

RECEIVED

MAR 13 2006

Department of Water Resources
Adjudication Bureau

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

In Re SRBA

Case No. 39576

A. Subcase 37-04007
(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: United States of America acting through the Department of Interior,
Bureau of Land Management, Idaho State Office

Address: 1387 South Vinnell Way
Boise, Idaho 83709-1657

Daytime Phone: see below

Name & Address of Attorney, if any:

Larry A. Brown (202) 305-0435 phone, (202) 305-0274 fax
United States Department of Justice
Environment and Natural Resource Division
General Litigation Section
550 West Fort Street, MSC 033
Boise, Idaho 83724

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Peter Bowler

Address: 555 River Road #E; Bliss, Idaho 83314

Name:

Address: ;

Name:

Address: ;

Name:

Address: ;

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☐ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point(s) of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☒ **Place of Use**
Should be: See attached.
11. **I object because:**
 - ☐ This water right should not exist.
 - ☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S):

The United States of America, through the Bureau of Land Management, is the owner of the land upon which use is claimed. The claimant's use of Federal land is unauthorized. See attached POU. Claimant's water right should not include this POU.

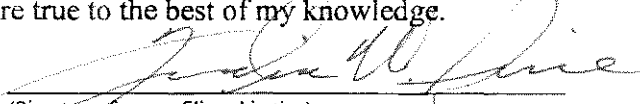
E.

VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of ADA)

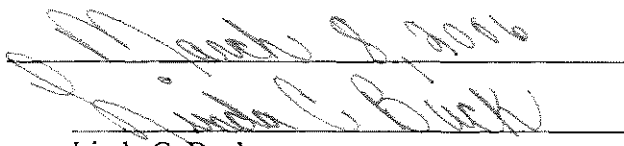
Fredric W. Price, Water Rights Specialist, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.


(Signature of person filing objection)


(Attorney signing in representative capacity)

Subscribed and sworn to before me on:


Linda C. Buck
Notary Public in and for the State of Idaho
Residing at: Mountain Home
My Commission Expires: 12-21-2011

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the Court. **FAX filings will not be accepted.**
You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on March 9, 2006, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

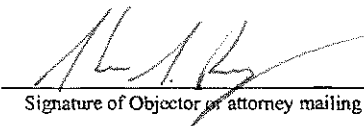
Name: Peter Bowler
Address: 555 River Road #E; Bliss, Idaho 83314
Name:
Address: ;
Name:
Address: ;
Name:
Address: ;

3. Copies to:

IDWR Document Depository
P.O. Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724



Signature of Objector or attorney mailing on Objector's behalf

11/01/2005

IDAH0 DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 37-4007
NAME AND ADDRESS: PETER BOWLER
555 RIVER ROAD #E
BLISS ID 83314

POUs on BLM
- Remove POUs that
describe Public Land
-perhaps this is a typographical error.

SOURCE: SPRING TRIBUTARY: SNAKE RIVER

QUANTITY: 0.500 CFS
The quantity of water under this right for domestic use shall not exceed 13,000 gallons per day.
Right nos. 37-4007, 37-4057 and 37-7384A are limited to a total combined diversion rate of 0.13 cfs for irrigation.

PRIORITY DATE: 04/15/1950
historic The appropriator shall exercise this right in a manner that recognizes the practice that the use of water for power generation is incidental to the rights of others to the use of water for other purposes. The appropriator shall not make a delivery call for hydropower generation except as against junior hydropower rights.

POINT OF DIVERSION: T06S R13E S21 NESESW Lot 2 Within GOODING County

PURPOSE AND PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
POWER	01/01 12/31	0.500 CFS
IRRIGATION	03/15 11/15	0.130 CFS
DOMESTIC	01/01 12/31	0.040 CFS

PLACE OF USE: IRRIGATION Within GOODING County
T06S R13E S21 Lot 2 SESW 2.3
POWER Within GOODING County
T06S R13E S21 NESE **BLM**
DOMESTIC Within GOODING County
T06S R13E S21 NESE **BLM**
2.3 ACRES TOTAL

Right nos. 37-4007, 37-4057 and 37-7384A are limited to the irrigation of a combined total of 2.3 acres in a single irrigation season.

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

The quantity of water decreed for this water right for domestic use is not a determination of historical beneficial use.

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

11/01/2005

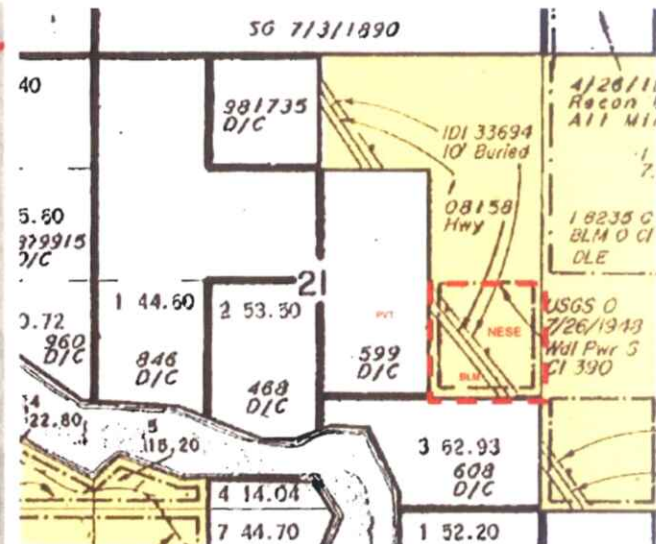
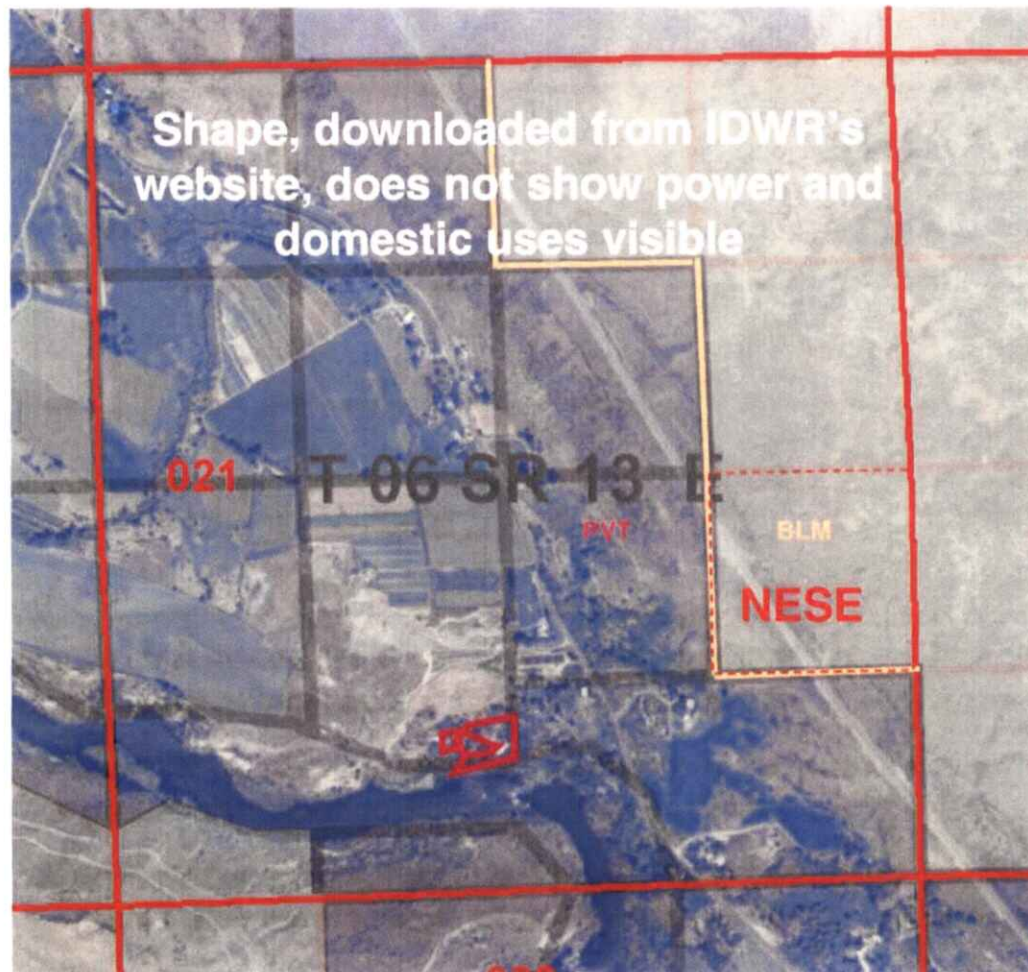
IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

37-04007 – Peter Bowler

T06S, R13E, S21, NESE

	Town	Rang	Subcase	Sect	QQ	Quar	Bas	Gov	Mix	PVT	BLM	FS	BOR	OtherFed	State	Own Comment
	06S	13E	37-04007	21	NE	SE	37		☐	☐	☒	☐	☐	☐	☐	Unauthorized Power Use
	06S	13E	37-04007	21	NE	SE	37		☐	☐	☒	☐	☐	☐	☐	Unauthorized Domestic Use



-POUs located in S21, NESE are described on BLM Land. This is an intrusion on Federal Public Land.

-Claimant is not authorized for the use of Federal Public Land.

- POUs described in the NESE QQ should be removed from this right.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Snake River Pottery

Project No. 5651-000

NOTICE OF APPLICATION FOR EXEMPTION FOR SMALL HYDROELECTRIC
POWER PROJECT UNDER 5 MW CAPACITY
(May 18, 1982)

Take notice that on May 3, 1982, Snake River Pottery (Applicant) filed an application under Section 408 of the Energy Security Act of 1980 (Act) 16 U.S.C. §§2702 and 2706 as amended for exemption of a proposed hydroelectric project from licensing under Part 1 of the Federal Power Act. The proposed small hydroelectric project (Project No. 5651) would be located on an unnamed Spring near Bliss, in Blaine County, Idaho. Correspondence with the Applicant should be directed to: Mr. Dale Hatch, P.O. Box 1711, Twin Falls, Idaho 83301.

Project Description - Applicant proposes to rehabilitate the existing project by replacing the existing generating units with installed capacity of 10 kW with new generating units with total rated capacity of 97 kW. The existing project consists of: (1) an intake structure; (2) a 600-foot-long penstock; (3) a powerhouse at elevation 2,115 feet m.s.l.; that the applicant would bore to an elevation outside the A.J. Wiley Project No. 5645 reservoir boundary on the Snake River, when it is licensed for construction; and (4) a proposed 1.5-kV, 1,270-foot-long transmission line connecting the project with an existing Idaho Power Company line north of the project.

Purpose of Exemption - An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments - The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the Idaho Department of Fish and Game are requested, for the purpose set forth in Section 408 of the Act, to submit within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the Agency letter. If an Agency does not file terms and conditions within this time period, that Agency will be presumed

to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Application - Any qualified license applicant desiring to file a competing application must submit to the Commission, on or before June 1, 1982, either the competing license application that proposes to develop at least 7.5 megawatts in that project, or notice of intent to file such a license application. Submission of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be exempted.

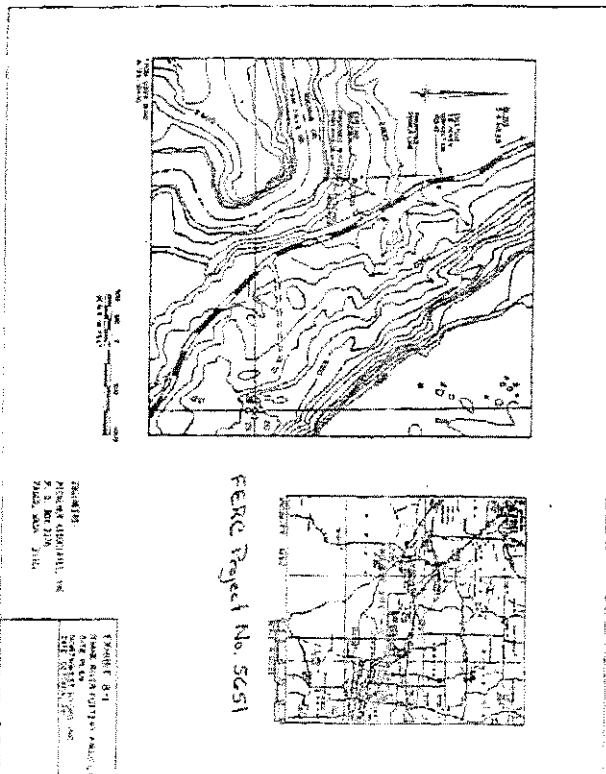
A notice of intent must conform with the requirements of 18 C.F.R. §4.13(b) and (c) (1982). A competing license application must conform with the requirements of 18 C.F.R. §4.13(a) and (d) (1982).

Comments, Protests, or Petitions to Intervene - Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. §§1.10 or §1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before June 1, 1982.

Filing and Service of Responsive Documents - Any filings must be made to the Commission in the form of "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and three copies required by the Commission's regulations to: Kenneth P. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426. An additional copy must be sent to: Fred T. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 W at the above address. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth P. Plumb
Secretary

DC-507





State of Idaho

DEPARTMENT OF WATER RESOURCES

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

JOHN V. EVANS

Governor

A. KENNETH DUNN

Director

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

March 27, 1985

Aldrich Bowler
Snake River Pottery
HC-60, Box 110
Bliss, ID 83314

Re: Water Rights for Power Production Purposes

Dear Mr. Bowler:

The purpose of this letter is to document our conversation of Friday, March 22, 1985, which included discussions regarding water rights for your power plant located on an unnamed stream tributary to the Snake River.

Based on the information that you provided during your visit, a data summary table has been developed, as shown below:

<u>Date of Use</u>	<u>Rate of Flow Utilized</u>	<u>Power Generated</u>	<u>Head</u>
1934	17 cfs	7.5 kw	50'
1952	17 cfs	25 kw	50'
1979	17 cfs	25 kw total	90'
Dec. 18, 1984	17 cfs	86 kw	90'

During our conversation you indicated that although some changes have been made to the power generation system during the last fifty years, the point of diversion and place of use have remained in the same forty-acre tract, and the rate of flow utilized has not been changed significantly. As you indicated, the increase in amount of power generated in 1952 versus 1934 was caused by the updating of turbine equipment. You further described that in 1979 you changed the point of diversion somewhat, resulting in an increase of head from fifty feet to ninety feet, but our Department advised you that no change in the water right was necessary because the point of diversion remained in the same forty-acre tract. Although we would require a transfer if such a change were made today, our interpretation in 1979 was different and no transfer was required at that time.

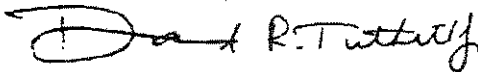
Mr. Aldrich Bowler
March 27, 1985
Page. 2

You have indicated that on December 18, 1984, new equipment was brought on line to increase the power output to 86 kilowatts using the same amount of water and head as had been utilized for several years. Even though the amount of power generated has increased, because the rate of flow utilized has not been increased no additional water right filing is required.

Copies of this letter will be placed in our files for Claims to Water Rights Nos. 37-4007 and 37-4147. If information provided in this letter is incorrect, or if interpretations herein are erroneous, please advise this office.

I enjoyed your visit to this office and wish you good luck in operation of your power generating system.

Sincerely,



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

DRT/ljs

cc: Files 37-4007 and 37-4147

RECEIVED

37-4007

SEP 7 1982

Department of Water Resources

20 EREC 962.394

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Snake River Pottery) Project No. 5651-002

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

(Issued September 2, 1982)

The Applicant 1/ filed an application for exemption from all or part of Part 1 of the Federal Power Act pursuant to 18 C.F.R. Part 4 Subpart K (1980) implementing in part Section 408 of the Energy Security Act (Act) of 1980 for a project as described in the attached public notice. 2/ 3/

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

Standard Article 2, included in this exemption, requires compliance with any terms and conditions that Federal or State fish and wildlife agencies have determined appropriate to prevent loss of, or damage to, fish and wildlife resources. The terms and conditions referred to in Article 2 are contained in any letters of comment by these agencies which have been forwarded to the Applicant in conjunction with this exemption.

1/ Snake River Pottery, Project No. 5651-002, filed on May 3, 1982.

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

3/ Authority to act on this matter is delegated to the Deputy Director, Office of Electric Power Regulation, under §§75.308 of the Commission's regulations, 18 C.F.R. §§75.308(1981). This order may be appealed to the Commission by any party within 30 days of its issuance pursuant to Rule 1902, 18 C.F.R. 385.1902, 47 Fed. Reg. 19047(1982). Filing an appeal and final Commission action on that appeal are prerequisites for filing an application for rehearing as provided in Section 313(a) of the Act. Filing an appeal does not operate as a stay of the effective date of this order or of any other date of this order or of any other date specified in this order, except as specifically directed by the Commission.

DC-A-6

-2-

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

It is ordered that:

Snake River Pottery Project No. 5651 as described and designated in Snake River Pottery application filed on May 3, 1982, exempted from all of the requirements of Part 1 of the Federal Power Act, including licensing, subject to the standard articles in §4.106 of the Commission's regulations attached hereto as Form E-8, 18 C.F.R. §§4.106, 45 Fed. Reg. 76116 (November 18, 1980), and the following Special Article.

Article 6. The construction, operation, and maintenance of the exempt project may be reviewed by the Commission and subjected to further requirements for consistency with the terms and conditions to the regional fish and wildlife program developed pursuant to the Pacific Northwest Electric Power Planning and Conservation Act. Inconsistencies between the regional plan and the mandatory conditions under Article 2 will be resolved by the Commission.

Robert E. Cackowski
Robert E. Cackowski
Deputy Director, Office of
Electric Power Regulation

§§§

§ 4.106 Standard terms and conditions of exemption from licensing.

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

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

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

(c) Article 3. The Commission may accept a license application by any qualified license applicant and revoke this exemption if actual construction or development of any proposed generating facilities has not begun within 18 months, or been completed within four years, from the date on which this exemption was granted. If an exemption is revoked, the Commission will not accept a subsequent application for exemption within two years of the revocation.

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

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