of the waters flowing in the Snake River superior in time and in right to the title thereto held by the Electric Bond & Share Company; that he was then proceeding with the work on the ground for the purpose of maintaining and perfecting his rights in and to the use of Snake River water; that he expected to deliver power therefrom the following summer; that he understood "the joint syndicate interests" were to be under his charge; that he had had the confidence of a large clientele for more than a quarter of a century and that he had a large organization, including able legal, engineering and construction departments; that he could not be expected to merely cooperate with those sent out or employed by the said Electric Bond & Share Company; that if such employes came into the field, it must be to report to him and it must be left to his discretion whether he should or should not retain such as had been previously employed to look after the interests of the Electric Bond & Share Company; that his (Munn's) loyalty to his clients and trusts must be above suspicion, and complained that said Mitchell had not furnished him with written authority nor given him a statement showing the condition of the holdings controlled by the said Electric Bond & Share Company, nor the engineering data on which the estimates of value were based.

Fourth: That by said representations and other similar representations, the said defendant Munn induced the said E. J. Mitchell and the said James Campbell to enter into the following agreement, made at the City of New York in the State of New York, in words and figures following, to-wit:

"It is proposed to organize under the laws of Colorado the IDAHO-NEVADA POWER COMPANY, having a Board of eight Directors, four to be selected by the Electric

Bond & Share Company and its associates, and four by James Campbell, and his associates. At the organization of the company, James Campbell is to be elected President, Ripley Emery, Vice-President, and L. L. Munn, General Manager. To this company shall be quit-claimed the water rights and power interests in Idaho now owned or controlled by the Electric Bond & Share Company and associates, including those on the North Fork of the Snake River, at American Falls, Island Sheals, Sugar, Shoshone, Twin, Upper Salmon and Lower Salmon Falls on the Snake River, and those on the Malade River; as well as those in Idaho owned and controlled by said Campbell, Munn and associates, including those on the Malade River and at Twin Falls aforesaid (the latter subject to a certain agreement with Messrs. Lyman and Bagley), but excepting the Bear Lake and Bear River water rights and power interests of said Campbell, Munn and associates.

"The capital stock of the company shall be $7,000,000, of which $2,500,000 shall be six per cent. preferred and $5,000,000 common stock. The preferred stock shall be cumulative after January 1, 1919, be preferred in liquidation as well as earnings and be subject to redemption at any time at 120% of par.

"The Electric Bond & Share Company and its associates have expended to date, including all obligations on its interests to be conveyed, and including an agreed allowance for general expenses, fifty-two thousand one hundred seventy-three and 30/100 ($52,173.30) dollars, and said Campbell, Munn and associates have expended to date on their interests to be conveyed, and including a similar allowance, eighty thousand four hundred ninety-three and 10/100 ($80,493.10) dollars, and the

lectric Bond & Share Company is to pay in cash to L. L. Kunn, as General Manager, the further sum of twenty-eight thousand three hundred nineteen and 00/100 (28,319.00) dollars. There shall be issued to the lectric Bond & Share Company, for the water rights, power interests and cash as aforesaid, $100,000 in preferred stock and $1,000,000 in common stock, and like amounts to said Campbell, Kunn and associates for their interests as aforesaid. The remaining stock, preferred and common, shall remain in the company's treasury, subject to the action of the Board of Directors.

"The stock issued to the parties hereto is to be pooled so as to provide for the election of four Directors to be selected by the lectric Bond & Share Company and four by Campbell, Kunn and associates.

"L. L. Kunn is to make examinations and estimate and advise at an early date how much cash will be required for the conservation, management and development of said properties. Each party shall have the right to furnish one-half of such cash, taking therefor preferred stock of the company at eighty per cent of its par value.

"The above is agreed to by the lectric Bond & Share Company, subject to the approval of the xecutive Committee or Board of Directorsof that Company.

. Z. MITCHELL,
as Vice-President, lectric Bond & Share Co.

L. L. KUNN.

Dated, New York, pril 5, 1917.

James Campbell."

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Fifth: That at the time of the making of said last mentioned agreement, the lectric ond & Share Company control-

led the following water right on the Malade River in the State of Idaho, to-wit:

Permit No. 3[illegible], approved October 6, 19[illegible], recorded at page 300 of Book 7 of Permits of the official records in the office of the State Engineer of the State of Idaho, issued by said State Engineer to C. E. Jackson to divert for power purposes one thousand cubic feet of water per second of time from the Malade River in Lincoln County at a point on said River N. 82° 13' W. 3[illegible]85.8 feet from the witness corner to the N.E. corner of Sec. 35, Twp. 6 S., R. 13 E., B.B.& M., and to return the same to the Snake River through a tail race immediately below a point situate N. 64° 49' W. 3660 feet from N.E. Cor. of Sec. 35, Twp. 6 S., R. 13 E., B.B.& M.

And at the time of the making of said last mentioned agreement, the defendant Dunn jointly with the said Campbell were the owners of the following permits to utilize the waters of the Malade River:

Permit No. 713, approved July 5, 1904, recorded at Page 713 of Book 3 of Permits of the official records in the office of the State Engineer of the State of Idaho, issued by said State Engineer to O. B. Glick and James A. Glick to divert for power purposes eleven hundred cubic feet of water per second of time from the Malade River in Lincoln County, Idaho, at a point on said River N. 77° 12' E. 1002 feet from the S.W. Cor. of Sec. 25, Twp. 6 S., R. 13 E., B.B.& M., and to return the same to the said River at a point S. 79° 40' E. 1524 feet from the S.W. Cor. of Sec. 26, in Twp. 6 S., R. 13 E., B.B.& M.

Permit No. 2524, approved January 28, 1907, recorded at Page 2524 of Book 8 of Permits of the official records in the office of the State Engineer of-

the state of Idaho issued by said State Engineer to Sumner Dameon to divert for power purposes twelve hundred cubic feet of water per second of time from the Malade River in Lincoln County, Idaho, at a point on the North bank of said Malade River above the intake of the canal-way of the Glenns Ferry Land & Irrigation Company, Ltd. S. 78° 30' E. 1476 feet from the N.W.Cor. of Sec. 27, Twp. 6 S., R. 13 E., B.B.& M., and to return the same to the Snake River at a point on Snake River whence the N.W. Cor. of Sec. 35, Twp. 6 S., R. 13 E., B.B.& M. bears S. 86° 45' W. 4678 feet.

Sixth: Thereafter the Executive Committee of the Board of Directors of said Electric Bond & Share Company approved said agreement of April 5, 1907, and pursuant thereto, the plaintiff was duly organized under the laws of the State of Colorado, with a capital stock of $7,000,000.00, divided into twenty-five hundred preferred shares and five thousand common shares, each of the par value of one hundred dollars, and with full authority, under its charter, to acquire water rights, lands, easements and all other property, real and personal, necessary or incident to the generation and marketing of electrical power in the said State of Idaho, for the purpose of taking over from the said Munn, Campbell and said Electric Bond & Share Company their title and interests, as provided in said agreement. Thereupon, directors and officers of the plaintiff corporation were duly chosen in accordance with the provisions of said agreement, and the defendant Munn was duly elected and has since remained a director and the Manager of the plaintiff corporation, as well as a member of the Executive Committee of its Board of Directors, and as Manager of said corporation at all times since his election as such Manager has been entrusted and charged with the work and duty of guarding, protecting and

advancing plaintiff's interests and property rights, including the perfecting of its titles and rights to the use of the waters of the Palouse River aforesaid, as well as charged with the duty of acquiring for and on behalf of plaintiff corporation such other rights to use the waters of said State of Idaho as were required by the plaintiff to carry out the objects and purposes for which it was organized and to advance its interests as aforesaid, and the said defendant Munn faithfully promised to protect, conserve and advance the interests and property rights of the plaintiff corporation, and from time to time since his election as Manager he, the defendant Munn, has represented to the plaintiff corporation that he was faithfully discharging the duties incumbent on him as aforesaid.

Seventh: On April 29th, 1907, said Munn made draft on and on May 3d, 1907, received from said Campbell the sum of thirty thousand dollars on account of said agreement of April 5, 1907; that immediately after the organization of the plaintiff corporation, the said Electric Bond & Share Company caused a deed to be signed and acknowledged conveying to the plaintiff corporation all the right, title and interest then controlled by the Electric Bond & Share Company and its associates aforesaid in and to the water rights aforesaid desired by the plaintiff corporation to be conveyed to it, and delivered such deed to the plaintiff corporation for recording as soon as by complying with the laws of the State of Idaho it was authorized to take titles and lawfully to transact business in said State; and, at the same time, in partial satisfaction of its covenant in said agreement to pay to the plaintiff corporation the sum of $28,319.60, paid into the treasury of the plaintiff corporation the sum of eight thousand dollars, and on or about the 25th day of May, 1907, also paid to the said defendant Munn, as Manager, and for the use of the

plaintiff corporation, the further sum of ten thousand dollars, to be used by him in paying the expense of filing in Idaho the Articles of Incorporation of the plaintiff Company, the certificate of appointment of its agent and designation of its place or places of business within the State of Idaho, and whatever else was required by the laws of said State in order to enable the plaintiff corporation to hold title to realty and do business within the limits of said State, as well as in paying additional expenses, which he, as such Manager, would incur on behalf of the corporation, in doing and performing the various acts and things necessary to protect, perfect and hold in and for the benefit of the plaintiff corporation its water rights and property interests; save and except if it should appear on examination by him that any right to the use of water conveyed or to be conveyed to plaintiff corporation, should prove valueless, then the said Munn was not required to perfect or protect the same; that said Electric Bond & Share Company has at all times since the incorporation of the plaintiff Company on to-wit, the fifth day of June, 1907, been ready and willing, and is now ready and willing, to pay to the plaintiff the balance due from it, to-wit, the sum of $10,319.60, whenever the said Munn shall comply with the terms and provisions of the agreement of April 5, 1907, on his part to be complied with; and plaintiff has been ready and willing at all times since its incorporation to designate its agent and place of business within the State of Idaho in manner required by the laws of the State of Idaho upon the filing of certified copy of its Articles of Incorporation in the State of Idaho.

Eighth: Although repeatedly requested so to do by the plaintiff corporation, the defendant Munn at the time of the organization of the plaintiff corporation and ever since, has failed, neglected and refused to file a certified

copy of its Articles of Incorporation as required by the laws of Idaho as aforesaid, and the plaintiff has been compelled to file and has filed said Articles as provided by the laws of the State of Idaho, and is now authorized to acquire title to real and personal property and carry on its business in the State of Idaho. Nevertheless, the defendant Dunn, although repeatedly requested so to do, has neglected and refused and still refuses to convey to the plaintiff corporation the water rights hereinabove described which by said agreement he had covenanted to convey to it, or to account in any manner for the ten thousand dollars of its funds so received by him, but during the year 1908, he, the said Dunn, acquired from the United States in his own name certain rights-of-way for an electrical power plant to be situated on the Malade River in the S.E.¼ of the N.E.¼ of Sec. 35, Twp. 6 S., R. 13 E., B.B.& M. in said Lincoln County, including rights-of-way for a generating station building, machine shop and laboratory, a quarters building, a store house and a barn, to be used in connection with the use of the waters of said Malade River to be diverted under said Permit No. 713, said rights-of-way being particularly described as follows, to-wit:

(a) For said Station Building: Commencing at a point whence the N.E. Cor. of Sec. 35, T. 6 S., R. 13 E., B.B.& M. bears N. 76° 57' E. 1565 feet; thence S. 52° 20' E., 90 feet; thence N. 37° 40' E., 120 feet; thence N. 52° 20' W., 90 feet; thence S. 37° 40' W., 120 feet; containing 10,800 sq. feet.

(b) For said Machine Shop and Laboratory: Commencing at a point whence the N.E. Cor. of Section 35, T. 6 S., R. 13 E., B.B.& M. bears N. 79° 24' E. 1406 feet; thence S. 52° 20' E., 50 feet; thence N. 37° 40' E., 100 feet; thence S. 52° 20' W., 50 feet; thence S. 37° 40' W., 100 feet, containing 5,000 sq. feet.

(c) For said Quarters Building: Commencing at a point whence the N.E. Cor. of Sec. 35, T. 6 S., R. 13 E., B.B.& M. bears N. 83° 58' E., 1710 feet; thence S. 52° 20' E., 70 feet; thence N. 37° 40' E., 50 feet; thence N. 52° 20' W., 70 feet; thence S. 37° 40' W., 50 feet, containing 3,500 sq. feet.

(d) for said Storehouse: Commencing at a point whence the N.E. Cor. of Section 35, T. 6 S., R. 13 E., B.B. & M. bears N. 85° 32' E., 1481 feet; thence N. 52° 20' E., 40 feet; thence S. 37° 40' E., 100 feet; thence N. 52° 20' E., 40 feet; thence S. 37° 40' W., 100 feet, containing 1,200 sq. feet.

(e) For said Barn: Commencing at a point whence the N.E. Cor. of Sec. 35, T. 6 S., R. 13 E., B.M.& M. bears N. 83° 51' E., 1890 feet; thence East 60 feet; thence North 30 feet; thence West 60 feet; thence South 30 feet, containing 1,200 sq. feet.

Ninth: On to-wit: the 25th day of November, 1908, the defendant Munn, as Manager of the plaintiff corporation, caused a certain Application for a Permit to use the waters of the said Malade River in the said Lincoln County, Idaho, for power purposes, to be filed in the office of the State Engineer of said State in the name of the defendant Addison M. Wrench, (who has been for many years past and now is an associate, partner and agent of the said Munn) but for the use and benefit of the plaintiff corporation, and at its expense, and by and with the consent of the said Wrench and with full knowledge on his part of the purpose of such filing, and pursuant to such Application a Permit, designated as Permit No. 4366, to use the waters of the Malade River was, on February 22, 1909, issued by the said State Engineer in the name of the said Addison M. Wrench, by which the owner of said Permit was authorized to divert from the said Malade River and its tributaries eleven hundred cubic feet per second of time of the waters thereof at a point on the said Malade River S. 81° 20' E. 720 feet from the N.W. Cor. of Sec. 26, Twp. 6 S., R. 13 E., B.M.& M., and at a point on Cove Creek N. 32° 30' W. 600 feet from the N.E. Cor. of Sect 35, Twp. 6 S., R. 13 E., B.M.& M., to be used for the generation of electrical power and returned to said River at a point which bears S. 77° 30' W. 3450 feet from the N.E. Cor. of Sec. 27, Twp. 6 S., R. 13 E., B.M.& M.

Tenth: On or about the first day of February, 1909, one Charles H. Hammett, and the Kings Hill Irrigation & Power

4366

Company and the Malad Power Company, corporations organized under the laws of the State of Nevada, or some one or more of them, claimed to be the legal or equitable owners and in possession of the water rights and titles to land hereinafter mentioned as having been conveyed by them or some one or more of them to defendant Munn, and on said last mentioned day the said Munn, as Manager of the plaintiff corporation, entered into an understanding with one Charles H. Hammett, the Kings Hill Irrigation & Power Company and the Malad Power Company aforesaid, whereby for and in consideration of the confirming in said Kings Hill Irrigation & Power Company by said Munn of a paramount title of record in and to the use of three hundred cubic feet per second of time of the waters of the Malade River for irrigation and domestic uses, to be delivered at the point of intake to the canal then established by said Kings Hill Irrigation & Power Company on said River, and the payment by said Munn of $10,000.00 in cash and the further payment of twenty-five thousand shares of the capital stock of the corporation which the said Munn represented was to generate power on said River, or in lieu of said twenty-five thousand shares the sum of $12,500.00, the said Hammett, and the two corporations last above mentioned, were immediately to convey to said Munn all their rights in and to the use of the waters of said Malade River, as well as an undivided three-quarters interest in and to the dam, canal-way and rights-of-way therefor of the Kings Hill Irrigation & Power Company and the Malad Power Company aforesaid and also all tracts of land in Lincoln County, Idaho, then owned by said Charles H. Hammett and said corporations, any one or more of them, in Sections 25, 26, 27, 34, 35 and 36 in Twp. 6 South, Range 13 East, B.B.& M., and also to cause to be conveyed at any time within two years by good and sufficient warranty deed Lot one in Section 34, Twp. 6 South, Range 13 East, B.B.& M. in said Lincoln County.

Thereafter, pursuant to the understanding aforesaid, and on or about the fourteenth day of February, 1909, the said Munn executed a deed to the said Kings Hill Irrigation & Power Company, whereby he confirmed in said Company the paramount title of record to the right to use three hundred cubic feet per second of time of the waters of said Malade River for irrigation and domestic purposes, to be diverted by said Kings Hill Irrigation & Power Company at the intake of its canal aforesaid, the right to the use of which three hundred second feet was then solely the property of and held by the said Munn for the use of the plaintiff, and also paid unto the said Hammett, the Kings Hill Irrigation & Power Company and the Malad Power Company the sum of $10,000.00

And in further consummation of said understanding and in conformity therewith, and on or about the twelfth day of February, 1909, the Kings Hill Irrigation & Power Company conveyed to and confirmed in the said Malad Power Company all of its rights to use the waters of said Malade River for power purposes, together with certain lands and rights-of-way then owned or possessed by it for use in connection therewith, and on or about the 13th day of February, 1909, the said Malad Power Company conveyed to the said Munn the following described lands and rights to divert and utilize the waters of the said Malade River:

"That certain water appropriation made on the 26th day of March, 1902, by one Herman Rapp and one Ernest Pearson for the diversion of 500 cubic feet per second of water from the Malade River at a point on the right bank of the Malade River situated about 1195.8 feet S. 75° 22' E. from the N.W. corner of Section 27, Twp. 6 S. of Range 13 E., B.B.& M., appearing of record at Page 248 of Book 1 of water rights in the official records of Lincoln County aforesaid; also that certain appropriation made by the Glenns Ferry Land & Irrigation Company, Limited, on the 7th day of August, 1902, for the diversion and appropriation of 500 cubic feet per second of the waters of said river and to be diverted at or near the point above described; also that certain water right and permit to divert and appropriate water, granted by the State Engineer of the State of Idaho on the 23d day of January, 1904, to F. J. Hagenbarth and

R. J. Shields, and evidenced by Permit No. 438 issued by said State Engineer for 1,100 cubic feet per second, the same to be diverted at or near the point above described.

"Also an undivided three-fourths interest in and to those certain pieces and parcels of land situated, lying and being in the County of Lincoln, State of Idaho, used and intended to be used as a right of way for the dam, canal, flume and ditches required for diverting and carrying the said water hereinbefore mentioned, which said right of way is more particularly described as follows:

A strip of land 200 feet wide lying 100 feet on each side of the following described line; Beginning at a point S. 76° 55' E. 1,251.8 feet from the N.E. corner of Sec. 34, Twp. 6 S., R. 13 E., B.B.& M.; thence S. 8° W. 250 feet; also the following line; Beginning at said point lying S. 76° 55' E. 1,251.8 feet from said N.E. corner of said Sec. 34; thence S. 8° E. 50 feet; also a strip of land 100 feet wide lying 50 feet on each side of the following centre line beginning at a point in the N.E.¼ of the N.E.¼ of Sec. 35, said Township and Range, S. 76° 55' E. 1,251.8 feet from the N.E. corner of said Sec. 34; thence N. 60° 51' E. 100 feet; thence S. 84° 56' W. 257 feet; thence W. 715 feet; thence S. 58° 7' W. 128 feet; thence S. 89° 55' W. 260 feet; thence S. 74° 2' W. 664 feet; thence N. 69° 32' W. 298 feet; thence N. 72° 23' W. 187 feet; thence S. 89° 52' W. 128 feet; thence S. 74° 28' W. 127 feet; thence S. 89° 17' W. 289 feet; thence N. 87° E. 487 feet; thence N. 77° 38' W. 169 feet; thence N. 49° 37' W. 73 feet; thence N. 70° 36' W. 700 feet; thence N. 75° 28' W. 1,616 feet more or less to head of syphon pipe of Kings Hill Irrigation & Power Company across Snake River.

"Also those certain lands, pieces and parcels of land situated, lying and being in the County of Lincoln, State of Idaho, bounded and particularly described as follows, to-wit:

Commencing at the Government meander corner at the southwest corner of Lot 2, Sec. 27, Twp. 6 S., R. 13 E., B.B.& M.; thence North 33° 00' West 290.8 feet to a point which is the place of beginning; thence North 75° 28' West 888 feet more or less to a point on the water's edge of the east side of Snake River; thence along said east water's edge of Snake River, North 42° 50' west 80 feet; thence continuing along said water's edge North 18° 00' West 134 feet; thence continuing along said water's edge North 7° 18' West 400 feet; thence continuing along said water's edge North 22° 56' East 100 feet; thence East 200 feet more or less to a point 120 feet East of the Government meander line on the East side of said Lot 2; thence South 31° 00' East 340 feet; thence East 120 feet to a point on the said Government meander line; thence South 24° 30' East along said meander line 443 feet more or less to a point 50 feet at right angles to and on the Southerly side of the centre line of the ditch or flume of the Kings Hill Irrigation & Power Company; thence South 75° 28' East parallel to said centre line 93.4 feet more or less; thence South 125.3 feet more or less to a point on the said meander line, which is the place of beginning, containing 6.7 acres more or less, with all water rights belonging to same and the right to use ditches of one V. V. Carico on his other lands to carry water to the lands above described.

"Those certain premises, pieces and parcels of land situated in said County of Lincoln and State of Idaho, and particularly described as follows:

Beginning at the Northeast corner of the N.W. ¼ of the N.E.¼ of Sec. 34, Twp. 6 South, Range 13 East, B.B.& M., thence West along the North line of said Sec. 34 to the Northwest corner of said N.W.¼ of the N.E.¼ of said Sec. 34; thence South along the West line of said N.W.¼ of the N.E.¼ of Sec. 34, 155 feet; thence South 77° 35' East 442 feet; thence South 84° 05' East to a point on the East line of said N.W.¼ of the N.E.¼; thence North along said East line of the N.W.¼ of the N.E.¼ of Sec. 34 to place of beginning, being 5-1/10 acres more or less."

Also any and all other real property, water rights, lands and improvements thereon of whatsoever kind, situate in Lincoln County, Idaho, and owned by the said Malad Power Company at the date of the conveyance last above mentioned.

The said conveyance of the Malad Power Company to the said Munn was conditioned, however, upon the said Munn's permitting the Kings Hill Irrigation & Power Company, its successors and assigns, to divert as aforesaid and utilize for domestic and irrigation purposes the said three hundred cubic feet per second of time of the waters of the Malade River.

And in further consummation of said understanding and on or about the 16th day of February, 1909, the said Charles H. Hammett executed and delivered to the said Munn a deed whereby he conveyed to said Munn, his heirs and assigns, all his right to use the waters of the said Malade River and also all rights-of-way and real property then owned or possessed by the said Hammett in sections 25, 26, 27, 34, 35 and 36, in Twp. 6 South, Range 13 East, B.B.& M. in said Lincoln County, Idaho, but for lack of knowledge of the specific property then owned by the said Hammett, the plaintiff is unable at the time of the filing of this complaint to give a more accurate description of the property and rights acquired by the said Munn under and by virtue of the said conveyance.

And in further consummation of said understanding and on or about the 14th day of February, 1909, the defendant

Munn entered into a further agreement with the said Hammett whereby said Hammett agreed to acquire from the United States Government title to the following described land situate in said Lincoln County, to-wit: Lot No. 1, in section 34, Twp. 6 South, Range 13 East, B.M.& M., to be used as a power station site in connection with all or any of the Permits and appropriations for the use of the waters of the said Malade River for power purposes hereinabove described. Thereafter, during the year 1911, the said Munn settled in full his obligation to the said Hammett, Kings Hill Irrigation & Power Company and the Malad Power Company under the understanding between them aforesaid by the payment to the said Hammett of the further sum of $6,500.00 and at the same time said Munn released the said Hammett from all further obligation on the part of the said Hammett to acquire the title to the property last above described, but, with the intent to deceive and defraud the plaintiff, instead of cancelling the said agreement with the said Hammett, the said Munn took from him an assignment of all said Hammett's rights under said agreement in the name of one Frank Keon, an agent of the said Munn, and thereupon in order to acquire the title to said land for the purpose aforesaid, the said Munn caused a scrip entry to be made therefor in the United States Land Office at Hailey, Idaho, in the name of Albert E. Woodhouse who in making said scrip entry acted solely as the agent and for and on behalf of said Munn.

Eleventh: That subsequent to the organizing of the plaintiff corporation, the defendant Munn permitted all the said titles which were to be conveyed to the plaintiff to utilize the waters of the Snake River to lapse and become void and worthless; and with the intent to defraud the plaintiff and defeat its rights and destroy its property, the defendant Munn failed, neglected and refused to do the work

required by the laws of the State of Idaho to maintain and perfect the right to utilize the water of the Malade River under the said Jackson Permit, No. 2300, with the view and for the purpose of making the title obtained under the Jackson Permit, which he had on the 10th day of January, 1907, caused to be conveyed to him personally, paramount and superior to the title under the said Jackson Permit; and notwithstanding said Munn was obligated under the said agreement of April 5, 1907, and notwithstanding it was his duty, to convey or cause to be conveyed to this plaintiff the said Glick Permit, No. 713, and the said Jackson Permit, No. 2524, and the said French Permit, No. 4366, and all titles aforesaid acquired by him from or through said Hammett, said Kings Hill Irrigation & Power Company and said Malad Power Company, he, the said Munn, on or about the 6th day of March, 1911, in pursuance of a conspiracy between himself and the said French to defraud the plaintiff, and in consideration of a large sum of money, as plaintiff is informed and believes, amounting to more than seventy-five thousand dollars, and for other good and valuable considerations, the amounts of which are unknown to the plaintiff, then and there paid to them, or one of them, by the defendant The Beaver River Power Company, a corporation organized under the laws of the State of Colorado, fraudulently conveyed or caused to be conveyed to the said French all of the rights to the use of the waters of the Malade River for power purposes, the record title to which then stood in his own name, together with all lands, rights-of-way, easements and other property which he had acquired for use in connection therewith, as hereinabove set forth, and immediately thereafter the said French fraudulently conveyed or caused to be conveyed to the defendant The Beaver River Power Company all of the water-rights,

lands and property conveyed or caused to be conveyed to him, the said Wrench, by the said Dunn as aforesaid, together with the right to use the waters of said Cahabe River for power purposes under and by virtue of said Permit No. 4366, the record title to which then stood in his (the said Wrench's) name but which said Wrench held for the use and benefit of the plaintiff as aforesaid; and the said Dunn and Wrench have converted to their own use the moneys and other considerations so received by them from the said The Beaver River Power Company in exchange for such conveyances; that at and prior to the time of the conveyance from the said Wrench to the said The Beaver River Power Company as aforesaid, the defendant Dunn was a Director and President of said The Beaver River Power Company and through him and its other officers and Directors the said The Beaver River Power Company had full knowledge of the rights and interest of the plaintiff corporation in the said water-rights, lands and easements so conveyed to it and of the obligation on the part of the said Dunn and of the said Wrench to convey the same to the plaintiff.

Twelfth: That on or about the sixth day of March, 1911, the said The Beaver River Power Company filed for record in the office of the County Recorder of said Lincoln County a certain Deed of Trust, dated July 1, 1908, and executed by it on or about that time, whereby it conveyed to the defendant The American Trust and Savings Bank, a corporation organized under the laws of the State of Illinois, as Trustee, certain real and personal property in the State of Utah, as well as all property and property rights which it might thereafter acquire, to secure the payment of its negotiable bonds, aggregating the principal sum of eight hundred thousand dollars, issued by the said corporation substantially contemporaneously with the execution by it of said Deed of

Trust; that said Deed of Trust is duly recorded at Pages 239 and 283 of Book 16 of Mortgages of the official records of Lincoln County, Idaho; that the negotiable bonds executed by the said The Beaver River Power Company aforesaid, or a large part thereof, have been deposited with and are now held by the said The American Trust and Savings Bank, as Trustee, subject to the terms and provisions of said Deed of Trust and, as the plaintiff is informed and believes, the said Trustee is, under and by virtue of the said after acquired property clause in said Deed of Trust, claiming a lien upon the water rights, lands and easements conveyed by the said Dunn and French to The Beaver River Power Company as aforesaid.

Thirteenth: That thereafter, on or about the second day of October, 1911, the said The Beaver River Power Company executed and delivered to the defendant, Continental & Commercial Trust & Savings Bank, a corporation organized under the laws of Illinois, a certain other Deed of Trust, whereby it conveyed to the said Continental & Commercial Trust & Savings Bank, as Trustee, all of the property conveyed to it, or caused to be conveyed to it, by the said Dunn and French, as hereinabove set forth, to secure the payment of negotiable bonds issued by the said The Beaver River Power Company; that the Deed of Trust last above mentioned is recorded at Page 32[illegible] of Book 16 of Mortgages of the official records in the office of the County Recorder of said Lincoln County, Idaho, and as the plaintiff is informed and believes, the negotiable bonds executed by the said The Beaver River Power Company as aforesaid or a large part thereof havebeen deposited with and are now held by the said Continental & Commercial Trust & Savings Bank, as Trustee, subject to the terms and provisions of said Deed of Trust, and the said Trustee is claiming a lien upon the water-rights,

lands and easements conveyed or caused to be conveyed to the said The Beaver River Power Company by the said Munn and French as aforesaid.

Fourteenth: Plaintiff further states that although it has repeatedly made demand upon the defendant Munn so to do, he has wholly failed and refused to account for the funds so paid to him for the plaintiff's use and benefit, or to render any statement of expenditures which he has made in connection with the maintenance, acquisition and development of the property, water rights and easements hereinabove particularly described, and that for such reason the plaintiff can not state the amount of such expenditures, if any there were, except as herein set forth; or the amount, if any there is, due from it to the said defendant Munn on account of expenditures made by him from his personal funds for the purpose of acquiring, maintaining, protecting or developing said property rights. Nevertheless, plaintiff hereby offers to do and perform whatever equity demands of it in the premises and to pay to the said Munn whatever amount of money, if any, on an accounting between this plaintiff and said defendant may be found by this Honorable Court to be due him.

WHEREFORE, the plaintiff prays that the defendants Munn and French may be decreed to hold in trust for the plaintiff and compelled to convey, or cause to be conveyed to it, the title to such of said lands, water rights, rights-of-way, Permits and easements hereinabove mentioned as now remain in them or under their control; that The Beaver River Power Company may be decreed to hold in trust for the plaintiff and compelled to convey to it all property, rights and franchises hereinabove mentioned conveyed or caused to be conveyed to it by the defendants Munn and French, or either of them, as herein set forth; that The American Trust & Sav-

ings Bank, as Trustee, and the Continental & Commercial Trust & Savings Bank, as Trustee, may be required to set forth what interest, if any, they have in all or any part of the property hereinabove mentioned; that the two Deeds of Trust executed by the said The Beaver River Power Company to The American Trust and Savings Bank and to the Continental & Commercial Trust & Savings Bank as aforesaid be set aside and held for naught as against all the property, rights and franchises in the foregoing complaint mentioned and decreed to create no lien thereon or on any part thereof; that if on final hearing of this cause it shall appear that the title to any of said property has been lost to the plaintiff because of the same having been conveyed to an innocent purchaser for value, the defendants Munn and French may be compelled to account to the plaintiff for the value of the property so lost, as well as to account to the plaintiff for all moneys and benefits which they have or either of them has received therefor or therefrom; that the defendant Munn may be required to account to the plaintiff for all moneys so advanced to him for the use and benefit of the plaintiff Company; that plaintiff prays for all other and further relief which to this Court shall appear to be equitable and just, as well as for costs of suit.

(Signed) Frey Sheymyn
Residing at Salt Lake City, Utah.

Raymond L. Givens
Residing at Ford, Idaho.

Attorneys for Plaintiff.

STATE OF IDAHO, :
: ss.
County of Ada, :

Raymond L. Givens, being first duly sworn, says: I am the resident attorney of the plaintiff corporation and make this verification because all officers of the plaintiff corporation are absent from the County where I reside and where this verification is made. I have read the foregoing complaint and know the contents thereof and the same is true to my knowledge except as to the matters which are therein stated on information and belief, and as to those matters I believe it to be true.

(signed) Raymond L. Givens.

Subscribed and sworn to before me on the 9th day of December, 1911.

(signed) Charles E. Winstead,
Notary Public.

(N.P. Seal)

Complaint filed December 11th, 1911, at 9 A.M.

(Signed) Henry W. Anderson
Clerk.

STATE ENGINEER'S OFFICE.

STATE OF IDAHO.

GRAND [illegible] AND [illegible] POWER COMPANY, a corporation.
Contestant.

vs.

AFFIDAVIT.

A. L. FRENCH, THE IDAHO NEVADA POWER COMPANY, a corporation, the [illegible] POWER COMPANY, a corporation, and the AMERICAN TRUST AND SAVINGS BANK, a corporation,

Contestees.

Received and filed for record in the office of the State Engineer at Boise, Idaho, at [illegible] 19__

STATE ENGINEER.

STATE OF IDAHO, } ss.
COUNTY OF AD. }

F. S. [illegible] being first duly sworn deposes and says that, as shown by the records in the office of the State Engineer of the State of Idaho, water permit No. 4366 was taken out by A. L. French for the diversion of 1190 second feet of the waters of the Malade River; that said application was filed November 25th, 1908, and a permit thereafter issued on said application;

That under the terms of said permit, it was required that one-fifth (1/5) of the work therein specified be completed by August 22nd, 1911; that under said permit, the estimated cost of the works is five hundred thousand ($500,000.00) dollars; that said works described in said permit consisted of a diverting dam in said Malade River and a flume or pipes, gates and apparatus necessary for the control of the water and conducting the same to the place of intended use; that under said permit, the height of the dam in said stream was to be twenty-two (22) feet, the length on top three hundred twenty-five (325) feet, the length of the conduit nineteen hundred fifty-two (1952) feet, all of which more fully appears in the said permit on file in the office of the State Engineer of the State of Idaho.

That under the aforesaid Permit, No. 4366, no work had been done on or prior to the 26th day of August, 1911, so far as affiant has been able to discover or ascertain after a careful examination of

the ground, excepting the placing of some piers and abutments in the Maloda River at a point near the place of diversion stated in said permit and that the work done under said permit on the 26th day of August, 1911, was less than one-tenth (1/10) of the entire work necessary to divert the water and bring it to the place of use and that the cost of the work done on said date was less than five thousand ($5,000.00) dollars.

H Horn

SUBSCRIBED AND SWORN TO before me this 2nd day of January 1912.

F J Abbs

Notary Public.

OFFICE OF STATE ENGINEER

AT BOISE, Idaho

IN THE MATTER OF CONTEST FOR THE CANCELLATION OF PERMIT NO. 4366 TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF IDAHO, UNDER THE PROVISIONS OF HOUSE BILL 223, APPROVED MARCH 11, 1909.

Great Shoshone and Twin Falls Water Power Company, a corporation organized under the laws of the State of Delaware,

Contestant,

vs.

A. M. Wrench, The Idaho-Nevada Power Company, a corporation organized under the laws of the State of Colorado, L. L. Nunn, the Beaver River Power Company, a corporation organized under the laws of the State of Colorado, and the American Trust and Savings Bank, a corporation,

Contestees.

AFFIDAVIT.

Received and filed for record in the office of the State Engineer at Boise, Idaho, at 10 A. M. JAN -3 1912 19

STATE ENGINEER.

STATE OF IDAHO,)
) ss.
County of Ada.)

On this third day of January, 1912, appeared before me, the undersigned Notary Public, duly appointed, commissioned, qualified and acting in and for the County of Ada in the State of Idaho, George L. Swendsen, to me personally known, who being first duly sworn, deposes and says, as follows:

"My name is George L. Swendsen. I am of lawful age. I am an engineer and a member of the engineering firm of Swendsen, Swendsen & Peirce, Idaho Building, Boise, Idaho. I am now, and have been for many years last past, in the active practice of my profession. I have read and know the contents of Permit No. 4366 to appropriate the public waters of the State of Idaho, under which said Permit it was required that one-fifth of the work therein specified be completed by August 22, 1911; that I know the location of the points of diversion, use and return in said Permit specified; that I know all the work which has been done during the past four years on, along and in the vicinity of the Malade River, in Lincoln County, Idaho, for the purpose of diverting, as well as looking toward the diversion of the waters of said River, and I know the time and times and

4366

when such work was done; that prior to August 22, 1911, there had been done under said Permit No. 4366 more than one-fifth of the work required by said last mentioned date to be completed thereunder; that such work consisted of a dam across said River at or in the immediate vicinity of the point of diversion on said River specified in said Permit, a grade through lava rock extending therefrom adown said River to a point above and near the dam across said River, situate on the eastern boundary of Northwest quarter (NW¼) of Section Thirty-five (35), Township Six (6) South, Range Thirteen (13) East, B.B. & M.; that said grade was builded by the owners of Permit No. 713, originally issued to William B. Slick, et al, and that I am informed and believe such Permit, and work, and also Permit No. 2524, became the property of the Idaho-Nevada Power Company prior to January 1st, 1909, and that I am further informed and believe that Permit No. 4366 is also, and always has been, the property of the said Idaho-Nevada Power Company; and, further, affiant states that the other work done prior to August 22, 1911, in connection with Permit No. 4366 consists of a large part of the work done in constructing the dam across said River on the eastern boundary of the NW¼ of NW¼ of Sec. 35, Township 6 South, Range 13 East, B.B. & M., and the gates, flumeway and canal extending therefrom to a point in Section 34 in said Township and Range last aforesaid, and the construction of a hydro-electric generating station in Lot 1, Sec. 34, in the Township and Rangelast aforesaid, and preparation on the ground for laying of, and the actual laying of, the pressure pipe from said acqueduct to the said hydro-electric generating station; that following said August 22nd last the work in connection with Permit No. 4366 has been continued with the same diligence as prior thereto, and that now such hydro-electric generating station is ready for operation and to output approximately 10,000 H.P. for transmission and distribution. I am an engineer in the employ of the Idaho-Nevada Power Company and make this affidavit in its behalf in the matter of the contest for the cancellation of Permit No. 4366 now pending in the office the State Engineer of Idaho.

George L. Snowden

Subscribed and sworn to before me on this third day of January, 1912.

James L. White

Notary Public and and for the
County of Ada, State of Idaho.

4366

OFFICE OF THE STATE ENGINEER

AT BOISE, IDAHO.

IN THE MATTER OF CONTEST FOR THE CONCELLATION OF PERMIT No. 4366 to APPROPRIATE THE PUBLIC WATERS OF THE STATE OF IDAHO, UNDER THE PROVISIONS OF HOUSE BILL 223, APPROVED MARCH 11, 1909.

To,

Great Shoshone and Twin Falls Water Power Company, a corporation organized and existing under the laws of the State of Delaware,

CONTESTANT,

-vs.-

A. M. Wrench, The Idaho-Nevada Power Company, a corporation, organized under the laws of the State of Colorado, L. L. Nunn, The Beaver River Power Company, a corporation, organized under the laws of the State of Colorado. and the American Trust and Savings Bank, a corporation,

CONTESTEES.

AFFIDAVIT OF

GEORGE F. HALLIDAY

STATE OF IDAHO, }
County of Lincoln, } ss.

Received and filed for record in the office of the State Engineer at Boise, Idaho. at M. JAN 3 1912 19

STATE ENGINEER

GEORGE F. HALLIDAY being first duly sworn, deposes and says, that he is the Auditor of The Beaver River Power Company, and as such has general supervision, charge and control over the books of account, vouchers and receipts of The Beaver River Power Company; that he has carefully, fully and completely examined the same at the Malade Camp in Lincoln County, Idaho, where they are situate, and from his examination states, that prior to August 22nd, 1911, there was expended in the development and construction of the hydro-electric plant for the partial utilization

4366

of the water permitted to be appropriated under permit No. 4366 issued by the State Engineer of the State of Idaho, more than $200,000; that the works upon which expenditures have been made consist of diversion dam, flumes, grades, apparatus necessary for the control of the waters, hydro-electric power generating machinery, power-house and work and services incidental and necessary thereto; that said company has since the 21st day of August, 1911, continued in the development of said water permit, and has expended large sums of money in excess of $150,000 in connection with said development and the transmission lines necessary for the transmission of current from the power generating station which has since said 22nd day of August, 1911 been practically completed for the generation of 7,500 horse power of electrical energy; that from his knowledge of the general financial condition of said corporation it is fully able to carry out the entire development to the fullest possible extent of the waters described in said permit.

Further affiant sayeth not.

Geo. F. Halliday

Subscribed and sworn to before me this first day of January 191.7.

R. A. Crawford

Notary Public

Received and filed for record in the office of the State Engineer at Boise, Idaho, at M. JAN -3 1917

STATE ENGINEER.

4366

OFFICE OF THE STATE ENGINEER

At Boise, Idaho,

--

Great Shoshone and Twin Falls Water Power Company, etc.,

Contestant,

-vs.-

A. M. Wrenchm et al,

Contestees.

Affidavit of George F. Halliday.

~~6666666666666666~~

OFFICE OF STATE ENGINEER

AT BOISE, IDAHO.

--

IN THE MATTER OF CONTEST FOR THE CANCELLATION OF PERMIT No. 4366 TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF IDAHO, UNDER THE PROVISIONS OF HOUSE BILL 223, APPROVED MARCH 11, 1909.

--

To,

Great Shoshone and Twin Falls Water Power Company, a corporation organized under the laws of the State of Delaware,

Contestant,

-vs.-

A. M. Wrench, The Idaho Nevada Power Company, a corporation, organized and existing under the laws of the State of Colorado, L. L. Nunn, The Beaver River Power Company, a corporation, organized under the laws of the State of Colorado, and the American Trust and Savings Bank, a corporation,

Contestees.

AFFIDAVIT OF ROBERT FAIRBANKS

Received and filed for record in the office of the State Engineer at Boise, Idaho, at M. JAN -3 1912 19

A. E. Robinson
STATE ENGINEER.

STATE OF IDAHO,)
) ss.
County of Lincoln,)

ROBERT FAIRBANKS, being first duly sworn, deposes and says: That he is an electrical engineer and a member of the American Institute of Electrical Engineers and in the employ of The Beaver River Power Company, a corporation, organized under the laws of the State of Colorado, and by virtue of its compliance with the laws of the State of Idaho, doing business therein; that he is in charge of the construction work of that certain hydro-electric development upon the Malade river in Lincoln County, Idaho, now owned and being carried on by the said The Beaver River Power Company; that he is thoroughly familiar with the work done

4366

and the money expended upon said development and knows the cost and character thereof; that the said development is being carried on for the purpose of securing and completing an economical use and perfection of those certain krights initiated by A. M. Wrench according to the terms of Permit No. 4366 issued by the State Engineer of Idaho, on the 22nd day of February, 1909, which permit granted permission to appropriate 1050 second feet of the flow of Malade River and 50 second feet of the flow of Cove Creek, said permit being by the said A. M. Wrench duly and properly conveyed to the said The Beaver River Power Company, which is now the holder thereof, together with all the rights attaching and appurtenant thereto, and all construction and development work done thereunder.

That prior to the 22nd day of August, 1911 the said The Beaver River Power Company had completed considerably more than one-fifth of the diversion works necessary for the diversion of the water described in said permit and had expended a large sum of money in excess of one-fifth of the amount of money required for said diversion works; that in addition thereto the said The Beaver River Power Company had prior to the 22nd day of August, 1911, completed more than one-fifth of the entire amount of work required for not only the diversion of said waters, but for the beneficial use thereof, and had so expended more than one-fifth of the entire amount of money required for the complete utilization of the waters described in said permit; that the work so done and constructed and the expenditures madeware under and by virtue of said permit No. 4366, and consisted of dams, flumes, grades, apparatus necessary for the control of said waters, hydro-electric power generating machinery, power-house, real property

necessary in the use and development of said permit and work and services incidental and necessary thereto; that the sum so expended up to the 22nd day of August, 1911, exceeded the sum of $200,000.

That the said Beaver River Power Company and its predecessors in interest have continuously and without intermission since October, 1910, carried on said development and the protection and development of the property and rights acquired prior to said last named date; that since the 22nd day of August, 1911 the said The Beaver River Power Company has continuously kept employed a large force of men, varying in number from fifty to one hundred in the development of the waters described in said permit; that by reason of said activity and development the said company has now completed the construction of one hydro-electric generating plant for partial use of said waters, said plant consisting of a large power house, steel pressure pipe line, control gates and the setting and placing of machinery necessary for the completion of one unit of said development; that said unit is capable of generating 7,500 horse Power of electrical energy, and at the time of making this affidavit the said unit is practically complete, and within a few days will be capable of generating the full amount of power contemplated by its construction; that at least .800... hundred cubic feet of waters under said permit is capable of being partially utilized under said permit at the present time, in said plant.

That in addition to the completion of said hydro-electric plant the said company has completed the erection of poles on a transmission line beginning at the said Malade development and ending within a short distance of Boise , Ada County, Idaho, traversing the counties of

Lincoln, Elmore and Ada, and so situate as to supply the towns of Glenns Ferry, Mountain Home, South Boise and Boise and various consumers of electrical energy in said counties; that said line consists generally of 40 foot cedar poles, placed about 300 feet apart; that the copper wire to be used in the construction of the transmission line has been received at Glenns Ferry, Mountain Home and Orchard, all being stations along the Oregon Short Line Railroad; the said wire is now being strung on said poles by two crews of men; that within thirty days from the date hereof the entire amount of electrical energy generated by said plant, to-wit, 7,500 horse power will be available for distribution along said transmission line.

That said company has at all times proceeded with diligence and in good faith toward the completion of the entire development planned and contemplated to utilize to its full capacity the said water described in said permit, and it is the intention and purpose of said corporation to cotinue on in said development in order to acquire all and every right, express and implied, in said permit, and to develop the highest possible efficiency from said waters, and to do this the said Company is, in the opinion of the affiant, financially able.

That A. M. Wrench and the Idaho-Nevada Power Company and L. L. Nunn, although named as Contestees in said contest matter have no interest whatsoever in any manner in or to the said permit or the work done thereunder; that the interest of the American Trust & Savings Bank is merely that of Trustee under a trust deed securing certain bonds issued on said permit and the work done thereunder.

Robert Fairbanks

Subscribed and sworn to before
me this 3rd day of January, 1912.

[illegible]

Notary Public.

4366

OFFICE OF THE STATE ENGINEER

At Boise, Idaho,

--

Great Shoshone and Twin Falls)
Water Power Company, etc.,)
Contestant,)
-vs.-)
A. M. Wrench, et al.,)
Contestee.)

Affidavit of Robert Fairbanks.

Boise, Idaho, December 12, 1911.

Permit 4366.

Mr. Frederick F. Steigmeyer, Lawyer,
Salt Lake City, Utah.

Sir:--

On the request of Mr. Gray, I enclose you herewith notice of contest and letter in the above which was mailed from this office on October 24, 1911, addressed to the Idaho-Nevada Power Company at Boise, Idaho under registered mail. The notice and letter were returned to this office on the 25th of last month as uncalled for. Mr. Gray called me up on the telephone and asked to have the papers forwarded to you.

Very truly yours,

Chief Clerk.

Enc. N.-L.
W/G.

4366

U. S. Registered Mails go to every post office in the world.
Letters and parcels may be registered at any post office or at any post-office station, and by rural carriers throughout their routes. Letters will be registered by letter carriers in the residential districts of cities.

~~Letter~~ Parcel No. _____ P. O., _____

Received for registration OCT 24 1911 *191* , *from* _____

addressed to _____

4366

1 *class postage prepaid.* *Postmaster, per* _____

October 24th, 1911.

Re: Permit 4366.

A. L. Wrench,
415 McCormick Block,
Salt Lake, Utah.

Sir:

I enclose you herewith a copy of notice of contest of the above permit, together with a copy of contestant's petition as filed in this office today.

Very truly yours,

State Engineer.

By_____

Enc. N of C. & P.

4366

W/P

U. S. Registered Mails go to every post office in the world. Letters and parcels may be registered at any post office or at any post-office station, and by rural carriers throughout their routes. Letters will be registered by letter carriers in the residential districts of cities.

Letter / ~~Parcel~~ } No. ..... P. O., ...

Received for registration ....., 191 , *from* .....

addressed to Beaver River Ruby Co.,

by Jess B Hawley Boise Idaho

4388

..... *class postage prepaid.*

Postmaster, per .....

October 24th, 1911.

Re: Permit 4366.

The Beaver River Power Co.,
c/o Jess B. Hawley, Lawyer,
Boise, Idaho.

Gentlemen:

I enclose you herewith a copy of notice of contest of the above permit, together with a copy of contestant's petition as filed in this office today.

Very truly yours,

State Engineer.

By_____

Enc.

4366

W/P

U. S. Registered Mails go to every post office in the world.
Letters and parcels may be registered at any post office or at any post-office station, and by rural carriers throughout their routes. Letters will be registered by letter carriers in the residential districts of cities.

Letter
~~Parcel~~ No. 4366

P. O.,
OCT 24 1911

Received for registration OCT 24 1911 *, 191 , from* [illegible]

addressed to [illegible]

1 *class postage prepaid.*

Postmaster, per [illegible]

October 24th, 1911.

Re: Permit 4366.

The Idaho-Nevada Power Co.,
Boise, Idaho.

Gentlemen:

I enclose you herewith a copy of notice of contest of the above permit, together with a copy of contestant's petition as filed in this office today.

Very truly yours,

4366 State Engineer.

By_____

Enc.

W/P

OFFICE OF STATE ENGINEER

AT BOISE, IDAHO.

IN THE MATTER OF CONTEST FOR THE CANCELLATION OF PERMIT NO. 4366 TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF IDAHO, UNDER THE PROVISIONS OF HOUSE BILL 225, APPROVED MARCH, 11, 1909.

To
Great Shoshone and Twin Falls Water Power Company, a corporation organized under the laws of the State of Delaware,
Contestant.

Vs.

A. M. Wrench, The Idaho Nevada Power Company, a corporation organized under the laws of the State of Colorado, L. L. Nunn, The Beaver River Power Company, a corporation organized under the laws of the State of Colorado and the American Trust and Savings Bank, a corporation.
Contestees.

NOTICE OF CONTEST.

You and each of you are hereby notified that on the 24th day of October, 1911, at 11.30 a.m., Great Shoshone and Twin Falls Water Power Company, a corporation organized under the laws of the State of Delaware, said company being the owner of record of Permit No. 6558 to Appropriate the Public Waters of the State of Idaho, filed in the office of the State Engineer a petition for the cancellation of Permit No. 4366 to Appropriate the Public

Waters of the State of Idaho,

THAT, Petitioner asked for the cancellation of said permit No. 4366 for the following reasons, to-wit:

THAT, Under said Permit No. 4366, it was required that one-fifth of the work therein specified be completed by August 22, 1911. That under said permit the estimated cost of works is Five Hundred Thousand ($500,000.00) Dollars. That said works described in said permit consist of a diversion dam, flume or pipe, gates and apparatus necessary for the control of the water. That under the aforesaid permit No. 4366, no work had been done on or prior to the 26th day of August, 1911, except the placing of some piers and abutments in the Malad river at a point near the place of diversion stated in the permit and that the work done under said permit at the present time is less than one-tenth (1/10) of the entire work necessary to divert the water and bring it to the place of use and that the cost of the work already done is less than Five Thousand ($5,000.00) Dollars.

The contestees herein are hereby required to appear at the office of the State Engineer at 10.00 a.m., January 3,, 1912, and show cause by affidavit, if any there be, why said permit No. 4366 should not be cancelled.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of my office at Boise, Idaho, this twenty-fourth day of October, 1911.

A. E. Robinson
State Engineer.

OFFICE OF STATE ENGINEER

AT BOISE, IDAHO.

IN THE MATTER OF CONTEST FOR THE CANCELLATION OF PERMIT NO. 4366 TO APPROPRIATE THE PUBLIC WATERS OF THE STATE OF IDAHO, UNDER THE PROVISIONS OF HOUSE BILL 223, APPROVED MARCH, 11, 1909.

To Great Shoshone and Twin Falls Water Power Company, a corporation organized under the laws of the State of Delaware, Contestant. Vs. A. M. Wrench, The Idaho Nevada Power Company, a corporation organized under the laws of the State of Colorado, L. L. Nunn, The Beaver River Power Company, a corporation organized under the laws of the State of Colorado and the American Trust and Savings Bank, a corporation. Contestees.	NOTICE OF CONTEST.

You and each of you are hereby notified that on the 24th day of October, 1911, at 11.30 a.m., Great Shoshone and Twin Falls Water Power Company, a corporation organized under the laws of the State of Delaware, said company being the owner of record of Permit No. 6558 to Appropriate the Public Waters of the State of Idaho, filed in the office of the State Engineer a petition for the cancellation of Permit No. 4366 to Appropriate the Public

4366

Waters of the State of Idaho.

THAT, Petitioner asked for the cancellation of said permit No. 4366 for the following reasons, to-wit:

THAT, Under said Permit No. 4366, it was required that one-fifth of the work therein specified be completed by August 22, 1911. That under said permit the estimated cost of works is Five Hundred Thousand ($500,000.00) Dollars. That said works described in said permit consist of a diversion dam, flume or pipe, gates and apparatus necessary for the control of the water. That under the aforesaid permit No. 4366, no work had been done on or prior to the 26th day of August, 1911, except the placing of some piers and abutments in the Malad river at a point near the place of diversion stated in the permit and that the work done under said permit at the present time is less than one-tenth (1/10) of the entire work necessary to divert the water and bring it to the place of use and that the cost of the work already done is less than Five Thousand ($5,000.00) Dollars.

The contestees herein are hereby required to appear at the office of the State Engineer at 10.00 a.m., January 3,, 1912, and show cause by affidavit, if any there be, why said permit No. 4366 should not be cancelled.

4366

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of my office at Boise, Idaho, this twenty-fourth day of October, 1911.

A. E. Robinson
State Engineer.

4336

U. S. Registration Labels go to every part of the civilized world.

Letters and parcels, as registered at any post office or to any postoffice station, and by rural carriers on regular their routes. Letters will be registered by letter carriers in the residence district of cities.

Letter } No. 4366
Par }

P. O.,

Received for registration , 191 , *from*

addressed to

1 *class postage prepaid.*

Postmaster, per

October 24th, 1911.

Re: Permit 4366.

L. L. Nunn,
Telluride, Colorado.

Sir:

I enclose you herewith a copy of notice of contest of the above permit, together with a copy of contestant's petition as filed in this office today.

Very truly yours,

4366

State Engineer.

By_____

Enc. N. of C. & P.

W/P

STATE ENGINEER'S OFFICE,

STATE OF IDAHO.

GREAT SHOSHONE AND TWIN FALLS WATER POWER COMPANY, a corporation organized under the laws of the State of Delaware.

Contestant.

vs.

The Idaho Nevada Power Co., A. M. FRENCH, L. L. NUNN, the BEAVER RIVER POWER COMPANY, a corporation, organized under the laws of the State of Colorado, and the AMERICAN TRUST AND SAVINGS BANK, a corporation.

Contestees.

CONTEST NO. 1811.

TO THE HONORABLE STATE ENGINEER

OF THE STATE OF IDAHO:

The Great Shoshone and Twin Falls Water Power Company, a corporation, organized under the laws of the State of Delaware, being the holder of Water Permit No. 6558, originally issued to F. B. Carter for the diversion of a thousand second feet of the waters of the Malade River, in Lincoln County, State of Idaho, said permit dating from May 28th, 1910, hereby enters contest against Permit No. 4366, issued to A. M. French for eleven hundred (1,100) second feet of the waters of the said Malade River, dating from November 25th, 1908, and states as follows:

1st. That Permit 6558, under which contestant claims was issued with a priority dating from May 28th, 1910, said date being the original date of the filing of the application for the permit; that bond was regularly filed and said Permit regularly issued and under the provisions of said permit, one-fifth of the work thereunder is required to be completed by the 10th day of March, 1913; that after the issuance of said permit, the same was granted and conveyed to the contestant herein by said F. B. Carter to whom the same was issued.

That Permit No. 4366, which is hereby contested, was issued

4366

for and on behalf of and for the use of The Idaho Nevada Power Co.)
to R. M. French, the application being filed November 25th, 1908, and that under said permit, it was required that one-fifth of the work therein specified be completed by August 22nd, 1911; that under said permit, the estimated cost of the works is five hundred thousand dollars ($500,000.00) and said works described in said Permit consisted of a diverting dam and flume or pipe, gates and apparatus necessary for the control of the water;

That under said permit, the height of the dam is to be twenty-two (22) feet, the length on top three hundred twenty-five (325) feet; that the length of the conduits is to be nineteen hundred fifty-two (1952) feet, all of which more fully appears in the said permit on file in the office of the State Engineer to which reference is hereby made.

2nd. That under the aforesaid Permit 4366, no work had been done on or prior to the 26th day of August, 1911, excepting the placing of some piers and abutments in the Malade River at a point near the place of diversion stated in the permit and that the work done under said Permit at the present time is less than one-tenth (1/10) of the entire work necessary to divert the water and bring it to the place of use, and that the cost of the work already done is less than five thousand ($5,000.00) dollars.

3rd. That petitioner is informed that L. L. Munn and the Beaver River Power Company, a corporation organized under the laws of the State of Colorado, claim some interest in this permit, and that the American Trust and Savings Bank, a corporation organized under the laws of the State of Illinois, has an interest in said water right as mortgagee.

WHEREFORE, petitioner prays that this petition may be filed, that due notice thereof may be given and that further proceedings may be had as required by law and that said Permit No. 4366 may be canceled.

GREAT SHOSHONE AND TWIN FALLS ~~WATER~~ POWER COMPANY,

By J. H. Hayes
Attorney.

4366

STATE OF IDAHO, }
COUNTY OF ADA. } ss.

S. H. HAYS being first duly sworn deposes and says that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be upon information or belief and that as to those matters, he believes it to be true.

That this verification is made by the attorney for contestant for the reason that all of the officers of the contestant are absent from the County of Ada, where affiant resides.

S. H. Hays

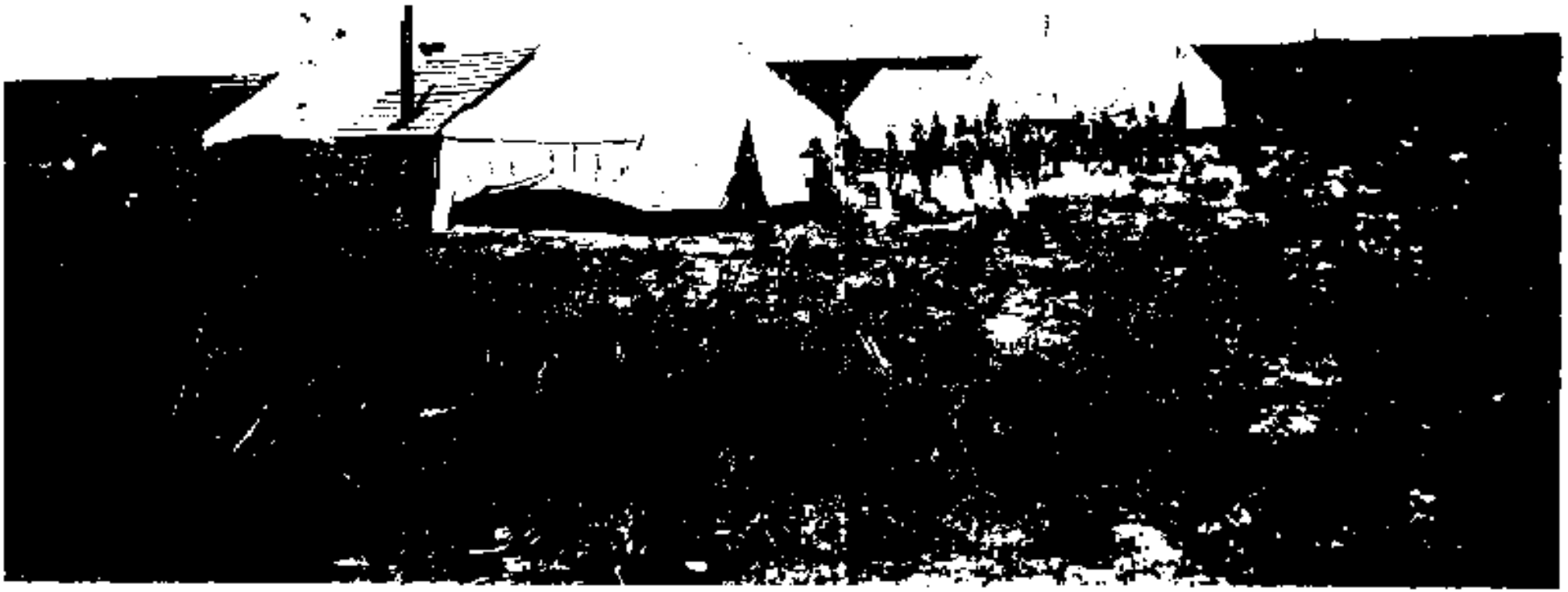
SUBSCRIBED AND SWORN TO before me this 24th day of October, 1911.

[illegible] Martin
Notary Public.

I, J. H. Nourse, an engineer in regular practice in the State of Idaho for six years last past, do hereby certify that I have examined the works constructed under Permit 4566, issued by the State Engineer of the State of Idaho, to A. M. Wrench, and am of the opinion that the matters stated in the above and foregoing petition are true and correct.

J. H. Nourse

No 41 Aug 22 1911



Hoh 40 Aug 22 1911



No 42 8/22/11



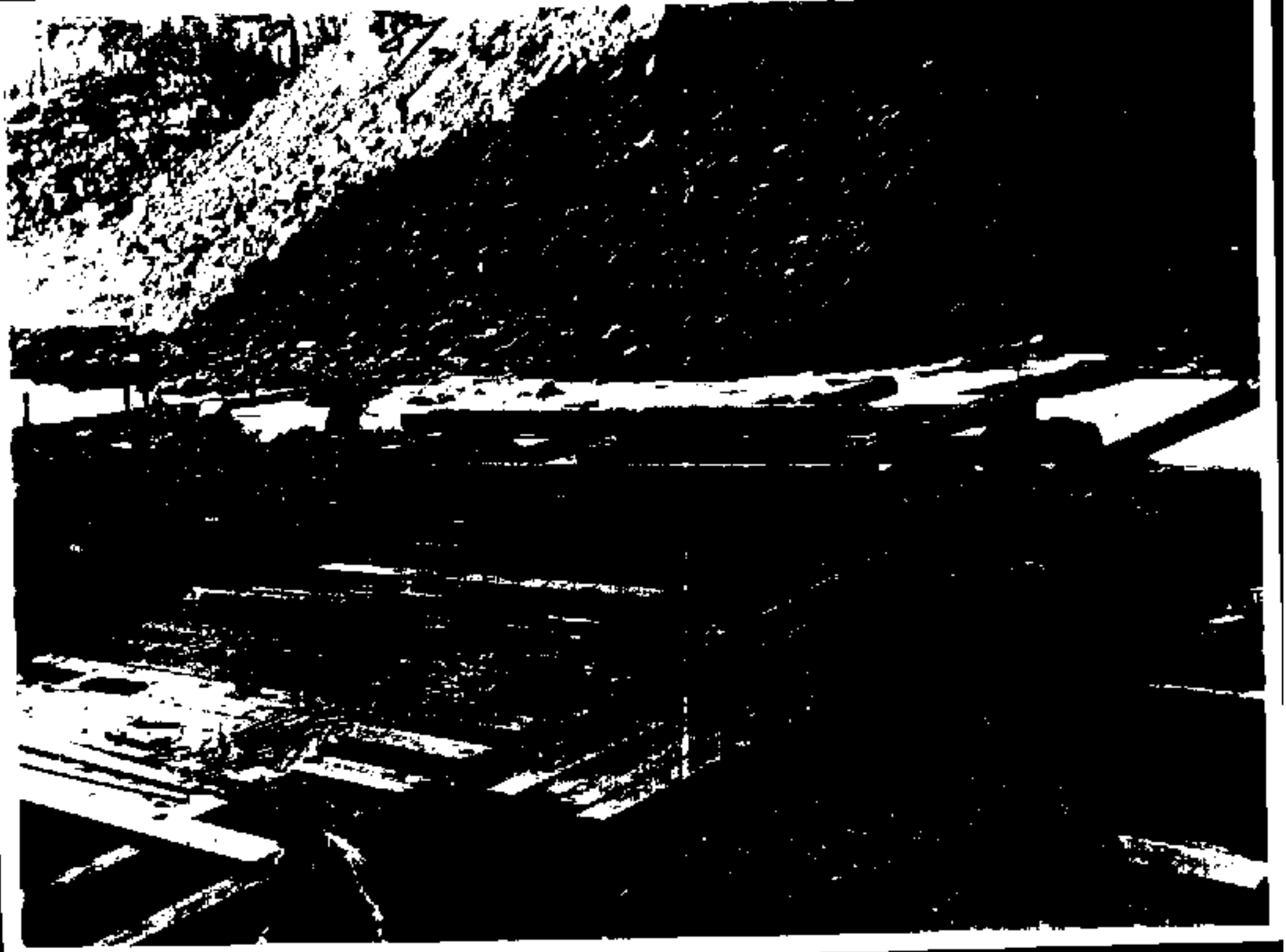


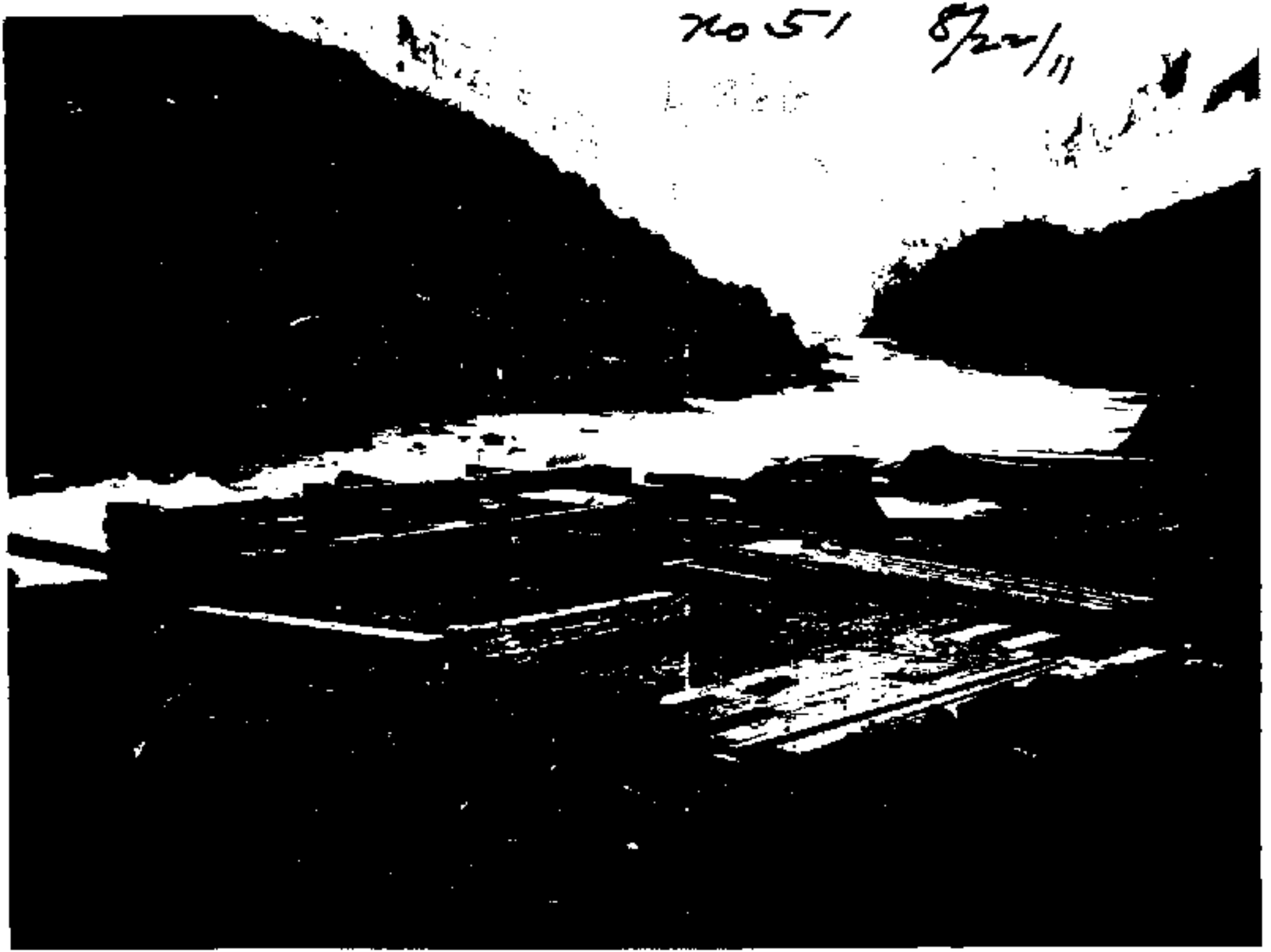


11/22/63 E-4026

No 47 8/22/11







Permit # 4366.
Surrender for Cancellation.

Nov 6 1
Pct 30
904

JOY DRUG STORES
BOISE, IDAHO
FROM
IDAHO PHARMACY No. 4
925 Opposite Post Office
FOR
NO. 1 Each
PRICE
PLEASE REPORT ANY DELAY
PAY NO MESSENGER CHARGES

No 2

THE MATTER OF CONTEST FOR THE CANCELLATION
OF PERMIT NO. 4366.

I request that affidavit be submitted by the parties to this contest, giving an estimate of cost and fair value of the following works: The diversion dam and work done therefor on the Malad river, which bears approximately south 81° 21' E. 720 feet from the SE corner, section 26, township 6 South, Range 13 East.

2nd. The grade leading from this dam extending in a westerly direction to a point in the NW4 of Section 35, about 640 feet east of the westerly boundery of section 35.

3rd. The grade and flume lying in Section 34 commencing near the east boundery line of Section 34 and leading westerly a distance of about five thousand feet to the end thereof.

4th. The grade for pressure pipe from the end of the above mentioned flume to the power house of the Beaver River Power Company.

5th. All of the works necessary to complete the diversion under your permit. Whether or not, to your knowledge, the work above specified was done in compliance with the terms of Permit No. 4366, and for the diversion of the water thereunder.

These affidavits to cover the work which has been done prior to August 22, 1911.

4366

Furnish such other and additional information that you have that will more clearly set forth all of the facts in this matter.

October 24th, 1911.

Re: Permit 4366.

James E. Clinton, Jr.,
Boise City National Bank,
Boise, Idaho.

Sir:

Great Shoshone & Twin Falls Water Power Company through its attorney, Mr. S. H. Hays, today filed petition, for cancellation of the above permit. Although the American Trust & Savings Bank does not appear of record here as having any claim of title or interest in the permit sought to be canceled, yet it was the desire of Mr. Hays that you, as statutory agent of the American Trust & Savings Bank, be notified of the pending contest. I, accordingly, enclose to you a copy of the notice of contest, together with a copy of the petition for cancellation.

Very truly yours,

State Engineer.

By_____

4366

Enc.

W/P

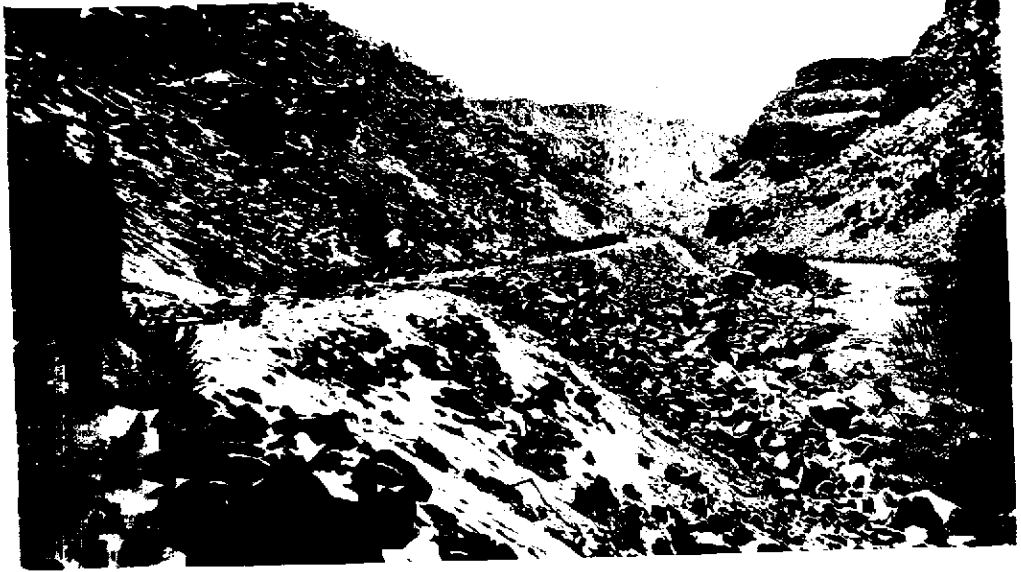
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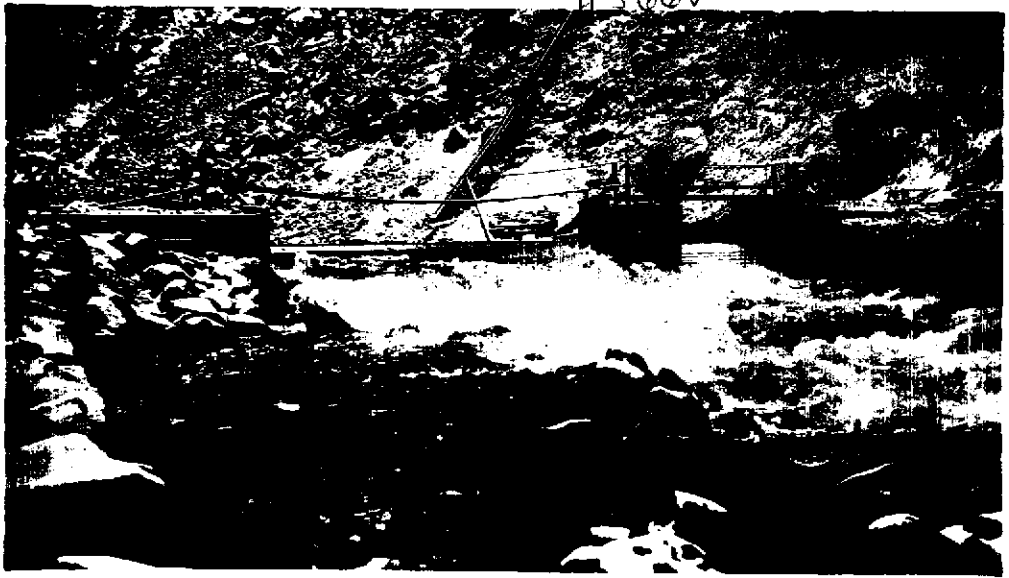


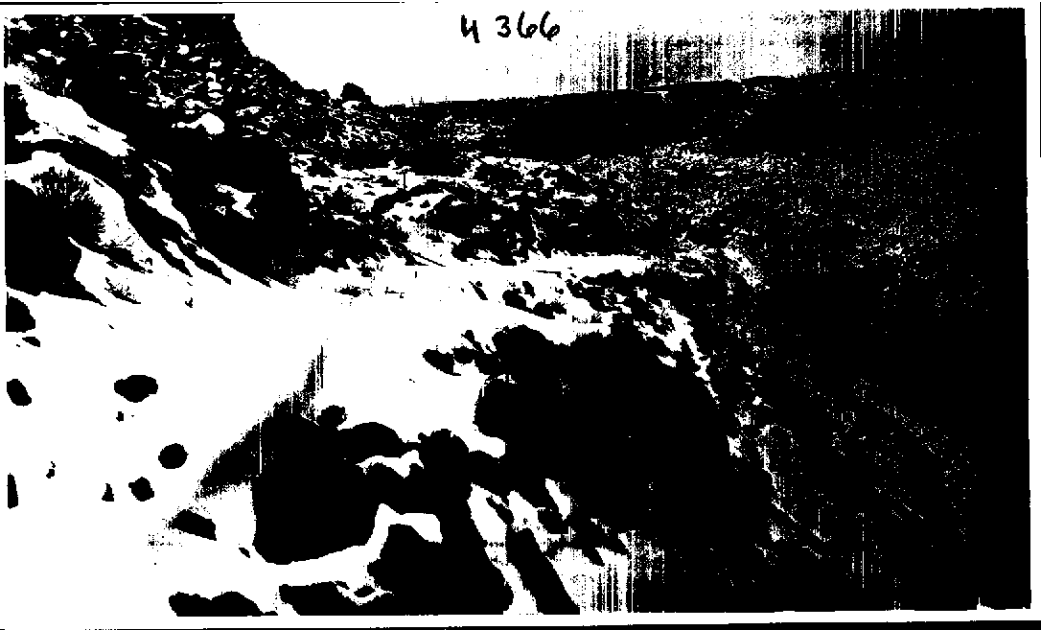
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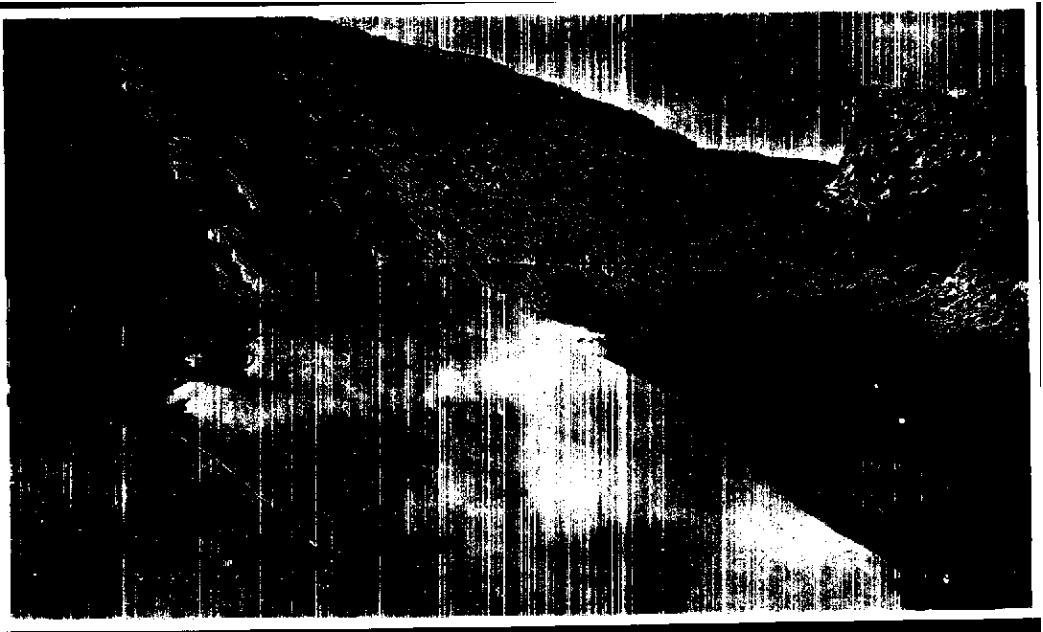


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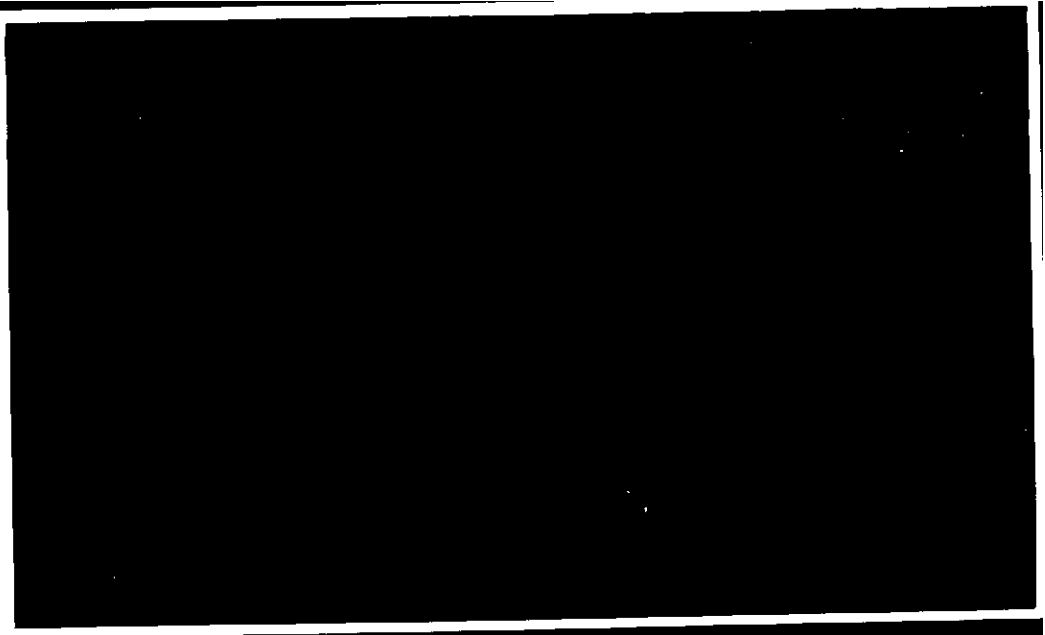



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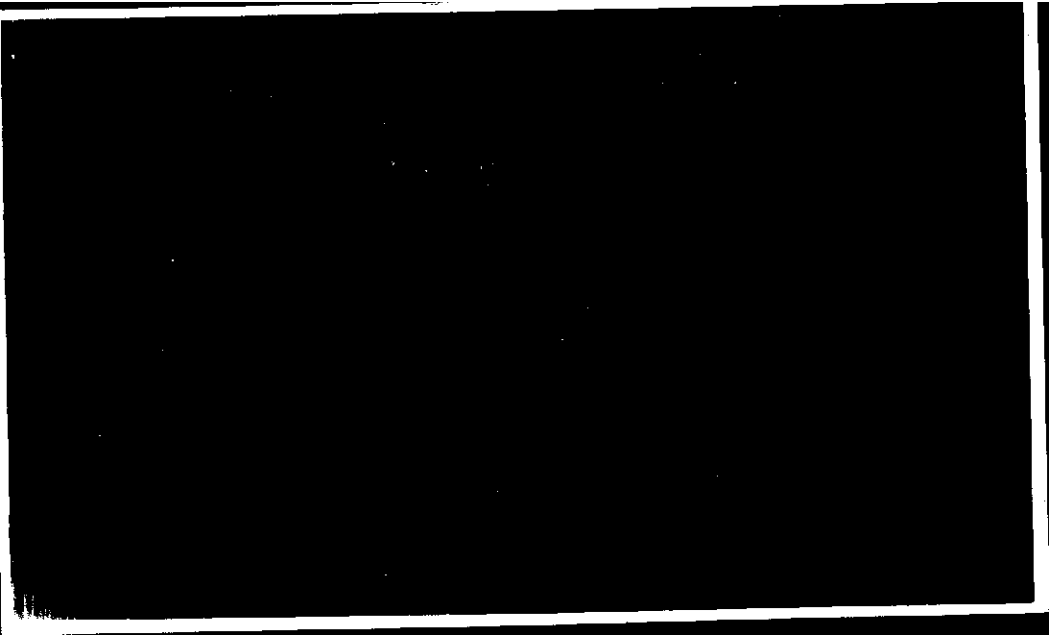

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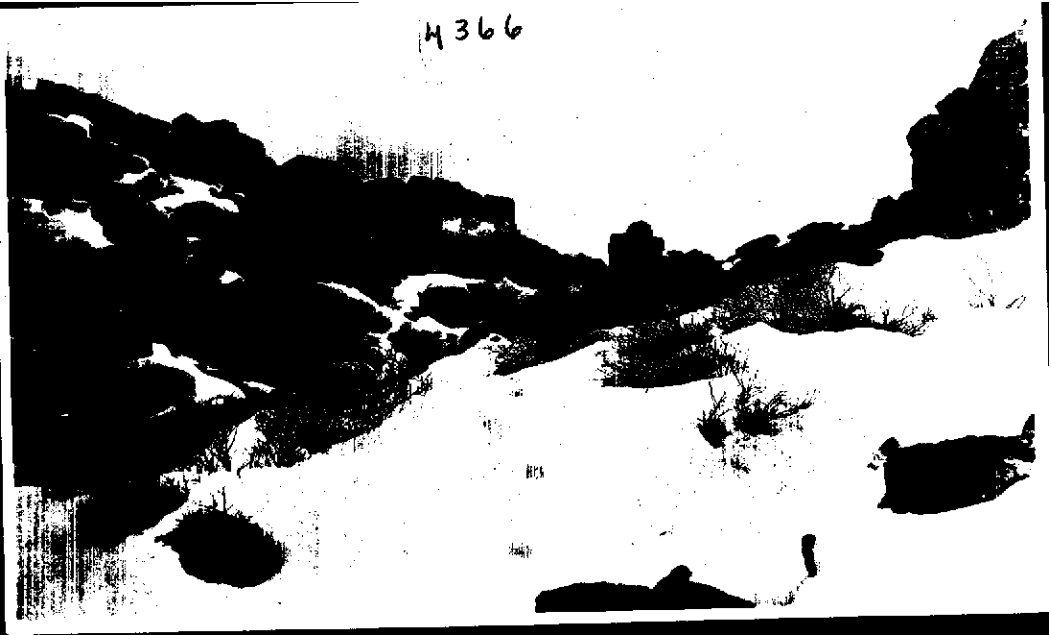


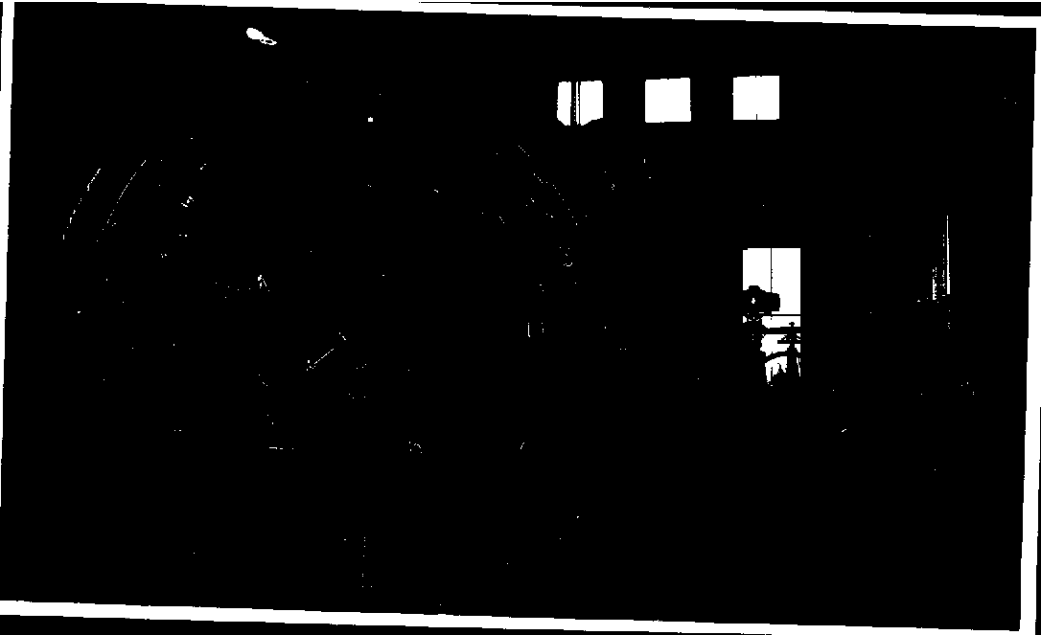

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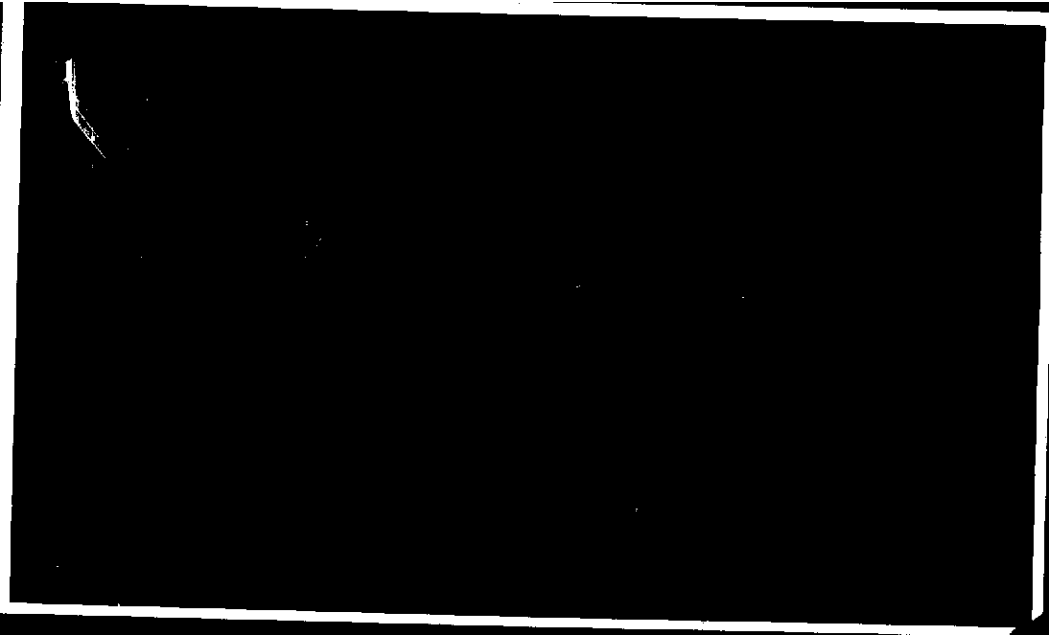


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Prints for Summers Affidavit

11



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Permit 43662 Kepple collect - to.

5-0485

145

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JOY DRUG STORES
BOISE, IDAHO.

FROM STORE No

FOR State Engineer

NO. 5603-

PRICE 3 of Each-

PLEASE REPORT ANY DELAY
PAY NO MESSENGER CHARGES

2-3

ght.

25

REGISTRY RETURN RECEIPT.

Received from the postmaster registered article, the original number of which appears on the reverse side of this card.

4366

Date of delivery July 28, 1911
(To be filled in by person signing receipt.)

When delivery is made to an agent of the addressee, both addressee's name and agent's signature must appear in this receipt.

(Signature or name of addressee.)

(Signature of addressee's agent.)

A registered article must not be delivered to anyone but the addressee or the person in whose care it is addressed, except upon addressee's written order or a written order from the sender permitted by the mailing postmaster and duly identified.

When the above has been properly signed, it must be postmarked with the name of delivering office and actual date of delivery and mailed to its address, without envelope or postage.

Post Office Department

OFFICIAL BUSINESS

Original Registry No.

BOISE JUL 28 11-AM IDAHO

16 4 6 19 11

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300.

Postmark of Delivering Office

and Date of Delivery.

RETURN TO:

State Engineer

(Name of sender.)

Street and Number, or Post Office Box,

BOISE, 4366

IDAHO.

This card must be neatly and correctly made up and addressed at the post office where the article is registered. The postmaster who delivers the registered article must see that this card is properly signed, legibly postmarked, and mailed to the sender, without envelope or postage.

B O N D.

KNOW ALL MEN BY THESE PRESENTS: That

A. M. Wrench of _____ as principal, and

L. L. Nunn of _____ and

Fred'k Steigmeyer of _____ as sureties,

are held and firmly bound unto the State of Idaho in the ful and just sum of Twenty-Two Hundred (2200) Dollars, lawful money of the United States, to the payment of which sum, well and truly to be made, said principal and sureties bind themselves, their heirs, administrators, executors and assigns, jointly and severally, under the terms and conditions hereinafter set forth.

The terms of this obligation are such that, whereas the above named principal on the 25th day of November, 1908, filed in the office of the State Engineer in Boise, Idaho, a certain application for permit to appropriate the public waters of the State of Idaho, the said application being thereupon numbered No. 5904, in accordance with which said application the State Engineer granted and issued to the said principal herein a certain permit numbered No. 4366, a full, true and complete copy of which application No. 5904 and permit No. 4366 is hereto attached and made a part of this obligation.

Now, if the above bounden principal shall faithfully carry to completion the said works of diversion as specified in said form prescribed therein and within the time therein allowed, then the above obligation to be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF:

The said principal and sureties have hereunto set their hands and seals, this 15th day of April, 1909.

WITNESSES:

[redacted]

[redacted]

A. M. Wrench (SEAL)
By Fred'k Steigmeyer, Agent.

L. L. Nunn (SEAL)

Fred'k Steigmeyer (SEAL)

STATE OF District of Columbia, City of Washington
COUNTY OF _____, } ss.

L. L. Nunn and Fred'k Steigmeyer whose names are subscribed to the within and foregoing obligation as sureties thereto, each being duly sworn, upon oath for himself deposes and says that he is worth the sum named in said obligation, to-wit, Twenty-Two Hundred Dollars, over and above all his debts and liabilities, exclusive of property exempt from execution.

L. L. Nunn

Fred'k Steigmeyer

Subscribed and sworn to before me this 16 day of April A.D., 1909.

My commission expires Nov 1, 1913

E. E. Owen
Notary Public.

APPROVED
DATE April 20 1909
Geo. Stephenson Jr
STATE ENGINEER

4366

Received and filed for record in the office of the State Engineer at Boise, Idaho, at

9:00 A.M. April 20 1959

Jas. Stephenson Jr.
STATE ENGINEER.

 Printed and for sale by the Statesman Printing Co., Boise, Idaho.

COPY.

No. 5904

APPLICATION FOR PERMIT

To Appropriate the Public Waters of the State of Idaho.

1. *Name of applicant:* A. M. Wrench

Postoffice address: 415 McCornick Bldg., Salt Lake City

County: Salt Lake *State* Utah

I. *If applicant is a corporation, give:*

(a) *Date and place of incorporation:*

(b) *The amount of capital stock:*

(c) *The amount paid in:*

(d) *The names and addresses of directors:*

II. *The financial resources of the applicant are:*

(a) *Cash on hand:*

(b) *Treasury stock:*

(c) *Bonds to be issued:*

(d) *Other resources:*

2. *The quantity of water claimed is* 1100 *cubic feet per second.*

3. *Source of water supply:* Malade River and Tributaries, including Cove Creek.

County of Lincoln

4. *Location of point of diversion:* From Malade River at point S.81° 20'E.,720 feet from S.E. cor.Sec. 26 T.6 S.R.13 E.B.B.&M; from Cove Creek at point N.32°30'E.,600 feet from N.E.cor.of Section 35 T.6 S.R.13 E., B.B.& M.

5. *To be used for:*

I. *Irrigation and domestic use:*

(a) *Amount of land to be irrigated:* *acres.*

(b) *In the following legal subdivisions:*
(A list of lands to be irrigated may be appended, as a part of this application.)

II. *Mining, power, manufacturing or transportation purposes:*

(a) *To be used for:* generating power for beneficial uses.

(b) *Amount of power to be generated:* 30,000 *horse power.*

(c) *At what point:* S.78°10'E.,3265 ft.from N.E.cor.Sec. 34 T.6 S.R.13 E., B.B.& M.

(d) *Is water to be returned to any stream:* Yes

(e) *If so, name stream and locate point of return:* Malade River at point which bears S.77°30'W.,3450 ft. from S.E. cor.Sec. 27 T. 6 S. R. 13 E., B.B. and M.

6. *Estimated cost of works:* $500,000.00

4366

7. *Description of works for diversion:*

I. *Kind of works* Diverting reservoir, dam, flume or pipe flow-line, pressure pipe, gates and apparatus for control.
(Reservoir, dam, ditch, flume, pipes or otherwise.)

II. *Dimensions of works:*

(a) *Heighth of dam* 22 *feet, length of dam at top* 325 *feet, length of dam at bottom* 216 *feet. Material used in construction:* Timber crib - rock fill, concrete or stone
(State whether wood, earth, stone or concrete.)

(b) *Capacity of reservoir:* 264 *acre-feet.*

(c) *Size of headgate: Width* 30 *feet, heighth* 10 *feet.*

(d) *Conduit* flume or pipe (State whether ditch, flume or pipe.), *width at bottom* if flume 14 *feet, width at water line* 14 *feet, depth of water* 10 *feet.*

Diameter of pipe: 180 *inches. Average grade per mile is* 5.1744 *feet.*

Length of conduit is 1.952 *miles, and it crosses the following quarter sections:* N.W.¼ Sec. 36, S.W.¼ Sec. 25, S.E.¼ Sec. 26, N.E.¼ and N.W.¼ Sec. 35, S.W.¼ Sec. 26, S.E.¼ Sec. 27 and N.E.¼ and N.W.¼ (Lot 1) Sec. 34 in T. 6 S. R. 13 E., B.B.& M.

to {point described in 5 II (c) above} *which is the point of intended use.*

8. *Time required of the completion of the construction of such work is* five *years.*

9. *Time required for the complete application of the water to the proposed use is* four *additional years.*

Be it Known *That the undersigned hereby makes application for a permit to appropriate the public waters of the State of Idaho as herein set forth.*

A. M. WRENCH
Applicant.

By FRED'K STEIGMEYER *Agent.*

Remarks: 50 sec. ft. will be diverted from Cove Creek and 1050 sec. ft. from the Malade River.

The data given in 7-II-(a), (b), (c) and (d) relates to the Malade River diversion.

Cove Creek diversion will be accomplished by dam fifteen feet high, length of dam at top eighty-two feet, length of dam at bottom seventy-four feet. Material ised in construction, crib, rock-filled; capacity of reservoir, 106 acre feet; size of head-gate, width 6 ft., height 5 ft.; conduit, flume or pipe; width at bottom if flume, 5 ft., width at water line, 5 ft., depth of water, 4 ft. Diameter of pipe: 48 inches. Average grade per mile is 5.28 ft. Length of conduit is 0.234 miles and it crosses the S.W.¼ of Sec. 25, T. 6 S.R. 13 E., B.B. & M. to main conduit (See Map); thence to point of use and return.

The Malade River diversion is in N.W.¼ of Sec. 36, T. 6 S. R. 13 E., B. B. & M.; the Cove Creek diversion in S.W.¼ of Sec. 25, T. 6 S. R. 13 E., B. B. & M.; the points of use and return in the N.W.¼ of Sec. 34, T. 6 S. R. 13 E., B. B. & M.,-- all in Lincoln County, Idaho.

APPROVAL OF STATE ENGINEER.

The number of this permit is 4366.

Date of first receipt of application 3.oo p.m. November 25, 1908.

Returned to applicant for correction December 25, 1908.

Corrected application received February 22, 1909.

Recorded in Book 12 *Page* 4366 *Approved* February 22, 1909.

This is to certify that I have examined the within application for a permit to appropriate the public waters of the State of Idaho and hereby grant the same, subject to the following limitations and conditions:

Good and sufficient bond to be filed in the sum of $ 2,200 *on or before* April 23, 1909.

~~Work to begin on or before ..... and to continue diligently and uninterruptedly to completion, unless temporarily interrupted by circumstances over which permittee has no control~~

One-fifth of the work above specified to be completed on or before August 22, 1911.

The whole of said work to be completed on or before February 22, 1914.

The time for proof of beneficial use of water appropriated in accordance herewith, to extend to February 22, 1918.

Witness my hand this twenty-second *day of* February, 1909.

4366

Jas Stephenson Jr
State Engineer.

INSTRUCTIONS.

Application will not be accepted nor permit granted thereunder, unless the following instructions are carefully carried out in preparing application blank and maps.

As to Application Blank.

Section 1. Insert name of applicant. Also postoffice address and county of residence. Subdivisions "I" and "II" are to be filled in **only** when applicant is a corporation.

Sec. 2. State the quantity of water claimed in second-feet, one second foot being the maximum allowed for 50 acres, except in very unusual cases. One second foot is considered as the equivalent of 50 miners' inches measured under a 4-inch pressure.

Sec. 3. Give name of stream or lake from which water is claimed. If a spring is the source of supply, give legal description of 40-acre tract in which it is situated. Where two or more sources are claimed, name or describe each separately and **specify amount claimed from each.**

Sec. 4. If point of diversion is on surveyed land, locate same by giving legal description of 40-acre tract in which it is situated. If upon unsurveyed land, give approximate distance to mouth of the stream from which water is claimed, or to the mouth of some creek putting into said stream in the vicinity. Where there is to be more than one point of diversion, number and describe **each separately,** and place such diversion numbers on the maps. In cases of springs on unsurveyed land, tie to some prominent and permanent land mark.

Sec. 5. Fill in Subdivision "I" if the water applied for is to be used for irrigation and domestic use. If intended for other purposes, fill in Subdivision "II."

Sec. 6. Give estimated cost of all construction works necessary to conduct water to place of use, including dams, ditches, flumes, etc. This should not include installation of machinery for power.

Sec. 7. In Subdivision "I" state generally what diversion works will be constructed. In Subdivision "II" give the dimensions of the works as indicated by the various blanks and give legal descriptions of quarter sections crossed by conduit.

Sec. 8. Indicate time desired within which to complete the diversion works, not exceeding five years.

Sec. 9. Indicate the time considered necessary to put water to beneficial use **after** the completion of the works, not exceeding four years.

As to Maps.

(A) Before permit will be granted applicant must file **two** maps showing the following details: (a) source or sources of supply; (b) point or points of diversion; (c) route of ditch or ditches delivering water within one mile of each 160-acre tract of the land to be irrigated; (d) lands to be irrigated to be shown by cross-hatching or outlining. If for power purposes, etc., the maps must show (a) source or sources of supply; (b) point or points of diversion; (c) route of ditch or ditches; (d) point or points of use; (e) point of return to stream after use.

(B) If the application is for more than 25 second-feet, the maps must be prepared from **actual survey** and must be certified to by engineer in charge of survey, certificates to contain (1) engineer's name and postoffice address; (2) date of survey.

General.

(C) A filing fee of $1.00 for the first second foot appropriated and ten cents additional for each additional second foot or fraction must be paid by applicant before permit will issue.

(D) Application will be accepted **temporarily** provided application blank be filed containing the information required in Sections 1 to 4, inclusive, and the statement as to purpose for which water is claimed, whether for irrigation, or power, etc. Applicant will then have 60 days from the date application is returned to him for completion within which to run surveys (where required), prepare maps and pay filing fee. However, it is best to submit maps and fees when application is filed, in all cases where a survey is not required, that is where the amount claimed is not more than 25 second-feet.

(E) The space in the blank under the head of "Remarks" is to be used for matter strictly pertaining to the application. It must not be used for letter writing.

No. 4366.

PERMIT

To appropriate water from Malad river & tributary

Lincoln *County, Idaho.*

Date of first receipt at office of State Engineer 3:2 pm. November 25 1908

Returned to applicant for correction December 25 1908

Corrected application received Feb 22 1909

Recorded in Book 12 *Page* 4366

Approved February 22, 1909.

Work to begin

Bond to be filed April 23, 1909.

One-fifth of work to be completed August 22, 1911.

Whole work to be completed February 22, 1914.

Final proof of use of water February 22, 1918.

Fees, $ 110.90 Pd

Statesman Printing Co., Boise, Idaho. 2-08-2000

4366

Form No. 150

State of Idaho

ENGINEERING DEPARTMENT

BOISE

JAS. STEPHENSON, JR.,
ENGINEER

NOTE

That in order to keep this permit in force a bond in the sum of $ 2,200.00 must be filed in the office of the State Engineer on or before April 23,1909.

conditioned upon faithfully carrying to completion the works of diversion as specified in said permit and in the application therefor.

JAS. STEPHENSON, JR.,

State Engineer.

4366