

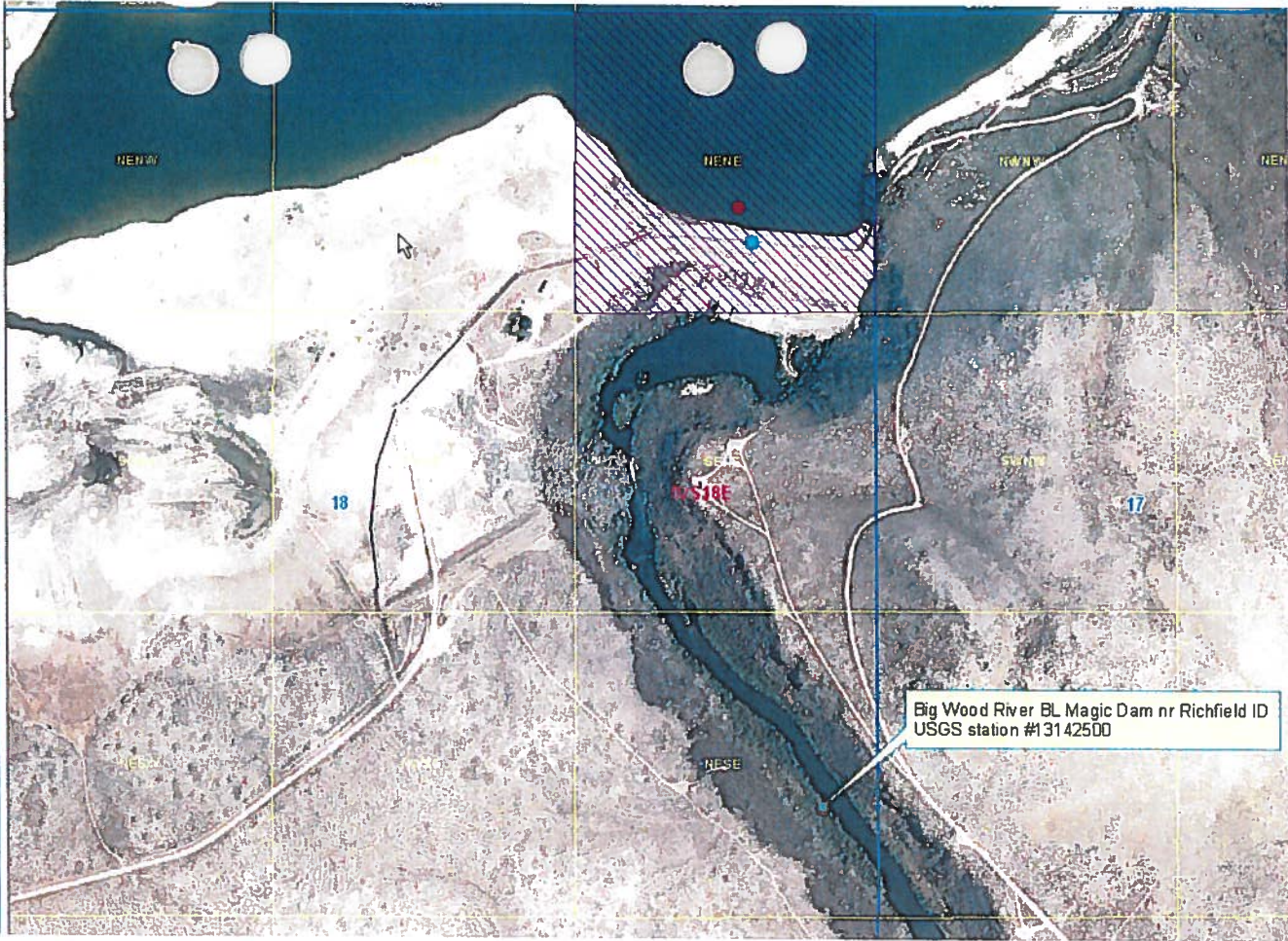
MEMORANDUM

Date: April 24, 2014
To: Water Right File 37-7848, 37-8178 and 37-8389
From: medl
Re: streamflow data and generation data comparison

I queried the USGS website for data within the development period of the above permits from the station below Magic Dam (station #13142500). I compared that data with the generation data obtained from the IPUC archive of Idaho Power Company's monthly generation reports. I found that although there were occasions during the non-irrigation season when there was sufficient discharge from the dam with which to generate electricity, the generation records do not show power generation occurred.

Note November 1989 in the attached spreadsheet and graph of USGS data compared to the table and graph of Idaho Power Co.

- Layers
- ☒ USGS AISites
 - ☐ SpatialData
 - ☒ Water Permit POD
 - ☒ Permit POU
 - ☒ PLSS
 - ☒ Township/Range
 - ☒ Sections
 - ☒ QQ
 - ☐ Taxlots
 - ☐ DRG
 - ☒ Imagery
 - ☐ 1987
 - ☐ 1992-2000 (1 meter)
 - ☐ esri Imagery (1 foot)
 - ☐ 2011 (1 meter)
 - ☒ 2009 (1 meter)
 - ☐ 2006 (2 meter)
 - ☐ 2006 (1 meter)
 - ☐ 2004 (1 meter)



----- WARNING -----
 # The data you have obtained from this automated U.S. Geological Survey database
 # have not received Director's approval and as such are provisional and subject to
 # revision. The data are released on the condition that neither the USGS nor the
 # United States Government may be held liable for any damages resulting from its use.
 # Additional info: <http://waterdata.usgs.gov/id/nwis/?provisional>

File-format description: http://waterdata.usgs.gov/nwis/?tab_delimited_format_info
 # Automated-retrieval info: http://waterdata.usgs.gov/nwis/?automated_retrieval_info

Contact: gs-w_support_nwisweb@usgs.gov
 # retrieved: 2014-04-29 16:08:17 EDT (vaww01)

Data for the following 1 site(s) are contained in this file
 # USGS 13142500 BIG WOOD RIVER BL MAGIC DAM NR RICHFIELD ID

 #
 # Data provided for site 13142500
 # DD parameter statistic Description
 # 01 00060 00003 Discharge, cubic feet per second (Mean)
 #
 # Data-value qualification codes included in this output:
 # A Approved for publication -- Processing and review completed.
 # e Value has been estimated.

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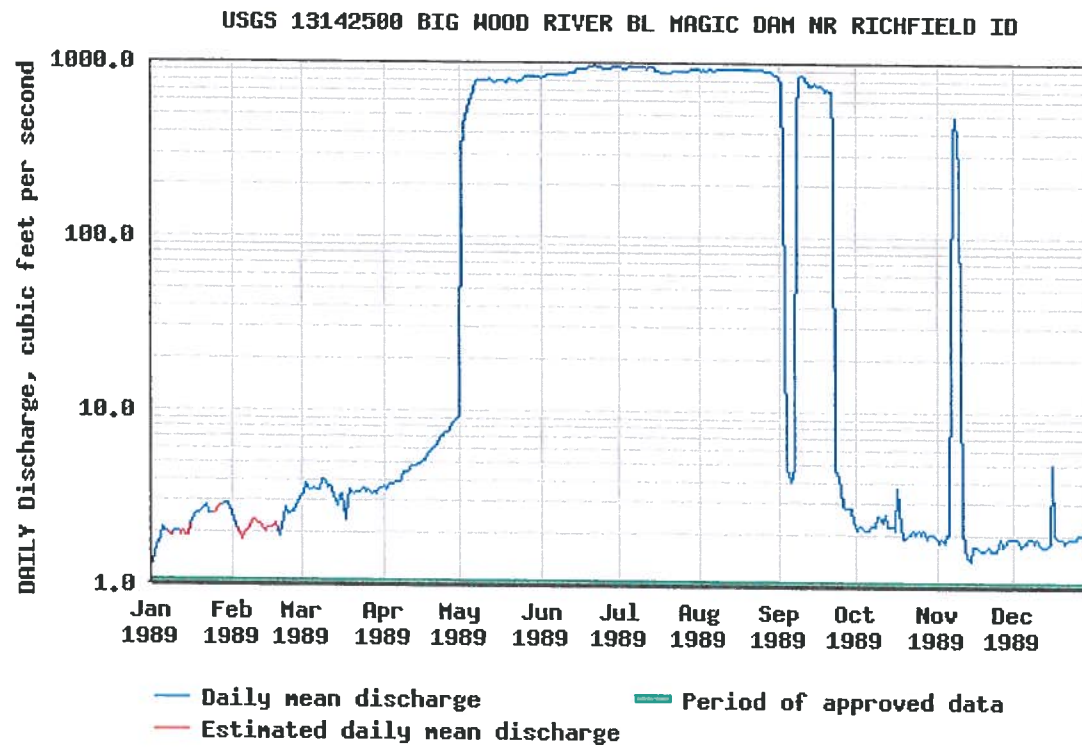
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	rounded to 3 significant figures			237,000 AF
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	flow sufficient for generation but none shown			
spreadsheet created by Michele Edl on 4/29/2014				



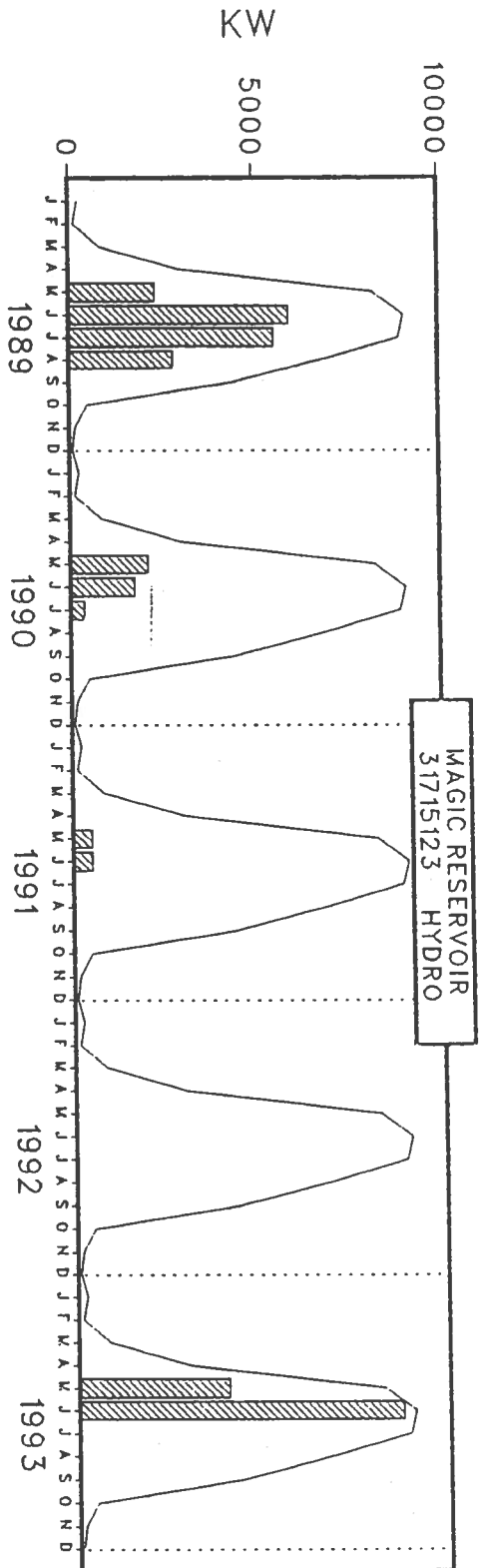
IDAHO POWER COMPANY
COGENERATION AND SMALL POWER PRODUCTION
MONTHLY GENERATION BY PLANT (AVERAGE KW)

1989		JAN89	FEB89	MAR89	APR89	MAY89	JUN89	JUL89	AUG89	SEP89	OCT89	NOV89	DEC89
31515004	MUD CREEK/S&S	91	60	60	29	46	76	47	88	223	259	207	138
31416001	SHOSHONE	0	0	165	299	315	313	286	306	300	160	188	109
11766002	TAMARACK	5090	4384	4115	3671	4637	4507	4885	4729	4522	4476	3855	4571
31415017	NORTHSIDE CANAL Y-8	0	2	25	25	33	32	30	32	29	10	0	10
31415023	CURRY CATTLE CO.	0	0	0	46	194	292	97	212	151	53	0	0
11415009	SHINGLE CREEK	72	65	85	133	186	193	172	136	118	108	102	89
31615003	ROCK CREEK #1	797	576	1149	1536	1402	1691	1864	1957	1936	1968	1524	1041
31515009	MALAD RIVER	2	133	462	484	496	179	133	407	582	383	228	116
31516014	CLEAR SPRINGS TROUT	442	444	444	439	418	418	417	410	407	400	413	435
31416013	BOX CANYON	249	214	562	467	629	144	124	196	210	197	206	224
31615030	KOYLE	0	13	562	467	629	443	306	625	780	443	212	463
31615031	KASEL & WITHERSPOON	346	282	199	231	496	535	657	719	917	865	556	463
44767012	AFTON	4970	5015	3862	5202	5085	5179	5046	2800	5425	5562	1483	4828
31214058	BIRCH CREEK	45	44	44	38	36	41	44	49	53	56	51	46
31316010	STEVENSON #1	18	1	0	0	0	0	0	0	20	32	29	26
31415065	BLACK CANYON NO.3	0	0	0	0	105	97	104	85	82	66	77	0
31616081	CEDAR DRAW	295	267	212	661	885	879	590	1236	1434	1427	586	378
31316011	STEVENSON #2	0	0	0	2	0	0	0	0	0	30	31	35
31415094	JIM KNIGHT	0	0	0	80	58	290	247	259	263	77	58	0
31416020	CANYON SPRINGS	118	118	109	112	118	125	119	116	55	106	98	123
31615067	PIGEON COVE	586	457	423	490	1224	1395	1352	1465	1629	1549	861	775
31315021	SNAKE RIVER POTTERY	57	58	44	44	32	34	10	26	27	0	35	59
31316015	LEMOYNE	22	19	17	24	23	18	26	19	22	21	23	24
31414075	SNEDIGAR RANCH	130	101	104	126	229	140	150	162	230	228	146	141
31715099	LOWLINE CANAL	-3	-6	0	1231	7193	7911	7507	8004	6532	4300	220	-4
31315093	HAILEY CSP	21	20	20	19	20	16	20	19	19	18	18	17
31615105	LITTLE WOOD RIV. RES.	-5	-7	-8	1638	1716	2199	1707	269	-2	-2	-6	-6
31615056	LATERAL #10	1043	492	10	447	857	909	720	1561	1759	1661	1627	1321
11866066	B.C. ELMETT	9211	8525	7750	4271	6234	10904	9564	9595	3194	8165	9123	9467
31515103	SAGEBRUSH	-6	-5	-4	129	288	297	293	288	296	90	70	-4
31315029	WHITE WATER RANCH	67	95	122	73	37	47	36	39	44	97	114	129
31615117	MARCOS RANCHES	0	0	0	283	555	485	413	673	883	795	47	0
12616071	OWYHEE DAM	-21	-16	2575	1962	5058	4711	4806	4669	4660	4453	-46	-45
31315008	H.E.E.D. CO.	7	7	8	5	15	22	19	28	0	0	0	21
31515106	BRIGGS CREEK	474	457	436	482	347	420	432	412	439	417	412	378
31615057	CRYSTAL SPRINGS	-31	-24	-11	638	1277	1444	787	1828	2295	2161	357	0
41455091	POCATELLO WASTE	159	197	169	188	154	155	139	152	149	149	136	170
31414111	MUD CREEK/WHITE	41	35	31	3	10	15	17	43	63	26	98	62
11615077	ELK CREEK	-11	-12	366	1225	1753	1748	641	-2	-1	51	133	-12
21415119	REYNOLDS IRRIGATION	182	175	184	132	60	200	202	167	247	228	219	238
31515107	LITTLEWOOD/ARKOOSH	68	65	324	455	730	770	621	509	429	299	195	226
41515122	SCHAFFNER	41	36	30	156	283	389	241	132	88	84	58	55
31615098	GEORON 2	-21	-12	345	507	772	787	815	878	648	116	173	225
31415027	TROUT CO.	139	133	136	97	50	52	50	74	107	116	144	149
31615121	FAULKNER RANCH	26	19	6	354	631	647	601	672	560	269	166	148
41415124	SUNSHINE POWER #2	2	1	6	8	18	37	35	24	10	3	3	10
31615125	LOWLINE #2	-22	-18	-13	278	2431	2534	2471	2522	2350	1697	56	0
31715126	LOWLINE #2	-35	-36	-28	2158	6572	7744	8351	7192	5793	2841	-22	-31
1615106	DIETRICH DROP	-6	-7	-6	259	3866	4641	4078	4444	3832	1028	-4	-7

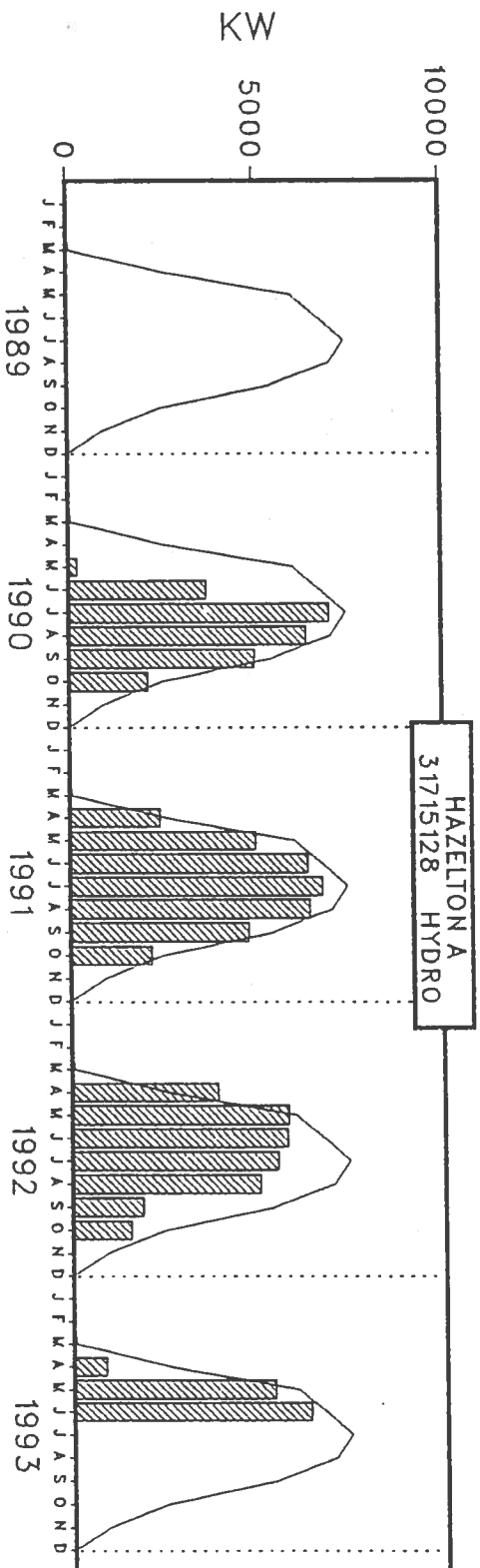
IDAHO POWER COMPANY
COGENERATION AND SMALL POWER PRODUCTION
MONTHLY GENERATION BY PLANT (AVERAGE KW)

21615078	BARBER DAM	0	0	0	1174	2280	2222	2308	2090	1579	332	87	-29
31615104	ROCK CREEK #2	0	0	11	1253	850	1093	1464	1620	1679	1253	442	662
12614070	MITCHELL BUTTE	0	0	0	0	671	1461	1154	1671	1414	530	-10	-32
31715123	MAGIC RESERVOIR	0	0	0	0	2344	5951	5547	2827	-35	-26	-47	-36
22314133	WEST BOISE WASTE	0	0	0	0	0	0	189	184	177	185	175	193
TOTAL		24652	22367	24905	33802	63952	76831	71934	68618	58619	49708	24906	26939

IDAHO POWER COMPANY Cogeneration and Small Power Production



Legend
 [Hatched Box] ACTUAL GENERATION
 [Solid Line] ESTIMATED GENERATION



BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION
IN THE MATTER OF THE APPLICATION)
OF IDAHO POWER COMPANY FOR AN) CASE NO. U-1006-294
ORDER APPROVING A FIRM ENERGY)
SALES AGREEMENT WITH COOK)
ELECTRIC, INC.) ORDER NO. 21358
)

On July 10, 1987, Idaho Power Company (IPCO) submitted an Application to the Idaho Public Utilities Commission (Commission) for an Order approving a Firm Energy Sales Agreement with Cook Electric, Inc. (Cook). Cook is the developer of a 9.9 mw hydroelectric project (Magic Reservoir) located in the Northwest Quarter of Section 22, Township 2 South, Range 18 East, Boise Meridian, Blaine County, Idaho. The estimated annual energy production is 31,221,200 kwh. The project is a qualified small power production facility under the applicable provisions of the Public Utility Regulatory Policies Act.

The Commission finds consideration of the contract Agreement to be appropriate and within the ambit of exclusion from the Commission imposed moratorium or suspension of compelled contract executions as defined in O.N. 21332 (U-1500-170).

The Commission further finds that the Agreement, as signed and submitted by the parties, contains avoided cost rates in conformity with applicable Commission Orders. The terms of the contract are reasonable and we approve them. We also approve payments made under this Agreement as prudently incurred expenses for ratemaking purposes.

CONCLUSIONS OF LAW

I

The Idaho Public Utilities Commission has jurisdiction over Idaho Power Company, an electric utility, pursuant to the authority and power granted it under Title 61 of the Idaho Code.

II

The Idaho Public Utilities Commission has authority under the Public Utility Regulatory Policies Act (PURPA) and implementing regulations of the Federal Energy Regulatory Commission (FERC) to set avoided costs, to order electric utilities to enter into fixed term obligations to purchase energy from small power producers and to implement FERC rules. PURPA §§210, 210A, 210F, 16 U.S.C.A. §§824-A-3, 824-A-3(a)(f); Afton Energy, Inc. v. Idaho Power Company, 107 Idaho 781, 693 P.2d 427.

O R D E R

IT IS THEREFORE ORDERED that the Firm Energy Sales Agreement between Idaho Power Company and Cook Electric, Inc. submitted in this proceeding be and the same is hereby approved.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See Idaho Code §61-626.

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DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho, this day of July, 1987.

PERRY SWISHER, PRESIDENT

DEAN J. MILLER, COMMISSIONER

RALPH NELSON, COMMISSIONER

ATTEST:

MYRNA J. WALTERS, SECRETARY

SW:vs/518L

Filename: E:\Internet\orders\21496.ord\21358.wp

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BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION
IN THE MATTER OF THE APPLICATION)
OF IDAHO POWER COMPANY FOR AN) CASE NO. U-1006-294
ORDER APPROVING A FIRM ENERGY)
SALES AGREEMENT WITH COOK ELEC-) ORDER NO. 21621
TRIC, INC.)

)

On November 24, 1987, Idaho Power Company (IPCo) filed an Application with the Idaho Public Utilities Commission (Commission) seeking approval of an amendment to its Firm Energy Sales Agreement (Agreement) dated July 10, 1987 with Cook Electric, Inc. (Cook) for the proposed 9.9 megawatt Magic Dam hydroelectric project. The underlying agreement was approved in Order No. 21358 on July 27, 1987. The Commission finds that the proposed amendment dated November 20, 1987 implements overpayment security provisions and provides for risk mitigation as directed and authorized in Commission Order No. 21522 issued October 21, 1987. The Commission has reviewed and approves of the proposed amendment language.

CONCLUSIONS OF LAW

I

The Idaho Public Utilities Commission has jurisdiction over Idaho Power Company pursuant to the authority and power granted it under Title 61, Idaho Code and the Rules of Practice and Procedure of the Idaho Public Utilities Commission, IDAPA 31.A.

II

The Idaho Public Utilities Commission has authority under the Public Utility Regulatory Policies Act of 1978 (PURPA) and implementing regulations of the Federal Energy Regulatory Commission (FERC) to set avoided costs, to order electric utilities to enter into fixed term obligations to purchase energy from qualifying cogeneration and small power production facilities, and to implement FERC rules. PURPA §§210, 210A, 210F, 16 U.S.C.A. §§824-a-3, 824-a-3(a), (f); Afton Energy, Inc. v. Idaho Power Company, 107 Idaho 781, 693 P.2d 427.

O R D E R

In consideration of the foregoing, IT IS HEREBY ORDERED that the proposed and submitted amendments dated November 20, 1987 (to Article 4 Conditions to Interconnection, paragraph 14.2 Insurance, and paragraph 21.2 Security for Repayment Obligation) to that Firm Energy Sales Agreement previously approved in Order No. 21358 are hereby approved as to form and substance.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See Idaho Code §61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho, this day of November, 1987.

PERRY SWISHER, PRESIDENT

DEAN J. MILLER, COMMISSIONER

RALPH NELSON, COMMISSIONER

ATTEST:

MYRNA J. WALTERS, SECRETARY

SW:vs/706L

Filename:	E:\Internet\orders\21698.ord\21621.wp
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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

RIGHT-OF-WAY GRANT/TEMPORARY USE PERMIT

Issuing Office

Shoshone, Idaho

Serial Number

I-25800

1. A (right-of-way) ~~XXXXXX~~ is hereby granted pursuant to:

- a. ☒ Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761);
- b. ☐ Section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185);
- c. ☐ Other (describe) _____.

2. Nature of Interest:

- a. By this instrument, the holder Magic Reservoir Hydroelectric, Inc. receives a right to construct, operate, maintain, and terminate a hydroelectric facility on public lands (or Federal land for MLA Rights-of-Way) described as follows:

Township 2 South, Range 18 East, Boise Meridian

Section 17: SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$
Section 18: NE $\frac{1}{4}$

b. The right-of-way or permit area granted herein is ____ feet wide, ____ feet long and contains ____ acres, more or less. If a site type facility, the facility contains $\pm$ 40 acres.

c. This instrument shall terminate on January 15, 2027 ~~XXXXXX~~ unless, prior thereto, it is relinquished, abandoned, terminated, or modified pursuant to the terms and conditions of this instrument or of any applicable Federal law or regulation.

d. This instrument ~~XXXXXX~~ ^{reissued} may not be renewed. If ~~XXXXXX~~ the right-of-way ~~XXXXXX~~ shall be subject to the regulations existing at the time of renewal and any other terms and conditions that the authorized officer deems necessary to protect the public interest.

e. Notwithstanding the expiration of this instrument or any renewal thereof, early relinquishment, abandonment, or termination, the provisions of this instrument, to the extent applicable, shall continue in effect and shall be binding on the holder, its successors, or assigns, until they have fully satisfied the obligations and/or liabilities accruing herein before or on account of the expiration, or prior termination, of the grant.

3. Rental:

For and in consideration of the rights granted, the holder agrees to pay the Bureau of Land Management fair market value rental as determined by the authorized officer unless specifically exempted from such payment by regulation. Provided, however, that the rental may be adjusted by the authorized officer, whenever necessary, to reflect changes in the fair market rental value as determined by the application of sound business management principles, and so far as practicable and feasible, in accordance with comparable commercial practices.

4. Terms and Conditions:

- a. This grant ~~XXXXXX~~ is issued subject to the holder's compliance with all applicable regulations contained in Title 43 Code of Federal Regulations parts 2800 ~~XXXXXX~~
- b. Upon grant termination by the authorized officer, all improvements shall be removed from the public lands within 180 days, or otherwise disposed of ~~XXXXXXXXXXXXXXXXXXXX~~ as directed by the authorized officer.
- c. Each grant issued pursuant to the authority of paragraph (1)(a) for a term of 20 years or more shall, at a minimum, be reviewed by the authorized officer at the end of the 20th year and at regular intervals thereafter not to exceed 10 years. Provided, however, that a right-of-way ~~XXXXXX~~ granted herein may be reviewed at any time deemed necessary by the authorized officer.
- d. The stipulations, plans, maps, or designs set forth in Exhibit(s) A and Appendices D-L incl., dated effective date of grant, attached hereto, are incorporated into and made a part of this grant instrument as fully and effectively as if they were set forth herein in their entirety.
- e. Failure of the holder to comply with applicable law or any provision of this right-of-way grant ~~XXXXXX~~ shall constitute grounds for suspension or termination thereof.
- f. The holder shall perform all operations in a good and workmanlike manner so as to ensure protection of the environment and the health and safety of the public.

IN WITNESS WHEREOF, The undersigned agrees to the terms and conditions of this right-of-way grant ~~XXXXXX~~

Paul H. Myers
(Signature of Holder)

Magic Reservoir Hydroelectric, Incorporated

Agent
(Title)

7/26/88.
(Date)

Robert D. Cordell
(Signature of Authorized Officer)

Area Manager, Bennett Hills Resource Area
(Title)

7/26/88
(Effective Date of Grant)

EXHIBIT A

RIGHT-OF-WAY STIPULATIONS

The stipulations are made by and between Magic Reservoir Hydroelectric, Inc., hereinafter referred to as the Holder, and U.S. Department of Interior, Bureau of Land Management, Shoshone District, hereinafter referred to as the Bureau.

The following terms and conditions shall apply to Magic Reservoir Hydroelectric, Inc.

Stipulations

1. Access roads shall have dust abatement during construction consisting of sprinkling the roads with water trucks or equivalent. The existing access roads shall be maintained by the holder in passable and safe condition during construction. No access roads shall be constructed for the electrical transmission powerline. Cross country access is authorized, weather and soil conditions permitting. Holder is responsible for repair of any damages. The Holder shall notify the Bureau at least 5 days prior to maintenance or construction of access roads. The Bureau will arrange a joint meeting to discuss specifications of the road work.
2. Holder shall maintain and surface with a minimum of three inches of gravel approximately one mile of the east side access road for emergency access to the site. Side casting will be minimized. The road will not be widened. Completed maintenance must be approved by the Bureau.
3. Within 45 days of project completion an "as-built" survey shall be submitted to the Bureau. This survey shall include all existing facilities of the project. Any substantial deviation from the authorized action shall require the filing of an amended right-of-way.
4. Development plans, layout plans, construction, reconstruction, or alteration of improvement plans, or revision of layout or construction plans for this area must be approved in advance and in writing by the Bureau.
5. Holder shall designate an on site manager for the project construction. This individual shall be qualified to represent the Holder and shall be present or have a qualified acting representative present at all times while project construction activities are taking place. This individual shall be the person who receives the on-the-ground approvals and directions from the Bureau.
6. No on-the-ground disturbance shall occur until a Notice to Proceed (BLM form 1510-7) is issued. This notice shall identify actions of construction that are fully authorized to be completed within a stage.

Holder shall submit specific construction plans to the Bureau for approval a minimum of five working days before anticipated start of construction of any stage. A Notice to Proceed is required for each of the following stages:

- a. Cofferdam placement and pumping of the Big Hole.
 - b. Excavate material for structures and placement of material above pond area.
 - c. Roads.
 - d. Construction of powerhouse, switchyard, and conduit pipes.
 - e. Repair and rehabilitate disturbed areas including Cofferdam removal.
 - f. Construction of powerline.
 - g. Construction of spillway extension and dike.
7. Holder shall exercise the utmost care, when using explosives, not to endanger life or property and shall comply with all requirements of the Bureau, State, and local agencies.
8. Holder shall provide a surety bond or cash deposit in the amount of two hundred thousand dollars (\$200,000) to be maintained until requirements relative to the construction phase of the project have been accepted by the Bureau. Project includes both the hydroelectric facility and electrical transmission line. Construction is considered completed when electrical power is produced by the facility and transmitted to the Idaho Power distribution system.
- A \$200,000 Certificate of Insurance or Surety Bond or cash deposit shall be maintained until after the first use of the spillway structure. After that use, river sedimentation shall be monitored. If determined by the Bureau that no adverse impacts to the fishery habitat occurs, the Certificate of Insurance shall be reduced to \$100,000 for the duration of the right-of-way. Should the sureties or Certificate of Insurance delivered under this authorization become unsatisfactory to the Bureau, the Holder shall, within thirty (30) days of demand, furnish new documents satisfactory to the Bureau.
9. Holder shall follow these plans:
- a. Erosion Control (Due prior to approval)
 - b. Sedimentation Monitoring (Due August 14, 1988)
 - c. Dissolved Oxygen Monitoring (Due August 14, 1988)
 - d. Riparian Mitigation (Due August 14, 1988)
 - e. Cultural Resources Management (Due prior to approval)
 - f. Recreation Mitigation (Due August 14, 1988.)

g. Construction signs (Due prior to approval)

Said plans shall be complete stand alone documents and attached hereto and marked as Appendicies E, F, G, H, I, J, and K respectively.

10. Soil and small rock above bedrock shall be removed from the spillway extension area to the extent possible. The intent of this stipulation is to avoid or minimize sedimentation of the Big Wood River.
11. Holder shall indemnify the United States against any liability for damage to life or property arising from the occupancy or use of Public Lands under this right-of-way.
12. There shall be no vehicle use other than boats below the high water mark of the Big Wood River without prior written approval of the Bureau.
13. Holder shall discharge no waste or by-product containing any substances in concentrations that would result in violation of water quality standards set forth by the State; would impair present or future beneficial uses of water; would cause pollution, nuisance, or contamination; or would unreasonably degrade the quality of any waters. During the construction and operation of the project, the Holder shall protect project water quality by using the existing best management practices mutually agreed to by the Bureau and the State.
14. All water pumped from between the power house coffer dam and the power house shall be pumped into a rock catchment just north of the spring-fed pond to remove sediment. The water would then spill to the spring fed pond and then to the Big Hole. The intent of this stipulation is to avoid or minimize sedimentation of the Big Wood River.

Maintenance of existing water quality and fisheries during the project construction and operation shall take priority over every other aspect of project operation including the generation of power.

15. Fish salvage operations within the Big Hole during construction shall comply with the standards established by the Idaho Department of Fish and Game (IDFG) and shall be performed under the direct supervision of the IDFG personnel.
16. Cofferdams shall consist of canvas or other nonpermeable bags filled with sand. The sand bag shall be capable of withstanding placement and removal without rupture. The cofferdams will be constructed and removed by hand. The intent of this stipulation is to prevent any sedimentation to the river from the cofferdams.
17. Holder shall not erect permanent signs or advertising devices without prior approval of the Bureau. The Holder shall maintain or renew approved signs as necessary.

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- 11.

18. After construction the Holder agrees to permit the free and unrestricted access to and upon the public land at all times for all lawful and proper purposes not inconsistent with the intent of the right-of-way or with the reasonable exercise and enjoyment by the Holder of the privileges thereof. This excludes the switchyard, dam tender house/yard, control houses, and power facility.
19. Pesticides may not be used to control undesirable woody and herbaceous vegetation, aquatic plants, insects, rodents, fish, etc., without the prior written approval of the Bureau and the Idaho Department of Fish and Game.

Holder shall use only those materials registered by the U.S. Environmental Protection Agency for the specific purpose planned and must strictly follow label instructions. The chemicals listed on Exhibit H shall not be used on public lands.

20. The exterior of the powerhouse and other facilities shall be painted to blend into the landscape. Three colors shall be applied to breakup the visual contrast of the structures. The colors and color scheme shall be approved by the Bureau.

The colors shall be applied in an irregular pattern and maintained for the duration of the project right-of-way.

21. If threatened, endangered, or sensitive wildlife or plant species are found during use under this authorization, the Holder shall notify the Bureau and shall take immediate measures to protect said species as directed by the Bureau.
22. Bureau shall mark or otherwise designate trees or shrubbery that may be removed or destroyed.
23. Method chosen to remove brush on downstream face of dam shall not cause any soil to enter the pond or river. Preferred method of brush removal would be cutting and removal by hand.
24. All vegetative material removed within the project area shall be burned below the high water mark of the reservoir or removed from the site. A permit from the Bureau is required before burning.
25. Bureau shall identify power poles that will be altered to minimize raptor perching and other power poles that will be altered to provide raptor nesting platforms. High visibility wires shall be used in the construction of the electrical and support wires of the transmission line. High visibility sheathing will be placed on guy wires.
26. Holder shall secure all necessary permits and authorizations prior to the start of construction.

202
11/11

27. If facilities authorized for construction under this right-of-way grant use Polychlorinated Biphenyls (PCBs) such use shall be in a totally enclosed manner in accordance with provisions of the Toxic Substances Control Act of 1976 as amended (see 40 CFR Part 761). Additionally, any release of PCBs (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR Part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation, and Liability Act, section 102b. A copy of any report required or requested by any Federal agency or State government as a result of a reportable release or spill of any hazardous material shall be furnished to the Bureau within five working days of the occurrence of the spill or release.

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

RECEIVED
JAN 16 1987
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20438

Cook Electric, Inc.

Project No. 3407-004

ORDER ISSUING LICENSE
(Major Project - Existing Dam)
(Issued January 15, 1987)

Cook Electric, Inc. has filed a license application under Part I of the Federal Power Act (Act) to construct, operate, and maintain the Magic Dam Project, located in Blaine County, Idaho, on the Big Wood River. The project would occupy lands of the United States administered by the Bureau of Land Management.

Notice of the application has been published. The motions to intervene that have been granted and the comments and protests filed by agencies and individuals have been fully considered in determining whether to issue this license, as discussed below.

Idaho Power Company (IPC) asked that a need for project output be shown. The need for project power and its economic feasibility are discussed in the attached Environmental Assessment (EA). The Commission has also discussed these issues raised by IPC in its recent license order for the Horseshoe Bend Project No. 5376 36 FERC ¶61,135 (1986).

The Idaho Department of Water Resources (IDWR) requested that the Commission condition the license to insure that the project would not interfere with developments on the Snake River and its tributaries pursuant to the Idaho State Water Plan. This request is not granted for the reasons given by the Commission in the Horseshoe Bend license order where IDWR requested the inclusion of the same condition.

Recommendations of Federal and State Fish and Wildlife Agencies

Section 10(j) of the Federal Power Act (FPA), as amended by the Electric Consumers Protection Act of 1986 (ECPA), Pub. L. 99-485, requires the Commission to include license conditions based on recommendations of federal and state fish and wildlife agencies for the protection, mitigation, and enhancement of fish and wildlife. The Environmental Assessment (EA) for the Magic Dam Project, which was prepared prior to ECPA and is attached to and made part of this license, addresses the primary concerns of the federal and state fish and wildlife agencies, but did not adopt all of the recommendations contained in the Idaho Department of Fish and Game's (IDFG) comment letter dated March 17, 1986. The IDFG recommendations that the staff did not recommend for adoption in the EA concerned (1) maintaining dissolved oxygen (DO) concentrations downstream from the project and (2) mitigating fish losses resulting from turbine mortality during project operation.

Consistent with new section 10(j)(2) of the FPA, the Commission staff succeeded in resolving all differences between IDFG's fish and wildlife recommendations and the staff's recommendations as reflected in the EA. By letter of December 12, 1986, the Director Office of Hydropower Licensing (Director) advised IDFG of the differences between the specific provisions recommended by IDFG and the provisions that the staff believes are necessary to limit project-related impacts on the fish and wildlife resources of the project area.

On December 26, 1986, IDFG notified the Director that the differences were minor and easily resolved. IDFG agreed that the staff's recommendations adequately address IDFG concerns with the following exceptions. IDFG believes that any study conducted to determine turbine mortality at the project should include provisions for: (1) compensation for turbine mortality retroactive to the start of project operation; (2) IDFG input on study needs and review and approval of the study design, including methods and procedures; (3) IDFG approval of qualified technical personnel to conduct such studies; and (4) funding of the study by the licensee.

Article 404, included herein, requires development of a turbine mortality monitoring plan. Items 1, 3, and 4 recommended by IDFG would further protect the fishery resource and are therefore incorporated into article 404.

Item 2 recommends that IDFG should have approval authority of the monitoring plan. We disagree with this recommendation, since IDFG will be consulted during development of the plan and all participants must agree to the scope of the plan, IDFG's views would be fully reflected in the monitoring plan. The Commission must retain ultimate approval of all license requirements under the authority of the Federal Power Act.

Comprehensive Plans . .

Section 10(a)(2) of the FPA, as amended by ECPA, requires the Commission to consider the extent to which a project is consistent with comprehensive plans (where they exist) for improving, developing, or conserving a waterway or waterways affected by the project that are prepared by an agency established pursuant to federal law that has the authority to prepare such plans or by the state in which the facility is or will be located. The Commission considers plans to be within the scope of section 10(a)(2) only if such plans reflect the preparers' own balancing of the competing uses of a waterway, based on their data and applicable policy considerations (i.e., consider and balance all relevant public use considerations). With regard to plans prepared at the state level, such plans are within the scope of section

10(a) only if they are prepared and adopted pursuant to a specific act of the state legislature and are developed, implemented, and managed by an appropriate state agency. 1/

The Commission has identified one comprehensive plan of the type referred to in section 10(a)(2) of the FPA: the Northwest Power Planning Council's 1986 Northwest Conservation and Electric Power Plan. Construction and operation of the Magic Dam Project would be consistent with the Northwest Power Planning Council's 1984 Fish and Wildlife Program for the Columbia River Basin.

No other comprehensive plans of the type referred to in section 10(a)(2) of the FPA relevant to this project have been identified. Three resource plans 2/ that touch on various aspects of waterway management were brought to our attention and have been reviewed in relation to the proposed project as part of our broad public interest examination under section 10(a)(1) of the FPA. No conflicts were found.

Summary of Findings

An Environmental Assessment (EA) was issued for this project. Background information, analysis of impacts, support for related license articles, and the basis for a finding of no significant impact on the environment are contained in the EA attached to this order. Issuance of this license is not a major federal action significantly affecting the quality of the human environment.

The design of this project is consistent with the engineering standards governing dam safety. The project will be safe if constructed, operated, and maintained in accordance with the requirements of this license. Analysis of related issues is provided in the Safety and Design Assessment attached to this order.

1/ 99 CONG. REC. 54140 (remarks by Senator McClure, April 11, 1986).

2/ Bureau of Land Management's Land Use Plan for its Magic Planning Unit-1980; Environmental Protection Agency - Region 10's policies on mitigating adverse environmental impacts permitted under section 404 of the Clean Water Act; State of Idaho's Statewide Comprehensive Outdoor Recreation Plan - 1983.

Based on our review of the agency and public comments filed in this proceeding, and on our independent analysis, as discussed herein, we conclude that the Magic Dam Project is best adapted to a comprehensive plan for the Big Wood River, taking into consideration the beneficial public uses described in section 10(a)(1) of the Federal Power Act.

The Director orders:

(A) This license is issued to Cook Electric, Inc. (licensee), for a period of 40 years, effective the first day of the month in which this order is issued, to construct, operate, and maintain the Magic Dam Project. This license is subject to the terms and conditions of the Act, which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the Act.

(B) The project consists of:

(1) All lands, to the extent of the licensee's interests in those lands, enclosed by the project boundary shown by Exhibit G:

<u>Exhibit G-</u>	<u>FERC No. 3407-</u>	<u>Showing</u>
1	15	Location Map
2	16	Site Plan

(2) The existing project facilities at the site consisting of: (a) a 128-foot-high, 3,100-foot-long earthfill dam; (b) a 400-foot-long spillway; (c) a dike, located adjacent to the spillway, approximately 800 foot long; (d) a 36.5-foot-high outlet tower; (e) a 620-foot-long, 132-inch diameter outlet conduit; (f) a bifurcation; (g) 2 emergency gates and 2 outlet valves in valve-house; and (h) a 3,740-acre reservoir with a capacity of 191,500 acre-feet at a normal maximum surface elevation of 4,935 feet msl. The proposed facilities consisting of: (a) an 800-foot-long additional spillway; (b) raising the crest of the dike to elevation 4,945 feet msl; (c) a new bifurcation, approximately 40 feet upstream of the existing bifurcation; (d) a 170-foot-long, 132-inch diameter penstock; (e) a powerhouse containing 3 generating units with a combined capacity of 9.0 MW; (f) the 4.16-kV generator leads; (g) a 4.16/46-kV step-up transformer; (h) a 2.8-mile-long transmission line which would connect to existing 46-kV Idaho Power Company lines; and (i) appurtenant facilities.

The project works generally described above are more specifically shown and described by those portions of Exhibits A and F recommended for approval in the attached Safety and Design Assessment.

(3) All of the structures, fixtures, equipment or facilities used to operate or maintain the project and located within the project boundary, all portable property that may be employed in connection with the project and located within or outside the project boundary, and all riparian or other rights that are

necessary or appropriate in the operation or maintenance of the project.

(C) The Exhibit G described above and those sections of Exhibits A and F recommended for approval in the attached Safety and Design Assessment are approved and made part of the license.

(D) This license is subject to the articles set forth in Form L-2, (October 1975), entitled "Terms and Conditions of License for Unconstructed Major Project Affecting Lands of the United States," except article 20. The license is also subject to the following additional articles:

Article 201. The licensee shall pay the United States the following annual charge, effective the first day of the month in which this license is issued:

- a. For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 12,000 horsepower.
- b. For the purpose of reimbursing the United States for the use, occupancy, and enjoyment of 2.5 acres of its lands other than for transmission line right-of-way, a reasonable annual charge as determined by the Commission in accordance with its regulations in effect from time to time.
- c. For the purpose of recompensing the United States for the use, occupancy, and enjoyment of 17.15 acres of its lands for transmission line right-of-way, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time.

Article 202. Pursuant to Section 10(d) of the Act, after the first 20 years of operation of the project under license, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. One-half of the project surplus earnings, if any, accumulated after the first 20 years of operation under the license, in excess of the specified rate of return per annum on the net investment, shall be set aside in a project amortization reserve account at the end of each fiscal year. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year after the first 20 years of operation under the license, the amount of that deficiency shall be deducted from the amount of any surplus earnings subsequently accumulated, until absorbed. One-half of the remaining surplus earnings, if any, cumulatively computed, shall

be set aside in the project amortization reserve account. The amounts established in the project amortization reserve account shall be maintained until further order of the Commission.

The annual specified reasonable rate of return shall be the sum of the annual weighted costs of long-term debt, preferred stock, and common equity, as defined below. The annual weighted cost for each component of the reasonable rate of return is the product of its capital ratio and cost rate. The annual capital ratio for each component of the rate of return shall be calculated based on an average of 13 monthly balances of amounts properly includable in the licensee's long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rates for long-term debt and preferred stock shall be their respective weighted average costs for the year, and the cost of common equity shall be the interest rate on 10-year government bonds (reported as the Treasury Department's 10-year constant maturity series) computed on the monthly average for the year in question plus four percentage points (400 basis points).

Article 203. The licensee shall clear and keep clear to an adequate width all 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 result from maintenance, operation, 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. All clearing of lands and disposal of unnecessary material shall be done with due diligence to the satisfaction of the authorized representative of the Commission and in accordance with appropriate federal, state, and local statutes and regulations.

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

Article 302. The licensee shall at least 60 days prior to start of construction, submit one copy to the Commission's Regional Director and two copies to the Director, Division of Inspections, of the final contract drawings and specifications for pertinent features of the project, such as water retention structures, powerhouse, and water conveyance structures. The Director, Division of Inspections, may require changes in the plans and specifications to assure a safe and adequate project.

Article 303. The licensee shall review and approve the design of contractor-designed cofferdams and deep excavations prior to the start of construction and shall ensure that construction of cofferdams and deep excavations is consistent with the approved design. At least 30 days prior to start of construction of the cofferdam, the licensee shall submit to the Commission's Regional Director and Director, Division of Inspections, one copy each of the approved cofferdam construction drawings and specifications and the letter(s) of approval.

Article 304. The licensee shall within 90 days of completion of construction file, for approval by the Commission, revised Exhibits A, F, and G to describe and show the project as built.

Article 305. The licensee shall file, for Commission approval, revised Exhibit F drawings showing the final design of project structures. The revised Exhibit F drawings shall be accompanied by a supporting design report and the licensee shall not commence construction of any project structure until the corresponding revised Exhibit F drawing has been approved.

Article 306. The licensee shall submit, with the final contract drawings and specifications for the Magic Dam Hydroelectric Project one copy to the Commission's Regional Director and two copies to the Director, Division of Inspections, of a study demonstrating that under flood conditions the flashboards can be safely removed in a timely manner to provide adequate free-board. The study should cover the following areas: (1) maximum-flow and water surface elevation that the flashboards will be removed and the time it will take to pull or trip and release, (2) method used to pull the flashboards or trip the release, and (3) how will the dam operator gain access to the spillway during flood conditions. The Director, Division of Inspections, reserves the right to require any changes in project design or operation so that Magic Dam will safely pass the PMF. The licensee shall not commence operation of the power generating facilities until the Director, Division of Inspections, has reviewed and approved the study.

Article 401. The licensee, after consultation with the Idaho Department of Fish and Game, the Idaho Department of Health and Welfare, the U.S. Fish and Wildlife Service, and the Bureau of Land Management, shall prepare and file with the Commission, within 1 year from the date of issuance of this license and prior to commencing any land-clearing, land-disturbing, or spoil-producing activities at the project, a comprehensive plan to control erosion, dust, and slope stability, and to minimize the quantity of sediment or other potential water pollutants resulting from project construction, construction and operation of the new spillway section, cofferdam emplacement and removal, spoil-disposal, and project operation. The plan shall also include descriptions and functional design drawings of control measures, topographic map locations of control measures, an implementation schedule, monitoring and maintenance programs for project construction and operation, and provisions for periodic review of the plan and for making any necessary revisions to the plan. The licensee shall include in the filing documentation of agency consultation on the plan, and copies of agency comments or recommendations.

If the licensee disagrees with any agency recommendations, the licensee shall provide a discussion of the reasons for disagreeing, based on actual-site geological, soil, and groundwater

conditions. The Commission reserves the right to require changes to the plan. Unless the Director, Office of Hydropower Licensing, directs otherwise, the licensee may commence land-clearing, land-disturbing, or spoil-producing activities at the project, 90 days after filing this plan.

Article 402. The licensee, after consultation with the Idaho Department of Fish and Game and the U.S. Fish and Wildlife Service, shall develop a monitoring plan to evaluate the extent of sedimentation below Magic dam, caused by project construction and operation, and the impact of this sedimentation on trout spawning habitat.

Within 1 year from the date of issuance of this license, the licensee shall file, for Commission approval, a copy of the monitoring plan, along with comments from the agencies on the plan and a schedule for filing the results of the monitoring. The Commission reserves the right to require modifications to the plan and the schedule.

The results of the monitoring shall be submitted to the Commission according to the approved schedule, along with the comments from the consulted agencies relating to the results. If the results of the monitoring indicate that project construction or operation have resulted in a reduction of trout spawning habitat below Magic Dam, the licensee shall also file, for Commission approval, a plan to protect and maintain spawning habitat and a schedule for implementing the proposed measures. The Commission reserves the right to require modifications to the mitigative plan and schedule.

Article 403. The licensee, after consultation with the Idaho Department of Fish and Game, the Idaho Department of Health and Welfare, and the U.S. Fish and Wildlife Service, shall develop a dissolved oxygen (DO) monitoring plan. The plan shall include measures necessary to effect rapid alteration of project operation to ensure maintenance of DO in the project tailrace at 90% saturation from April 1 through July 1 and maintenance of state DO standards immediately downstream of the project the rest of the year. The plan shall be filed with the Commission for approval within 1 year from the date of issuance of this license. Comments from the above agencies on the plan shall be included in the filing. The Commission reserves the right to require modifications in the plan.

Article 404. The licensee, after consultation with the Idaho Department of Fish and Game (IDFG) and the U.S. Fish and Wildlife Service (FWS), shall develop a monitoring plan (plan) which has been agreed to by all participants, to evaluate turbine-induced injury and mortality to fish resources. The plan shall include methods and procedures to be followed and identify qualified technical personnel that would conduct the study. Within 6 months from the date of issuance of this license, the licensee shall file, for Commission approval, a copy of the plan, along with a schedule for filing the results of the monitoring and comments from the above agencies on the plan and the schedule.

The results of the monitoring shall be submitted to the Commission according to the approved schedule, along with comments from FWS and IDFG on the results. If the results of the monitoring indicate that measures are necessary to minimize adverse effects to fish resources, the licensee also shall file, for Commission approval, a schedule for implementing the measures, agreed upon by the licensee, FWS, and IDFG. Measures shall include, but not be limited to, providing funding to IDFG for stocking additional fish in the project reservoir, and compensation for turbine-mortality impacts retroactive to the start of project operation. At the same time, copies of the schedule shall be served upon FWS and IDFG. The Commission reserves the right to require necessary measures to protect the fish resource.

Article 405. The licensee, after consultation with the U.S. Fish and Wildlife Service and the Idaho Department of Fish and Game, shall file for Commission approval, within 1 year from the date of issuance of this license, a plan to mitigate in kind for the loss of riparian habitat value from project construction and operation. The plan shall include but shall not be limited to: (a) identification of the type of habitat to be used for replacement; (b) a determination of the location and the number of acres of habitat to be used for replacement; (c) a discussion of the specific construction and maintenance techniques to be used for mitigating project effects; (d) a schedule of implementation; and (e) a monitoring program to determine the effectiveness of mitigative measures. Documentation of agency consultation on the mitigative plan shall be included in the filing. The Commission reserves the right to require changes to the plan.

Article 406. The licensee, before starting any land-clearing or land-disturbing activities that may affect significant archeological or historic sites, shall implement its cultural resources management plan to avoid such sites as described in the licensee's application for license filed with the Commission on July 24, 1984. The plan shall be implemented in a manner satisfactory to the Idaho State Historic Preservation Officer (SHPO). Within 4 years after the date of issuance of this license, the licensee shall file with the Commission a copy of a letter from the SHPO indicating that the plan has been implemented so as to avoid impacts to archeological or historic sites. The licensee shall make funds available in a reasonable amount for the required work. If the licensee discovers any previously unidentified archeological or historic sites during the course of constructing or developing project works or other facilities at the project, the licensee shall stop all construction and development activities in the vicinity of the sites and shall consult a qualified cultural resources specialist and the SHPO about the eligibility of the sites for listing in the National Register of Historic Places and about any measures needed to avoid the sites or to mitigate effects on the sites. If the licensee and the SHPO cannot agree on the amount of money to be spent for project-specific archeological and historical purposes, the Commission reserves the right to require the licensee to conduct the necessary work at the licensee's own expense.

Article 1. The licensee, after consultation with the National Park Service, the Bureau of Land Management, the Idaho Department of Parks and Recreation, the Blaine County Recreation District, and the Blaine County Planning and Zoning Commission, shall prepare and file with the Commission, for approval, within 1 year from the date of issuance of this license, a Report on Recreational Resources that conforms to the requirements of Commission Regulations 18 CFR at 4.51 (f)(5). The report shall include, but shall not be limited to: a plan for improving access roads, providing shade, and rehabilitating toilet facilities at existing recreational facilities; identification of the effect of reservoir drawdown on ice fishing; provisions for the development of parking, restrooms, landscaping, camping facilities, and fishing access (with consideration for the handicapped) adjacent to Magic Dam; and a proposal for facility development at the Dinosaur Ridge recreation site. Further, the filing shall include a drawing showing the type and location of the facilities to be provided at the project, a construction schedule, identification of the entity responsible for operating and maintaining the project recreational facilities, and documentation of consultation with the above-named agencies.

Article 408. (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 other 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 uses 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, cancelling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The types 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; and (3) embankments, bulkheads, retaining

walls, or similar structures for erosion control to protect the existing shoreline. 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 uses 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 reservoir 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 and roads for which 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 reservoir. 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 certificates 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 watercraft at a time and are located at least one-half mile from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or 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 the edge of the project reservoir at normal maximum 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 45 days before conveying any interest in project lands under this paragraph (d), the licensee must submit a letter to the Director, Office of Hydropower Licensing, 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 or K 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 Director, 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 paragraphs (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 Exhibit R or approved report on recreational resources of an Exhibit E; or, if the project does not have an approved Exhibit R or approved report on recreational resources, that the lands to be conveyed do not have recreational value.

(3) The instrument of conveyance must include covenants running with the land adequate to ensure that: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; and (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.

(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.

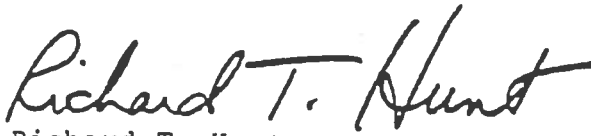
(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised Exhibit G or K drawings (project boundary maps) reflecting exclusion 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 or K 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.

Article 409. The Commission reserves the authority to order, upon its own motion or upon the recommendation of federal or state fish and wildlife agencies or affected Indian tribes, alterations of project structures and operation that take into account, to the fullest extent practicable, at each relevant stage of the decision-making process, the regional fish and wildlife program developed and amended under the Pacific Northwest Electric Power Planning and Conservation Act.

(E) The Commission reserves the right to assess the licensee fees pursuant to section 30(e) of the Federal Power Act.

(F) This order is issued under authority delegated to the Director and is final unless appealed under Rule 1902 to the Commission by any party within 30 days from the issuance date of this order. Filing an appeal does not stay the effective date of this order or any date specified in this order. The licensee's failure to appeal this order shall constitute acceptance of the license.



Richard T. Hunt
Director, Office of
Hydropower Licensing