

140 FERC ¶ 62,242
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Idaho Power Company

Project No. 503-048

ORDER ISSUING NEW LICENSE

(September 28, 2012)

INTRODUCTION

1. On June 26, 2008, Idaho Power Company (Idaho Power) filed, pursuant to sections 4(e) and 15 of the Federal Power Act (FPA),¹ an application for a new license to continue operation and maintenance of the Swan Falls Hydroelectric Project No. 503. The project's authorized capacity being licensed is 25 megawatts (MW). The project is located on the Snake River, in Ada and Owyhee Counties, Idaho.² As currently licensed, the project occupies 529 acres of federal land within the Snake River Birds of Prey National Conservation Area (Snake River NCA),³ administered by the U.S. Department

¹ 16 U.S.C. §§ 797(e) and 808 (2006).

² The Snake River is a navigable waterway of the United States from its mouth on the Columbia River (which flows to the Pacific Ocean) to the mouth of Henry's Fork, at about river mile 774. *Idaho Power Company*, 14 F.P.C. 71 (1955). Pursuant to section 23(b)(1) of the FPA, 16 U.S.C. § 817(1) (2006), the project is required to be licensed for two reasons: it is located on a navigable waterway; and it occupies federal lands.

³ The Snake River NCA was established on August 4, 1993, by Public Law No. 103-64, 107 Stat. 302 (1993), for the conservation, protection, and enhancement of the environmental resources and values associated with the area, including raptors and their habitats. Section 4(i) of Public Law 103-64 provides that the Commission shall retain its current jurisdiction under the FPA concerning all aspects of the continued and future operation of licensed or relicensed hydroelectric facilities located within the boundaries of the Snake River NCA. *See* 107 Stat. at 308. Therefore, the Commission has the authority to relicense the Swan Falls Project.

of the Interior (Interior), Bureau of Land Management (BLM). Under the new license, the project will occupy 185.8 acres of Snake River NCA federal land. As discussed below, this order issues a new license for the project.

BACKGROUND

2. The Commission issued the original license for the project on June 25, 1928, and the license expired on June 30, 1970. The Commission issued a new license on December 22, 1982, and the license expired on June 30, 2010.⁴ Since then, Idaho Power has operated the project under an annual license pending the disposition of its new license application.

3. On December 5, 2008, the Commission issued a public notice that was published in the *Federal Register* accepting the application for filing and soliciting motions to intervene and protests.⁵ The notice set February 3, 2009, as the deadline for filing notices and motions to intervene. The State of Idaho and the Shoshone-Bannock Tribes timely filed motions to intervene.⁶ The intervenors do not oppose relicensing the project.

4. On June 16, 2009, the Commission issued a public notice that was published in the *Federal Register* indicating the application was ready for environmental analysis and soliciting comments, recommendations, terms and conditions, and prescriptions.⁷ The

⁴ 12 FERC ¶ 62,519 (1982).

⁵ 73 *Fed. Reg.* 75417 (December 11, 2008).

⁶ The State of Idaho filed a pleading styled as a “Notice of Intervention and Motion to Intervene.” The State of Idaho filed the notice pursuant to Rule 214(a)(2) of the Commission’s Rules of Practice and Procedure, on behalf of the Idaho Department of Environmental Quality (Idaho DEQ), the Idaho Department of Fish and Game (Idaho DFG), and the Idaho Water Resource Board (Idaho WRB). The state filed the motion to intervene pursuant to Rule 214(a)(3), on behalf of the Idaho Department of Parks and Recreation (Idaho DPR) and the Idaho State Board of Land Commissioners (Idaho Board). See 18 C.F.R. § 385.214(a)(2) and (a)(3) (2012). Under Rule 214(a)(2), the Idaho DEQ, Idaho DFG, and Idaho WRB became parties to the proceeding upon timely filing of the notice of intervention. The motions to intervene filed by the State of Idaho and the Shoshone-Bannock Tribes were timely and unopposed, and therefore, automatically granted under Rule 214(c)(1) of the Commission’s regulations. 18 C.F.R. § 385.214(c) (2012).

⁷ 74 *Fed. Reg.* 29685 (June 23, 2009).

notice set August 17, 2009, as the deadline for filing comments, recommendations, terms and conditions, and prescriptions. Interior and the State of Idaho filed comments and recommendations. On March 5, 2010, Commission staff issued a draft Environmental Impact Statement (EIS) on the application to relicense the project. Comments on the draft EIS were filed by the State of Idaho, the U.S. Environmental Protection Agency (EPA), Interior, and Idaho Power. A final EIS was prepared by Commission staff and issued on August 6, 2010. The EPA filed comments on the final EIS.⁸ The interventions, comments, and recommendations have been fully considered in determining whether, and under what conditions, to issue this license.

PRELIMINARY MATTERS

5. As noted above, the Swan Falls Project occupies federal land within the Snake River NCA.⁹ Congress established the Snake River NCA in 1993 for the conservation, protection, and enhancement of the environmental resources and values associated with the area, including raptors and their habitats.¹⁰ BLM administers the Snake River NCA lands as a unit of the national park system.

6. Section 2402 of the Energy Policy Act of 1992¹¹ prohibits the Commission from issuing “an original license ... [or exemption] for any new hydroelectric project located within the boundaries of any unit of the national park system that would have a direct adverse effect on federal lands within any such unit.” That section does not affect the Commission’s authority to issue relicenses for projects located within a unit of the national park system.¹²

⁸ Unless otherwise specified, references to the EIS in this order refer to the final EIS.

⁹ Interior does not allege that these lands are a “reservation” as defined in FPA section 3(2), 16 U.S.C. § 794(2) (2006), and it did not submit conditions for inclusion in the license pursuant to FPA section 4(e), 16 U.S.C. § 797(e) (2006).

¹⁰ Pub. L. No. 103-64, 107 Stat. 302 (1993).

¹¹ Pub. L. No. 102-486, 106 Stat. 2776-3133 (Oct. 24, 1992).

¹² See, e.g., *Northern States Power Company*, 67 FERC ¶ 61,282 (1994).

PROJECT DESCRIPTION

A. Project Area

7. The project is located in the southwestern portion of the Snake River Plain. The Snake River flows generally from southeast to northwest at the Swan Falls Project. There are no major tributaries in the vicinity of the project. The existing project was constructed on the upstream edge of waterfalls caused by a ridge of basalt extending across the river. The project reservoir is a long and narrow water body confined within the canyon through which the Snake River flows.

B. Existing Facilities

8. The Swan Falls Project consists of: (1) a 1,218-foot-long, 88-foot-high concrete gravity and rock-fill dam, composed of an abutment embankment, a spillway with twelve 31-foot-wide, 16.1-foot-high spillway sections, a center island, the “old powerhouse” section (decommissioned and replaced by the current powerhouse in 1994 and maintained by Idaho Power as a hydropower museum), the intermediate dam, and the project’s powerhouse; (2) a 12-mile-long, 1,525-acre reservoir with a normal maximum water surface elevation of 2,314 feet mean sea level (msl); (3) two 36-foot-long concrete flow channels leading from the intake structure on the project’s powerhouse to vertical steel shafts housing (4) two horizontal Kaplan turbine/generator units with a nameplate rating of 12.5 MW each; (5) a 1,400-foot-long, 120-foot-wide excavated tailrace channel; (6) a 1.2-mile-long, 138-kilovolt transmission line; and (7) appurtenant facilities. A more detailed project description is contained in Ordering Paragraph (B)(2).

9. Idaho Power proposes no physical changes to the generation facility features or other major project facilities.

C. Current Project Operation

10. The Swan Falls Project reservoir is a re-regulating reservoir, with three feet of storage available between elevation 2,311 feet msl and 2,314 feet msl to manage flows from the upstream C.J. Strike Project (FERC Project No. 2055).¹³ The project can also provide minimal peaking operations to meet short-term, unexpected load requirements.

¹³ The Commission relicensed Idaho Power Company’s C.J. Strike Project No. 2055 in 2004. *Idaho Power Co.*, 108 FERC ¶ 61,129 (2004).

11. Under the current license, Idaho Power is required to provide instantaneous minimum flows downstream of the Swan Falls dam of 5,000 cubic feet per second (cfs) during the irrigation season (April 1 to September 30) and 4,000 cfs outside of the irrigation season (October 1 to March 31). If the average daily inflow is less than the specified minimums, the project discharge from the powerhouse and/or spillway must equal the average inflow. The current license also includes ramping rate restrictions of no more than one foot per hour and three feet per day as measured at the U.S. Geological Survey gage located approximately one mile downstream of the dam.

D. Project Recreation Facilities

12. The following four project recreation sites are included within the project boundary: (1) Swan Falls Park, located along the northeast bank of the reservoir just upstream of the dam; (2) Swan Falls reservoir boat ramp, located on the northeast bank of the reservoir about 0.25 mile upstream of the dam; (3) Swan Falls downstream boat launch, located on the northeast bank of the tailwater just downstream of the dam; and (4) Swan Falls powerhouse museum, located within the old powerhouse between the center island and the intermediate dam. A canoe portage trail located on the southwest bank adjacent to the dam is also a project recreation site, but is not included within the current project boundary.

E. Project Boundary

13. The current project boundary encloses about 2,192 acres, of which 937 acres are water and 1,255 acres are land; 529 acres are federal land managed by BLM. The project boundary extends from about 12 miles upstream of the dam to about 2,000 feet downstream of the dam. The project boundary follows a combination of metes and bounds and contour lines that enclose all major project features, including the dam, powerhouse, reservoir, transmission line, and four of the five project recreation areas. It also encompasses the main project access road, an equipment yard, a storage structure, five Idaho Power-owned houses,¹⁴ and a yard for trashrack debris.

14. Under this new license, 791 acres of project land upstream of the Swan Falls dam are being removed because the lands are not needed for project purposes. Upstream of the dam, the new project boundary will generally follow contour 2,318 feet msl¹⁵ along both sides of the river.

¹⁴ The houses are used by Idaho Power employees that operate and maintain the project.

¹⁵ The 2,318-foot elevation contour is the reservoir level during the maximum
(continued)

15. Under this new license, 192 acres of land downstream of the Swan Falls dam are being added for wildlife habitat protection, cultural resource site protection, and recreation. Downstream of the dam, the project boundary is being extended approximately 1.5 miles to generally include all lands on the northeast side of the river between the ordinary high water mark and the elevation 2,360-foot-msl contour line to bring the canoe portage trail into the project boundary and several dispersed recreation sites that Idaho Power proposes to improve and maintain.

16. The new project boundary will enclose approximately 1,593 acres of land and water, of which 185.8 acres are federal lands managed by BLM as part of the Snake River NCA.

F. Proposed Project Operation and Environmental Measures

17. Idaho Power proposes the following measures under the new license: (1) release minimum flows from the dam of 3,900 cfs from April 1 to October 31, and 5,600 cfs from November 1 to March 31 each year to protect aquatic resources in the Snake River; (2) maintain the current ramping rate restriction of no more than one foot per hour or three feet per day; (3) monitor dissolved oxygen and temperature in the project outflow to document and report dissolved oxygen and temperature conditions downstream of the dam and to determine whether additional measures are needed; (4) continue to remove and dispose of aquatic vegetation and debris that accumulate on the project trashracks; (5) implement its proposed Special Status Plant Management Plan; (6) implement its proposed Noxious Weed Management Plan; (7) implement its proposed Wildlife Habitat Protection and Enhancement Plan; (8) develop and implement a transmission line operation and maintenance plan; (9) finalize and implement its Recreation Management Plan; (10) continue to implement its existing Public Safety Plan; (11) develop and implement a Visual Guidelines Plan identifying paint schemes, plant species, and construction materials to be used to reduce visual effects; (12) develop and implement a Signage Plan; (13) finalize and implement its Resource Management Plan; (14) continue to implement its existing policies for permitting piers, boat docks, and other facilities; and (15) implement the May 2010 Historic Properties Management Plan (HPMP).

SUMMARY OF LICENSE REQUIREMENTS

18. As summarized below, this license, which authorizes 25 MW of renewable energy, requires a number of measures to protect and enhance fish, wildlife, cultural, recreational, and aesthetic resources at the project.

spillway design event at Swan Falls dam.

19. To protect water quality and aquatic resources in the Snake River, the license requires Idaho Power to implement its proposals to provide a 3,900-cfs minimum flow downstream of Swan Falls dam from April 1 to October 31 and a 5,600-cfs minimum flow from November 1 to March 31 annually; restrict ramping rates during flow release changes; and remove and dispose of aquatic vegetation and debris that accumulate on the project trashracks on land. Further, the license requires Idaho Power to implement the staff recommendations to develop and implement an Operations Compliance Monitoring Plan; implement the measures of the Snake River White Sturgeon Conservation Plan¹⁶ that apply to the reach of the Snake River between the head of the Brownlee reservoir (river mile 343)¹⁷ and the head of the Swan Falls reservoir (river mile 469); and develop and implement a Water Quality Monitoring Plan as required by the water quality certificate.

20. To protect the endangered Snake River physa snail (Snake River physa), this license requires Idaho Power to file the staff-recommended Snake River Physa Snail Protection Plan for Commission approval, detailing how it will implement the incidental take terms and conditions in the U.S. Fish and Wildlife Service (FWS) Biological Opinion. The plan must include measures for conducting a series of snail surveys; monitoring to track population trends, if Snake River physa are consistently located in the project area; monitoring sediment deposition and snail habitat; scheduling construction activities for the downstream boat ramp site during the lowest possible streamflow period; and ensuring that a minimum flow of 3,900 cfs is maintained downstream of the powerhouse at all times.

21. To protect vegetation and wildlife resources, this license requires Idaho Power to implement its proposed Special Status Plant Management Plan, Noxious Weed Management Plan, and Wildlife Habitat Protection and Enhancement Plan. This license also requires Idaho Power to implement staff-recommended timing restrictions on transmission line maintenance activities to protect benchland nesting birds and cliff-nesting raptors.

¹⁶ The Snake River White Sturgeon Conservation Plan was filed with the Commission on August 5, 2005. Its geographic scope stretches from Shoshone Falls (river mile 614) to the Lower Granite dam (river mile 107). It was included as Technical Report E.3.1-D to the Swan Falls Project final license application.

¹⁷ Brownlee reservoir, which is the farthest upstream of three reservoirs forming the Hells Canyon Project (FERC Project No. 1971), is about 173 miles downstream of the Swan Falls Project.

22. To protect and enhance recreational resources, the license requires Idaho Power to finalize and implement its proposed Recreation Management Plan. The license requires that Idaho Power include in the plan staff-recommended modifications addressing cultural resource consultation, erosion control, as-built drawings, dispersed recreation sites, accessibility, litter and sanitation, and an implementation schedule; providing for recreation monitoring and consultation with resource agencies every six years to assess recreation facilities, dispersed recreation sites, and usage; and filing with the Commission any proposals for future recreation management, as needed.

23. To protect visual resources in the project area, the license requires Idaho Power to develop and implement its proposed Visual Guidelines Plan and Signage Plan.

24. To protect cultural resources, this license requires Idaho Power to implement the provisions of its HPMP.

WATER QUALITY CERTIFICATION

25. Under section 401(a)(1) of the Clean Water Act (CWA),¹⁸ the Commission may not issue a license authorizing the construction or operation of a hydroelectric project unless the state water quality certifying agency either has issued water quality certification for the project or has waived certification by failing to act on a request for certification within a reasonable period of time, not to exceed one year. Section 401(d) of the CWA provides that the certification shall become a condition of any federal license that authorizes construction or operation of the project.¹⁹

26. On June 6, 2008, Idaho Power applied to Idaho DEQ for water quality certification for the Swan Falls Project, which Idaho DEQ received the same day. On May 4, 2009,²⁰ Idaho DEQ issued certification for the Swan Falls Project that includes two conditions, which are set forth in Appendix A of this order and incorporated into the license (see Ordering Paragraph (D)).

27. The certification includes specific requirements for Idaho Power to develop a Water Quality Monitoring Plan in consultation with Idaho DEQ within six months of license issuance and to submit annual reports to Idaho DEQ summarizing the results of the water quality monitoring as described in the Water Quality Monitoring Plan. The

¹⁸ 33 U.S.C. § 1341(a)(1) (2006).

¹⁹ 33 U.S.C. § 1341(d) (2006).

²⁰ Idaho Power filed the certification on August 13, 2009.

purpose of the monitoring plan is to collect data on temperature, dissolved oxygen, and total dissolved gases for comparison with water quality standards and to help detect the effect, if any, of the Swan Falls Project on water quality, both within the reservoir and downstream from the Swan Falls Project. The monitoring plan will include a description of the location and method of monitoring the following parameters, as appropriate, in the inflow and the outflow to the Swan Falls Project: discharge flows, dissolved oxygen, total dissolved gas, and water temperature in the Snake River. The monitoring plan will include a Quality Assurance Control Project Plan (QAPP). The QAPP will include appropriate protocols for dissolved oxygen, total dissolved gas, water temperature measurement, and continuous flow monitoring.

28. The certification also requires Idaho Power to submit annual reports to Idaho DEQ that summarize the results of its water quality monitoring as set out in the approved monitoring plan. Idaho DEQ intends to review the annual data and report of findings in coordination and consultation with Idaho DFG. After five years, Idaho Power may request the termination of some or all of the monitoring described in the approved monitoring plan that is in addition to the monitoring proposed by Idaho Power in its license application. Within 60 days of the request, Idaho DEQ will notify Idaho Power of its decision regarding whether termination of the monitoring is appropriate. If after review of an annual report, Idaho DEQ determines the data show that the operation of the Swan Falls Project causes or contributes to a violation of water quality standards, Idaho Power will be required to develop a contingency plan, within six months of Idaho DEQ's determination, that addresses Idaho Power's contribution to the violation.

29. Article 401(a) requires Idaho Power to file for Commission approval the Water Quality Monitoring Plan developed in consultation with Idaho DEQ.

30. Article 401(b) requires Idaho Power to file annual data reports for Commission review, and to document compliance with the measures required by the water quality certification.

31. Article 401(c) requires Idaho Power to file with the Commission any contingency plans that may result from violations of water quality standards, as required by the water quality certification.

SECTION 18 FISHWAY PRESCRIPTION

32. Section 18 of the FPA²¹ provides that the Commission shall require the construction, maintenance, and operation by a licensee of such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce, as appropriate.

33. By letter filed August 12, 2009, the Secretary of the Interior requested that the Commission reserve authority to prescribe fishways. Consistent with Commission policy, Article 407 of this license reserves the Commission's authority to require fishways that may be prescribed by Interior for the Swan Falls Project.

THREATENED AND ENDANGERED SPECIES

34. Section 7(a)(2) of the Endangered Species Act of 1973²² requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species, or result in the destruction or adverse modification of their designated critical habitat.

35. The endangered Snake River physa (*Haitia (Physa) natricina*) has been documented in the project area, although not consistently. On March 25, 2011, Idaho Power filed a draft biological assessment (BA), which considered the effects of the project on the Snake River physa. Based on Commission staff's review of the BA, staff required Idaho Power to collect additional field data, which resulted in Idaho Power filing amendments to the BA on June 30, 2011, and August 18, 2011. The information presented in the amended BA, which indicated that Snake River physa individuals occur in the project area at depths subject to exposure from project operation, led staff to conclude that relicensing the project would be likely to adversely affect Snake River physa. By letter dated August 21, 2011, staff requested formal consultation with FWS.

36. On February 2, 2012, FWS filed a biological opinion with its determination that the project is not likely to jeopardize the continued existence of the Snake River physa. In its biological opinion, FWS included an incidental take statement with four reasonable and prudent measures to minimize take of Snake River physa, along with six incidental take terms and conditions to implement the measures. FWS also included one discretionary conservation recommendation to further the conservation and protection of Snake River physa.

37. This license includes the incidental take terms and conditions and requires the licensee to file a plan (Article 405) for Commission approval detailing how it will

²¹ 16 U.S.C. § 811 (2006).

²² 16 U.S.C. § 1536(a) (2006).

implement the terms and conditions of FWS' biological opinion. The terms and conditions require the licensee to undertake a series of aquatic surveys targeted primarily at areas of previously identified Snake River physa concentrations from the head of Swan Falls reservoir downstream to the head of Brownlee reservoir over a specified number of years to be agreed upon in consultation with the FWS; establish a voucher system²³ to account for Snake River physa collections; establish a regular monitoring system to track population trends, if Snake River physa are found and can be consistently located in the project area; develop protocols, in cooperation with the FWS, to monitor for increases in sediment deposition and increases in macrophyte beds; schedule construction activities for the downstream boat ramp site to coincide with the least minimum flows possible; ensure that a minimum flow of 3,900 cfs is maintained downstream of the powerhouse at all times; and obtain all required federal and state collection permits.²⁴

38. The FWS included the following conservation recommendation: "If monitoring shows a declining population trend ... engage in discussion with the Service to determine if project activities are contributing to the decline; and, to discuss the potential for modifying project activities in order to minimize factors contributing to the decline." A necessary component of the plan required by Article 405 will be provisions for consultation with FWS and Idaho DFG if survey and monitoring show that populations are declining, and filing with the Commission any changes in the project that Idaho Power proposes to conserve and protect the Snake River physa. Therefore, Article 405 requires Idaho Power to include in its plan provisions for consultation with FWS and Idaho DFG if survey and monitoring show that populations are declining, and filing with the Commission any changes in the project that Idaho Power proposes to conserve and protect the Snake River physa.

39. The terms and conditions for the Snake River physa are included in Appendix B (FWS' Biological Opinion, Terms and Conditions) and are made part of this license by Ordering Paragraph (E).

NATIONAL HISTORIC PRESERVATION ACT

²³ Voucher systems serve as taxonomic references to document the presence of a species at a particular locality.

²⁴ FWS' terms and conditions are framed as requirements placed on the Commission. They have been revised to clarify that the requirements are the licensee's responsibility.

40. Under section 106 of the National Historic Preservation Act (NHPA)²⁵ and its implementing regulations,²⁶ federal agencies must take into account the effect of any proposed undertaking on properties listed or eligible for listing in the National Register (defined as historic properties) and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking. This generally requires the Commission to consult with the State Historic Preservation Officer (SHPO) to determine whether and how a proposed action may affect historic properties, and to seek ways to avoid or minimize any adverse effects.

41. To satisfy these responsibilities, the Commission executed a Programmatic Agreement (PA) with the Idaho SHPO and invited Idaho Power; BLM; Shoshone-Bannock Tribes, Fort Hall Reservation; Shoshone-Paiute Tribes, Duck Valley Reservation; Burns Paiute Tribe; and Fort McDermitt Paiute Shoshone Tribes to concur with the stipulations of the PA. The PA was executed with the Idaho SHPO on February 18, 2011. Idaho Power signed the PA as a concurring party. The PA requires Idaho Power to implement the HPMP, dated May 2010, for the term of the new license issued for this project. Execution of the PA demonstrates the Commission's compliance with section 106 of the NHPA. Article 417 requires the licensee to implement the PA and associated HPMP.

PACIFIC NORTHWEST ELECTRIC POWER PLANNING AND CONSERVATION ACT

42. In 1980, Congress enacted the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act).²⁷ This act created the Northwest Power Planning Council (now known as the Northwest Power and Conservation Council) and directed it to develop a Columbia River Basin Fish and Wildlife Program (Program). The Program is to protect, mitigate, and enhance fish and wildlife resources affected by the development and operation of hydroelectric projects on the Columbia River and its tributaries, while assuring the Pacific Northwest an adequate, efficient, economical, and reliable power supply.²⁸ Section 4(h)(11)(A) of the Northwest Power Act²⁹ provides that

²⁵ 16 U.S.C. § 470 *et seq.* (2006).

²⁶ 36 C.F.R. Part 800 (2012).

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

²⁸ 16 U.S.C. § 839(b)(h)(5) (2006).

²⁹ 16 U.S.C. § 839(h)(11)(A) (2006).

federal agencies operating or regulating hydroelectric projects within the Columbia River Basin shall exercise their responsibilities to provide equitable treatment for fish and wildlife resources with other purposes for which the river system is utilized and shall take the Council's Program into account "at each relevant stage of decision-making processes to the fullest extent practicable."

43. To mitigate harm to fish and wildlife resources, the Council has adopted specific provisions to be considered in the licensing or relicensing of non-federal hydropower projects (Appendix B of the Program). Commission staff's recommendations, including minimum flows and ramping rates (Article 402) and wildlife habitat protection and enhancement (Article 411), are consistent with applicable provisions of the Program, as discussed in more detail in the EIS.³⁰ As part of the Program, the Council has designated over 40,000 miles of river in the Pacific Northwest region as not being suitable for hydroelectric development ("protected area"). The project is not located within a protected area designated under Appendix B of the Program. Further, Article 408 reserves to the Commission the authority to require future alterations in project structures and operations to take into account, to the fullest extent practicable, the applicable provisions of the Program.

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

44. Section 10(j)(1) of the FPA³¹ requires the Commission, when issuing a license, to include conditions based on recommendations by federal and state fish and wildlife agencies submitted pursuant to the Fish and Wildlife Coordination Act,³² to "adequately and equitably protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat)" affected by the project.

45. In response to the June 16, 2009 public notice that the project was ready for environmental analysis, Idaho DFG filed four recommendations under section 10(j).³³ Two recommendations were determined to be outside of the scope of section 10(j) and are discussed in the next section. This license includes conditions consistent with the two

³⁰ See EIS at 8-9.

³¹ 16 U.S.C. § 803(j)(1) (2006).

³² 16 U.S.C. §§ 661 *et seq.* (2006).

³³ Idaho DFG filed the recommendations on August 14, 2009.

recommendations that are within the scope of section 10(j): (1) implement Idaho Power's proposed measures to protect, enhance, and restore riparian and upland habitat; and (2) provide details about measures in the Snake River White Sturgeon Conservation Plan. In its comments on the draft EIS, Idaho DFG commented that provisions of the Snake River White Sturgeon Conservation Plan proposed to be implemented in the Swan Falls project area should be included in any license issued for this project.

A. Wildlife Habitat Protection and Enhancement Plan

46. This license requires Idaho Power to implement its Wildlife Habitat Protection and Enhancement Plan (Article 411). The plan includes provisions for: (1) protecting and enhancing 2.7 miles of shoreline habitat along the reservoir and the Snake River downstream of the dam to mitigate the effects of project operation on riparian habitat; (2) improving flow patterns at Swan Falls Island³⁴ to support 8.9 acres of riparian vegetation by excavating a connecting channel and replacing an existing culvert; (3) protecting riparian vegetation adjacent to the project lay-down yard adjacent to Swan Falls Island; (4) protecting and enhancing 25.1 acres of riparian habitat and 43.5 acres of upland habitat to mitigate the on-going effects of project-related recreation; and (5) filing monitoring reports with the Commission throughout the term of the new license.

47. Article 411 also requires Idaho Power to file its monitoring reports with FWS, BLM, and Idaho DFG, and to include with the reports a description of any proposed additional measures needed to protect and enhance wildlife habitat.

48. These measures would protect, restore, and enhance riparian and upland habitat, as recommended by Idaho DFG.

B. Swan Falls White Sturgeon Conservation Plan

49. Idaho Power developed and filed a Snake River White Sturgeon Conservation Plan concurrent with the Hells Canyon Final License Application on July 21, 2004. The Snake River White Sturgeon Conservation Plan described measures and strategies for Snake River white sturgeon populations that Idaho Power would implement upon any

³⁴ Swan Falls Island is located downstream of the project dam. Siltation has blocked the culvert that provided water to the channel around the island, reducing hydrologic support to the island's shrub-scrub and emergent wetland vegetation.

new licenses issued to Idaho Power requiring implementation of the Snake River White Sturgeon Conservation Plan. The geographic scope of the Snake River White Sturgeon Conservation Plan includes the Snake River from the Lower Granite dam³⁵ (river mile 107.5) to Shoshone Falls dam (river mile 614).

50. In the EIS,³⁶ staff recommended that any license issued for this project include requirements to implement the portions of the Snake River White Sturgeon Conservation Plan that could be affected by operation of the Swan Falls Project. This license requires Idaho Power to file a Swan Falls White Sturgeon Conservation Plan (Article 406) for Commission approval that details its plans and schedule to implement the measures of the Snake River White Sturgeon Conservation Plan that apply to the reach of the Snake River between the head of the Brownlee reservoir (river mile 343) and the head of the Swan Falls reservoir (river mile 469). These measures include: (1) conducting controlled laboratory experiments to assess whether degraded water quality conditions in the Swan Falls reach limit sturgeon recruitment by affecting the survival of eggs, larvae, and young-of-the-year sturgeon; (2) assessing the risks and benefits of a conservation aquaculture program³⁷ in contrast to the translocation of adult sturgeon from other reaches of the Snake River; (3) if the assessment indicates that translocation of adult sturgeon would be more beneficial than implementing a conservation aquaculture plan, providing for a translocation plan; (4) if the assessment indicates that implementation of a conservation aquaculture plan would be more beneficial than translocation of adult sturgeon, providing for an aquaculture plan; and (5) conducting population assessments and monitoring of the effectiveness of either the translocation or conservation aquaculture program in the Swan Falls reach every 10 years. The license requires the plan to be developed in consultation with the White Sturgeon Technical Advisory Committee, composed of the FWS, Idaho DFG, Idaho DEQ, U.S. Bureau of Reclamation, Oregon Department of Fish and Wildlife (Oregon DFW), U.S. Forest Service, EPA, the Shoshone-Paiute Tribe, the Nez Perce Tribe, and the Columbia River Intertribal Fish Commission.

SECTION 10(a)(1) OF THE FPA

³⁵ The Lower Granite dam is operated by the U.S. Army Corps of Engineers.

³⁶ See EIS at 159.

³⁷ A conservation aquaculture program would culture white sturgeon eggs, larvae, and/or young-of-the-year for planting in the Swan Falls reservoir if water quality conditions are found to be conducive to survival of these early life stages.

51. Section 10(a)(1) of the FPA³⁸ requires that any project for which the Commission issues a license shall be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce; for the improvement and utilization of waterpower development; for the adequate protection, mitigation, and enhancement of fish and wildlife; and for other beneficial uses, including irrigation, flood control, water supply, recreation, and other purposes.

A. Idaho DFG Recommendations

52. Idaho DFG made two recommendations under section 10(j) that are not specific measures to protect, mitigate damages to, or enhance fish and wildlife. Consequently, these recommendations are considered under the broad public-interest standard of section 10(a)(1).

53. Idaho DFG recommended that Idaho Power be required to monitor the population of resident fish species in the Swan Falls reservoir and in a 15-mile reach downstream from Swan Falls dam every five years in both the spring and the fall. In the EIS,³⁹ Commission staff found that this measure is not designed to detect the effects of any specific project-related action, and therefore, would be too broad to be of any benefit as it relates to the project. Additionally, staff found that proposed project operation would improve the project area fishery by reducing daily variations in habitat for all life stages of fish species and monitoring would be of little benefit. For these reasons, the license does not include this recommendation.

54. Idaho DFG's second recommendation was to make the Swan Falls Project license term consistent with the downstream Hells Canyon Project and the upstream C.J. Strike Project terms. The Hells Canyon relicensing proceeding is on-going, so the term of any new license that might be issued for that project is not known. Therefore, the Swan Falls license term cannot be made to coincide with the Hells Canyon license term. The C.J. Strike license expires on July 31, 2034. Section 15(e) of the FPA⁴⁰ provides that any new license issued shall be for a term that the Commission determines to be in the public interest, but not less than 30 years or more than 50 years. The C.J. Strike license will

³⁸ 16 U.S.C. § 803(a)(1) (2006).

³⁹ See EIS at 164.

⁴⁰ 16 U.S.C. § 808(e) (2006).

expire in less than 30 years, therefore, the Swan Falls license term cannot be made consistent with the C.J. Strike license term.

B. Project Operation and Trashrack Maintenance

55. To protect water quality and aquatic resources, Idaho Power proposed a number of measures. These include: an instantaneous minimum flow of 3,900 cfs downstream of Swan Falls dam from April 1 to October 31, and 5,600 cfs from November 1 to March 31 annually; continuation of the current ramping rate restrictions of no more than one foot per hour or three feet per day; and continuation of the removal and disposal of aquatic vegetation and debris that accumulate on the project trashrack to remove nutrients and oxygen-demanding material from the river. All of these measures were recommended by staff in the EIS,⁴¹ and are required by Articles 402 and 404.

56. To document compliance with Article 402's requirements for minimum flows and ramping rates, Article 403 requires that the licensee file an Operation Compliance Monitoring Plan with the Commission for approval within one year of license issuance.

C. Botanical Resource Protection

57. Five plant species designated as having special status by BLM, the Idaho Conservation Data Center, and the Idaho Native Plant Society occur within the project boundary. To protect these species during project operation and maintenance, Idaho Power proposes to implement a Special Status Plant Management Plan. The plan includes provisions for constructing fences or placing boulders to prevent access to special status plant populations; controlling noxious and undesirable plant species; planting native grasses and shrubs to rehabilitate disturbed uplands; adopting best management practices for road construction and maintenance that would minimize erosion, habitat loss, and noxious weed spread; excluding the use of herbicides near special status plant populations; monitoring known populations to ensure habitat degradation does not occur; conducting clearance surveys before any ground-disturbing activities are implemented in areas that were not covered during previous survey efforts; and filing monitoring reports with the Commission through the term of the new license. In the EIS,⁴² staff recommended adoption of the proposed plan because it would ensure a comprehensive approach to special-status plant protection on lands within the project boundary. Ensuring that agencies with management responsibilities over special status plants are informed of the results of monitoring will necessitate Idaho Power submitting

⁴¹ See EIS at 154.

⁴² See EIS at 70.

its monitoring reports to FWS, BLM, and Idaho DFG. Filing agency comments on the monitoring reports and, if warranted by new information, agency comments on any additional measures Idaho Power proposes to protect or enhance special status plant species, will facilitate Commission oversight. Article 409 requires Idaho Power to implement the Special Status Plant Management Plan and submit its monitoring reports to FWS, BLM, Idaho DFG, and the Commission. Article 409 also requires Idaho Power to include with the reports agency comments on the monitoring results and a description of any additional measures it proposes to protect or enhance special status plants, based on the results of the monitoring.

58. Idaho Power's noxious weed surveys documented 12 noxious weed species within the project boundary. To control these weeds during project operation and maintenance, Idaho Power proposes to implement a Noxious Weed Management Plan. The plan includes a schedule for weed control and monitoring, identifies specific control measures to be considered, calls for regular updating of the target species list and new treatment measures that may become available, and provides for filing monitoring reports with the Commission through the term of the new license.

59. In the EIS,⁴³ staff recommended the plan as an effective means of managing noxious weeds on project lands. Ensuring that agencies with management responsibilities over weeds and wildlife habitat adversely affected by weeds are informed of the results of monitoring will necessitate Idaho Power submitting its monitoring reports to FWS, BLM, and Idaho DFG. Filing agency comments on the monitoring reports and, if warranted by new information, agency comments on any additional measures Idaho Power proposes to control noxious weeds, will aid Commission staff in evaluating the adequacy of noxious weed management and any future proposed measures. Article 410 requires Idaho Power to implement the Noxious Weed Management Plan and submit its monitoring reports to FWS, BLM, Idaho DFG, and the Commission. Article 410 also requires Idaho Power to include with the reports agency comments on the monitoring reports and a description of any additional measures it proposes to control noxious weeds, based on the results of the monitoring.

D. Transmission Line Right-of-Way Maintenance

60. Idaho Power proposes to develop and implement a Transmission Line Operation and Maintenance Plan that would include erosion control and weed monitoring and treatment. In addition, Idaho Power proposes to include management measures related to soils and botanical resources for the transmission line and its associated right-of-way,

⁴³ See EIS at 68.

such as erosion control and weed monitoring and treatment, in its Noxious Weed Management Plan. In the EIS,⁴⁴ staff did not recommend development of a Transmission Line Operation and Maintenance Plan because the measures included in a Transmission Line Operation and Maintenance Plan would largely duplicate those in the Noxious Weed Management Plan. Staff did recommend an additional provision related to the transmission line; specifically, staff recommended timing restrictions on routine transmission line maintenance activities to minimize the risk of disturbing nesting birds, including cliff-dwelling raptors and three special-status bird species (long-billed curlew, short-eared owl, and Brewer's sparrow)⁴⁵ that may nest on benchlands above the Snake River canyon rim.⁴⁶ Article 412 requires Idaho Power to file for Commission approval a plan for timing restrictions on routine transmission line maintenance activities that protects benchland nesting birds and cliff-nesting raptors from disturbance.

E. Recreation Management Plan

61. To ensure that the project provides adequate recreation access and facilities, Idaho Power, in consultation with stakeholders, developed a Recreation Management Plan⁴⁷ that includes the following provisions:

- (1) continuing operation and maintenance of the five existing project recreation sites: Swan Falls Park, Swan Falls reservoir boat ramp, Swan Falls downstream boat launch, Swan Falls powerhouse museum, and the canoe portage trail;
- (2) improving Swan Falls Park by providing riprap or a retaining wall along the shoreline (to repair a damaged area), and adding a new dock, picnic tables, and a shelter;
- (3) enhancing the Swan Falls reservoir boat ramp by upgrading the boat ramp by making it wider and steeper, adding a vault toilet, and enhancing parking for vehicles and trailers;

⁴⁴ See EIS at 164.

⁴⁵ The Idaho Comprehensive Wildlife Strategy identifies long-billed curlew, short-eared owl, and Brewer's sparrow as among the species of greatest conservation need in the Owyhee Uplands section of Idaho, which includes the project area,

⁴⁶ See EIS at 161.

⁴⁷ See Recreation Management Plan filed on April 7, 2009.

(4) enhancing the Swan Falls downstream boat launch by constructing a two-lane boat ramp (hard-surfaced in place of the current gravel ramp), adding a vault toilet, enlarging and defining the parking area for vehicles and trailers, and removing an outdated and unnecessary air compressor to make vehicle maneuvering easier;

(5) improving the canoe portage trail by installing signage;

(6) enhancing and maintaining six dispersed recreation sites that provide access to the reservoir and river, improving associated access roads, and closing and restoring nine other dispersed sites;⁴⁸

(7) implementing a proposed Litter and Sanitation Plan, including additional vault toilets and dumpsters, biennial litter pickups, and two signs describing a carry-in/carry-out policy applying to lands within the project boundary; and

(8) finalizing the proposed Interpretation and Education Plan.⁴⁹

62. In the EIS,⁵⁰ Commission staff recommended implementation of all of Idaho Power's proposed measures included in the plan, but with eight revisions. These revisions are:

⁴⁸ Idaho Power identified 15 dispersed use areas inside the project boundary. Visitor use at these sites, including off-road vehicle use, has created a series of braided roads or multiple access roads to some sites and caused severe ruts to form, adversely affecting upland and riparian habitats located within and near the sites. Idaho Power proposes to define and improve 6 of the 15 sites to provide recreation usage while protecting the natural and cultural resources of the area. Idaho Power would prevent motorized access to areas adjacent to the 6 selected sites by placing materials such as fences, boulders, and/or berms around the sites. All secondary roads and impromptu trails would be closed to motorized vehicular traffic. For the 9 remaining dispersed sites, Idaho Power would close and revegetate these sites and restrict motorized traffic to protect and enhance upland and riparian habitat as part of the Wildlife Habitat Protection and Enhancement Plan.

⁴⁹ The Interpretation and Education Plan is designed to provide educational and safety information to visitors by means of panels and wayside exhibits about water flows, boating safety, resident fish populations, wildlife, geology, local history, and information required by section 8.2 of the Commission's regulations. 18 C.F.R. § 8.2 (2012).

⁵⁰ See EIS at 162.

- (1) completing Idaho Power's consultation with the SHPO to ensure that work planned at the informal dispersed sites (item 6 above) and associated access roads considers the effects on cultural resources known to exist in the area;
- (2) adding soil erosion control measures for all construction sites;
- (3) including as-built drawings for the three existing developed recreation sites that would be improved;
- (4) providing detailed descriptions and conceptual drawings on the six dispersed recreation sites that Idaho Power proposes in the Recreation Management Plan to enhance and maintain;
- (5) describing how the needs of the disabled were considered in the planning and design of the recreation facilities;
- (6) clarifying that the Litter and Sanitation Plan only applies to project lands and facilities;
- (7) including consultation with BLM, Idaho DPR, and the Idaho SHPO in the finalization of the Interpretation and Education Plan as part of the Recreation Management Plan; and
- (8) including an implementation schedule for all measures.

63. Article 413 requires the filing of a revised Recreation Management Plan with the above modifications for Commission approval.

F. Recreation Monitoring

64. The draft Recreation Management Plan includes measures to address current recreation needs at the project, but does not provide for the continued monitoring of recreation facilities and dispersed recreation sites. Idaho DPR recommended that an interagency recreation working group be established that would convene every six years to review FERC Form 80 information. In the EIS,⁵¹ staff found that periodic monitoring and assessment of recreation-related effects on lands within the project boundary as part of data gathering for the FERC Form 80 and as a component of the Recreation Management Plan would allow Idaho Power and relevant agencies to monitor and assess recreation measures over the term of the new license. Article 414 requires Idaho Power to consult with Idaho DPR, BLM, Idaho DFG, and the Idaho SHPO on monitoring results

⁵¹ See EIS at 162.

and the need for any additional recreation management measures when preparing its FERC Form 80. Article 414 further requires Idaho Power, at the time of filing the FERC Form 80, to file a recreation monitoring report that includes a summary of the recreation monitoring activities and results, and for Commission approval any proposals for future recreation management, based on the monitoring results and consultation with the agencies.

G. Visual Guidelines Plan

65. Project operation, maintenance, and construction at recreation facilities will likely affect visual resources of the project area, including the regionally-important Western Heritage Historic Byway. The Byway extends to the Swan Falls dam and offers views of high desert features with historic, scenic, and geological elements. To address project effects on visual resources, Idaho Power proposes to implement visual resources protective measures specified in a Visual Guidelines Plan. In the EIS,⁵² staff concluded that, with certain revisions, implementation of this plan would minimize effects of project operation, maintenance, or construction activity on the visual resources of the project area. Staff recommended including in the plan a list of neutral paint color schemes, a list of vegetation species planned for use, a list of construction materials that could be used, and documentation of consultation with BLM and Idaho DPR in developing these lists. Article 415 requires Idaho Power to develop and file for Commission approval a Visual Guidelines Plan with these provisions.

H. Signage Plan

66. The current signage at the project is inconsistent in design, and many signs are in need of maintenance. Idaho Power proposes to develop and implement a signage plan for the project and adjacent lands that it owns. In the EIS,⁵³ staff found the proposed plan would improve the recreational experiences and aesthetic resources at the project. Article 416 requires Idaho Power to develop and implement a signage plan for project lands and facilities.

I. Resource Management Plan

67. Idaho Power proposes to finalize and implement a Resource Management Plan, included in its license application to guide its staff working in project operation and maintenance. The plan lists the goals, objectives, and policies for the management of the

⁵² See EIS at 163.

⁵³ See EIS at 112.

project's environmental and cultural resources, public safety, and land use and access. In the EIS,⁵⁴ staff found that the plan would have a beneficial effect on the management of project lands and recommended that Idaho Power finalize its proposed plan to take into account the Visual Guidelines Plan and signage plan. However, the Resource Management Plan's measures duplicate to a large extent measures contained in the Wildlife Habitat Protection and Enhancement Plan, Noxious Weed Management Plan, and HPMP. In addition, the plan covers both project lands and adjoining non-project Idaho Power lands over which the Commission does not have jurisdiction. While the Commission has no objection to Idaho Power preparing guidance for its staff for maintenance of its lands, the Resource Management Plan is not being required as a part of the license for the afore-mentioned reasons.

68. Following is an analysis of those measures in the Resource Management Plan that are not included in other proposed plans and that are being required in this license. First, the Resource Management Plan requires using only native plant species or species determined to be acceptable by Idaho Power and BLM biologists for habitat restoration. The Wildlife Habitat Protection and Enhancement Plan lists potential plant species to be used in riparian and upland habitat restoration and states that one of the criteria in selecting the species will be whether the species is native, but does not include consultation with BLM. Therefore, Article 411 requires that consultation with BLM on plant species selection be included in the Wildlife Habitat Protection and Enhancement Plan. Second, the Resource Management Plan includes a provision for Idaho Power to only use chemical herbicides approved by EPA for aquatic application in or near riparian areas, and stipulates that only a state-certified applicator may apply the herbicides. Because these measures would help ensure that riparian and aquatic habitat is not adversely affected by herbicide use, they are included in Article 410, which requires the Noxious Weed Management Plan.

69. Measures in the proposed Resource Management Plan that are not included in this license are discussed below. First, the Resource Management Plan requires constructing or evaluating and modifying project transmission line poles for raptor safety as described in the Avian Power Line Interaction Committee's *Suggested Practices for Raptor Protection on Power Lines: The State of the Art in 1996* and subsequent revisions to that document. This proposal is not needed because the license application states that the project transmission line was built according to these guidelines. Second, the Resource Management Plan requires avoiding "significant human actions" within areas of riparian vegetation, except for land management, necessary operations and maintenance, and resource enhancement or protection activities included in an approved plan. This

⁵⁴ See EIS at 110.

measure is too vague to be enforceable. Third, the Resource Management Plan requires implementing its Noxious Weed Management Plan both on Idaho Power project and non-project lands. While Idaho Power may, if it wishes, apply the Noxious Weed Management Plan to lands it owns outside the project boundary, the Commission has no jurisdiction over those lands. Fourth, the Resource Management Plan has provisions for conducting a pre-disturbance survey, prior to undertaking any significant facility improvements, to identify sensitive and other resources in the vicinity of the site and to plan for and carry out appropriate protection measures during and after the action, and retaining information collected from these surveys in a resource database. This measure is not needed because section 4.200 of the Commission's regulations requires Idaho Power to request approval for any major action that would be implemented on project lands, and any impacts on sensitive and other resources would be evaluated at that time. Fifth, the Resource Management Plan contains a public safety section. Public safety aspects of licensed projects are administered by the Commission's Division of Dam Safety and Inspections (D2SI) pursuant to Part 12 of the Commission's regulations, and the public safety portion of the Resource Management Plan is already required by Part 12 and need not be included as separate requirements of this license.

J. Project Boundary

70. Idaho Power proposes to remove 791 acres from the current project boundary, most of which are located upstream from the dam, and add 192 acres to the current project boundary downstream from the dam. This would result in a net reduction of 599 acres within the project boundary.

71. The project boundary is being revised to include a tract of land on which is located four of the six dispersed recreation sites that Idaho Power will enhance and maintain; the canoe portage trail; lands to be revegetated under the Wildlife Habitat Protection and Enhancement Plan; and cultural resource sites that will be monitored and, as necessary, further treated under the HPMP. In the EIS,⁵⁵ staff recommended that those lands be included within the project boundary because they would serve the project purposes of enhancing recreational use and protecting wildlife habitat and cultural resources.

72. As described in the EIS,⁵⁶ the lands located along the reservoir above the 2,318-foot elevation contour are being removed from the project boundary because they are not affected by project operation or uses and are not needed for project purposes. There would be two exceptions. First, Idaho Power would retain the current project boundary

⁵⁵ See EIS at 108-109.

⁵⁶ See EIS at 109.

from the dam upstream about 2 miles to river mile 459.65 for lands it owns on the east (north) side of the reservoir that are used for project operation (e.g., transmission line, employee housing) and for proposed recreation and terrestrial enhancement measures (e.g., Swan Falls Park, Swan Falls reservoir boat ramp). From river mile 459.65 upstream, Idaho Power proposes that the eastern (northern) project boundary follows the 2,318-foot contour for all lands in the current project boundary. Second, on the west (south) side of the reservoir, immediately at the dam, the project boundary would be modified to encompass the canoe portage trail. The project boundary would then resume at the 2,318-foot contour.

73. As currently licensed, the project occupies 529 acres of federal land within the Snake River NCA, managed by BLM. Under the new license, the project will occupy 185.8 acres of Snake River NCA land.

74. Article 203 requires the filing of revised Exhibit G drawings reflecting the project boundary changes.

ADMINISTRATIVE PROVISIONS

A. Annual Charges

75. The Commission collects annual charges from licensees for administration of the FPA. Article 201 provides for the collection of funds for administration of the FPA and use and occupancy of United States lands.

B. Exhibit F and G Drawings

76. The Commission requires licensees to file sets of approved project drawings on microfilm and in electronic file format. Article 202 requires the filing of the approved Exhibit F drawings in those formats. The Exhibit G drawings filed with the license application, however, do not reflect the proposed project boundary changes approved by this license, do not delineate the acres of federal lands within the project boundary as approved by this license,⁵⁷ do not show the new dispersed recreation sites approved with this license, and do not identify ownership of all state and privately held land within the project boundary. Therefore the Exhibit G drawings are not approved. Article 203 requires Idaho Power to file revised Exhibit G drawings pursuant to sections 4.39 and 4.41 of the Commission's regulations including the items noted above.

⁵⁷ Detailed information on the location and acreage of federal lands is required for the purpose of determining annual charges. *See* 18 C.F.R. § 11.2 (2012).

C. Amortization Reserve

77. The Commission requires for new major licenses, non-municipal licensees must set up and maintain an amortization reserve account upon license issuance. Article 204 requires the establishment of the account.

D. Headwater Benefits

78. Some projects directly benefit from headwater improvements that were constructed by other licensees, the United States, or permittees. Article 205 requires the licensee to reimburse such entities for these benefits if they were not previously assessed and reimbursed.

E. Project Land Rights Progress Report

79. The project will occupy 185.8 acres of federal lands; 454.2 acres of private lands, of which the licensee owns 438.4 acres; and 24.6 acres of state lands (non-park lands) owned by the State of Idaho.⁵⁸ The state-owned lands include property below and above the ordinary high water mark. Idaho Power has negotiated an agreement with the State of Idaho for a 25-foot right of way above the ordinary high water mark to ensure recreational access to the Snake River. Idaho Power also plans to obtain an easement from the state for the lands below the ordinary high water mark that are proposed for inclusion in the project boundary. In addition, Idaho Power plans to obtain flood easements over three parcels of privately owned land along the reservoir.

80. Standard Article 5 set forth in L-Form 5 requires the licensee to acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction, maintenance, and operation of the project, within five years. In order to monitor compliance with Article 5, Article 206 requires the licensee to file no later than four years after license issuance, a report detailing its progress on acquiring title in fee or the necessary rights to all lands within the project boundary. The report shall include specific documentation on the status of the rights that have been acquired as of the filing date of the progress report, and a plan and schedule to acquire all remaining land prior to the five-year deadline.

⁵⁸ The current project boundary includes 58 acres of state lands. *See* License Application at section E.6.1.2. The proposed boundary change in the license application would remove some of the state lands, leaving 24.6 acres.

F. Use and Occupancy of Project Lands and Waters

81. Requiring a licensee to obtain prior Commission approval for every use or occupancy of project land would be unduly burdensome. Therefore, Article 418 allows the licensee to grant permission, without prior Commission approval, for the use and occupancy of project lands for such minor activities as landscape planting. Such uses must be consistent with the purposes of protecting and enhancing the scenic, recreational, and environmental values of the project.

G. Review of Final Plans and Specifications

82. Article 301 requires the licensee to provide the Commission's D2SI Portland Regional Office (D2SI-PRO) with any approved contractor-designed cofferdam and deep excavation construction drawings.

83. Article 302 requires the licensee to provide the Commission's D2SI-PRO with any final contract plans and specifications—together with a supporting design report consistent with the Commission's engineering guidelines.

84. Once any new construction or modifications to the project are completed, Article 303 requires the licensee to file with the Commission revised drawings of project features as built.

H. Dam Safety

85. Article 304 requires the licensee to file with the Commission's D2SI-PRO a plan and schedule of any proposed modifications to the water retaining and/or conveyance features of the project resulting from the environmental requirements of the license to insure that these modifications do not adversely affect the project works, dam safety, or project operation.

86. To demonstrate awareness of the roles and responsibilities of project owners and dam safety staff with regard to project safety, Article 305 requires the licensee to submit a Licensee's Dam Safety Program to the Commission's D2SI-PRO.

I. Commission Approval of Resource Plan and Filing of Reports

87. In Appendix A, there are certification conditions that do not require the licensee to either file certain plans or reports with the Commission or to file a license amendment application with the Commission, if needed. Therefore, as appropriate, Article 401 requires the licensee to file such items with the Commission either for approval or to document compliance.

STATE AND FEDERAL COMPREHENSIVE PLANS

88. Section 10(a)(2)(A) of the FPA⁵⁹ requires the Commission to consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project.⁶⁰ Under section 10(a)(2)(A), federal and state agencies filed 37 comprehensive plans that address various resources in Idaho. Of these, the staff identified and reviewed 15 comprehensive plans that are relevant to this project.⁶¹ No conflicts were found.

APPLICANT'S PLANS AND CAPABILITIES

89. In accordance with sections 10(a)(2)(C) and 15(a) of the FPA,⁶² Commission staff evaluated Idaho Power's record as a licensee in the following areas: (1) conservation efforts; (2) compliance history and ability to comply with the new license; (3) safe management, operation, and maintenance of the project; (4) ability to provide efficient and reliable electric service; (5) need for power; (6) transmission services; (7) cost effectiveness of plans; and (8) actions affecting the public. I accept the staff's findings in each of the following areas.

A. Conservation Efforts

90. Section 10(a)(2)(C) of the FPA requires the Commission to consider the extent of electricity consumption efficiency improvement programs in the case of license applicants primarily engaged in the generation or sale of electric power, like Idaho Power. Each year, Idaho Power completes a comprehensive analysis of future load growth and the need for new resources, including customer efficiency programs, to meet its customer demand. Demand side management actions and goals proposed by the most recent report indicate Idaho Power promotes demand side load management practices for both residential and commercial/industrial customers and has undertaken several programs to improve efficiency and promote energy conservation at its own plants. These programs show that Idaho Power is making an effort to conserve electricity and has made a satisfactory good faith effort to comply with section 10(a)(2)(C) of the FPA.

B. Compliance History and Ability to Comply with the New License

⁵⁹ 16 U.S.C. § 803(a)(2)(A) (2006).

⁶⁰ Comprehensive plans for this purpose are defined at 18 C.F.R. § 2.19 (2012).

⁶¹ The list of applicable plans can be found in section 5.5 of the EIS for the project.

⁶² 16 U.S.C. §§ 803(a)(2)(C) and 808(a) (2006).

91. Based on a review of Idaho Power's compliance with the terms and conditions of the existing license, staff finds Idaho Power's overall record of making timely filings and compliance with its license is satisfactory. Therefore, staff believes Idaho Power can satisfy the conditions of a new license.

C. Safe Management, Operation, and Maintenance of the Project

92. Staff has reviewed Idaho Power's management, operation, and maintenance of the Swan Falls Project pursuant to the requirements of 18 C.F.R. Part 12 and the Commission's Engineering Guidelines and periodic Independent Consultant's Safety Inspection Reports. Staff concludes that the dam and other project works are safe, and that there is no reason to believe that Idaho Power cannot continue to safely manage, operate, and maintain these facilities under a new license.

D. Ability to Provide Efficient and Reliable Electric Service

93. Staff has reviewed Idaho Power's plans and its ability to operate and maintain the project in a manner most likely to provide efficient and reliable electric service. Idaho Power has devices that monitor structural movement or stress, seepage, uplift, and equipment failure at the project. Idaho Power regularly inspects the project turbine generator units to ensure they continue to perform in an optimal manner, schedules maintenance to minimize effects on energy production, and since the project has been in operation, has undertaken several initiatives to ensure the project is able to operate reliably into the future. Staff concludes that Idaho Power is capable of operating the project to provide efficient and reliable electric service in the future.

E. Need for Power

94. Idaho Power serves about 495,570 retail customers in portions of southern Idaho and eastern Oregon. The company owns or has interests in electric generating plants with a total plant nameplate capacity of 3,276.4 MW. Nearly 48 percent of this capacity is thermal electric, and approximately 52 percent is hydroelectric. Idaho Power owns two natural gas-fired facilities that provide 443.7 MW of peaking capacity; two diesel generators with a total capacity of 5 MW; and is a joint owner of three coal-fired generating plants, with Idaho Power's share of those plants 1,118 MW. Idaho Power's total hydroelectric capacity is 1,709 MW, which is generated by 17 hydroelectric facilities located on the Snake River and its tributaries. The 25-MW Swan Falls Project generates an average of 161,300 megawatt hours (MWh) annually. This annual generation represents about 0.9 percent of total Idaho Power energy sold to its customers in 2010.

95. Idaho Power's 2011 Integrated Resource Plan predicts that 1,601 MW of new resources will be added to Idaho Power's resources to meet its peak customer load plus a

planning margin to meet higher-than-expected load conditions under lower-than-expected water conditions through the year 2030. Idaho Power also plans to implement demand side management, transmission alternatives, expansion of existing resources, and market purchases to provide additional resources to meet future needs.

96. The Swan Falls Project is within the Western Electricity Coordinating Council's (WECC) Basin subregion (BASN). WECC's 10-year coordinated plan summary for the period 2011 through 2021 projects an average annual compound growth rate in winter peak demand of 2.2 percent. Capacity additions totaling over 2,800 MW are planned for the BASN area over the 10-year period. Natural gas-fired generation is anticipated to be the major non-renewable resource addition for the coming decade.

97. Power from the Swan Falls Project can continue to meet Idaho Power's customers' growing needs as well as meeting part of the regional need for power.

F. Transmission Services

98. The project includes 1.2 miles of transmission line, which delivers project power to Idaho Power's transmission grid at the Strike Junction-Caldwell transmission line. Idaho Power is proposing no changes that would affect its own or other transmission services in the region. The project and project transmission lines are important elements in providing power and voltage control to local Ada and Owyhee County communities and the region.

G. Cost Effectiveness of Plans

99. Idaho Power plans to make a number of facility and operational modifications to enhance environmental resources affected by the project. Based on Idaho Power's record as an existing licensee, staff concludes that these plans are likely to be carried out in a cost-effective manner.

H. Actions Affecting the Public

100. Idaho Power provided opportunity for public involvement in the development of its application for a new license for the Swan Falls Project. During the previous license period, Idaho Power provided facilities to enhance the public use of project lands and facilities, and operated the project with consideration for the protection of downstream uses of the Snake River. Idaho Power uses the project to help meet local power needs.

PROJECT ECONOMICS

101. In determining whether to issue a new license for an existing hydroelectric project, the Commission considers a number of public interest factors, including the economic

benefits of project power. Under the Commission's approach to evaluating the economics of hydropower projects, as articulated in *Mead Corp.*,⁶³ the Commission uses current costs to compare the costs of the project and likely alternative power with no forecasts concerning potential future inflation, escalation, or deflation beyond the license issuance date. The basic purpose of the Commission's economic analysis is to provide a general estimate of the potential power benefits and the costs of a project, and of reasonable alternatives to project power. The estimate helps to support an informed decision concerning what is in the public interest with respect to a proposed license.

102. In applying this analysis to the Swan Falls Project, staff has considered two options: Idaho Power's proposal and the project as licensed herein. As proposed by Idaho Power, the levelized annual cost of operating the Swan Falls Project is about \$8,008,000 or \$49.65/MWh.⁶⁴ The project would generate an estimated average of 161,300 MWh of energy annually. When staff multiplies its estimate of average generation by the alternative power cost of \$59.82/MWh,⁶⁵ staff gets a total value of the project's power of \$9,648,966 in 2012 dollars. To determine whether the project is economically beneficial, staff subtracts the project's cost from the value of the project's power.⁶⁶ Therefore, in the first year of operation, the project would cost \$1,640,966, or \$10.17/MWh, less than the likely alternative cost of power.

103. As licensed herein with the mandatory conditions and staff measures, the levelized annual cost of operating the project would be about \$8,142,420, or \$50.48/MWh. The average annual generation and the value of the project power would be the same as Idaho Power's proposal. Therefore, in the first year of operation, project power would cost about \$1,506,546, or \$9.34/MWh, less than the likely alternative cost of power.

⁶³ 72 FERC ¶ 61,027 (1995).

⁶⁴ Cost values provided in the EIS in 2010 were escalated to 2012 dollars (\$2012) using the Consumer Price Index.

⁶⁵ The alternative power cost of \$59.82 per MWh is based on information obtained from Idaho Power in additional information filed January 5, 2009, which includes the energy rate of \$50.12, and the dependable capacity rate of \$154/kilowatt-year, escalated to \$2012.

⁶⁶ Details of staff's economic analysis for the project as licensed herein and for various alternatives are included in the EIS issued August 2010. *See* EIS at 137-149. The economic analysis in this order has been updated to remove the Resource Management Plan, which was recommended in the EIS, but is not included in the project as licensed, and to include provisions for the protection of the Snake River physa snail.

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

COMPREHENSIVE DEVELOPMENT

105. Sections 4(e) and 10(a)(1) of the FPA⁶⁷ require the Commission to give equal consideration to the power development purposes and to the purposes of energy conservation; the protection, mitigation of damage to, and enhancement of fish and wildlife; the protection of recreational opportunities; and the preservation of other aspects of environmental quality. Any license issued shall be such as in the Commission's judgment will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for all beneficial public uses. The decision to license this project, and the terms and conditions included herein, reflect such consideration.

106. The EIS for the project contains background information, analysis of effects, and support for related license articles. The project will be safe and adequate if operated and maintained in accordance with the requirements of this license.

107. Based on my independent review and evaluation of the project, recommendations from the resource agencies and other stakeholders, and the no-action alternative, as documented in the EIS, I have selected the proposed Swan Falls Project with the staff-recommended measures, which includes all mandatory conditions, and find that it is best adapted to a comprehensive plan for improving or developing the Snake River.

108. I selected this alternative because: (1) issuance of a new license will serve to maintain a beneficial, dependable, and an inexpensive source of electric energy; (2) the required environmental measures will protect and enhance fish and wildlife resources, water quality, recreational resources, and historic properties; and (3) the 25 MW of electric capacity comes from a renewable resource that does not contribute to atmospheric pollution.

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

LICENSE TERM

109. Section 15(e) of the FPA⁶⁸ provides that any new license issued shall be for a term that the Commission determines to be in the public interest, but not less than 30 years or more than 50 years. The Commission's general policy is to establish 30-year terms for projects with little or no redevelopment, new construction, new capacity, or environmental mitigation and enhancement measures; 40-year terms for projects with a moderate amount of such activities; and 50-year terms for projects with extensive measures.⁶⁹ This license authorizes no new capacity, and only a minor amount of new construction associated with recreation facilities and environmental mitigation measures. Consequently, a 30-year license term for the Swan Falls Project is appropriate.

The Director orders:

(A) This license is issued to Idaho Power Company (licensee), for a period of 30 years, effective the first day of the month in which this order is issued, to construct, operate, and maintain the Swan Falls Hydroelectric Project. This license is subject to the terms and conditions of the Federal Power Act (FPA), which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the FPA.

(B) The project consists of:

(1) All lands, to the extent of the licensee's interests in these lands, described in the project description and the project boundary discussion of this order.

(2) Project works consisting of: (a) a 1,218-foot-long, 88-foot-high concrete gravity and rock-fill dam composed of: (i) an abutment embankment, (ii) two spillway sections consisting of a western section contiguous with the abutment embankment containing eight 31-foot-high, 16.1-foot-wide radial gates, and an eastern section located adjacent to the island containing four 31-foot-high, 16.1-foot-wide radial gates; (iii) a center island, (iv) the "old powerhouse" section, (v) the intermediate dam, and (vi) the project's powerhouse; (b) a 12-mile-long, 1,525-acre reservoir with a normal maximum water surface elevation of 2,314 feet mean sea level (msl); (c) two 36-foot-long concrete flow channels; (d) two pit-type, horizontal Kaplan turbine/generator units each with a nameplate rating of 12.5 megawatts with a combined maximum hydraulic capacity of

⁶⁸ 16 U.S.C. § 808(e) (2006).

⁶⁹ See *Consumers Power Co.*, 68 FERC ¶ 61,077 at 61,383-84 (1994).

20,400 cubic feet per second operating at an average gross head of 22.5 feet; (e) a 1,400-foot-long, 120-foot-wide excavated tailrace channel; (f) a 1.2-mile-long, 138-kilovolt three-phase transmission line; and (g) appurtenant facilities.

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

Exhibit A: The following sections of Exhibit A filed on June 26, 2008, and supplemented on January 5, 2009, and June 4, 2009:

Exhibit A - Description of Project, pages A-1 through A-9, as supplemented by pages 5 and 7 of the "Proposed FERC Project Boundary" section of the Responses to Additional Information Requests, filed on June 4, 2009.

Exhibit F: The following Exhibit F drawings filed on June 26, 2008:

<u>Exhibit F Drawing</u>	<u>FERC No. 503-</u>	<u>Description</u>
Sheet F-1	1001	Project Plan and Location
Sheet F-2	1002	Structures Plan and Elevation
Sheet F-3	1003	Spillway Plan and Section
Sheet F-4	1004	Powerhouse Structure Plan and Section
Sheet F-5	1005	Old Powerhouse Plan and Section
Sheet F-6	1006	Old Powerhouse Sections

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

(C) The Exhibits A and F described above are approved and made part of this license. The Exhibit G drawings filed as part of the application for license do not conform to Commission regulations and are not approved. .

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

(E) This license is subject to the incidental take terms and conditions of the Biological Opinion submitted by the U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act, as those conditions are set forth in Appendix B to this order.

(F) This license is also subject to the articles set forth in Form L-5 (Oct. 1975), entitled "Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters and Lands of the United States," (*see* 54 F.P.C. 1799 et seq.), as reproduced at the end of this order, and the following additional articles:

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

(a) reimbursing the United States for the cost of administration of Part I of the Federal Power Act. The authorized installed capacity for that purpose is 25 megawatts;

(b) recompensing the United States for the use, occupancy, and enjoyment of 181.4 acres of its lands (other than for transmission line right-of-way); and

(c) recompensing the United States for the use, occupancy, and enjoyment of 4.4 acres of its lands for transmission line right-of-way.

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

(a) Three sets of the approved exhibit drawings shall be reproduced on silver or gelatin 35mm microfilm. All microfilm shall be mounted on type D (3-1/4" X 7-3/8") aperture cards. Prior to microfilming, the FERC Project-Drawing Number (i.e., **P-503-1001** through **P-503-1006**) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number shall be typed on the upper right corner of each aperture card. Additionally, the Project Number, FERC Exhibit (i.e., F-1, etc.), Drawing Title, and date of this license shall be typed on the upper left corner of each aperture card.

Two of the sets of aperture cards shall be filed with the Secretary of the Commission, ATTN: OEP/DHAC. The third set shall be filed with the Commission's Division of Dam Safety and Inspections Portland Regional Office.

(b) The licensee shall file two separate sets of exhibit drawings in electronic raster

format with the Secretary of the Commission, ATTN: OEP/DHAC. A third set shall be filed with the Commission's Division of Dam Safety and Inspections Portland Regional Office. Exhibit F drawings must be identified as Critical Energy Infrastructure Information (CEII) material under 18 C.F.R. § 388.113(c) (2012). Each drawing must be a separate electronic file, and the file name shall include: FERC Project-Drawing Number, FERC Exhibit, Drawing Title, date of this license, and file extension in the following format [**P-503-1001**, F-1, Description, MM-DD-YYYY.TIF]. Electronic drawings shall meet the following format specification:

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

Article 203. Exhibit G Drawings. Within 90 days of the effective date of the license, the licensee shall file, for Commission approval, revised Exhibit G drawings enclosing within the project boundary all principal project works necessary for operation and maintenance of the project. The project boundary shown on the revised Exhibit G drawings shall include the tract of land downstream of the project dam described and shown in drawing 1A of the additional information response filed on April 7, 2009, on which are located dispersed recreation sites and the canoe portage trail as described in the Recreation Management Plan filed on April 7, 2009, lands to be revegetated as described in the Wildlife Habitat Protection and Enhancement Plan filed June 4, 2009, and cultural resource sites to be monitored as described in the Historic Properties Management Plan filed May 24, 2010. The revised Exhibit G drawings shall identify all state and private land within the project boundary and delineate the 185.8 acres of federal lands administered by the U.S. Bureau of Land Management. The Exhibit G drawings must comply with sections 4.39 and 4.41 of the Commission's regulations.

Article 204. Amortization Reserve. Pursuant to section 10(d) of the Federal Power Act, 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. The licensee shall set aside in a project amortization reserve account at the end of each fiscal year one half of the project surplus earnings, if any, in excess of the specified rate of return per annum on the net investment. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year, the licensee shall deduct the amount of that deficiency from the amount of any surplus earnings subsequently accumulated, until absorbed. The licensee shall set aside one-half of the remaining surplus earnings, if any, cumulatively computed, in the project amortization reserve account. The licensee shall

maintain the amounts established in the project amortization reserve account until further order of the Commission.

The specified reasonable rate of return used in computing amortization reserves shall be calculated annually based on current capital ratios developed from an average of 13 monthly balances of amounts properly included in the licensee's long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rate for such ratios shall be the weighted average cost of long-term debt and preferred stock 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 205. Headwater Benefits. If the licensee's project was directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement during the term of the original license (including extensions of that term by annual licenses), and if those headwater benefits were not previously assessed and reimbursed to the owner of the headwater improvement, the licensee shall reimburse the owner of the headwater improvement for those benefits, at such time as they are assessed, in the same manner as for benefits received during the term of this new license. The benefits shall be assessed in accordance with Part 11, Subpart B, of the Commission's regulations.

Article 206. Project Land Rights Progress Report. No later than four years after license issuance, the licensee shall file a report with the Commission describing the status of acquiring title in fee or the rights needed to carry out project purposes for all the lands within the project boundary. The report must provide an overview map of each parcel and summary table identifying the licensee's rights over each parcel within the project boundary. The report shall also include specific supporting documentation showing the status of the land rights on all parcels of land within the project boundary that: (1) have been acquired up to the date of filing of the report, including pertinent deeds, lease agreements, and/or bill of sale information that specifically verify the licensee's rights; and (2) the licensee's plan and schedule for acquiring all remaining project lands prior to the five-year deadline, including a history of actions taken, current owner information, the type of ownership to be acquired whether in fee or by easement, and the timeline for completing property acquisition.

Article 301. Cofferdam Construction Drawings and Deep Excavations. Before starting any construction, the licensee shall review and approve the design of contractor-designed cofferdams and deep excavations, and shall make sure construction of cofferdams and deep excavations is consistent with the approved design. At least 30 days before starting construction of the cofferdam, the licensee shall submit one copy to the Division of Dam Safety and Inspections (D2SI) –Portland Regional Engineer and two copies to the Commission (one of these copies shall be a courtesy copy to the Commission's Director, D2SI), of the approved cofferdam construction drawings and specifications and the letters of approval.

Article 302. Contract Plans and Specifications. At least 60 days prior to start of any construction, the licensee shall submit one copy of its plans and specifications and supporting design document to the Commission's Division of Dam Safety and Inspections (D2SI) – Portland Regional Engineer (PRO), and two copies to the

Commission (one of these shall be a courtesy copy to the Director, D2SI). The submittal to the D2SI-PRO must also include as part of preconstruction requirements: a Quality Control and Inspection Program, Temporary Construction Emergency Action Plan, and Soil Erosion and Sediment Control Plan. The licensee may not begin construction until the D2SI-PRO has reviewed and commented on the plans and specifications, determined that all preconstruction requirements have been satisfied, and authorized start of construction.

Article 303. *As-built Drawings.* Within 90 days of completing any approved construction activities, the licensee shall file, for Commission approval, revised Exhibits A, F, and G, as applicable, to describe and show those project facilities as built. A courtesy copy shall be filed with the Commission's Division of Dam Safety and Inspections (D2SI)–Portland Regional Engineer; the Director, D2SI; and the Director, Division of Hydropower Administration and Compliance.

Article 304. *Project Modification Resulting From Environmental Requirements.* The planning and design of any permanent or temporary modification which affects the project works or operation resulting from environmental requirements shall be coordinated as early as feasible with the Commission's Division of Dam Safety and Inspections (D2SI) – Portland Regional Engineer (PRO). Within 90 days of issuance date of the license, a letter is to be sent to the D2SI-PRO providing a plan and schedule of any proposed modifications to the project operations or to the water retaining and/or conveyance features of the project in the planning and design phase resulting from environmental requirements of the license. The schedule is to allow sufficient review time for the Commission to insure that the proposed work does not adversely affect the project works, dam safety, or project operation.

Article 305. *Licensee's Dam Safety Program.* Within 90 days of the issuance date of the license, the licensee shall submit to the Commission's Division of Dam Safety and Inspections–Portland Regional Engineer, a Licensee's Dam Safety Program, which, at a minimum, shall demonstrate a clear acknowledgement of its responsibility for the safety of the project, an outline of the roles and responsibilities of the licensee's dam safety staff, and access of the licensee's dam safety official to the Chief Executive Officer. For guidance on what constitutes a good dam safety program the licensee shall reference the information posted on the FERC website at www.ferc.gov/industries/hydropower/safety/initiatives/odsp.asp.

Article 401. *Commission Approval, Notification, and Filing of Amendments.*

(a) *Requirement to File Plans for Commission Approval*

Idaho Department of Environmental Quality's (Idaho DEQ's) water quality certification (Appendix A) requires the licensee to prepare and implement a Water Quality Monitoring Plan, without obtaining prior Commission approval. The plan shall be submitted to the Commission for approval prior to implementation and within six months of license issuance.

The licensee shall include with the plan filed with the Commission documentation that the licensee developed the plan in consultation with Idaho DEQ and has received approval of Idaho DEQ. The Commission reserves the right to make changes to any plan submitted. Upon Commission approval, the plan becomes a requirement of the license, and the licensee shall implement the plan or changes in project operations or facilities, including any changes required by the Commission.

(b) *Requirement to File Reports*

Idaho DEQ's water quality certification requires the licensee to prepare annual water quality monitoring reports. The reports document compliance with requirements of this license and may have bearing on future actions. The reports shall be submitted to the Commission by February 28 of each year detailing the previous year's results.

The licensee shall submit to the Commission documentation of any consultation, and copies of any comments and recommendations made by any consulted entity in connection with each report. The Commission reserves the right to require changes to project operations or facilities based on the information contained in the report and any other available information.

(c) *Requirement to File Amendment Applications*

Idaho DEQ's water quality certification in Appendix A contemplates future changes to project operations or facilities based on new information or the results of studies or monitoring required by the certification, but do not appear to require prior Commission approval for such changes (e.g., discontinuing water quality monitoring, designing and implementing measures to meet state water quality standards). These changes may not be implemented without prior Commission authorization, granted after the filing of an application to amend the license. *See* 18 C.F.R. § 4.200 (2012).

Article 402. *Project Operation.* The licensee shall provide an instantaneous minimum flow downstream of Swan Falls dam of 3,900 cubic feet per second (cfs) from

April 1 to October 31 and 5,600 cfs from November 1 to March 31, annually. The licensee shall restrict ramping rates during flow release changes to no more than one foot per hour or three feet per day as measured in the project reservoir.

The above operating regime may be temporarily modified if required by operating emergencies beyond the control of the licensee or for short periods upon mutual agreement among the licensee, U.S. Fish and Wildlife Service, Bureau of Land Management, Idaho Department of Fish and Game, and the Idaho Department of Environmental Quality. If the operations are so modified, the licensee shall notify the Commission as soon as possible, but no later than 10 days after each such incident.

Article 403. Operation Compliance Monitoring Plan. Within one year of license issuance, the licensee shall file with the Commission, for approval, an operation compliance monitoring plan for the project. The plan at a minimum shall include:

- (a) provisions for monitoring and documenting compliance with the minimum flow requirement and ramping rates stipulated in Article 402;
- (b) a description of the location of all gages and/or measuring devices, or techniques that would be used to monitor minimum flows and/or ramping rates; the procedures for maintaining and calibrating monitoring equipment; the frequency of recording for each gage and/or measuring device; the protocols or methods to be used for reporting the monitoring data to the Commission; and a monitoring schedule;
- (c) a provision to maintain a log of project operation; and
- (d) an implementation schedule.

The licensee shall include with the plan documentation of consultation with the U.S. Fish and Wildlife Service, Bureau of Land Management, Idaho Department of Fish and Game, and the Idaho Department of Environmental Quality; copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies; and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan and associated schedule shall not begin until the plan and schedule are approved by the Commission. Upon Commission approval, the licensee shall implement the plan and schedule, including any changes required by the Commission.

Article 404. Aquatic Vegetation and Debris Removal. The licensee shall remove aquatic vegetation and debris that accumulate on the project trashracks and dispose of the debris in a location where it cannot return to the Snake River. By December 31 of each year, the licensee shall file a report with the Commission detailing on which dates the removal activities took place in that calendar year, the approximate amount of debris removed, and the disposal location. The annual reports shall also be provided to the Idaho Department of Environmental Quality and the Idaho Department of Fish and Game.

Article 405. Snake River Physa Protection Plan. Within one year of license issuance, the licensee shall file for Commission approval a plan detailing how the licensee will implement the incidental take terms and conditions of the U.S. Fish and Wildlife's Biological Opinion, filed February 2, 2012, included in Appendix B to this license, and required by Ordering Paragraph (E), to protect the endangered Snake River physa.

The plan shall include provisions for filing monitoring reports with the Commission, U.S. Fish and Wildlife Service (FWS), and the Idaho Department of Fish and Game (Idaho DFG); consultation with the FWS and Idaho DFG if survey and monitoring show that populations are declining; and seeking Commission approval for any changes in the project that Idaho Power proposes to conserve and protect the Snake River physa.

The licensee shall develop the plan in consultation with FWS and Idaho DFG. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information. The plan shall also include an implementation schedule.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 406. Swan Falls White Sturgeon Conservation Plan. Within one year of license issuance, the licensee shall file for Commission approval a Swan Falls White Sturgeon Conservation Plan to address the reach of the Snake River between the head of

the Brownlee reservoir (river mile 343) and the head of the Swan Falls reservoir (river mile 469). The plan shall include the following measures that will be implemented in this reach, as well as an implementation schedule. These measures include:

- (a) controlled laboratory experiments to assess whether degraded water quality conditions in the Swan Falls reach are limiting sturgeon recruitment by affecting the survival of eggs, larvae, and young-of-year sturgeon;
- (b) an assessment of the risks and benefits of a conservation aquaculture program in contrast to the translocation of adult sturgeon;
- (c) if the assessment indicates that translocation of adult sturgeon would be more beneficial than implementing a conservation aquaculture plan, provisions for a translocation plan;
- (d) if the assessment indicates that implementation of a conservation aquaculture plan would be more beneficial than translocation of adult sturgeon, provisions for a conservation aquaculture plan; and
- (e) population assessments and monitoring of the effectiveness of either the translocation or conservation aquaculture program in the Swan Falls reach every 10 years.

The Swan Falls White Sturgeon Conservation Plan shall include clarifications to the Snake River White Sturgeon Conservation Plan, including identification of: (1) where water quality-related impact studies on early life history stages of white sturgeon would be conducted and how the study facilities would be operated; and (2) how many white sturgeon would be translocated during each phase of the possible translocation measure.

The licensee shall develop the Swan Falls White Sturgeon Conservation Plan in consultation with the U.S. Fish and Wildlife Service, Idaho Department of Fish and Game, Idaho Department of Environmental Quality, U.S. Bureau of Reclamation, Oregon Department of Fish and Wildlife, U.S. Forest Service, U.S. Environmental Protection Agency, the Shoshone-Paiute Tribe, the Nez Perce Tribe, and the Columbia River Intertribal Fish Commission. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing

shall include the licensee's reasons, based on project-specific information. The plan shall also include an implementation schedule.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 407. *Reservation of Authority to Prescribe Fishways.* Authority is reserved to the Commission to require the licensee to construct, operate, and maintain, or provide for the construction, operation, and maintenance of such fishways as may be prescribed by the Secretary of the Interior pursuant to section 18 of the Federal Power Act.

Article 408. *Columbia River Basin Fish and Wildlife Program.* The Commission reserves the authority to order, upon its own motion or upon the recommendation of federal and state fish and wildlife agencies, affected Indian Tribes, or the Northwest Power and Conservation Council, alterations of project structures and operations to take into account to the fullest extent practicable the regional fish and wildlife program developed and amended pursuant to the Pacific Northwest Electric Power Planning and Conservation Act.

Article 409. *Special Status Plant Management Plan.* The Special Status Plant Management Plan is approved and made part of the license and may not be amended without prior Commission approval. Upon license issuance, the licensee shall implement the Special Status Plant Management Plan, filed June 4, 2009 as Appendix D.

As required by the approved plan, the licensee shall file monitoring reports with the Commission by December 31 following years one, three, and five after license issuance, and every five years thereafter through the term of the license. The licensee shall include with the reports documentation that it has provided the reports to the U.S. Fish and Wildlife Service, Bureau of Land Management, and Idaho Department of Fish and Game, copies of any agency comments or recommendations, and for approval a description of any additional measures the licensee proposes to protect or enhance special status plants. The licensee shall allow a minimum of 30 days for the agencies to comment or make recommendations before filing the monitoring reports with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific reasons.

Article 410. *Noxious Weed Management Plan.* Upon license issuance, the licensee shall implement the Noxious Weed Management Plan, filed June 4, 2009, as Appendix C, with the following modification: the licensee shall use only chemical

herbicides approved by the U.S. Environmental Protection Agency for aquatic application in or near riparian areas, and shall have them applied by a state-certified applicator.

As required by the approved plan, the licensee shall file monitoring reports with the Commission by December 31 following years one, three, and five after license issuance, and every five years thereafter through the term of the license. The reports shall include the location of weed occurrences the size and status of the weed infestation, and management treatments used. The licensee shall include with the reports documentation that it has provided the reports to the U.S. Fish and Wildlife Service, Bureau of Land Management, and Idaho Department of Fish and Game, copies of any agency comments or recommendations, and for approval a description of any additional measures the licensee proposes to control noxious weeds. The licensee shall allow a minimum of 30 days for the agencies to comment or make recommendations before filing the monitoring reports with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific reasons.

Article 411. *Wildlife Habitat Protection and Enhancement Plan.* Upon license issuance, the licensee shall implement the Wildlife Habitat Protection and Enhancement Plan, filed June 4, 2009, as Appendix B, with the following modification: the licensee shall use for habitat restoration only native plant species or species determined to be acceptable by the Bureau of Land Management (BLM).

As required by the approved plan, the licensee shall file monitoring reports with the Commission by December 31 following years one, three, and five after license issuance, and every five years thereafter through the term of the license. The licensee shall include with the reports documentation that it has provided the reports to the U.S. Fish and Wildlife Service, BLM, and Idaho Department of Fish and Game, copies of any agency comments or recommendations, and for approval a description of any additional measures the licensee proposes to protect and enhance wildlife habitat. The licensee shall allow a minimum of 30 days for the agencies to comment or make recommendations before filing the monitoring reports with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific reasons.

Article 412. *Transmission Line Maintenance.* Within one year of license issuance, the licensee shall file for Commission approval a plan for timing restrictions on routine transmission line maintenance activities that minimizes noise disturbance to benchland-nesting birds, e.g., long-billed curlew, short-eared owl, and Brewer's sparrow, and cliff-dwelling raptors within or adjacent to the transmission line right-of-way.

The licensee shall develop the plan in consultation with the U.S. Fish and Wildlife Service, Bureau of Land Management, and Idaho Department of Fish and Game. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 413. Recreation Management Plan. Within 6 months of license issuance, the licensee shall file with the Commission for approval a revised Recreation Management Plan (RMP) that includes the following measures in the RMP filed on April 7, 2009: (1) the continued operation and maintenance of the five existing project recreation sites for the term of the license: Swan Falls Park, Swan Falls reservoir boat ramp, Swan Falls downstream boat launch, Swan Falls powerhouse museum, and canoe portage trail; (2) improvement of Swan Falls Park by providing riprap or a retaining wall along the shoreline, and adding a new dock, picnic tables, and a shelter; (3) enhancement of the Swan Falls reservoir boat ramp by upgrading the boat ramp, adding a vault toilet, and enhancing parking for vehicles and trailers; (4) enhancement of the Swan Falls downstream boat launch by constructing a two-lane boat ramp, adding a vault toilet, enhancing parking for vehicles and trailers, and removing the air compressor; (5) improvement of the canoe portage trail by installing signage; (6) enhancement and continued operation and maintenance of six existing dispersed recreation sites that provide access to the reservoir and river, improving associated access roads, and closing and restoring nine other dispersed sites; and (7) implementation of the Litter and Sanitation Plan, including additional vault toilets and dumpsters, biannual litter pickups, and two signs describing a carry-in/carry-out policy within the project boundary, as modified above.

The revised RMP shall also include the following modifications:

- (1) documentation that demonstrates completion of the licensee's consultation with the Idaho State Historic Preservation Officer (Idaho SHPO) to ensure that work planned at informal dispersed recreation sites and associated access roads, as described in section 2.6.1 of the approved plan, considers the effects on cultural resources known to exist in the area;
- (2) soil erosion control measures for all recreation-related construction sites;
- (3)

detailed drawings for the Swan Falls Park, Swan Falls reservoir boat ramp, Swan Falls downstream boat launch, and the existing canoe portage trail; (4) a detailed description and drawings of proposed improvements to the six dispersed recreation sites shown on figure 1 of the RMP; (5) a description of how the needs of the disabled were considered in the planning and design of the recreation facilities; (6) modification of the Litter and Sanitation Plan so it applies only to lands within the project boundary; (7) a final Interpretation and Education Plan, developed in consultation with the Bureau of Land Management, Idaho Department of Parks and Recreation (Idaho DPR), and the Idaho SHPO; and (8) a revised implementation schedule for all measures contained in the RMP.

The Commission reserves the right to require further changes to the RMP. Recreation facility enhancements shall not begin until the licensee is notified by the Commission that the revised RMP is approved (this limitation does not apply to routine maintenance or repairs). Upon approval of the Commission, the licensee shall implement the plan, including any changes required by the Commission.

Article 414. Recreation Monitoring. The licensee shall file a Recreation Monitoring Report every six years from the date of issuance of this license, along with the filing of the FERC Form 80 reports. The report shall include a summary of all monitoring activities and results, and, for approval, any proposals to the Commission for future recreation management. The report shall be developed in consultation with the Idaho Department of Parks and Recreation (Idaho DPR), Idaho Department of Fish and Game (Idaho DFG), Idaho State Historic Preservation Officer (Idaho SHPO), and the Bureau of Land Management (BLM). The licensee shall provide the consulted agencies a minimum of 30 days to review the draft report and make recommendations before filing the report with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons why the recommendation was not adopted.

Article 415. Visual Guidelines Plan. Within six months of license issuance, the licensee shall file with the Commission for approval a Visual Guidelines Plan that contains, at a minimum, the following: (1) a list of neutral paint color schemes for maintaining project structures; (2) a list of species for vegetative planting and/or aesthetic screening purposes where needed; and (3) a list of the construction materials proposed to be used for maintaining existing buildings or for new building construction.

The plan shall be developed in consultation with the Bureau of Land Management and Idaho Department of Parks and Recreation. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make

recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 416. Signage Plan. Within six months of license issuance, the licensee shall file with the Commission for approval a Signage Plan for the project that addresses, at a minimum, project signage for public safety, access, recreational use, and resource protection. The plan shall include sign placement, content, design, and location information.

The plan shall be developed in consultation with the Bureau of Land Management and Idaho Department of Parks and Recreation. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 417. Programmatic Agreement and Historic Properties Management Plan. The licensee shall implement the "Programmatic Agreement Between the Federal Energy Regulatory Commission and the Idaho State Historic Preservation Officer for Managing Historic Properties that May be Affected by Issuing a License to Idaho Power Company for the Continued Operation of the Swan Falls Hydroelectric Project in Ada and Owyhee Counties, Idaho (FERC No. 503-048)," executed on February 18, 2011, and including but not limited to the Historic Properties Management Plan (HPMP) for the project. In the event that the Programmatic Agreement is terminated, the licensee shall continue to implement the provisions of its approved HPMP. The Commission reserves the right to require changes to the HPMP at any time during the term of the license.

Article 418. Use and Occupancy. (a) In accordance with the provisions of this article, the licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensee shall also have continuing responsibility to supervise and control the use and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The type of use and occupancy of project lands and waters for which the licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 water craft at a time and where said facility is intended to serve single-family type dwellings; (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline; and (4) food plots and other wildlife enhancement. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the use and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the licensee shall: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the impoundment shoreline. To implement this paragraph (b), the licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensee's costs of administering the permit program. The Commission reserves the right to require the licensee to file a description of its standards, guidelines, and procedures for implementing

this paragraph (b) and to require modification of those standards, guidelines, or procedures.

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

(d) The licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary state and federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary federal and state water quality certification or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary federal and state approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 water craft at a time and are located at least one-half mile (measured over project waters) from any other private or public marina; (6) recreational development consistent with an approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from project waters at normal surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 60 days before conveying any interest in project lands under this paragraph (d), the licensee must file a letter with the Commission, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G map may be used), the nature of the proposed use, the identity of any federal or state agency official consulted, and any federal or state approvals required for the proposed use. Unless the Commission's authorized representative, within 45 days from the filing date,

requires the licensee to file an application for prior approval, the licensee may convey the intended interest at the end of that period.

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

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

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

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

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

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

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

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

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

Jeff C. Wright
Director
Office of Energy Projects

Form L-5
(October, 1975)

**FEDERAL ENERGY REGULATORY COMMISSION
TERMS AND CONDITIONS OF LICENSE FOR CONSTRUCTED
MAJOR PROJECT AFFECTING NAVIGABLE WATERS
AND LANDS OF THE UNITED STATES**

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

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

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

Article 4. The project, including its operation and maintenance and any work incidental to additions or alterations authorized by the Commission, whether or not conducted upon lands of the United States, shall be subject to the inspection and

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

Article 5. The Licensee, within five years from the date of issuance of the license, shall acquire title in fee or the right to use in perpetuity all lands, other than lands of the United States, necessary or appropriate for the construction maintenance, and operation of the project. The Licensee or its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights or occupancy and use; and none of such properties shall be voluntarily sold, leased, transferred, abandoned, or otherwise disposed of without the prior written approval of the Commission, except that the Licensee may lease or otherwise dispose of interests in project lands or property without specific written approval of the Commission pursuant to the then current regulations of the Commission. The provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear; and mortgage or trust deeds or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article.

Article 6. In the event the project is taken over by the United States upon the termination of the license as provided in Section 14 of the Federal Power Act, or is transferred to a new licensee or to a nonpower licensee under the provisions of Section 15 of said Act, the Licensee, its successors and assigns shall be responsible for, and shall make good any defect of title to, or of right of occupancy and use in, any of such project property that is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and shall pay and discharge, or shall assume responsibility for payment and discharge of, all liens or encumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: Provided, That the provisions of this article are not intended to require the Licensee, for the purpose of transferring the project to the United States or to a new licensee, to acquire any different title to, or right of occupancy and use in, any of such project property than was necessary to acquire for its own purposes as the Licensee.

Article 7. The actual legitimate original cost of the project, and of any addition thereto or betterment thereof, shall be determined by the Commission in accordance with the Federal Power Act and the Commission's Rules and Regulations thereunder.

Article 8. The Licensee shall install and thereafter maintain gages and stream-gaging stations for the purpose of determining the stage and flow of the stream or streams on which the project is located, the amount of water held in and withdrawn from storage, and the effective head on the turbines; shall provide for the required reading of such gages and for the adequate rating of such stations; and shall install and maintain standard meters adequate for the determination of the amount of electric energy generated by the project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission or its authorized representative. The Commission reserves the right, after notice and opportunity for hearing, to require such alterations in the number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, as are necessary to secure adequate determinations. The installation of gages, the rating of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of the project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision, or cooperation for such periods as may mutually agreed upon. The Licensee shall keep accurate and sufficient records of the foregoing determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 9. The Licensee shall, after notice and opportunity for hearing, install additional capacity or make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so.

Article 10. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other projects or power systems and in such manner as the Commission any direct in the interest of power and other beneficial public uses of water resources, and on such conditions concerning the equitable sharing of benefits by the Licensee as the Commission may order.

Article 11. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement, the Licensee shall reimburse the owner of the headwater improvement for such part of the annual charges for interest, maintenance, and depreciation thereof as the Commission shall determine to be equitable, and shall pay to the United States the cost of making such determination as fixed by the Commission. For benefits provided by a storage reservoir or other headwater improvement of the United states, the Licensee shall pay to the Commission the amounts for which it is billed from time to time for such headwater benefits and for the cost of making the determinations pursuant to the then current regulations of the Commission under the Federal Power Act.

Article 12. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission my prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes, and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

Article 13. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity for hearing,

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

Article 14. In the construction or maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines and telegraph, telephone and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling or obstructing traffic or endangering life. None of the provisions of this article are intended to relieve the Licensee from any responsibility or requirement which may be imposed by any other lawful authority for avoiding or eliminating inductive interference.

Article 15. The Licensee shall, for the conservation and development of fish and wildlife resources, construct, maintain, and operate, or arrange for the construction, maintenance, and operation of such reasonable facilities, and comply with such reasonable modifications of the project structures and operation, as may be ordered by the Commission upon its own motion or upon the recommendation of the Secretary of the Interior or the fish and wildlife agency or agencies of any State in which the project or a part thereof is located, after notice and opportunity for hearing.

Article 16. Whenever the United States shall desire, in connection with the project, to construct fish and wildlife facilities or to improve the existing fish and wildlife facilities at its own expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of the Licensee's lands and interests in lands, reservoirs, waterways and project works as may be reasonably required to complete such facilities or such improvements thereof. In addition, after notice and opportunity for hearing, the Licensee shall modify the project operation as may be reasonably prescribed by the Commission in order to permit the maintenance and operation of the fish and wildlife

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

Article 17. The Licensee shall construct, maintain, and operate, or shall arrange for the construction, maintenance, and operation of such reasonable recreational facilities, including modifications thereto, such as access roads, wharves, launching ramps, beaches, picnic and camping areas, sanitary facilities, and utilities, giving consideration to the needs of the physically handicapped, and shall comply with such reasonable modifications of the project, as may be prescribed hereafter by the Commission during the term of this license upon its own motion or upon the recommendation of the Secretary of the Interior or other interested Federal or State agencies, after notice and opportunity for hearing.

Article 18. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and for outdoor recreational purposes, including fishing and hunting: Provided, That the Licensee may reserve from public access such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property.

Article 19. In the construction, maintenance, or operation of the project, the Licensee shall be responsible for, and shall take reasonable measures to prevent, soil erosion on lands adjacent to streams or other waters, stream sedimentation, and any form of water or air pollution. The Commission, upon request or upon its own motion, may order the Licensee to take such measures as the Commission finds to be necessary for these purposes, after notice and opportunity for hearing.

Article 20. The Licensee shall clear and keep clear to an adequate width lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which results from the clearing of lands or from the maintenance or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. All clearing of the lands and disposal of the unnecessary material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission and in accordance with appropriate Federal, State, and local statutes and regulations.

Article 21. Material may be dredged or excavated from, or placed as fill in, project lands and/or waters only in the prosecution of work specifically authorized under the license; in the maintenance of the project; or after obtaining Commission approval, as appropriate. Any such material shall be removed and/or deposited in such manner as to reasonably preserve the environmental values of the project and so as not to interfere with traffic on land or water. Dredging and filling in a navigable water of the United States shall also be done to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 22. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its lands and rights-of-way and such rights of passage through its dams or other structures, and shall permit such control of its pools, as may be required to complete and maintain such navigation facilities.

Article 23. The operation of any navigation facilities which may be constructed as a part of, or in connection with, any dam or diversion structure constituting a part of the project works shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army.

Article 24. The Licensee shall furnish power free of cost to the United States for the operation and maintenance of navigation facilities in the vicinity of the project at the voltage and frequency required by such facilities and at a point adjacent thereto, whether said facilities are constructed by the Licensee or by the United States.

Article 25. The Licensee shall construct, maintain, and operate at its own expense such lights and other signals for the protection of navigation as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 26. Timber on lands of the United States cut, used, or destroyed in the construction and maintenance of the project works, or in the clearing of said lands, shall be paid for, and the resulting slash and debris disposed of, in accordance with the requirements of the agency of the United States having jurisdiction over said lands. Payment for merchantable timber shall be at current stumpage rates, and payment for young growth timber below merchantable size shall be at current damage appraisal values. However, the agency of the United States having jurisdiction may sell or dispose of the merchantable timber to others than the Licensee: Provided, That timber so sold or disposed of shall be cut and removed from the area prior to, or without undue interference with, clearing operations of the Licensee and in coordination with the Licensee's project construction schedules. Such sale or disposal to others shall not relieve the Licensee of

responsibility for the clearing and disposal of all slash and debris from project lands.

Article 27. The Licensee shall do everything reasonably within its power, and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon the request of officers of the agency concerned, to prevent, to make advance preparations for suppression of, and to suppress fires on the lands to be occupied or used under the license. The Licensee shall be liable for and shall pay the costs incurred by the United States in suppressing fires caused from the construction, operation, or maintenance of the project works or of the works appurtenant or accessory thereto under the license.

Article 28. The Licensee shall interpose no objection to, and shall in no way prevent, the use by the agency of the United States having jurisdiction over the lands of the United States affected, or by persons or corporations occupying lands of the United States under permit, of water for fire suppression from any stream, conduit, or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license, or the use by said parties of water for sanitary and domestic purposes from any stream, conduit, or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license.

Article 29. The Licensee shall be liable for injury to, or destruction of, any buildings, bridges, roads, trails, lands, or other property of the United States, occasioned by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto under the license. Arrangements to meet such liability, either by compensation for such injury or destruction, or by reconstruction or repair of damaged property, or otherwise, shall be made with the appropriate department or agency of the United States.

Article 30. The Licensee shall allow any agency of the United States, without charge, to construct or permit to be constructed on, through, and across those project lands which are lands of the United States such conduits, chutes, ditches, railroads, roads, trails, telephone and power lines, and other routes or means of transportation and communication as are not inconsistent with the enjoyment of said lands by the Licensee for the purposes of the license. This license shall not be construed as conferring upon the Licensee any right of use, occupancy, or enjoyment of the lands of the United States other than for the construction, operation, and maintenance of the project as stated in the license.

Article 31. In the construction and maintenance of the project, the location and standards of roads and trails on lands of the United States and other uses of lands of the United States, including the location and condition of quarries, borrow pits, and spoil

disposal areas, shall be subject to the approval of the department or agency of the United States having supervision over the lands involved.

Article 32. The Licensee shall make provision, or shall bear the reasonable cost, as determined by the agency of the United States affected, of making provision for avoiding inductive interference between any project transmission line or other project facility constructed, operated, or maintained under the license, and any radio installation, telephone line, or other communication facility installed or constructed before or after construction of such project transmission line or other project facility and owned, operated, or used by such agency of the United States in administering the lands under its jurisdiction.

Article 33. The Licensee shall make use of the Commission's guidelines and other recognized guidelines for treatment of transmission line rights-of-way, and shall clear such portions of transmission line rights-of-way across lands of the United States as are designated by the officer of the United States in charge of the lands; shall keep the areas so designated clear of new growth, all refuse, and inflammable material to the satisfaction of such officer; shall trim all branches of trees in contact with or liable to contact the transmission lines; shall cut and remove all dead or leaning trees which might fall in contact with the transmission lines; and shall take such other precautions against fire as may be required by such officer. No fires for the burning of waste material shall be set except with the prior written consent of the officer of the United States in charge of the lands as to time and place.

Article 34. The Licensee shall cooperate with the United States in the disposal by the United States, under the Act of July 31, 1947, 61 Stat. 681, as amended (30 U.S.C. sec. 601, et seq.), of mineral and vegetative materials from lands of the United States occupied by the project or any part thereof: Provided, That such disposal has been authorized by the Commission and that it does not unreasonably interfere with the occupancy of such lands by the Licensee for the purposes of the license: Provided further, That in the event of disagreement, any question of unreasonable interference shall be determined by the Commission after notice and opportunity for hearing.

Article 35. If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use, without adequate replacement, or shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license. The Commission, after notice and opportunity for hearing, may require the Licensee to remove any or all structures, equipment and power lines within the project boundary and to take any such other action necessary to

restore the project waters, lands, and facilities remaining within the project boundary to a condition satisfactory to the United States agency having jurisdiction over its lands or the Commission's authorized representative, as appropriate, or to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

Article 36. The right of the Licensee and of its successors and assigns to use or occupy waters over which the United States has jurisdiction, or lands of the United States under the license, for the purpose of maintaining the project works or otherwise, shall absolutely cease at the end of the license period, unless the Licensee has obtained a new license pursuant to the then existing laws and regulations, or an annual license under the terms and conditions of this license.

Article 37. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

APPENDIX A

Water Quality Certification Conditions for the Swan Falls Hydroelectric Project Issued by the Idaho Department of Environmental Quality May 4, 2009.

MONITORING PLAN

IPC has proposed monitoring temperature and dissolved oxygen at the Swan Falls facility. DEQ agrees that water quality monitoring is necessary. In order to implement the IPC proposed monitoring, and to address DEQ's concerns with water quality in the Swan Falls reach of the Snake River, IPC shall, after issuance of a new License, develop, in consultation with DEQ, a Monitoring Plan that includes the elements described below.

The Monitoring Plan shall be submitted to DEQ for approval within six (6) months after issuance of a New License. The purpose of the Monitoring Plan is to evaluate data for comparison with water quality standards and to help detect the effect, if any, of the Swan Falls Project on water quality both within the reservoir and downstream from the Swan Falls Project. The Monitoring Plan shall include a description of the location and method of monitoring the following parameters, as appropriate, in the inflow and the outflow to the Swan Falls Project: discharge flows, dissolved oxygen, total dissolved gas, and water temperature in the Snake River. The Monitoring Plan shall include a Quality Assurance Control Project Plan (QAPP). The QAPP shall include appropriate protocols for dissolved oxygen, total dissolved gas, water temperature measurement and continuous flow monitoring. Upon approval, the Monitoring Plan, including the QAPP, shall be implemented in accordance with DEQ's approval.

DATA REVIEW DECISION MAKING

1. IPC shall submit annual reports to DEQ that summarize the results of its water quality monitoring as set out in the approved Monitoring Plan.
2. DEQ intends to review the annual data and report of findings in coordination and consultation with the Idaho Department of Fish and Game (IDFG). After such coordination and consultation, DEQ shall proceed as follows:
 - a. After five (5) years, IPC may request the termination of some or all of the monitoring described in the approved Monitoring Plan that is in addition to the monitoring proposed by IPC in its license application. Within sixty (60) days of the request, DEQ shall notify IPC of its decision regarding whether termination of the monitoring is appropriate.

b. If after review of an annual report, DEQ determines the data shows that the operation of the Swan Falls Project causes or contributes to a violation of Water Quality Standards, Idaho Power Company will be required to develop a contingency plan, within six (6) months of DEQ's determination that addresses IPC's contribution to the violation.

APPENDIX B

Reasonable and Prudent Measures and Terms and Conditions included in the U.S. Fish and Wildlife Service's Biological Service's Biological Opinion for the Relicensing of the Swan Falls Hydroelectric Project No. 503-048

February 6, 2012

REASONABLE AND PRUDENT MEASURES

1. Minimize the potential for take of Snake River physa snails from proposed action elements involving ramping rates and minimum flows by conducting surveys in the Action Area designed to locate Snake River physa individuals or colonies.
2. If Snake River physa individuals or colonies can be consistently located in the Action Area, collect such information as will be useful in determining effects of proposed operations to the species, and that can be gathered with minimal effort and cost.
3. Minimize the potential for take of Snake River physa from construction activities.
4. Within its legal authorities, maintain Snake River minimum flows of 3,900 cfs as per Swans Falls Agreement.

TERMS AND CONDITIONS

In order to be exempt from the prohibitions of Section 9 of the Act, the licensee must comply with the following terms and conditions, which implement the reasonable and prudent measures described above and outline required reporting and monitoring requirements.

1a. Commit to a series of aquatic surveys targeted primarily to areas of previously known Snake River physa concentrations in the Action Area⁷⁰ in order to maximize the potential for consistently locating Snake River physa individuals or colonies, over a specified number of years to be agreed upon in cooperation with the Service. Survey areas and protocols will be determined and developed in cooperation with the Service. The licensee must obtain all required Federal and State collection permits.

1b. Due to the difficulty in identifying Snake River physa in the field, potential Snake

⁷⁰ The Action Area extends from the head of Swan Falls reservoir (RM 469) downstream to the head of Brownlee reservoir (RM 343).

River physa specimens will initially need to be sacrificed and transported elsewhere for identification. Therefore, establish a voucher system to account for Snake River physa collections. If the species is found in sufficient numbers such that laboratory and field experience improve identification skills to the point where specimens can be positively identified in the field, the voucher system may be discontinued.

2a. If Snake River physa are found and can be consistently relocated in the Action Area, establish a regular monitoring system to track population trends. Monitoring should include some measure of cobble (pebble/gravel habitat condition, with population trend and habitat monitoring protocols to be developed in cooperation with the Service.

2b. Develop protocols, in cooperation with the Service, to monitor for increases in sediment (fines) deposition and increases in macrophyte beds.

3. Schedule construction activities for the downstream boat ramp site to coincide with the least minimum flows possible given power demands, construction logistics, and water year consideration.

4. If flows are less than 3,900 cfs as measured at the Murphy Gage, the licensee must exercise its rights under the Swans Falls Agreement and Idaho law to ensure that the minimum flows are maintained.