

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
104 FERC ¶ 62,216

American Falls Reservoir District No. 2
Big Wood Canal Company

Project No. 12423-000

ORDER ISSUING ORIGINAL LICENSE
(Minor Project)
(September 26, 2003)

1. On November 25, 2002, American Falls Reservoir District No. 2 and the Big Wood Canal Company (AFRD2 & BWCC) filed, pursuant to Part I of the Federal Power Act (FPA),¹ an application for a minor original license with the Federal Energy Regulatory Commission (Commission) to construct, operate, and maintain the 1.5-megawatt (MW) Lateral 993 Hydroelectric Project (project). The proposed project would be located at the juncture of two irrigation canals, namely the 993 Lateral and North Gooding Main Canal, 20 miles northwest of the Town of Shoshone, Lincoln County, Idaho. The initial diversion is the Milner Dam on the Snake River where water used by the proposed project is diverted to the North Gooding Main Canal, a U. S. Bureau of Land Management (BLM) project. The Lateral 993 Hydroelectric Project would occupy 17 acres of Federal land managed by the BLM.²

BACKGROUND

2. On December 17, 2002, the Commission issued public notice of the application. On January 22, 2003, the Commission issued a public notice accepting the application for filing and soliciting interventions and protests. A timely motion to intervene was filed by the State of Idaho, which does not oppose licensing this project.

¹16 U.S.C. §§ 791a-825r.

² Nothing in the record of this proceeding suggests that these federal lands are "reservations," as defined in FPA Section 3(2), 16 U.S.C. §§794(2). Collectively, 10.6 acres of construction easements are to be used during construction of the project and 6.4 acres of permanent easements are to be used for maintenance and operation of the project through the license term. Once construction is complete, the applicant will submit a revised Exhibit G to include only 6.4 acres of easements for maintenance and operation through the license term.

3. On April 1, 2003, the Commission issued a notice that the application was ready for environmental analysis. The State of Idaho, *ex rel.*, the Idaho Department of Fish and Game (IDFG), the Idaho Department of Environmental Quality (IDEQ), and the Idaho Water Resource Board (IWRB) filed comments in response to the notice.
4. On July 17, 2003, Commission staff issued an Environmental Assessment (EA) that evaluated the potential impacts of the project. Analyses in the EA addressed the potential effects of construction and operation of the proposed project on geology and soils, aquatic resources, terrestrial resources, threatened and endangered species, aesthetic resources, cultural resources, and recreation resources. In the EA, staff recommends that the project be licensed as proposed with certain additional protective measures, and finds that licensing the project would not constitute a major federal action significantly affecting the quality of the human environment. No comments were filed in response to the EA.
5. All comments and information filed by the agencies and interested parties have been fully considered and addressed in this order in determining whether, and under what conditions, to issue this license.

PROJECT DESCRIPTION

6. AFRD2 & BWCC propose to construct the project at the juncture of the 993 Lateral and North Gooding Main Canal. A 10-foot-high diversion structure would be constructed across the North Gooding Main Canal (approximately 50 feet long) and would divert the entire canal flow into a new canal to be constructed along the same alignment as the 993 Lateral. The new canal would convey the water approximately 7,000 feet to the penstock intake structure. An emergency bypass spillway would be constructed in the new canal and would divert irrigation water into the existing canal during an emergency shutdown of the turbines. The intake structure would divert water into a 72-inch-diameter penstock. The penstock would convey the water approximately 2,900 feet to the powerhouse sited on the northerly bank of the existing North Gooding Main Canal. The powerhouse would house two Francis style turbines with synchronous generators and related equipment. Water leaving the powerhouse returns to the North Gooding Main Canal. Approximately 500 feet of the downstream canal channel would be excavated to lower the tailwater level. The project would also include a 100-foot primary transmission line. See licensing ordering paragraph (B) for more detailed information.

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7. AFRD2 & BWCC propose to construct, operate, and maintain the project to provide power to the Idaho Power Company (IPC) and the project would have an average annual energy production of approximately 5.8 gigawatt-hours (GWh).

8. The project would operate in "run-of-canal" mode. Operation would optimally require stable, uninterrupted flow in the irrigation canal. Flows would be continually passed through the facility, either through the turbines and/or through the bypass structure during the irrigation season to facilitate downstream irrigation needs. The project's operational mode would be seasonal, and would depend on water releases into the North Gooding Main Canal. The plant would operate during the irrigation season and not operate during winter months (i.e., approximately four to five months).

APPLICANT'S PLANS AND CAPABILITIES

9. In accordance with Section 10 of the FPA, staff evaluated AFRD2 & BWCC's proposal for these areas: (A) need for power; (B) dam safety; and (C) safe management, operation, and maintenance of the project. I accept staff's conclusions as described below in each of these areas.

A. Need for power

10. The project is proposed by the AFRD2 & BWCC. Power generated by the project would be sold directly to the IPC.

11. IPC is located in the Northwest Power Pool Area (NPPA) of the Western Electric Coordinating Council's (WECC) region of the North America Electric Reliability Council (NERC). The NPPA region comprises all or major portions of Idaho, Montana, Nevada, Oregon, Utah, Washington and Wyoming, a small part of California, and the Canadian Provinces of British Columbia and Alberta. Staff looked at the regional need for power as reported for the NPPA region. The NERC (2002) projects peak demand and energy requirements for the NPPA region to grow at compound rates of 2.5 percent and 1.9 percent, respectively.

12. Staff concluded that the region has a need for power over the near term and that power from the project would be useful in meeting a small part of the regional need for power.

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B. Dam Safety

13. The project is classified as having a low downstream hazard potential, based on the Commission's dam safety criteria and the following project-specific features: (1) the project would be located in a remote area with limited access with ranching and agriculture being the primary land use activities; and (2) there are no inhabited structures downstream of the project.

14. Failure of project features would not pose a risk to life or property. Because of the low downstream hazard potential, the project would not be subject to Part 12, Subpart D of the Commission's regulations.

C. Safe Management, Operation, and Maintenance of the Project

15. Staff concludes that the project would be safe and adequate for operation during the license term, and would pose no threat to public safety if operated and maintained according to good engineering practices, and the normal regulations governing our hydroelectric licenses.

WATER QUALITY CERTIFICATION

16. Under Section 401(a)(1) of the Clean Water Act (CWA),³ the Commission may not issue a license for a hydroelectric project unless the certifying agency either has issued a water quality certificate for the project or has waived certification by failing to act on a request for certification within a reasonable period of time, not to exceed one year. Section 401(d) of the CWA provides that state certification shall become a condition of any federal license or permit that is issued.⁴

17. AFRD2 & BWCC requested a Section 401 Water Quality Certificate (WQC) from the IDEQ on October 29, 2002. On June 24, 2003, the IDEQ issued a Section 401 WQC, with eight conditions. These conditions are included in Appendix A of this license, and are incorporated in the license pursuant to ordering paragraph (D) of this order.

³33 U.S.C. § 3341(a)(1).

⁴33 U.S.C. § 3341(d).

SECTION 18 FISHWAY PRESCRIPTIONS

18. Section 18 of the FPA, 16 U.S.C. §811, states that the Commission shall require construction, maintenance, and operation by the licensee of such fishways as the Secretaries of Commerce and Interior may prescribe. By letter dated March 19, 2003, the U. S. Fish and Wildlife Service (USFWS) indicated that it did not have any additional comments regarding fish, wildlife, or other environmental resources that may be affected by project activities. As such, the USFWS has not prescribed any fishways for this project.

RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES AND 10 (J) PROCESS

19. Section 10(j) of the FPA⁵ requires the Commission, when issuing a license, to include license conditions based on the recommendations of the federal and state fish and wildlife agencies, submitted pursuant to the Fish and Wildlife Coordination Act,⁶ to "adequately and equitably protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat)" affected by the project.

20. The State of Idaho filed timely recommendations to protect, mitigate damages to, and enhance fish and wildlife. This license includes conditions consistent with the agencies' recommendations. These recommendations include requests for the licensees to prepare and implement an elk, pronghorn antelope, and mule deer monitoring plan (Article 401); design and construct the transmission line to prevent raptor electrocution (Article 402); and prepare and implement a soil stabilization, monitoring, and restoration plan (Article 403).

THREATENED AND ENDANGERED SPECIES

21. Section 7(a) of the Endangered Species Act of 1973, as amended (ESA)⁷ requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species, or result in the

⁵16 U.S.C. §803(j).

⁶16 U.S.C. §661 *et seq.*

⁷16 U.S.C. § 1536(a).

destruction or adverse modification of designated critical habitat. The construction and operation of the project would not have any effects on listed species or critical habitat. In a letter dated March 19, 2003, the USFWS determined that no issues have been identified for this project that require consultation under Section 7 of the ESA.

CULTURAL RESOURCES

22. Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA), requires that the Commission evaluate the potential effects on properties listed or eligible for listing in the National Register of Historic Places (National Register). Section 106 also requires that the Commission consult with interested Indian Tribes that might attach religious or cultural significance to such properties.⁸

23. In this case, the Commission must take into account whether any historic property could be affected by a proposed new license within the project's area of potential effects (APE).

24. A small prehistoric lithic scatter (10-LN-90) of an indeterminate age was located within the APE near the Lateral 993 Canal (Goddard 2001:4; Woods 2002:7). The prehistoric lithic scatter was not evaluated, but without further archeological testing, it is considered to be provisionally eligible for the National Register.

25. This license includes conditions based on the SHPO's measures to protect site 10-LN-90 during construction and throughout the license term (Article 404).

COLUMBIA RIVER BASIN FISH AND WILDLIFE PROGRAM

26. Under section 4(h) of the Pacific Northwest Power Planning and Conservation Act, the Northwest Power Planning Council (Council) developed the Columbia River Basin Fish and Wildlife Program (Program) to protect, mitigate, and enhance the fish and

⁸ Commission staff sent letters to the Shoshone-Bannock, Shoshone Paiute, Northwestern Band of the Shoshoni Nation, and Nez Perce Tribe on whether any of the tribes were aware of known properties that they attached religious or cultural significance and that might be affected by the proposed project. We sent these letters to the tribes, along with copies of the license application, on March 11, 2003 and have not received any information from them about such properties.

wildlife resources associated with development and operation of hydroelectric projects within the Columbia River Basin. Section 4(h) states that responsible federal and state agencies should provide equitable treatment for fish and wildlife resources, in addition to other purposes for which hydropower is developed, and that these agencies should take into account, to the fullest extent practicable, the Program adopted under the Pacific Northwest Power Planning and Conservation Act. Specific provisions affecting non-federal hydropower projects are outlined in Appendix B of the Program.

27. Our recommendations are consistent with applicable provisions of the Program. The project is not located within a protected area designated under Appendix B of the Program. Further, a condition of this license reserves to the Commission the authority to require future alterations in project structures and operations to take into account, to the fullest extent practicable, the applicable provisions of the program (Article 405).

OTHER ISSUES

A. Administrative Conditions

28. The Commission collects annual charges from licensees for the administration of the FPA, and to reimburse the United States for the occupancy and use of any federal lands. Article 201 of the license provides for the collection of such funds, as appropriate.

29. The Commission requires licensees to file sets of approved project drawings on microfilm. Article 202 provides for the filing of these drawings.

30. Article 203 requires the licensees to follow appropriate federal, state, and local statutes and regulations when clearing and disposing of unnecessary materials.

31. Article 306 requires the licensees to file revised drawings of project features as built. In addition to those project features described in the application, Article 306 requires the licensees to include within the project boundary the bypassed portion of the North Gooding Main Canal. The bypassed portion of the North Gooding Main Canal will be used for project purposes in the event of an emergency shutdown of the turbines and therefore must be included within the project boundary.

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B. Start and Completion of Construction

32. Article 301 requires the licensees to start project construction within two years of the date of the license issuance and complete construction within four years of issuance of this license.

C. Review of Final Plans and Specifications

33. Article 303 requires AFRD2 & BWCC to provide the Commission and its Portland Regional Director with final contract drawings and specifications--together with a supporting design report consistent with the Commission's engineering guidelines--at least 60 days before the start of project construction.

D. Use and Occupancy of Project Lands and Waters

34. Requiring a licensee to obtain prior Commission approval for every use or occupancy of project land would be unduly burdensome. Therefore, Article 406 of the license allows AFRD2 & BWCC to grant permission, without prior Commission approval, for the use and occupancy of project lands for such minor activities as landscape planting. Such uses must be consistent with the purpose of protecting and enhancing the scenic, recreational, and environmental values of the project.

STATE AND FEDERAL COMPREHENSIVE PLANS

35. Section 10(a)(2) of the FPA⁹ requires the Commission to consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project. Under Section 10(a)(2) of the FPA, federal and state agencies have filed comprehensive plans with the Commission. Of these, staff identified and reviewed the plans relevant to the project.¹⁰ No inconsistencies were found.

⁹ 16 U.S.C. § 803(a)(2)(A).

¹⁰ Bureau of Land Management. 1986. Monument resource management plan. Department of the Interior, Shoshone, Idaho. January 1986. 45 pp.

Fish and Wildlife Service. Canadian Wildlife Service. 1986. North American waterfowl management plan. Department of the Interior.

(continued...)

COMPREHENSIVE DEVELOPMENT

36. Sections 4(e) and 10(a)(1) of the FPA, §§ 16 U.S.C. 797(e) and 803(a)(1), respectively, require the Commission to give equal consideration to the power development purposes and to the purposes of energy conservation, the protection and mitigation of damage to fish and wildlife, the protection of recreational opportunities, and the preservation of other aspects of environmental quality. Any license issued shall be such as in the Commission's judgment will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for all beneficial public uses. The decision to license this project, and the terms and conditions included herein, reflect such consideration.

37. In determining whether a proposed project will be best adapted to a comprehensive plan for developing a waterway for beneficial public purposes, pursuant to Section 10(a)(1) of the FPA, the Commission considers a number of public interest factors, including the economic benefits of project power.

¹⁰(...continued)

Environment Canada. May 1986. 19pp.

Idaho Department of Fish and Game. 2001. Idaho fisheries management plan, 2001-2006. Boise, Idaho.

Idaho Department of Fish and Game. Bonneville Power Administration. 1986. Pacific Northwest Rivers study. Final report: Idaho. Boise, Idaho. 12 pp. and appendices.

Idaho Department of Health and Welfare. Division of Environment. 1997. Idaho water quality standards and wastewater treatment requirements. Boise, Idaho.

Idaho Water Resources Board. 1993. State water plan: Milner Dam to King Hill Boise, Idaho.

Northwest Power Planning Council. 1998. Northwest conservation and electric power plan. Portland, Oregon

Northwest Power Planning Council. 2000. Columbia River Basin Fish and Wildlife Program. Portland, Oregon.

Economic Benefits of Project Power

38. As discussed, power generated by the project would be sold directly to the IPC. IPC is located in the NPPA of the WECC region of the NERC. The NERC (2002) projects peak demand and energy requirements for the NPPA region to grow at compound rates of 2.5 percent and 1.9 percent.
39. I conclude that the region has a need for power over the near term and that power from the project would be useful in meeting a small part of the regional need for power. In a September 26, 2002 order,¹¹ the Idaho Public Utilities Commission (IPUC) established a levelized avoided cost rate for the IPC. The levelized avoided cost rate for the IPC is 51.08 mills/kilowatt-hours (kWh) for a project smaller than 10 MW coming on-line in 2005 with a 20-year contract.
40. The main purpose of the project is to provide power to the IPC. If constructed, the project would have an installed capacity of 1.5 MW and generate about 5.8 GWh of electrical energy annually.
41. The project as proposed by the licensees has an annual cost of \$231,000. Commission staff estimate that the annual power benefit from the project would be about \$296,000, thereby yielding an annual net benefit of \$65,000.
42. With the measures proposed by staff and required in the WQC, staff estimates the project would have an annual cost of \$232,000. Staff estimates that the annual power benefit from the project would be about \$296,000, thereby yielding an annual net benefit of \$64,000.
43. When licensed in accordance with the conditions adopted herein, the project would produce about 5.8 GWh of energy annually at a cost of about 39.9 mills/kWh, or about \$232,000 per year. Using IPUC's levelized avoided cost rate we estimate the annual value of project power would be 51.1 mills/kWh or \$296,000 per year. Thus, the applicants' power would cost about 11.2 mills/kWh or \$64,000 less than the likely alternative cost of power.

¹¹Case No. GNR-E-02-1; Order No. 29124.

Preferred Alternative

44. Based on Commission staff's independent review and evaluation of the Lateral 993 Hydroelectric Project, the recommendations of the resource agencies and other stakeholders, and the no-action alternative, as documented in the EA, I have selected the Proposed Action, with the water quality certificate conditions and staff-recommended enhancement measures, as the preferred alternative for the project.

45. I selected this alternative because the preferred alternative: (1) meets a regional need for power; (2) protects environmental resources; and (3) is in the public interest.

46. The preferred alternative as approved by the license for the project requires AFRD2 & BWCC to:

1. develop a site-specific erosion and sediment control plan, inclusive of pertinent drawings, to minimize and/or avoid potential impacts that could cause erosion, sedimentation, and degradation of water quality (Article 403). The plan will be developed in consultation with IDFG, IDEQ, BLM and all other appropriate agencies prior to construction. The plan will include limiting construction to the non-irrigation season, stabilizing the interior canal banks, control structure and powerhouse prior to release of water through the system, and restoration and revegetation of the disturbed area should be accomplished in such a manner as to prevent noxious weeds from growing in the newly disturbed areas.

2. develop a post-construction plan in consultation with IDEQ to monitor soil and vegetation rehabilitation efforts and to identify and treat noxious weeds in an environmentally safe manner (Article 403).

3. install raptor-proof primary transmission lines according to current specifications of the Edison Electric Institute (Article 402).

4. flag the periphery of site 10-LN-90 prior to any construction and to advise crews to avoid the area per consultation with the Idaho State Historical Society (ISHS), and in order to protect historic and archeological resources associated with the project (Article 404). Further, in the event that any historic or archeological artifacts are discovered during excavation, all work at that location will cease and the State Historical Preservation Officer (SHPO) will be notified immediately. Construction may continue at that site per the recommendations of the ISHS. This agreement will satisfy the regulations of the Commission, and those of the

Advisory Council on Historic Preservation pursuant to Section 106 of the National Historic Preservation Act. The flagging procedures are intended to continuously protect and maintain historic properties during the term of project license.

5. develop a plan to monitor elk, pronghorn antelope, and mule deer in the project canal. The plan would be developed in consultation with IDFG (Article 401).

LICENSE TERM

47. Section 6 of the FPA¹² states that licenses under Part I of the FPA shall be issued for a period not to exceed 50 years. The Commission's policy establishes 30-year terms for those projects that propose little or no redevelopment, new construction, new capacity, or enhancement; 40-year terms for those projects that propose a moderate amount of redevelopment, new construction, new capacity or enhancement; and 50-year terms for those projects that propose extensive redevelopment, new construction, new capacity or enhancement. Because the project involves an original license with substantial new construction, the license is issued for a period of 50 years.

SUMMARY OF FINDINGS

48. The EA contains background information, analysis of impacts, support for related license articles, and the basis for a finding that licensing the project would not constitute a major federal action significantly affecting the quality of the human environment. The design of this project is consistent with the engineering standards governing dam safety. The project will be safe if operated and maintained in accordance with the requirements of this license.

49. Based upon a review of the agency and public comments filed on the project, and the staff's independent analysis pursuant to Sections 4(e), 10(a)(1), and 10(a)(2) of the FPA, I conclude that issuing a license for the project, with the required environmental measures and other special license conditions, will be best adapted to the comprehensive development of affected water courses for beneficial public uses.

¹²16 U.S.C. § 799.

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The Director orders:

(A) This license is issued to American Falls Reservoir District No. 2 and the Big Wood Canal Company (licensees), for a period of 50 years, effective the first day of the month in which this order is issued, to construct, operate, and maintain the Lateral 993 Hydroelectric Project (No. 12423). This license is subject to the terms and conditions of the FPA, which is incorporated by reference as part of this license, and to the regulations the Commission issues under the provisions of the FPA.

(B) The project consists of:

(1) All lands, to the extent of the licensees' interest in those lands, enclosed by the project boundary shown by Exhibit G, filed November 25, 2002, February 20, 2003, and April 25, 2003:

<u>Exhibit G Drawing</u>	<u>FERC Drawing No.</u>	<u>Description</u>
Sheet G-1	12423-1	Vicinity Sketch
Sheet G-2	12423-2	Project Location Map and Boundary
Sheet G-3	12423-3	Facilities Map
Sheet G-4	12423-4	Construction and Permanent Easements Map

(2) The proposed project works consisting of : (1) a new concrete diversion structure located across the North Gooding Main Canal with a maximum height of 10 feet; (2) a new 7,000-foot-long canal with a bottom width of 25 feet that is to be excavated from rock, with some earth embankment, having a hydraulic capacity of 350 cubic feet per second (cfs); (3) a 10-foot-high, gated concrete diversion structure that would divert up to 350 cfs to a concrete intake structure; (4) a 2,900-foot-long steel pipe (or High Density Polyethylene) penstock (72-inch diameter); (5) a 30- by 50-foot concrete with masonry or metal walled powerhouse containing two 750-kilowatt (kW) turbines with a total installed capacity of 1,500 kW; (6) an enlarged 100-foot-long tailrace channel with a bottom width of 40 feet that would discharge into the North Gooding Main Canal; (7) a 100-foot-long primary transmission line; and (8) appurtenant facilities. The plant would operate during the irrigation season and not operate during winter months (i.e., approximately four to five months).

The project works generally described above are more specifically described in Exhibit A (pages A-13 through A-16) of the license application and Exhibit F (F-1

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through F-5) of the license application, the response to additional information filed February 20, 2003, and the revised project features filed on April 25, 2003.

<u>Exhibit F Drawing</u>	<u>FERC Drawing No.</u>	<u>Description</u>
Sheet F-1	12423-5	Existing Canals
Sheet F-2	12423-6	General Layout Plan
Sheet F-3	12423-7	Plan - Emergency Spillway and Bypass
Sheet F-4	12423-8	Section - Canal
Sheet F-5	12423-9	Plan - Penstock Intake
Sheet F-6	12423-10	Section - Intake Structure
Sheet F-7	12423-11	Plan - Penstock
Sheet F-8	12423-12	Plan - Powerhouse
Sheet F-9	12423-13	Profile - Powerhouse

(3) All of the structures, fixtures, equipment, or facilities used to operate or maintain the project, all portable property that may be employed in connection with the project, and all riparian or other rights that are necessary or appropriate in the operation or maintenance of the project.

(C) Those sections of Exhibits A and F described above are approved and made part of the license. Exhibit G is approved only insofar as it shows the general project location.

(D) This license is subject to the water quality certification conditions submitted by the Idaho Department of Environmental Quality pursuant to Section 401(a) of the Clean Water Act, as those conditions are set forth in Appendix A of this order.

(E) The following sections of the FPA are waived and excluded from the license for this minor project:

4(b), except the second sentence; 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army; 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the Act that are waived here; 10(c), insofar as it relates to depreciation reserves; 10(d); 10(f); 14, except insofar as the power of condemnation is reserved; 15; 16; 19; 20; and 22.

(F) This license is subject to the articles set forth in Form L-17 (October 1975)

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entitled "TERMS AND CONDITIONS OF LICENSE FOR UNCONSTRUCTED MINOR PROJECT AFFECTING LANDS OF THE UNITED STATES", and the following additional articles:

Article 201. The licensees shall pay the United States the following annual charges, effective as of the date of commencement of project construction for the purposes of:

A. Reimbursing the United States for the Commission's administrative costs, pursuant to Part I of the Federal Power Act, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 1,500 kilowatts. Under the regulations currently in effect, projects with authorized installed capacity of less than or equal to 1,500 kilowatts will not be assessed an annual charge.

B. Recompensing the United States for the use, occupancy and enjoyment of 17 acres of its lands, other than for transmission line right-of-way during the construction of the project.

Article 202. Within 45 days of the date of issuance of the license, the licensees shall file three sets of aperture cards of the approved exhibit drawings. The set of originals shall be reproduced on silver or gelatin 35mm microfilm. All microfilm shall be mounted on type D (3-1/4' X 7-3/8") aperture cards. The licensees shall submit one copy of FORM-587 with the aperture cards.

Prior to microfilming, the FERC Drawing Number (12423-1 through 12423-13) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number shall be typed on the upper right corner of each aperture card. Additionally, the Project Number, FERC Exhibit (e.g., F-1, G-1, etc.), Drawing Title, and date of this license shall be typed on the upper left corner of each aperture card.

Two of the sets of aperture cards shall be filed with the Secretary of the Commission, ATTN: OEP/DHAC. The third set of aperture cards shall be filed with the Commission's Portland Regional Office.

Article 203. The licensees shall clear and keep clear to an adequate width all lands along open conduits and shall dispose of all temporary structures, unused

timber, brush, refuse, or other material unnecessary for the purposes of the project which result from maintenance, operation, or alteration of the project works. All clearing of lands and disposal of unnecessary material shall be done with due diligence to the satisfaction of the authorized representative of the Commission and in accordance with appropriate federal, state, and local statutes and regulations.

Article 301. The licensees shall commence construction of the project works within two years from the issuance date of the license and shall complete construction of the project within four years from the issuance date of the license.

Article 302. Before starting construction, the licensees shall review and approve the design of contractor-designed cofferdams and deep excavations and shall make sure construction of cofferdams and deep excavations is consistent with the approved design. At least 30 days before starting construction of the cofferdam, the licensees shall submit one copy to the Commission's Portland Regional Director and two copies to the Commission (one of these copies shall be a courtesy copy to the Commission's Director, Division of Dam Safety and Inspections), of the approved cofferdam construction drawings and specifications and the letters of approval.

Article 303. At least 60 days before starting construction, the licensees shall submit one copy to the Division of Dam Safety and Inspections - Portland Regional Engineer and two copies to the Commission (one of these shall be a courtesy copy to the Director, Division of Dam Safety and Inspections), of a supporting design report and final contract plans and specifications. The Commission may require changes to the plans and specifications to assure the work is completed in a safe and environmentally sound manner. Construction may not commence until authorized by the Regional Engineer. If the licensees plan substantial changes to the location, size, type, or purpose of the water retention structures, powerhouse, or water conveyance structures, the plans and specifications must be accompanied by revised Exhibit F and G drawings, as necessary.

Article 304. At least 60 days before starting construction, the licensees shall submit one copy to the Division of Dam Safety and Inspections - Portland Regional Engineer and two copies to the Commission (one of these shall be a courtesy copy to the Director, Division of Dam Safety and Inspections), of the Quality Control and Inspection Program (QCIP) for the Commission's review and approval. The QCIP shall include a sediment and erosion control plan.

Article 305. At least 60 days before starting construction, the licensees shall submit one copy to the Division of Dam Safety and Inspections - Portland Regional Engineer and two copies to the Commission (one of these shall be a courtesy copy to the Director, Division of Dam Safety and Inspections), of the Temporary Emergency Action Plan (TEAP) for the Commission's review and approval. The TEAP shall describe emergency procedures in case failure of a cofferdam, large sediment control structure, or any other water retaining structure could endanger construction workers or the public. The TEAP shall include a notification list of emergency response agencies, a plan drawing of the proposed cofferdam arrangement, the location of safety devices and escape routes, and a brief description of testing procedures.

Article 306. Within 90 days after finishing construction, the licensees shall submit, for Commission approval, eight copies of the revised Exhibits A, F, and G describing the project as built. The revised exhibits shall include all project features described herein and shall also include the bypassed portion of the North Gooding Main Canal that will be used during an emergency shut down of the turbines. The licensees shall submit six copies to the Commission, one copy to the Commission's Portland Regional Director, and one to the Director, Office of Energy Projects.

Article 401. At least 90 days before any land-disturbing or land-clearing activities, the licensees shall file for Commission approval, an Elk, Pronghorn Antelope, and Mule Deer Monitoring Plan after consultation with the Idaho Department of Fish and Game, U. S. Fish and Wildlife Service, and the Bureau of Land Management. The plan shall include, at a minimum, an annual monitoring schedule, monitoring strategies, what criteria will be monitored and the filing of annual reports and an annual reporting schedule. The licensees shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensees shall allow a minimum of 30 days for the agencies to comment and to make recommendations prior to filing the plan with the Commission for approval. If the licensees do not adopt a recommendation, the filing shall include the licensees' reasons, based on project-specific information. The Commission reserves the right to make any changes to the plan.

The licensees shall file an Annual Report that shall include at a minimum any modifications to project facilities or operations proposed to minimize impacts to

elk, pronghorn antelope, and mule deer occurring as a result of current facility operations and results of the monitoring such as mortality, as appropriate. The Commission reserves the right to require any additional measures to protect wildlife resources.

Article 402. The licensee shall design and construct the transmission line in accordance with guidelines set forth in "Suggested Practices for Raptor Protection on Power Lines--the State of the Art in 1996," by Avian Power Line Interaction Committee, Edison Electric Institute/Raptor Research Foundation.

The licensee shall consult with the U. S. Fish and Wildlife Service, the Idaho Department of Fish and Game, and the Bureau of Land Management in adopting these guidelines, and shall develop and implement a design that will provide adequate separation of energized conductors, groundwires, and other metal hardware, adequate insulation, and any other measures necessary to protect raptors from electrocution hazards.

Article 403. At least 90 days before any land-disturbing or land-clearing activities, the licensees shall file for Commission approval, a Soil Stabilization, Monitoring, and Restoration Plan. The plan shall include, at a minimum, a site-specific erosion and sediment control plan, inclusive of pertinent drawings, to minimize and/or avoid potential impacts that could cause erosion, sedimentation, and degradation of water quality. The plan shall be developed in consultation with the Idaho Department of Environmental Quality, Idaho Department of Fish and Game, U.S. Bureau of Land Management and the U. S. Fish and Wildlife Service prior to construction. The plan shall include limiting construction to the non-irrigation season, stabilizing the interior canal banks, control structure, and powerhouse prior to release of water through the system, and restoration and revegetation of the disturbed area shall be accomplished in such a manner as to prevent noxious weeds from growing in the newly disturbed areas. The plan shall also include a post-project strategy to monitor soil and vegetation rehabilitation efforts and to identify and treat noxious weeds as defined by the Idaho Department of Agriculture and in cooperation with Idaho Department of Fish and Game in an environmentally safe manner. The licensees shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agency, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensees shall allow a minimum of 30 days for the agencies to comment and to make recommendations prior to filing the plan with the Commission for approval. If the licensees do not adopt a recommendation, the

filing shall include the licensees' reasons, based on project-specific information. The Commission reserves the right to make any changes to the plan.

Article 404. Prior to any land-disturbing or land-clearing activities, the licensees shall flag the boundaries of site 10-LN-90 and protect it from potential adverse affects during construction of the project.

If the licensees discover a previously unidentified archeological or historic site during the course of constructing or developing project works or other facilities at the project, the licensees shall stop all land-clearing and land-disturbing activities in the vicinity of the cultural resource and consult with the Idaho State Historic Preservation Officer (SHPO). After consultation with the SHPO, and if it is determined that the discovered archeological or historic site is a historic property, pursuant to Section 106 of the National Historic Preservation Act, the licensees shall file for Commission approval a Historic Properties Management Plan (plan) prepared by a qualified cultural resource specialist after having consulted with the SHPO.¹ The plan shall include the following items: (1) a description of the discovered property indicating whether it is listed on or eligible to be listed on the National Register of Historic Places; (2) a description of the potential adverse effects that has occurred, or could occur, on the discovered historic property; (3) proposed measures for avoiding or mitigating such adverse effects; (4) documentation of the nature and extent of consultation; and (5) a schedule for mitigating effects and conducting additional studies. The Commission may require changes to the plan.

The licensees shall not begin land-clearing or land-disturbing activities, other than those specifically authorized in this license, or resume such activities in the vicinity of a property, until informed that the requirements of this article have been fulfilled.

Article 405. The Commission reserves the authority to order, upon its own motion or upon the recommendation of federal and state fish and wildlife agencies, affected Indian Tribes, and the Northwest Power Planning Council, alterations of project structures and operations to take into account to the fullest

¹ In crafting the Historic Properties Management Plan, the Licensee will use the Advisory Council on Historic Preservation and Commission's "Guidelines for the Development of Historic Properties Management Plans for FERC Hydroelectric Projects" (dated May 20, 2002).

extent practicable the regional fish and wildlife program developed and amended pursuant to the Pacific Northwest Electric Power Planning and Conservation Act.

Article 406. (a) In accordance with the provisions of this article, the licensees shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The licensees may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensees shall also have continuing responsibility to supervise and control the use and occupancies for which they grant permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensees for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the licensees shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The type of use and occupancy of project lands and waters for which the licensees may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 water craft at a time and where said facility is intended to serve single-family type dwellings; (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline; and (4) food plots and other wildlife enhancement. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensees shall require multiple use and occupancy of facilities for access to project lands or waters. The licensees shall also ensure, to the satisfaction of the Commission's authorized representative, that the use and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the licensees shall: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that

the proposed construction is needed and would not change the basic contour of the impoundment shoreline. To implement this paragraph (b), the licensees may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensees' costs of administering the permit program. The Commission reserves the right to require the licensees to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

(c) The licensees may convey easements or rights-of-way across, or leases of project lands for: (1) replacement, expansion, realignment, or maintenance of bridges or roads where all necessary state and federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project impoundment. No later than January 31 of each year, the licensees shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed. If no conveyance was made during the prior calendar year, the licensees shall so inform the Commission and the Regional Director in writing no later than January 31 of each year.

(d) The licensees may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary state and federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary federal and state water quality certification or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary federal and state approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 water craft at a time and are located at least one-half mile (measured over project waters) from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved

report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from project waters at normal surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 60 days before conveying any interest in project lands under this paragraph (d), the licensees must submit a letter to the Director, Office of Energy Projects, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G or K map may be used), the nature of the proposed use, the identity of any federal or state agency official consulted, and any federal or state approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the licensees to file an application for prior approval, the licensees may convey the intended interest at the end of that period.

(e) The following additional conditions apply to any intended conveyance under paragraph (c) or (d) of this article:

(1) Before conveying the interest, the licensees shall consult with federal and state fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.

(2) Before conveying the interest, the licensees shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved Exhibit R or approved report on recreational resources of an Exhibit E; or, if the project does not have an approved Exhibit R or approved report on recreational resources, that the lands to be conveyed do not have recreational value.

(3) The instrument of conveyance must include the following covenants running with the land: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (ii) the grantee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project; and (iii) the grantee shall not unduly restrict public access to project waters.

(4) The Commission reserves the right to require the licensees to take reasonable remedial action to correct any violation of the terms and conditions of this article,

for the protection and enhancement of the project's scenic, recreational, and other environmental values.

(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised Exhibit G or K drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised Exhibit G or K drawings would be filed for approval for other purposes.

(g) The authority granted to the licensees under this article shall not apply to any part of the public lands and reservations of the United States included within the project boundary.

(G) The licensees shall serve copies of any Commission filing required by this order on any entity specified in the order to be consulted on matters relating to that filing. Proof of service on these entities must accompany the filing with the Commission.

(H) This order is final unless a request for rehearing is filed within 30 days from the date of its issuance, as provided in Section 313(a) of the FPA. The filing of a request for rehearing does not operate as a stay of the effective date of this license or of any other date specified in this order, except as specifically ordered by the Commission. The licensees' failure to file a request for rehearing shall constitute acceptance of this order.

J. Mark Robinson
Director
Office of Energy Projects

Appendix A

Water Quality Certificate Conditions for the Lateral 993 Hydroelectric Project Issued by the Idaho Department of Environmental Quality (IDEQ) June 24, 2003.

General Conditions

1. The project shall be constructed in a manner, that will not violate Idaho's Water Quality Standards as set forth in IDAPA 58.01.02.
2. The proposed project shall be constructed in accordance with the FERC approved plan and its revisions.
3. All fill and construction materials not used in the project shall be removed and disposed of in a manner that will prevent their entry into waters of the State of Idaho. This includes canalways.
4. The certification holder shall notify the IDEQ, in writing, upon transferring this ownership or responsibility for the compliance with these conditions to another person. The new owner/operator shall request, in writing, transfer of this water quality certification to his/her name.
5. The certification holder shall allow the IDEQ or its representative to inspect the project area at reasonable times and to inspect records regarding this project.

Special Conditions

1. Project Implementation: Construction shall be done in dry conditions to help control turbidity and sedimentation. Where equipment and machinery will be used:

- a. All fuel, oil, and other hazardous materials shall be stored in a centralized location that is constructed and maintained with under liners, to ensure that a spill cannot enter surface or groundwater.
 - b. Re-fueling and maintenance of construction equipment and machinery shall be in an upland location away from Lateral 993. This will ensure that in the case of an accidental spill it will not enter the canalway and eventually make its way to the Big Wood River or Dry Creek.
2. Total Maximum Daily Load (TMDL): The project shall be conducted in such a manner that it meets the demands of the Big Wood River Watershed Management Plan, and thus protects for excessive total phosphorous, total suspended solids, turbidity, and substrate sediments in the streambed and water column. Therefore,
- a. Rock Riprap: All areas subject to erosion because of the construction shall be protected with rock riprap or other suitable methods of erosion protection meeting IDWR Rules and Minimum Standards for Stream-channel Alterations. Rock used for riprap shall be sound, dense, well graded, angular rock free of fines and of a sufficient size to withstand the expected velocities within the channel during ordinary high water to ensure erosion protection.
 - b. TMDL Instream Targets: As described in the Big Wood River TMDL, total suspended solids are limited to less than 50 mg/L. Turbidity is limited to less than 50.3 NTU, based on a background of 0.3 NTU in the Big Wood River. Total phosphorous is limited to less than 0.100 mg/L. Compliance with these instream targets at the point of discharge into Dry Creek and the Big Wood River.
3. Excavation Activity: Construction excavation impacts may occur during the project activity due to the raising of the existing canal banks and associated activities. These activities may potentially affect the streambank stability of Lateral 993 along with any associated wetlands and riparian lands that have developed since the construction of the Lateral 993. Therefore,
- a. Streambank Stability and Protection: Riparian vegetation that is disturbed and/or removed in the course of construction of the project

should be restored. To enhance the stability of the streambanks, live willow cuttings or other suitable shrub cuttings shall be placed in conjunction with the riprap in such a manner that one end is in contact with permanent moisture and a maximum of three or four leaf nodes are exposed. Streambank vegetation shall be protected to the extent practical during construction. Disturbed areas shall be revegetated and/or seeded with perennial vegetation. Care shall be taken to select locations for ingress and egress from the stream that will minimize bank and riparian vegetation damage. All disturbed and eroded areas from the construction shall be revegetated with perennial shrubs, grasses, and forbs to reduce erosion, restore bank cover, and habitat and inhibit the invasion of noxious weeds.

- b. Wetlands and Riparian Lands: All temporary structures, excavated materials, vegetative or construction debris resulting from the construction shall be disposed out of the stream channel, the wetlands, and riparian lands of Lateral 993. All debris shall be removed from the site and disposed of properly in the uplands.
- c. Restoration and Stabilization Plan: A site-specific restoration and stabilization plan, inclusive of pertinent drawings, that describes how Big Wood Canal Company shall meet the requirements of this certification shall be prepared and submitted to the IDEQ for approval prior to construction. Construction shall not begin until the restoration and stabilization plan is approved by IDEQ.
- d. Post-construction Plan: A post-construction plan shall be developed and submitted to IDEQ for approval 30 days after construction to monitor soil and vegetation rehabilitation efforts and to identify and treat noxious weeds in an environmentally safe manner.