

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 1-07010B

Priority: March 30, 1977

Maximum Diversion Rate: 3,000.00 CFS
Maximum Diversion Volume: 905,000.0 AF

It is hereby certified that BYPASS LIMITED
ONE TECH DR STE 220
ANDOVER MA 01810 has complied with the terms and conditions of the
permit, issued pursuant to Application for Permit dated June 29, 1977; and has submitted Proof of
Beneficial Use on July 01, 1988. An examination confirms water is diverted from:

SOURCE

SNAKE RIVER

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
POWER	03/15 to 11/15	3,000.00 CFS	905,000.0 AF

LOCATION OF POINT(S) OF DIVERSION:

SNAKE RIVER	L5 (SW1/4NW1/4) Sec. 28, Twp 10S, Rge 21E, B.M.	JEROME County
SNAKE RIVER	L5 (SW1/4NW1/4) Sec. 28, Twp 10S, Rge 21E, B.M.	JEROME County

PLACE OF USE: POWER

Twp Rge Sec	NE	NW	SW	SE	Totals
10S 20E 13	NE NW SW SE X				

CONDITIONS OF APPROVAL

1. The term of this water right license shall run concurrently with energy sales agreement Case Number U-1006-285, Order Number 20900 approved by the Idaho Public Utilities Commission, which expires on December 3, 2021. Prior to the expiration of the term, the Director may issue an order canceling all or any part of the use authorized herein, may establish a new term, or may revise, delete, or add conditions under which the subsequent water right license may be exercised. The order shall take effect on the date the current term expires. If the Director does not issue such an order, the term shall automatically extend to a length equal to the prior term and any prior conditions on the water right license shall remain in effect.
2. Use of water under this right shall be non-consumptive.
3. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.

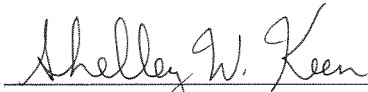
State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 1-07010B

4. The rights for the use of water confirmed in this license shall be junior and subordinate to all rights for the use of water other than hydropower, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any right or claim against any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this right.
5. This right does not convey any authority to require or demand the diversion of water into the North Side Canal or the Milner Gooding Canal solely for power generation purposes and only authorizes an additional use of water which has been diverted into those canals under other existing water rights.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.

Signed this 24th day of October, 2014.



for GARY SPACKMAN
Director

State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT
(For Licensing Purposes)
WATER RIGHT NO. 1-07010B

FOR DEPARTMENT USE ONLY

Preliminary check by _____ Fee = 50⁰⁰ Received by SRF # C093461 Date 4/24/2011

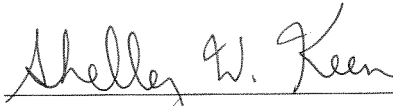
ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, GARY SPACKMAN, of the Department of Water Resources hereby approve the above Application for Amendment for Permit No. 1-07010B with the following:

CONDITIONS OF APPROVAL

1. The term of this water right license shall run concurrently with energy sales agreement Case Number U-1006-285, Order Number 20900 approved by the Idaho Public Utilities Commission, which expires on December 3, 2021. Prior to the expiration of the term, the Director may issue an order canceling all or any part of the use authorized herein, may establish a new term, or may revise, delete, or add conditions under which the subsequent water right license may be exercised. The order shall take effect on the date the current term expires. If the Director does not issue such an order, the term shall automatically extend to a length equal to the prior term and any prior conditions on the water right license shall remain in effect.
2. Use of water under this right shall be non-consumptive.
3. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
4. The rights for the use of water confirmed in this license shall be junior and subordinate to all rights for the use of water other than hydropower, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any right or claim against any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this right.
5. This right does not convey any authority to require or demand the diversion of water into the North Side Canal or the Milner Gooding Canal solely for power generation purposes and only authorizes an additional use of water which has been diverted into those canals under other existing water rights.

Witness my hand this 24th day of October, 2014.


for GARY SPACKMAN
Director

RECEIVED

JUN 24 2011

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State of Idaho
Department of Water Resources
APPLICATION FOR AMENDMENT

DEPARTMENT OF
WATER RESOURCES

(For Licensing Purposes)

WATER RIGHT NO. 1-07010B

Date of Priority: March 30, 1977

Maximum Diversion Rate: 3,000.00 CFS

Maximum Diversion Volume: 905,000.0 AF

Comes now BYPASS LIMITED

ONE TECH DR STE 220

ANDOVER MA 01810

and represents to the Director of the Idaho Department of Water Resources that he is the owner and holder of Permit to Appropriate the Public Waters of the State of Idaho No. 1-07010B, and requests that the permit be changed as follows:

Source: SNAKE RIVER

BENEFICIAL USE

PERIOD OF USE

RATE OF DIVERSION

ANNUAL VOLUME

POWER

03/15 to 11/15

3,000.00 CFS

905,000.0 AF

LOCATION OF POINT(S) OF DIVERSION:

SNAKE RIVER L5 (SW1/4NW1/4) Sec. 28, Twp 10S, Rge 21E, B.M.

JEROME County

SNAKE RIVER L5 (SW1/4NW1/4) Sec. 28, Twp 10S, Rge 21E, B.M.

JEROME County

PLACE OF USE: POWER

Twp Rge Sec	NE				NW				SW				SE				Totals
10S 20E 13	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
		X															

Permit holder asserts that no one will be injured by such change and that such change will be made at permit holder's own risk. Signed this 23rd day of June, 2011.

(Signature)



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

October 24, 2014

BYPASS LTD
ONE TECH DR STE 220
ANDOVER MA 01810

RE: License No. 1-7010B

Issuance of License

Dear Water Right Holder(s):

The Department of Water Resources has issued the enclosed Water Right License confirming that a water right has been established in accordance with your permit. Please be sure to thoroughly review the conditions of approval and remarks listed on your license.

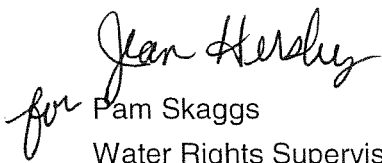
Your license is based on a field examination that was previously conducted. The field examiner found that you were diverting more than 3000 cfs which exceeds the rate authorized by this right. The Department conducted a search and was unable to find other water rights that authorized the additional diversion rate. You will need to either reduce your diversion rate to the authorized amount or file an application for permit for the additional rate not authorized under this or other water rights.

The license is a PRELIMINARY ORDER issued by the Department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action by the Department unless a party petitions for reconsideration or files an exception and/or brief within fourteen (14) days of the service date as described in the enclosed information sheet.

Please note that water right owners are required to report any change of water right ownership and/or mailing address to the Department within 120 days of the change. Failure to report these changes could result in a \$100 late filing fee. Contact any office of the Department or visit the Department's homepage on the Internet to obtain the proper forms and instructions.

If you have any questions, please contact me at 208-287-4951.

Sincerely,


for Pam Skaggs
Water Rights Supervisor

Enclosure(s)

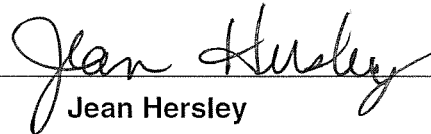
CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2014 I mailed a true and correct copy, postage prepaid, of the foregoing PRELIMINARY ORDER(Approved License) to the person(s) listed below:

RE: WATER RIGHT NO.

1-7010B

**BYPASS LTD
ONE TECH DR STE 220
ANDOVER MA 01810**

A handwritten signature in cursive script, reading "Jean Hersley", is written over a horizontal line.

Jean Hersley

Technical Records Specialist II

EXPLANATORY INFORMATION TO ACCOMPANY A PRELIMINARY ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after: (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) The petition for reconsideration is disposed of; or
- (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

MEMORANDUM

Date: October 24, 2014
To: Water Right File 1-7010, 1-7010B, 1-7010C and 1-7010D
From: medl
Re: file documents

Documents in the root file 1-7010 dated 1987 or later, have been portioned out into parts A, B, C, D.

1-7010 A represents the undeveloped sites. This part has lapsed. See micro-film.

1-7010 B represents the Bypass Ltd project. A license has been issued.

1-7010 C represents the Y8 project. The hydroelectric project has been abandoned and the 1-7010 C permit has been voided.

1-7010 D represents the Wilson Lake project. Proof was filed in 1993. A beneficial use field exam is still needed.



CHI MOUNTAIN STATES OPERATIONS, INC.
A SUBSIDIARY OF ENEL GREEN POWER NORTH AMERICA, INC.

Green Power

Enel Green Power North America, Inc.

One Tech Drive, Suite 220
Andover, Massachusetts USA 01810
T 978 681 1900 F 978 681 7727

Via FedEx

June 23, 2011

Michele Edl
Associate Engineer
Water Rights Section
Idaho Department of Water Resources
322 East Front St
Boise ID 83720

Re: Bypass Hydroelectric Project (FERC No. 9070-ID);
Application for Amendment - Water Right No. 1-07010B

Dear Ms. Edl:

As you requested in your letter of June 13, 2011 please find enclosed for filing an executed Application for Amendment of Bypass Limited's Water Right No. 1-07010B, as well as a check for \$50.00 to cover the application fee.

Thank you again for your assistance in the licensing of this water right. As always, if you have any questions concerning this matter please do not hesitate to contact me at (978) 681-1900, extension 809 via email at kevin.webb@enel.com.

Sincerely,
CHI Mountain States Operations, Inc.

Kevin M. Webb
Environmental Affairs Coordinator

cc: V. Engel, Bypass
J. Fulmer, Bypass
D. Higbee, Bypass

RECEIVED
JUN 24 2011
DEPARTMENT OF
WATER RESOURCES

From: Edl, Michele
Sent: Thursday, June 23, 2011 11:41 AM
To: 'Kevin.Webb@enel.com'
Subject: map and links to backfile

Mr. Webb,

This email is the follow-up I promised in our phone conversations of this morning and last night.

I have attached a PDF file which is an aerial photo map of the vicinity of the Bypass Limited project. The Milner reservoir is in the lower right corner. The two points-of-diversion, the two canal headgates, are located on the reservoir shore. I created it as a reference for the water right file. It shows the location of the laterals which take from the canal system upstream from the powerhouse. As I type this message, it has not been scanned to the water right file.



DOC.pdf

IDWR provides remote access to the contents of our water right vault. We provide scanned images of the water right file information and make them available to the public from our website. This link takes you to our front page

<http://www.idwr.idaho.gov/> .

If you are interested in viewing all of the file contents for the Bypass Limited water right, you will need go to this page and complete a database query.

Here are instructions for a query:

Beginning from the main front page, start a query by mouse-ing over the left side menu **Map&Spatial Data**. A submenu will pop up. Click on **Water Right & Adjudication Search** in that submenu.

That click should take you to the **Search by: Basin** page. A very colorful map of Idaho is on the right side of that page.

A water right in Idaho has a Basin number and a Sequence number and sometimes followed by an alpha character, in the following order: Basin – Sequence alpha.

In this case the Basin is 1, the Sequence is 7010 the alpha is B

You already know the water right number,(1-7010 B) and you know that it is still a permit but checking the box in front of **All of the above** in the middle of the page will provide you thorough results.

Queries can be made for multiple water rights which is why there are boxes allowing range of water right numbers.

To query for the Bypass Limited water right, make these entries:

On the line beginning with **Basin**, type **1** in the left box. You can leave the right box empty

On the line beginning with **Sequence**, type **7010**. Again you can leave the right box empty

On the line beginning with Split Suffix, type **B**

Then click on the **Search** button

A table page with your results should appear.

There are three buttons to the left of the table. They are hot links to additional information for this permit. The **Related Documents** button has the contents of the backfile and scanned images of the file contents I have added since. I see that my licensing review memo and attachments have not been scanned and will take steps to make them visible here as soon as possible.

If your research time is limited, the link below should open up one of the files in Related Documents; the water right backfile. This contains the field exam.

http://www.idwr.idaho.gov/apps/ExtSearch/DocsImages/h0k401_.pdf

Don't hesitate to call me with additional questions.

Sincerely,

Michele Edl

MEMORANDUM

Date: June 23, 2011
To: Water Right File 1-7010B
From: medl
Re: phone log

Both yesterday June 22, 2011 and today, I spoke with Mr. Kevin Webb, Regulatory Affairs Coordinator, for EGP North America about the permit amendment and other issues related to ongoing processing of this right.

Mr. Webb is located on the east coast and is not familiar with the PLSS addressing system. He was not easily finding the locations of the points-of-diversion which had prompted the permit amendment. He also asked why a run-of-river facility would not have the points-of-diversion at the turbine intakes. I explained that the point-of-diversion is the location where the water is diverted from its natural course. In this case the points-of-diversion were canal headgates at Milner Reservoir. I promised to provide him a map showing the area so that he could relate better to the PLSS addresses.

He was also concerned that the license be issued to Bypass Limited not to NSCC. I explained that assignments from NSCC had prompted the split of the permit and, that although I did not have an unbroken ownership chain the license would be issued to Bypass Limited. I explained that once licensed, the water right would be real property appurtenant to the place-of-use. He stated that ENEL had acquired all Sithe-Energies property and that they had a lease agreement with NSCC.

I encouraged him to return the amendment before July 1, 2011, because there would be an increase to the fee on that day. He stated that he had a signed copy of the form in his possession and as soon as he could get a check cut for the fee, he would FED-EX them to me.

We also discussed a question he had posed several days ago. In a June 3, 2011 email, Mr. Webb had asked about the possibility of encompassing the entire documented flow in this permit. I explained that expansion of a permit was not really possible and because it was not possible, I was working to provide maximum value under this permit authorization.

We briefly discussed how to compress the timeline for processing the additional permit. I explained that statutory requirements for public notification couldn't be compressed but the timeline should be significantly less than the 20+ years required for this right. I also explained that I had asked my supervisor that question. I told him that the Department could accept an application for permit, and proof-of-beneficial use with a field exam at the same time but we would need another field exam.

I offered to supply him with a list of certified water right examiners. Mr. Webb stated that he has been in contact with Charles E. Brockway with questions about his field exam for 1-7010B. I believe he is inclined to hire Brockway Engineering to complete the necessary second exam.

Edl, Michele

From: Webb, Kevin (EGP North America) [Kevin.Webb@enel.com]
Sent: Monday, June 13, 2011 10:10 AM
To: Edl, Michele
Subject: RE: Permit amendment

Thank you Michele. We'll look forward to discussing this with you later this week.

From: Edl, Michele [mailto:Michele.Edl@idwr.idaho.gov]
Sent: Monday, June 13, 2011 12:07 PM
To: Webb, Kevin (EGP North America)
Subject: Permit amendment

Mr. Webb,

I am providing you these early-bird PDFs of documents that will be mailed from this office either later today or early tomorrow.

In my review, I found that two points-of-diversion from the Snake River were used by the Bypass Limited project. But only one point-of-diversion, in the correct government lot, was listed on the permit. You need to request an amendment of the permit to show two points-of-diversion in Government lot 5. Those two points of diversion represent the headgates of the two canals which supply water to the Bypass Limited.

I expect to discuss this amendment, as well as your request for an increase to the permitted rate in our scheduled phone exchange this week.

Sincerely,

Michele Edl

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The information contained in this communication is confidential and may be legally privileged. It is intended solely for the use of the individual or entity to whom it is addressed and others authorized to receive it. If you are not the intended recipient please notify us immediately and be notified that any disclosure, copying, distribution or taking of any action in reliance on the contents of this information is strictly prohibited and may be unlawful.



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

June 13, 2011

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

BYPASS LIMITED
ONE TECH DR STE 220
ANDOVER MA 01810

RE: Water Right Permit No. 1-07010B

Dear Permit Holder(s):

The Department of Water Resources is reviewing the permit referenced above prior to issuing a water right license. By issuing a license, the Department confirms the extent of development that has been established in compliance with the terms of the permit. The examiner who verified your water use reported that certain elements of the permit have been developed differently than described on your permit. Changes that do not increase the authorized use of water under the permit can be requested and approved in accordance with Section 42-211, Idaho Code. Before a license can be issued, your permit must be amended to depict your water use as it was actually developed.

Based on the examiner's report, the following elements were developed differently than described on your permit:

☒ **Point(s) of Diversion**

☐ **Place(s) of Use**

☐ **Other**

The enclosed Application for Amendment form depicts the elements of the water right as they will appear on the license when it is issued. Please review the amendment form carefully. If you concur with the information presented, please sign the form and return it with the \$50.00 filing fee within 14 days.

If you have any questions, please call me at 208-287-4946.

Sincerely,

Michele Edl
Associate Engineer

Enclosure(s)

Edl, Michele

From: Webb, Kevin (EGP North America) [Kevin.Webb@enel.com]
Sent: Friday, June 03, 2011 3:22 PM
To: Edl, Michele
Cc: Higbee, Dale (EGP North America)
Subject: RE: NSCC inflow data for Bypass Limited

Michele:

I am not sure how far you have proceeded in this licensing. However, if possible we would like to explore the possibility of amending the existing permit/license to encompass the entire flow documented in Mr. Brockway's Proof of Beneficial Use, as an alternative to licensing the existing permit for 3,000 cfs and then pursuing a separate permit & license for the additional flow. Would this be possible?

I will be out of the office next week but would like to discuss this with you after I return on the 13th.

Thank you

Kevin M. Webb

Regulatory Affairs Coordinator
Bypass Limited

A subsidiary of Enel Green Power North America, Inc.

One Tech Drive, Suite 220

Andover, MA 01810

☎: (978) 681-1900 x-809

☎: (978) 681-7727

✉: Kevin.Webb@Enel.com

www.enelgreenpower.com/northamerica

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

Sent: Friday, May 20, 2011 6:17 PM

To: Webb, Kevin (EGP North America)

Cc: Higbee, Dale (EGP North America)

Subject: NSCC inflow data for Bypass Limited

Mr. Webb, Mr. Higbee,

North Side Canal Company personnel have responded to my request for data in support of licensing 1-7010B. They have provided rough data and calculated results for Bypass Limited inflow in 1989 which is the calendar year nearest to the date that the proof statement was submitted. I hope I will be able to complete the licensing review and issue a license by the end of the month.

Michele Edl, Associate Engineer