

143 FERC ¶ 62,033
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Mr. William Arkoosh

Project No. 14154-001

ORDER ISSUING ORIGINAL MINOR LICENSE

(April 16, 2013)

INTRODUCTION

1. On November 15, 2011, Mr. William Arkoosh (Mr. Arkoosh or applicant) filed, pursuant to Part I of the Federal Power Act (FPA),¹ an application for an original license to construct, operate, and maintain the proposed Little Wood River Ranch II Hydropower Project No. 14154 (Little Wood River Project or project). The 1.23-megawatt (MW) project will be located on the Little Wood River, six miles west of the Town of Shoshone, in Lincoln County, Idaho. The project will occupy approximately 3.3 acres of federal land under the jurisdiction of the U.S. Bureau of Land Management (BLM).²

2. As discussed below, this order issues an original license for the Little Wood River Project.

BACKGROUND

3. On April 4, 2012, the Commission issued a public notice that was published in the *Federal Register* accepting the application for filing; soliciting motions to intervene and protests; soliciting comments, recommendations, terms and conditions, and prescriptions; indicating the application was ready for environmental analysis; indicating the Commission intended to waive solicitation of additional study requests and scoping; and establishing an expedited schedule for processing.³ The notice set May 4, 2012, as the deadline for filing motions to intervene, protests, comments, recommendations, terms and conditions, and prescriptions. The State of Idaho timely filed a notice of intervention,⁴

¹ 16 U.S.C. §§ 791(a) – 825(r) (2006).

² The project is required to be licensed under section 23(b)(1) of the FPA, 16 U.S.C. § 817(1) (2006), because it occupies federal lands.

³ 77 *Fed. Reg.* 21758 (April 11, 2012).

⁴ The State of Idaho filed on behalf of the Idaho Department of Environmental
(continued)

comments, and recommendations under section 10(j) of the FPA.⁵ The U.S. Department of the Interior filed a letter stating it had no comments on the application. Neither entity opposes the project.

4. An Environmental Assessment (EA) was prepared by Commission staff and issued on October 25, 2012, analyzing the impacts of the proposed project and alternatives to it. The Idaho Department of Fish and Game (Idaho DFG) and Idaho Department of Environmental Quality (Idaho DEQ) filed comments on the EA. The intervention, comments, and recommendations have been fully considered in determining whether, and under what conditions, to issue this license.

PROJECT DESCRIPTION

A. Project Area

5. The project will be located on the Little Wood River, approximately six miles west of Shoshone, in Lincoln County, Idaho. The Little Wood River originates in the Pioneer Mountains and flows approximately 130 miles to its confluence with the Big Wood River, draining a 1,132-square-mile area. The project area is mostly rural, with an arid climate. Water from the Little Wood River is an important source of irrigation water for the region.

B. Project Facilities

6. The Little Wood River Project consists of the following new facilities: (1) a diversion dam structure consisting of (a) an approximately 30-foot-long, 12-foot-high minimum flow bypass release structure, (b) an approximately 200-foot-long, 12-foot-high rock-rubble dam constructed along the north side of the newly-created reservoir on the Little Wood River, and (c) an approximately 310-foot-long earthen dike berm with riprap slope protection constructed along the south side of the reservoir; (2) a 9.1-acre reservoir; (3) a feeder canal gate intake leading to an excavated 3,900-foot-long, 25-foot-wide unlined feeder canal, which will convey project flows to a concrete intake structure having two parallel 5-foot-diameter, 120-foot-long steel penstocks; (4) a 60-foot-long, 20-foot-wide, 25-foot-high concrete and steel powerhouse containing two Francis

Quality (Idaho DEQ), the Idaho Department of Fish and Game (Idaho DFG), and the Idaho Water Resource Board (Idaho WRB). Under Rule 214(a) of the Commission's Rules of Practice and Procedure, the Idaho DEQ, Idaho DFG, and Idaho WRB became parties to the proceeding upon timely filing of their notice of intervention. 18 C.F.R. § 385.214(a) (2012).

⁵ 16 U.S.C. § 803(j)(1) (2006).

turbines with a total installed capacity of 1.23 MW; (5) a 1,600-foot-long excavated rock tailrace canal; (6) a 2.2-mile-long, 12.47-kilovolt transmission line; and (7) appurtenant facilities. The project diversion facilities are shown below. A more detailed project description is contained in Ordering Paragraph (B)(2).

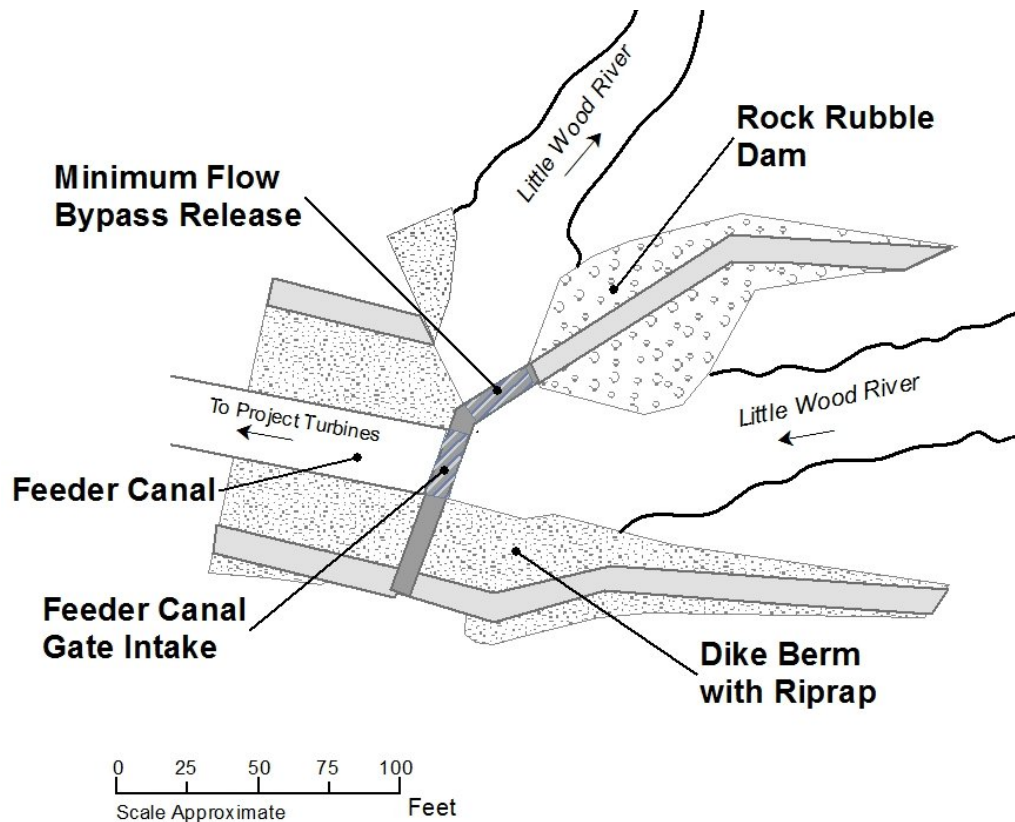


Figure 1. Project Diversion Facilities (source: Mr. Arkoosh, as modified by staff).

C. Project Boundary

7. The project boundary encloses the features listed above, an 80-foot-wide corridor along the transmission line, and 0.8 mile of the Little Wood River upstream of the project dam, which includes the project impoundment. The project boundary encloses 3.3 acres of federal land managed by the BLM and 119.1 acres of land owned by the applicant and a neighboring private land owner.

D. Proposed Project Operation and Environmental Measures

8. The Little Wood River Project will operate in a run-of-river mode. The diversion dam will divert up to 500 cubic feet per second (cfs) of flow from the Little Wood River to the open-channel feeder canal. Water will flow through this canal to an intake structure, which will channel the flow into two penstocks. The penstocks will direct flow to two Francis turbine/generator units. After passing through the turbines, the water will

leave the powerhouse through a tailrace canal, which will return the water to the Little Wood River. The feeder canal, penstock, powerhouse, and tailrace will bypass an approximately 1.3-mile-long reach of the Little Wood River. The project will provide seasonal minimum flows of between 10 and 55 cfs⁶ to the bypassed reach of the Little Wood River via a minimum flow release structure. The estimated annual generation for the project is 5,323 megawatt-hours (MWh). In addition to the operational and flow-related provisions noted above, Mr. Arkoosh proposes the following measures.

9. To control erosion and sedimentation, and protect aquatic resources in the Little Wood River, Mr. Arkoosh proposes to: (1) dispose of excess soil material away from water; (2) implement a Riparian Habitat Improvement Plan (Riparian Habitat Plan) that includes planting native riparian vegetation in areas disturbed during construction; (3) implement the Operational Compliance and Monitoring Plan that includes (a) installing a minimum flow release structure on the new diversion dam and a flow monitoring gage in the bypassed reach to document compliance with minimum flow requirements and (b) recording forebay water elevations to help ensure and to document run-of-river operation; (4) implement measures in the Environmental Features Design Plan that includes (a) constructing the feeder and tailrace canals to have a flow velocity of less than 2 feet per second (fps) so that the canals will act as sediment settling ponds and (b) constructing a plunge pool below the new diversion dam to ensure compatibility with any future fish passage facilities.

10. To protect terrestrial resources, Mr. Arkoosh proposes to: (1) implement measures in the Environmental Features Design Plan that include (a) constructing a log boom and exit ramp in the feeder canal to prevent big game entrapment, (b) constructing the transmission line consistent with the most current Avian Powerline Interaction

⁶ The applicant will use the U.S. Department of Agriculture's Surface Water Supply Index (SWSI) as the basis for establishing the appropriate minimum flow release. This index estimates the type of water year expected based on snowpack, reservoir storage, and winter and spring precipitation. During wet, normal, and slightly dry years (SWSI values greater than -2 as of April 1), the minimum flows provided to the bypassed reach of the Little Wood River will be: (a) 42 cfs in April, (b) 55 cfs in May, (c) 48 cfs in June, (d) 35 cfs in July, (e) 36 cfs in August and September, and (f) 13 cfs from October through March. During dry years (SWSI values of -2 and down to -3 as of April 1), the minimum flow provided to the bypassed reach will be no less than 13 cfs at all times. During extremely dry years (SWSI values of -3 or below as of April 1), the minimum flow provided to the bypassed reach will be no less than 10 cfs at all times. See EA at 22 for additional details regarding the SWSI.

Committee (APLIC) standards, and (c) monitoring the effects of project operation on raptors;⁷ (2) implement measures in the Riparian Habitat Plan that include (a) removing Russian olive trees and other non-native plant species along the Little Wood River, (b) revegetating disturbed project lands with native trees, shrubs, and grasses, and (c) installing protective fences around newly planted native vegetation that include wildlife and livestock passage/water access gaps; and (3) implement the Environmental Monitoring Plan to monitor for noxious and invasive plant species and the effectiveness of revegetation along the bypassed reach of the Little Wood River.

SUMMARY OF LICENSE REQUIREMENTS

11. As summarized below, this license, which authorizes 1.23 MW of renewable energy, requires a number of measures to protect and enhance environmental resources at the project.

12. To control erosion and sedimentation, the license requires Mr. Arkoosh to revegetate with native vegetation areas disturbed during construction and to dispose of excess soil material away from water. The license also requires a staff-recommended erosion and sediment control plan that incorporates the applicant's proposed erosion and sedimentation measures and the requirements of the Idaho DEQ water quality certification for controlling erosion and sedimentation.

13. To protect aquatic resources, the license requires Mr. Arkoosh to plant native riparian vegetation along the bypassed reach, operate the project in a run-of-river mode, provide minimum flows in the bypassed reach, construct a minimum flow release structure, document compliance with required project operations, construct the feeder and tailrace canals to act as sediment settling ponds, and construct a plunge pool below the new diversion dam. To protect water quality during construction and operation of the project, the license also requires the Idaho DEQ water quality certification conditions to control and monitor turbidity levels during construction, minimize in-water work, limit the use of chemicals during construction and operation, minimize disturbance of existing wetlands and native vegetation and restore any such disturbed areas, and implement measures to manage and reduce the risk of spills of hazardous materials. The license also requires a revised staff-recommended Riparian Habitat Plan to include detailed descriptions and specifications of all proposed riparian habitat improvement measures and a schedule for implementing these measures.

⁷ See EA at 32. The Avian Power Line Interaction Committee (APLIC) updated its guidelines in December 2012, after the issuance of the EA. This license directs Mr. Arkoosh to use the *Reducing Avian Collisions with Power Lines: State of the Art in 2012* (APLIC 2012), or the most current avian protection standards available.

14. To protect terrestrial resources, the license requires the proposed Environmental Features Design, Riparian, and Environmental Monitoring plans.

15. To protect cultural resources, the license requires that the licensee stop all land-clearing and land-disturbing activities, notify the Commission and the Idaho State Historic Preservation Office (Idaho SHPO), and implement protective measures if previously unidentified archeological or historic properties are discovered during the course of constructing, maintaining, or developing project works.

WATER QUALITY CERTIFICATION

16. Under section 401(a)(1) of the Clean Water Act (CWA),⁸ the Commission may not issue a license authorizing the construction or operation of a hydroelectric project unless the state water quality certifying agency either has issued water quality certification for the project or has waived certification by failing to act on a request for certification within a reasonable period of time, not to exceed one year. Section 401(d) of the CWA provides that the certification shall become a condition of any federal license that authorizes construction or operation of the project.⁹

17. On January 26, 2012, Mr. Arkoosh applied to Idaho DEQ for water quality certification for the Little Wood River Project, which Idaho DEQ received the same day. On August 6, 2012, Idaho DEQ issued certification for the Little Wood Project that included 57 conditions; eight are general conditions and are not discussed further in this order. The remaining 49 conditions include measures for material management, erosion and sediment control, turbidity control, in-water work, fish screening and salvage, pollutants/toxics control, vegetation protection and restoration, dredge material management, and hazardous or deleterious materials management.

18. As discussed in the EA,¹⁰ staff did not recommend the condition that requires a fish screen over the project intake. On November 19, 2012, Idaho DEQ issued notice of a modification of the certification, which became final 35 days thereafter. In the notice, Idaho DEQ withdrew its requirement to provide fish screening devices, but indicated the measure could be required later if water quality improves to the point where successful salmonid spawning is possible within the project reach of the Little Wood River.

⁸ 33 U.S.C. § 1341(a)(1) (2006).

⁹ 33 U.S.C. § 1341(d) (2006).

¹⁰ See EA at 50.

19. The water quality certification conditions, as modified by the November 19, 2012 notice from Idaho DEQ, are set forth in Appendix A of this order and incorporated into the license (see Ordering Paragraph (E)).

20. Mr. Arkoosh proposed measures to control erosion and prevent sedimentation including disposing of excess soil material away from flowing water and implementing his Riparian Habitat Plan's provision to replant disturbed soils with native vegetation. The water quality certification includes additional erosion and sediment control measures, including provisions for selecting appropriate best management practices for sediment and erosion control, installing erosion and sediment controls before beginning project construction, installing and maintaining permanent erosion and sediment controls, stabilizing project banks to protect from high flows, developing and implementing an inspection and maintenance plan to monitor effectiveness of the erosion and sediment control measures, stabilizing fill slopes to prevent erosion, and preventing significant amounts of sediment from leaving the site and entering waters of the state. In the EA,¹¹ staff recommended that the proposed erosion and sediment control measures be combined with those from the water quality certification into a single erosion and sediment control plan. Article 302 requires the plan.

SECTION 18 FISHWAY PRESCRIPTION

21. Section 18 of the FPA¹² provides that the Commission shall require the construction, maintenance, and operation by a licensee of such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce, as appropriate. No fishway prescriptions or reservations of authority were filed under section 18 of the FPA.

THREATENED AND ENDANGERED SPECIES

22. Section 7(a)(2) of the Endangered Species Act of 1973¹³ requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species, or result in the destruction or adverse modification of their designated critical habitat.

¹¹ See EA at 52.

¹² 16 U.S.C. § 811 (2006).

¹³ 16 U.S.C. § 1536(a) (2006).

23. The FWS stated that there are no federally listed threatened or endangered species in the vicinity of the project.¹⁴ Federally listed candidate species that occur in Lincoln County are the greater sage-grouse and wolverine; however, the FWS stated that these species are unlikely to occur in the project area. Commission staff found in the EA¹⁵ that none of the proposed action alternatives would affect these species. Therefore, no further action under the Endangered Species Act is required.

NATIONAL HISTORIC PRESERVATION ACT

24. Under section 106 of the National Historic Preservation Act (NHPA)¹⁶ and its implementing regulations,¹⁷ federal agencies must take into account the effect of any proposed undertaking on properties listed or eligible for listing in the National Register (defined as historic properties) and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. This generally requires the Commission to consult with the SHPO to determine whether and how a proposed action may affect historic properties, and to seek ways to avoid or minimize any adverse effects.

25. The remains of a historic homestead were identified within the project's area of potential effects; however, Mr. Arkoosh found that the project would have no effect on this historic property. In a letter filed on April 3, 2012, the Idaho SHPO concurred with Mr. Arkoosh's finding of one historic property within the project's area of potential effects and made a determination that the proposed project will have "no effect" on this historic property. In the EA,¹⁸ staff determined that the proposed action would not affect historic properties.

26. Article 407 requires Mr. Arkoosh to stop work and consult with the Idaho SHPO if previously unidentified cultural resources are discovered during project construction or operation.

PACIFIC NORTHWEST ELECTRIC POWER PLANNING AND CONSERVATION ACT

¹⁴ Letter from Brian T. Kelly, State Supervisor, FWS, Idaho Fish and Wildlife Office, Boise, Idaho, to Kimberly D. Bose, Secretary, FERC, Washington, D.C., April 27, 2012.

¹⁵ See EA at 34.

¹⁶ 16 U.S.C. § 470 *et seq.* (2006).

¹⁷ 36 C.F.R. Part 800 (2012).

¹⁸ See EA at 37.

27. In 1980, Congress enacted the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act).¹⁹ This act created the Northwest Power Planning Council (now known as the Northwest Power and Conservation Council) and directed it to develop a Columbia River Basin Fish and Wildlife Program (Program). The Program is to protect, mitigate, and enhance fish and wildlife resources affected by the development and operation of hydroelectric projects on the Columbia River and its tributaries, while assuring the Pacific Northwest an adequate, efficient, economical, and reliable power supply.²⁰ Section 4(h)(11)(A) of the Northwest Power Act²¹ provides that federal agencies operating or regulating hydroelectric projects within the Columbia River Basin shall exercise their responsibilities to provide equitable treatment for fish and wildlife resources with other purposes for which the river system is utilized and shall take the Council's Program into account "at each relevant stage of decision-making processes to the fullest extent practicable."

28. To mitigate harm to fish and wildlife resources, the Council has adopted specific provisions to be considered in the licensing or relicensing of non-federal hydropower projects (Appendix B of the Program). Commission staff's recommendations, including run-of-river operation (Article 401), minimum flows (Article 402), measures to preserve aquatic habitat (Articles 403, 404, and 405), and measures to preserve wildlife habitat protection and enhancement (Articles 404, 405, and 406), are consistent with applicable provisions of the Program, as discussed in more detail in the EA.²² As part of the Program, the Council has designated over 40,000 miles of river in the Pacific Northwest region as not being suitable for hydroelectric development ("protected area"). The project is not located within a protected area designated under Appendix B of the Program. Further, Article 409 reserves to the Commission the authority to require future alterations in project structures and operations to take into account, to the fullest extent practicable, the applicable provisions of the Program.

RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES PURSUANT TO SECTION 10(j) OF THE FPA

29. Section 10(j)(1) of the FPA²³ requires the Commission, when issuing a license, to include conditions based on recommendations submitted by federal and state fish and

¹⁹ 16 U.S.C. §§ 839(b) *et seq.* (2006).

²⁰ 16 U.S.C. § 839(b)(h)(5) (2006).

²¹ 16 U.S.C. § 839(h)(11)(A) (2006).

²² *See* EA at 5.

²³ 16 U.S.C. § 803(j)(1) (2006).

wildlife agencies pursuant to the Fish and Wildlife Coordination Act,²⁴ to “adequately and equitably protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat)” affected by the project.

30. In response to the April 4, 2012 public notice that the project was ready for environmental analysis, Idaho DFG²⁵ filed nine²⁶ recommendations under section 10(j). All nine recommendations fall within the scope of section 10(j). This license includes conditions consistent with the nine recommendations: (1) maintain a minimum flow of 10 cfs to 55 cfs in the bypassed reach depending on the month (Article 402); (2) implement erosion control measures (Article 302); (3) design and construct feeder and tailrace canals to act as settling basins (Article 404); (4) design and construct a plunge pool below the project diversion (Article 404); (5) install a log-boom and egress ramp to prevent wildlife entrainment (Article 404); (6) design the transmission line to minimize adverse interactions with avian species and conduct avian surveys for the first three years of the license (Article 404); (7) implement the Riparian Habitat Plan, including removal of non-native trees (Russian olive) and shrubs, revegetate disturbed areas with native trees, shrubs, and grasses, and construct a 2.6-mile-long perimeter fence to protect riparian vegetation (Article 406); (8) monitor the riparian zone for the first five years of project operation (Article 405); and (9) conduct surveys for noxious weeds at year one and year five of project operation (Article 405).

SECTION 10(a)(1) OF THE FPA

31. Section 10(a)(1) of the FPA²⁷ requires that any project for which the Commission issues a license be best adapted to a comprehensive plan for improving or developing a

²⁴ 16 U.S.C. §§ 661 *et seq.* (2006).

²⁵ The State of Idaho on behalf of Idaho DFG filed the recommendations on May 3, 2012.

²⁶ In the May 3, 2012 filing, Idaho DFG stated that the applicant would need to enter into a funding and habitat improvement agreement with Idaho DFG if the applicant requests state funding to assist with implementation of riparian enhancement measures. This statement was identified as a recommendation in the EA. However, Idaho DFG’s comments on the EA filed on November 13, 2012, demonstrates that Idaho DFG did not intend for its statements on the cost-sharing agreement to be a recommendation for a license condition, but rather to inform us that should the licensee request state funding, the licensee would need to enter into an off-license agreement with the state as a condition of receiving any funds.

²⁷ 16 U.S.C. § 803(a)(1) (2006).

waterway or waterways for the use or benefit of interstate or foreign commerce; for the improvement and utilization of waterpower development; for the adequate protection, mitigation, and enhancement of fish and wildlife; and for other beneficial public uses, including irrigation, flood control, water supply, recreation, and other purposes.

32. No recommendations were filed under Section 10(a)(1).

EXEMPTION OF THE FERC FORM 80 RECREATION REPORT

33. The FERC Form 80 Recreation Report (Form 80) collects recreation usage data on recreation facilities at projects through the term of their licenses. Recreational use in the area is infrequent because the project is located on remote lands that are mostly privately owned²⁸ and primarily used for grazing and agriculture, with little or no potential for recreation. Due to the small size of the impoundment and the existing limitations on aquatic habitat from excess sediments, nutrients, temperature, and bacteria,²⁹ the project is not anticipated to provide recreational fishing or other recreation opportunities. Therefore, this order exempts the licensee from the Form 80 filing requirement (Article 408).

ADMINISTRATIVE PROVISIONS

A. Annual Charges

34. The Commission collects annual charges from licensees for administration of the FPA. Article 201 provides for the collection of funds for administration of the FPA and use and occupancy of United States lands. Under the regulations currently in effect, projects with an authorized installed capacity of less than or equal to 1,500 kW, like this project, will not be assessed an annual charge.

B. Exhibit F and G Drawings

The Commission requires licensees to file sets of approved project drawings on microfilm and in electronic file format. Article 202 requires the filing of these drawings. The Exhibit F and G drawings accompanying the application are approved in this order. Article 202 requires Mr. Arkoosh to label the drawings with the current project number (P-14154) when they are filed in microfilm and electronic file format.

C. Headwater Benefits

²⁸ The project occupies 119.1 acres of private lands and 3.3 acres of BLM land that are used primarily for grazing and agriculture.

²⁹ See EA at 25-26.

35. Some projects directly benefit from headwater improvements that were constructed by other licensees, the United States, or permittees. Article 203 requires the licensee to reimburse such entities for these benefits if they were not previously assessed and reimbursed.

D. Project Land Rights Progress Report

36. The project will occupy 3.3 acres of federal land and 119.1 acres of private land. The Exhibit G-1 filed as part of the application for license identifies land that the applicant owns or intends to obtain the rights to. Standard Article 5 set forth in L-Form 17 requires the licensee to acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction, maintenance, and operation of the project, within five years. In order to monitor compliance with Article 5, Article 204 requires the licensee to file no later than four years after license issuance, a report detailing its progress on acquiring title in fee or the necessary rights to all lands within the project boundary. The report must include specific documentation on the status of the rights that have been acquired as of the filing date of the progress report, and a plan and schedule to acquire all remaining land prior to the five-year deadline.

E. Project Financing

37. To ensure that there are sufficient funds available for project construction, operation, and maintenance, Article 205 requires the licensee to file for Commission approval documentation of project financing for the construction, operation, and maintenance of the project at least 90 days before starting any construction associated with the project.

F. Use and Occupancy of Project Lands and Waters

38. Requiring a licensee to obtain prior Commission approval for every use or occupancy of project land would be unduly burdensome. Therefore, Article 410 allows the licensee to grant permission, without prior Commission approval, for the use and occupancy of project lands for such minor activities as landscape planting. Such uses must be consistent with the purposes of protecting and enhancing the scenic, recreational, and environmental values of the project.

G. Start of Construction

39. Article 301 requires the licensee to commence construction of the project works within two years from the issuance date of the license and complete construction of the project within five years from the issuance date of the license.

H. Review of Final Plans and Specifications

40. Article 302 requires the licensee to provide the Commission's Division of Dam Safety and Inspections Portland Regional Office (D2SI-PRO) with final contract drawings and specifications—together with a supporting design report consistent with the Commission's engineering guidelines, and an erosion and sediment control plan that incorporates the specific requirements of the Idaho DEQ water quality certification for controlling erosion and sedimentation.

41. Article 303 requires the licensee to provide the Commission's D2SI-PRO with cofferdam construction drawings.

42. Where new construction or modifications to the project are involved, the Commission requires licensees to file revised drawings of project features as built. Article 304 provides for the filing of these drawings.

43. Article 305 requires the licensee to provide the Commission's D2SI-PRO with a public safety plan.

44. Article 306 requires the licensee to provide the Commission's D2SI-PRO with an inflow design flood and hazard classification study.

45. Article 307 requires the licensee to provide the Commission's D2SI-PRO with an owner's dam safety program.

I. Commission Approval of Reports

46. The approved Operational Compliance Monitoring Plan requires the licensee to file a report with Idaho DFG consisting of streamflow data and forebay water elevations used to document compliance with the run-of-river and minimum flow requirements of this license for the previous month by the 15th day of the following month. However, the Operational Compliance Monitoring Plan does not require the licensee to file these reports with the Commission. Therefore, Article 403 requires the licensee to also file copies of these reports with the Commission.

STATE AND FEDERAL COMPREHENSIVE PLANS

47. Section 10(a)(2)(A) of the FPA³⁰ requires the Commission to consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project.³¹ Under section 10(a)(2)(A), federal and state agencies filed 37 comprehensive plans that address

³⁰ 16 U.S.C. § 803(a)(2)(A) (2006).

³¹ Comprehensive plans for this purpose are defined at 18 C.F.R. § 2.19 (2012).

various resources in Idaho. Of these, the staff identified and reviewed 8 comprehensive plans that are relevant to this project.³² No conflicts were found.

SAFE MANAGEMENT, OPERATION, AND MAINTENANCE OF THE PROJECT

48. Staff reviewed the preliminary plans to build the project as described in the license application. The project will be safe when constructed, operated, and maintained in accordance with the Commission's standards and oversight and the provisions of this license.

NEED FOR POWER

49. To assess the need for power, staff looked at the needs in the operating region in which the project will be located. Project power will be used to meet regional electrical demand. The project will be located in the Western Electricity Coordinating Council (WECC) region of the North American Electric Reliability Council (NERC). According to NERC, summer peak demand in the region is expected to increase at an average rate of 1.72 percent per year over the 10-year planning period from 2013-2022. The project's power and contribution to the region's diversified generation mix will help meet a need for power in the region.

PROJECT ECONOMICS

50. In determining whether to issue an original license for a hydroelectric project, the Commission considers a number of public interest factors, including the economic benefits of project power. Under the Commission's approach to evaluating the economics of hydropower projects, as articulated in *Mead Corp.*,³³ the Commission uses current costs to compare the costs of the project and likely alternative power with no forecasts concerning potential future inflation, escalation, or deflation beyond the license issuance date. The basic purpose of the Commission's economic analysis is to provide a general estimate of the potential power benefits and the costs of a project, and of reasonable alternatives to project power. The estimate helps to support an informed decision concerning what is in the public interest with respect to a proposed license.

51. In applying this analysis to the Little Wood River Project, staff has considered two options: Mr. Arkoosh's proposal and the project as licensed herein. As proposed by Mr. Arkoosh, the levelized annual cost of operating the Little Wood Project is about

³² The list of applicable plans can be found in section 5.5 of the EA for the project.

³³ 72 FERC ¶ 61,027 (1995).

\$305,275 or \$57.35/MWh.³⁴ The project would generate an estimated average of 5,323 MWh of energy annually. When staff multiplies its estimate of average generation by the alternative power cost of \$56.58/MWh,³⁵ staff gets a total value of the project's power of \$301,175 in 2012 dollars. To determine whether the project is economically beneficial, staff subtracts the project's cost from the value of the project's power.³⁶ Therefore, in the first year of operation, the project would cost \$4,100, or \$0.77/MWh, more than the likely alternative cost of power.³⁷

52. As licensed herein with the mandatory conditions and staff measures, the levelized annual cost of operating the project would be about \$305,545, or \$57.40/MWh. The average annual generation and the value of the project power would be the same as Mr. Arkoosh's proposal. Therefore, in the first year of operation, project power would cost about \$4,370, or \$0.82/MWh, more than the likely alternative cost of power.³⁸

53. In considering public interest factors, the Commission takes into account that hydroelectric projects offer unique operational benefits to the electric utility system (ancillary service benefits). These benefits include the ability to help maintain the stability of a power system, such as by quickly adjusting power output to respond to rapid changes in system load, and to respond rapidly to a major utility system or regional blackout by providing a source of power to help restart fossil-fuel based generating stations and put them back on line.

54. Although our analysis shows that the project as licensed herein would cost more to operate than our estimated cost of alternative power, it is the applicant who must decide whether to accept this license and any financial risk that entails.

55. Although staff's analysis does not explicitly account for the effects inflation may have on the future cost of electricity, the fact that hydropower generation is relatively insensitive to inflation compared to fossil-fueled generators is an important economic

³⁴ Cost values are provided here in 2012 dollars.

³⁵ Provided by the applicant based on the Idaho Power Avoided Cost Rates for Non-Fueled Projects.

³⁶ Details of staff's economic analysis for the project as licensed herein and for various alternatives are included in the EA at 39-47.

³⁷ The values do not include any Renewable Energy Credit Revenues that the licensee may qualify for upon completion of the project, which could increase the revenue for the project by as much as \$32,000 in the first year of operation.

³⁸ *Id.*

consideration for power producers and the consumers they serve. This is one reason project economics is only one of the many public interest factors the Commission considers in determining whether or not, and under what conditions, to issue a license.

COMPREHENSIVE DEVELOPMENT

56. Sections 4(e) and 10(a)(1) of the FPA³⁹ require the Commission to give equal consideration to the power development purposes and to the purposes of energy conservation; the protection, mitigation of damage to, and enhancement of fish and wildlife; the protection of recreational opportunities; and the preservation of other aspects of environmental quality. Any license issued shall be such as in the Commission's judgment will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for all beneficial public uses. The decision to license this project, and the terms and conditions included herein, reflect such consideration.

57. The EA for the project contains background information, analysis of effects, and support for related license articles. Based on the record of this proceeding, including the EA and the comments thereon, licensing the Little Wood River Project as described in this order would not constitute a major federal action significantly affecting the quality of the human environment. The project will be safe if constructed, operated, and maintained in accordance with the requirements of this license.

58. Based on my independent review and evaluation of the project, recommendations from the resource agencies and other stakeholders, and the no-action alternative, as documented in the EA, I have selected the proposed Little Wood River Project with the staff-recommended measures, and find that it is best adapted to a comprehensive plan for improving or developing the Little Wood River.

59. I selected this alternative because: (1) issuance of an original license will serve to provide a new beneficial and dependable source of electric energy; (2) the required environmental measures will protect and enhance geological resources, fish and wildlife resources, water quality, and historic properties; and (3) the 1.23 MW of electric capacity comes from a renewable resource that does not contribute to atmospheric pollution.

LICENSE TERM

60. Section 6 of the FPA⁴⁰ provides that original licenses for hydropower projects shall be issued for a period not to exceed 50 years. The Commission's general policy is to establish 30-year terms for projects with little or no redevelopment, new construction,

³⁹ 16 U.S.C. §§ 797(e) and 803(a)(1) (2006).

⁴⁰ 16 U.S.C. § 799 (2006).

new capacity, or environmental mitigation and enhancement measures; 40-year terms for projects with a moderate amount of such activities; and 50-year terms for projects with extensive measures.⁴¹ This license requires an extensive amount of new construction, including: (1) a new diversion dam; (2) a new feeder canal; (3) two new penstocks; (4) a new powerhouse; (5) a new tailrace canal; and (6) a new transmission line. Consequently, a 50-year license for the Little Wood River Project is appropriate.

The Director orders:

(A) This license is issued to Mr. William Arkoosh (licensee), for a period of 50 years, effective the first day of the month in which this order is issued, to construct, operate, and maintain the Little Wood River Ranch II Project. This license is subject to the terms and conditions of the Federal Power Act (FPA), which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the FPA.

(B) The project consists of:

(1) All lands, to the extent of the licensee's interests in these lands, enclosed by the project boundary shown by Exhibit G filed November 15, 2011:

<u>Exhibit G Drawing</u>	<u>FERC No. 14154-</u>	<u>Description</u>
Sheet G-1	7	Project Location and Boundary
Sheet G-2	8	Project Boundary West Portion
Sheet G-3	9	Project Boundary Center Portion
Sheet G-4	10	Project Boundary East Portion

(2) Project works consisting of: (a) a diversion dam structure consisting of (i) an approximately 30-foot-long, 12-foot-high minimum flow bypass release structure, (ii) an approximately 200-foot-long, 12-foot-high rock-rubble dam constructed along the north side of the newly-created reservoir on the Little Wood River; and (iii) an approximately 310-foot-long earthen dike berm with riprap slope protection constructed along the south side of the reservoir; (b) a 9.1-acre reservoir; (c) a feeder gate intake with two slide gates leading to a 3,900-foot-long, 25-foot-wide unlined feeder canal, which will convey project flows to a concrete intake structure having two parallel 5-foot-diameter, 120-foot-long steel penstocks; (d) a 60-foot-long, 20-foot-wide, 25-foot-high concrete and steel powerhouse containing two Francis turbines with a total installed

⁴¹ See *City of Danville, Virginia*, 58 FERC ¶ 61,318 at 62,020 (1992).

capacity of 1.23 MW; (e) a 1,600-foot-long excavated rock tailrace canal; (f) a 2.2-mile-long, 4.2-kilovolt, stepping up to a 12.47-kilovolt three-phase transmission line, including a 0.25-mile-long buried section; and (g) appurtenant facilities.

The project works generally described above are more specifically shown and described by those approved portions of Exhibits A and F shown below:

Exhibit A: The following sections of Exhibit A filed on November 15, 2011:

Exhibit A – Project Description, pages 1 through 5.

Exhibit F: The following Exhibit F drawings filed on November 15, 2011:

<u>Exhibit F Drawing</u>	<u>FERC No. 14154-</u>	<u>Description</u>
Sheet F-1	1	Diversion Site Plan
Sheet F-2	2	Diversion Structure Sections
Sheet F-3	3	Penstock, Penstock Intake Plan, and Elevation
Sheet F-4	4	Powerhouse Plan
Sheet F-5	5	Powerhouse Elevation
Sheet F-6	6	Feeder Canal and Tailrace Cross Section

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

(C) The Exhibits A, F, and G described above are approved and made part of this license.

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

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

(E) This license is subject to the conditions submitted by the Idaho Department of Environmental Quality under section 401(a)(1) of the Clean Water Act, 33 U.S.C. § 1341(a)(1) (2006), as those conditions are set forth in Appendix A to this order.

(F) This license is also subject to the articles set forth in Form L-17 (October, 1975), entitled "Terms and Conditions of License for Unconstructed Minor Project Affecting Lands of the United States," (see 54 F.P.C. 1799 et seq.), as reproduced at the end of this order, and the following additional articles:

Article 201. Administrative Annual Charges. The licensee shall pay the United States annual charges, effective the first day of the month in which the license is issued, and as determined in accordance with the provisions of the Commission's regulations in effect from time to time, for the purposes of:

(a) reimbursing the United States for the cost of administration of Part I of the Federal Power Act. The authorized installed capacity for that purpose is 1,230 kilowatts. Under the regulations currently in effect, projects with authorized installed capacity of less than or equal to 1,500 kW will not be assessed an annual charge; and

(b) recompensing the United States for the use, occupancy, and enjoyment of 3.3 acres of its lands (other than for transmission line right-of-way).

Article 202. Exhibit Drawings. Within 45 days of the date of issuance of the license, the licensee shall file the approved exhibit drawings in aperture card and electronic file formats.

(a) Four sets of the approved exhibit drawings shall be reproduced on silver or gelatin 35mm microfilm. All microfilm shall be mounted on type D (3-1/4" X 7-3/8") aperture cards. Prior to microfilming, the FERC Project-Drawing Number (i.e., P-14154-1 through P-14154-10) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number shall be typed on the upper right corner of each aperture card. Additionally, the Project Number, FERC Exhibit (i.e., F-1, G-1, etc.), Drawing Title, and date of this license shall be typed on the upper left corner of each aperture card.

Two of the sets of aperture cards along with form FERC-587 shall be filed with the Secretary of the Commission, ATTN: OEP/DHAC. The third set shall be filed with the Commission's Division of Dam Safety and Inspections Portland Regional Office. The remaining set of aperture cards (Exhibit G only) and a copy of Form FERC-587 shall be filed with the Bureau of Land Management (BLM) office at the following address:

Bureau of Land Management
 Land Services Section (ID-943A)
 1387 S. Vinnell Way
 Boise, ID 83709-1657

(b) The licensee shall file two separate sets of exhibit drawings in electronic raster format with the Secretary of the Commission, ATTN: OEP/DHAC. A third set shall be filed with the Commission's Division of Dam Safety and Inspections Portland Regional Office. Exhibit F drawings must be separated from other project exhibits and identified as Critical Energy Infrastructure Information (CEII) material under 18 C.F.R. § 388.113(c) (2012). Each drawing must be a separate electronic file, and the file name shall include: FERC Project-Drawing Number, FERC Exhibit, Drawing Title, date of this license, and file extension in the following format [P-14154-7, G-1, Project Location and Boundary, MM-DD-YYYY.TIF]. Electronic drawings shall meet the following format specification:

IMAGERY - black & white raster file
 FILE TYPE – Tagged Image File Format (TIFF), CCITT Group 4
 RESOLUTION – 300 dpi desired (200 dpi min)
 DRAWING SIZE FORMAT – 24” X 36” (min), 28” X 40” (max)
 FILE SIZE – less than 1 MB desired

Each Exhibit G drawing that includes the project boundary must contain a minimum of three known reference points (i.e., latitude and longitude coordinates, or state plane coordinates). The points must be arranged in a triangular format for GIS geo-referencing the project boundary drawing to the polygon data, and must be based on a standard map coordinate system. The spatial reference for the drawing (i.e., map projection, map datum, and units of measurement) must be identified on the drawing and each reference point must be labeled. In addition, each project boundary drawing must be stamped by a registered land surveyor.

(c) The licensee shall file two separate sets of the project boundary data in a geo-referenced electronic file format (such as ArcView shape files, GeoMedia files, MapInfo files, or a similar GIS format) with the Secretary of the Commission, ATTN: OEP/DHAC. The filing shall include both polygon data and all reference points shown on the individual project boundary drawings. An electronic boundary polygon data file(s) is required for each project development. Depending on the electronic file format, the polygon and point data can be included in single files with multiple layers. The geo-referenced electronic boundary data file must be positionally accurate to ± 40 feet in order to comply with National Map Accuracy Standards for maps at a 1:24,000 scale. The file name(s) shall include: FERC Project Number, data description, date of this license, and file extension in the following format [P-14154, boundary polygon/or point data, MM-DD-YYYY.SHP]. The filing must be accompanied by a separate text file describing the

spatial reference for the geo-referenced data: map projection used (i.e., UTM, State Plane, Decimal Degrees, etc), the map datum (i.e., North American 27, North American 83, etc.), and the units of measurement (i.e., feet, meters, miles, etc.). The text file name shall include: FERC Project Number, data description, date of this license, and file extension in the following format [P-14154, project boundary metadata, MM-DD-YYYY.TXT].

In addition, for those projects that occupy federal lands, a separate geo-referenced polygon file(s) is required that identifies transmission line acreage and non-transmission line acreage affecting federal lands for the purpose of meeting the requirements of 18 C.F.R. § 11.2. The file(s) must also identify each federal owner (e.g., BLM, Forest Service, Corps of Engineers, etc.), land identification (e.g., forest name, Section 24 lands, national park name, etc.), and federal acreage affected by the project boundary. Depending on the geo-referenced electronic file format, the polygon, point, and federal lands data can be included in a single file with multiple layers.

Article 203. Headwater Benefits. If the licensee's project is directly benefited by the construction work of another licensee, a permittee, or of the United States on a storage reservoir or other headwater improvement, the licensee shall reimburse the owner of the headwater improvement for those benefits, at such time as they are assessed. The benefits will be assessed in accordance with Subpart B of the Commission's regulations.

Article 204. Project Land Rights Progress Report. No later than four years after license issuance, the licensee shall file a report with the Commission describing the status of acquiring title in fee or the rights for all the lands within the project boundary for the entire term of the license. The report must provide an overview map of each parcel and summary table identifying the licensee's rights over each parcel within the project boundary. The report shall also include specific supporting documentation showing the status of the land rights on all parcels of land within the project boundary that: (1) have been acquired up to the date of filing of the report, including pertinent deeds, lease agreements, and/or bill of sale information that specifically verify the licensee's rights; and (2) the licensee's plan and schedule for acquiring all remaining project lands prior to the five-year deadline, including a history of actions taken, current owner information, the type of ownership to be acquired whether in fee or by easement, and the timeline for completing property acquisition.

Article 205. Documentation of Project Financing. At least 90 days prior to the start of construction, the licensee shall file with the Commission, for approval, three copies of the licensee's documentation for the project financing. The documentation must show that the licensee has acquired the funds, or commitment for funds, necessary to construct the project in accordance with this license. The documentation must include, at a minimum, financial statements, including a balance sheet, income statement, and a statement of actual or estimated cash flows over the license term which provide evidence

that the licensee has sufficient assets, credit, and projected revenues to cover project construction, operation, and maintenance expenses, and any other estimated project liabilities and expenses.

The financial statements must be prepared in accordance with generally accepted accounting principles and signed by an independent certified public accountant. The licensee shall not commence project construction associated with the project before the filing is approved.

Article 301. *Start of Construction.* The licensee shall commence construction of the project works within two years from the issuance date of the license and shall complete construction of the project within five years from the issuance date of the license.

Article 302. *Contract Plans and Specifications.* At least 60 days prior to the start of any construction, the licensee shall submit one copy of its plans and specifications and supporting design document to the Commission's Division of Dam Safety and Inspections (D2SI)–Portland Regional Engineer (PRO), and two copies to the Commission (one of these shall be a courtesy copy to the Director, D2SI). The submittal to the D2SI-PRO must also include as part of preconstruction requirements: a Quality Control and Inspection Program, Temporary Construction Emergency Action Plan, and Soil Erosion and Sediment Control Plan. The Soil Erosion and Sediment Control Plan shall include at a minimum:

(a) a description of best management practices that will be used to control erosion and sedimentation that incorporates the specific requirements of the Idaho Department of Environmental Quality water quality certification for controlling erosion and sedimentation;

(b) a map showing the locations where the measures will be implemented; and

(c) a description of the revegetation measures that will be used to control erosion and sedimentation, along with the locations where the measures will be implemented.

The licensee shall prepare the Soil Erosion and Sediment Control Plan after consultation with the Idaho Department of Environmental Quality and the Idaho Department of Fish and Game. The licensee may not begin construction until the D2SI–PRO Regional Engineer has reviewed and commented on the plans and specifications, determined that all preconstruction requirements have been satisfied, and authorized start of construction.

Article 303. *Cofferdam Construction Drawings and Deep Excavations.* Before starting construction, the licensee shall review and approve the design of contractor-

designed cofferdams and deep excavations and shall make sure construction of cofferdams and deep excavations is consistent with the approved design. At least 30 days before starting construction of the cofferdams and deep excavations, the licensee shall submit one copy to the Commission's Division of Dam Safety and Inspections (D2SI)-Portland Regional Engineer and two copies to the Commission (one of these copies shall be a courtesy copy to the Commission's Director, D2SI), of the approved cofferdam construction drawings and specifications and the letters of approval.

Article 304. As-built Drawings. Within 90 days of completion of construction of the facilities authorized by this license, the licensee shall file for Commission approval, revised Exhibits A, F, and G, as applicable, to describe and show those project facilities as built. A courtesy copy shall be filed with the Commission's Division of Dam Safety and Inspections (D2SI)—Portland Regional Engineer; the Director, D2SI; and the Director, Division of Hydropower Administration and Compliance.

Article 305. Public Safety Plan. Within 90 days from the issuance of this order, the licensee shall submit one copy to the Commission's Division of Dam Safety and Inspections (D2SI)-Portland Regional Engineer and two copies to the Commission (one of these copies shall be a courtesy copy to the Commission's Director, D2SI) of a Public Safety Plan. The plan shall include an evaluation of public safety concerns at the project site and assess the need for the installation of safety devices or other safety measures. The submitted plan should include a description of all public safety devices and signage, as well as a map showing the location of all public safety measures. For guidance on preparing public safety plans the licensee can review the *Guidelines for Public Safety at Hydropower Projects* on the FERC website.

Article 306. Inflow Design Flood and Hazard Classification Study. Within six months of the issuance date of this order, the licensee shall submit one copy to the Commission's Division of Dam Safety and Inspections (D2SI)-Portland Regional Engineer and two copies to the Commission (one of these copies shall be a courtesy copy to the Commission's Director, D2SI) of an Inflow Design Flood and Hazard Classification study. The study should be performed according to Chapter 2 of the Commission's Engineering Guidelines. The study should include: (1) an incremental hazard evaluation to determine the effects on downstream structures in the event of a dam failure; (2) a recommendation for the project's hazard potential classification; (3) a determination of the project's Inflow Design Flood not less than the 100-year flood; and (4) an assessment of the adequacy of the project's spillway capacity.

Article 307. Owner's Dam Safety Program. Within 90 days from the issuance of this order, the licensee shall submit one copy to the Commission's Division of Dam Safety and Inspections (D2SI) Portland Regional Engineer and two copies to the Commission (one of these copies shall be a courtesy copy to the Commission's Director, D2SI), an Owner's Dam Safety Program which among other items demonstrates a clear

acknowledgement of the dam owner's responsibility for the safety of the project, an outline of the roles and responsibilities of the dam safety staff, and access of the dam safety official to the Chief Executive Officer (CEO). For guidance on Owner's Dam Safety programs, the licensee should reference information posted on the FERC website.

Article 401. Run-of-River Operation. The licensee shall operate the project in a run-of-river mode. The licensee shall at all times act to minimize the fluctuation of the impoundment surface elevation by maintaining a discharge from the project so that, at any point in time, flows, as measured immediately downstream of the project dam approximate the sum of inflows to the project impoundment.

Run-of-river operation may be temporarily modified if required by operating emergencies beyond the control of the licensee, or for short periods upon mutual agreement between the licensee and the U.S. Fish and Wildlife Service and Idaho Department of Fish and Game. If the flow is so modified, the licensee shall notify the Commission as soon as possible, but no later than 10 days after each such incident.

Article 402. Minimum Flow. The licensee shall release from the project dam into the bypassed reach of the Little Wood River the instantaneous minimum flows listed below, in cubic feet per second (cfs), or inflow to the project impoundment, whichever is less, for the protection and enhancement of aquatic resources, riparian vegetation, and water quality in the bypassed reach of the Little Wood River. These flows will be based on the U.S. Department of Agriculture's Surface Water Supply Index (SWSI) as of April 1 of each year. The SWSI predicts the type of water year expected based on snowpack, reservoir storage, and winter and spring precipitation.

Month	Minimum Flow (cfs)		
	Baseline Minimum Flow SWSI: above -2	SWSI: from -2 down to, and including, -3	SWSI: below -3
January	13	13	10
February	13	13	10
March	13	13	10
April	42	13	10
May	55	13	10
June	48	13	10
July	35	13	10
August	36	13	10
September	36	13	10
October	13	13	10
November	13	13	10
December	13	13	10

The flow may be temporarily modified if required by operating emergencies beyond the control of the licensee, and for short periods upon agreement between the licensee, Idaho Department of Fish and Game, U.S. Fish and Wildlife Service, and Idaho Department of Environmental Quality. If the flow is so modified, the licensee shall notify the Commission as soon as possible, but no later than 10 days after each such incident.

Article 403. *Operational Compliance Monitoring Plan.* The Operational Compliance Monitoring Plan, filed on May 22, 2012, is approved and made part of the license. This plan includes a requirement to file, by the 15th day of each month, a report with the Idaho Department of Fish and Game consisting of streamflow data and forebay water elevations used to document compliance with the run-of-river and minimum flow requirements of this license for the previous month. The licensee shall also file each report with the Commission. The licensee shall implement the Operational Compliance Monitoring Plan on the effective date of this license.

Article 404. *Environmental Features Design Plan.* The Environmental Features Design Plan, filed on May 22, 2012, is approved and made part of the license. The licensee shall implement the Environmental Features Design Plan on the effective date of this license.

Article 405. *Environmental Monitoring Plan.* The Environmental Monitoring Plan, filed on May 22, 2012, is approved and made part of the license. The licensee shall implement the Environmental Monitoring Plan on the effective date of this license.

Article 406. *Riparian Habitat Improvement Plan.* Within one year of license issuance, the licensee shall file with the Commission for approval, a revised Riparian Habitat Improvement Plan (Riparian Habitat Plan) for the project. The revised plan will incorporate measures in the plan filed on May 22, 2012, and the Vegetation Protection and Restoration conditions numbered one through five in the Idaho Department of Environmental Quality water quality certification. The plan at a minimum shall also include:

- (a) a detailed description and specifications of the riparian habitat improvement measures (such as species, location, and amount of native plantings, and fencing specifications); and
- (b) a schedule for implementing the measures.

The licensee shall develop the revised plan after consultation with the Idaho Department of Fish and Game (Idaho DFG). The licensee must provide documentation of consultation, copies of comments and recommendations on the completed plan after it

has been prepared, and specific descriptions of how Idaho DFG's comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for Idaho DFG to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons based on project-specific information.

The Commission reserves the right to require changes to the plan. Land-disturbing activities, including project construction or implementation of any elements of the revised Riparian Habitat Plan, shall not begin until the plan and implementation schedule are approved by the Commission. Upon Commission approval, the licensee shall implement the plan and schedule, including any changes required by the Commission.

Article 407. Protection of Undiscovered Cultural Resources. If the licensee discovers previously unidentified cultural resources during the course of constructing, maintaining, or developing project works or other facilities at the project, the licensee shall stop all land-clearing and land-disturbing activities in the vicinity of the resource; notify the Commission and the Idaho State Historic Preservation Office (SHPO) immediately; and implement measures developed in consultation with the Idaho SHPO to protect the cultural resources. If no measures are needed, the licensee shall file with the Commission documentation of its consultation with the Idaho SHPO and the tribes immediately.

If a discovered cultural resource is determined to be eligible for the National Register of Historic Places (National Register), the licensee shall file for Commission approval a historic properties management plan (HPMP) prepared by a qualified cultural resource specialist after consultation with the Idaho SHPO. In developing the HPMP, the licensee shall use the Advisory Council on Historic Preservation and the Federal Energy Regulatory Commission's *Guidelines for the Development of Historic Properties Management Plans for FERC Hydroelectric Projects*, dated May 20, 2002. The HPMP shall include the following items: (1) a description of each discovered property, indicating whether it is listed in or eligible to be listed in the National Register; (2) a description of the potential effect on each discovered property; (3) proposed measures for avoiding or mitigating adverse effects; (4) documentation of consultation; and (5) a schedule for implementing mitigation and conducting additional studies. The Commission reserves the right to require changes to the HPMP.

The licensee shall not resume land-clearing or land-disturbing activities in the vicinity of a cultural resource discovered during construction, until informed by the Commission that the requirements of this article have been fulfilled.

Article 408. FERC Form 80 Exemption. The licensee is exempt from the filing of the FERC Form 80 recreation report for the project, which is required by section 8.1 of the Commission's regulations, 18 C.F.R. § 8.11 (2012).

Article 409. Columbia River Basin Fish and Wildlife Program. The Commission reserves the authority to order, upon its own motion or upon the recommendation of federal and state fish and wildlife agencies, affected Indian Tribes, or the Northwest Power and Conservation Council, alterations of project structures and operations to take into account to the fullest extent practicable the regional fish and wildlife program developed and amended pursuant to the Pacific Northwest Electric Power Planning and Conservation Act.

Article 410. Use and Occupancy. (a) In accordance with the provisions of this article, the licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensee shall also have continuing responsibility to supervise and control the use and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

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

walls, the licensee shall: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the impoundment shoreline. To implement this paragraph (b), the licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensee's costs of administering the permit program. The Commission reserves the right to require the licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

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

(d) The licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary state and federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary federal and state water quality certification or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary federal and state approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 water craft at a time and are located at least one-half mile (measured over project waters) from any other private or public marina; (6) recreational development consistent with an approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from project waters at normal surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 60 days before

conveying any interest in project lands under this paragraph (d), the licensee must file a letter with the Commission, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G map may be used), the nature of the proposed use, the identity of any federal or state agency official consulted, and any federal or state approvals required for the proposed use. Unless the Commission's authorized representative, within 45 days from the filing date, requires the licensee to file an application for prior approval, the licensee may convey the intended interest at the end of that period.

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

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

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

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

(4) The Commission reserves the right to require the licensee to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational, and other environmental values.

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

when revised Exhibit G drawings would be filed for approval for other purposes.

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

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

(H) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the FPA, 16 U.S.C. § 8251 (2006), and section 385.713 of the Commission's regulations, 18 C.F.R. § 385.713 (2012). The filing of a request for rehearing does not operate as a stay of the effective date of this license or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

Jeff C. Wright
Director
Office of Energy Projects

Form L-17
(October, 1975)

FEDERAL ENERGY REGULATORY COMMISSION

**TERMS AND CONDITIONS OF LICENSE FOR UNCONSTRUCTED
MINOR PROJECT AFFECTING LANDS
OF THE UNITED STATES**

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

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

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

Upon the completion of the project, or at such other time as the Commission may direct, the Licensee shall submit to the Commission for approval revised exhibits insofar as necessary to show any divergence from or variations in the project area and project

boundary as finally located or in the project works as actually constructed when compared with the area and boundary shown and the works described in the license or in the exhibits approved by the Commission, together with a statement in writing setting forth the reasons which in the opinion of the Licensee necessitated or justified variation in or divergence from the approved exhibits. Such revised exhibits shall, if and when approved by the Commission, be made a part of the license under the provisions of Article 2 hereof.

Article 4. The construction, operation, and maintenance of the project and any work incidental to additions or alterations shall be subject to the inspection and supervision of the Regional Engineer, Federal Energy Regulatory Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall cooperate fully with said representative and shall furnish him a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of the project and for any subsequent alterations to the project. Construction of the project works or any features or alteration thereof shall not be initiated until the program of inspection for the project works or any such feature thereof has been approved by said representative. The Licensee shall also furnish to said representative such further information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow said representative and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may prescribe from time to time for the protection of life, health, or property.

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

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

Article 6. The Licensee shall install and thereafter maintain gages and stream-gaging stations for the purpose of determining the stage and flow of the stream or streams on which the project is located, the amount of water held in and withdrawn from storage, and the effective head on the turbines; shall provide for the required reading of such gages and for the adequate rating of such stations; and shall install and maintain standard meters adequate for the determination of the amount of electric energy generated by the project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission or its authorized representative. The Commission reserves the right, after notice and opportunity for hearing, to require such alterations in the number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, as are necessary to secure adequate determinations. The installation of gages, the rating of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of the project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision, or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient records of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 7. The Licensee shall, after notice and opportunity for hearing, install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so.

Article 8. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 9. The operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Commission may prescribe

for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes, and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Commission may prescribe for the purposes hereinbefore mentioned.

Article 10. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity for hearing, in the interests of comprehensive development of the waterway or waterways involved and the conservation and utilization of the water resources of the region for water supply or for the purposes of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation for use of its reservoir or other project properties or parts thereof for such purposes, to include at least full reimbursement for any damages or expenses which the joint use causes the Licensee to incur. Any such compensation shall be fixed by the Commission either by approval of an agreement between the Licensee and the party or parties benefiting or after notice and opportunity for hearing. Applications shall contain information in sufficient detail to afford a full understanding of the proposed use, including satisfactory evidence that the applicant possesses necessary water rights pursuant to applicable State law, or a showing of cause why such evidence cannot concurrently be submitted, and a statement as to the relationship of the proposed use to any State or municipal plans or orders which may have been adopted with respect to the use of such waters.

Article 11. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such reasonable facilities, and comply with such reasonable modifications of the project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

Article 12. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of the Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be reasonably prescribed by the Commission in order to permit the maintenance and operation of the fish and wildlife

facilities constructed or improved by the United States under the provisions of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish and wildlife facilities or to relieve the Licensee of any obligation under this license.

Article 13. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and for outdoor recreational purposes, including fishing and hunting: Provided, That the Licensee may reserve from public access such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property.

Article 14. In the construction, maintenance, or operation of the project, the Licensee shall be responsible for, and shall take reasonable measures to prevent, soil erosion on lands adjacent to streams or other waters, stream sedimentation, and any form of water or air pollution. The Commission, upon the request or upon its own motion, may order the Licensee to take such measures as the Commission finds to be necessary for these purposes, after notice and opportunity for hearing.

Article 15. The Licensee shall consult with the appropriate State and Federal agencies and, within one year of the date of issuance of this license, shall submit for Commission approval a plan for clearing the reservoir area. Further, the Licensee shall clear and keep clear to an adequate width lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which results from the clearing of lands or from the maintenance or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. Upon approval of the clearing plan all clearing of the lands and disposal of the unnecessary material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission and in accordance with appropriate Federal, State, and local statutes and regulations.

Article 16. Timber on lands of the United State cut, used, or destroyed in the construction and maintenance of the project works, or in the clearing of said lands, shall be paid for, and the resulting slash and debris disposed of, in accordance with the requirements of the agency of the United States having jurisdiction over said lands. Payment for merchantable timber shall be at current stumpage rates, and payment for young growth timber below merchantable size shall be at current damage appraisal values. However, the agency of the United States having jurisdiction may sell or dispose of the merchantable timber to others than the Licensee: Provided, That timber so sold or disposed of shall be cut and removed from the area prior to, or without undue interference

with, clearing operations of the Licensee and in coordination with the Licensee's project construction schedules. Such sale or disposal to others shall not relieve the Licensee of responsibility for the clearing and disposal of all slash and debris from project lands.

Article 17. The Licensee shall do everything reasonably within its power, and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon the request of officers of the agency concerned, to prevent, to make advance preparations for suppression of, and to suppress fires on the lands to be occupied or used under the license. The Licensee shall be liable for and shall pay the costs incurred by the United States in suppressing fires caused from the construction, operation, or maintenance of the project works or of the works appurtenant or accessory thereto under the license.

Article 18. The Licensee shall interpose no objection to, and shall in no way prevent, the use by the agency of the United States having jurisdiction over the lands of the United States affected, or by persons or corporations occupying lands of the United States under permit, of water for fire suppression from any stream, conduit, or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license, or the use by said parties of water for sanitary and domestic purposes from any stream, conduit, or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license.

Article 19. The Licensee shall be liable for injury to, or destruction of, any buildings, bridges, roads, trails, lands, or other property of the United States, occasioned by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto under the license. Arrangements to meet such liability, either by compensation for such injury or destruction, or by reconstruction or repair of damaged property, or otherwise, shall be made with the appropriate department or agency of the United States.

Article 20. The Licensee shall allow any agency of the United States, without charge, to construct or permit to be constructed on, through, and across those project lands which are lands of the United States such conduits, chutes, ditches, railroads, roads, trails, telephone and power lines, and other routes or means of transportation and communication as are not inconsistent with the enjoyment of said lands by the Licensee for the purposes of the license. This license shall not be construed as conferring upon the Licensee any right of use, occupancy, or enjoyment of the lands of the United States other than for the construction, operation, and maintenance of the project as stated in the license.

Article 21. In the construction and maintenance of the project, the location and standards of roads and trails on lands of the United States and other uses of lands of the

United States, including the location and condition of quarries, borrow pits, and spoil disposal areas, shall be subject to the approval of the department or agency of the United States having supervision over the lands involved.

Article 22. The Licensee shall make provision, or shall bear the reasonable cost, as determined by the agency of the United States affected, of making provision for avoiding inductive interference between any project transmission line or other project facility constructed, operated, or maintained under the license, and any radio installation, telephone line, or other communication facility installed or constructed before or after construction of such project transmission line or other project facility and owned, operated, or used by such agency of the United States in administering the lands under its jurisdiction.

Article 23. The Licensee shall make use of the Commission's guidelines and other recognized guidelines for treatment of transmission line rights-of-way, and shall clear such portions of transmission line rights-of-way across lands of the United States as are designated by the officer of the United States in charge of the lands; shall keep the areas so designated clear of new growth, all refuse, and inflammable material to the satisfaction of such officer; shall trim all branches of trees in contact with or liable to contact the transmission lines; shall cut and remove all dead or leaning trees which might fall in contact with the transmission lines; and shall take such other precautions against fire as may be required by such officer. No fires for the burning of waste material shall be set except with the prior written consent of the officer of the United States in charge of the lands as to time and place.

Article 24. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

Article 25. The right of the Licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

Article 26. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

APPENDIX A

Water Quality Certificate Conditions for the Little Wood River Ranch II Hydroelectric Project Issued By the State of Idaho Department of Environmental Quality [DEQ] Issued July 31, 2012, as Amended on November 14, 2012.

General Conditions

1. This certification is conditioned upon the requirement that any modification (e.g., change in BMPs [best management practices], work windows, etc.) of the permitted activity shall first be provided to DEQ for review to determine compliance with Idaho WQS [water quality standards] and to provide additional certification pursuant to Section 401. Such modifications may not be implemented until DEQ has determined whether additional certification is necessary.
2. DEQ reserves the right to modify, amend, or revoke this certification if DEQ determines that, due to changes in relevant circumstances-including without limitation, changes in project activities, the characteristics of the receiving water bodies, or state WQS-there is no longer reasonable assurance of compliance with WQS or other appropriate requirements of state law.
3. If ownership of the project changes, the certification holder shall notify DEQ, in writing, upon transferring this ownership or responsibility for compliance with these conditions to another person or party. The new owner/operator shall request, in writing, the transfer of this water quality certification to his/her name.
4. A copy of this certification must be kept on the job site and readily available for review by any contractor working on the project and any federal, state, or local government personnel.
5. Project areas shall be clearly identified in the field prior to initiating land-disturbing activities to ensure avoidance of impacts to waters of the US beyond project footprints.
6. The applicant shall provide access to the project site and all mitigation sites upon request by DEQ personnel for site inspections, monitoring, and/or to ensure that conditions of this certification are being met.
7. The applicant is responsible for all work done by contractors and must ensure the contractors are informed of and follow all the conditions described in this certification and the Section 404 permit.
8. If this project disturbs more than 1 acre and there is potential for discharge of stormwater to waters of the US, coverage under the EPA Storm Water Construction

General Permit must be obtained. More information can be found at <http://yosemite.epa.gov/R10/WATER.NSF/NPDES%20Permits/Region%2010+CGP+resources>.

Fill Material

1. Fill material shall be free of organic and easily suspendable fine material. The fill material to be placed shall include clean earth fill, sand, and stone only.
2. Fill material shall not be placed in a location or in a manner that impairs surface or subsurface water flow into or out of any wetland area.
3. Placement of fill material in existing vegetated wetlands shall be minimized to the greatest extent possible.
4. All temporary fills shall be removed in their entirety on or before construction completion.
5. Excavated or staged fill material must be placed so it is isolated from the water edge or wetlands and not placed where it could re-enter waters of the state uncontrolled.

Erosion and Sediment Control

1. BMPs for sediment and erosion control suitable to prevent exceedances of state WQS shall be selected and installed before starting construction at the site. One resource that may be used in evaluating appropriate BMPs is DEQ's Catalog of Storm water Best Management Practices for Idaho Cities and Counties, available online at <http://www.deq.idaho.gov/medial4940S8-entire.pdf>. Other resources may also be used for selecting appropriate BMPs.
2. One of the first construction activities shall be placing permanent and/or temporary erosion and sediment control measures around the perimeter of the project or initial work areas to protect the project water resources.
3. Permanent erosion and sediment control measures shall be installed in a manner that will provide long-term sediment and erosion control to prevent excess sediment from entering waters of the state.
4. Permanent erosion and sediment control measures shall be installed at the earliest practicable time consistent with good construction practices and shall be maintained as necessary throughout project operation.
5. Top elevations of bank stabilization shall be such that adequate freeboard is provided

to protect from erosion at 100-year design flood elevation.

6. Structural fill or bank protection shall consist of materials that are placed and maintained to withstand predictable high flows in the waters of the state.
7. A BMP inspection and maintenance plan must be developed and implemented. At a minimum, BMPs must be inspected and maintained daily during project implementation.
8. BMP effectiveness shall be monitored during project implementation. BMPs shall be replaced or augmented if they are not effective.
9. All construction debris shall be properly disposed of so it cannot enter waters of the state or cause water quality degradation.
10. Disturbed areas suitable for vegetation shall be seeded or revegetated to prevent subsequent soil erosion.
11. Maximum fill slopes shall be such that material is structurally stable once placed and does not slough into the stream channel during construction, during periods prior to revegetation, or after vegetation is established.
12. To the extent reasonable and cost-effective, the activity submitted for certification shall be designed to minimize subsequent maintenance.
13. Sediment from disturbed areas or able to be tracked by vehicles onto pavement must not be allowed to leave the site in amounts that would reasonably be expected to enter waters of the state. Placement of clean aggregate at all construction entrances or exits and other BMPs such as truck or wheel washes, if needed, must be used when earth-moving equipment will be leaving the site and traveling on paved surfaces.

Turbidity

1. Sediment resulting from this activity must be mitigated to prevent violations of the turbidity standard as stipulated under the Idaho WQS (IDAPA S8.01.02.2S0.02.e). Any violation of this standard must be reported to the DEQ regional office immediately.
2. All practical BMPs on disturbed banks and within the waters of the state must be implemented to minimize turbidity during in-water work.
3. Containment measures such as silt curtains, geotextile fabrics, and silt fences must be implemented and properly maintained to minimize in-stream sediment suspension and resulting turbidity.

4. Turbidity monitoring must be conducted, recorded, and reported as described below. Monitoring must occur each day during project implementation. A properly and regularly calibrated turbidimeter is required.

A sample must be taken every hour at a relatively undisturbed area approximately 100 feet up-current from in-water disturbance or discharge to establish background turbidity levels for each monitoring event. Background turbidity, location, date, and time must be recorded prior to monitoring down-current.

Monitoring must occur every hour approximately 100 feet down-current from the inwater disturbance or point of discharge and within any visible plume. The turbidity, location, date, and time must be recorded for each sample.

Results from the compliance point sampling must be compared to the background levels sampled during each monitoring event. If the downstream turbidity exceeds upstream turbidity by 50 nephelometric turbidity units (NTU) or more, or 25 NTU for 10 or more consecutive days, then the project is causing an exceedance of the WQS. If an exceedance occurs, or there is evidence that an exceedance may be occurring (i.e. a plume is observed), the applicant must inspect the condition of the projects BMPs. If the BMPs appear to be functioning to their fullest capability, then the applicant must modify the activity (this may include modifying existing BMPs).

5. Copies of daily logs for turbidity monitoring must be available to DEQ upon request. The log must include background measurements (in NTUs); compliance point measurements; comparison of background and compliance point monitoring as a numeric value (in NTUs); and location, time and date for each sampling event. The report must describe all exceedances and subsequent actions taken, monitoring, and the effectiveness of the action.

In-water Work

1. Work in open water is to be kept at a minimum and only when necessary. Equipment shall work from an upland site to minimize disturbance of waters of the us. If this is not practicable, appropriate measures must be taken to ensure disturbance to the waters of the US is minimized.

2. Construction affecting the bed or banks shall take place only during periods of low flow.

3. Fording of the channel is not permitted. Temporary bridges or other structures shall be built if crossings are necessary.

a. Temporary crossings must be perpendicular to channels and located in areas

with the least impact. The temporary crossings must be supplemented with clean gravel or treated with other mitigation methods at least as effective in reducing impacts. Temporary crossings must be removed as soon as possible after the project is completed or the crossing is no longer needed.

4. Heavy equipment working in wetlands shall be placed on mats or suitably designed pads to prevent damage to the wetlands.
5. Activities in spawning areas must be avoided to the maximum extent practicable.
6. Work in waters of the state shall be restricted to areas specified in the application.
7. Measures shall be taken to prevent wet concrete from entering into waters of the state when placed in forms and/or from truck washing.
8. Fish screening devices on intake structures are not needed at this time. However, if future water quality conditions in the Little Wood River within the project reach improve to the point where successful salmonid spawning is possible, then, upon notice from DEQ, the licensee shall meet with DEQ and IDFG to discuss whether fish screening would further support beneficial uses.
9. Stranded fish found in dewatered segments should be moved to a location (preferably downstream) with water.
10. To minimize sediment transport, stream channel or stream bank stabilization must be completed prior to returning water to a dewatered segment.

Pollutants/Toxics

1. The use of chemicals such as soil stabilizers, dust palliatives, sterilants, growth inhibitors, fertilizers, and deicing salts during construction and operation should be limited to the best estimate of optimum application rates. All reasonable measures shall be taken to avoid excess application and introduction of chemicals into waters of the state.

Vegetation Protection and Restoration

1. Disturbance of existing wetlands and native vegetation shall be kept to a minimum.
2. To the maximum extent practical, staging areas and access points should be placed in open, upland areas.
3. Fencing and other barriers should be used to mark the construction areas.

4. Where possible, alternative equipment should be used (e.g., spider hoe or crane).
5. If authorized work results in unavoidable vegetative disturbance, riparian and wetland vegetation shall be successfully reestablished to function for water quality benefit at pre-project levels or improved at the completion of authorized work.

Dredge Material Management

1. Upland disposal of dredged material must be done in a manner that prevents the material from re-entering waters of the state.

Management of Hazardous or Deleterious Materials

1. Petroleum products and hazardous, toxic, and/or deleterious materials shall not be stored, disposed of, or accumulated adjacent to or in the immediate vicinity of waters of the state. Adequate measures and controls must be in place to ensure that those materials will not enter waters of the state as a result of high water, precipitation runoff, wind, storage facility failure, accidents in operation, or unauthorized third-party activities.
2. Vegetable-based hydraulic fluid should be used on equipment operating in or directly adjacent to the channel if this fluid is available.
3. Daily inspections of all fluid systems on equipment to be used in or near waters of the state shall be done to ensure no leaks or potential leaks exist prior to equipment use. A log book of these inspections shall be kept on site and provided to DEQ upon request.
4. Equipment and machinery must be removed from the vicinity of the waters of the state prior to refueling, repair, and/or maintenance.
5. Equipment and machinery shall be steam cleaned of oils and grease in an upland location or staging area with appropriate wastewater controls and treatment prior to entering a water of the state. Any wastewater or wash water must not be allowed to enter a water of the state.
6. Emergency spill procedures shall be in place and may include a spill response kit (e.g., oil absorbent booms or other equipment).
7. Any spill less than 25 gallons must be cleaned up within 24 hours of the release but does not require reporting to DEQ. If the spill is less than 25 gallons and is not cleaned up within 24 hours, then it becomes a reportable quantity.
8. Any spill greater than or equal to 25 gallons must be cleaned up within 24 hours of the

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release and reported to DEQ by calling 1-800-632-8000 (Idaho State Communications Center). Any spill equal to or greater than 25 gallons is reportable immediately.

9. Any release that causes sheen (of any size) in waters of the state must be reported immediately to the National Response Center at 1-800-424-8802 and the Idaho State Communication Center (1 -800-632-8000).

Document Content(s)

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