Edl, Michele

Subject:

FW: Ford Hydro Response letter

From: C McHugh [mailto:cmchugh@mchughbromley.com]

Sent: Tuesday, June 16, 2020 5:00 PM

To: Edl, Michele < Michele. Edl@idwr.idaho.gov>

Subject: Ford Hydro Response letter

Please see attached.

Thank you.

Candice M. McHugh

M9HUGH BROMLEY

380 S. 4th, Ste. 103 Boise, ID 83702 (208) 287-0991 – office (208) 287-0864 – facsimile cmchugh@mchughbromley.com http://www.mchughbromley.com

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cmchugh@mchughbromley.com 208-287-0991

380 S. 4th St., Ste. 103 Boise, ID 83702

June 16, 2020

Idaho Department of Water Resources Michelle Edl PO Box 83720 Boise, ID 83720-0098

RE: Licensing Information for Permit No. 84-7171

Dear Ms. Edl:

I am writing this letter on behalf of Ford Hydro Ltd Partnership (shall be referred to as "Ford Hydro" and including its predecessors) and its Permit No. 84-7171. I am providing additional information to support the licensing of this permit in the amount of 60 cfs.

Enclosed herewith is a **Declaration of Mr. Charles Cuddy and an attached Exhibit A that shows that on or about April 23, 1988, 60 cfs was used to generate power under the permit.** And the project generated 26,589 kwh on that date. The date and recollection is supported by a report dated June 2, 1988, attached as Exhibit A from Washington Water Power that contains a contemporaneous recording of Mr. Cuddy's numbers in 1988 because the WWP electric meter recording device malfunctioned and they relied on Mr. Cuddy's report. It is important to note that while these are called "estimates" Mr. Cuddy's records were generated from the hourly generated log data stored in the powerhouse PLC memory and thus are (and were) not hypothetical numbers.

In addition, Mr. Cuddy was there an observed flows going through the system and estimates the amount of flow to be 60 cfs. Although 26,589 kwh daily generation equates to 1107 kw generation output, due to typical Jim Ford Creek daily streamflow fluctuations the project was able to utilize maximum permitted flows of 60 cfs in the afternoon of April 23, 1988 with corresponding reduced flows earlier in the day and later that same night. This day stands out to Mr. Cuddy as the rest of his affidavit indicates because the next day the penstock ruptured.

As you are aware, due to the topography of the Jim Ford Creek drainage comprised substantially of farmed rolling hills with minimal forest cover, Jim Ford Creek typically experiences significant variation in stream flow over a 24-hour period, and especially during spring ice breakup which typically occurs in March through April. Peak flows occur in that March to May timeframe each year. While limiting the volume may be warranted to 60 cfs x 90 days with additional volume at reduced rates for the remainder of the year, keeping the maximum rate at 60 cfs is critical to allow power generation as it was developed in the late 1980s and still used today.

Further support for the 60 cfs rate is also found in **Exhibits B and C**. Exhibit B was an April, 24, 1989 collaborative effort between Ford Hydro and state agencies, including IDWR, to come up with a "work plan" to ensure that the pipes for the project were adequate and would not fail. Exhibit C is a

follow-up letter from the Department of lands along with a report dated February 14, 1990 from Mr. Ross and consulting engineer that shows that on February 13, 1990 (there was a typo in the date) that a surge test was performed with all three turbines running because there was adequate water in the creek to support a full level of power production, which would be the system capacity of 60 cfs.

I spoke with David Tuthill to confirm that the procedures for licensing hydro-power rights has changed over time within the Idaho Department of Water Resources (IDWR) and measuring hydro-power rights was not always easy or required. At the time Permit No. 84-7171 was issued in April 30, 1986 it contained certain stipulations on the "Conditions For Approval of Permit No. 84-7171". Condition g required that the "The permit holder shall either install a measuring device or a flow measurement port or provide a certified measurement or computation of flow based upon system design to be prepared by a professional system engineer". (emphasis added). This condition was met when Ford Hydro submitted its Proof of Beneficial Use on March 30, 1990, through a letter dated March 29, 1990 and attaching the form, its fee of \$600 and "a certified computation of flow based upon system designed prepared by a professional system engineer." This met the condition and it too supports the 60 cfs rate.

While the next step is normally a field exam to verify the proof as submitted, when 30 years has passed, it is difficult to recreate the history. However, as you observed when you went out this year, you can see that the system capacity and design supports a 60 cfs diversion rate. Further, because this is a hydropower right, it is completely subordinated and non-consumptive. Thus, it is not treated like other consumptive use rights or water rights that are not subordinated. While measured flow at the time of the Beneficial Field Report done on March 5, 1998 would be ideal, the Report is apparently missing from the file. Thus, it seems reasonable for IDWR to give Mr. Cuddy's sworn statement and the 1988 values as proof of what was timely developed under the permit.

Concerning the apparent confusion regarding ownership of the point-of-diversion for water right 84-7171, Ford Hydro has coordinated with Clearwater County to update their records to reflect the court decision previously shared with IDWR. An updated property map is attached **as Exhibit D** wherein Clearwater County merged the real estate underlying the point of diversion with the existing two-acre parcel containing the shop building adjacent to the diversion structure which is owned by Ford Hydro. As there are numerous properties affected by the court order the process is not yet finalized, nonetheless Ford Hydro already possessed an easement on the same property. We can take care of this discrepancy with a permit amendment at the time of licensing as is routinely done in accordance with IDWR guidelines and practice.

If you have any other questions regarding this matter, please let me know and thank you for your time and attention.

Very Truly Yours,

Candice M. McHugh

Enclosures

DEFORE THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF IDAHO

IN THE MATTER OF PERMIT NO. 84-7171 IN THE NAME OF FORD HYDRO LIMITED PARTNERSHIP

DECLARATION OF CHARLES CUDDY

Charles (Chuck) Cuddy under penalty of perjury states as follows:

- 1. I am over the age of eighteen and state the following based upon my own personal knowledge.
 - I was the Project Manager for Ford Hydro Limited Partnership from commencement of construction in early 1987 through 1990. I am a former member of the Idaho State Water Board.
 - 3. On December 31, 1987, the first power was generated using temporary penstocks for testing purposes.
 - 4. In the late winter, early spring of 1988, a High Pressure penstock was installed.
 - 5. I observed the peak electrical production occurred on April 23, 1988 and shortly thereafter produced a daily estimate of the kWh, the peak being 26,589. A true and correct copy of that estimate is attached hereto as Exhibit A. I estimate the amount of water used at peak production was 60 cfs. During the winter through spring daily stream flows in Fords Creek fluctuate significantly. Flows peak in afternoon and slowly drop off throughout the night due to cold, then begin increasing with daylight due to

warmer temperatures. This is a daily cycle and resulting flow fluctuation significantly affecting hourly generation.

- 6. A penstock rupture occurred on April 24, 1988 due to a defective steel penstock section.
- 7. Penstock replacement and repair approvals were obtained on May 3, 1989.
- Approval to resume full operation using all three water turbines was received February 21, 1990.
- 9. I certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 9th day of June, 2020.

Charles Cuddy

The Washington Water Power Company Interoffice Memorandum

POWER SUPPLY

Exhibit A

To:

Susan Broughton

Pat Winter

Date: June 2, 1988

From:

Gary W. Lawson

Subject:

Jim Ford Creek Metering

The purpose of this memo is to calculate generation amounts for the Jim Ford Creek Hydroelectric Project ("Project"). It is my understanding that the meter recording device has malfunctioned, and as such, we do not have hourly printouts of the generation at the project. The only information we currently have is a printout of the the generation between December 31, 1987 and January 5, 1988. We also have visual readings taken on April 25, 1988 and on May 26, 1988.

The only generation at the Project in December and January occurred on December 31, 1987, and on January 4, 1988. These amounts appear on the magnetic tape dump covering this period. The tape dump shows:

December Generation

235 pulses x 0.63 kWh/pulse = 148 kWh

January Generation

503 pulses x 0.63 kWh/pulse = 317 kWh

Generation for both February and March is zero. The Project was down in order to install the permanent penstocks. The Project began generation again in April. On April 15, 1988, the official contract Operation Date occurred.

A visual reading was taken on April 25, 1988 which showed that there had been generation of 165,375 kWh (meter reading of 105 times meter multiplier of 1575 kWh) since the installation of the meter. Subtracting out for the generation in December through March, total April generation is:

bughton and Winter ay 20, 1988 age 2

Total Generation to April 25, 1988	165,375 kWh
December Generation	-148 kWh
January Generation	-317 kWh
February Generation	0 kWh
March Generation	0 kWh
April Generation to April 25, 1988	164,910 kWh

To help with the determination of the generation in April which occurred prior to the Operation Date, Charles Cuddy put together a daily estimate of generation in April based upon the Project operating logs. The following is a table showing the generation estimate by Mr. Cuddy and the result of prorating that estimate against the 164,910 that we know was generated in April up through the meter read date on April 25, 1988. A penstock rupture on April 24, 1988 caused the Project to terminate generation on a forced outage. The Project produced no generation for the remainder of April and did not produce any generation in May.

Calculation of Daily Generation Splits for April, 1988

Date	Estimated Gener. From C Station Log (kWh)	Prorated Peneration to 164,910 kWhs (kWh)	Pre and Post Operation Date Energy (kWh)
4/1/88	0	0	
4/2/88	ŏ	ŏ	
4/3/88	ŏ	ŏ	
4/4/88	Õ	· ō	
4/5/88	4,726	3783	
4/6/88	13,087	10477	
4/7/88	3,310	2650	
4/8/88	5,425	4343	
4/9/88	. 0	0	•
4/10/88	5,931	4748	
4/11/88	26,491	21207	
4/12/88	0 100	0	
4/13/88	2,192	1755	
4/14/88 4/15/88	3,735	2990	51,954
-¥ 4/16/88	14,659 17,333	11735 13876	
4/17/88	9,792	7839	•
4/18/88	4.186	8351	•
4/19/88	12,622	10105	•
4/20/88	5.829	4666	
4/21/88	14.169	11343	
4/22/88	26,199	20974	
4/23/88	26.589	21286	
4/24/88	9.720	7781	
4/25/88	0,, 0	ö	
4/26/88	ŏ	ŏ	
4/27/88	Č	ŏ	
4/28/88	ŏ	ŏ	
4/29/88	ŏ	ŏ	
-4/30/88	ē	ŏ	112.956
Total	205,995	164.910	164.910

oughton and Winter May 20, 1988 Page 3

Administrative Fee

Please note that Section 12(d) of the Power Sales Agreement between Water Power and Ford Hydro Limited Partnership calls for an administrative fee of 5% of the monthly payment amount up to a maximum of \$800.00 per month. As such, I have calculated the net payments to include a deduction for this administrative fee.

Summary Of Payments

The following is a summary of the generation amounts and payments that should be made to Ford Hydro Limited Partnership for the generation at the Jim Ford Creek Project since it initial generation in December 1987:

December, 1987

Nonfirm Energy Payment	
Pre Operation Date Energy	148 kWh
Nonfirm Energy Cost	1.4 ¢/kWh
Total Payment	\$2.07
Less Administrative Fee	(\$0.10)
Net Payment	\$1.97

January, 1988

Nonlirm Energy Payment	
Pre Operation Date Energy	317 kWh
Nonfirm Energy Cost	1.7 ¢/kWh
Total Payment	\$ 5.39
Less Administrative Fee	(\$0.27)
Net Payment	\$5.12

February, 1988

Nonfirm Energy Payment	•
Pre Operation Date Energy	0 kWh
Nonfirm Energy Cost	1.6 ₹/k Wh
Total Payment	\$0.00 ×
Less Administrative Fee	\$0.00
Net Payment	\$0.00

roughton and Winter May 20, 1988 Page 4

March, 1988

Nonfirm Energy Payment			
Pre Operation Date Energy		0	kWh
Nonfirm Energy Cost		1.5	¢/kWh
Total Payment		\$0.00	
Less Administrative Fee		\$0.00	
Net Payment		\$0.00	
pril, 1988			
No.6- Proper Property			
Nonfirm Energy Payment			
Pre Operation Date Energy		51,954	
Nonfirm Energy Cost			¢/kWh
		\$727.35	
Firm Energy Payment			
Post Operation Date Energy		112,956	kWh
Firm Energy Fixed Cost	3.6		
Firm Energy Variable Cost	0.7		
Total Firm Rate	•	4.3	¢/kWh
Firm Energy Payment		\$4,857.13	
Total Payment		\$ 5,584.48	
Less Administrative Fee		(\$279.22	
Net Payment	ď	\$5,305.26	
•			

May, 1988

Firm Energy Payment		A 1 ****
Post Operation Date Energy		0 kWh
Firm Energy Fixed Cost	3.6	
Firm Energy Variable Cost	0.7	
Total Firm Rate		4.3 ¢/kWh
Total Payment		\$0.00
Less Administrative Fee		\$ 0.00
Net Payment		\$0.00

Exhibit B

May 3, 1989

STANLEY F. HAMILTON DIRECTOR BOARD OF LAND COMMISSIONERS

CECIL D. ANDRUS

PETE T. CENARRUSA

JIM JONES Attorney General

JOE R. WILLIAMS State Auditor

JERRY L. EVANS Sup't of Public Instruction

Mr. Archie Ford Ford Hydro Limited Partnership 242 Middlefield Rd. Bellingham, WA 98225

RE: Proposed Work Plan -- Jim Ford Creek Hydro Project

Dear Mr. Ford:

Reference the proposed work plan contained in the meeting report prepared by Bob King, Ott Engineering, Inc. The meeting report documenting the major items discussed at our meeting in Boise on April 24, 1989, was forwarded to my office by telecopier on April 27, 1989.

You may consider this letter as approval of the work plan on behalf of the state.

I emphasize that a state representative must be present during execution of items 3 and 5. Please coordinate with Luke Aldrich in advance as to the scheduling of these items.

Sincerely,

Stan

STANLEY F. HAMILTON Director

SFH/pks

cc: Verl King Luke Aldrich Jay Biladeau Fred Kisabeth



MEETING REPORT

PROJECT	Jim Ford Creek Hydroelectric	JOB N	O. <u>S1102-01.05</u>
LOCATION	Boise, Idaho - State Offices	DATE	04 / 24 / 89
ATTENDEES	Fred Kisabeth, Asst. Director-IDL; Jay Biladeau, Land Bureau Chief-IDL;	BY <u>R</u>	obert D. King, P.E.
	Verl G. King; IDWR; Arch Ford, Ford Hydro; Bob King, Ott Engineers; Chuck (Duddy, W	estford Resources;
	John M. Hillock, OXESS; Ralph Swinehart, OXESS, Wallowa Mtn, Eng; Steve Sch	uster, Ida	nho AG/Lands; Joe
	Elchert, C/W Area - IDL; Stan Hamilton, Director-IDL; Luke Aldrich, IDL (Orofino)		
SUBJECT	Project Status, State Concerns, and Remediation Workplan		
NOTES:			

The Meeting began at 1:30 pm. The following major items were discussed:

(

- Arch Ford (Ford Hydro Limited Partnership) opened the meeting by thanking the State of Idaho Department of Land
 (IDL) and Department of Water Resources (IDWR) for convening the meeting. The purpose of the meeting was to
 identify outstanding IDL and IDWR concerns regarding past pipeline failures at the Jim Ford Creek Hydroelectric Project
 located in Weippe, Idaho, and to agree to a plan of action for remediation.
- Bob King (Ott Engineering, Inc.) then described:
 - Ott's past involvement with the project as independent review engineers.
 - A chronology and description of major events, including pipe ruptures, for the project.
 - A synopsis of issues still outstanding (OTT's opinion) on the project.
- The floor was then opened up to the State to ask questions, state opinions, and identify any additional or different concerns the State has at this time. On conclusion of this discussion, the following joint list of concerns (IDL, IDWR, and OTT) were identified and agreed to. These concerns are presented along with a proposed plan of action for each.

1. SLOPE STABILITY

A geologist will look at land forms along the entire pipeline alignment. If potential areas of instability can be identified, they will be noted.

2. SURFACE DRAINAGE

The entire penstock alignment will be examined to identify any drainage courses which could cause saturation of the penstock trench or adjacent soils.

3. CONSTRUCTION QUALITY AND TRENCH SEEPAGE

Random observations of pipeline bedding, cover, and pipe condition will be made along the entire buried pipeline route. Investigations will be more intensive in the steep section of CMP and in particular at the upstream end of the recent slope failure (slump) location (approximately one test hole per 100 feet for 500 feet upstream of the most recent failure). Test holes in the upper reach of CMP will be located at approximately one per 500 feet, or at an adjacent desirable location.

ATTATCHMENT A

The need for pipe trench drainage along the existing buried pipeline will be evaluated in light of observations made in items one, two, and three.

4. DESIGN DOCUMENTS

An independent engineer will develop design drawings for the section of pipe requiring repair. The drawings will describe in detail: the proposed drainage system, including the length and discharge point(s); the proposed repairs; and any other modifications determined to be needed.

5. TESTING

Once the project is back on-line, two additional tests will be conducted. These are:

- a. Measurement of the actual pressure rise in the CMP caused by two and three unit load rejection.
- b. Observation of the two installed automatic intake valve closure systems under simulated emergencies (pipe failures)

Only one approximately 20-foot piece of CMP is proposed for replacement at this time. This is the failed section immediately upstream of the CMP to steel wall pipe transition. The CMP (for a distance of 300 feet upstream of the transition) will be visually internally inspected for signs of distress or leaks prior to return to service. FHLP agreed to replace the CMP in the steep reach with one quarter-inch thick steel wall pipe (approximately 542 feet in length) if another CMP failure occurred in this reach (not earth movement failure). This was acceptable to the state. The State of Idaho agreed to adhere to the independent engineers recommendations for repairs. A State of Idaho representative will be present during execution of items 3 and 5.

FHLP was directed to write a letter describing the meeting and the proposed work plan to the State, and FAX it direct to Stan Hamilton (hard copy to follow). The State will in turn, FAX an approval of the workplan to FHLP, hard copy to follow. This Meeting Report is the proposed workplan.

The meeting concluded at 3:30 pm.

CC RAN TAT ERI MW



CLEARWATER AREA OFFICE 10230 Highway 12
Orofino, Idaho 83544

STANLEY F. HAMILTON DIRECTOR

February 21, 1990

Ford Hydro Limited Partnership c/o Merrimack Valley Energy, Inc. 114 State Street, Fifth Floor Boston, MA 02109

ATTN: Harry Wolfe

Dear Mr. Wolfe:

The surge testing with all three units on line has been completed (reference Mr. Ross's letter of February 14, 1990. Upon receipt of a letter from Ott Engineering confirming the adequacy of the test data this office will be able to grant authorization for full production.

We look forward to completion of the project. If you have any questions, please contact us.

Sincerely,

Alvin Carr

Lands & Range Specialist

AEC: leb

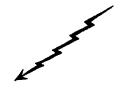
cc: Fred Kisabeth Jay Biladeau



ROBERT W. ROSS

Consulting Engineer

8969 KIOWA ST. BOISE, ID 83709 PHONE (208) 362-2025



Feb 14, 1990

Mr. Harry Wolf 114 State St. 5th Floor Boston, MA 02109

RE: Final Surge Tests - Ford Hydro

Dear Mr. Wolf,

On Feb 13, 1989 surge tests which included all three units was performed on the Ford Hydro plant. Mr. Alvin Carr from the Idaho Department of Lands was on site assisted in the surge testing. The difference between these tests and previous surge tests performed in December 1989 is that there was sufficient water to support continuous operation of all three units. Between tests the flow was allowed to stabilize for several minutes. Pressure readings were taken both at the penstock pressure gage in the powerhouse and at a pressure gage near the transition section that had previously failed. Static pressure with no units running is 18 PSI. Steady state pressure is the pressure with specified combination of units running prior to load rejection. (The reason that the steady state pressure went down as more units were put on line is increased flow caused more upstream penstock pressure loss.) surge pressure occurred about one minute after shutdown was initiated and occurred for about 10 seconds. Pressure rise above static which is pressure rise due to surge is calculated as the maximum pressure minus the static pressure. Powerhouse pressure readings are given as reference to previous tests. The pressure reading at the pipe transition should be considered the accurate and indicative of conditions in the areas of concern. Below are the results of the tests.

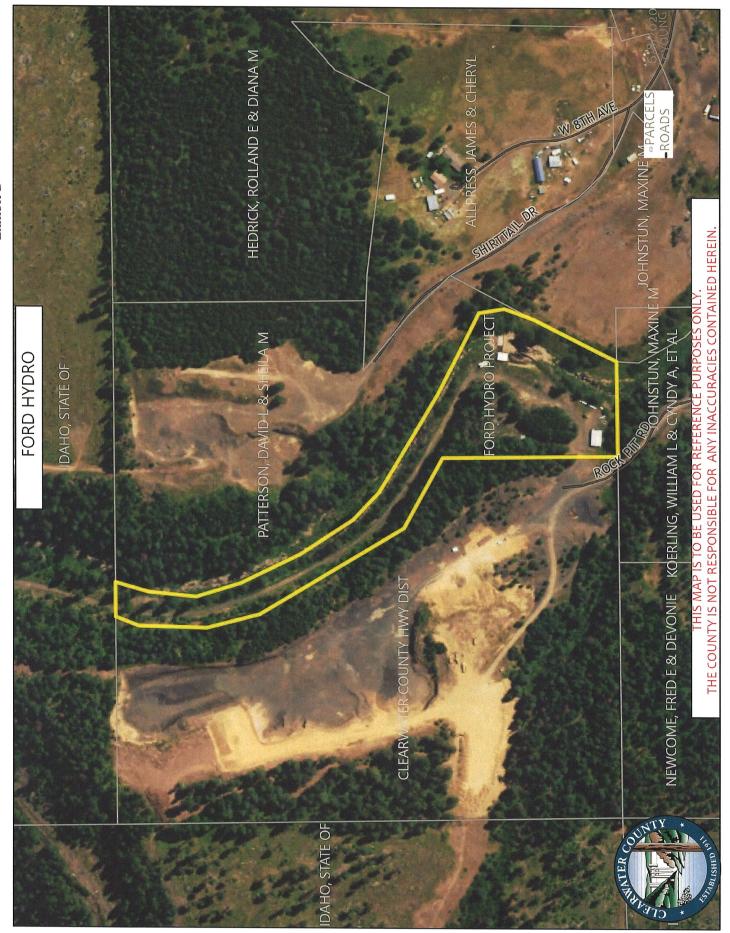
Pressure Gage at Pipe Transition Pressure	Gage	in	Powerhouse
---	------	----	------------

Units		Max	Pressure		Max	Pressure
on	Steady	Surge	Rise Over	Steady	Surge	Rise Over
Line	State	Pressure	Static	State	Pressure	Static
1	18	22	4	205	210	5
1,2	12	26	8	200	215	10
1,2,3	5	26	8	192	218	13

Sincerely,

Robert W. Ross

Robert w. Ross





State of Idaho Second Amended & Restated Easement No. 5253 Page 14 of 16

6. Access road from pipeline road junction - (Station 74+70.51) - to existing road (near rock pit) as determined from plat sheet 9, dated December 13, 1988:

1,600.72 feet x 50.00 feet ÷ 43,560.00 square feet = 1.84 acres

7. Access road from rock pit junction - to powerhouse as determined from aerial photos (Attachment 1-B) and on-site measurement (string machine):

 $5,808.00 \text{ feet x } 50.00 \text{ feet } \div 43,560.00. \text{ square feet} = 6.67 \text{ acres}$

8. Access road from State Highway 11 - to the rock pit junction as determined from metes and bounds description, dated April 7, 1988 (Attachment 2-A):

6,304.54 feet x 50.00 feet ÷ 43,560.00 square feet = <u>7.24 acres</u>

TOTAL PROJECT ACREAGE COVERED BY STATE OF IDAHO AMENDED EASEMENT NO. 5253: = 24.69 acres

Easement Compensation Fee: = 24.69 acres x \$400.00 / acre

= \$9,876.00

Initial Easement Compensation Fee: = \$4,800.00

Compensation Fee Balance Due: = \$9,876.00 - \$4,800.00

= \$5,076.00

Performance Bond: = 24.69 acres - 15.75 acres (access roads)

= 8.94 acres x \$2,000.00 / acre

= \$17,880.00

- * Referenced survey stations <u>are approximations only</u> and were not used to calculate easement length, as they do not lie exactly on ownership boundaries and/or on easement width transition points.
- ** Plats available at Clearwater Area office.

ATTACHMENT NO. 2

FORD HYDRO PROJECT ACREAGE FOR ROYALTY CALCULATIONS

AMENDED STATE OF IDAHO EASEMENT NO. 5253

Figures shown here reflect total acreages encumbered by project structures used for power production on both state land and private land and are used for annual royalty payment calculations. These acreages are less than those reflected in state and private easements purchased by Ford Hydro since widths for the penstock and transmission lines have been standardized at 40 feet and 20 feet, respectively, across all ownerships.

A. STATE LAND PORTION

1. Penstock - (40.00 foot wide right-of-way) - Station 22+90.67* to approximately Station 90+36.42 as determined from metes and bounds description, dated April 7, 1988 (Attachment 2-A), and plat sheets 5, 6, and 7, dated December 13, 1988**:

6,723.60 feet x 40 feet ÷ 43,560.00 square feet = 6.17 acres

2. <u>Powerhouse Site</u> - approximately from Station 90+36.42 to Station 91+72.42 as determined from plat sheet 8, dated December 13, 1988:

130.00 feet x 100.00 feet ÷ 43,560.00 square feet = 0.31 acres

3. Powerline - as determined from plat sheets 5 and 6, dated December 13, 1988;

NE1/4SE1/4, Section 9:

183.96 feet x 20 feet ÷ 43,560.00 square feet = 0.08 acres

NW1/SW1/4, Section 10:

543.35 feet x 10 feet ÷ 43,560.00 square feet = 0.12 acres

Total Acres on State (62% of Project)

6.68 acres

State of Idaho Second Amended & Restated Easement No. 5253 Page 16 of 16

B. PRIVATE LAND PORTION

- 1. <u>Dam and Reservoir Site</u> as determined from attached metes and bounds description, dated April 11, 1995 (Attachment 2-B): = 1.43 acres
- 2. <u>Penstock</u> (20.00 feet wide centerline right-of-way) approximately from Station 9+88.21 to Station 22+90.67 as determined from plat sheet 5, dated December 13, 1988:

1,302.46 feet x 40 feet ÷ 43,560.00 square feet = 1.20 acres

3. <u>Transmission Line "Shortcut"</u> - as determined from plat sheet 5, dated December 13, 1988:

SW¼SW¼, Section 10: 543.35 feet x 10 feet ÷ 43,560.00 square feet = 0.12 acres

4. <u>Transmission line</u> - (Dam to Highway 11) - from project plat dated April 11, 1995 (Attachment 2-C):

3,057.20 feet x 20 feet ÷ 43,560.00 square feet = $\frac{1.40}{1.40}$ acres

Total Acres on Private (38% of Project)

= 4.15 acres

TOTAL PROJECT ACREAGE FOR ROYALTY FORMULA = 10.83 ACRES

- * Referenced survey stations <u>are approximations only</u> and were not used to calculate easement length, as they do not lie exactly on ownership boundaries and/or on easement width transition points.
- ** Plats available at Clearwater Area office.

FORD HYDRO LIMITED PARTNERSHIP

PO Box 1432 Lewiston, Idaho 83501

March 26, 2001

Mr. Donald F. McNarie Idaho Department of Lands Statehouse Boise, Idaho 83720

Re: Jim Ford Hydroelectric Project State of Idaho Easement No. 5253

Dear Don;

Please find enclosed the 2000 annual easement fee for the Ford Hydroelectric Project:

3,555,258 Kilowatt Hours X .002 Mills X 62%% of Project on State Land = \$4,408.52 Annual Easement Fee.

I am sorry for the delay in forwarding last years easement fee. It was simply due to insufficient funds in the account from lack of generation income as a result of the drought. Based upon current income for 2001 and estimated revenue for chalance of the year, the 2001 easement fee will be very insignificant amount.

Sincerely

Ford Hydro Limited Partnership

By: Ford Hydro, Inc. The General Partner

Arch R. Ford President

BOISE, IDAI

70,67 26,057 36,000

(1) Defined in Echibit A, Tobie 1 - Rotes are fixed for term of agreement (2) Raties will vary. Latest revision effective 7/99

بضبو	
Page	

		ζ,	2000 2000	ATRACT ADI 2000-01	JIM FORD CREK HYDRO FROJECT CONTRACT ADMINISTRATION WORKSHEET 2000-01 OPERATING YEAR	PROJECT WOORGHEE YEAR		: , ·					<i>,</i> 3.
		海	Aug	cb Cb	8	Nov	88	Ş	Č	Mar	Aca	May	ture.
Generation - KWH Firm Energy Rwad Cost Rate (1)	out c/fouth	 	9 5	, S	25462	7,998	48,296 7.3	7.3	266,895 7.3	9 9 9	3,6	0 9	- 3
Firm Energy Vortchie Cost Robe (2) s/Kwh.	2)cficath	ğ	1.0	1.8	1.0	1.4	7.7	1.4	7	0.7	67	8	d
iotal Frm flote	cfresh	A 10	&.10	6.10	6.13	a 3	8.70	8.70	82	4.30	430	430	7
Firm Energy Poyment		8008	80.00	\$0.00	\$1,554.40	\$617.53	\$4,201.93	\$5,826.48	\$23,219.87	8000	30.00	\$6.00	SOR
Less Administrative Fee (35) up to \$300	008\$0	808	80.00	000\$	\$77.72	\$30.28	क्याच्याच	\$291.32	\$8000	8000	80	80.00	SOCK
Amount entered Power Transactions Month entered into P/T	Stop	30.00	8000	8000	\$1,476.68	\$586.45	क्ष.क्रा.क्ष े क .क्षडाठ डि <u>ट</u> 2419 <i>ड</i>	\$5.535.16	\$22.419.87	8008	80,80	20,00	SS

(1) Defined in Exhibit A. Latris 1 - Rates are fased for term of agreement (2) Rates will way. Latest revision effective 7.79

Edl, Michele

From:

AF <arch@westford.co>

Sent:

Monday, March 09, 2020 12:48 PM

To:

Edl, Michele

Cc: Subject: brenda@westford.co

Attachments:

RE: Ford Hydro headworks parcel District Court Judgement 2003 pdf

Hello Michele,

The county record does appear a bit confusing. I have ordered a title search of all the relevant properties as last time this was done was many years ago. When completed will respond to your request. In the interim please find attached a district court order assigning me ownership of the property in question.

Cheers,

Arch

From: Edl, Michele [mailto:Michele.Edl@idwr.idaho.gov]

Sent: Friday, March 06, 2020 2:43 PM

To: AF <arch@westford.co> **Cc:** brenda@westford.co

Subject: Ford Hydro headworks parcel

Mr. Ford,

I have conflicting information about the parcel boundary of the Ford Hydro Project headworks parcel and consequently conflicting information about ownership of the point-of-diversion for the water right 84-7171.

I have consulted with IDWR's GIS personnel and with the Clearwater County Assessor and Recorder in an attempt to confirm that the Ford project's headworks are located within property owned by Ford Hydro.

Based on traces of the attached metes and bounds list (obtained from Clearwater County) the Ford Hydro Project parcel boundaries do not appear to encompass the diversion weir or buildings.

I have also confirmed that there isn't a recorded easement on the abutting property owned by David Patterson.

The two traces of the metes and bounds that I obtained and are attached to this email, are offset from each other along the north – south axis but are otherwise are identical. The exact location of "the brass cap" monument (listed as the starting point of the metes and bounds) is the critical difference.

I believe that you very likely had a survey done and intended that all of the project headworks would be within the project's property.

Please provide me with a copy of the survey, or the exact location of the brass cap or any other information which will help me clear up this question. Thank you again.

Sincerely, Michele Edl 208-287-4946

nstru	ment # 192780		RECEPTION 2 INDEXE
CLEARW 2003-06-1	ATER COUNTY , OROFINO, IDAHO 8 11:53;30 No. of Pages: 9	192780	FILMED DELIVE
Recorde ROBIN C	for : CLARK & FEENEY IRISTENSEN Recorder Deputy Walter		MALED I
1	* Metury to PAUL THOMAS CLARK	JU	N 0.9 2003
2	CLARK and FEENEY Attorneys for Plaintiff The Train Station, Suite 201		D-分)。(Al Disc Court) cos, tdaho
3	13th and Main Streets P. O. Drawer 285		
4	Lewiston, Idaho 83501 Telephone: (208)743-9516		
5	Idaho State Bar No. 1329		
6 7	IN THE DISTRICT COURT OF TH STATE OF IDAHO, IN AND F		
8	FORD HYDRO LIMITED PARTNERSHIP,) Case No. (CV 03-00035
9	Plaintiff,))) JUDGME I	NT
10	vs.)	
11	THE OXYFORD ENERGY COMPANY, a Delay Corporation, MOSIER COMPANY, INC., a Neva corporation, TREWETHERNHOLDINGS, LTD,	ada)	
12	Jersey Limited Liability Company, and THE UNKNOWN OWNERS OF the following describ)	
13	real property:)	
14 15	PARCEL 1: The following land located in the West half of)	
16	Section 10 and the West half of Section 15, Town 35 North, Range 4 East, Boise Meridian, Clearwa		
17	County, Idaho:)	
18	Beginning at a brass cap monument marking the Southeast corner of the Southwest quarter of said		
19	Section 10; thence South 88°59'58" West 1573.24 feet along the South boundary of said Section 10; the True Point of Beginning; thence South 88°59'	to)	
20	West 177.13 feet; thence North 01°05'33" West 451.91 feet; thence South 61°40'59" East 146.28)	
21	thence South 67°34'05" East 112.80 feet; thence South 17°26'15" East 49.42 feet; thence South)	
22	02°53'28" West 67.73 feet; thence South 10°53'20 West 111.55 feet; thence South 18°34'52" West	0"))	
23	118.13 feet to the True Point of Beginning.)	
24	ALSO INCLUDING an easement 30 feet in width for the purpose of ingress and egress centered alo the following described line;		
25	die tottownig desertoed line,		en e
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JUDGMENT

LAW OFFICES OF
CLARK AND FEENEY
LEWISTON, IDAHO 83501

described parcel of land; thence North 01°05'33" West 36.15 feet along the West boundary of said parcel of land to the True Point of Beginning of this easement; thence South 67°17'48" West 30.23 feet; thence South 31°38'49" East 74.97 feet; thence South 41°23'50" East 213.35 feet; thence South 35°08'01" East 103.62 feet; thence South 39°48'22" East 193.15 feet; thence South 53°55'04" East 340.75 feet; thence along a 25.2689 degree curve right 192.16 feet; said curve inscribing a central angle of 48°33'27" and having a radius of 226.75 feet, a chord bearing of South 29°38'20" East and a chord distance of 186.46 feet; thence South 05°21'37" East 297.17 feet; thence along a 30.4003 degree curve right 120.17 feet; said curve inscribing a central angle of 36°31'51" and having a radius of 188.47 feet a chord bearing of South 12°54'19" West a chord distance of 118.14 feet; thence South 31°10'14" West 96.81 feet; thence along a 3.8164 degree curve left 327.95 feet; said curve inscribing a central angle of 12°30'59" and having a radius of 1501.26 feet, a chord bearing of South 24°54'45" West and a chord distance of 327.30 feet; thence South 18°39'15" West 26.78 feet; thence along a 5.6317 degree curve left 323.56 feet, said curve inscribing a central angle of 18°13'20" and having a radius of 1017.37 feet, a chord bearing of South 09°32'35" West and a chord distance of 322.20 feet; thence South 00°25'55" West 435.87 feet; thence South 08°51'03" East 201.96 feet more or less to the North Right of Way of State Highway 11 and the terminus of this easement. PARCEL 2: The following described lands, situated in the County of Clearwater, State of Idaho (all in Township 35 North, Range 4 East, Boise Meridian); Existing Road: N1/2 SE 1/4 Section 9 New Road Construction: W1/2 NE1/4, N1/2 SE1/4, Section 9 New 110 KV Transmission Line: NW1/4 NE1/4, S1/2 NE1/4, E1/2 SE1/4, Section 9 and NW1/4 SW1/4, e1/2 NE1/4, Section 16 Conduit or Flume: NW1/4 NE1/4, SE1/4 NE1/4, E1/2 SE1/4, Section 9, and E1/2 NE1/4, NW1/4 SW1/4, Section 10 Surge Tank: SW1/4 NE1/4, Section 9

Beginning at the Southwest corner of the above

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CLARK AND FEENEY

36" O.D. Steel Penstock: W1/2 NE1/4, Section 9 1 Powerhouse: NW1/4 NE1/4, Section 9 2 PARCEL 3: 3 The following lands, situated in the Southwest quarter 4 of Section 10, Township 35 North, Range 4 East, Boise Meridian, Clearwater County, Idaho: 5 Beginning at a Brass Cap Monument marking the 6 Southeast corner of the Southwest quarter of said Section 10; thence North 72°27'52" West 1344.06 7 feet to a steel pin marking the most Northerly corner of Tax No. 1503, as Recorded in the Office of the 8 Recorder of Clearwater County, Idaho, and the True Point of Beginning; thence South 28°22'12" West 9 17.92 feet; thence South 60°08'17" West 135.48 feet; thence North 64°54'27" West 40.61 feet; thence North 56°21'35" East 166.40 feet; thence South 10 42°48'53" East 35.68 feet to the True Point of 11 Beginning. ALSO; Beginning at a brass cap monument marking 12 the Southeast corner of the Southwest quarter of said Section 10; thence South 88°59'58" West 1496.29 13 feet along the South boundary of the Southwest quarter of said Section 10 to a point on the East bank 14 of Ford's Creek and the True Point of Beginning: thence South 88°59'58" West 76.95 feet along the 15 South Boundary of the Southwest quarter of said Section 10 to a point on the West bank of Ford's 16 Creek; thence North 18°34'52" East 118.10 feet; thence North 10°53'20" East 111.55 feet; thence 17 North 02°53'28" East 67.77 feet; thence North 17°26'15" West 49.42 feet; thence North 67°34'05" 18 West 112.80 feet; thence North 61°40'59" West 314.48 feet; thence North 33°54'13" West 478.25 19 feet; thence North 14°46'37" West 143.16 feet: thence North 00°54'20" East 178.43 feet; thence 20 North 20°26'03" East 74.95 feet to a point on the North Boundary of the Southwest quarter of the 21 Southwest quarter of said Section 10; said point being North 59°29'40" West of and 2531.51 feet from the 22 Southeast corner of the Southwest quarter of said Section 10; thence North 89°09'52" East 90.58 feet 23 along the North Boundary of the Southwest quarter of the Southwest quarter of said Section 10; thence 24 South 16°00'39" West 91.14 feet; thence South 05°39'25" West 125.93 feet; thence South17°07'38" 25 East 122.25 feet; thence South 25°53'37" East 173.52

feet; thence South 32°52'11" East 165.76 feet; thence

South 46°36'35" East 100.14 feet; thence South

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59°00'15" East 297.55 feet; thence South 64°54'27" East 232.72 feet; thence South 09°22'42" East 67.85 feet; thence South 19°39'39" West 81.27 feet; thence South 26°21'25" West 176.43 feet; thence South 16°02'12" West 39.82 feet to the True Point of Beginning. ALSO the following described parcel situated in the Southwest quarter of the Southwest quarter of Section 10, Township 35 North, Range 4 East, Boise Meridian, Clearwater County, Idaho, more particularly described as: Beginning at the Northwest corner of the Southwest quarter of the Southwest quarter of said Section 10; thence North 89°09'52" East a distance of 521,14 feet to the right of way line of the Ford Hydro Conduit Route; thence South 20°26'30" West 10.73 feet along said right of way line; thence South 89°09'52" West 517.3 feet more or less to the West boundary of the Southwest quarter of the Southwest quarter of said Section 10; thence North along the West boundary of the Southwest quarter of the Southwest quarter of said Section 10 a distance of 10 feet to the point of beginning. PARCEL 4: The following described lands, situated in the Southwest quarter of Section 10, and the Northwest

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quarter of Section 15, Township 35 North, Range 4 East, Boise Meridian, Clearwater County, Idaho:

Beginning at a Brass Cap Monument marking the Southeast corner of the Southwest quarter of said Section 10; thence North 72°27'52" West 1344.06 feet to a steel pin marking the most Northerly corner of Tax Number 1503, Recorded in the Office of the Recorder of Clearwater County, Idaho and the true point of beginning; thence North 42°48'53" West 35.68 feet; thence North 56°21'35" East 63.75 feet; thence South 33°16'56" East 449.09 feet; thence South 56°51'24" East 140.79 feet: thence South 62°10'23" East 152.73 feet; thence North 76°43'44" East 177.76 feet; thence South 71°40'42" West 85.07 feet; thence South 15°48'57" East 22.49 feet; thence South 76°43'02" West 105.26 feet; thence North 62°11'20" West 165.02 feet; thence North 56°51'26" West 146.90 feet; thence North 38°07'10" West 357.53 feet; thence North 31°54'57" West 65.24 feet to the True Point of Beginning.

PARCEL 5:

JUDGMENT

LAW OFFICES OF

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The following described lands, situated in the Southwest quarter of Section 10; and the Northwest quarter of Section 15, Township 35 North, Range 4 East, Boise Meridian, Clearwater County, Idaho: Beginning at a Brass Cap Monument marking the Southeast corner of the Southwest quarter of said Section 10; thence South 86°15'48" West 662.54 feet to a steel pin marking the point on the North Boundary of Tax Number 1503, recorded in the office of the Recorder of Clearwater County, Idaho, and the True Point of Beginning; thence North 71°40'42" East 85.07 feet; thence North 76°43'44" East 182.59 feet; thence North 86°52'35" East 261.74 feet; thence South 21°22'01" East 31.58 feet; thence South 86°52'39" West 269.43 feet; thence South 76°43'02" West 263.21 feet; thence North 15°48'57" West 22.49 feet to the True Point of Beginning. ALSO; Beginning at a Brass Cap Monument marking the Southeast corner of the Southwest quarter of said Section 10; thence North 72°27'52" West 1344.06 feet to a steel pin marking the most Northerly corner of Tax No. 1503, recorded in the Office of the Recorder of Clearwater County, Idaho, and the True Point of Beginning; thence South 31°54'57" East 65.24 feet; thence North 38°07'10" West 56.36 feet; thence South 60°08'17" West 9.48 feet; thence North 28°22'12" East 17.92 feet to the True Point of Beginning.

The Court having reviewed the pleadings and records of the above entitled action and defendants, The Oxford Energy Company, Mosier Company, Inc., Trewethern Holdings, LTD. and Unknown Owners, having been served with Summons and Complaint and having failed to appear within the time provided by law and of default of said defendants having been entered herein for their failure to appear and defend this action within the time provided by law, plaintiff having filed its affidavit in compliance with the Solders and Sailors Relief Act of 1940 and with the Idaho Rules of Civil Procedure and that appearing therefrom that no legal cause exists why judgment by default should not be entered against said defendants, the plaintiff having applied to this Court for entry of default judgment herein and the Court having considered the proof offered on behalf of the plaintiff in support of said judgment, the Court having further considered the stipulation for

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entry of judgment entered into by and between plaintiff and defendant, State of Idaho, and being fully informed in the premise.

NOW THEREFORE IT IS ORDERED ADJUDGED AND DECREED that all persons known and unknown are further barred from all claim or claims to an estate in the premises described in the caption above or lien or encumbrance thereupon of any kind or nature whatsoever in derogation of plaintiff's undivided fee simple interest in said property.

IT IS FURTHER ORDERED the above named plaintiff is the lawful owner and possessor of an undivided fee simple interest superior to all claimants which are specifically reserved in and to the said real property which is situated in the County of Clearwater, State of Idaho, more particularly described as follows:

PARCEL 1:

The following land located in the West half of Section 10 and the West half of Section 15, Township 35 North, Range 4 East, Boise Meridian, Clearwater County, Idaho:

Beginning at a brass cap monument marking the Southeast corner of the Southwest quarter of said Section 10; thence South 88°59'58" West 1573.24 feet along the South boundary of said Section 10 to the True Point of Beginning; thence South 88°59'58" West 177.13 feet; thence North 01°05'33" West 451.91 feet; thence South 61°40'59" East 146.28 feet; thence South 67°34'05" East 112.80 feet; thence South 17°26'15" East 49.42 feet; thence South 02°53'28" West 67.73 feet; thence South 10°53'20" West 111.55 feet; thence South 18°34'52" West 118.13 feet to the True Point of Beginning.

ALSO INCLUDING an easement 30 feet in width, for the purpose of ingress and egress centered along the following described line;

Beginning at the Southwest corner of the above described parcel of land; thence North 01°05'33" West 36.15 feet along the West boundary of said parcel of land to the True Point of Beginning of this easement; thence South 67°17'48" West 30.23 feet; thence South 31°38'49" East 74.97 feet; thence South 41°23'50" East 213.35 feet; thence South 35°08'01" East 103.62 feet; thence South 39°48'22" East 193.15 feet; thence South 53°55'04" East 340.75 feet; thence along a 25.2689 degree curve right 192.16 feet; said curve inscribing a central angle of 48°33'27" and having a radius of 226.75 feet, a chord bearing of South 29°38'20" East and a chord distance of 186.46 feet; thence South 05°21'37" East 297.17 feet; thence along a 30.4003 degree curve right 120.17 feet; said curve inscribing a central angle of 36°31'51" and having a radius of 188.47 feet a chord bearing of South 12°54'19" West a chord distance of 118.14 feet; thence South 31°10'14" West 96.81 feet; thence along a 3.8164 degree curve left 327.95 feet; said curve inscribing a central angle of 12°30'59" and

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having a radius of 1501.26 feet, a chord bearing of South 24°54'45" West and a chord distance of 327.30 feet; thence South 18°39'15" West 26.78 feet; thence along a 5.6317 degree curve left 323.56 feet, said curve inscribing a central angle of 18°13'20" and having a radius of 1017.37 feet, a chord bearing of South 09°32'35" West and a chord distance of 322.20 feet; thence South 00°25'55" West 435.87 feet; thence South 08°51'03" East 201.96 feet more or less to the North Right of Way of State Highway 11 and the terminus of this easement.

PARCEL 2:

The following described lands, situated in the County of Clearwater, State of Idaho (all in Township 35 North, Range 4 East, Boise Meridian);

Existing Road: N1/2 SE 1/4 Section 9

New Road Construction: W1/2 NE1/4, N1/2 SE1/4, Section 9

New 110 KV Transmission Line: NW1/4 NE1/4, S1/2 NE1/4, E1/2 SE1/4, Section 9 and NW1/4 SW1/4, e1/2 NE1/4, Section 16

Conduit or Flume: NW1/4 NE1/4, SE1/4 NE1/4, E1/2 SE1/4, Section 9, and E1/2 NE1/4, NW1/4 SW1/4, Section 10

Surge Tank: SW1/4 NE1/4, Section 9

36" O.D. Steel Penstock: W1/2 NE1/4, Section 9

Powerhouse: NW1/4 NE1/4, Section 9

PARCEL 3:

The following lands, situated in the Southwest quarter of Section 10, Township 35 North, Range 4 East, Boise Meridian, Clearwater County, Idaho:

Beginning at a Brass Cap Monument marking the Southeast corner of the Southwest quarter of said Section 10; thence North 72°27'52" West 1344.06 feet to a steel pin marking the most Northerly corner of Tax No. 1503, as Recorded in the Office of the Recorder of Clearwater County, Idaho, and the True Point of Beginning; thence South 28°22'12" West 17.92 feet; thence South 60°08'17" West 135.48 feet; thence North 64°54'27" West 40.61 feet; thence North 56°21'35" East 166.40 feet; thence South 42°48'53" East 35.68 feet to the True Point of Beginning.

ALSO; Beginning at a brass cap monument marking the Southeast corner of the Southwest quarter of said Section 10; thence South 88°59'58" West 1496.29 feet along the South boundary of the Southwest quarter of said Section 10 to a point on the East bank of Ford's Creek and the True Point of Beginning; thence South 88°59'58" West 76.95 feet along the South Boundary of the Southwest quarter of said Section 10 to a point on the West bank of

Ford's Creek; thence North 18°34'52" East 118.10 feet; thence North 10°53'20" East 111.55 feet; thence North 02°53'28" East 67.77 feet; thence North 17°26'15" West 49.42 feet; thence North 67°34'05" West 112.80 feet; thence North 61°40'59" West 314.48 feet; thence North 33°54'13" West 478.25 feet; thence North 14°46'37" West 143.16 feet; thence North 00°54'20" East 178.43 feet; thence North 20°26'03" East 74.95 feet to a point on the North Boundary of the Southwest quarter of the Southwest quarter of said Section 10; said point being North 59°29'40" West of and 2531.51 feet from the Southeast corner of the Southwest quarter of said Section 10; thence North 89°09'52" East 90.58 feet along the North Boundary of the Southwest quarter of the Southwest quarter of said Section 10; thence South 16°00'39" West 91.14 feet; thence South 05°39'25" West 125.93 feet; thence South 17°07'38" East 122.25 feet; thence South 25°53'37" East 173.52 feet; thence South 32°52'11" East 165.76 feet; thence South 46°36'35" East 100.14 feet; thence South 59°00'15" East 297.55 feet; thence South 64°54'27" East 232.72 feet; thence South 90°22'42" East 67.85 feet; thence South 19°39'39" West 81.27 feet; thence South 26°21'25" West 176.43 feet; thence South 16°02'12" West 39.82 feet to the True Point of Beginning.

ALSO the following described parcel situated in the Southwest quarter of the Southwest quarter of Section 10, Township 35 North, Range 4 East, Boise Meridian, Clearwater County, Idaho, more particularly described as:

Beginning at the Northwest corner of the Southwest quarter of the Southwest quarter of said Section 10; thence North 89°09'52" East a distance of 521.14 feet to the right of way line of the Ford Hydro Conduit Route; thence South 20°26'30" West 10.73 feet along said right of way line; thence South 89°09'52" West 517.3 feet more or less to the West boundary of the Southwest quarter of said Section 10; thence North along the West boundary of the Southwest quarter of the Southwest quarter of said Section 10 a distance of 10 feet to the point of beginning.

PARCEL 4:

The following described lands, situated in the Southwest quarter of Section 10, and the Northwest quarter of Section 15, Township 35 North, Range 4 East, Boise Meridian, Clearwater County, Idaho:

Beginning at a Brass Cap Monument marking the Southeast corner of the Southwest quarter of said Section 10; thence North 72°27'52" West 1344.06 feet to a steel pin marking the most Northerly corner of Tax Number 1503, Recorded in the Office of the Recorder of Clearwater County, Idaho and the true point of beginning; thence North 42°48'53" West 35.68 feet; thence North 56°21'35" East 63.75 feet; thence South 33°16'56" East 449.09 feet; thence South 56°51'24" East 140.79 feet; thence South 62°10'23" East 152.73 feet; thence North 76°43'44" East 177.76 feet; thence South 71°40'42" West 85.07 feet; thence South 15°48'57" East 22.49 feet; thence South 76°43'02" West 105.26 feet; thence North 62°11'20" West 165.02 feet; thence North 56°51'26" West 146.90 feet; thence North 38°07'10" West 357.53 feet; thence North 31°54'57" West 65.24 feet to the True Point of Beginning.

PARCEL 5:

The following described lands, situated in the Southwest quarter of Section 10; and the Northwest quarter of Section 15, Township 35 North, Range 4 East, Boise Meridian, Clearwater County, Idaho:

Beginning at a Brass Cap Monument marking the Southeast corner of the Southwest quarter of said Section 10; thence South 86°15'48" West 662.54 feet to a steel pin marking the point on the North Boundary of Tax Number 1503, recorded in the office of the Recorder of Clearwater County, Idaho, and the True Point of Beginning; thence North 71°40'42" East 85.07 feet; thence North 76°43'44" East 182.59 feet; thence North 86°52'35" East 261.74 feet; thence South 21°22'01" East 31.58 feet; thence South 86°52'39" West 269.43 feet; thence South 76°43'02" West 263.21 feet; thence North 15°48'57" West 22.49 feet to the True Point of Beginning.

ALSO; Beginning at a Brass Cap Monument marking the Southeast corner of the Southwest quarter of said Section 10; thence North 72°27'52" West 1344.06 feet to a steel pin marking the most Northerly corner of Tax No. 1503, recorded in the Office of the Recorder of Clearwater County, Idaho, and the True Point of Beginning; thence South 31°54'57" East 65.24 feet; thence North 38°07'10" West 56.36 feet; thence South 60°08'17" West 9.48 feet; thence North 28°22'12" East 17.92 feet to the True Point of Beginning.

IT IS FURTHER ORDERED that plaintiff is entitled to lawful, peaceful and uninterrupted

possession of said property against the defendants and each of them.

DATED this (day of June,	2003.
--------------	--------------	-------

151 Jahn Fl. Brachburg

I hereby certify on the day of June, 2003, a true copy of the foregoing instrument was mailed to:

PAUL THOMAS CLARK CLARK and FEENEY P. O. Drawer 285 Lewiston, Idaho 83501

Sul K. Summerton Deputy/Clerk

County of Otosify I have been that the foregoing is a factories come to copy of an instrument as the same for respand on file and of record in my office. WITNESS my hand and official seal hereto affixed . day of___ LUNCE AD., DOX ROBIN CHRISTENSEN, CLERK OF THE DISTRICT

COURT EX OFFICIO AUDITOR & REC. by Deputy

LAW OFFICES OF CLARK AND FEENEY LEWISTON, IDAHO 83501

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JUDGMENT

Edl, Michele

From:

Benjamin Baldwin <bbaldwin@idl.idaho.gov>

Sent:

Thursday, March 05, 2020 12:23 PM

To:

Edl, Michele

Subject:

Ford Hydro Water Plant

Attachments:

ES5253 Ford Hydro Limited Partnership.zip; ES5253 2001 Invoice.pdf

Michele,

I found the file for the Ford Hydro Power Plant. The file is gigantic so I have only attached the relevant documents. The plant is operating under an easement, not a lease. The original easement was granted in 1987 with a few amendments along the way, but it does appear that no construction occurred prior to issuance of the easement. I attached the easement documents along with the last invoice that we received a copy of at the Maggie Creek (Kamiah) office; all transactions have been handled out of our Boise Staff office since 2002. Looking through the file, it appears that kilowatt production was fairly uniform from 1988 – 2001 with the same formula used in calculating the annual easement fee. If you need anything further please let me know.

Benjamin Baldwin Resource Specialist, Sr. Idaho Department of Lands 913 3rd St. Kamiah, ID 83536 208-935-2141 bbaldwin@idl.idaho.gov 216345

(IDAHO DEPARTMENT OF LANDS)

Instrument # 216345

CLEARWATER COUNTY, OROFINO, IDAHO 03:20:00 No. of Pages: 16 3-3-2011 Recorded for : IDAHO DEPARTMENT OF LANDS

CARRIE BIRD Ex-Officio Recorder Deputy

Fee: 0.00 Index to: EASEMENT, CORRECTION C REDIAN

This certifies that this is a true and correct copy of this document, the original of which is on file with the Idaho Department of Lands (IDL).

300 N. 6th St., Suite 103 PO Box 83720 Boise, Idaho 83720-0050

Phone (208) 334-0200 Fax (208) 334-3698

Michan **IDL Representative**

3-7-11 Date

STATE OF IDAHO **SECOND AMENDED & RESTATED EASEMENT NO. 5253**

THIS INDENTURE is made this 24 day of 3 2011, by and between the STATE OF IDAHO, Department of Lands, 300 North 6th Street, Suite 103, P.O. Box 83720, Boise, Idaho 83720-0050, acting by and through the State Board of Land Commissioners ("Grantor"), and FORD HYDRO LIMITED PARTNERSHIP, Route 2. Box 65, Lenore, Idaho 83541 ("Grantee").

In consideration of the mutual covenants and agreements of the parties hereto. the Grantor hereby grants to the Grantee, their assign(s) and successor(s) in interest, forever, an easement upon, over, and across the lands hereinafter described and for the purposes and in accord with the provisions hereinafter set forth.

- DURATION: This easement shall be effective upon execution and shall ١. continue in perpetuity, subject only to the terms and provisions of this easement and the requirements of Grantee's license with the Federal Energy Regulatory Commission ("FERC") as granted or later amended.
- PROPERTY DESCRIPTION: The Grantor grants this easement upon, 11. over and across the following described lands situated in CLEARWAER COUNTY, to wit:

Parcel 1 (penstock, buried transmission lines, powerhouse and penstock access road).

A variable width easement for the purpose of construction and maintenance of a hydroelectric facility located in Section 9 and Section 10, Township 35 North, Range 4 East, Boise Meridian, Clearwater County, State of Idaho, more particularly described as follows:

An easement in said Sections 9 and 10 centered along the following described line: Beginning at a brass cap monument marking the Southeast Corner of said Section 10; thence South 89°38'13" West 2,655.27 feet, along the North boundary of said Section 10, to a brass cap monument marking the Southwest Corner of the Southeast Quarter of said Section 10; thence North 58°54' 08" West 2,489.38 feet to a point on the South boundary of the Northwest Quarter of the Southwest Quarter of said Section 10 and the TRUE POINT OF BEGINNING; said easement being 25.00 feet either side of the following described lines unless noted otherwise; thence North 19°41'41" East 198.68 feet; thence North 08° 02'06" West 340.91 feet; thence North 22°15'45" West 295.35 feet; thence North 54° 38'10" West 38.98 feet; thence North 88°39'45" West 61.34 feet; thence South 56° 26'41" West 92.08 feet; thence South 19°

52'14" West 76.11 feet; thence South 03° 42'16" West 143.77 feet; thence South 20° 32'38" West 252.46 feet; thence South 46° 27'02" West 439.43 feet; thence South 62° 02'38" West 100.72 feet; thence South 79° 19'23" West 104.02 feet; thence North 85° 24'39" West 201.69 feet; thence North 59° 53'12" West 292.10 feet; thence North 32° 52'00" W 157.37 feet; thence North 23° 29'12" West 163.48 feet; thence North 17° 31'32" West 180.31 feet; thence North 39° 28'52" West 121.44 feet; thence North 13° 59'18" West 149.78 feet; thence North 21° 49'04" East 80.72 feet: thence North 03° 05'17" West 188.93 feet; thence North 17º 47'14" East 163.79 feet; thence North 22º43'44" East 142.64 feet; thence North 32° 53'06" East 118.72 feet; thence North 04° 48'02" West 83.89 feet; thence North 41° 57'17" West 34.34 feet; thence North 72° 45'24" West 288.86 feet; thence South 49° 22'13" West 215.32 feet; thence South 65° 02'08" West 102.57 feet; thence South 79° 53'31" West 86.08 feet; thence North 70° 21'03" West 177.89 feet; thence North 42° 28'50" West 20.02 feet; thence North 11° 11'11" West 233.07 feet; thence North 02° 50'33" East 102.52 feet; thence North 12° 41'17" West 159.17 feet; thence North 05° 59'03" East 211.10 feet; thence North 16° 15'23" East 143.65 feet; thence North 21° 09'53" East 139.81 feet; at this point said easement increases to 50.00 feet West of the Centerline and 100.00 feet East of the Centerline: thence North 21° 09'53" East 40 feet; thence North 30° 03'30" West 165.78 feet; thence North 10° 34'32" West 60 feet, at this point said easement decreases to 25.00 feet either side of Centerline; thence North 10° 34'32" West 287.40 feet; thence North 61° 30'16" East 70.77 feet: at this point said easement increases to 80.00 feet North of the Centerline and 50.00 feet South of the Centerline; thence North 61° 30'16" East 136 feet to the terminus of this easement, said TERMINUS POINT being North 44°41'12" West of and 6,187.34 feet from the Southwest Corner of the Southeast Quarter of said Section 10.

PARCEL 2 (buried transmission line shortcut).

Along with an Easement 10.00 feet wide, for the purpose of a buried transmission line, all lying on the North side of the following described centerline except as noted otherwise:

Commencing at a brass cap monument marking the Southeast corner of Section 10, Township 35 North, Range 4 East, Boise Meridian; thence South 89°38'13" West a distance of 2,655.27 feet along the South boundary of said Section 10 to a brass cap monument marking the South one quarter corner of said Section 10; thence North 58°54'08" West a distance of 2,489.38 feet to a point on the South boundary of the Northwest Quarter of the Southwest Quarter of said Section 10 and being the REAL POINT OF BEGINNING; thence South 89°09'52" West 543.35 feet; At this point, said easement increases to 20 feet wide, being 10 feet on each side of the centerline; thence North 89°35'48" West 183.96 feet to a point on the centerline of the easement described under "Parcel 1" above, said point being the TERMINUS of this easement.

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PARCEL 3 (access road from rock pit to powerhouse).

A strip of land 50 feet wide, being 25 feet on each side of the following described centerline (it is the intent of this easement to follow the centerline of the existing road):

Beginning at the South one-quarter (1/4) corner of said Section 10, thence North 57°20'13" West a distance of 5,297.50 feet to a point, said point being the REAL POINT OF BEGINNING; thence South 01°07'36" East 76.14 feet; thence South 19°04'05" East 25.42 feet; thence South 58°12'07" East 29.58 feet; thence South 68°08'01" East 37.83 feet; thence South 64°13'36" East 38.33 feet; thence South 89°33'17" East 50.80 feet; thence South 49°16'30" East 35.60 feet; thence South 04°57'19" East 26.42 feet; thence South 37°21'07" West 24.88 feet; thence South 66°15'36" West 24.19 feet; thence North 58°32'48" West 33.20 feet; thence North 83°24'11" West 34.95 feet; thence North 57°42'35" West 35.85 feet; thence North 78°25'59" West 42.60 feet; thence North 74°23'31" West 40.13 feet; thence North 48°54'02" West 175.85 feet; thence North 29°12'06" West 137.59 feet; thence North 18°23'38" West 76.36 feet; thence North 15°50'26" West 52.36 feet; thence North 11°14'47" West 52.93 feet; thence North 09°56'56" West 50.16 feet; thence North 07°47'31" West 90.44 feet; thence North 18°35'04" West 80.50 feet; thence North 40°33'16" West 32.29 feet; thence North 68°14'33" West 37.24 feet; thence South 73°09'07" West 29.67 feet; thence South 69° 29'31" West 29.76 feet; thence South 19°14'36" West 59.04 feet; thence South 11° 34'42" East 54.84 feet; thence South 46° 32'29" East 85.22 feet; from this point, the Centerline is un-surveyed, but follows along the existing road centerline on the following approximate description; thence Southwesterly a distance of 1,300.00 feet to a road junction; thence Northwesterly a distance of 1,700.00 feet to a switchback; thence Easterly a distance of 2,808.00 feet to a point being the Northwest corner of the powerhouse, said point being the TERMINUS of said easement.

PARCEL 4 (access road from State Highway 11 to the rock pit).

Along with an Easement, 50.00 feet wide, for the purpose of ingress and egress, centered along the following described line (it is the intent of this easement to follow the centerline of the existing road):

Commencing at a brass cap monument marking the Southeast corner of the Southwest Quarter of Section 10, Township 35 North, Range 4 East, Boise Meridian; thence North 56°46'39" West a distance of 5,784.88 feet to the REAL POINT OF BEGINNING of the hereinafter described easement; thence South 06°04'43" East 223.14 feet; thence South 26°09'28" East 243.91 feet; thence South 37°51'18" East 232.22 feet; thence South 78°22'31" East 326.91 feet; thence South 50°37'19" East 228.37 feet; thence South 30°52'35" East 136.94 feet; thence South 02°40'05" West 266.32 feet; thence South 21° 57'50" East

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217.37 feet; thence South 33°46'21" East 201.88 feet; thence South 23° 01'04" East 312.65 feet; thence South 01°44'19" West 2,554.58 feet; thence South 02° 32'14" West 1,356.10 feet more or less to the North Right of Way of State Highway 11 and the TERMINUS of this easement.

The total acres contained within this easement being 24.69 acres, more or less

If the project and access road are located substantially as described herein, the centerline of said project and access road as constructed is hereby deemed accepted by the parties as the true centerline of the premises granted. If any subsequent survey of the project and access road shows that any portion of the same, although located substantially as described, crosses lands of the Grantor not described herein, the easement shall be amended to include the additional lands traversed; if any lands described herein are not traversed by the project and access road as constructed, the easement traversing the same shall be terminated.

Attachment No. 1 is a summary of the acreage involved in this easement.

III. PURPOSE: This amended and restated easement is entered into in order to correct the legal description in that certain "Amended State of Idaho Easement No. 5253" dated March 6, 1998, recorded December 27, 2010 as instrument No. 215874 ("First Amended Easement 5253"). These corrections are based on a revised legal description provided by Ford Hydro Power Project (the Project) for which this easement is granted. The Project consists of the construction, operation, and maintenance of a hydroelectric facility. The Amended State of Idaho Easement No. 5253 of March 6, 1998 was itself an amendment and restatement of that certain "State of Idaho Easement No. 5253" originally entered between the parties dated November 24, 1987 ("Original Easement 5253").

IV. FEES: A one-time fee of FOUR THOUSAND EIGHT HUNDRED AND NO/100ths DOLLARS (\$4,800.00). lawful money of the United State of America, was provided in Original Easement 5253 based on 12 acres at \$400.00 per acre. Grantee also paid to the Grantor an additional fee of TWO THOUSAND ONE HUNDRED EIGHTY and NO/100ths DOLLARS (\$2,180.00), lawful money of the United States of America, for an additional 5.45 acres included in the First Amended Easement 5253, based on the rate of \$400.00 per acre. Grantee also paid an additional fee pursuant to the terms of the First Amended Easement 5253 in the amount of \$5,076 for an additional 12.69 acres included in the First Amended Easement 5253 based on the rate of \$400.00 per acre.

The Grantee shall pay to the Grantor an annual fee for the easement based on the following formula:

Annual fee = ANG (annual net generation) X 2 mills (2/10 of a cent) X 62% (percentage of hydroelectric project acreage on state land).

WHERE

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"Annual net generation" means the energy output in kilowatt hours that the Grantee received payment for in the previous calendar year,

AND

"Hydroelectric project" means the dam, diversion, penstock, transmission lines, water storage area, powerhouse, and other related facilities <u>but does not</u> include any access roads. Attachment #2 shows the project acreage figures used in determining the percentage of project on state land for the royalty formula.

The fee formula shall remain in effect for the term of the power purchase contract that the Grantee has with a power utility or for the term of the FERC license, whichever expires first. At the expiration of said contract or license or if, under the power purchase contract, the amount paid to the Grantee is increased before the expiration of the contract, the Grantor reserves the right to alter the fee formula, with due and proper notice to the Grantee (would not apply to any built in increase for maintenance or cost of living adjustments). Any new formula shall be based on the then current Land Board policy governing hydroelectric projects.

- V. REPORTING: The Grantee shall submit to the Grantor, a verified copy of the annual net generation along with the annual fee, both of which shall be due and payable on or before February 1ST of the following year. If the annual fee is not paid on or before February 1ST, the Grantor shall give written notice to the Grantee that if the payment of the annual fee and interest thereon, accruing from February 1ST at the prevailing interest rate of the Grantor's transactions is not received within sixty (60) days of notice thereof, then the Grantor may cancel the easement without further notice.
- VI. ADDITIONAL RIGHTS RESERVED TO THE GRANTOR: It is understood and acknowledged that all rights are contingent upon their failure to conflict with any provision of the Federal Energy Regulatory Commission license for Project No. 7986 issued to Grantee on January 17, 1986, as such license may be amended (the "FERC license"); and that all individuals or entities authorized by the Grantor to enter upon or cross this easement shall insure against damage to the easement of Grantee's property in the sum of Five Hundred Thousand Dollars (\$500,000.00).

The Grantor expressly reserves the following rights:

- A. Oil and gas, geothermal, and all other mineral rights.
- B. To grant easements over or leases, permits or licenses upon the easement area, provided that such easement, lease, license, or other use shall not unreasonably interfere with the Grantee's use of its easement.
- C. The Grantor, its agents, contractors, lessees, permittees, and other authorized individuals and entities may enter upon and across the easement area to inspect the improvements, to harvest timber, and for other lawful uses, so long as such use does not unreasonably interfere with Grantee's use of this easement. In

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addition to the insurance provided above, all those authorized by the Grantor to use the easement area to harvest timber shall be bonded in an amount sufficient to insure that access roads shall be maintained in and restored to the condition they were in prior to commencement of timber operations.

D. To sell the lands subject to the terms of this easement.

VII. MAINTENANCE: Grantee shall bear the sole and complete responsibility for all improvements constructed upon the easement area, including without limitation, the pipelines, the transmission lines, the powerhouse, and all other improvements. Additionally, all access roads shall be maintained by the Grantee to acceptable standards as determined by the Grantor. Grantee shall also cooperate with Grantor to maintain the integrity of all road closures on the easement area.

VIII. RESPONSIBILITY - HOLD HARMLESS CLAUSE: Both parties shall indemnify and hold harmless the other against any and all liability, claims, and expenses of any kind, including reasonable attorney fees for any damage to any person or property caused by any negligent or other wrongful act of the other party, or its officers, employees, agents, or invitees in connection with the activities of the easement, The party seeking indemnification under this provision shall give the other party written notice of the claim for indemnification within ten (10) days after it receives notice or has knowledge of the claim and shall give the other party a reasonable opportunity to defend against the claim including cooperation in the defense of the claim. Grantee shall not be considered an agent of the Grantor in the construction, operation, maintenance, or use of the easement area or the facilities, structures or improvements situated thereon.

IX. ASSIGNMENT: The Grantee shall not sublet all or any part of the easement or assign or transfer this easement or any interest therein, without the prior written consent of Grantor. Subject to the approval of the Grantor which shall not be unreasonably delayed or denied, the Grantee may assign this easement to an assignee who agrees to perform all of the Grantee's obligations under this agreement.

X. MORTGAGES: Subject to the Grantor's consent, which consent shall not be unreasonably withheld, the Grantee may mortgage or otherwise create a security interest in the Grantee's interest in this easement to secure indebtedness incurred by the Grantee to finance the construction of the Project, or to secure the Grantee's obligations to a third party under a lease to the Grantee of the improvements constituting the Project in the event that any or all of the improvements are constructed or acquired by the third party and leased by it to the Grantee. In the event that the Grantee mortgages or otherwise creates a security interest in its interest in the easement, the holder of the mortgage or security interest (the "Secured Party") shall notify the Grantor of the creation of such mortgage or security interest and the name and address for the service of notice upon the Secured Party. The Grantor hereby agrees for the benefit of the Secured Party that:

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- A. Upon serving the Grantee with any notice of default, Grantor will simultaneously serve a copy of such notice upon the Secured Party. No notice to the Grantee shall be effective upon the Secured Party unless a copy is also served upon the Secured Party.
- B. In the event of any default by the Grantee hereunder or under the terms of the mortgage or other security interest, the Secured Party shall, at its option, have the right to perform any of the Grantee's covenants, to cure any default by the Grantee, and/or to exercise any election, option, or right conferred upon the Grantee by the terms of this easement.
- C. The Grantor will not terminate this easement or the Grantee's right of possession for any default of the Grantee if within a period of thirty (30) days after the expiration of the period of time within which the Grantee might cure said default under the provisions of this easement, the Secured Party cures the default or causes the default to be cured, or if within a period of thirty (30) days after the expiration of the period of time within which the Grantee might commence to eliminate the cause of such default under the provisions of this easement, the Secured Party commences to eliminate the cause of such default and proceeds therewith diligently and with reasonable dispatch.
- D. The Grantor will not terminate this easement if the Secured Party takes possession of the easement upon default by the Grantee under the terms of the mortgage, provided that the fees due and payable under this easement shall continue to be paid and the other covenants, conditions and agreements of this easement on the Grantee's part to be kept and performed shall continue to be kept and performed. Secured Party shall have a period of thirty (30) days after taking possession within which to commence performance.
- E. No right, privilege or option available to the Grantee to cancel or terminate this easement shall have been exercised effectively unless joined in by the Secured Party.
- F. No modification or amendment to this easement shall be effective without the written consent of the Secured Party.
- G. Notwithstanding anything to the contrary upon the occurrence of an event of default, other than a default in the payment of money, the Grantor shall take no action to effect a termination of this easement without first giving to the Secured Party a reasonable time within which either (1) to obtain possession of the easement (including possession by a receiver), or (2) to institute, prosecute and complete foreclosure proceedings or otherwise acquire the Grantee's interest under this easement with diligence. The Secured Party, upon obtaining possession or acquiring the Grantee's interest under this easement, shall be required promptly to cure all defaults then reasonably susceptible of being cured by the Secured Party.

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> H. In the event of the termination of this easement as a result of the bankruptcy or insolvency of the Grantee, the Grantor shall serve upon the Secured Party written notice that the easement has been terminated. The notice shall include a statement of any and all sums which would be due under this easement but for such termination and of all other defaults, if any, under this easement then known to the Grantor. If within thirty (30) days after the Grantor's notice, the Secured Party shall request a new easement, the Grantor shall enter into a new easement with the Secured Party, or its designee, in accordance with and upon the following terms and conditions: (1) the new easement shall be at the reasonable cost of the Grantee, (2) the new easement shall be effective as of the date of termination of this easement, (3) the new easement shall be for the same term of this easement and at its same rent, agreements, terms, covenants and conditions, and (4) the new easement shall require the Grantee to perform any unfulfilled obligation of the Grantee under this easement which is reasonably susceptible of being performed by such Grantee. Upon the execution of such new easement, the Grantee named therein shall pay any and all sums which would at the time of its execution be due under this easement but for such termination and shall pay all expenses, including reasonable counsel fees, court costs and disbursements incurred by the Grantor in connection with such default and termination, the recovery of possession of the easement, and the preparation, execution and delivery of the new easement.

XI. BONDS: Grantee shall secure and maintain during the entire term of this easement, a performance bond or an irrevocable letter of credit in the amount of SEVENTEEN THOUSAND EIGHT HUNDRED EIGHTY and NO/100ths DOLLARS (\$17,880.00), lawful money of the United States of American, based on 8.94 acres (total easement acreage minus access road acreage) at TWO THOUSAND and NO100/ths DOLLARS (\$2,000.00), lawful money of the United States of America, per acre to guarantee compliance with the terms of this easement, including without limitation, construction, safety, performance, maintenance, reclamation, and, if required by the Grantor, the prompt removal of all equipment and improvements from the easement area upon Grantee's default or extinguishment of the easement for any reason.

XII. INSURANCE: Grantee shall secure and maintain during the term of this easement, public liability, property damage, and products liability insurance at least in the sum of FIVE HUNDRED THOUSAND and NO/100ths DOLLARS (\$500,000.00), lawful money of the United States of America, for injury or death for each occurrence; and the aggregate sum of ONE MILLION and NO/100ths DOLLARS (\$1,000,000.00), lawful money of the United States of America, for injury or death; and in the sum of FIVE HUNDRED THOUSAND and NO/100ths DOLLARS (\$500,000.00), legal and lawful money of the United States of America, for damages to property and products damage caused by any occupancy, use, operations or any other activity upon the easement area carried on by the Grantee, its assigns, agents, operators or contractors. The Grantor shall be named insured in all instances. A current certificate of insurance shall be maintained with the Director of the Department of Lands by Grantee for the duration of this easement as proof of insurance.

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XIII. WASTE: Grantee shall not allow waste to be committed upon the easement area. Grantee shall at all times keep the premises free from abandoned machinery, motor vehicles, refuse and other unsightly materials.

XIV. RECLAMATION: Upon relinquishment, termination or extinguishment or any reason, Grantee shall reclaim all lands disturbed by its construction by reseeding and revegetating with seed to the extent necessary to minimize erosion. The amount and species of seed shall be determined by Grantor. The seed bed area suitable for disking shall be disked to a depth of 1/2 inch to 1 inch before seeding.

In the event the Grantee fails to commence and continue reclamation within thirty (30) days after relinquishment, termination or extinguishment, the Grantor may declare the performance bond forfeited and use the bond monies to reclaim the land, and may exercise all other remedies at law and in this easement. The Grantor may extend the thirty (30) day period to allow for optimum weather and planting conditions.

XV. REVERSION FOR NON-USE: In the event that the easement is not used for the purpose for which it was granted for any five (5) year period, the easement is presumed abandoned and shall automatically terminate. The Grantor shall notify the Grantee and the Secured Party in writing of the termination. The Grantee and the Secured Party shall have thirty (30) days from the date of notification to reply in writing to the Grantor to show cause why the easement should be reinstated. Within sixty (60) days of receipt of the statement to show cause, the Grantor shall notify the Grantee and the Secured Party in writing as to the Grantor's decision concerning reinstatement. The Grantee or the Secured Party shall have thirty (30) days of receipt of the Grantor's decision to appeal an adverse decision to the State Board of Land Commissioners.

XVI. RELINQUISHMENT: Unless otherwise prevented from doing so by failure to acquire the consent of a Secured Party or as otherwise provided herein, the Grantee may relinquish this easement by filing a written relinquishment with the Grantor. Thirty (30) days thereafter, the Grantee shall be relieved of liability under this easement except for the continued obligation to make payments of all accrued fees, timely removal of equipment and improvements and/or the release of the performance bond for the removal of equipment and improvements if required by the Grantor, the reclamation of the premises, and compliance with all other duties and payments of all liabilities required by this easement or by law or regulation which accrued prior to the filing of the relinquishment.

XVII. COVENANT: It is mutually understood and agreed by the parties that all of the terms, covenants, conditions and obligations in this easement are of the essence and shall be binding upon the heirs, executors and assigns of this easement.

XVIII. COMPLIANCE WITH APPLICABLE LAWS: All applicable laws and regulations of the United States and the State of Idaho and its political subdivisions are incorporated herein by reference, except as lawfully varied by the contractual terms of this easement. Grantee shall comply with all such applicable laws and regulations.

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XIX. TERMINATION: Except as provided in paragraph V, X, and XV above, the Grantor may terminate this easement for any material breach of its terms ninety (90) days after written notice of default has been given to the Grantee and Secured Party, unless the breach has been cured to the Grantor's satisfaction before the ninety (90) day period has expired.

In the event that Grantor declares a termination of the easement, thereafter the easement shall be completely and finally extinguished and all right and title thereto shall automatically revert to the Grantor or to the record owner of the Grantor's interest in the lands subject to this easement; provided that the Grantee shall remain bound to comply with all duties and liabilities required by this easement or by law, which accrued prior to the date of extinguishment; the Grantee shall quietly and peaceably surrender possession of the easement to the Grantor; and the Grantor may pursue all other remedies at law and in this easement.

XX. FORCE MAJEURE: In the event that any performance required of either party by this easement is delayed by any reason beyond its control, including but not limited to fire, flood, storms, strikes, labor disputes, riots, insurrection or the inability to procure materials, the affected party shall notify the other party of the delay and the reasons for it. The time for which the affected performance is required shall be excused and/or extended for the amount of time the performance is delayed. Nothing in this paragraph shall excuse the Grantee from making timely payment of the fees due under this easement.

XXI. NOTICE: All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered in hand to such party or mailed by certified or registered mail, postage prepaid, return receipt requested and addressed:

If to the Grantee: Ford Hydro Limited Partnership

Route 2, Box 65 Lenore, Idaho 83541

If to the Grantor: Director

Idaho Department of Lands 300 N. 6TH Street, Ste. 103

P.O. Box 83720 Boise, ID 83720-0050

Or, in each case to such other address as may be specified in a written notice delivered in compliance with the foregoing requirements.

XXII. FEDERAL REGULATION: Both parties recognize that the Project, and therefore this easement, are subject to the regulatory jurisdiction of FERC. Any performance required under this easement is expressly conditioned on it being in compliance with FERC rules, regulations and orders. If any performance under this easement requires

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FERC approval, that performance is conditioned upon the receipt of that approval. Both parties shall take all reasonable and appropriate steps to insure that the performance required under this contract are within FERC rules, regulations and orders and that applications for required approvals are filed in a timely manner.

XXIII. ACCEPTANCE:

Use of this easement by Grantee constitutes acceptance of the easement and agreement to be bound by the terms hereof.

IN WITNESS WHEREOF, the Grantee has caused these presents to be duly executed the day and year first above written.

FORD HYDRO LIMITED PARTNERSHIP	
Dated: <u>2-//-//</u>	By: Lend Joseph lts: Manager
STATE OF HOAHO)) ss. COUNTY OF Whatcom	
known to me to be the	of FORD HYDRO LIMITED ne instrument and acknowledged to me that they
	NOTARY PUBLIC for Idaho

Notary Public
State of Washington
CĤAD D NICKISCH
My Appointment Expires Jul 14, 2012

Residing at <u>Allingham</u> who, Idaho-My Commission expires: July 14 20 12

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IN WITNESS WHEREOF, the State Board of Land Commissioners has caused these presents to be executed by its President, the Governor of the State of Idaho, and countersigned by the Secretary of State and the Director, Idaho Department of Lands.

> STATE BOARD OF LAND COMMISSIONERS Governor of the State of Idaho and President of the State Board of Land Commissioners

Countersigned:

Director Idaho Department of Lands

STATE OF IDAHO)) ss. COUNTY OF ADA)

On this 24th day of February , 2011, before me, a Notary Public in and for said State, personally appeared C.L. "BUTCH" OTTER, known to me to be the Governor of the State of Idaho and President of the State Board of Land Commissioners; BEN YSURSA, known to me to be the Secretary of State for the State of Idaho; and GEORGE B. BACON, known to me to be the Director of Department of Lands of the State of Idaho, that executed the same instrument and acknowledged to me that such State of Idaho and State Board of Land Commissioners executed same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year written above.

NOTARY PUBLIC for Idaho

Residing at <u>Boise</u>, Idaho My Commission expires: <u>& II</u> - 2014

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ATTACHMENT NO. 1

FORD HYDRO PROJECT ACREAGE

AMENDED STATE OF IDAHO EASEMENT NO. 5253

Figures shown here reflect the total acreage on state land affected by construction of the project and are used to determine the one-time easement compensation fee and performance bond.

- Penstock (50.00 foot wide right-of-way) approximately from Station 22+90.67 to Station 83+86.61* as determined from metes and bounds description, dated April 7, 1988 (Attachment 1A), and plat sheets 5, 6, and 7, dated December 13, 1988 **:
 - 6,099.65 feet x 50.00 feet ÷ 43,560.00 square feet = 7.00 acres
- 2. Penstock / Flume Transition (50.00 feet and 100.00 feet centerline right-of-way) approximately from Station 83+86.61 to Station 86+77.80 as determined from metes and bounds description, dated April 7, 1988:
 - 265.78 feet x 150.00 feet ÷ 43,560.00 square feet = 0.92 acres
- Flume (50.00 foot wide right-of-way) approximately from Station 86+77.80 to Station 90+36.42 as determined from metes and bounds description, dated April 7, 1988:
 - 358.17 feet x 50.00 feet ÷ 43,560.00 square feet = 0.41 acres
- 4. Powerhouse Site approximately from Station 90+36.42 to Station 91+72.42 as determined from metes and bounds description, dated April 7, 1988:
 - 136.00 feet x 130.00 feet ÷ 43,560.00 square feet = 0.41 acres
- 5. Transmission Line "Shortcut" as determined from plat sheets 5 and 6, dated December 12, 1988:

NE1/SE1/4, Section 9:

183.96 feet x 20.00 feet ÷ 43,560.00 square feet = 0.08 acres

NW1/SW1/4, Section 10:

543.35 feet x 10.00 feet ÷ 43,560.00 square feet = 0.12 acres

Edl, Michele

From:

AF <arch@westford.co>

Sent:

Thursday, March 05, 2020 9:08 AM

To:

Edl, Michele

Cc:

brenda@westford.co

Subject:

RE: Proof of Beneficial Use

Attachments:

Change in address Signed.pdf; Idaho State Lands Easement.pdf

Good Morning Michele,

Please find attached an executed change of address form (original sent via mail). Please note the IDWR listed address for FHLP in Cashmere, WA is quite simply another example of IDWR's poor record keeping. Neither FHLP, its affiliates nor any of its principals has ever maintained an address nor conducted any business in Cashmere, WA.

Regarding the field exam date of March 5, 1998 which I downloaded from the IDWR web site in 2007, I distinctly remember coordinating the field exam with my staff to meet the field examiner on site sometime in late 1990's. It would seem there was a filed field examination report otherwise why would it have been listed on the IDWR web site in 2007 but subsequently deleted? The exam date of March 5, 1998 was not a department error rather more proof of its poor record keeping.

Also attached is a copy of the Idaho State Lands Department easement in perpetuity (highlighted in yellow) for your records.

Cheers,

Arch

From: Edl, Michele [mailto:Michele.Edl@idwr.idaho.gov]

Sent: Wednesday, March 04, 2020 11:33 AM

To: AF <arch@westford.co> **Cc:** brenda@westford.co

Subject: RE: Proof of Beneficial Use

Mr. Ford,

Thank you for taking the time to collect and send these items to me.

The proof statement that you submitted in 1990 and IDWR's acknowledgement of that statement that you attached to this email are a pre-licensing step.

When a project to use water is complete, the permittee must "prove up" the water right by demonstrating that the water has been put to beneficial use according to the terms of the permit. The proof is accomplished by submitting:

- a completed Statement of Completion form accompanied by the license examination fee or
- a completed Statement of Completion form accompanied by a completed Beneficial Use Field Report as prepared by a certified water right examiner.

You submitted the Statement of Completion and fee for the first bullet point. You have done everything that you needed to do.

The prove-up step was compete. IDWR's acknowledgement step triggers the next step, which is to put the water right permit on a list of projects needing confirmation of beneficial use by a field examiner. It is at that step that the process stalled.

You have possession of a copy of the Summary Report for Water Right No. 84-7171 which is dated 4/10/2007 and the date listed in the field exam date is 3/5/1998.

But I opened the same report this

morning: https://idwr.idaho.gov/apps/ExtSearch/RightReportAJ.asp?BasinNumber=84&SequenceNumber=7171&SplitS uffix=%20%20&TypewrWaterPermit=True Notice that on today's version, there is no field exam date listed.

I can't fully explain the disappearing date. But in March of 1998, all water right licenses were issued from the State office and were based on field work and reports that were completed by regional staff. The field examiner was (and is) required to write up a report of his/her findings and that report must be made part of the water right file. It is the basis for the elements of the water right license. There is no beneficial use field report in the file for 84-7171. If the field inspection was conducted on 3/5/1998, then the inspector fell short of completing the required tasks. Without a report, the field exam step would not be considered complete.

The exam date of 3/5/1998 appears to be a Department error. I am doing my best to correct that error and to complete a process that was left incomplete. But I will need your help.

I have begun my report write up. The first section confirms ownership and updates the contact, f necessary. The water rights database shows water right permit 84-7171 as currently held by

FORD HYDRO LTD PARTNERSHIP C/O FORD HYDRO INC **PO BOX 506** CASHMERE, WA 98815 (206) 293-3443

I believe that the permit ownership is correct but the address and phone may not be. (You mentioned that you have moved several times in the past decade.) If this information needs to be updated, please complete a change of address form located at this link: https://idwr.idaho.gov/files/forms/change-in-address.pdf and return it to me:

Michele Edl **Water Rights Section Idaho Department of Water Resources** 322 E Front St **Boise ID 83720**

The change of address form doesn't need to be notarized but IDWR does need an original signature. We are not authorized to accept electronic signatures.

I will also need confirmation that you have a authorization to construct a powerhouse on State of Idaho property. Who may I contact with the State of Idaho Department of Lands to get either a copy of the agreement or some other confirmation?

Sincerely, Michele Edl 208-287-4946 (direct to desktop line)

From: AF [mailto:arch@westford.co] Sent: Tuesday, March 03, 2020 5:15 PM

To: Edl, Michele < Michele. Edl@idwr.idaho.gov>

Cc: brenda@westford.co

Subject: Proof of Beneficial Use

Hi Michele,

After further review of my files I found the Proof of Beneficial Use documents as submitted and approved by Idaho Department of Water Resources, and which ties into the field exam date highlighted in yellow in the attached Water Right document. It would seem a lack of good record keeping rather than an incomplete Beneficial Use of waters of Idaho?

Hopefully this will put the issue to rest.

Arch

Edl, Michele

From:

AF <arch@westford.co>

Sent:

Tuesday, March 03, 2020 10:16 AM

To:

Edl, Michele

Cc:

brenda@westford.co

Subject:

FW: FORDS CREEK HYDRO

Attachments:

IDWR Letter Beneficial USE.pdf; Turbine Efficiency Curve.pdf; Jim Ford Water Right

Summary.pdf

Hi Michele,

Please find attached the same documents I emailed to Russ to give to you prior to your inspection. As you can see in Jim Ford Water Rights Summary, there was a field exam in 1998. Why this is no longer listed on the IDWR web site is a mystery but should not null its validity. Also the letter to Albert Beardslee clearly shows there was information provided to IDWR of a beneficial use many years ago.

My contact cell phone if needed is 360 202 6363.

Cheers,

Arch