CERTIFICATION

I hereby certify that the attached 40 pages are true and correct copies of a document on the file with the Commission.

8-31-07
Date

Narma L. Anderson
Custodian

I hereby certify that the Custodian or his designee, which signature appears above, is the official custodian of the records of the Federal Energy Regulatory Commission which certification is made and was such official custodian at the time of executing the above certification.

Kimberly D. Bose
SECRETARY
UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

IDAHO POWER COMPANY

PROJECT NO.
19-000
603-001
1976-000
2056-000
2725-000
2777-001
2778-001

PETITION FOR DECLARATORY ORDER

Idaho Power Company, "Licensee", hereby petitions the Federal Energy Regulatory Commission for a declaratory order as requested herein. In support of this petition Licensee states as follows:

The exact name, business address and telephone number of the Licensee are:

Idaho Power Company
1220 Idaho Street
P.O. Box 70
Boise, Idaho 83707
1-208-383-2678

The Commission is respectively requested to send copies of all communications, orders, and correspondence on this petition directly to:

Paul L Jauregui
Vice President, Secretary and General Counsel
1220 Idaho Street
P.O. Box 70
Boise, Idaho 83707

Nov 27 1984

84/1280376
Lee S. Sernline
Leighton & Sernline
Suite 101
1010 Massachusetts Avenue NW
Washington, D.C. 20001-5502

II

Licensee is the holder of licenses issued by the Commission for the
following projects on the Snake River and its tributaries:

<table>
<thead>
<tr>
<th>Project Number</th>
<th>Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>16-000*</td>
<td>Twin Falls</td>
</tr>
<tr>
<td>505-001</td>
<td>Swyn Falls</td>
</tr>
<tr>
<td>1976-000</td>
<td>Bliss</td>
</tr>
<tr>
<td>2055-000</td>
<td>C.J. Strike</td>
</tr>
<tr>
<td>2661-000</td>
<td>Lower Salmon</td>
</tr>
<tr>
<td>2726-001</td>
<td>Upper and Lower Malad</td>
</tr>
<tr>
<td>2777-001</td>
<td>Upper Salmon</td>
</tr>
<tr>
<td>2778-001</td>
<td>Shoshone Falls</td>
</tr>
</tbody>
</table>

Licensee has pending an application for a new license for Project
No. 16-000 (Twin Falls) and is presently operating that project under an annual
license.

III

A controversy has developed concerning the definition of Licensee's
water rights for the projects listed above. Two state court actions and a
complaint before the Idaho Public Utilities Commission have resulted from
the controversy. An agreement dated October 25, 1983, among the State of
Idaho, in and through John V. Evans, in his official capacity as Governor of the
State of Idaho, Jim Jones in his official capacity as Attorney General of the
State of Idaho and Licensee was executed, hereinafter referred to as the
"Agreement" The Agreement is attached hereto as Exhibit A and by this
reference made a part hereof. Licensee makes this petition pursuant to
Paragraph 13(B)(i) of the Agreement. The Agreement, if implemented in accordance with all of its terms and conditions, will define Licensee's water rights, resolve certain controversies now existing and assure a sufficient supply of water for the projects listed in Paragraph II hereof.

WHEREFORE, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, Petitioner requests a declaratory order that implementation of the Agreement, as provided therein, which assure a sufficient supply of water for Licensee's projects listed in Paragraph II hereof and that the Agreement, if it becomes effective pursuant to Paragraph 13 thereof, would be in the public interest.

DATED this _ day of __________, 1984.

IDAHO POWER COMPANY

CORPORATE SEAL

By

James E. Bruce
Chairman of the Board
and Chief Executive Officer

ATTEST:

By

Paul L. Jorgensen
Vice-President, Secretary
and General Counsel

ACKNOWLEDGMENT

STATE OF IDAHO

County of Ada

JAMES E. BRUCE, being duly sworn, says that he is the Chairman
Board and Chief Executive Officer of Idaho Power Company; that he has
filed the Petition for Declaratory Order and knows the contents thereto.
Paragraph 13(8)(i) of the Agreement. The Agreement, as implemented in accordance with all of its terms and conditions, will define Licensee's water rights, resolve certain controversies now existing and assure a sufficient supply of water for the projects listed in Paragraph 11 thereof.

WHY NOT, pursuant to Rule 20 of the Commission's Rules of Practice and Procedure, petitioner requests a declaratory order that implementation of the Agreement, as provided therein, would assure a sufficient supply of water for Licensee's projects listed in Paragraph 11 thereof and that the Agreement, if it becomes effective pursuant to Paragraph 13 thereof, would be in the public interest.

DATED this ______ day of __________, 1984

IDAHO POWER COMPANY

By /s/ James E. Bruce

Chairman of the Board
and Chief Executive Officer

CORPORATE SEAL

By /s/ Paul J. Jauragui

Vice-President, Secretary
and General Counsel

ACKNOWLEDGEMENT

STATE OF IDAHO
County of Ada

JAMES E. BRUCE, being duly sworn, says that he is the Chairman of the Board and Chief Executive Officer of Idaho Power Company; that he has read the foregoing Petition for Declaratory Order and knows the contents thereof; and
That the allegations thereof are true and correct to the best of his knowledge, information and belief.

By __________________________
James F. Bruce

SUBSCRIBED AND SWORN to before me this 26th day of November, 1984.

(Notarial Seal)

Residing at Boise, Idaho

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of November, 1984, I mailed a true and correct copy of the foregoing petition for Declaratory Order upon:

Honorable James A. McClure
United States Senate
Washington, D.C. 20510

Honorable Steve Symms
United States Senate
Washington, D.C. 20510

Honorable Larry Craig
U.S. House of Representatives
Washington, D.C. 20510

Honorable George Hansen
U.S. House of Representatives
Washington, D.C. 20510

Honorable John V. Evans
Governor of the State of Idaho
Statehouse
Boise, ID 83707

Jim Jones (2)
Attorney General
Statehouse
Boise, ID 83720

David J. Barker, Deputy Attorney General
Idaho Department of Water Resources
430 West State Street
Boise, ID 83720

Clive Strong
Deputy Attorney General
Statehouse
Boise, ID 83720

Steven Y. Woodard
Deputy Attorney General
Idaho Department of Fish and Game
100 South Walnut
P.O. Box 25
Boise, ID 83701

Michael Gilmore
Deputy Attorney General
Idaho Public Utilities Commission
Statehouse
Boise, ID 83720

Chairman
Idaho Water Resources Board
Statehouse
Boise, ID 83720

Director
Idaho Department of Water Resources
430 West State Street
Boise, ID 83720
Re: ;~.:rn.:i1
from Hutterman, Portland, OR 97201

Mr Bill Lloyd
Regional Director
Bureau of Reclamation
Box 043-550 West Fort Street
Boise, ID 83720

Regional Director
Upper Colorado Region
Bureau of Reclamation
P O Box 11668
Salt Lake City, UT 84111

National Parks Service
Room 990
With Second Avenue
Seattle, WA 98174

State Director
Bureau of Land Management
230 Collins Road
Boise, ID 83702

National Marine Fisheries Service
7600 Sandpoint Way NE
Bldg C15700
Seattle, WA 98115

Secretary of Agriculture
General Counsel
Department of Agriculture
Washington, D C 20250

Chief of the Forest Service
Department of Agriculture
P O Box 2417
Washington, D C 20013

Water Resources Coordinator
U S Coast Guard (G-WS/73)
Department of Transportation
Washington, D C 20590

Director, Division of Hydro-electric
Resource Development
Department of Energy
Federal Building, Room 7101
12th & Pennsylvania Avenue, NW
Washington, D C 20401

Annecy Power Administration
Box 1621
Portland, OR 97204

Northwest Power Planning Council
Suite 200
700 F W Taylor Street
Portland, OR 97205

Northwest Power Planning Council
450 West State Street
Boise, ID 83720

Oregon Department of Fish and Wildlife
P O Box 3503
Portland, OR 97208

Washington Department of Fisheries
Room 115, General Administration Building
Olympia, WA 98504

Washington Department of Game
440 North Capitol Way
Olympia, WA 98504

Mr Gordon High Eagle
Nez Perce Tribal Executive Committee
P O Box 305
Lapwai, ID 83540

Mr Robert C Strom
Nez Perce Tribal Executive Committee
P O Box 305
Lapwai, ID 83540

Chairman
Shoshone-Bannock Tribal Council
P O Box 305
Fort Hall, ID 83223
Chairman
Yakima Tribal Council
P O Box 51
Toppenish, WA 98948

Board of County Commissioners:
Twin Falls County
Twin Falls, ID 83301

Board of County Commissioners:
Jerome County
Jerome, ID 83338

Board of County Commissioners:
Gooding County
Gooding, ID 83330

Board of County Commissioners:
Elmore County
Mountain Home, ID 83647

Board of County Commissioners:
Owyhee County
Murphy, ID 83346

Board of County Commissioners
Ada County
840 Main Street
Boise, ID 83702

Nicholas R. Tyrer
Attorney for Idaho Power Company
Idaho Power Company
1230 Idaho Street
P O Box 70
Boise, Idaho 83707
1. Executive Date

This Agreement shall take effect upon execution, except as to paragraphs 7, 9, and 11.

2. Executive Commitment

When the parties agree on certain actions to be taken by State, it is their intent to commit the executive branch of State government, subject to constitutional and statutory limitations, to take those actions.

3. Jointly Served

Jim Jones is a party to this agreement solely by virtue of his official position as counsel for the State of Idaho and his role counsel in Idaho Power Company v. State of Idaho, Ada County Civil Case Nos. 81375 and 52237 and Idaho Power Company v. Idaho Department of Water Resources, Ada County Civil Case No. 81375.

4. Good Faith

Upon the parties agreeing to joint presentations in legislation or action by another entity, each party agrees to actively and in good faith support such legislation or action.

The State shall enforce the State Water Plan and shall support the existing of water rights held in trust by the State and shall the Snake River is fully appropriated as needed to enforce the State Water Plan. State and Company shall not take any position before the legislature or any court, board or agency which is inconsistent with the terms of this Agreement.

5. Stay of Current Court and Regulatory Action

a. The parties shall file a motion with the court in Ada County Civil Case Numbers 81375 and 52237, seeking a
any or all proceedings shall within days following
the Agreement of the First Regular Session of the
10th General Assembly, and shall be in accordance with
the Idaho Rules of Civil Procedure, completion of designated discovery filed by
the State of Idaho and Plaintiff of various defendants
by Company. The State shall designate in writing,
within fifteen (15) days from the execution of this
Agreement, those items of its discovery that must be
responded to by Company. The Company shall respond to
those items of discovery designated by the State
within ninety (90) days from execution of this
Agreement.

B. The parties shall request the Federal Energy Regula-
tory Commission (FERC) to stay any subordination-
related decisions in any Company project listed in
paragraph 1 licensing or relicensing proceeding
pending implementation of this Agreement except as
contemplated in paragraph 12 of this Agreement. The
parties acknowledge, however, that FERC could
dependently take action prejudicial to their
interests, and, in such event, the parties may take
reasonable actions necessary to protect their
interests. Further, the State shall not file any
motions to intervene in Project Number 2777 (Upper
Salmon) and 2778 (Shoshone Falls); however, by
agreeing to this provision, the Company in return
waives any defense to the timeliness of a motion to
intervene caused by this Agreement in the event this
Agreement is not implemented. Company is not
agreeing, however, that a motion to intervene would be
likely to arise.

C. The parties shall not attempt to influence any
executive agency of the United States to take a
particular position regarding subordination in any
Company project licensing or relicensing proceeding
pending implementation of this Agreement.

6. Legislative Program

The parties agree to propose and support the following
legislation to implement this Agreement:

A. Enactment of Public Interest Criteria as set forth in
Exhibit 1 attached hereto.
7. Company's Water Rights

The State and Company agree that Company's water rights shall be as follows (Bracketed names used below refer to Company projects):

A. State Water License Numbers 36-2013 (Thousand Springs), 36-2126 & 37-2472 (Lower Malad), 37-2471 (Upper Malad), 36-3318 (Clear Lake), 36-2026 (Sand Springs), 02-2050 (Upper Salmon), 07-7001A, 02-2029, 02-3059, 02-2060 (Lower Salmon), 02-2064, 02-2065 (Eliot), 02-2052 (Twin Falls), 02-2036 (Shoshone Valley), 02-2022, 02-2050, 02-2051, and Permit Number 02-3180 (Swan Falls) entitle the Company to an unappropriated right of 3000 c.f.s. average daily flow from April 1 to October 31, and 3600 c.f.s. average daily flow from November 1 to March 31, both to be measured at the Murphy U.S.G.S. gauging station immediately below Swan Falls. These flows are not subject to depletion. The Murphy gauging station is located at Latitude 43° 17' 31", Longitude 116° 23' 12", in NW1/4SE1/4SE1/4 of Section 35 in Township 4 South, Range 1 West, Boise Meridian, Ada County Hydrometric Unit 17036103, on right bank 4.2 miles downstream from Swan Falls, Power plant, 7.5 miles NE of Murphy, at river mile 467.5.

B. The Company is also entitled to use the flow of the Snake River at its facilities to the extent of its actual beneficial use but not to exceed those amounts stated in State Water License Numbers 36-2013 (Thousand Springs), 37-2126 & 37-2472 (Lower Malad).
The company's rights listed in paragraph 7(A) and 7(B) are also subordinate to the uses of those persons designated from Ada County Case No. S1375 pursuant to the permit executed between the State and Company implementing the terms of R.C. 55 61-539 and 61-540.

The company's rights listed in paragraph 7(A) and 7(B) are also subordinate to those persons who have historically used water prior to October 1, 1934, and who have filed an application or claim for said use by May 30, 1985.

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

Upon implementation of this Agreement, State and Company shall consent to entry of Deeds in Ada County Civil Case Nos. 20000 and 21276 that describe the Company's water right as provided in paragraphs 7(E) through 7(F).
2. Finalized 1980 Contract

The parties acknowledge that the Governor and the Company have finalized the terms of a contract that would implement the provisions of Senate Bill 1168 of the First Regular Session of the Idaho Legislature, presently codified as 41-309 and 41-310, Idaho Code which is being executed on this date.

10. Agreement Not An Admission

The parties agree that this Agreement represents an attempt to compromise pending litigation; and it shall not be considered an admission, waiver, or abandonment of any issues or rights of law by any party, and no party will assert or contest that paragraph 7, 8, and 11 have any legal effect until this Agreement is implemented by the accomplishment of the acts described in paragraph 11.

11. Status of 1980 Water Plan

State and Company agree that the resolution of the parties' water rights and recognition thereof by State together with the Idaho State Water Plan provide a sound comprehensive plan for the management of the Snake River watershed. Thus, the parties acknowledge that this agreement provides a plan best adapted to develop, conserve, and utilize the water resources of the region in the public interest. Upon implementation of this agreement, State and Company will present the Idaho State water plan and this document to FERC as a comprehensive plan for the management of the Snake River watershed.
2. Declaratory Relief

The prayer is, in fact, for a declaratory judgment that in the current and forecast conditions of the generation of hydroelectric energy, the Company's rate base is nor unreasonably large and nor unreasonably substantial in the light of the current and forecast economic conditions. Such economics do not justify an unreasonably large or unreasonably substantial rate base. In the event the Court does not agree with the Company, the Company will seek appropriate remedial legislation.

B. Petition

1. Within forty-five (45) days of the execution of this Agreement, the Company shall file with FERC a request for a declaratory ruling that the implementation of this Agreement assures a sufficient supply of water for Project Numbers 18, 2041 (Lower Salmon), 2227 (Upper Salmon), 3059 (C. S. Strike), 2778 (Shoshone Falls), 12 (Twin Falls), 2226 (Upper and Lower Malheur), and 503 (Swan Falls).

ii. Within forty-five (45) days of implementation of this Agreement, the Company shall submit this Agreement and the consent decree to FERC in the proceedings for relicensing of Project Numbers 18 (Twin Falls), and 503 (Swan Falls) and the State and Company shall request that FERC recognize this Agreement as a definition of the Company's water rights in those proceedings.

iii. When any project listed in (ii) heretofore is no longer due for relicensing proceeding, Company
6. The Governor and Attorney General on behalf of the State and the Idaho and Company shall request that the IFPC recognize this Agreement as a definition of the Company's water right in those proceedings.

7. Company shall, if necessary, file appropriate pleadings or other documents with the Public Utility Commission of Oregon for an order granting to that user the right. Such filing, if necessary, shall be done within sixty (60) days of the execution of this Agreement.

10. Conditions on Effective Date

5. The provisions of paragraph 7, 8, and 11 shall not be binding and effective until each of the following conditions have been implemented:

i. enactment of the water user plan to implement the provisions of Exhibit 5;

ii. enactment of the legislative program outlined in paragraph 8;

iii. issuance of an appropriate order by IFPC as set forth in paragraph 11(A), or enactment of appropriate legislation by the State of Idaho, as set forth in Exhibit 5;

iv. issuance of an appropriate order by IFPC in a form acceptable to the parties as set out in paragraph 12(B)(i);

v. dismissal with prejudice of the proceeding pending before the IFPC in Case No. U-1000-124;

vi. issuance of an appropriate order by the Public Service Commissioner of Oregon if Company has requested one; and
11. Authority of Idaho Parliament and Idaho Water Resource Board Not Affected

This Agreement shall not be construed to limit or interfere with the authority and duty of the Idaho Department of Water Resources or the Idaho Water Resource Board to enforce and administer any of the laws of the State which it is authorized to enforce and administer.

12. Waiver, Modification or Amendment

No waiver, modification, or amendment of this Agreement or of any covenants, conditions, or limitations herein contained shall be valid unless in writing duly executed by the parties and the parties further agree that the provisions of this section may not be waived, modified, or amended except as herein set forth.

16. Termination of Contract

This Agreement shall terminate upon the failure to satisfy any of the conditions stated in paragraph 13. The parties shall meet on May 1, 1985, to determine if the contract shall be continued or terminated.

17. Subsequent Changes in Law

This Agreement is contingent upon certain enactments of law by the State and action by the Idaho Water Resource Board. Thus, within this Agreement, reference is made to state law in defining respective rights and obligations of the parties. Therefore, upon implementation of the conditions contained in paragraph 13, any subsequent final order by a court of competent jurisdiction, legislative enactment, or administrative ruling shall not affect the validity of this Agreement.

19. Successors

The provisions of this Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties.
19. Entire Agreement

This Agreement contains all the agreements, promises, understandings, conditions, and provisions between the parties and there are no agreements, promises, understandings, conditions, or provisions, either oral or written, between them other than are herein set forth.

20. Effect of Separation of Sections

The sectional headings appearing in this Agreement are not to be construed as interpretations of the text but are inserted for convenient reference only.

21. Multiple Originals

This Agreement is executed in quadruplicate. Each of the four (4) agreements with an original signature of each party shall be an original.

IN WITNESS WHEREOF, the parties have executed this Agreement at Boise, Idaho, this 21st day of October, 1981.

STATE OF IDAHO

[Signature]

JOHN V. EVANS
Governor of the State of Idaho

IDAHO POWER COMPANY

[Signature]

JAMES R. BRUCE
Chairman of the Board and Chief Executive Officer

By:

[Signature]

Attorney General of the State of Idaho
CERTIFICATE OF SECRETARY

Paul L. Jauzda, as secretary of Idaho Power Company, a Maine Corporation, hereby certifies as follows:

(1) That the corporate seal, or facsimile thereof, affixed to the instrument is in fact the seal of the corporation, or a true facsimile thereof, as the case may be;

(2) That any officer of the corporation executing the instrument does in fact occupy the official position indicated, and that one in such position is duly authorized to execute such instrument on behalf of the corporation, and that the signature of such officer subscribed thereto is genuine; and

(3) That the execution of the instrument on behalf of the corporation has been duly authorized.

In witness whereof, I, PAUL L. JAUZDA, as the secretary of Idaho Power Company, a Maine Corporation, have executed this certificate and affixed the seal of Idaho Power Company, a Maine Corporation, on this 1st day of October, 1981.

Paul L. Jauzda
Secretary of Idaho Power Company
CERTIFICATE OF SEAL AND OF DIPLOMATIC
OF THE STATE OF IDAHO

PETE T. CENAUSA, as Secretary of State of the State
of Idaho, hereby certifies as follows:

1. That the State of Idaho seal, or facsimile
thereof, affixed to the instrument is in fact the
seal of the State of Idaho, or a true facsimile
thereof, as the case may be; and

2. That the officials of the State of Idaho
executing the instrument do in fact occupy the
official positions indicated, that they are duly
authorized to execute such instrument on behalf
of the State of Idaho, and that the signatures of
such officials of the State of Idaho subscribed
to the same are genuine, and

3. That the execution of the instrument on behalf of
the State has been duly authorized.

IN WITNESS WHEREOF, I, Pete T. Cenauska, Secretary of
State of the State of Idaho, have examined this certificate
and affixed the seal of the State of Idaho on this ___ day
of ___ , 1984.

[Signature]
PETE T. CENAUSA
Secretary of State
State of Idaho

STATE OF IDAHO

/ s/
COUNTY OF IDAHO

On this ___ day of ___ , 1984, before me, a
Notary Public, in and for said County and State, personally
appeared JAMES E. BRUCE, and PAUL L. JAUREGUI, known or
Identified and sworn to by the President and Secretary, respectively, of Idaho Power Company, the corporation that executed the within instrument, and acknowledged to me that such instrument is executed by the said.

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

[Signature]
NOTARY PUBLIC FOR IDAHO
Commission expires [Date]

STATE OF IDAHO

County of Ada

On this 25th day of August, 1944, before me, a Notary Public, in and for said County and State, personally appeared JOHN V. LOHR, known or identified to me to be the Governor of the State of Idaho; JIM ROYAL, known or identified to me to be the Attorney General of the State of Idaho; and PERRY C. CARPENTER, known to me to be the Secretary of the State of Idaho; and eachacknowledged to me that they executed the same.

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

[Signature]
NOTARY PUBLIC FOR IDAHO
Commission expires [Date]
LEGISLATURE OF THE STATE OF IDAHO

Forty-ninth Legislature
First Regular Session - 1989

IN THE

BILL NO. ______

BY ______

AN ACT

RELATING TO MOUNTAIN LAKE FOR HYDROPOWER PURPOSES; AMENDING SECTION 42-7203, IDAHO CODE, BY MAKING CERTAIN ORGANIZATIONAL CHANGES AND BY PROVIDING FOR NOTICE TO PRIORITY DEPARTMENT; AMENDING CHAPTER 2, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-7203C TO PROVIDE THAT THE DEPARTMENT SHALL CONSIDER PUBLIC INTEREST CRITERIA WHEN AN APPLICANT'S APPROPRIATION WOULD SIGNIFICANTLY REDUCE THE AMOUNT OF WATER AVAILABLE FOR A SUBSEQUENT LOWE UF AND AMENDING OF WATER AVAILABLE FOR A SUBSEQUENT LOWE UF OF WATER AVAILABLE FOR A SUBSEQUENT LOWE UF; AND AMENDING OF WATER AVAILABLE FOR A SUBSEQUENT LOWE UF OF WATER AVAILABLE FOR A SUBSEQUENT LOWE UF, IDAHO CODE, BY THE ADDITION OF A NEW

SECTION 42-203D TO PROVIDE THAT THE DEPARTMENT SHALL REVIEW ALL PERMITS ISSUED PRIOR TO THIS ACT'S EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-203, Idaho Code be, and the same is hereby amended to read as follows:

42-203. Notice upon receipt of application -- protest -- hearing and findings -- appeals. (1) Upon receipt of an application to appropriate the waters of this state, the department of water resources shall prepare a notice in such form as the department may prescribe, specifying: (a) the number of the application; and (b) the
date of filing thereof; (c) the name and post-office address of the applicant; (d) the source of the water supply; (e) the amount of water to be appropriated; (f) in general the nature of the proposed use; (g) the approximate location of the point of diversion; (h) and the kind of use. The department shall also prepare in said notice that any protest against the approval of such application, in form prescribed by the department, shall be filed with the department within ten (10) days from the last date of publication of such notice.

(2) The director of the department of water resources shall cause the notice to be published in a newspaper printed within the county wherein the point of diversion lies, or in the event no newspaper is printed in said county, then in a newspaper of general circulation therein. When the application proposes a diversion in excess of 20,000 acre-feet, or 2,000 acre-feet, the director shall cause the notice to be published in the newspaper of sufficient circulation. This notice shall be published at least once a week for two (1) successive weeks.

(3) The director of the department shall cause a copy of the notice of application to be sent by ordinary mail to any person who requests in writing to receive any notice of application and who pays an annual mailing fee as established by departmental regulation.

(4) Any person, firm, association or corporation concerned in any such application may, within the time allowed in the notice of application, file with said director of the department of water resources a written protest against the approval of such application, which protest shall state the name and address of protestant and shall be signed by him or by his agent or attorney and shall clearly set forth his objections to the approval of such application. Hearing upon the protest as filed shall be held within sixty (60) days from the date such protest is received. Notice of this hearing shall be given by mailing notice not less than ten (10) days before the date of hearing and shall be forwarded to both the applicant and the protestant, or protestants, by certified mail. Such notice shall state the names of the applicant and protestant, or protestants, the time and place fixed for the hearing and such other information as the director of the department of water resources may deem advisable. In the event that no protest is filed, then the director of the department of water resources may forthwith approve the application, providing the same in all respects conforms with the requirements of this chapter, and with the regulations of the department of water resources.
(g) Such application shall be conducted in accordance with the provisions of section 47-1701A(1) and (2), Idaho Code. The director of the department of water resources shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied. An application which is protected or not protected, where the proposed use is such (g) that it will reduce the quantity of water under existing water rights, or (h) from a water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (g) where it appears to the satisfaction of the department that such application is not made in good faith, is made for delay or speculative purposes, or (g) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (g) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposal, the director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller and quantity of water than applied for, or may deny a permit upon conditions. The provisions of this section shall apply to any boundary stream between this and any other state in all cases where the water sought to be appropriated has its source largely within the state, irrespective of the location of any proposed power generating plant.

(6) Any person or corporation who has formally appeared at the hearing, feeling aggrieved by the judgment of the director of the department of water resources, may seek judicial review thereof in accordance with section 47-1701A(4), Idaho Code.

SECTION 2. That Chapter 2, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a New Section to be known and designated as Section 42-203C, Idaho Code, and to read as follows:

42-203C. PUBLIC INTEREST DETERMINATION -- CRITERIA -- WEIGHT -- PURPORT OR PROOF.

(1) If an applicant intends to appropriate water which is or may be available for appropriation by reason of a subordination condition applicable to a water right for power purposes, then the director shall consider, prior to approving the application, the criteria established in section 42-203A, and whether the proposed use would significantly reduce, individually or cumulatively with other uses, the amount of water available to the holder of a water right used for power production and, if so, whether the proposed use is in the public interest.
(ii) the potential benefits, both direct and indirect, that the proposed use would provide to the state and local economy;

(iii) the economic impact the proposed use would have upon electric utility rates in the state of Idaho, and the availability, feasibility, and cost of alternative energy sources to ameliorate such impact to the state and local economy;

(iv) the promotion of the family farming tradition;

(v) the promotion of full economic and multiple use development of the water resources of the State of Idaho;

(vi) whether the proposed development conforms to a staged development policy of up to 70,000 acres per year or 80,000 acres in any four-year period in the Snake River Basin above the Murphy gauge.

No single factor enumerated above shall be entitled to greater weight by the director in arriving at this determination.

(5) the burden of proof under this section shall be on the proponent.

SECTION 3. That Chapter 2, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION to be known and designated as Section 42-2430, Idaho Code, and to read as follows:

42-2430. REVIEW OF PERMIT -- OPPORTUNITY FOR HEARING. The department shall review all permits issued prior to the effective date of this section, except to the extent a permit has been put to beneficial use prior to July 1, 1963, to determine whether they comply with the provisions of chapter 2, title 42, Idaho Code. If the department finds that the proposed use does not satisfy the criteria of chapter 2, title 42, Idaho Code, then the department shall either cancel the permit or impose the conditions required to bring the permit into compliance with chapter 2, title 42, Idaho Code. If the department finds that the permit satisfies the criteria established by chapter 2, title 42, Idaho Code, then the department shall enter an order continuing the permit.

--- 4 ---
The department shall provide an opportunity for hearing in accordance with section 79A, Title 42, Idaho Code, and sections 3209 through 3215, Title 67, Idaho Code, for each holder of a permit that is either cancelled or made subject to new conditions.
EXHIBIT 2

FIRST REGULAR SESSION - 1985

IN THE ________

BILL NO. _____

BY _____

AN ACT


BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF IDAHO:

SECTION 1. THAT chapter 14, Title 42, Idaho Code, be, and the same is hereby amended by the addition of a NEW SECTION, to be known and designated as Section 42-1406A, Idaho Code, and to read as follows:

42-1406A. SNAKE RIVER BASIN ADJUDICATION - COMMENCEMENT. (1) Effective management in the public interest of the waters of the Snake River Basin requires that a comprehensive determination of the nature, extent and priority of the rights of all users of surface and ground water from that system be determined. Therefore, the director of the department of water resources on or after July 1, 1985 shall petition the district court of Ada County to commence an adjudication of the water rights of the Snake River Basin either through initiation of a new proceeding or the enlargement of an ongoing adjudication proceeding. The petition shall describe:
(a) the boundaries of any hydrologic sub-basins within the system for which the director intends to proceed separately with regard to the water rights existing within such sub-basins as provided for in sections 42-1408 through 42-1412, Idaho Code; and

2) the uses of water, if any, within the system that are not intended to be excluded from the adjudication proceeding.

(2) Upon issuance of an order by the district court which:

(a) authorizes the director to commence an investigation and determination of the various water rights existing within said system;

(b) defines the system boundaries;

(c) defines the boundaries of any hydrologic sub-basins within the system for which proceedings may advance separately pursuant to sections 42-1408 through 42-1412, Idaho Code; and

2) defines any uses of water excluded from the adjudication proceeding,

the adjudication shall proceed in the manner provided by the provisions of chapter 14, title 42, Idaho Code, with the exception of sections 42-1406 and 42-1407.

SECTION 2. That section 42-1414, Idaho Code, be, and the same is hereby amended to read as follows:

42-1414. FEES FOR FILING NOTICE OF CLAIM - In order to provide an adequate and equitable cost-sharing formula for financing the costs of adjudicating water rights, the department of water resources shall accept no notice of claim unless such notice of claim is submitted with a filing fee based upon the adequacy of water claimed which shall be determined in the same manner as the fee for filing an application for a permit to develop surface water. The fee schedule is provided in section 47-2211, Idaho Code, except that where such claim is in connection with an area that has previously been adjudicated by a state or federal court, the claimant shall pay a filing fee of only
(a) the boundaries of the entire system within the state to be adjudicated;

(b) the boundaries of any hydrologic sub-basins within the system for which the director intends to proceed separately with respect to the various water rights associated with the same portion to sections 42-1406 through 42-1413, Idaho Code; and

(c) the uses of water, if any, within the system that are recommended to be excluded from the adjudication proceeding.

(2) Upon issuance of an order by the district court which:

(a) authorizes the director to commence an investigation and determination of the various water rights existing within the system;

(b) defines the system boundaries;

(c) designates the boundaries of any hydrologic sub-basins within the system for which proceedings may advance separately pursuant to sections 42-1406 through 42-1413, Idaho Code; and

(d) defines any uses of water excluded from the adjudication proceeding;

the adjudication shall proceed in the manner provided by the provisions of chapter 11, title 42, Idaho Code, with the exception of sections 42-1406 and 42-1407.

Section 2. That section 42-1414, Idaho Code, be, and the same is hereby amended to read as follows.

42-1414. FEES FOR FILING NOTICE OF CLAIM - In order to provide an adequate and equitable cost-sharing formula for financing the costs of adjudicating water rights, the department of water resources shall accept no notice of claim required under the provisions of section 42-4109, Idaho Code, unless such notice of claim is submitted with a filing fee based upon the value of water claimed. Said fee shall be determined in the same manner as the fee for filing an application for a permit to appropriate the public waters of this state as provided in section 42-4111, Idaho Code, except that where such claim is in connection with a water right established pursuant to a valid permit or license previously issued by the department of water resources or a water right which has been finally been adjudicated by a state or federal court, said claimant shall pay a filing fee of only

- 2 -
The Senate ($100.00) tax refund due form below. Failure to pay the variable water use tax in accordance with the
principles, shall be found for the department to collect
and return the notice of claim to the claimant. Provided
that all taxes which are paid, shall be processed in any notice
of claim with whatever title adjudication involving such
claim were under any other title fee, under
this Act of 1977. The fee schedule set forth below applies
to adjudication proceedings commenced or initiated on or after
July 1, 1985 and to adjudication proceedings for which a
proposed finding of water rights has not been filed with the
appropriate district court by the department of water resources
prior to July 1, 1985.
1. Flat fee per claim filed:

1. Claim for domestic user stock
watering rights: $25.00

2. Claim for all user rights: $50.00

3. Additional variable water use fee for each claim filed:

1. Irrigation use: $1.00 per a.f.s.

2. Livestock: $75.00 per a.f.s.

3. Livestock: $10.00 per a.f.s.

4. Municipal, Industrial, Commercial, Plumbing, Heating, Cooling: $100.00 per a.f.s.

5. Public: $100.00 per a.f.s.

6. Miscellaneous: flat fee only.

C. Payment of a variable water use tax of more than
$1,000.00 may be agreed upon by paid at the total amount equal
pursuant, with the anticipated interest accruing to the unpaid
balance. All fees collected by the department pursuant to this
section shall be placed in the water resource adjudication
account established by section 42-1777, Idaho Code.

SECTION 3. That Chapter 17, Title 42, Idaho Code, be, and the
same is hereby amended by the addition of a NEW SECTION, to be
known and designated as Section 42-1777, Idaho Code, and to
read as follows:

42-1777. WATER RESOURCES ADJUDICATION ACCOUNT. - A water
resource adjudication account is hereby created and established
in the agency asset fund. Fee moneys in the account
are to be asserted by the department of water resources, upon appropriation by the legislature, to pay the costs of the department attributable to the Snake River Basin adjudication provided for by section 42-7406H, Idaho Code.

The state treasurer is directed to invest all moneys in the account. All interest or other income accruing from such investment shall accrue to the account.
AN ACT

RESTORING CHAPTER 8, TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 61-5023 TO PROVIDE THAT GAIN UPON SALE OF A PUBLIC UTILITY'S WATER RIGHT SHALL ACCRUE TO THE BENEFIT OF THE RATEPAYERS.

Be it enacted by the legislature of the State of Idaho:

SECTION 1 - That Chapter 8, Title 61, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 61-5023, Idaho Code, and to read as follows:

61-5023. MIGRATION OF GAIN UPON SALE OF WATER RIGHT.

The gain upon sale of a public utility's water right used for the generation of electricity shall accrue to the benefit of the ratepayers.
SUBJECT: PROPOSED LEGISLATION RELATING TO UTILITIES COMMISSION AND ITS AUTHORITY IN MATTER OF REVENUE REQUIREMENT AND OTHER REGULATORY IMPLICATIONS OF SWAN FALLS COMPROMISE.

SECTION 1 - FINDINGS AND STATEMENT OF PURPOSE.--After hearing testimony from the Office of the Governor, the Office of the Attorney General, the Idaho Public Utilities Commission, the Idaho Department of Water Resources, the Idaho Water Resources Board, the Idaho Department of Fish and Game, other governmental entities and affected interest groups and individuals of the State of Idaho, the legislature hereby finds that while portions of the legislation, as described in the settlement and stipulation, is in the public interest for all purposes, including but not limited to, all purposes under the Public Utilities Law, as amended, implementation of the settlement will resolve continuing controversy over electric utility water rights in the Snake River Basin above Mersey U.S.G.S. gaging station. Such controversy has rendered the amount of the water available for hydropower uncertain, thus placing at risk both the reliability of lowest-cost hydropower to the ratepayers and the state's ability to manage an increasingly scarce resource. This settlement balances all of the parties' concerns and ensures that existing hydropower-generating facilities will remain useful, that ratepayers will not be burdened with excessive costs, and that availability of water for additional, desirable, manufacturing, and agricultural uses will persistently expand.

SECTION 2 - PUBLIC UTILITIES COMMISSION--MISALLOCATIONS.--The Idaho Public Utilities Commission shall have no jurisdiction to consider in any proceeding, whether instituted before or after the effective date of this act, any issue as to whether any electric utility, (including Idaho Power Company), should have or could have preserved, maintained or protected its water rights and hydropower generating in a manner inconsistent with [describe the settlement and stipulation].

SECTION 3 - IN-DEPTH EFFECT OF AGREEMENT.--In any proceeding before the Idaho Public Utilities Commission, including but not limited to a proceeding in which the commission is setting or reviewing the revenue requirement of any electric utility (including Idaho Power Company), the commission shall accept as reasonable and in the public interest for all purposes, the [describe the settlement and stipulation], including without limitation the effects of implementation of such [describe the settlement and stipulation] on the utility's revenue requirements and hydropower generation.
SECTION 4. - DISPLACEMENT OF THE
shall be conducted in accordance with Section 4, to the extent one of those sections
apply.
The executive branch of the State of Idaho and the Idaho Power Company agree to recommend that the following positions be incorporated into policy 32 of the state water plan.

1. The minimum daily flow at the Murphy gauging station should be increased to 3,900 c.f.s. from April 1 through October 31 and to 2,600 c.f.s from November 1 to March 31.

2. The minimum daily flow at the Milner gauging station shall remain at zero c.f.s.

3. New storage projects upstream from the Murphy gauge should only be approved after it is determined that existing storage above Murphy is fully utilized.

4. The Idaho Water Resource Board should consider reserving a block of water for future FCMI purposes.

5. There should be an express recognition of the adverse effects of diversions for storage from the mainstream of the Snake River between Milner and Murphy on hydropower production from November 1 to March 31. In this regard, approval of any new storage projects that contemplate the diversion of water during the November 1 to March 31 period from the mainstream of the Snake River between Milner Dam and Murphy Gauge should be coupled with provisions that mitigate the impact such depletions would have on the generation of hydropower.

(The parties are proposing a policy which is neutral on the question of which Company facilities should be considered in mitigation decisions. At any later time the Board considers that question, the parties reserve the right to take any position they deem appropriate.)
AN ACT

AMENDING CHAPTER 2, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-203B: 7 PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF WATER SOURCES SHALL HAVE THE AUTHORITY TO SUBORDINATE RIGHTS GRANTED FOR POWER PURPOSES TO SUBSEQUENT UPSTREAM RIGHTS, AND TO LIMIT PERMITS OR LICENSES GRANTED FOR POWER PURPOSES TO A SPECIFIC TERM.

AS IT ENACTED BY THE LEGISLATURE OF THE STATE OF IDAHO:

SECTION 1. THAT CHAPTER 2, TITLE 42, IDAHO CODE, BE, AND THE SAME IS HEREBY AMENDED BY THE ADDITION THERETO OF A NEW SECTION, TO BE KNOWN AND DESIGNATED AS SECTION 42-203B, IDAHO CODE, AND TO READ AS FOLLOWS:

42-203B. AUTHORITY TO SUBORDINATE RIGHTS — NATURE OF SUBORDINATED WATER RIGHT AND AUTHORITY TO ESTABLISH A SUBORDINATION CONDITION — AUTHORITY TO LIMIT TERM OF PERMIT OR LICENSE. The director shall have the authority to subordinate the rights granted in a permit or license for power purposes to subsequent upstream beneficial depletionary uses. A subordinated water right for power use does not give rise to any claim against, or right to interfere with, the holder of subsequent upstream rights established pursuant to state law. The director shall also have the authority to limit a permit or license for power purposes to a specific term.

-1-
AMENDING CHAPTER 2, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-203B, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES SHALL HAVE THE AUTHORITY TO SUBORDINATE RIGHTS GRANTED FOR POWER PURPOSES TO SUBSEQUENT UPSTREAM RIGHTS, AND TO LIMIT PERMITS OR LICENSES GRANTED FOR POWER PURPOSES TO A SPECIFIC TERM.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 2, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereof of a new section, to be known and designated as Section 42-203B, Idaho Code, and to read as follows:

42-203B. AUTHORITY TO SUBORDINATE RIGHTS — NATURE OF SUBORDINATED WATER RIGHT AND AUTHORITY TO ESTABLISH A SUBORDINATION CONDITION — AUTHORITY TO LIMIT TERM OF PERMIT OR LICENSE. The director shall have the authority to subordinate the rights granted in a permit or license for power purposes to subsequent upstream beneficial depletionary uses. A subordinated water right for power use does not give rise to any claim against, or right to interfere with, the holder of subsequent upstream rights established pursuant to state law. The director shall also have the authority to limit a permit or license for power purposes to a specific term.
SECTION 2. This Act does not apply to licenses which have already been issued as of the effective date of this Act.

SECTION 3. An emergency existing therefore, which emergency is hereby declared to exist, this Act shall go in full force and effect on and after its passage and approval.
SECTION I

1. The legislature finds and declares that it is in the public interest to specifically implement the state's power to regulate and limit the use of water for power purposes and to define the relationship between the state and the holder of a water right for power purposes to the extent such right exceeds an established minimum flow. The purposes of the trust established by sections 2 and 3 of this act are to assure an adequate supply of water for all future beneficial uses and to clarify and protect the right of a user of water for power purposes to continue using the water pending approval of depletionary future beneficial uses. [Further findings will be added]

2. A water right for power purposes which is defined by agreement with the state as unsubordinated to the extent of a minimum flow established by state action shall remain unsubordinated as defined by the agreement. Any portion of the water rights for power purposes in excess of the level so established shall be held in trust by the State of Idaho, by and through the Governor, for the use and benefit of the user of the water for power purposes, and of the people of the State of Idaho. The rights held in trust shall be subject to subordination to and depletion by future upstream beneficial users whose rights are acquired pursuant to state law.

3. Water rights for power purposes not defined by agreement with the state shall not be subject to depletion unless any applicable minimum stream flow established by state action. Water rights for power purposes in excess of such minimum stream flow shall be held in trust by the State of Idaho, by and through the Governor, for the use and benefit of the user of water for power purposes and of the people of the State of Idaho. The rights held in trust shall be subject to subordination to and depletion by future upstream beneficial users whose rights are acquired pursuant to state law.

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

5. The Governor or his designee is hereby authorized and empowered to enter into agreements with holders of water rights for power purposes to define that portion of their water rights at or below the level of the applicable minimum stream flow as being unsubordinated to upstream beneficial uses and depletions, and to define such rights in excess thereof as
being held in trust by the State according to Section 2 above. Such agreements shall be subject to ratification by law. The contract entered into by the Governor and the Idaho Power Company on October 24, 1934, is hereby found and declared to be such an agreement, and the legislature hereby ratifies the Governor's authority and power to enter into this agreement.

Section 2: This Act shall not be construed as modifying, amending, or repealing any interstate compact.

Section 3: The provisions of this Act are hereby declared to be severable. If any provision of this Act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this Act.

Section 4: An emergency existing therefor, which emergency is hereby declared to exist, this Act shall be in full force and effect on and after its passage and approval.
AN ACT

AMENDING SECTION 42-1805, IDAHO CODE, TO PROVIDE THAT THE
DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES SHALL HAVE
THE POWER TO ESTABLISH RULES AND REGULATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF IDAHO:

SECTION 1. THAT SECTION 42-1805, BE, AND THE SAME IS HEREBY
AMENDED TO READ AS FOLLOWS:

42-1805. ADDITIONAL DUTIES — IN ADDITION TO OTHER DUTIES
PRESCRIBED BY LAW, THE DIRECTOR OF THE DEPARTMENT OF WATER
RESOURCES SHALL HAVE THE FOLLOWING POWERS AND DUTIES:

1. TO REPRESENT THE STATE IN ALL MATTERS PERTAINING TO
INTRASTATE AND INTERNATIONAL WATER RIGHTS AFFECTING IDAHO WATER
RESOURCES; AND TO COOPERATE WITH ALL AGENCIES, NOW EXISTING OR
HEREAFTER TO BE FORMED, WITHIN THE STATE OR WITHIN OTHER
JURISDICTIONS, IN MATTERS AFFECTING THE DEVELOPMENT OF THE
WATER RESOURCES OF THIS STATE.

2. TO PREPARE A PRESENT AND CONTINUING INVENTORY OF THE
WATER RESOURCES OF THIS STATE, ASCERTAIN MEANS AND METHODS OF
CONSERVING AND AUGMENTING THESE AND DETERMINE AS ACCURATELY AS
POSSIBLE THE MOST EFFECTIVE MEANS BY WHICH THESE WATER
RESOURCES MAY BE APPLIED FOR THE BENEFIT OF THE PEOPLE OF THIS
STATE.
(3) To conduct surveys, tests, investigations, research, examinations, studies, and estimates of cost relating to availability of unappropriated water, effective use of existing supply, conservation, storage, distribution and use of water.

(4) To prepare and compile information and data obtained and to make the same available to interested individuals or agencies.

(5) To cooperate with and coordinate activities with the administrator of the division of environmental protection of the department of health and welfare as such activities relate to the functions of either or both departments concerning water quality. Such cooperation and coordination shall specifically require that:

(a) The director meet at least quarterly with the administrator and his staff to discuss water quality programs. A copy of the minutes of such meeting shall be transmitted to the governor.

(b) The director transmit to the administrator, reports and information prepared by him pertaining to water quality programs, and proposed rules and regulations pertaining to water quality programs.

(c) The director shall make available to the administrator and the administrator shall make available to the director all notices of hearings relating to the promulgation of rules and regulations relating to water quality, waste discharge permits, and stream channel alteration, as such directly affect water quality, and notice of any other hearings and meetings which relate to water quality.

(d) To perform administrative duties and such other functions as the board may from time to time assign to the director to enable the board to carry out its powers and duties.

(7) To suspend the issuance of licenses or permits of a defined class or in a defined geographic area, as necessary to protect existing uses, ensure compliance with state law or implement the State Water Plan.

(8) To promulgate, adopt, modify, repeal and enforce rules and regulations implementing or effectuating the powers and duties of the department.