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In the District Court of the United States for the
District of Idaho, Eastern Division.

POWER & LIGHT COMPANY,

Plaintiff

vs.

THE LAST CHANCE CANAL COMPANY,
Limited, et. al.

Defendants.

In Equity

No. 203.

FINAL DECREE

Before HON. F. S. DIETRICH,
District Judge.

Filed July 14, 1920.

W. D. McREYNOLDS,
Clerk.

By PEARL ZANGER,
Deputy.

In Equity No. 203

In the District Court of the United States
for the District of Idaho, Eastern Division,

UTAH POWER & LIGHT COMPANY, a Corporation, *Plaintiff*,

vs.

The Last Chance Canal Company, Limited; The Tanner Canal Company, Limited; The Central Canal Company, The North Extension Canal Company, Limited; West Branch Canal Company, Limited; The Turner Canal Company, Limited; The East Branch Canal Company, The Bench Canal, and Budge Land & Live Stock Company, Limited, corporations; W. H. Larkins, Jas. Ellsmore, Geo. Hogan, Lewis S. Pond and Alex Harris as Trustees of the Gentile Valley Irrigation Company, Limited, late a corporation; The Thatcher Irrigation Company, Limited, a corporation; Nathan D. Thatcher, J. A. Folkman, Milton Robbins and Geo. M. Smith, as Trustees of Thatcher Canal & Power Company, Limited, late a corporation; Nelson Ditch Company, a corporation; A. J. Nielson, B. R. Meek, Henry McCuen, C. S. Burton and Eli Fosgreen, as Trustees of Riverdale-Preston Irrigation Company, late a corporation; The Riverdale Irrigating Company, Nielson-Meek Company and West Cache Irrigation Company, corporations; E. P. Johnson, Albert Johnson, Hyrum Johnson, Geo. D. Anderson, Joseph T. Pond, Frank W. Harris, A. C. Bosen, Hyrum J. Smith, John E. Hill, Melvin Green, Robert L. Smith, Charles Westerburg, Peter Westerburg and David P. Evans.

Horace Howard, Henry Rhinehart, Harvey W. Higley, James Monroe (or Munro), Nellie Simmons, John Baird, William Monroe (or Munro), Orrin Monroe (or Munro), Charles Monroe (or Munro), Charles Foster, Hyrum Foster, Mary Baird, John Woodall (or J. D. Woodall), George Ellis, Skinner Irrigation Company, a corporation; Heber Crane, Fred Bartschi, Charles Bartschi, David Chugg, Phillip Chugg, Fred Stauffer, William Williams, Sr. (or William Morgan Williams), William Williams, Jr. (or William Mormon Williams), Oliver Williams, E. M. Lindsay, Georgetown Irrigation Company, a corporation, and Thomas Freeman.

3. In addition to the storage rights of plaintiff, herein decreed, the waters of Bear River and its tributaries between the points hereinbefore described, as drawn within the jurisdiction of this court for distribution under this decree, are hereby allotted and decreed for the various beneficial uses herein specified, without waste to the plaintiff and defendants, respectively, and their successors in title and interest, in the amounts, for the purposes, and with the priorities, established and prescribed by the "Schedule of Rights" hereinafter defined.

The rights herein decreed and recognized are designated and classified as "Power Rights," "Irrigation Rights" and "Domestic Rights," respectively, and shall have the following characteristics:

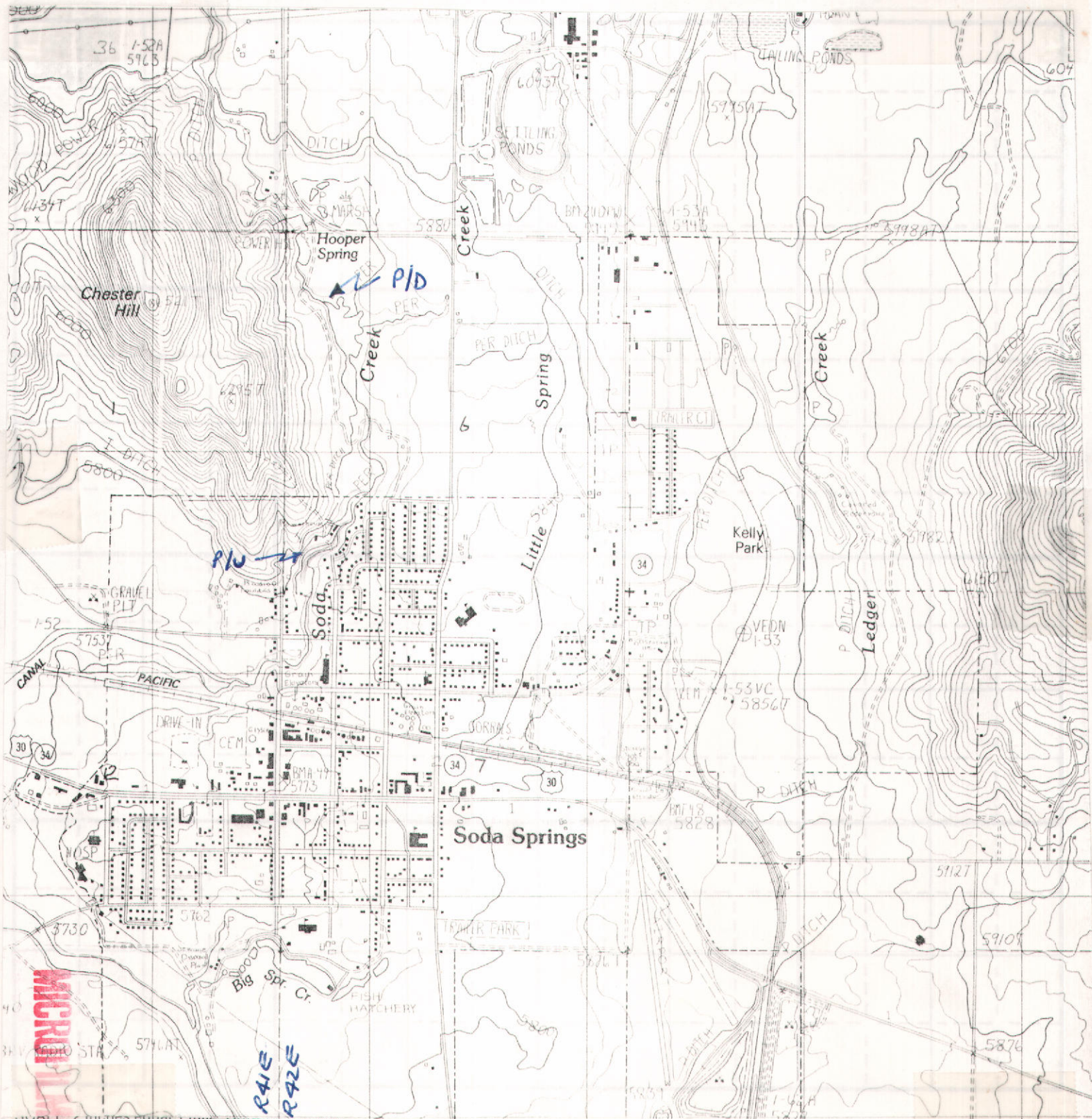
"Power Rights" include the right to divert and use water for the generation of electric power, and such rights of diversion and use are continuous throughout the year without limitation to time or season.

"Irrigation Rights" include the right to divert and use water for irrigation, culinary, domestic, and agricultural purposes connected therewith, throughout the irrigation season of each year, which is defined as that portion of each calendar year which commences on the 20th day of April and closes on the 30th day of September; subject to the qualification, however, that between the 20th and 30th days of April of each year, and the 15th and 30th days of September of each year, inclusive of each of said days, no irrigation appropriator shall divert or use more than 40 per cent of his or its allotment under the "Schedule of Rights" hereinafter prescribed, except as is hereinafter specifically provided in the "Schedule of Rights." The water allotted and decreed to the parties hereto for irrigation purposes is, and shall be, appurtenant to the land upon which the same has been applied and used, as described in the schedule; subject, however, to the rights of appropriators or shareholders in any appropriating canal company to change the place of diversion or use as provided by law when no damage or injury results to others, or to make any beneficial use of such waters, or any part thereof, which does not injure other appropriators.

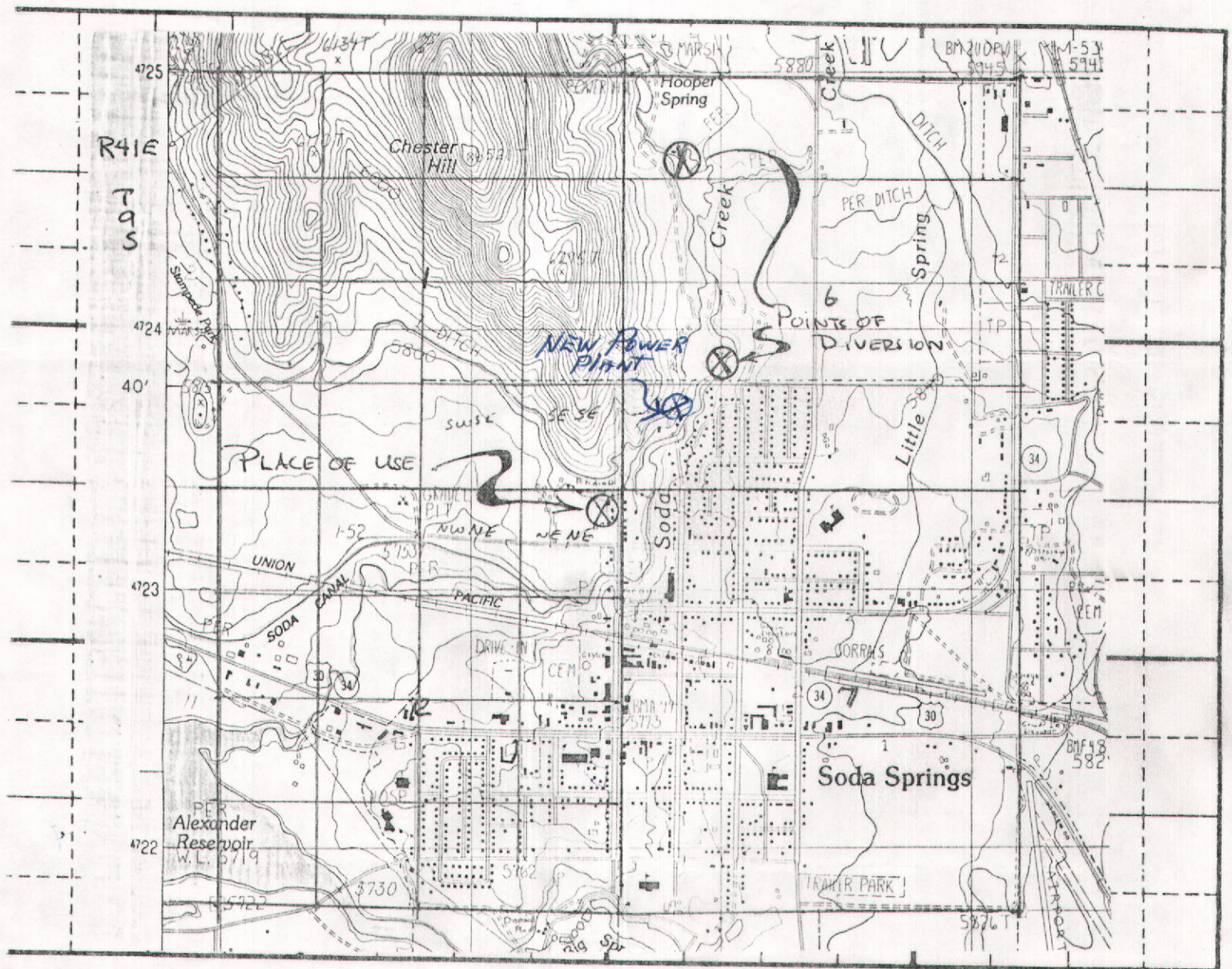
"Domestic Rights" include the right to divert and use water during the non-irrigating season, that is to say, from the first day of October of each year to the 19th day of April following, both dates inclusive, under agricultural appropriations and through irrigation ditches, for general domestic uses, including watering stock and culinary purposes. Each irrigation right herein decreed shall include and imply as a part thereof a domestic right to the use, during the non-irrigating season, of such of the waters allotted for irrigation purposes as are necessary for such domestic purposes and such shall be the measure of said domestic rights, and the extent of use of water through irrigation canals in the non-irrigation season,

[illegible]

- land involved by section, township and range number.



(8) Remarks _____



Scale: 2 inches equal 1 mile.
1:24,000

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)
County of Caribou) ss.

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

Robert Torgerson
(Claimant)

Sworn to before me this 10th day of October, 19 83.

Helen B. Kingsford
Notary Public
Residing at Soda Springs, Idaho

My commission expires Lifetime

10-26-83 FOR DEPARTMENT USE ONLY
Received by CW Date 6-23-83 Exception filed by: _____ Forwarded to: _____ Date: _____
Prelim. check by Kaw Date 10-27-83
\$30.00 fee received by CW Date 6-23-83 #30679
Published in Caribou County Sun
Dates 11/10 & 11/17/83

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11-2

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District of Idaho, Eastern Division.

POWER & LIGHT COMPANY,

Plaintiff

vs.

THE LAST CHANCE CANAL COMPANY,
Limited, et. al.

Defendants.

In Equity

No. 203.

FINAL DECREE

Before HON. F. S. DIETRICH

District Judge

July 13, 1920

W. D. McREYNOLDS,

Clerk

PEARL ZANGER,

Deputy

In Equity No. 203

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for the District of Idaho, Eastern Division,**

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VS.

The ~~First Chance~~ Canal Company, Limited; The Tanner Canal Company, Limited; The Central Canal Company, The North Extension Canal Company, Limited; West Branch Canal Company, Limited; The Turner Canal Company, Limited; The East Branch Canal Company, The Bench Canal, and Budge Land & Live Stock Company, Limited, corporations; W. H. Larkins, Jas. Ellsmore, Geo. Hogan, Lewis S. Pond and Alex Harris as Trustees of the Gentile Valley Irrigation Company, Limited, late a corporation; The Thatcher Irrigation Company, Limited, a corporation; Nathan D. Thatcher, J. A. Folkman, Milton Robbins and Geo. M. Smith, as Trustees of Thatcher Canal & Power Company, Limited, late a corporation; Nelson Ditch Company, a corporation; A. J. Nielson, B. R. Meek, Henry McCuen, C. S. Burton and Eli Fosgreen, as Trustees of Riverdale-Preston Irrigation Company, late a corporation; The Riverdale Irrigating Company, Nielson-Meek Company and West Cache Irrigation Company, corporations; E. P. Johnson, Albert Johnson, Hyrum Johnson, Geo. D. Anderson, Joseph T. Pond, Frank W. Harris, A. C. Bosen, Hyrum J. Smith, John E. Hill, Melvin Green, Robert L. Smith, Charles Westerburg, Peter Westerburg and David P. Evans.

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"Domestic Rights" include the right to divert and use water during the non-irrigating season, that is to say, from the first day of October of each year to the 19th day of April following, both dates inclusive, under agricultural appropriations and through irrigation ditches, for general domestic uses, including watering stock and culinary purposes. Each irrigation right herein decreed shall include and imply as a part thereof a domestic right to the use, during the non-irrigating season, of such of the waters allotted for irrigation purposes as are necessary for such domestic purposes and such shall be the measure of said domestic rights, and the extent of use of water through irrigation canals in the non-irrigation season,

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	DATE OF PRIORITY	AMOUNT IN SECOND FEET	POINT OF DIVERSION AND PLACE OF USE
188.	<i>Frank E. Ellis (substituted for John T. Corrigan and Minnie Corrigan:</i>		
11	0493 (a) 1889—June 17	0.3 c.f.s.	
11	0494 (b) 1894—May 1	4.0 c.f.s.	

189.	<i>Village of Soda Springs, a muni- cipal corporation:</i>		
11	0495 (a) 1907—June 1	40 c.f.s.	
	~~72989~~ Withdrawn		

11	0496 (b) 1917—October 1	4.0 c.f.s.	
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domestic

11	0497	190. Soda Springs Water Company: 1886—May 3	0.4 c.f.s.
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The Town Ditch, diverting from the said Soda Creek in the Northeast quarter of the Southwest quarter of Section 6, Township 9 South, Range 42 East, B.M. The following parties are entitled to divert from the said ditch with priorities and in the amounts hereinbelow set forth:

11	0498	192. Landi C. Eastman and Caroline D. Eastman: 1910—May 1	1.6 c.f.s.
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11	0499	193. T. H. Horsley: 1881—May 1	0.6 c.f.s.
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T. 1596

For the irrigation of 200 acres of land in the North half and the Southeast quarter of Section 2, Township 9 South, Range 41 East, B.M.

To be diverted from said Creek at the intake of the said Feeney ditch, thence conveyed through said Feeney ditch 3600 feet to the power plant of said corporation, and there used for the generation of electrical energy and then returned to the channel of said creek above the intake of the canal of the Farmers Land and Irrigation Company, in the Southwest quarter of Section 6, Township 9 South, Range 42 East.

Of the flow of that certain spring situate in the East half of the Northwest quarter of Section 6, Township 9 South, Range 42 East, B.M., for domestic use to be diverted through the reservoir and pipe line system of distribution owned by the said corporation.

Of the flow of certain springs situate in the Southwest quarter of the Southeast quarter of Section 6, Township 9 South, Range 42 East, B.M., a tributary of said Soda Creek, for domestic use. To be piped from the said springs to the residences of the stockholders of said company in platted portions of the Village of Soda Springs, Bannock County, Idaho.

For the irrigation of 80 acres of land in Lots 1 and 2, and the Southeast quarter of the Southwest quarter of said Section 6. Said water may be used through either the said Town ditch or the Lau ditch hereinabove described.

For the irrigation of 30 acres of land in the East half of the Southeast quarter of

DATE OF PRIORITY	AMOUNT IN SECOND FEET	POINT OF DIVERSION AND PLACE OF USE	DATE PRIORITY
188. <i>Frank E. Ellis (substituted for John T. Corrigan and Minnie Corrigan:</i>		For the irrigation of 200 acres of land in the North half and the Southeast quarter of Section 2, Township 9 South, Range 41 East, B.M.	
11 0499 (a) 1889—June 17	0.3 c.f.s.		
11 0499 (b) 1894—May 1	4.0 c.f.s.		186
189. <i>Village of Soda Springs, a muni- cipal corporation:</i>		To be diverted from said Creek at the in- take of the said Feeney ditch, thence con- veyed through said Feeney ditch 3600 feet to the power plant of said corporation, and <u>there used for the generation of electrical energy and then returned to the channel of said creek above the intake of the canal of the Farmers Land and Irrigation Com- pany, in the Southwest quarter of Section 6, Township 9 South, Range 42 East.</u>	
11 0499 (a) 1907—June 1	40 c.f.s.		
11 0499 (b) 1917—October 1	4.0 c.f.s.	Of the flow of that certain spring situate in the East half of the Northwest quarter of Section 6, Township 9 South, Range 42 East, B.M., for domestic use to be diverted through the reservoir and pipe line system of distribution owned by the said corpo- ration.	194. An soc ti
190. <i>Soda Springs Water Company:</i>		Of the flow of certain springs situate in the Southwest quarter of the Southeast quarter of Section 6, Township 9 South, Range 42 East, B.M., a tributary of said Soda Creek, for domestic use. To be piped from the said springs to the residences of the stockholders of said company in platted portions of the Village of Soda Springs, Bannock County, Idaho.	195. M 196. C 197. L 198. G 199. J 200. H 201. L
11 0499 1886—May 3	0.4 c.f.s.		202. T 203. G 204. G 205. I
<i>The Town Ditch, diverting from the said Soda Creek in the Northeast quarter of the Southwest quarter of Section 6, Township 9 South, Range 42 East, B.M. The following parties are entitled to divert from the said ditch with priorities and in the amounts hereinbelow set forth:</i>			206. 207.
192. <i>Landi C. Eastman and Caroline D. Eastman:</i>		For the irrigation of 80 acres of land in Lots 1 and 2, and the Southeast quarter of the Southwest quarter of said Section 6. Said water may be used through either the said Town ditch or the Lau ditch herein- above described.	208. 209.
11 0499 1910—May 1	1.6 c.f.s.		210. 211.
193. <i>T. H. Horsley:</i>		For the irrigation of 30 acres of land in the East half of the Southeast quarter of	
11 0499 1881—May 1	0.6 c.f.s.		

Transfer No. T2989
Water Right No. 11-0495

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
To Change the Point of Diversion and/or the Place of Use

Name of applicant City of Soda Springs Phone 208-547-2151
Post Office address 9 West Second South, Soda Springs, ID 83276

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:
- a. Decree No. 11-0495 Decreed to Village of Soda Springs
(Name)
in case of Utah Power & Light Co. vs Last Chance Canal Co.
dated in 7-14-1920 in District Court county of Caribou
(Name of court)
 - b. License No. _____ issued by the Idaho Department of Water Resources
 - c. Claim No. _____ on file with the Idaho Department of Water Resources
2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant _____
3. Source of water Soda Creek tributary to Bear River
4. Date of priority 6-1-1907
5. Water is used for the following purposes: *Not specified in decree
amount 40 for Power Generation purposes from * to *
amount _____ for _____ purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
(month/day — both dates inclusive)
6. Total amount of water under right: a. 40 cubic feet per second
&/or
b. _____ acre feet per annum
*Not specified in decree
7. Location of original point of diversion is _____ 1/4 of _____ 1/4 of Section _____
Township _____ Range _____, B.M., in _____ County
Additional points of diversion, if any _____
8. Lands irrigated or place of use: *Not specified in decree

TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total number of acres to be irrigated _____

9. Describe any other water rights used for the same purpose as described above The city also holds water rights 11-2091, 11-2092, 11-2133, 11-2156 & 11-2161 for power
10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years gen. of nonuse? No If yes, describe in item D, REMARKS.

B. DESCRIPTION OF PORTION OF RIGHT OWNED BY APPLICANT (If the entire right is owned by the applicant, omit part B).

1. Amount of water: a. _____ cubic feet per second
&/or
b. _____ acre feet per annum
2. Point of diversion _____ 1/4 _____ 1/4, Section _____ Township _____
Range _____, B.M., _____ County
Additional points _____
3. Place of use:

TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total number of acres to be irrigated _____

C. DESCRIPTION OF RIGHT OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

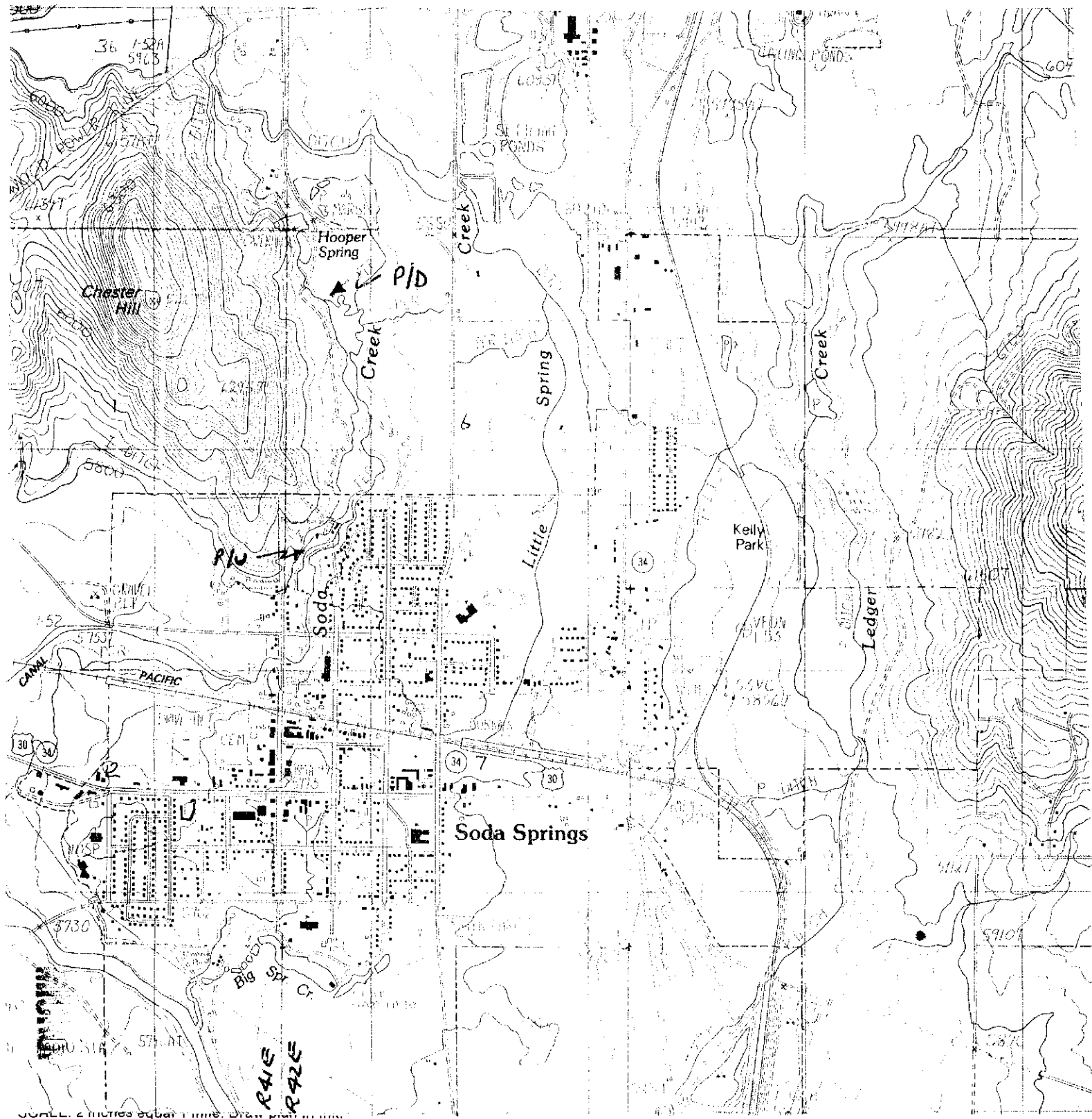
1. General Information
- a. Amount of water to be diverted 40 c.f.s. &/or _____ acre feet
- b. Description of diverting works Existing concrete diversion dam. This dam diverts water into the "Feeney Ditch".
- c. Describe the reasons for the proposed changes The city is proposing replacement of existing Powerplant No. 1 & 2 with a new powerplant (No. 5 located within the same 40 acre tract as existing Powerplant 1. Powerplant No. 5 will use the combined water rights for Powerplant No. 1 (11-0495) and Powerplant No. 2 (11-2092).
2. Change in point of diversion No Change (See "remarks")
- Point of diversion NW 1/4 NW 1/4, Section 6 Township 9S
Range 42E, B.M., Caribou County
Additional points _____
3. Change in place of use (No change) See "remarks"
- a. Are there liens, mortgages, or contracts on the lands from which you propose to transfer the water right which limit your authority to make the proposed change? Yes _____ No X. If yes, provide a statement agreeing to the proposed change from the holder of the lien, mortgage or contract.
- b. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer

c. Describe the land or place of use to which the right will be transferred:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
9S	42E	6											X						

Total number of acres to be irrigated _____

4. Describe any other water rights used for the same purpose as described above. The city currently holds water right 11-2092 and has made application to transfer the points of diversion & use to match 11-0495 (See application dated 11-9-83)
5. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



D. REMARKS

This application for transfer is submitted to clarify the point of diversion, period of use and place of use of water right 11-0495. The point of diversion will remain as is in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 6, T. 9S, R. 42E. Although the point of use will change, it will remain within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 6, T. 9S, R. 42E. The period of use will be from 1-1 to 12-31

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willfull misrepresentations made in this application may result in voiding its approval.

Subscribed and sworn to before me this 19th day of January, 19 84

My commission expires Lifetime

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____ and said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 19 _____

FOR DEPARTMENT USE ONLY			
Received by <u>CW</u>	Date <u>1-5-84</u>	Protest filed by <u>Robert Torgesen</u>	
Prelim. check by <u>Ym</u>	Fee <u>50.00</u>		
Receipted by <u>BP</u>	Date <u>1-5-84</u> # <u>29798</u>		
Published in <u>Caribou County Sun</u>	Copies of protest forwarded by <u>CW</u>		
Pub. dates <u>2/2 - 2/9/84</u>	Hearing held by _____ Date _____		
Watermaster recommendation requested on _____	Recommended for _____ approval _____ denial _____		
_____ rec'd.	by _____		

FEDERAL ENERGY
REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300

POSTAGE AND FEES PAID
FEDERAL ENERGY
REGULATORY COMMISSION
FERC 351



RECEIVED

MAR 19 1984

Department of Water Resources

State of Idaho P-7959
Dept. of Water Resources
State House
Boise, Idaho 83720

These two water rights
will be used
SD-

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Notice of Application Filed with the Commission

(March 15, 1984)

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

- a. Type of Application: SMW Exemption
- b. Project No: 7959-000
- c. Date Filed: January 5, 1984
- d. Applicant: City of Soda Springs
- e. Name of Project: Soda Creek Hydro Project
- f. Location: On Soda Creek in Caribou County, Idaho
- g. Filed Pursuant to: Section 408 of the Energy Security Act (Act) (16 U.S.C. §§2705 and 2708 as amended).
- h. Contact Person: David H. Clegg, Mayor, City of Soda Springs, 9 West Second South, Soda Springs, Idaho 83276.
- i. Comment Date: APR 30 1984
- j. Description of Project: The proposed run-of-river project would consist of: (1) an existing diversion dam at El. 5841.8 feet m.s.l.; (2) an existing power canal, 3,636 feet long, to be extended approximately 800 feet; (3) a new intake structure and trashrack; (4) a new 42-inch penstock, approximately 400 feet long; (5) a new powerhouse containing a turbine-generator unit rated at 370-kw; (6) a tailrace returning flow to Soda Creek; (7) a new 12.5-kv underground transmission line, approximately 150 feet long, connecting to an existing line; and (8) appurtenant facilities. The Applicant estimates that the average annual energy output would be 1,900,000 kWh. Project energy would be utilized by the Applicant. Applicant has the real property interests required for the project.
- k. This notice also consists of the following standard paragraphs: Al, A9, B, C and D1a
- l. Purpose of Exemption: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Al. Exemption for Small Hydroelectric Power Project under SMW Capacity -- Any qualified license or conduit exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing license or conduit exemption application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such an application. Any qualified small hydroelectric exemption applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, either a competing small hydroelectric exemption application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing license, conduit exemption, or small hydroelectric exemption application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

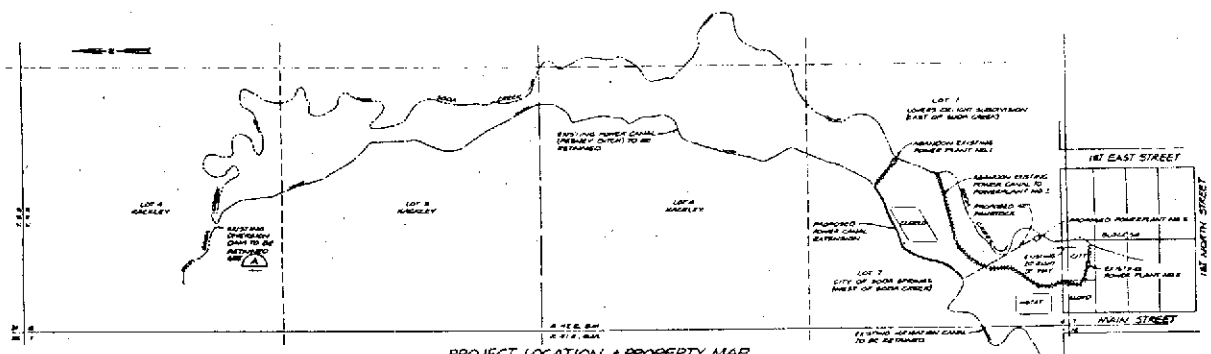
A9. Notice of Intent -- A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a license, small hydroelectric exemption, or conduit exemption application, and be served on the applicant(s) named in this public notice.

B. Comments, Protests, or Motions to Intervene - Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. 55385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

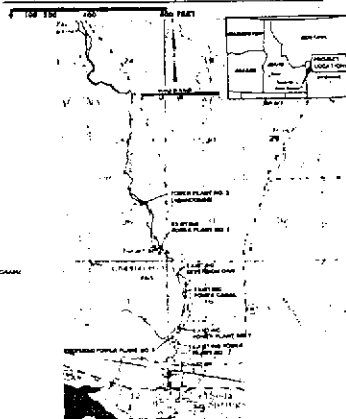
C. Filing and Service of Responsive Documents - Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Deputy Director, Project Management, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D3a. Agency Comments - The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

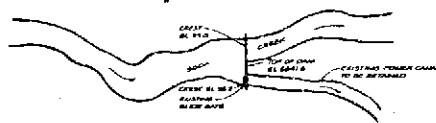
Kenneth F. Plumb
Secretary



PROJECT LOCATION & PROPERTY MAP



VICINITY MAP



EXISTING DIVERSION DAM
(SEE INDEPENDENT REPORT)

DETAIL A
0' 100' 200' 300' 400' 500' 600' 700' 800' 900' 1000'

NOTES
CONSTRUCTION IN THE PROJECT AREA MUST BE IN ACCORDANCE WITH THE CITY OF BOCA RATON'S ZONING ORDINANCE AND THE BOCA CREEK HYDROELECTRIC PROJECT'S DESIGN. THE CITY OF BOCA RATON'S ZONING ORDINANCE IS A PUBLIC LAW AND MUST BE OBTAINED FROM THE CITY OF BOCA RATON'S PLANNING DEPARTMENT. THE CITY OF BOCA RATON'S PLANNING DEPARTMENT IS A PUBLIC LAW AND MUST BE OBTAINED FROM THE CITY OF BOCA RATON'S PLANNING DEPARTMENT.

CERTIFICATION

THIS DRAWING IS A PART OF THE APPLICATION FOR EXEMPTION FROM LICENSING MADE BY THE UNDERSIGNED TO THE FLORIDA DEPARTMENT OF REVENUE. THE UNDERSIGNED IS A PROFESSIONAL ENGINEER AND IS NOT PROVIDING ANY GUARANTEE OR WARRANTY FOR THE PROJECT. THE UNDERSIGNED IS NOT PROVIDING ANY GUARANTEE OR WARRANTY FOR THE PROJECT.

APPLICATION FOR EXEMPTION FROM LICENSING

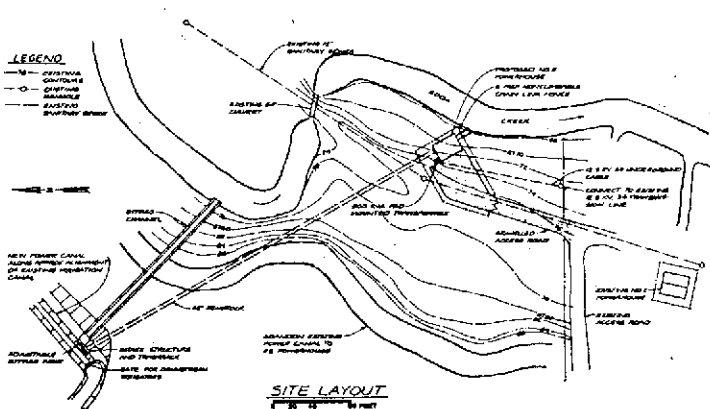
EXHIBIT B

PROJECT LOCATION AND PROPERTY OWNERSHIP

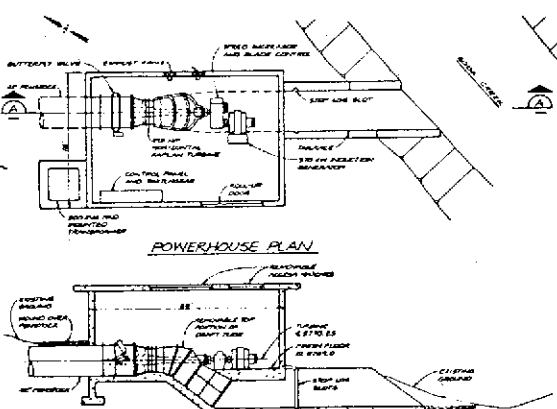
BOCA CREEK HYDROELECTRIC PROJECT

SHEET 1 OF 1

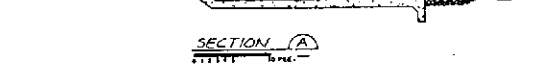
P-7454-000



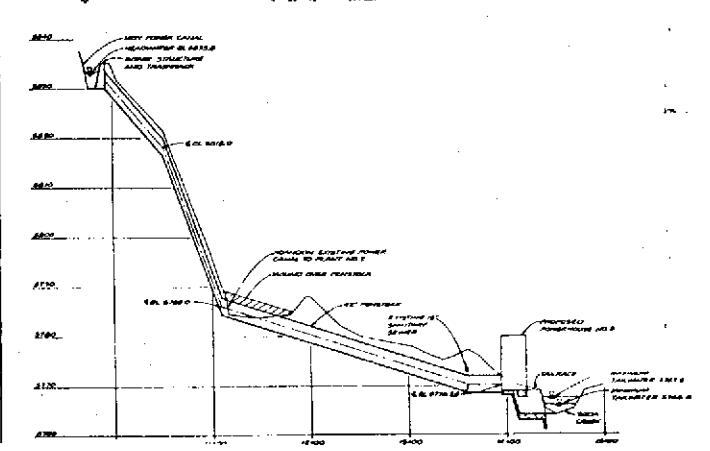
SITE LAYOUT



POWERHOUSE PLAN



SECTION A



CERTIFICATION

THIS DRAWING IS A PART OF THE APPLICATION FOR EXEMPTION FROM LICENSING MADE BY THE UNDERSIGNED TO THE FLORIDA DEPARTMENT OF REVENUE. THE UNDERSIGNED IS A PROFESSIONAL ENGINEER AND IS NOT PROVIDING ANY GUARANTEE OR WARRANTY FOR THE PROJECT. THE UNDERSIGNED IS NOT PROVIDING ANY GUARANTEE OR WARRANTY FOR THE PROJECT.

APPLICATION FOR EXEMPTION FROM LICENSING

EXHIBIT G

SITE LAYOUT AND POWERHOUSE DETAILS

BOCA CREEK HYDROELECTRIC PROJECT

SHEET 1 OF 1

P-7454-000

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

83 FERC 62,067

City of Soda Springs, Idaho) Project No. 7959-000

ORDER GRANTING EXEMPTION FROM LICENSING OF A
SMALL HYDROELECTRIC PROJECT OF 5 MW OR LESS

(Issued October 17, 1985)

The Applicant 1/ filed an application for exemption from all or part of Part 1 of the Federal Power Act (Act) pursuant to 18 C.F.R. Part 4 Subpart K (1980) implementing in part Section 408 of the Energy Security Act (ESA) of 1980 for a project as described in the attached public notice. 2/

Notice of the application was published in accordance with Section 408 of the ESA and the Commission's regulations and comments were requested from interested Federal and State agencies including the U.S. Fish and Wildlife Service and the State Fish and Wildlife Agency. All comments, protests and petitions to intervene that were filed have been considered. No agency has any objection relevant to issuance of this exemption.

Motions to Intervene, Protests, and Comments

On May 1, 1984, Evan M. and Lois Kackley (protestants) filed comments and a protest regarding the exemption application filed for Project No. 7959. The protestants contend that the Environmental Report of the application lacks completeness. The protestants have requested that: (1) further investigation be made concerning deer crossings and the importance of wetlands to deer and other animals; (2) a minimum streamflow be established above the point of diversion; (3) further evaluation of Soda Creek hydrology be made; and (4) parks and recreation areas be included in the exemption and the historical springs be restored.

The Environmental Report of the application was found adequate on January 25, 1984. Terms and conditions have been set by the responsible resource agencies for the protection of fish and wildlife resources. Terms and conditions set by the Idaho Department of Fish and Game address water quality, vegetation, deer migration, canal encroachment features to prevent deer drownings, and flow diversion. These terms and conditions have been forwarded to the

1/ City of Soda Springs, Idaho, Project No. 7959, filed on January 5, 1984.

2/ Pub. Law 96-294, 94 Stat. 611, Section 408 of the FSA amends Inter alia, Sections 405 and 408 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. §§2705 and 2708).

Applicant in conjunction with this exemption. Standard Article 2, included in this exemption, requires compliance with any terms and conditions that Federal or state fish and wildlife agencies have determined appropriate to prevent loss of, or damage to, fish and wildlife resources. 3/

Although Section 4.107(e)(1) of the Commission's regulations, 18 CFR §4.107(e)(1) (1985), requires that Exhibit E of the exemption application include a description of recreational uses at the project, recreational development plans are not required for exemption projects. The Applicant has stated however, that as local demands require, recreational development in the area will be considered. Recreational areas near the project currently include Hooper Springs Park, located adjacent to Soda Creek and 1/4-mile north of the existing diversion dam. The park is the location of historic Soda Springs and includes picnic facilities within its 40-acre site.

The protestants also contest the Applicant's proposal to divert approximately 40 cfs through the existing power canal (Feeney Ditch) across property owned by the protestants. The City had indicated in its exemption application that it had been using Feeney Ditch, a portion of which is located on the protestants' lands, for over 70 years, and that the City had acquired the right of usage by virtue of a prescriptive easement.

The protestants contend that the Applicant lacks authority to divert any amount of water through the Feeney Ditch across the protestants' lands, in excess of the 48 cfs water right previously acquired by a 1915 deed and a 1920 court decree. The protestants therefore claim that the Applicant would be exceeding its water use privilege by its proposed use of the ditch. The protestants raised this claim with the District Court (Court) for the State of Idaho in a request to permanently enjoin the Applicant from increasing the volume of water within the ditch from an amount in excess of 44.8 cfs. 4/ On February 15, 1985, the Applicant filed a copy of the Court's February 7, 1985 decision, finding that the Applicant has the right to modify the use of its easement by increasing the volume of water, as proposed, so long as the modification does not create an unreasonable increase in burden on the protestants' estate. In the absence of a showing that

3/ An exemption from licensing granted by this Commission does not serve as any basis for restricting hunting and fishing access to the waterway involved except to the extent required for public safety purposes.

4/ The Kackleys, in their protest filed with the Commission May 1, 1984, state opposition to the City of Soda Springs, Idaho increasing the amount of water through the Feeney Ditch in excess of 48 cfs, but in the proceeding before the District Court for the State of Idaho, the Kackleys stated opposition to an amount in excess of 44.8 cfs.

11-2091 } are the water
4 } into proposed
11-0495 } for well per BDF
-2-

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OCT 22 1985

There would be any increased burden, the Court denied the Protestants' request for permanent injunctive relief.^{5/}

On June 6, 1985, and August 20, 1985, the Protestants filed supplements to their May 1 protest in this proceeding. The Protestants alleged that the Applicant had engaged in project construction activities while its application for exemption from licensing was pending at the Commission. The Commission staff conducted an investigation, including an on-site inspection, and determined that the on-going maintenance activities were designed to provide efficiency and safety for the current project and did not involve the commencement of construction of the proposed project.

In light of the foregoing, it is concluded that issuance of an exemption for the proposed project would be consistent with the public interest.

Environmental Considerations

The Idaho State Archeologist recommends that a professional archeologist inspect the project areas where new construction will take place as there is some possibility of important archeological sites being located in the project area. The U.S. Department of the Interior states that for coordination of compliance with the National Historic Preservation Act, the Applicant should contact the National Park Service and the State Historic Preservation Officer (SHPO). The National Historic Preservation Act requires an inventory of the project's impact areas. Therefore, Article 9 requires the Exemptee, prior to any construction, to consult with the SHPO to determine the scope of any necessary cultural resource survey and to conduct the survey as necessary. Based on survey results, the Exemptee should assess the significance of any sites found and provide recommendations for mitigation developed in cooperation with the SHPO.

Should the Applicant contest any terms or conditions that were proposed by Federal or state agencies in their letters of comment as being outside the scope of Article 2, the Commission shall determine whether the disputed terms or conditions are outside the scope of Article 2.

Based on the terms and conditions required by Federal and state fish and wildlife agencies, the environmental information in the application for exemption, other public comments, and staff's

5/ By order of June 13, 1985, the Court denied the Protestants' motion to modify its February 7 ruling.

independent analysis, issuance of this order is not a major Federal action significantly affecting the quality of the human environment.^{6/}

The Director of the Office of Hydropower Licensing or the Director's designee, under 18 C.F.R. §375.314, orders:

(A) Soda Creek Hydro Project No. 7959 as described and designated in the City of Soda Springs, Idaho application filed on January 5, 1984, is exempted from all of the requirements of Part I of the Federal Power Act, including licensing, subject to the standard articles in §4.106 of the Commission's regulations attached hereto as Form E-2, 18 C.F.R. §4.106, 50 Fed. Reg. 11,658 (March 25, 1985), and the following Special Article:

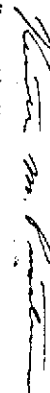
For the purposes of applying these provisions of 18 CFR Part 12, the exempted project is deemed to be a licensed project development and the owner of the exempted project is deemed to be a licensee.

Article 9. The Exemptee shall, prior to the commencement of any construction, consult with the Idaho State Historic Preservation Officer (SHPO), to: (1) determine the scope of any necessary cultural resource survey; (2) conduct such a survey and (3) prepare a report to be filed with the SHPO describing the results of its survey work, providing an assessment of the significance of the cultural resources inventoried, including possible eligibility for the National Register of Historic Places, and setting forth recommendations for the avoidance of, or mitigation of damage to, significant properties at the project. Any necessary mitigation work should be undertaken by the Exemptee in cooperation with the SHPO and in accordance with a schedule and plan negotiated between the Exemptee and the SHPO. The Exemptee shall make available funds in a reasonable amount for any survey and mitigation work as required. If any previously unrecorded archeological or historical sites are discovered during the course of construction or development of any project works or other facilities at the project, construction activity shall be halted, a qualified archeologist shall be consulted to determine the significance of the sites, and the Exemptee shall consult with the SHPO to develop and implement a mitigation plan for the protection of significant archeological or historical resources.

6/ Environmental Assessment, City of Soda Springs, Idaho, PERC Project No. 7959 - Idaho, Division of Environmental Analysis, Office of Hydropower Licensing, Federal Energy Regulatory Commission, May 15, 1985. This document is available in the Division of Public Information and in the Commission's public filed associated with the proceeding.

-5-

(B) This order is final unless appealed to the Commission by any party within 30 days from the issuance date of this order under 18 C.F.R. 385.1902 (1985).


Kenneth M. Pusateri
Acting Director, Office of
Hydropower Licensing

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

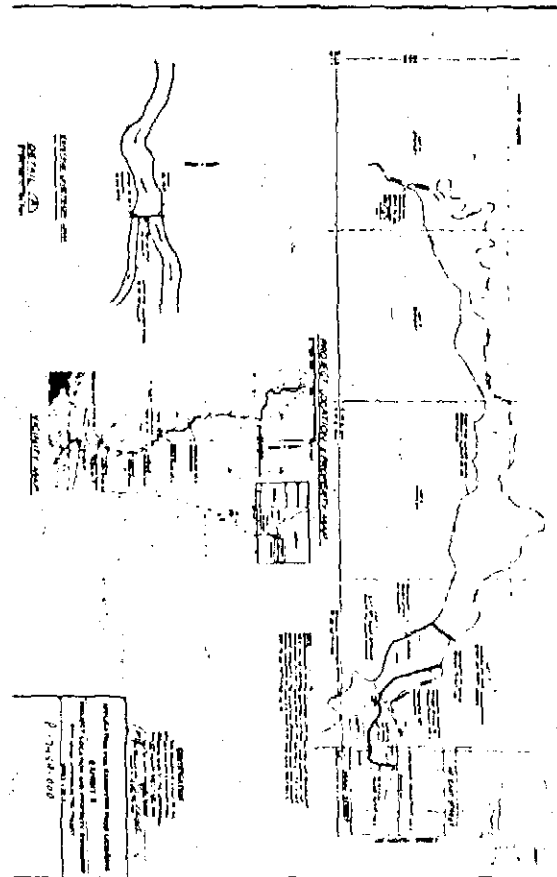
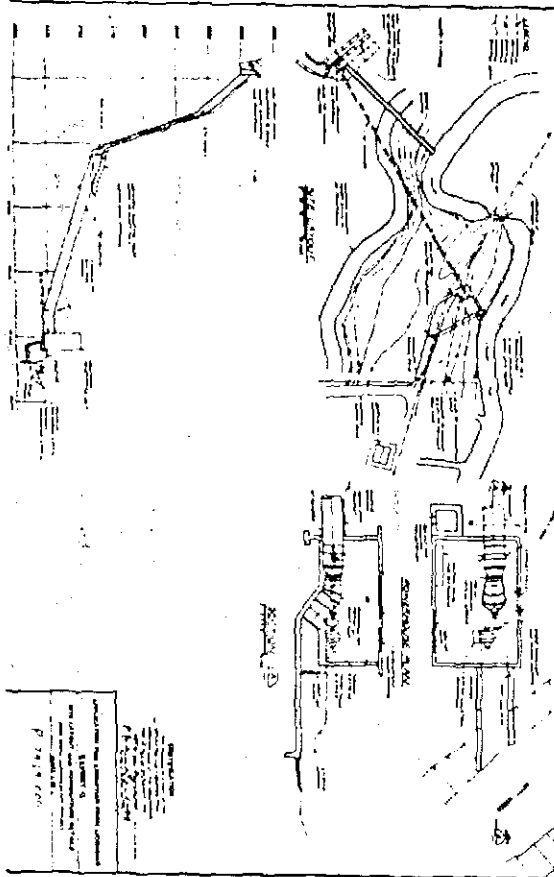
Notice of Application filed with the Commission

(March 15, 1984)

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

- a. Type of Application: New Exemption
- b. Project No: 3459-000
- c. Date Filed: January 5, 1984
- d. Applicant: City of Soda Springs
- e. Name of Project: Soda Creek Hydro Project
- f. Location: On Soda Creek in Caribou County, Idaho
- g. Filled Pursuant to: Section 408 of the Energy Security Act (ESA) (16 U.S.C. 3521(b) and 2108 as amended).
- h. Contact Person: David M. Craig, Mayor, City of Soda Springs, 9 West Second South, Soda Springs, Idaho 83276.
- i. Comment Date: APR 30 1984
- j. Description of Project: The proposed run-of-river project would consist of: (1) an existing diversion dam at E. Soda's foot wall; (2) an existing power canal, 1,616 feet long, to be extended approximately 800 feet; (3) a new intake structure and trashrack; (4) a new 42-inch penstock, approximately 400 feet long; (5) a new powerhouse containing a turbine-generator unit rated at 100-kw; (6) a tailrace returning approximately 1,000 cfs of water to the river; (7) a new 12.5-inch penstock, approximately 1,000 feet long, connecting to an existing line; and (8) appurtenant facilities. The Applicant estimates that the average annual energy output would be 1,900,000 kWh. Project energy would be utilized by the Applicant. Applicant has the real property interests required for the project.
- k. This notice also consists of the following attached paragraphs: A1, A2, B, C and D12
- l. Purpose of Exemption: An exemption, if issued, gives the exemption priority of control, development, and operation of the project works the terms of the exemption from its existing and previous the exemption from project of license applicants that would seek to take or develop the project.

10-6-70



-1-

§ 4.106 Standard terms and conditions of exemption from licensing

Any exemption from licensing granted under this subpart for a small hydroelectric power project is subject to the following standard terms and conditions:

(a) Article 1. The Commission reserves the right to conduct investigations under sections 4(g), 306, 307, and 311 of the Federal Power Act with respect to any acts, complaints, facts, conditions, practices, or other matters related to the construction, operation, or maintenance of the exempt project. If any term or condition of the exemption is violated, the Commission may revoke the exemption, issue a suitable order under section 4(g) of the Federal Power Act, or take appropriate action for enforcement, forfeiture, or penalties under Part III of the Federal Power Act.

(b) Article 2. The construction, operation, and maintenance of the exempt project must comply with any terms and conditions that the United States Fish and Wildlife Service, any state fish and wildlife agencies have determined are appropriate to prevent loss of, or damage to, fish or wildlife resources or to otherwise carry out the purposes of the Fish and Wildlife Coordination Act, as specified in Exhibit E of the application for exemption from licensing or in the comments submitted in response to the notice of the exemption application.

(c) Article 3. The Commission may revoke this exemption if actual construction or any proposed generating facilities has not begun within two years, or has not been completed within four years from the date on which this exemption was granted. If an exemption is revoked under this article, the Commission will not accept from the prior exemption holder a subsequent application for exemption from licensing or a notice of exemption from licensing for the same project within two years of the revocation.

(d) Article 4. This exemption is subject to the navigation servitude of the United States if the project is located on navigable waters of the United States.

(e) Article 5. This exemption does not confer any right to use or occupy any Federal lands that may be necessary for the development or operation of the project. Any right to use or occupy any Federal lands for those purposes must be obtained from the administering Federal land agencies. The Commission may accept a license application, by any qualified license applicant and revoke this exemption, if any necessary right to use or occupy Federal lands for those purposes has not been obtained within one year from the date on which this exemption was granted.

-2-

(f) Article 6. In order to best develop, conserve, and utilize in the public interest the water resources of the region, the Commission may require that the exempt facilities be modified in structure or operation or may revoke this exemption.

(g) Article 7. The Commission may revoke this exemption if, in the application process, material discrepancies, inaccuracies, or falsehoods were made by or on behalf of the applicant.

(h) Article 8. Any exempted small hydroelectric power project that utilizes a dam that is more than 33 feet in height above streambed, as defined in 18 CFR 12.31(c) of this chapter, impounds more than 2,000 acre-feet of water, or has a significant or high hazard potential, as defined in 33 CFR part 222, is subject to the following provisions of 18 CFR part 12, as it may be amended:

- (1) Section 12.4(b)(1)(i) and (ii), (b)(2)(i) and (iii), (b)(iv), and (b)(v);
- (2) Section 12.4(c);
- (3) Section 12.5;
- (4) Subpart C; and
- (5) Subpart D.

For the purposes of applying these provisions of 18 CFR part 12, the exempted project is deemed to be a licensed project development and the owner of the exempted project is deemed to be a licensee.

(i) Before transferring any property interests in the exempt project, the exemption holder must inform the transferee of the terms and conditions of the exemption. Within 30 days of transferring the property interests, the exemption holder must inform the Commission of the identity and address of the transferee.



State of Idaho

DEPARTMENT OF WATER RESOURCES

STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS

Governor

A. KENNETH DUNN

Director

Mailing address:
Statehouse
Boise, Idaho 83720
(208) 334-4440

August 3, 1984

City of Soda Springs
Attn: Mr. Roy G. Rainey, City Administrator
9 West Second South
Soda Springs, ID 83276

RE: Application for Transfer No. 2989 for Decreed Water Right No. 11-0495,
in the name of the City of Soda Springs

Dear Mr. Rainey:

We are in receipt of your letter dated July 27, 1984, in which you acknowledged receipt of the Petition for Leave to Intervene in connection with the above-referenced Application for Transfer.

We have informed Mr. Goodman by a letter of this date that the subject application has been withdrawn by the City of Soda Springs. We also indicated that the petition would be maintained in the permanent record of the withdrawn Application for Transfer, so the information contained therein would be available should further questions about the application arise.

You also requested notification of any and all claims and applications to the use of water from Soda Creek which may have been filed by the Kackleys recently. We searched our computer records for any such filings, and double-checked with our Eastern Regional Office in Idaho Falls, and we were not able to find the filings to which paragraph three of page three of the petition referred. In our letter to Mr. Goodman, we indicated that he may want to investigate this matter further for purposes of clarification in the future.

Regarding your request to be notified of claims and applications which are filed in Sec. 6, Twp 9S, Rge 42E, subsequent to the date of your letter, please be advised that we currently have no means of notifying interested parties regarding water rights that are filed. Because we do not have a system that will accurately and fully notify any interested party, we

Mr. Roy G. Rainey
August 3, 1984
Page 2

rely on the statutory procedure of advertising all such new water rights in the county where the point of diversion is located. Therefore, we would suggest that you review the public notices in the Caribou County Sun to receive notification of such new water rights.

If you have further comments or questions regarding this matter, please feel free to contact either this office or our Eastern Regional Office in Idaho Falls.

Sincerely,

A handwritten signature in cursive script that reads "David R. Tuthill Jr.".

DAVID R. TUTHILL, JR., P.E.
Supervisor, Water Allocation Section

DRT:ls

cc: Eastern Region

DAVID H. CLEGG
Mayor

PHILLIP MERCHEN
President

LARAE RASMUSSEN
Clerk-Treasurer

ROY G. RAINEY
City Administrator

City of Soda Springs

County Seat and Commercial Center of
Caribou County
Founded May 20, 1863
9 West Second South - Phone 547-2151
SODA SPRINGS, IDAHO 83276

July 27, 1984

Councilmen

Phillip Merchen
Carl L. Schenck
Robert K. Torgesen
Edie Tracy

RECEIVED
JUL 30 1984

Department of Water Resources

A. Kenneth Dunn, Director
Department of Water Resources
Statehouse
450 West State Street
Boise, Idaho 83720

Dear Director Dunn:

We have been served with a letter from William T. Goodman, Esq., dated July 25, 1984, together with a Petition for Leave to Intervene in connection with Application No. 2989, City of Soda Springs. License No. 11-0495. We assume that these documents refer to our application of January 19, 1984, numbered 29798.

Your attention is directed to my letter to you dated June 20, 1984, withdrawing the Application for Transfer of Water Right No. 11-0495. That request was acknowledged and confirmed by Mr. Ernest Carlsen's letter of July 11, 1984.

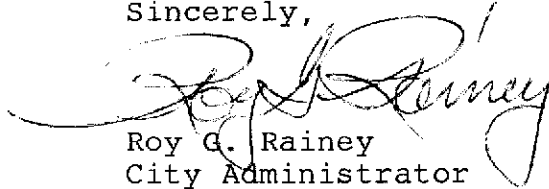
We are interested in the statement made on page three in paragraph three, "Your Petitioner has filed with the Department of Water Resources, prior hereto, a Claim of Water Right for such purposes." We have requested information relative to said claim and are advised that no such claim exists either in your Idaho Falls or Boise offices. We respectfully request that you diligently research the said Claim and advise us if it does or does not exist.

We further request notification of any and all claims and applications which have been filed heretofore in 1984, in Sec. 6, T9S, R42 EBM, or which are filed subsequent to the date of this letter.

Page 2 - A. Kenneth Dunn, Director

We appreciate your assistance and cooperation and trust that you will advise Mr. Goodman of the current status of 11-0495.

Sincerely,

A handwritten signature in cursive script, appearing to read "Roy G. Rainey". The signature is written in dark ink and is positioned above the printed name and title.

Roy G. Rainey
City Administrator

RGR:nh



State of Idaho

DEPARTMENT OF WATER RESOURCES

STATE OFFICE, 450 W. State Street, Boise, Idaho

JOHN V. EVANS

Governor

A. KENNETH DUNN

Director

Mailing address:

Statehouse

Boise, Idaho 83720

(208) 334-4440

August 3, 1984

Goodman and Duff
Attn: William T. Goodman
P.O. Box 61
Rupert, ID 83350

RE: Application for Transfer No. 2989 for Decreed Water Right No. 11-0495,
in the name of the City of Soda Springs.

Dear Mr. Goodman:

We are in receipt of your letter dated July 25, 1984, and the Petition for Leave to Intervene regarding the above-referenced Application for Transfer.

Please be advised that pursuant to a request by Mr. Roy G. Rainey, Administrator of the City of Soda Springs, the Application for Transfer has been withdrawn and is no longer valid. The information that you have provided, however, will become a part of the permanent file regarding the transfer application, and will be made available should further questions about the Application for Transfer arise.

After receiving a copy of the Petition for Leave to Intervene, Mr. Rainey wrote a letter to this office in which he requested information relating to a certain portion of the document. Page three, paragraph three includes the statement, "Your Petitioner has filed with the Department of Water Resources, prior hereto, a Claim of Water Right for such purposes." Mr. Rainey requested information regarding the water right filings to which this statement referred. We have conducted a search for such water rights in this office, and cannot locate any filings to the use of waters of Soda Creek that have been made by Mrs. Kackley. We did locate some decreed rights in the name of Kackley, but the decreed water rights appear to be in a location other than that in question.

Because the Application for Transfer has been withdrawn, the question regarding the recording of Mrs. Kackley's water rights does not bear on

William T. Goodman
P.O. Box 61
Rupert, ID 83350

any pending decision. Rather, the question is posed as a matter of clarification, with the anticipation that at some time in the future the information may be desired. If you wish to clarify this matter, I would suggest that you contact our Eastern Regional Office in Idaho Falls.

Sincerely,

David R. Tuthill Jr.

DAVID R. TUTHILL, JR., P.E.
Supervisor, Water Allocation Section

DRT:ls

cc: Eastern Region

WILLIAM T. GOODMAN
LARRY R. DUFF
ALAN GOODMAN
THOMAS P. BASKIN

LAW OFFICE
Goodman and Duff

CHARTERED
717 7TH STREET
BOX 61
RUPERT, IDAHO 83350
July 25, 1984

AREA CODE 208
TELEPHONE NO.
436-4774

RECEIVED
JUL 26 1984

Department of Water Resources

Director
Department of Water Resources
State Office
450 West State Street
Boise, Idaho 83720

Re: City of Soda Springs, License No. 11-0495,
Application No. 2989

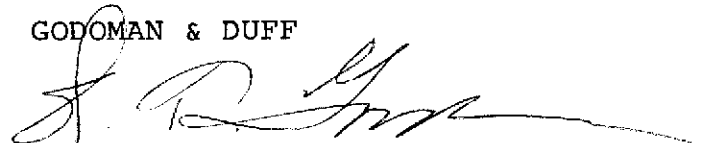
Dear Mr. Dunn:

Enclosed with this letter is an original and copy of the
Petition for Leave to Intervene, together with a Proof of
Service in connection with the filing.

Kindly file the Petition on behalf of Mrs. Kackley and if any
fees are due advise us and they will be promptly remitted.

Very truly yours,

GODOMAN & DUFF


William T. Goodman

WTG:KH

Encl.

cc: City of Soda Springs
Mr. Robert Torgeson

William T. Goodman, Esquire
Goodman & Duff
Attorneys at Law
P. O. Box 61
717 7th Street
Rupert, Idaho 83350
Telephone: 436-4774

Attorneys for Lois Kackley

RECEIVED
JUL 26 1984

Department of Water Resources

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

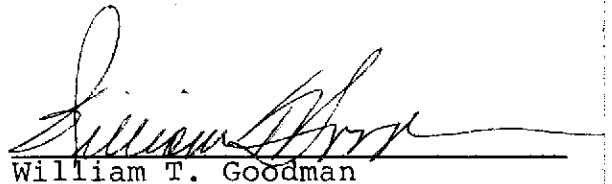
Application for Transfer of	)	
Water Right of:	)	Application No. 2989,
	)	License No. 11-0495
	)	
CITY OF SODA SPRINGS, IDAHO,	)	<u>PROOF OF SERVICE</u>
	)	
	)	
	)	

-0-

WILLIAM T. GOODMAN, Attorney for the Petitioners for Leave to Intervene, does hereby certify that on the 25th day of July, 1984, he mailed by regular mail, with postage prepaid, in a sealed envelope, a copy of the Petition for Leave to Intervene addressed to the following named parties known to the Petitioner in the above-entitled matter:

City of Soda Springs, City Hall, Soda Springs,
Idaho 83276

Mr. Robert Torgeson, c/o City Hall, Soda Springs,
Idaho 83276


William T. Goodman

PROOF OF SERVICE

Subscribed and sworn to before me this 25th day of
July, 1984.

(SEAL)

William H. Hanks
Notary Public
Residing at Rupert, Idaho
My Commission Expires: Life

William T. Goodman, Esquire
Goodman & Duff
Attorneys at Law
P. O. Box 61
717 - 7th Street
Rupert, Idaho 83350
Telephone: 436-4774

RECEIVED
JUL 26 1984

Department of Water Resources

Attorneys for Lois Kackley

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

Application for Transfer of	)	
Water Right of:	)	Application No. 2989,
	)	License No. 11-0495
	)	
CITY OF SODA SPRINGS, IDAHO	)	<u>PETITION FOR LEAVE TO</u>
	)	<u>INTERVENE</u>
	)	
	)	

-0-

LOIS KACKLEY petitions the Department of Water Resources for leave to Intervene in Application No. 2989, in connection with License No. 11-0495, filed by the City of Soda Springs, Idaho, dated January 19, 1984, as follows:

1. Your Petitioner is: Lois Kackley, whose address is Wayan, Idaho 83285.

2. The basis upon which intervention is sought is as follows: Your Petitioner is the legal owner of the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 6, Township 9 South, Range 42 East, Boise Meridian, Caribou County, Idaho. The above described real property is actually owned by your Petitioner, and is described correctly as a Lot in Section 6. Your Petitioner is the legal owner of all of the following described real property:

Lots 3, 4, 5, and 6; SE $\frac{1}{4}$ NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ SW $\frac{1}{4}$, less a parcel 30 feet x 135 feet in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6, Township 9 South, Range 42 East, Boise Meridian, Caribou County, Idaho.

PETITION FOR LEAVE
TO INTERVENE

4. Your Petitioner will rely upon her title to the real property herein described; the Application of the City of Soda Springs under which this Petition for Intervention is filed; Application No. 2972 for License No. 11-2092 of the City of Soda Springs; Application No. 7352, Permit No. 5339 issued and approved by the Department of Water Resources on October 19, 1909, Book 15: Records of the flows of Soda Creek over the past years; Warranty Deed from Soda Springs Electric Company to the City of Soda Springs, recorded December 8, 1915; the Dietrick Decree of Soda Creek, dated July 14, 1920; The Claim of Water Right filed heretofore by Petitioner, and the statements contained in the Applications of the Applicant, Nos. 2972 and 2989 that "no one will be injured by such change and that the change does not constitute an enlargement in use of the original right".

5. Your Petitioner, in addition to the documentary evidence described in paragraph 4 above has three witnesses who have personal knowledge of all facts contained herein and dealing with and relating to the Application.

6. This petition was not earlier filed herein by your Petitioner because it was not readily apparent what, if any of her rights herein were or would be affected by the Application and further the Petitioner was assured by the applicant that her rights would not be affected adversely by their Applications to the Department of Water Resources nor would any changes be made in the "Feeney Ditch".

DATED this 17th day of July, 1984.

GOODMAN & DUFF

By:

William T. Goodman
William T. Goodman
Attorneys for Petitioner

Lois Kackley
Lois Kackley
Petitioner in Intervention.

William T. Goodman, Esquire
Goodman & Duff
Attorneys at Law
P. O. Box 61
717 - 7th Street
Rupert, Idaho 83350
Telephone: 436-4774

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Department of Water Resources

Attorneys for Lois Kackley

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

Application for Transfer of	)	
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Lots 3, 4, 5, and 6; SE $\frac{1}{4}$ NW $\frac{1}{4}$ and the NE $\frac{1}{4}$ SW $\frac{1}{4}$, less a parcel 30 feet x 135 feet in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 6, Township 9 South, Range 42 East, Boise Meridian, Caribou County, Idaho.

PETITION FOR LEAVE
TO INTERVENE

The above described real property of Petitioner is where the "Feeney Ditch" is located to convey water for the City of Soda Springs and other water users through her property from the point of diversion in the "NW $\frac{1}{4}$ NW $\frac{1}{4}$ " of said Section 6.

The City of Soda Springs has a right to divert such water for power purposes as contained in the Application of up to 40 c.f.s. through the "Feeney Ditch". In addition to this amount of water for power purposes the other irrigation users have a right to divert at the same point an additional 4.8 c.f.s. for irrigation purposes.

The City of Soda Springs acquired the water right from the Soda Springs Electric Company who had an easement across the above described property now owned by the Petitioner to divert said 40 c.f.s. from Soda Creek. The easement described and acquired in 1909 from the Soda Springs Electric Company included the conduit canal "Feeney Ditch" which for size was described as follows: Width at bottom, 10 feet; Width at water line, 18 feet; Depth of water, 2 feet; Length, 3,000 feet.

The applicant, City of Soda Springs, has not acquired prior to this date any easement by prescription or otherwise to transport over the lands of the Petitioners more than their 40 c.f.s. of water for power purposes.

Prior to this date and under Application No. 2972, relating to License No. 11-2092 the City has sought and obtained approval to change the place of diversion of this water right to the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 6, Township 9 South, Range 42 East, Boise Meridian. The amount of water to be diverted at the above point as set forth in the Application filed under date November 9, 1983, is 48 c.f.s.

The conduit canal, i.e. "Feeney Ditch" right of way is not of sufficient size to carry the 40 c.f.s and 48 c.f.s. of water of the City of Soda Springs, if such water exists, together with an additional 4.8 c.f.s. water of the irrigation users. In addition to the lack of capacity and probable lack of water the applicant, City of Soda Springs, does not have a right to way or easement of any nature, kind or description, to use the conduit canal, "Feeney Ditch" to transport more than their 40 c.f.s. of water from Soda Creek.

The effect of such transfer and diversion as proposed by this application, if added to the 1983 application for change of point of diversion of the 48 c.f.s. by the City of Soda Springs, will be to dry up Soda Creek for approximately 3/4ths of a mile where it transverses the land of your Petitioner.

Your Petitioner is now and has at all times prior hereto used the waters of Soda Creek where the same flowed through her property as a stock watering source for her real property. Your Petitioner has filed with the Department of Water Resources, prior hereto, a Claim of Water Right for such purposes. The proposed total diversion as applied for by the City of Soda Springs will adversely, directly and substantially affect the Petitioner and her rights.

3. Your Petitioner seeks by this petition to intervene to limit the right and use of her lands and real property by the Applicant to the use thereof held by the Applicant which is the right to divert only 40 c.f.s. of water from Soda Creek in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 6, Township 9 South, Range 42 East, Boise Meridian, Caribou County, Idaho, and transport the same through the conduit canal, "Feeney Ditch", as set forth in the application and historically used to divert such amount of water by the Applicant.

4. Your Petitioner will rely upon her title to the real property herein described; the Application of the City of Soda Springs under which this Petition for Intervention is filed; Application No. 2972 for License No. 11-2092 of the City of Soda Springs; Application No. 7352, Permit No. 5339 issued and approved by the Department of Water Resources on October 19, 1909, Book 15: Records of the flows of Soda Creek over the past years; Warranty Deed from Soda Springs Electric Company to the City of Soda Springs, recorded December 8, 1915; the Dietrick Decree of Soda Creek, dated July 14, 1920; The Claim of Water Right filed heretofore by Petitioner, and the statements contained in the Applications of the Applicant, Nos. 2972 and 2989 that "no one will be injured by such change and that the change does not constitute an enlargement in use of the original right".

5. Your Petitioner, in addition to the documentary evidence described in paragraph 4 above has three witnesses who have personal knowledge of all facts contained herein and dealing with and relating to the Application.

6. This petition was not earlier filed herein by your Petitioner because it was not readily apparent what, if any of her rights herein were or would be affected by the Application and further the Petitioner was assured by the applicant that her rights would not be affected adversely by their Applications to the Department of Water Resources nor would any changes be made in the "Feeney Ditch".

DATED this 17th day of July, 1984.

GOODMAN & DUFF

By:

William T. Goodman
William T. Goodman
Attorneys for Petitioner

Lois Kackley
Lois Kackley

Petitioner in Intervention.

July 26, 1984

Clyde Nelson
P.O. Box 797
Soda Springs, ID 83276

Dear Mr. Nelson:

Pursuant to the request of Mr. Ernest Carlsen, of our Eastern Regional Office in Idaho Falls, enclosed is a copy of Mr. Bobby D. Fleenor's letter of May 22, 1984, to William T. Goodman.

If we can be of further assistance, please contact our office.

Sincerely,

KAY WALKER
Technical Records Specialist

KW:k
Enclosure

MAILED
JUL 27 1984

Transfer No. _____

Water Right No. _____

VOID

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
To Change the Point of Diversion and/or the Place of Use

Name of applicant City of Soda Springs Phone 208/547-2151Post Office address 9 West Second South, Soda Springs, ID 83276**A. DESCRIPTION OF RIGHT AS RECORDED****1. Right evidenced by:**

- a. Decree No. _____ Decreed to _____ (Name)
in case of _____ vs _____
dated in _____ in _____ county of _____
(Name of court)
- b. License No. 11-0495 issued by the Idaho Department of Water Resources
- c. Claim No. _____ on file with the Idaho Department of Water Resources

2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant _____**3. Source of water** Soda Creek tributary to Bear River**4. Date of priority** 6/1/1907**5. Water is used for the following purposes:**

amount 40 cfs for power generation purposes from January 1 to December 31
amount _____ for _____ purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
(month/day — both dates inclusive)

6. Total amount of water under right: a. 40 cubic feet per second
&/or
b. _____ acre feet per annum

7. Location of original point of diversion is NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 6
Township 9 South Range 42 East, B.M., in Caribou County
Additional points of diversion, if any _____

8. Lands irrigated or place of use:

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
9S	42E	6																	40 cfs

Total number of acres to be irrigated N/A

9. Describe any other water rights used for the same purpose as described above The City also holds water rights 11-2091, 11-2092, 11-2133, 11-2156, and 11-2161 for power generation.

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of nonuse? No If yes, describe in item D, REMARKS.

MICROFILMED

B. DESCRIPTION OF PORTION OF RIGHT OWNED BY APPLICANT (If the entire right is owned by the applicant, omit part B). N/A

1. Amount of water: a. _____ cubic feet per second
&/or
b. _____ acre feet per annum
2. Point of diversion _____ ¼ _____ ¼, Section _____ Township _____
Range _____, B.M., _____ County
Additional points _____
3. Place of use:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	

Total number of acres to be irrigated _____

C. DESCRIPTION OF RIGHT OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

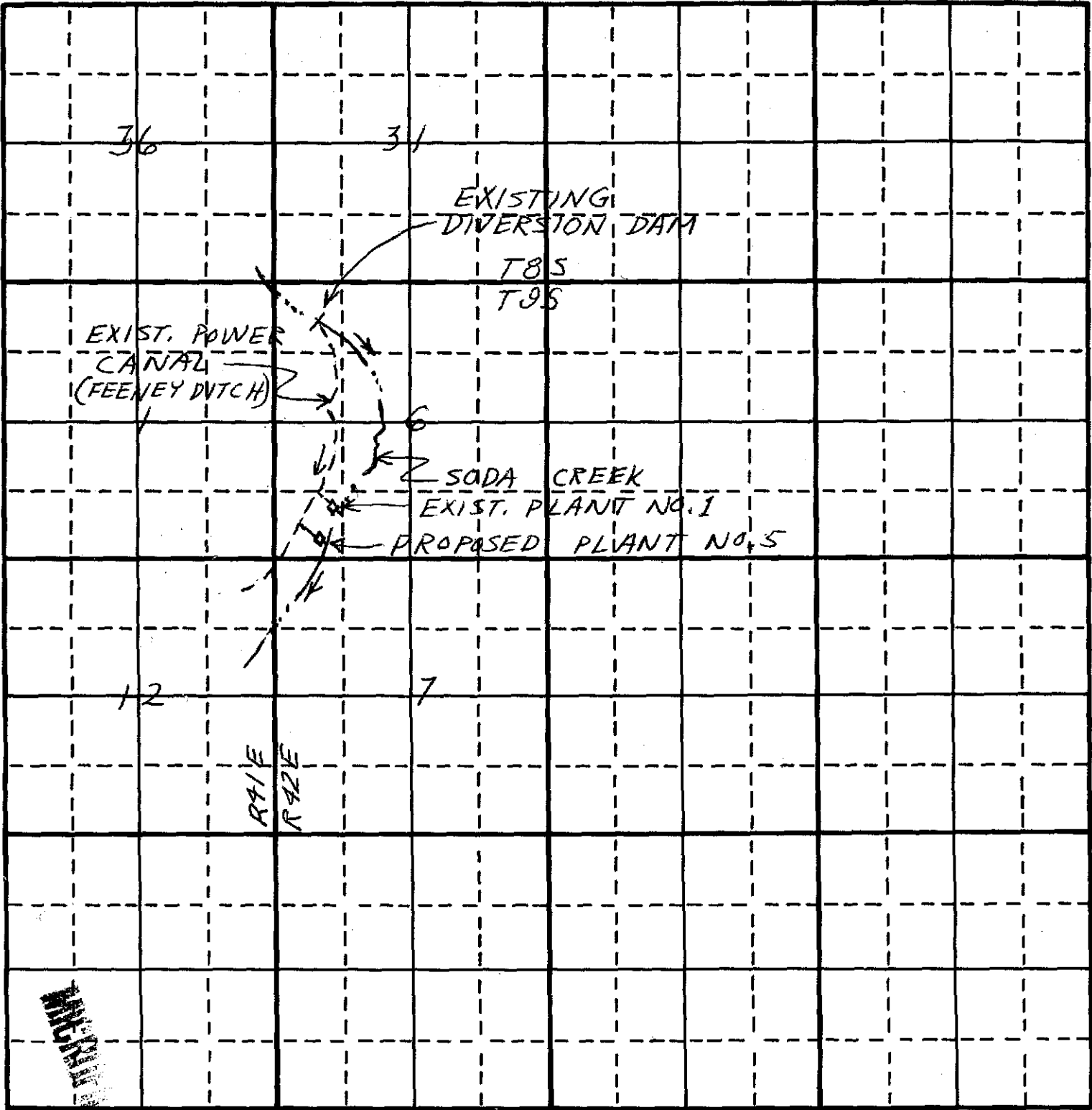
1. General Information
- a. Amount of water to be diverted 40 c.f.s. &/or _____ acre feet
- b. Description of diverting works Existing concrete diversion dam. This dam diverts water into the "Feeney Ditch."
- c. Describe the reasons for the proposed changes The City is proposing replacement of existing Powerplant No. 1 and No. 2 with a new powerplant (No. 5) located within the same 40 acre tract as existing Powerplant No. 1. Powerplant No. 5 will use the combined water rights for Powerplant No. 1 (11-0495) and Powerplant No. 2 (11-2092).
2. Change in point of diversion No change proposed (See Paragraph D. REMARKS)
Point of diversion _____ ¼ _____ ¼, Section _____ Township _____
Range _____, B.M., _____ County
Additional points _____
3. Change in place of use No change proposed (See Paragraph D. REMARKS)
- a. Are there liens, mortgages, or contracts on the lands from which you propose to transfer the water right which limit your authority to make the proposed change? Yes _____ No X. If yes, provide a statement agreeing to the proposed change from the holder of the lien, mortgage or contract.
- b. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer
N/A

c. Describe the land place of use to which the right will be referred:

TWP.	RANGE	SEC.	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
9S	42E	6											X						40 cfs

Total number of acres to be irrigated N/A

4. Describe any other water rights used for the same purpose as described above. The City currently holds water right 11-2092, and has made application to transfer the points of diversion and use to match 11-0495 (See Application for Transfer dated 11/9/83).
5. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



SCALE: 2 inches equal 1 mile. Draw plan in ink.

D. REMARKS

This Application for Transfer is submitted to clarify the point of diversion and place of use of water right 11-0495. The point of diversion will remain as is in the NW $\frac{1}{4}$, NW $\frac{1}{4}$, Section 6, T9S, R42E. Although the point of use will change, it will remain within the SW $\frac{1}{4}$, SW $\frac{1}{4}$, Section 6, T9S, R42E.

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willfull misrepresentations made in this application may result in voiding its approval.

Quinn H. Clegg
(Signature of Applicant)

Subscribed and sworn to before me this 30th day of December, 19 83

Janet L. Stamps
(Notary Public)

My commission expires May 28, 1985

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____ and said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 19____

FOR DEPARTMENT USE ONLY

Received by aw Date 1-05-84 Protest filed by _____

Prelim. check by _____ Fee 50.00 _____

Receipted by BP Date 1/5/84 #29798 _____

Published in _____ Copies of protest forwarded by _____

Pub. dates _____ Hearing held by _____ Date _____

Watermaster recommendation requested on _____ Recommended for approval _____ denial _____

_____ rec'd. _____ by _____

RECEIVED

FEB 24 1984

Department of Water Resources
Eastern District Office

PUBLIC NOTICE

First Time Published

**NOTICE OF PROPOSED
CHANGE OF WATER RIGHT
NO. 11-0495**

Notice is hereby given that City of Soda Springs, Idaho has applied to the Dept. of Water Resources for a change in the point of diversion and place of use of the waters of Soda Creek tributary to Bear River. The right sought to be changed is evidenced by Decree No. 11-0495 to Village of Soda Springs in case of Utah Power & Light Co. vs. Last Chance Canal Co. dated in 7-14-1920 in District Court, Caribou County and is recorded as follows:

AMOUNT: 40 cfs

PRIORITY: 6-1-1907

POINT OF DIVERSION: Not specified in decree

The water is used for power generation purposes on lands not specified by the decree.

TO BE CHANGED AS FOLLOWS:

The water will be diverted within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 6, T. 9S, R. 42E, B.M. Caribou County and used for power generation purposes within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 6, T. 9S, R. 42E, B.M.

Any protests against the above proposed change of water right must be filed with the Dept. of Water Resources, 150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83401, on or before February 20, 1984.

A. Kenneth Dunn
Director

Published in the Caribou County Sun on Feb. 2 and 9, 1984.

**Affidavit of
Publication**

County of Caribou }
State of Idaho } ss.

Mark Steele

being first duly sworn on his oath, states:

That he is Publisher of the Caribou County Sun, a newspaper of general circulation in Caribou County, Idaho, published weekly at Soda Springs in said County that said newspaper has been published in said County uninterruptedly and continuously for over seventy-eight consecutive weeks, prior to the first publication of the annexed notice or advertisement;

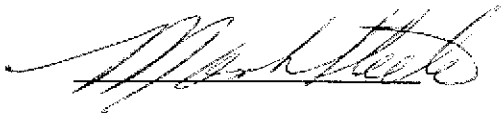
That the annexed notice was published as per clipping attached in the regular and entire edition of said newspaper and not in any supplement thereof

for 2 successive weekly issues thereof, the date of the first publication being the

2nd day of
February, 1984

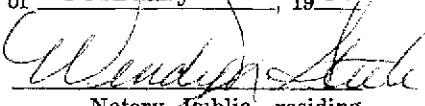
The date of the last publication

being the 9th day of
February, 1984


Subscribed and sworn to be-

fore me this 29th day

of February, 1984


Notary Public, residing
at Soda Springs, Idaho
(SEAL)

My Commission expires the

1st day of March

1984

July 11, 1984

RE: Application for Transfer No. 11-0495

Mr. Roy G. Rainey
City Administrator
City of Soda Springs
Nine West Second South
Soda Springs, ID 83276

Dear Mr. Rainey:

This letter is to acknowledge receipt of your withdrawal of the above referenced application. The Department will take no further action in this matter and has taken the steps necessary to void the application in our files.

Very truly yours,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

cc: Robert K. Torgesen

DAVID H. CLEGG
Mayor

PHILLIP MERCHEN
President

LaRAE RASMUSSEN
Clerk-Treasurer

ROY G. RAINEY
City Administrator

City of Soda Springs

County Seat and Commercial Center of
Caribou County
Founded May 20, 1863
9 West Second South - Phone 547-2151
SODA SPRINGS, IDAHO 83276

June 20, 1984

Councilmen

Phillip Merchen
Carl L. Schenck
Robert K. Torgesen
Edie Tracy

RECEIVED
JUN 21 1984

Department of Water Resources

Mr. A. Kenneth Dunn, Director
Idaho Department of Water Resources
Statehouse
Boise, Idaho 83720

RECEIVED

JUL 2 1984

Department of Water Resources
Eastern District Office

Dear Mr. Dunn;

This letter refers to the request by William T. Goodman on behalf of Evan M. Kackley for reopening the period for filing protests on Applications, Numbers 29763 and 29798 by the City of Soda Springs, Idaho.

It is respectfully requested that the unnumbered application for Transfer of Water Right Number 11-0495 dated January 19, 1984, be withdrawn at this time.

We object most strenuously to any action relating to the Transfer of Water Rights No. 11-2092 which was approved by Mr. Glen Saxton on March 23, 1984, without legal protest of any kind. The gross inaccuracies in Mr. Goodman's letter should be noted as follows:

Transfer No. 2972 specifies a change in the point of diversion of Water Right 11-2092 from SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec.6, T9S, R42EBM, to NW $\frac{1}{4}$, NW $\frac{1}{4}$, Sec.6, T9S, R42EBM.

The diversion dam has never been "boarded up by the applicant."

State Permit No. 5339 issued on August 21, 1909, describes but in no way limits the Feeny Ditch.

Kackleys hold no water rights on either Soda Creek or the Feeny Ditch between the approved point diversion and the south boundary of their property and consequently have no standing from which to claim damages or injury.

The City holds rights to 90 cfs on a reservoir and canal immediately upstream from the stated point of diversion which together with the 20cfs flow from Hooper Springs into Soda Creek, insures more than adequate water to prevent "dewatering of about 3/4 of a mile of Soda Creek."

The City of Soda Springs requests your immediate attention to this important matter and your definitive response. We shall take whatever steps may be necessary to defend our actions and our rights in the matter and trust that you will do the same relative to approval of 11-2092.

Sincerely,



Roy G. Rainey
City Administrator

RGR/kg

May 22, 1984

RECEIVED

MAY 24 1984

Department of Water Resources
Eastern District Office

William T. Goodman
GOODMAN & DUFF
Box 61
Rupert, ID 83350

Dear Mr. Goodman:

Re: License Nos. 11-2092 (2972) and 11-0495 (2989)

Your letter of April 27, 1984 requested that the protest period be reopened on the City of Soda Springs's applications for transfer.

The city has filed applications to transfer two of its water rights. Transfer application No. 2972 of water right License No. 11-2092 requested a change in the point of diversion and the place of use of 48 cfs of water used for power generation. That transfer application was approved March 24, 1984 and, therefore, your protest cannot be considered. Transfer application No. 2989 of decreed water right No. 11-0495 which requests a change in the place of use of 40 cfs, however, has been protested and; therefore, the final action has not been taken on that application. Your protest is, as you know, after the period set out by statute and cannot be considered, but you may petition to intervene under rule 6 of the Department's Rules of Practice and Procedure. A copy of those rules are enclosed.

If you have any questions, please let me know.

Sincerely,

BOBBY D. FLEENOR
Chief, Regional Offices Bureau

BDF:rf

Enclosure

bcc: Eastern Region w/ copy of Goodman's letter

RECORDED

WILLIAM T. GOODMAN
LARRY R. DUFF
ALAN GOODMAN
THOMAS P. BASKIN

LAW OFFICE
Goodman and Duff

CHARTERED
717 7TH STREET
BOX 61
RUPERT, IDAHO 83350

AREA CODE 208
TELEPHONE NO.
436-4774

April 27, 1984

RECEIVED
APR 30 1984

Department of Water Resources

Mr. A. Kenneth Dunn, Director
Idaho Department of Water Resources
Statehouse
Boise, Idaho 83720

11-0495
11-2092

Re: Application Nos. 29763 and 29798
City of Soda Springs, Idaho

Dear Mr. Dunn:

I have been requested by my clients, Evan M. Kackley, M.D. and Lois Kackley, to contact your office to request that the period for filing protests to the above applications be reopened since the filings made did not disclose the apparent diversion by the applicant of all waters of Soda Creek from the diversion dam to the discharge point from the proposed power plant. Further, that this letter be considered as a protest to the applications.

The applications indicate "no changes" in place of diversion or place of use. These applications do not seem to be consistent with the application of the City of Soda Springs to the Federal Energy Regulatory Commission wherein it is claimed that the diversion dam diverts the entire flow of Soda Creek except in periods of when the flow of the creek exceeds the capacity of the power canal. The diversion dam was boarded up by the applicant within the last couple of years.

The power canal referred to is the Feeney Ditch which traverses lands owned by Lois Kackley for about 3/4ths of a mile. The size and capacity of this ditch as it has existed for many years is described and limited by the State Permit No. 5339 issued on August 21, 1909. This information is also contained in the "Comments and Protest" of my clients recently filed with the FERC and a copy of which was directed to your office.

In addition to the foregoing, the applications contain the following statement: "I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right."

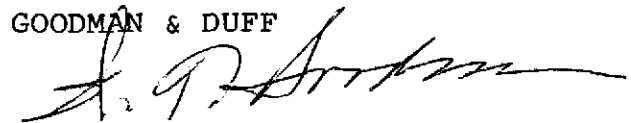
A. Kenneth Dunn, Director
April 27, 1984
Page 2

It is submitted that the de-watering of about 3/4ths of a mile of Soda Creek does in fact cause an injury to the landowner involved and further, the diversion of more water into the power canal than the water rights held by the City constitute an enlargement in the use of the original right. This is further indicated by the FERC application which states the power canal "Feeney Ditch" has a capacity of up to 120 cfs. The historical and actual use of this ditch has not been of that capacity and considerable work would be required to bring the ditch to that capacity in the opinion of my clients.

We would appreciate your consideration of the matter at this point.

Very truly yours,

GOODMAN & DUFF



William T. Goodman

WTG:mb

cc: Dr. & Mrs. Evan M. Kackley

February 22, 1984

RE: Application for Transfer No. 11-0495 CITY OF SODA SPRINGS

Caribou County Sun
P.O. Box 815
Soda Springs, ID 83276

Gentlemen:

Would you please submit an affidavit of publication and certified bill in connection with the above referenced application(s). The legal notice was to have been published in your paper on February 2 and 9, 1984.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

COLLEEN WRAY
Adm. Secretary

February 22, 1984

RE: Application for Transfer No. 11-0495

City of Soda Springs
9 West Second South
Soda Springs, ID 83276

Gentlemen:

Enclosed please find a copy of the protest filed against the above referenced application. You should be aware that the following are the items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?
2. Does the change constitute an enlargement in the use of the original right?
3. Will the proposed use under this transfer conflict with the local public interest?

You will be notified at a later date as to the time and place set for conference and/or hearing. Legal counsel is not mandatory at an proceeding before the Department, although you may desire to employ an attorney in your behalf.

If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

RDC:cw

Enclosure

cc: IDWR - State Office

February 22, 1984

RE: Application for Transfer No. 11-0495 CITY OF SODA SPRINGS

Robert Torgesen
Box 45
Soda Springs, ID 83276

Dear Mr. Torgesen:

This is to acknowledge receipt of the protest filed against the above referenced application for transfer. The following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?
2. Does the change constitute an enlargement in the use of the original right?
3. Will the proposed use under this transfer conflict with the local public interest?

You will be notified at a later date as to the time and place set for conference and/or hearing.

If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

RDC:cw

cc: IDWR - State Office

February 13, 1984

RECEIVED

FEB 15 1984

Department of Water Resources
Eastern District Office

State of Idaho
Department of Water Resources
Eastern District Office
150 Shoup--Suite 15
Idaho Falls, Idaho 83402

To Whom It May Concern:

We, Robert K. Torgesen and/or Nedra Torgesen do hereby Protest the change in the point of diversion and place of use of the waters of Soda Creek tributary to Bear River, as evidenced by the Decree No. 11-0495 to the Village of Soda Springs, Idaho.

For the following reasons:

1. It would change our point of diversion as Decreed in Claim No. 11-4289, also Decreed by Instrument No. 1698--Sheet No. 87 and 88--Entry No. 77 Final Decree--Utah Power and Light -vs- Last Chance Canal Company.
2. It interferes with our Ditch Rights in the Feeney and Chester Ditches.
3. Consideration needs to be given to financial loss to us, caused by interference in transferring water through the Feeney and Chester Ditches, because of canal and power plant construction by the City of Soda Springs or its contractors.

This Protest made on February 13, 1984 for the purpose of preserving Water Rights and Ditch Rights.

State Of Idaho
County of Caribou

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing protest to construction of a power plant and change of water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

Robert K. Torgesen
Robert K. Torgesen-Claimant

Nedra Torgesen
Nedra Torgesen-Claimant

Sworn to before me this 14 day of February, 1984

Helen B. Kingford
Notary Public
Residing at Soda Springs, Idaho

My commission expires Lifetime

RECORDED

NOTE OF EXPLANATION:

Our point of diversion in the NE $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec 6-T9-R42E will need to be changed to the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec 6-T9-R42E or the exact location of the proposed new power plant.

The additional canal to be constructed to service the new power plant, will be built part-way across the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Sec 6-T9-R42E on the exact location of the Feeney and Chester Ditches.

We need to be assured that if the necessary changes are allowed, that all new gates for diversion and any pipes or ditches are installed in a workable manner and to the satisfaction of Robert Torgesen. We request that no construction or changes of any kind be allowed until terms have been agreed upon between Robert K. Torgesen and/or Nedra Torgesen and the City of Soda Springs or its contractors.

We will be happy to work with the City of Soda Springs and Appreciate any help the Department of Water Resources can give us in working out the necessary agreements.

Thank You

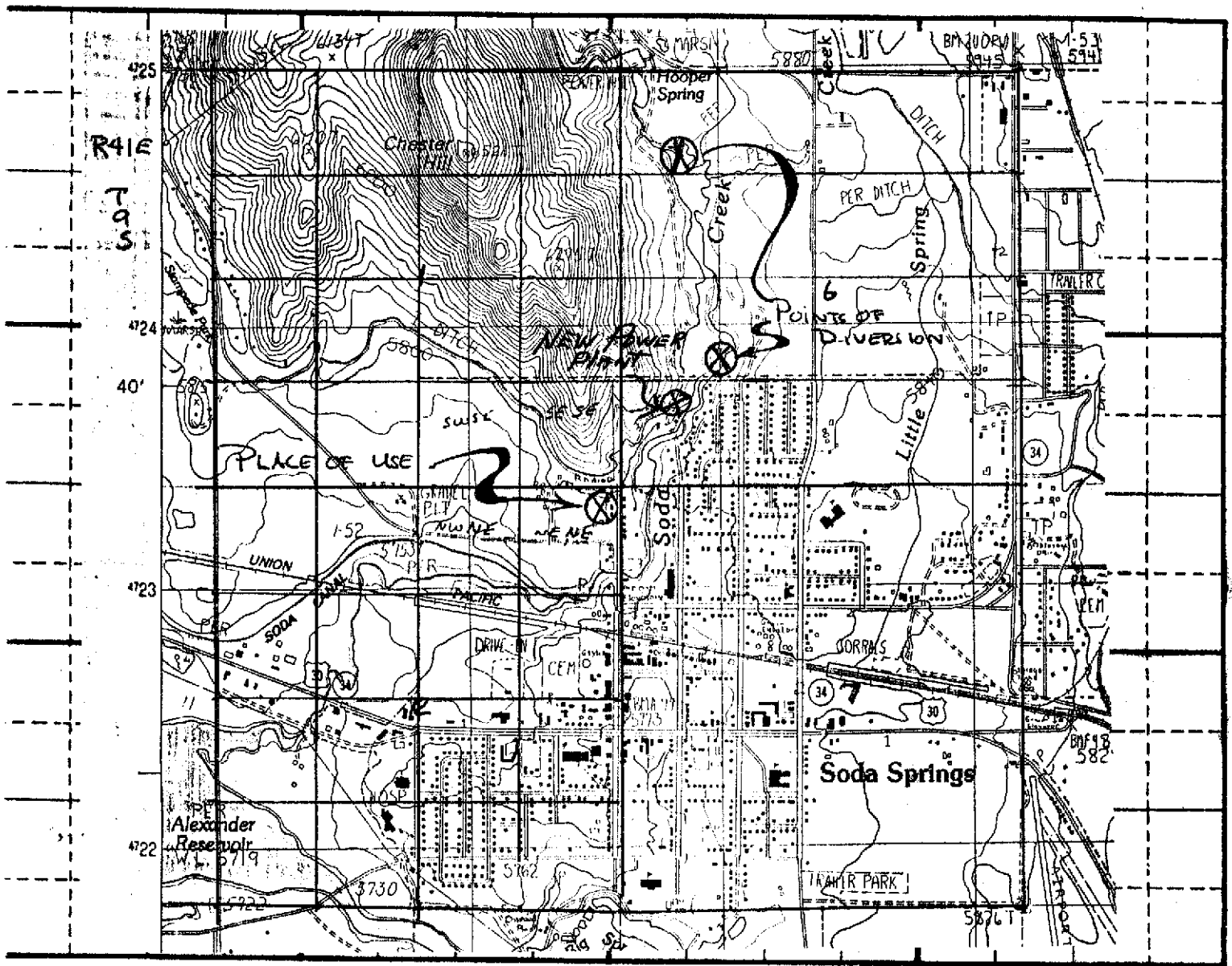
Sincerely,



Robert Torgesen
Box 45
Soda Springs, Idaho 83276

cc: Roy G. Rainey--City Administrator
City of Soda Springs, Idaho

(8) Remarks



Scale: 2 inches equal 1 mile,
1:24,000

Map should show the location of the point of diversion and the place of use of the water by 40-acre subdivisions, section, township and range of the public land survey system.

State of Idaho)
County of Caribou) ss.

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the foregoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

Robert Torgerson
(Claimant)

Sworn to before me this 10th day of October, 1983.

Helen B. Kingsford
Notary Public
Residing at Soda Springs, Idaho

My commission expires Lifetime

Received by CW Date 6-23-83 Exception filed by: Forwarded to Date
Prelim. check by Kew Date 10-27-83 claimant by:
\$30.00 fee received by CW Date 6-23-83 #30679
Published in Caribou County Sun
Dates 11/10 - 11/17/83

MICROFILMED

APPLICATION FOR TRANSFER OF WATER RIGHT
NO. 11-0495

RECEIVED

FEB 14 1984

RECOMMENDATION OF WATERMASTER

Department of Water Resources
Eastern District Office

I, Gary L. Jensen, watermaster of Soda Creek,
of Water District No. 11-B, County of Caribou, State of Idaho,
whose address is HC 70 BOX 2050 Soda Springs, Idaho 83276
have read the attached copy of the application for transfer of water right for _____
City Of Soda Springs, and to the best of my knowledge believe the
(name)
application to be true.

A. I hereby endorse the above numbered Application for Transfer and recommend
that the Director of the Department of Water Resources approve the transfer subject to
the following conditions: NONE

OR

B. I do not endorse approval of the above numbered Application for Transfer as re-
quested for the following reasons: _____

Dated at Soda Springs, Idaho, this 10th day of February 19 84.

Gary L. Jensen 11-B
(signature)

RECEIVED

February 7, 1984

RE: Application for Transfer No. 11-0495 CITY OF SODA SPRINGS

Garv Jensen, Watermaster
Water District No. 11-B
Star Rt.
Soda Springs, ID 83276

Dear Mr. Jensen:

Please find enclosed a copy of the above referenced application and watermaster recommendation form. Please review the application and complete the form, returning it to this office on or before February 20, 1984.

Thank you for your cooperation in this matter.

Sincerely,

BARBARA L. POWERS
Secretary

bp

Enclosures



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

John V. Evans
Governor

A. Kenneth Dunn
Director

150 Shoup -- Suite 15
Idaho Falls, Idaho 83402
(208) 525-7161

February 3, 1984

Evan M. Kackley
2323 Ellis Ave.
Boise, ID 83702

Dear Mr. Kackley:

Please find enclosed the copy of Transfer #11-0495 that you requested.

Please remit \$2 to this office to cover the cost of the copies.

Sincerely,

JULIE KELSO
Secretary

RECEIVED
FEB 10 1984

NOTICE OF PROPOSED CHANGE OF WATER RIGHT

NO. 11-0495

Notice is hereby given that City of Soda Springs, Idaho has applied to the Dept. of Water Resources for a change in the point of diversion and place of use of the waters of Soda Creek tributary to Bear River. The right sought to be changed is evidenced by Decree No. 11-0495 to Village of Soda Springs in case of Utah Power & Light Co. vs. Last Chance Canal Co. dated in 7/14/1920 in District Court, Caribou County and is recorded as follows:

AMOUNT: 40 cfs PRIORITY: 6/1/1907

POINT OF DIVERSION: Not specified in decree

The water is used for power generation purposes on lands not specified by the decree.

TO BE CHANGED AS FOLLOWS

The water will be diverted within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 6, T. 9S, R. 42E, B.M. Caribou County and used for power generation purposes within the SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 6, T. 9S, R. 42E, B.M.

Any protests against the above proposed change of water right must be filed with the Dept. of Water Resources 150 Shoup Ave., Suite 15, Idaho Falls, Idaho, 83401, on or before February 20, 1984.

A. KENNETH DUNN

Director

Published in the Caribou County Sun on 2/2 & 2/9/84.



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

TRANSFER ANALYSIS SHEET

G. F. RAMSEY

G. F. RAMSEY

INITIAL REVIEW BY: JAN 6 1984 JAN 20 1984

1. Right number 11-0495 Applicant CITY OF SODA SPRINGS

2. Type of right: ☒ Decree ☐ License ☐ Claim

3. Purpose of transfer: ☐ Change point of diversion ☐ Add diversion point(s) ☐ Change place of use
☒ Other CLARIFY POINT OF DIVERSION AND PLACE OF USE

4. Check:

a. ☒ Source ☒ Priority ☒ Amount ☒ Purpose ☒ Period of use

b. ☒ Description of original point of diversion.

c. ☒ Description of original place of use.

5. Amount of land &/or water transferred:

a. ☒ All of right.

b. ☐ Part of right (NOTE! Part B should be filled in only if part of the right is owned by the applicant).

c. ☒ Check description of point(s) of diversion.

d. ☒ Check description of place of use.

e. ☒ Check map (shows p.d. and p.u. after transfer).

f. ☒ Check for correct signature, notarization, and fee.

g. ☒ Check proof of ownership of right &/or land from which water is transferred.

h. ☒ Check for expansion in use of right. Comments _____

i. ☒ Check for existing water rights from same source, on land water is being transferred to.

Right number(s) 11-2092

j. ☒ Is use within a Watermaster District? ☐ Yes ☒ No

If yes, what district? _____

FINAL PROCESSING REVIEW BY: _____

1. Watermaster recommendation requested on _____ Received on _____

2. Is transfer published correctly? ☒ Yes ☐ No

3. Protest received? ☒ Yes ☐ No

RECOMMENDED ACTION

1. ☐ Approve

2. ☐ Deny

3. Conditions* _____

4. By _____ Date JUL 12 1984

RECEIVED

January 6, 1984

David H. Clegg
City of Soda Springs
9 West Second South
Soda Springs, ID 83276

Dear Mr. Clegg:

I have received your application for transfer which would clarify the decree #11-0495 for power generation using Soda Creek water. The original decree did not specify the point of diversion, place of use or period of use. In filling out your original application, these items were incorrectly filled in from known information and not from the decree. I have enclosed a corrected application which should be signed, notarized and returned to this office (no additional money is required).

Please check all portions of the application prior to signing. If you have any questions, please call (525-7161) or come to the Idaho Falls Office.

Sincerely,

GERALD F. RAMSEY
Radiologic Specialist

GFR:bp

Enclosure

11