

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: John N. Nassikas, Chairman;
William L. Springer, and Don S. Smith.

Idaho Power Company

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Project No. 2258

ORDER ISSUING MAJOR LICENSE
(CONSTRUCTED)

(Issued March 31, 1975)

The Idaho Power Company (Applicant) of Boise, Idaho, filed with the Commission on February 13, 1959, an application for major license under §4(e) of the Federal Power Act (Act), 16 U.S.C. §797(e), for operation and maintenance of the constructed Project No. 2258. Supplements and revisions to the basic application were filed on February 24, March 24, April 2, 6 and 29, and November 12, 1959; November 21, 1972; and April 10, 1973. Project No. 2258, as applied for, consists of three developments on the Snake River, Idaho, which was found to be a navigable water of the United States by Commission order dated August 4, 1955, in Idaho Power Company, Project Nos. 1971, 2132 and 2133, 14 F.P.C. 72 (1955). Upper Salmon A and B developments are located in the region of Buhl, Counties of Gooding and Twin Falls, Idaho. Shoshone Falls development is located in the region of Twin Falls, Counties of Jerome and Twin Falls, Idaho. American Falls development is located in the region of the City of American Falls, County of Power, Idaho.

We are by this order licensing only the American Falls development under the docket designated as Project No. 2258. While the Commission has included under one license developments owned and operated by the same company when they are closely coordinated hydraulically or electrically, 1/ no close relationship appears to exist here between American Falls and the two other developments involved. American Falls is 99 miles upstream of Shoshone Falls development and over 130 miles upstream of the

1/ See, e.g., Wisconsin Michigan Power Company, Project No. 1759, Order issued November 5, 1974, F.P.C.; Virginia Electric & Power Company, Project Nos. 2093 and 2009, 23 F.P.C. 537 (1960).

two plants at Upper Salmon development. The Bureau of Reclamation (Reclamation) Minidoka Dam, which impounds Lake Walcott reservoir as part of the Minidoka Reclamation Project, is some 39 miles downstream of American Falls, and separates American Falls from the other developments and interrupts flows from the American Falls reservoir. Accordingly, we will not presently treat Project No. 2258, as applied for, as one project, but will defer consideration of the Upper Salmon and Shoshone Falls portions. Hereinafter, any discussion or comments on Project No. 2258 will refer only to American Falls development, designated hereinafter as American Falls Project. Matters and issues raised in any portion of record in Project No. 2258 relating to Shoshone Falls or Upper Salmon developments will not be treated or resolved by this order.

American Falls Project was constructed in several stages between 1913 and 1927, with the first unit placed in operation in 1913; the second in December, 1923; the third in January, 1924; and the fourth and fifth in June, 1927. The project works consist of: a concrete gravity diversion dam, located immediately below the American Falls dam of Reclamation, with gated spillway; a powerhouse adjacent to the dam with one 3,500-kW generating unit and four 6,000-kW generating units installed therein; step-up transformers and switching equipment associated with the 2.3/6.9/46/138-kV substation; and appurtenant facilities. The diversion dam provides a forebay which receives water from the American Falls reservoir. The forebay supplies the plant and creates an effective head of 48 feet.

Public notice of the filing of the basic application was issued June 1, 1959, with July 20, 1959, as the last day for filing protests or petitions to intervene. Notice was published in the Federal Register on June 6, 1959, 24 Fed. Reg. 4643 (1959).

A petition for leave to intervene was tendered out-of-time by the Idaho Fish and Game Commission (IFG). The petition stated that as it appeared that the construction and operation of the hyroelectric dams at Project No. 2258 have had and will have detrimental effect upon certain fish resources of the State of Idaho, the petitioner requested leave to intervene in order to fulfill its statutory responsibilities. By order dated August 14, 1959, we permitted intervention. Our records reflect no further action taken by IFG respecting the instant proceeding.

Interior has requested the inclusion of special license articles in any license issued for Project No. 2258; Applicant has opposed several of these conditions. By letter dated December 16, 1969, Interior recommended that the Commission hold in abeyance the issuance of a license to Applicant for the American Falls power plant, until the problems arising out of the contemplated replacement of Reclamation's American Falls dam had been resolved.

We note that with the enactment of the Act of December 28, 1973, 87 Stat. 904, a method was adopted by which a Replacement Dam may be constructed by non-Federal entities. We note too, that on September 25, 1973, Applicant filed for major license for its unconstructed American Falls power plant, Project No. 2736, in anticipation of enactment of the Act of December 28, 1973. Therefore, we herein issue a license for Project No. 2258 and provide for Applicant's filing for surrender of its license for Project No. 2258 at such time as it is rendered inoperative by any new project approved by the Commission.

Pursuant to Staff request dated January 26, 1971, Applicant filed on November 21, 1972, and supplemented on April 10, 1973, its Exhibit W or environmental report. Pursuant to Section 2.81 of the Commission's General Rules, 18 C.F.R. §2.81 (1974), Staff has made its initial review of the Applicant's report and determined that the proposed action is not a major Federal action significantly affecting the quality of the human environment requiring the preparation of a detailed environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. §4321 et seq.

We agree. Issuance of this license for continuing operation in the present manner will not produce significant environmental impacts. All three applied-for developments involve plants with limited pondage and are semipermanent features in the environment, having operated from 28 to 68 years. Enough time has elapsed since construction so that local human and wildlife populations have adapted to their appearance, spatial requirements and operational modes.

The United States Department of the Interior (Interior) made comments dated August 30, September 28, and November 2, 1962; March 25, 1964; March 24, 1965; and December 16, 1969. We herein provide for the disposition of all issues remaining between Interior and Applicant.

Interior asserts that the hydroelectric installation sought to be licensed under Project No. 2258 is located in part on Federal lands. Applicant has opposed Interior's allegations, saying that none of the developments proposed to be licensed involve public lands. We do not believe that the importance of designating public lands within the project at this time outweighs the public interest in placing this constructed project under license. By Article 29 herein, we have reserved settling this difference pending notice and opportunity for hearing.

Interior recommended license conditions to effect the maximum benefit from use of waters from the Reservoir for generation of power from any Federal plant at the site and from Applicant's plant. We believe that the maximum utilization of the power resource at American Falls can be achieved under the terms of Article 10 regarding the development of additional capacity or other changes and Article 11, which requires electrical and hydraulic coordination with respect to any Federal powerplant at American Falls. In addition, we are requiring by Article 36 that Applicant enter into an agreement with the Bureau of Reclamation within two years to effect the maximum justifiable power development of the American Falls site.

We note that no Federal power plant has been constructed, although one was authorized by the Congress, 64 Stat. 1083. Under Section 10(f) of the Act and Article 12 of this license, the United States will be reimbursed for headwater benefits, if any, provided to Applicant.

Issues have also been raised concerning protection for present and future irrigation development. The interested parties have agreed to Article 32 as recognition that the project should not be operated in a manner that would contribute to the depletion in flow of the Snake River.

As the forebay above Applicant's plant at American Falls backs up against the existing Reclamation Dam, Interior noted that evacuation of all the stored water from the reservoir requires lowering the elevation of the forebay. To insure the integrity of the Reclamation project, Interior requested a license condition which would insure that drawdown would be effected as necessary. Applicant would accede to such a condition only when such drawdown was required for irrigation purposes. We concur with Interior's position on this matter; the United States should be able to control flows at American Falls for all beneficial downstream uses. We have so provided in Article 31 of the license.

Interior also wishes to have included the condition found in Utah Power & Light Company, Project No. 2420, 40 F.P.C. 1495 (1968), wherein the order issuing license said that the Applicant would not make any claims under the authority of the license for depletion of future flows for irrigation of lands or other beneficial purposes. In the Order Modifying License Order on Rehearing in the above-captioned project, 41 F.P.C. 175 (1969), that article was clarified to indicate that the license was not to be construed as affording greater rights to Licensee than it might otherwise have. Here, we adopt the clarified article as Article 33.

At the time the original application for Project No. 2258 was filed on February 13, 1959, Exhibits R (recreational use) and S (fish and wildlife resources) were not required of the Applicant. These plans became required elements of certain applications in 1963 in the case of Exhibit R, 29 F.P.C. 777; and in 1966 for Exhibit S, 35 F.P.C. 1038.

We are requiring by Article 35 that within two years Applicant shall file for Commission approval Exhibits R and S pursuant to our Regulations, 18 C.F.R. §4.41. Such a condition will more fully develop and protect the resources available at the project. Consultation with appropriate agencies is a part of this requirement.

By letter dated January 26, 1971, the Commission's Secretary requested from Applicant a filing of an Exhibit W (environmental report) pursuant to our then applicable Order No. 415, 44 F.P.C. 1529 (1970). On November 21, 1972 and April 10, 1973, Applicant filed the requested data. These filings have given us certain insight on environmental factors involved in this application, and some limited data as to recreational and fish and wildlife matters. In addition, other data exist in the Commission's records relating to the instant application and that in Project No. 2736 which give us a satisfactory basis for evaluating the environmental resources of the area.

The major characteristics of this project are an outstanding forebay fishery for resident species, particularly rainbow and brown trout; boat ramp and public parking area adjacent to the power plant; extensively landscaped 1/4 acre park, 1/2 acre open, grassy park, and 1-1/2 acre plot of grassy

terrain, all used for picnicking; foot bridge for fishing accessibility; and certain common flora and fauna, none of which are endangered species under the Endangered Species Act of 1973, 16 U.S.C. §1531 et seq. No major archeological resources are located in the area.

We have consulted the National Register of Historical Places through February 4, 1975, and find no listed historical sites would be affected. The Old Island Powerhouse has been identified as an historical landmark eligible for inclusion in the National Register. By Article 30 herein we are assuring that project operation will not have a detrimental effect upon it.

Interior recommended that the transmission lines and facilities included under license be made available for wheeling of government power on such terms and conditions as may be mutually satisfactory to the Applicant and Interior. Applicant submits that there is no justification for subjecting the lines to such a requirement, contending that such arrangements should be left to mutual agreements of the parties.

Applicant included for license its Shoshone Falls-American Falls 138-kV transmission line; American Falls-Brady Substation 138-kV transmission line; and the step-up transformer banks and switching equipment which make up the 2.3/6.9/46/138-kV substation adjacent to the American Falls plant. Our analysis of the transmission system leads us to conclude that the interconnected primary transmission system ties in at the American Falls substation. The banks and facilities at the substation connect with the American Falls plant and serve as the primary outlet for plant output, while other sources feed into the substation, commingling the power generated by the project. We do not believe that the two 138-kV lines included in the application are "primary lines" and a part of the project within the meaning of the Section 3(11) of the Act, 16 U.S.C. §796(11).

We, therefore, perceive no need to include those facilities herein under license in an article requiring wheeling of government power. While Applicant has wheeling responsibilities at other projects, see, e.g., Idaho Power Company, Project No. 1971, 32 F.P.C. 342 (1964), we believe that the facts here are sufficiently at variance with those in Project No. 1971 so as to preclude the necessity for the same arrangements. In Project No. 1971 wheeling is accomplished over the applicant's lines from the powerhouse to the junction with the interconnected system, which were deemed jurisdictional. In the instant case there are no such transmission facilities subject to our jurisdiction.

By letter dated August 28, 1959, the U.S. Department of the Army, Corps of Engineers (Corps) commented on the basic application. Corps said that at the present time, the need for navigation facilities in this reach of the river and operational control of these projects in the interests of navigation, appears remote. However, to adequately safeguard the right of any possible future navigation, the Corps recommended that the Commission's standard navigation articles be inserted in any license issued. The Corps has approved the plans of the structures in accordance with the Act and we have included the requested provisions.

By letter dated April 19, 1967, the Snake River Power Association, Inc., stated that the Association is in full support of the position that the Secretary of the Interior has taken with regards to the conditions for granting of the license for the American Falls Plant.

By our previously noted order issued August 4, 1955, 14 F.P.C. 72, we determined that the Snake River from its junction with the Columbia River up to the mouth of Henry's Fork is a navigable water of the United States. In accordance with the criteria set forth in Public Service Company of New Hampshire, Project No. 2288, 27 F.P.C. 830, the termination date for this license will be December 31, 1993. Interior has recommended this termination date. We make the effective date of this license August 1, 1955, which was the first day of the month in which the Snake River was determined to be navigable.

By letter dated March 6, 1975, Idaho Department of Health and Welfare (IDHW) issued a state water quality certificate pursuant to Section 401 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. §1341. In so doing, IDHW stated that it found no adverse impacts on water quality by the operation and maintenance of the American Falls Power Plant facility.

Pertinent parts of Exhibits J, K, L and M filed with the application for major license have been examined and found to conform with the Commission's Rules and Regulations and are hereinafter approved and made part of the license for Project No. 2258. We believe that the structures to be placed under license are safe and adequate. In addition, Applicant has shown the necessary financial ability to continue operation.

The Applicant for Project No. 2258 is also the Applicant for American Falls Project No. 2736, which would be constructed pursuant to the Act of December 28, 1973, to utilize for power generation, falling water releases from the American Falls Replacement Dam. Article 37 of the license approved herein would require surrender of the license for Project No. 2258 when the project is rendered inoperable by the construction or operation of a more comprehensive development at American Falls. Accordingly, we do not consider the application for Project No. 2736 to be a conflicting application within the meaning of the Act. 16 U.S.C. §800(a).

We believe that licensing Project No. 2258 under terms and conditions hereinafter proposed meets the standard of Section 10(a) of the Act, 16 U.S.C. Section 803(a). That Section requires that the project approved shall

"be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of water power development, and for other beneficial public uses, including recreational purposes..."

Our evaluation of the question of comprehensive development has included questions of conservation of resources, optimum utilization of water power, maintenance of water quality, fish and wildlife protection, navigation, the inclusion of the project in the interconnected transmission system, and recreational use. The license conditions also insure the development of the project for public use and access.

We believe that the subject matter of the instant application has been fully developed and considered by this Commission. Therefore, we do not believe that a trial-type hearing would contribute any new and relevant information, except as hereinafter provided, and conclude that it is not in the public interest to hold such a hearing at this time.

We conclude on the basis of the facts before us that a major license should be issued to the applicant effective on August 1, 1955 and terminating December 31, 1993. We believe that such a term is appropriate under our prior determinations as to constructed projects in similar circumstances.

The Commission finds:

(1) The American Falls development of Project No. 2258 may affect lands of the United States and would be located on a navigable waterway of the United States.

(2) The Shoshone Falls and Upper Salmon developments of proposed Project No. 2258 should be severed from the application and reserved for treatment in later proceedings.

(3) Applicant is a corporation organized under the laws of the State of Maine and is authorized to do business in the State of Idaho.

(4) Public notice of the filing of the application for major license was given on June 1, 1959. A timely petition to intervention was filed by the Idaho Fish and Game Commission and was granted.

(5) No conflicting application is before the Commission.

(6) Subject to the terms and conditions hereinafter imposed, the project does not adversely affect a Government Dam, nor will the issuance of a license upon the conditions hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(7) Subject to the terms and conditions hereinafter imposed, the project will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, for the improvement and utilization of waterpower development, and for other beneficial public uses, including recreational purposes.

(8) Subject to the terms and conditions hereinafter imposed, the cost of continuing operation of this constructed project is reasonable compared to the cost of developing suitable alternative sources of power.

(9) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 36,700 horsepower, and the amount of annual charges based on such capacity to be paid under the license for the project for the cost of administration of Part 1 of the Act is reasonable.

(10) The Commission should reserve the right to determine at a later date, after notice and opportunity for hearing, whether any lands of the United States are occupied by the American Falls Project, and to fix reasonable annual charges for the use, occupancy and enjoyment of such lands.

(11) The plans of the structures affecting navigation have been approved by the Corps of Engineers.

(12) The term of the license hereinafter authorized is reasonable.

(13) The Exhibits designated and described in paragraph (B) below conform to the Commission's Rules and Regulations and should be approved as part of the License for the project.

(14) Applicant has submitted satisfactory evidence of compliance with the requirements of all applicable state laws insofar as necessary to effectuate the purposes of a license for the project.

(15) For the reasons discussed above, we do not believe that our actions taken herein constitute a major Federal action significantly affecting the quality of the human environment requiring the preparation of a detailed environment impact statement.

The Commission orders:

(A) This license is hereby issued to Idaho Power Company of Boise, Idaho, under Section 4(e) of the Federal Power Act, for a period effective August 1, 1955, and terminating December 31, 1993, for the continued operation and maintenance of the American Falls Project No. 2258, located on the Snake River and affecting navigable waters of the United States, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this license and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) The American Falls Project No. 2258 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the licensee's interests in such lands, the limits of which are otherwise defined, the use and occupancy of which are necessary for the purpose of the project; such project area and project boundary being shown and described by certain exhibits which form part of the application for license which are designated and described as follows:

Exhibit J: (FPC No. 2258-3) General Map,
American Falls Development

Exhibit K: (FPC No. 2258-6) Detail Map,
American Falls Development

(ii) project works consisting of: a concrete gravity diversion dam, located immediately below the American Falls Dam of the United States Bureau of Reclamation, with gated spillway; a forebay impounded by such diversion dam; a powerhouse adjacent to the dam with one 3,500-kilowatt generating unit and four 6,000-kilowatt generating units installed therein; step-up transformers and switching equipment associated with the 2.3/6.9/46/138-kV substation; and appurtenant facilities: the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also form part of the application for license and which are designated and described as follows:

<u>Exhibit L</u>	<u>FPC No.</u>	<u>Showing for American Falls</u>
Sheet 1 of 4	2258-7	General Plan
Sheet 2 of 4	2258-8	Weir & Gate Sections
Sheet 3 of 4	2258-9	Powerhouse Plans
Sheet 4 of 4	2258-10	Powerhouse Sections

Exhibit M: Pages 1 and 2 of five typewritten pages, entitled "General Description and Specifications of Equipment," filed February 13, 1959, except for the two 46-kV transmission lines, the 138-kV tie to Brady Substation, and the four 138-kV transmission lines included on page 2.

(iii) all of the structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the following terms and conditions set forth herein as articles:

Article 1. The entire project, as described in this order of the Commission, shall be subject to all the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: Provided, however, That if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval revised, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. The project area and project works shall be in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, there shall not be made without prior approval of the Commission any substantial alteration or addition not in conformity with the approved plans to any dam or other project works under the license or any substantial use of project lands and waters not authorized herein; and any emergency alteration, addition, or use so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in uses of project lands and waters or the project works or divergence from such approved exhibits may be made if such changes will not result in decrease in efficiency, in material increase in cost, in an adverse environmental impact, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct.

Article 4. The project, including its operation and maintenance and any work incident to additions or alterations authorized by the Commission whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project

is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him such information as he may require concerning the operation and maintenance of the project, and of any such alteration thereof, and shall notify him of the date upon which work with respect to any alteration will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period more than one week, and of its resumption and completion. Licensee shall submit to said representative a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of any such alterations to the project. Construction of said alterations or any feature thereof shall not be initiated until the program of inspection for the alterations or any feature thereof has been approved by said representative. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may from time to time prescribe for the protection of life, health, or property.

Article 5. The Licensee within five years from date of issuance of the license shall acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction, maintenance and operation of the project. The Licensee, its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without the prior written approval of the Commission, except that the Licensee may lease or otherwise dispose of interests in project lands or property without specific written approval of the Commission pursuant to the then current regulations of the Commission. The provisions of this article

are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear; and mortgage or trust deed or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning to this article.

Article 6. In the event the project is taken over by the United States upon the termination of the license, as provided in Section 14 of the Act, or is transferred to a new licensee or to a non-power licensee under the provisions of Section 15 of the Act, the Licensee, its successors and assigns will be responsible for and will make good any defect of title to or of right of occupancy and use in any of such project property which is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and will pay and discharge, or will assume responsibility for payment and discharge, of all liens or incumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: Provided, That the provisions of this article are not intended to require the Licensee, for the purpose of transferring the project to the United States or to a new Licensee, to acquire any different title to or right of occupancy and use in any of such project property than was necessary to acquire for its own purposes as Licensee.

Article 7. The actual legitimate original cost of the project, and of any addition thereto or betterment thereof, shall be determined by the Commission in accordance with the Act and the Commission's Rules and Regulations thereunder.

Article 8. After the first 20 years of operation of the project under the license, six percent per annum shall be the specified rate of return on the net investment in the project for determining surplus earnings of the project for the establishment and maintenance of amortization reserves, pursuant to Section 10(d) of the Act; one-half of the project surplus earnings, if any, accumulated after the first 20 years of operation under the license, in excess of six percent per annum on the net investment, shall be set aside in a project amortization reserve account as of the end of each fiscal year: Provided, That, if and to the extent that there is a deficiency of project earnings below six percent per annum for any fiscal year

or years after the first 20 years of operation under the license, the amount of such deficiency shall be deducted from the amount of any surplus earnings accumulated thereafter until absorbed, and one-half of the remaining surplus earnings, if any, thus cumulatively computed, shall be set aside in the project amortization reserve account; and the amounts thus established in the project amortization reserve account shall be maintained therein until further order of the Commission.

Article 9. For the purpose of determining the stage and flow of the stream or streams on which the project is located, the amount of water held in and withdrawn from storage, and the effective head on the turbines, the Licensee shall install and thereafter maintain such gages and stream-gaging stations as the Commission may deem necessary and best adapted to the requirements; and shall provide for the required readings of such gages and for the adequate rating of such stations. The Licensee shall also install and maintain standard meters adequate for the determination of the amount of electric energy generated by said project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission and may be altered from time to time if necessary to secure adequate determinations, but such alteration shall not be made except with the approval of the Commission or upon the specific direction of the Commission. The installation of gages, the ratings of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of said project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient record of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 10. The Licensee shall install additional capacity or make other changes in the project as directed by the Commission to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing.

Article 11. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 12. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereof as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvements of the United States the Licensee shall pay to the Commission the amounts for which it billed from time to time for such headwater benefits and for the costs of making the determinations pursuant to the then current Commission Regulations under the Federal Power Act.

Article 13. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes.

Article 14. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall, after notice and opportunity for hearing, permit such reasonable use of its project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission in the interest of comprehensive development of the waterway or waterways involved and the conservation and utilization of water resources of the region, for water supply, or for the purpose of steam-electric, irrigation, industrial, municipal, or similar uses.

The Licensee shall receive reasonable compensation, at least full reimbursement for any damages or expenses which the joint use causes him to incur, for use of its reservoir or other project properties or parts thereof for such purposes, any such compensation to be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot be concurrently submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

Article 15. In the construction or maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines and telegraph, telephone and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling or obstructing traffic or endangering life. None of the provisions of this article are intended to relieve the Licensee from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive interference.

Article 16. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance and operation of such reasonable facilities and comply with such reasonable modifications of the project structures and operation as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

Article 17. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free

of cost, such of Licensee's lands and interest in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be reasonable prescribed by the Commission in order to permit the maintenance and operation of the fish and wildlife facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 18. The Licensee shall construct, maintain and operate, or shall arrange for the construction, maintenance and operation of such reasonable recreational facilities, including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities and utilities, giving consideration to the needs of the physically handicapped, and shall comply with such reasonable modifications of the project structures and operations as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal and State agencies, after notice and opportunity for hearing.

Article 19. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and water for navigation and for outdoor recreational purposes, including fishing and hunting; Provided, That the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property. Licensee, in the interests of promoting optimum recreational use and protecting the scenic values of project lands and waters, may to a reasonable extent grant permits to individuals or groups of individuals for landscape plantings on project lands, or for the construction of access roads, wharves, landings, and other similar facilities, the occupancy of which may, under appropriate circumstance, be subject to the payment of rent in a reasonable amount; Provided, That Licensee, in granting such permits, shall require that permittees provide for multiple occupancy and use of such facilities, where

feasible, and shall ensure that such facilities are constructed and maintained in such a manner so as to be consistent with shoreline aesthetic values; Provided further, That the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the License.

Article 20. The Licensee shall be responsible for and shall take reasonable measures to prevent soil erosion on lands adjacent to the stream(s) and to prevent stream siltation or other forms of water or air pollution resulting from construction, operation or maintenance of the project. The Commission upon request, or upon its own motion, may order the Licensee to take such measures as the Commission may find to be necessary for these purposes, after notice and opportunity for hearing.

Article 21. Licensee shall dispose of all temporary structures, unused timber, brush, refuse, or other unneeded material resulting from the clearing of lands or from the maintenance or alteration of the project works. Disposal of the material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission and in accordance with appropriate Federal, State, and local statutes and regulations.

Article 22. Insofar as any material is dredged or excavated in the prosecution of any work authorized under the license, or in the maintenance of the project, such material shall be removed and deposited in such a manner that it will reasonably preserve the project environmental values and so it will not interfere with traffic, both land and water. Dredging and filling in a navigable water of the United States will also be done to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 23. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its lands and its rights-of-way and such right of passage through its dams or other structures, and permit such control of pools as may be required to complete and maintain such navigation facilities.

Article 24. The operation of any navigation facilities which may be constructed as a part of or in connection with any dam or diversion structure constituting a part of the project works shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army.

Article 25. The Licensee shall furnish free of cost to the United States power for the operation and maintenance of navigation facilities in the vicinity of the project at the voltage and frequency required by such facilities and at a point adjacent thereto whether said facilities are constructed by the Licensee or by the United States.

Article 26. The Licensee shall for the protection of navigation, construct, maintain and operate at its own expense such lights and other signals on fixed structures in or over navigable waters of the United States as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 27. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and take any such other action necessary to restore the project stream(s), lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or provide for the continued operation and maintenance of non-power facilities and fulfill such other obligations under the license as the Commission may prescribe. The Commission, in its discretion, may also terminate the license.

Article 28. The right of the Licensee and of its transferees and successors to use or occupy waters, over which the United States has jurisdiction, or lands of the

United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

Article 29. The Commission reserves the right to determine at a later date what, if any, lands of the United States are occupied or affected by the project works and to fix the annual charge for the use thereof.

Article 30. The Licensee shall cooperate with the U.S. Department of the Interior's Bureau of Reclamation, the Office of the Idaho State Historic Preservation Officer, and other appropriate agencies (1) in the identification of historical resources within the project boundary, (2) in developing a plan for protection of such structures including the Old Island Powerhouse, and (3) in developing and executing plans for the improvement of such resources in the interest of recreation, education, and historic preservation, including the provision of public access to such structures.

Article 31. The Licensee shall operate its facilities at American Falls in such a manner as not to interfere with the release of water by the Government at American Falls Dam and, when required by the United States, acting through the Department of the Interior, the Licensee shall draw down the elevation of water in its forebay pool sufficiently to permit the waters to flow from the Government's American Falls Dam into the forebay of the Licensee's installation at rates of flow as determined by the Department of the Interior.

Article 32. The project shall be operated in such a manner as will not conflict with the future depletion in flow of the waters of Snake River and its tributaries, or prevent or interfere with the future upstream diversion and use of such water above the backwater created by the project for the irrigation of lands and other beneficial consumptive uses in the Snake River watershed.

Article 33. This license shall not be construed as affecting in any way any claim the licensee may have concerning its water rights acquired pursuant to State law. Those rights, not this license, shall govern any claim the licensee may advance against the United States or other

parties claiming through the United States for any damages resulting from any future depletion in the flow of the waters of the Snake River and its tributaries for the irrigation of lands or other beneficial consumptive uses.

Article 34. The Licensee shall, to the satisfaction of the Commission's authorized representative, install and operate such signs, lights, sirens or other devices below the powerhouse to warn the public of fluctuations in flow from the project as may be reasonably needed to protect the public in its recreational use of project lands and waters.

Article 35. The Licensee shall, within two years from the issuance of the license, file for Commission approval an Exhibit R and an Exhibit S for the project conforming to the requirements of Section 4.41 of the Commission's Rules and Regulations under the Federal Power Act. These exhibits shall be prepared in cooperation with the appropriate State and Federal agencies with Exhibit R specifically incorporating a solid waste management plan to include (a) the location of solid waste receptacles to be provided at public areas, picnic areas, and boat access areas, (b) schedules for collection from the receptacles, (c) provisions for including in the subject plan any public use areas as they may be developed, and (d) disposal sites and methods of disposal.

Article 36. Within two years from the issuance of this order, the Licensee shall enter into an agreement with the Bureau of Reclamation, United States Department of the Interior, to effect the maximum justifiable development of the power resources of the American Falls site consistent with comprehensive development for other beneficial public purposes.

Article 37. The Licensee shall file for surrender of license for this project when its generating capacity is rendered inoperable by reason of the construction and/or operation of a more comprehensive hydroelectric development at American Falls.

Article 38. The Licensee shall continue to consult and cooperate with the Idaho Department of Parks and Recreation, Idaho Fish and Game Department, Fish and Wildlife Service and the Bureau of Reclamation of the U.S. Department

of the Interior, the City of American Falls, and other appropriate agencies for the protection and development of the natural resources and environmental values of the project area.

Article 39. The Licensee shall pay the United States the following annual charges, effective August 1, 1955:

(i) For purpose of reimbursing the United States for the cost of administration of Part 1 of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purposes is 36,700 horsepower;

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, an amount to be hereafter determined by the Commission.

Article 40. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

(D) The Exhibits designated and described in paragraph (B) above are hereby approved and made a part of the license.

(E) The Licensee shall within 90 days from the date of acceptance of this license, file in accordance with the provisions of Section 11.20(a)(4) of the Regulations a statement under oath showing the gross amount of power generation for the project in kilowatt-hours for each calendar year commencing August 1, 1955.

(F) The Upper Salmon and Shoshone Falls developments included as part of the application for license for American Falls Project No. 2258 filed February 13, 1959, are hereby severed from that application and will be considered separately at a later date.

(G) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

By the Commission.

(S E A L)

Kenneth F. Plumb,
Secretary.

IN TESTIMONY of its acknowledgement of acceptance of all of the provisions, terms and conditions of this license the Idaho Power Company, this _____ day of _____, 1975, has caused its corporate name to be signed hereto by _____ its _____ President, and its corporate seal to be affixed hereto and attested by _____, its _____ Secretary, pursuant to a resolution by its Board of Directors duly adopted on the _____ day of _____, 1975, a certified copy of the record of which is attached hereto.

Idaho Power Company

By _____
President

Attest:

Secretary

(Executed in Quadruplicate)