

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 63-11069

Priority: November 15, 1989

Maximum Diversion Rate: 2,451.00 CFS

It is hereby certified that BOISE PROJECT BOARD OF CONTROL
2465 OVERLAND RD
BOISE ID 83705 has complied with the terms and conditions of the permit,
issued pursuant to Application for Permit dated November 15, 1989; and has submitted Proof of
Beneficial Use on July 22, 1991. An examination confirms water is diverted from:

SOURCE

BOISE RIVER

Tributary: SNAKE RIVER

and a water right has been established as follows:

BENEFICIAL USE

POWER

PERIOD OF USE

01/01 to 12/31

DIVERSION RATE

2,451.00 CFS

LOCATION OF POINT(S) OF DIVERSION:

BOISE RIVER L7 (SE1/4NE1/4) Sec. 11, Twp 02N, Rge 03E, B.M.

ADA County

PLACE OF USE: POWER

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
02N	03E	11	X																
			L 4																

CONDITIONS OF APPROVAL

1. The term of this water right shall run concurrently with Lucky Peak Power Plant Project license 2832 issued by the Federal Energy Regulatory Commission (FERC), which expires on May 31, 2030. The term shall automatically extend to run concurrently with any annual renewals of the project's FERC license. Prior to the issuance of a subsequent or new FERC license for the project, the Director may review the water right license and may issue an order canceling all or any part of the use, establishing a new term, or revising, adding or deleting conditions under which the water right may be exercised. The order shall take effect on the date the current term, as may be extended through annual renewals, expires. If the Director does not issue such an order, the term shall automatically extend to a length equal to the project's subsequent or new FERC license and any prior conditions on the water right license shall remain in effect.
2. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 63.

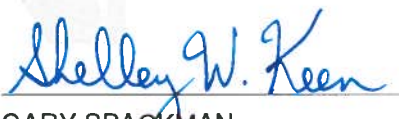
State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 63-11069

3. The following rights are diverted through the point of diversion described above: 63-9019 and 63-11069.
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. Use of water under this right shall be non-consumptive.
6. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
7. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
8. This water right does not convey any authority to require or demand the release of water but shall only be effective to allow generation of hydroelectricity using water released under existing rights and operating procedures for irrigation, flood control, fish and wildlife, and other authorized purposes.
9. This right does not grant any right-of-way or easement across the land of another.

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 11th day of December, 2014.


for GARY SPACKMAN
Director



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 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

December 15, 2014

BOISE PROJECT BOARD OF CONTROL
2465 OVERLAND RD
BOISE ID 83705

RE: License Nos. 63-9019 & 63-11069

Issuance of Licenses

Dear Water Right Holder(s):

The Department of Water Resources has issued the enclosed Water Right Licenses confirming that water rights have been established in accordance with your permits. Please be sure to thoroughly review the conditions of approval and remarks listed on your licenses. Also enclosed is a copy of the approved Application for Amendment.

The licenses are PRELIMINARY ORDERS issued by the Department pursuant to section 67-5243, Idaho Code. They can and will become final orders 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,

Pamela Skaggs

Water Rights Supervisor

Enclosure(s)

cc: BOISE PROJECT BOARD OF CONTROL

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2014, I mailed true and correct copies, postage prepaid, of the foregoing PRELIMINARY ORDERS (Approved Licenses) to the person(s) listed below:

RE: WATER RIGHT NOS.

63-9019 & 63-11069

**BOISE PROJECT BOARD OF CONTROL
2465 OVERLAND RD
BOISE ID 83705**

**BOISE PROJECT BOARD OF CONTROL
ATTN ALBERT BARKER
BARKER ROSHOLT & SIMPSON LLP
1010 W JEFFERSON ST STE 102
PO BOX 2139
BOISE ID 83701-2139**


Darla Block
Technical Records Specialist

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: December 2, 2014
To: Shelley Keen and Water Right Files 63-9019 and 63-11069
From: Michele Edl
Re: no license volume

Introduction

You requested that I write a memo which condenses the Department's thinking related to licensing volumes for this and similar hydropower generation facilities. (Other examples include Minidoka's Inman Powerhouse WR #1-7056.)

Project Description

Lucky Peak Dam was constructed by the U.S. Army Corps of Engineers (USACE) from 1949-1955 to be a part of the Boise River system. It is operated by the USACE under an agreement with the U.S. Bureau of Reclamation whereby the three Boise River projects: Anderson Ranch, Arrowrock, and Lucky Peak, are operated as a single system.

On June 10, 1980, a license to construct and operate a power generation facility at Lucky Peak Dam was issued by the Federal Energy Regulatory Commission (FERC) to the Boise Project Board of Control. The Lucky Peak Power Plant Project (FERC # 2832) was retrofit into the existing dam and came online in 1988.

Water Right Owners

In addition to the FERC license, the Boise Project Board of Control (BPBC) holds the subject water right permits, 63-9019 and 63-11069. The BPBC is the operating agent for five irrigation districts: Boise-Kuna Irrigation District, Big Bend Irrigation District, Nampa & Meridian Irrigation District, New York Irrigation District, and Wilder Irrigation District. BPBC's purpose is to manage irrigation facilities and related works and to deliver water to the districts' landowners. It was created in 1926 as a result of contracts between the U.S. Bureau of Reclamation and the five irrigation districts. The contracts are not water rights but they do define the space allocations for water that is stored in the Boise River system.

Related to permits 63-9019 and 63-11069 is decreed water right, 63-3618, which authorizes storage of Boise River water in Lucky Peak Reservoir. The United States acting through the Bureau of Reclamation (USBR) appears on the face of the partial decree for right 63-3618. However, the Idaho Supreme Court has ruled that title to the use of the water is held by the beneficial or end-users of the water.

The power plant is operated by the U.S. Army Corps of Engineers (USACE) under a contract with Seattle City Light, Seattle Washington's publicly owned electric power utility. Neither USACE nor Seattle City Light hold any water rights in the Boise system.

Use Priorities and Conflicts

Lucky Peak is a multipurpose project within a multipurpose reservoir system. Lucky Peak controls water from the drainage basin above Lucky Peak Dam and below Arrowrock Dam. It reregulates releases from Arrowrock Dam and provides flood control, irrigation water, recreation and fish and wildlife water.

It is not possible to optimize the regulation of each of these separate uses. Flood control conflicts with refill regardless of the intended use for the stored water. So, flood control use directly conflicts with all of the other system uses to some degree. A Water Control Plan¹ has been developed to define the reservoir

¹ Water Control Manual for Boise River Reservoirs approved by U.S. Army Corps of Engineers, Walla Walla District, April 1985. The manual was been revised in 1987, 1988 and 2011. A copy is available in the Dam Safety archive.

regulation practices and the procedures for joint use of the storage spaces. The plan represents compromises between the various established uses for the entire Boise System.

No water is released from Lucy Peak Reservoir solely for the purpose of generating electricity. The power plant utilizes other authorized releases to generate electricity.

Beneficial Use Rule Requirements

Until March 29, 2012, a volume recommendation was required in the field exam reports for all hydropower facilities. After March 29, 2012, "on stream, run-of-river, non-consumptive power generation uses"² were exempt from the volume reporting requirement. The Lucky Peak Power Plant Project is designed to be an on-stream, storage project not an on-stream, run-of-river project and by Beneficial Use Examination Rule IDAPA 37.03.02.35. j.v. would require a volume.

Volumes were recommended by both the field examiner and the license reviewers. However, they did not recommend the same volume. In his 2007 review memo, Aaron Marshall recommended a volume for the beneficial use developed through these permits that was considerably higher than the volume recommendation made by the field examiner, Steve Lester in 2003. Both Mr. Lester and Mr. Marshall based their volume calculations on streamflow data for the Boise River.

A volume calculation based on river flows is not incorrect. Turbine discharge can often be represented by the stream flow measured below an on-stream project. The Lucky Peak powerhouse is built into an on-stream storage facility. And if the stored water was for power purposes, then a sum of the river flow would be a fair representation of the volume of water used for power generation. However, as stated in the sections above, Lucky Peak is not operated for power generation purposes.

Summary

The Lucky Peak Power Plant Project is an on-stream storage project and would usually require a volume for licensing.

However, Lucky Peak Dam and Reservoir pre-existed construction of the powerhouse. The primary purposes for Lucky Peak's impounded water were, and still are, for flood control and irrigation.

The rate and volume of water released from Lucky Peak Reservoir is not under the control of the power plant operator. Rather, power production is incidental to releases for primary purposes. Therefore, The Lucky Peak Power Plant Project functions like a run-of-river project because it receives and uses only the water that comes to it via storage releases for other purposes.

Recommendation

I am recommending no volume for either of these water right licenses. I contend that the Lucky Peak Power Plant Project functions like a run-of-river project based on the operation strategy for the Boise River System. The volume of water released from Lucky Peak Reservoir is not under the control of the powerhouse operators. They can only use the water that passes through Lucky Peak Dam for other purposes.

In the event that both the operation priorities for the Boise system and the ownership of the Lucky Peak storage right changes, then a volume limit for these water rights may be needed. Volumes can be applied to the licenses when they come up for review at the end of their terms.

² <http://adminrules.idaho.gov/rules/current/37/0302.pdf> pg 7

MEMORANDUM

Date: October 10, 2014
To: Water Right File 63-11069
From: medl
Re: Term condition

I have been assigned to review and update the term limit condition for this water right license.

The Lucky Peak Power Plant Project is FERC project number 2832. FERC has issued a major license for the project on June 10, 1980 with a 50-year term. The FERC license will expire on May 31, 2030 and I have set the water right license term to coincide with that date.

Keen, Shelley

From: Albert Barker [apb@idahowaters.com]
Sent: Friday, May 25, 2012 5:27 PM
To: Baxter, Garrick
Cc: Tucker, James; Keen, Shelley
Subject: RE: Term limit proposal for hydro rights

Garrick-

I share Jim's concerns about the remark as proposed and agree with the language that he has suggested be added. The language originally proposed in the last sentence suggests that if the statute gets changed the licensee can ask for a change in the term, but that the Department might or might not entertain a petition and the Department might or might not change the term to correspond to the new statutory language. Maybe that gives the licensee some small level of comfort, but for me it is a very small comfort.

I am anxious to see a license issued to Lucky Peak power plant in light of the implications of the Brownlee decision, since Lucky Peak power plant has been operating under a permit since the turbines first started spinning in 1989. But Lucky Peak power plant has no ability to call on any water releases and can only operate with what other water users order to be released. It is pretty hard to run water downstream without running through the turbines, and there is no one actively trying to prevent Lucky Peak from generating under its permit. Under those circumstances, the Steering Committee has asked for some greater level of certainty than contained in your proposal. Jim's edits provide that additional certainty in our view.

Thank you for considering this suggestion for the term limit.

Albert P. Barker
Barker Rosholt & Simpson LLP
(208) 336-0700

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From: Tucker, James [mailto:JTucker@idahopower.com]
Sent: Friday, May 25, 2012 1:04 PM
To: 'Baxter, Garrick'
Cc: Albert Barker
Subject: RE: Term limit proposal for hydro rights

Garrick. Thanks for the email – earlier this year we discussed possible amendment of 203(B) to facilitate the imposition of a term limit on hydropower rights that would be commensurate with the FERC license. We didn't get that done this session and I understand that it will be presented next year. Below is a suggested amendment to your language for the Shoshone permit. If IDWR doesn't think it now has the authority to impose such a condition, we would like to discuss a delay in issuance of the permit until the issue is presented to and resolved by the legislature. That should not be a problem with the Shoshone expansion as it is not scheduled to be completed until sometime in 2014. One thought that might expedite the matter before the legislature; what if it was proposed to the IWRB to include the language in the second paragraph below in "Policy 1N Hydropower" of the revised State Water Plan? I think that language is consistent with what we discussed presenting to the legislature as an amendment to the statute. I briefly

discussed with Al and an including him on this email as he was involved in our prior discussions. Let me know.

In accordance with Idaho Code § 42-203B(6), the authorization to divert and use water for hydropower purposes under this right shall extend for a term of years expiring on July 31, 2044, the established expiration date of Shoshone Falls Project License No. 2778 issued by the Federal Energy Regulatory Commission (FERC), provided that the term shall be automatically extended for so long as the subject hydropower project is under licensure by the FERC under the Federal Power Act. Should the term provisions in Idaho Code § 42-203B be changed during the term of this right, the holder of this water right may seek to have this term amended by the Department.

State Water Plan revision –

Hydropower water rights should be limited to a term, which may be in the form of a fixed date or by reference to a federal energy regulatory commission (FERC) license or other authorization issued or contract executed, in connection with the power project.

Have a good weekend, jim

From: Baxter, Garrick [mailto:Garrick.Baxter@idwr.idaho.gov]
Sent: Monday, May 21, 2012 10:17 AM
To: Tucker, James
Subject: FW: Term limit proposal for hydro rights

Jim,
Shelley Keen received a call from Jon Bowling about application 02-10325. Jon said that Idaho Power was ready to move forward with processing. It looks like the only outstanding issue is the term condition. Shelley sent Jon proposed term condition language similar to language we floated to Al Barker a couple months back to be used on the Board of Control's Lucky Peak right. Al is anxious to get the Board's water right licensed and the Department said it could move immediately with this language. Still waiting to hear back from Al on whether it is acceptable to him.
Garrick

From: Keen, Shelley
Sent: Monday, May 21, 2012 10:02 AM
To: jbowling@idahopower.com
Cc: Baxter, Garrick
Subject: FW: Term limit proposal for hydro rights

John,

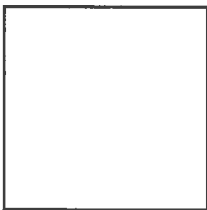
See below for a proposed term limit condition to satisfy Idaho Code § 42-203B(6). The change in approach is in response to our reading of footnotes 8 and 9 in the Brownlee decision issued a year ago.

We will look through the file for Application 02-10325 to see if there are any other remaining matters that need to be addressed before a permit can be issued. Meanwhile, IDWR would welcome your comments on the proposed condition.

Sincerely,

Shelley Keen
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098
(208) 287-4947
shelley.keen@idwr.idaho.gov

In accordance with Idaho Code § 42-203B(6), the authorization to divert and use water for hydropower purposes under this right shall extend for a term of years expiring on July 31, 2044, the established expiration date of Shoshone Falls Project License No. 2778 issued by the Federal Energy Regulatory Commission (FERC). Should the term provisions in Idaho Code § 42-203B be changed during the term of this right, the holder of this water right may seek to have this term amended by the Department.



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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

December 1, 2011

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

BOISE PROJECT BOARD OF CONTROL
2465 OVERLAND RD
BOISE ID 83705

RE: Water Right Permit No. 63-9019 and 63-11069

Dear Permit Holder(s):

The Department of Water Resources (Department) has prepared "draft" approval license documents for your review for permits 63-9019 and 63-11069. Please note that condition #7 on both draft licenses is intended to convey that additional term limit language will be added at the time final licenses are issued. The intent of the draft licenses are to allow you the opportunity to review the other elements of the draft licenses and express any questions or concerns you may have.

Lastly, on January 25, 2008, the Department received an Application for Amendment (application) for the licensing purposes of permit 63-9019. I have enclosed a copy for your review. Notice that the maximum diversion volume on the application is less than what the draft license proposes. Since the application incorrectly identifies the volume, a new application will need to be secured at some point before licensing permit 63-9019. By withdrawing the application now, we become one step closer to reaching a final resolution on the permit. I have enclosed a Withdrawal of Application for Amendment of Permit form for your use.

You may contact me at (208) 287-4944 if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink that reads "Cherie Palmer". The signature is written in a cursive, flowing style.

Cherie Palmer, Sr. Water Resource Agent
Water Allocation Bureau

c: Albert P. Barker-Barker Rosholt & Simpson LLP

DRAFT

State of Idaho
Department of Water Resources
Water Right License

WATER RIGHT NO. 63-11069

Priority: November 15, 1989

Maximum Diversion Rate: 2,451.00 CFS
Maximum Diversion Volume: 1,774,000.0 AF

It is hereby certified that BOISE PROJECT BOARD OF CONTROL
2465 OVERLAND RD
BOISE ID 83705 has complied with the terms and
conditions of the permit, issued pursuant to Application for Permit dated November 15, 1989; and has
submitted Proof of Beneficial Use on July 22, 1991. An examination confirms water is diverted from:

SOURCE

BOISE RIVER

Tributary: 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	01/01 to 12/31	2,451.00 CFS	1,774,000.0 AF

LOCATION OF POINT(S) OF DIVERSION:

BOISE RIVER L7 (SE¼NE¼) Sec. 11, Twp 02N, Rge 03E, B.M. ADA County

PLACE OF USE: POWER

Twp Rge Sec	NE				NW				SW				SE				
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	Totals
02N 03E 11	X																
	L 4																

CONDITIONS OF APPROVAL

1. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 63.
2. The following rights are diverted through point of diversion described above: 63-9019 and 63-11069.
3. 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.
4. Use of water under this right shall be non-consumptive.
5. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
6. 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. 63-11069

CONDITIONS OF APPROVAL CONTINUED

7. <Reserved for a term limit condition pursuant to Idaho Code § 42-203B(6).>
8. This water right does not convey any authority to require or demand the release of water but shall only be effective to allow generation of hydroelectricity using water released under existing rights and operating procedures for irrigation, flood control, and fish and wildlife purposes.
9. This right does not grant any right-of-way or easement across the land of another.

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.

Peppersack, Jeff

From: Tuthill, Dave
Sent: Thursday, December 06, 2007 5:48 PM
To: Peppersack, Jeff
Subject: RE: 63-9019 - Licensing Review for Board of Control Power Permit at Lucky Peak

Aaron

Jeff,

The Board's position remains unchanged. Please prepare the licenses for my signature, with a term to expire coincident with the FERC term.

Thanks, Dave

-----Original Message-----

From: Peppersack, Jeff
Sent: Tuesday, December 04, 2007 5:24 PM
To: Tuthill, Dave
Subject: RE: 63-9019 - Licensing Review for Board of Control Power Permit at Lucky Peak

Dave,
Any thoughts on how we might proceed with this one?

Jeff

-----Original Message-----

From: Tuthill, Dave
Sent: Monday, November 12, 2007 8:42 AM
To: Peppersack, Jeff; Anderson, Hal; Spackman, Gary
Subject: RE: 63-9019 - Licensing Review for Board of Control Power Permit at Lucky Peak

Just as a double-check, I am anticipating that Jeff will be making a presentation on this issue to the IWRB at their work session on Nov 27. Are we all in agreement with this?

Thanks, Dave

-----Original Message-----

From: Peppersack, Jeff
Sent: Thursday, October 25, 2007 9:41 AM
To: Tuthill, Dave
Cc: Marshall, Aaron; Keen, Shelley; Anderson, Hal; Spackman, Gary
Subject: RE: 63-9019 - Licensing Review for Board of Control Power Permit at Lucky Peak

Dave,
The FERC term ends May 31, 2030. The benefit of adding a term does provide opportunity to recondition or even cancel the right based on future public interest. IDWR's consideration of public interest was broader at the time the permit was issued, so it was likely anticipated that public interest could change for various reasons. The public interest issues that IDWR can consider today are narrower, but who knows what the issues (or even the law) might be in 2030. IDWR has routinely been adding the term condition on all power rights that require a FERC license.

Jeff

-----Original Message-----

From: Tuthill, Dave

Sent: Wednesday, October 24, 2007 8:16 PM

To: Peppersack, Jeff; Anderson, Hal; Spackman, Gary

Cc: Marshall, Aaron; Keen, Shelley

Subject: RE: 63-9019 - Licensing Review for Board of Control Power Permit at Lucky Peak

Jeff,

Thanks for the analysis.

1. Do we know the end of the FERC term for this license?
2. Where this is essentially a run-of-the-river power plant, what is the benefit of establishing a term? The opportunity to recondition the license at the end of the term?
3. Hal, based on the background here, should we provide an opportunity to the IWRB to review this issue?

Dave

From: Peppersack, Jeff

Sent: Mon 10/22/2007 3:31 PM

To: Tuthill, Dave

Cc: Marshall, Aaron; Keen, Shelley

Subject: 63-9019 - Licensing Review for Board of Control Power Permit at Lucky Peak

Dave,

As you know, Al Barker sent you a letter regarding licensing of this permit. The permit was issued in 1984 and a petition for hearing was filed to address a condition setting a term for review in 2030 and possible cancellation or modification of the right based on a public interest review. The petition questioned IDWR's authority to set a term for the power use.

I reviewed the file and confirmed that the petition for hearing was not addressed to completion. IDWR sent a letter questioning whether a fact determining hearing was warranted and proposed a written brief and possible oral argument unless the applicant felt that a hearing was necessary to establish facts through testimony. The applicant responded that they could not determine if a hearing would be necessary without 1) deposing the director, 2) viewing the entire permit file and 3) viewing any Water Resource Board documents associated with a resolution adopting term limits for permits. Apparently that letter was not seen because the last letter from IDWR on the subject indicated that a hearing would be set if IDWR did not receive a response.

The file includes a 1984 letter from Ken Dunn indicating that the Water Resource Board adopted a resolution regarding term limits for permits. The resolution was apparently the basis for the condition. A year or two after the permit was issued, the legislature added 42-203B and specifically parts 6 and 7 providing for term limits on power permits and licenses. The statute says that the term limits shall not apply to licenses which have already been issued (prior to July, 1985). It does not seem to preclude use of term limits on licenses where the permit was issued prior to 1985, with or without the condition; so we might interpret that to mean that we can apply a term limit on the license even if we didn't have authority to set a term on the permit. Probably should have legal staff review that.

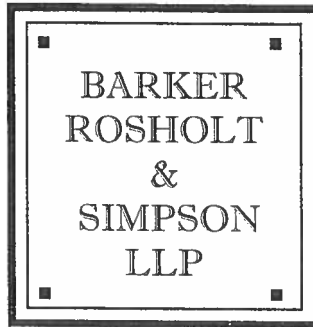
Al Barker suggests issuing the license subject to reservation of the right to challenge by the Board of Control should IDWR ever seek to modify or cancel the water right. I think we could come up with a condition like that, but if we have authority to set a term limit on the license anyway, we should probably just apply it now like we would for all other FERC power permits and licenses.

Jeff

RECEIVED

OCT 19 2007

ALBERT P. BARKER DEPARTMENT OF
JOHN A. ROSHOLT WATER RESOURCES
JOHN K. SIMPSON
TRAVIS L. THOMPSON
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Albert P. Barker
apb@idahowaters.com

October 16, 2007

David Tuthill 
Director, Idaho Department of Water Resources
322 E. Front Street
P.O. Box 83720
Boise, Idaho 83720-0098

Re: Lucky Peak Power Plant Project, Water Rights No. 63-9019 and 63-11069

Dear Director Tuthill:

Thank you for providing a draft of the License and the proposed Application for Amendment to Water Right 63-9019. As we understand the Amendment, it only changes the place of use to T2N R3E, Section 11 NENE, Lot 4, which is the location of the power plant. This Amendment is acceptable to the Board of Control and I am enclosing an executed Application for Amendment I signed on behalf of the Board of Control as its attorney.

There is one outstanding issue regarding the License. In June of 1984, the Board of Control filed a Petition for Hearing on a condition in the permit, Condition f. This Condition f is identical to the proposed Condition No. 6 in the License. No hearing was ever held nor any determination ever made concerning the validity of that condition.

The condition purports to reserve to the Department the ability to cancel or revise the License at the time that the FERC License expires.

After discussion of this proposed Condition, the Board of Control proposes that the hearing on this Condition be held in abeyance until such time as the Department attempts to exercise its rights under Condition 6. If there is no attempt to exercise those rights or if the Board of Control concurs with any changes to the License, then the question of the authority of the Department to put this Condition in the License is moot. This seems to have been the approach followed when a prior Director issued the Permit. Under those circumstances, Board of Control proposes that the Department and the Board of Control agree that the License shall be issued subject to reservation of rights in the Board of Control to challenge the authority of the

David Tuthill
October 16, 2007
Page 2

Department to issue Condition No. 6, at the time the Department attempts to exert any authority under Condition No. 6, if ever. Under those conditions, the Board of Control would accept the License.

Very truly yours,

BARKER ROSHOLT & SIMPSON LLP

A handwritten signature in black ink, appearing to read 'Albert P. Barker', written in a cursive style.

Albert P. Barker

APB/se

cc: Lucky Peak Power Plant Project Steering Committee
Boise Project Board of Control
Dennis Larrondo

MEMORANDUM

DATE: October 4, 2007
TO: Dave Tuthill *DT*
FROM: Aaron Marshall
RE: Lucky Peak Power Plant, Water Right Licenses 63-9019 and 63-11069

I understand that you will be meeting with the Boise Project Board of Control on October 10, 2007, and would like to present the water right licenses for the Lucky Peak Power Plant at the meeting.

Water right no. 63-9019 will require a licensing amendment prior to issuing the license to reflect a change from the permitted place of use. The licensing amendment will require a \$50 processing fee. I have included the licensing amendment and the water right license, provided the Board of Control concurs with the amendment.

Please let me know if you would like me to contact the Board of Control prior to your meeting and inform them that a licensing amendment and \$50 filing fee will be necessary.

Thanks, Aaron.
I am taking a copy to
the B P B o C for
their review & submitted
of amendment.

Dave

MEMORANDUM

To: Water Right File Nos. 63-9019 and 63-11069
From: Aaron Marshall
Date: October 3, 2007
Re: Water Right Nos. 63-9019 and 63-11069, License Processing

The Beneficial Use Field Examination for each permit was completed October 27, 1993 by Steve Lester. All attachments to the beneficial use report were provided by the permit holder. Attachment D included a calculated estimate for the total power plant discharge at 8,151 cfs. Since the plant discharge capacity is greater than the permitted flow rate for 63-9019, the license includes the entire permitted flow rate, 5,700 cfs. The flow rate for water right 63-11069 is the difference between the plant discharge capacity and the flow rate provided under water right 63-9019, 2,451 cfs.

$5,700 \text{ cfs} / 8,151 \text{ cfs} = 70\% \rightarrow 63-9019 \text{ represents } 70\% \text{ of the total flow}$

$2,451 \text{ cfs} / 8,151 \text{ cfs} = 30\% \rightarrow 63-11069 \text{ represents up to an additional } 30\% \text{ of the total flow}$

The beneficial use report memorandum dated February 27, 2003, indicated that power production began in May 1988. Therefore, the beneficial use period used to consider for annual volume limitations for each license is 1988 through present. I downloaded water year annual reports from the U.S. Bureau of Reclamation's Hydromet web site for the discharge from Lucky Peak Reservoir from 1988 through 2007. The highest annual discharge volume for the period was 3,537,804 acre-feet in calendar year 1997, see Attachment A and B of this memorandum. Thirty-one days, April 8 through May 8, had daily average discharge values that exceeding the plant capacity of 8,151 cfs, see Attachment C of this memorandum. The total discharge volume in excess of the plant capacity was 62,835 acre-feet. I reduced the total annual volume by the discharge volume in excess of the plant capacity to calculate the maximum extent of beneficial use under the two permits. The resulting volume is 3,474,969 acre-feet, a 2% reduction. I divided this total proportionally between the two water rights based on the flow rate ratio.

$3,474,969 \text{ acre-feet} \times 70\% = 2,432,478.3 \text{ acre-feet for water right 63-9019}$

$3,474,969 \text{ acre-feet} \times 30\% = 1,042,490.7 \text{ acre-feet for water right 63-11069}$

The annual volumes are rounded using four significant figures.

The resulting annual volume for water right 63-9019 is 2,432,000 acre-feet.

The resulting annual volume for water right 63-11069 is 1,042,000 acre-feet.

The beneficial use report memorandum indicated that, "Approximately 95% of water released from Lucky Peak Reservoir is routed through the power plant according to the project administrator." The field examiner considered this statement in his recommendation for the annual volume. It is unclear if this 5% is not routed through the plant during spring runoff because the flow exceeds the plant capacity or if 5% of the flow is continuously routed through the plant bypass spill gate. Since there is no evidence to quantify or describe the conditions when an estimated 5% of the flow is not routed through the power plant, I did not further reduce the annual volume.

A licensing amendment is necessary for water right 63-9019 to change the place of use legal description to accurately reflect the permit development.

The permitted place of use legal description was SW¼NE¼ Sec. 11, Twp 02N, Rge 03E, B.M.

The developed place of use legal description is Lot 4 NE¼NE¼ Sec. 11, Twp 02N, Rge 03E, B.M.

I updated the place of use and point of diversion shape files for each water right to reflect the development of each right.

The current standard hydropower subordination condition was added to each water right as well as the condition that all use shall be non-consumptive. Since all water used under rights 63-9019 and 63-11069 is non-consumptive, there will be no injury to downstream water rights.

ATTACHMENT A

Station LUC - Lucky Peak Lake near Boise, ID

Parameter QD - Discharge, Mean Daily - cfs

Bureau of Reclamation Hydromet System - Data downloaded and compiled October 1, 2007

WATER YEAR

	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	
1988	35424.8	8977.2	8945.4	7549.1	7398.3	36232	108132.8	203385	209375.1	208105.7	192793.3	92191.7	1,118,510.4
1989	12458.2	8814.5	9183.5	9479	15241	63367.9	246761.5	283239.5	254915.6	260052.8	243014.7	186446.2	1,592,974.4
1990	48130.9	9488.9	9717	9377.8	8661.8	23452.5	139622.4	187755.3	187259.4	225461	194399.9	141937.1	1,185,264.0
1991	27762.6	9479	9165.6	9068.4	18184.5	68394	110003.2	171986.7	206221.4	230816.4	226948.6	132612.8	1,220,643.2
1992	16804	8257.2	8275	7963.6	7059.2	6111.1	110651.8	204158.6	195312.3	171828	64924.9	23998	825,343.7
1993	11992.1	14689.6	19275.4	16193	15001	52700.8	104294.8	395603.1	264832.9	284370.1	234743.7	181844.5	1,595,541.0
1994	67687.9	15241	15001	37412.2	40861.5	75598	151874.3	205209.8	215702.4	259378.4	223239.5	78529.5	1,385,735.5
1995	16889.2	9219.2	9437.3	25842.6	31249.6	65470.4	204337.1	413156.8	349269.2	339074.2	249699	207907.3	1,921,551.9
1996	72412.5	14110.4	107999.9	85120.6	243570.1	397130.3	356092.4	477857.6	440191.5	277626.3	268760.2	200171.8	2,941,043.6
1997	78085.5	14445.6	36285.6	369401.4	389275.8	465123.7	531986.5	504931.9	406393.2	274670.9	277408.1	209256.1	3,557,264.3
1998	85090.9	9193.4	15072.4	15006.9	68435.7	127656.1	209811.5	478373.3	466948.5	300852.7	271735.4	207054.4	2,255,231.2
1999	82478.6	14017.2	12926.3	9992.7	100938.8	424581.6	409090.7	291490.8	352165.1	281335.4	265923.8	217447.8	2,462,388.8
2000	88042.3	14255.2	15020.8	15072.4	14033	102120.9	276079.2	262313.9	259497.4	252614.7	250928.8	204218.1	1,754,196.7
2001	75207.2	14469.4	15006.9	15110.1	13616.5	14987.1	74975.2	191325.5	195054.4	189143.7	189024.7	74245.3	1,062,166.0
2002	13580.3	9170	9515.8	9445.7	26256.2	58728.2	170374.6	276424.2	267417.3	264455	233336.8	163094	1,501,798.1
2003	43432.9	14362.7	14844.8	14839.3	34518.8	33954.6	148205	227775	261493.2	272858.6	255689.8	195305.9	1,517,280.6
2004	62764.9	14532.9	15109	41490.2	53200.6	15633.6	150497.4	207667.2	217419	267414.6	247063.7	183848.8	1,476,641.9
2005	71124.4	15091.1	15677.1	15666.6	14143.5	16537.6	70897.4	169323	205474.4	234172.2	232722.8	172863.3	1,233,693.4
2006	40943.5	15061	15218.2	26694.7	208424	208819.2	377782	602900.9	353748.5	270554.9	260266.1	172627.9	2,553,040.9
2007	81938.2	29520.6	15282.5	20406.2	14034.9	16495.4	163762.3	242422.4	251440.8	267726	215944.3	140772.5	1,459,746.1

CALENDAR YEAR

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	
1988	7549.1	7398.3	36232	108132.8	203385	209375.1	208105.7	192793.3	92191.7	12458.2	8814.5	9183.5	1,095,619.2
1989	9479	15241	63367.9	246761.5	283239.5	254915.6	260052.8	243014.7	186446.2	48130.9	9488.9	9717	1,629,855.0
1990	9377.8	8661.8	23452.5	139622.4	187755.3	187259.4	225461	194399.9	141937.1	27762.6	9479	9165.6	1,164,334.4
1991	9068.4	18184.5	68394	110003.2	171986.7	206221.4	230816.4	226948.6	132612.8	16804	8257.2	8275	1,207,572.2
1992	7963.6	7059.2	6111.1	110651.8	204158.6	195312.3	171828	64924.9	23998	11992.1	14689.6	19275.4	837,964.6
1993	16193	15001	52700.8	104294.8	395603.1	264832.9	284370.1	234743.7	181844.5	67687.9	15241	15001	1,647,513.8
1994	37412.2	40861.5	75598	151874.3	205209.8	215702.4	259378.4	223239.5	78529.5	16889.2	9219.2	9437.3	1,323,351.3
1995	25842.6	31249.6	65470.4	204337.1	413156.8	349269.2	339074.2	249699	207907.3	72412.5	14110.4	107999.9	2,080,529.0
1996	85120.6	243570.1	397130.3	356092.4	477857.6	440191.5	277626.3	268760.2	200171.8	78085.5	14445.6	36285.6	2,875,337.5
1997	369401.4	389275.8	465123.7	531986.5	504931.9	406393.2	274670.9	277408.1	209256.1	85090.9	9193.4	15072.4	3,537,804.3
1998	15006.9	68435.7	127656.1	209811.5	478373.3	466948.5	300852.7	271735.4	207054.4	82478.6	14017.2	12926.3	2,255,296.6
1999	9992.7	100938.8	424581.6	409090.7	291490.8	352165.1	281335.4	265923.8	217447.8	88042.3	14255.2	15020.8	2,470,285.0
2000	15072.4	14033	102120.9	276079.2	262313.9	259497.4	252614.7	250928.8	204218.1	75207.2	14469.4	15006.9	1,741,561.9
2001	15110.1	13616.5	14987.1	74975.2	191325.5	195054.4	189143.7	189024.7	74245.3	13580.3	9170	9515.8	989,748.6
2002	9445.7	26256.2	58728.2	170374.6	276424.2	267417.3	264455	233336.8	163094	43432.9	14362.7	14844.8	1,542,172.4
2003	14839.3	34518.8	33954.6	148205	227775	261493.2	272858.6	255689.8	195305.9	62764.9	14532.9	15109	1,537,047.0
2004	41490.2	53200.6	15633.6	150497.4	207667.2	217419	267414.6	247063.7	183848.8	71124.4	15091.1	15677.1	1,486,127.7
2005	15666.6	14143.5	16537.6	70897.4	169323	205474.4	234172.2	232722.8	172863.3	40943.5	15061	15218.2	1,203,023.5
2006	26694.7	208424	208819.2	377782	602900.9	353748.5	270554.9	260266.1	172627.9	81938.2	29520.6	15282.5	2,608,559.5

ATTACHMENT B

Station LUC - Lucky Peak Lake near Boise, ID

Parameter QD - Discharge, Mean Daily - cfs

Report for Calendar Year 1997

Bureau of Reclamation Hydromet System - Provisional Data, Subject to Change

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
DAY	1997	1997	1997	1997	1997	1997	1997	1997	1997	1997	1997	1997
1	3090	7000	7020	7720	9530	7730	4290	4560	4340	2980	150	215
2	3590	7010	7010	7790	9430	7570	4280	4550	4260	2970	151	249
3	4080	7010	7380	7870	9100	7480	4280	4570	4160	2920	140	251
4	4420	7010	7600	7900	9050	7310	4290	4550	4050	2900	147	250
5	4680	7010	7740	7900	8860	7240	4280	4540	3980	2900	157	249
6	4930	7020	7800	7910	8630	7240	4280	4530	3960	2900	156	250
7	5340	7000	7800	8040	8440	7240	4280	4500	3960	2900	157	250
8	5840	7020	7810	8230	8240	7240	4290	4490	3920	2880	156	249
9	6350	7010	7800	8380	8040	7240	4280	4480	3840	2550	157	248
10	6510	7030	7790	8470	7970	7240	4290	4490	3790	2310	156	248
11	6510	7010	7800	8510	7980	7060	4250	4490	3730	2280	156	248
12	6510	7010	7810	8570	7970	6990	4240	4490	3630	2280	156	247
13	6510	7020	7800	8610	7990	7320	4240	4490	3520	2280	156	248
14	6520	6980	7800	8810	8000	7490	4510	4490	3480	2120	156	246
15	6500	7010	7800	9130	7990	7500	4600	4500	3450	601	156	245
16	6510	7010	7800	9390	7980	7500	4580	4490	3430	386	155	245
17	6500	7010	7530	9650	7990	7650	4590	4490	3380	400	155	244
18	6510	7000	7400	9750	7990	7900	4600	4480	3250	400	156	244
19	6500	7020	7400	9760	7990	7990	4580	4520	3180	403	156	244
20	6500	7010	7410	9770	7990	8000	4590	4540	3160	334	155	245
21	6500	7010	7400	9760	7990	7650	4590	4540	3150	300	154	244
22	6520	7010	7410	9750	7990	7490	4620	4540	3150	299	155	244
23	6510	7020	7400	9660	7980	6860	4640	4540	3160	301	157	243
24	6500	7010	7410	9550	7990	6150	4640	4540	3160	300	156	244
25	6510	6990	7400	9560	7980	5650	4640	4540	3130	301	156	243
26	6510	7010	7670	9560	7990	4860	4640	4540	3090	301	153	245
27	6510	7000	7800	9560	7980	4430	4640	4510	3080	302	155	245
28	6510	7010	7590	9550	7980	4320	4640	4470	3090	301	155	242
29	6570	---	7210	9560	7970	4290	4620	4460	3030	301	156	243
30	6750	---	7310	9540	7820	4260	4620	4470	2990	302	154	245
31	6950	---	7600	---	7740	---	4570	4470	---	198	---	246
Total	186240	196260	234500	268210	254570	204890	138480	139860	105500	42900	4635	7599
Tot AF	369401.4	389275.8	465123.7	531986.5	504931.9	406393.2	274670.9	277408.1	209256.1	85090.9	9193.4	15072.4
Ave	6007.7	7009.3	7564.5	8940.3	8211.9	6829.7	4467.1	4511.6	3516.7	1383.9	154.5	245.1
Max	6950	7030	7810	9770	9530	8000	4640	4570	4340	2980	157	251
Min	3090	6980	7010	7720	7740	4260	4240	4460	2990	198	140	215

3,537,804

ATTACHMENT C

Station LUC - Lucky Peak Lake near Boise, ID

Parameter QD - Discharge, Mean Daily - cfs

Report for Calendar Year 1997 - COMPUTATION OF MEAN DAILY DISCHARGE IN EXCESS OF POWER PLANT CAPACITY - 8,151 CFS

Bureau of Reclamation Hydromet System - Provisional Data, Subject to Change

DAY	JAN 1997	FEB 1997	MAR 1997	APR 1997	MAY 1997	JUN 1997	JUL 1997	AUG 1997	SEP 1997	OCT 1997	NOV 1997	DEC 1997
1	0	0	0	0	1379	0	0	0	0	0	0	0
2	0	0	0	0	1279	0	0	0	0	0	0	0
3	0	0	0	0	949	0	0	0	0	0	0	0
4	0	0	0	0	899	0	0	0	0	0	0	0
5	0	0	0	0	709	0	0	0	0	0	0	0
6	0	0	0	0	479	0	0	0	0	0	0	0
7	0	0	0	0	289	0	0	0	0	0	0	0
8	0	0	0	79	89	0	0	0	0	0	0	0
9	0	0	0	229	0	0	0	0	0	0	0	0
10	0	0	0	319	0	0	0	0	0	0	0	0
11	0	0	0	359	0	0	0	0	0	0	0	0
12	0	0	0	419	0	0	0	0	0	0	0	0
13	0	0	0	459	0	0	0	0	0	0	0	0
14	0	0	0	659	0	0	0	0	0	0	0	0
15	0	0	0	979	0	0	0	0	0	0	0	0
16	0	0	0	1239	0	0	0	0	0	0	0	0
17	0	0	0	1499	0	0	0	0	0	0	0	0
18	0	0	0	1599	0	0	0	0	0	0	0	0
19	0	0	0	1609	0	0	0	0	0	0	0	0
20	0	0	0	1619	0	0	0	0	0	0	0	0
21	0	0	0	1609	0	0	0	0	0	0	0	0
22	0	0	0	1599	0	0	0	0	0	0	0	0
23	0	0	0	1509	0	0	0	0	0	0	0	0
24	0	0	0	1399	0	0	0	0	0	0	0	0
25	0	0	0	1409	0	0	0	0	0	0	0	0
26	0	0	0	1409	0	0	0	0	0	0	0	0
27	0	0	0	1409	0	0	0	0	0	0	0	0
28	0	0	0	1399	0	0	0	0	0	0	0	0
29	0	---	0	1409	0	0	0	0	0	0	0	0
30	0	---	0	1389	0	0	0	0	0	0	0	0
31	0	---	0	---	0	---	0	0	---	0	---	0
Total	0	0	0	25607	6072	0	0	0	0	0	0	0
Tot AF	0	0	0	50791	12044	0	0	0	0	0	0	0

62,835

1997 Total Annual Volume = 3,537,804 AF

1997 Total Annual Volume in Excess of Power Plant Capacity = 62,835 AF

1997 Total Annual Volume less Volume Exceeding Power Plant Capacity = 3,474,969 AF