

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT
To appropriate the public waters of the State of Idaho

Ident. No. 34-143391. Name of applicant(s) Gordon Fulton Phone (208) 588-3118Name connector (check one): ☐ and ☐ or ☐ and/orMailing address: 5907 Hwy 93 City MackayState Id Zip 83251 Email: tailingart@yahoo.com2. Source of water supply Rock Creek which is a tributary of Sinks

3. Location of point(s) of diversion:

Twp	Rge	Sec	Govt Lot	¼	¼	¼	County	Source	Local name or tag #
10N	22E	34		SE	SW	SE	Custer	Rock Creek	34-00057
10N	22E	34		SE	SW	SE	Custer	Rock Creek	34-00058
10N	22E	34		SE	SW	SE	Custer	Rock Creek	34-00836
10N	22E	34		Se	SW	SE	Custer	Rock Creek	34-04039

4. Water will be used for the following purposes:

Amount 6.5cfs for Power Generation purposes from Jan 1 to Dec 31 (both dates inclusive)
(cfs or acre-feet per year)Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per year)Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per year)Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per year)5. Total quantity to be appropriated is (a) 6.5 cubic feet per second (cfs) and/or (b) _____ acre-feet per year (af).

6. Proposed diverting works:

a. Describe type and size of devices used to divert water from the source. Existing concrete headgate an spillwayb. Height of storage dam n/a feet; active reservoir capacity n/a acre-feet; total reservoir capacity _____ acre-feet. If the reservoir will be filled more than once each year, describe the refill plan in item 11.For dams 10 feet or more in height OR reservoirs with a total storage capacity of 50 acre-feet or more, submit a separate Application for Construction or Enlargement of a New or Existing Dam. Application required? ☐ Yes ☒ Noc. Proposed well diameter is n/a inches; proposed depth of well is n/a feet.d. Is ground water with a temperature of greater than 85°F being sought? ☐ Yes ☒ Noe. If well is already drilled, when? n/a; drilling firm _____
Well was drilled for (well owner) _____; Drilling Permit No. _____

7. Description of proposed uses (if irrigation only, go to item 8):

a. Hydropower; show total feet of head and proposed capacity in kW. 600 ft head 250kwb. Stockwatering; list number and kind of livestock. n/ac. Municipal; show name of municipality or the applicant's qualifications as a municipal provider. n/ad. Domestic; show number of households n/ae. Other; describe fully. n/a

RECEIVED

JUN 29 2011

Department of Water Resources
Eastern Region

AMENDED

34-14339

8. Description of place of use:

- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
9N	22E	5										6.5							6.5cfs
		5										P							

Total number of acres to be irrigated: n/a

9. Describe any other water rights used for the same purposes as described above. Include water delivered by a municipality, canal company, or irrigation district. If this application is for domestic purposes, do you intend to use this water, water from another source, or both, to irrigate your lawn, garden, and/or landscaping? n/a

10. a. Who owns the property at the point of diversion? Department of Agriculture Forest Service
b. Who owns the land to be irrigated or place of use? Wiley Smith
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: Wiley and his sons are very agreeable to placing a small power plant in their field.

11. Describe your proposal in narrative form, and provide additional explanation for any of the items above. Attach additional pages if necessary. My proposal is to install a small Hydro Plant on our existing 20" diameter x 2 1/2 mile long steel irrigation pipeline. The creek is already diverted virtually year around for irrigation or stock water purposes, so it seems foolish not to utilize the available pressure. Flows vary considerably due to seasonal runoff. Usually from 1cfs to 3cfs during the winter to much more than the pipeline will hold during spring runoff. I have the permission to place the power plant on private land, and pending agreement to feed it into a 69kv line that runs within a few hundred feet of the proposed location.

12. Time required for completion of works and application of water to proposed beneficial use is 5 years (minimum 1 year).
13. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½" x 11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.

The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.

Gordon Fultay
Signature of Applicant
Gordon Fultay
Print Name (and title, if applicable)

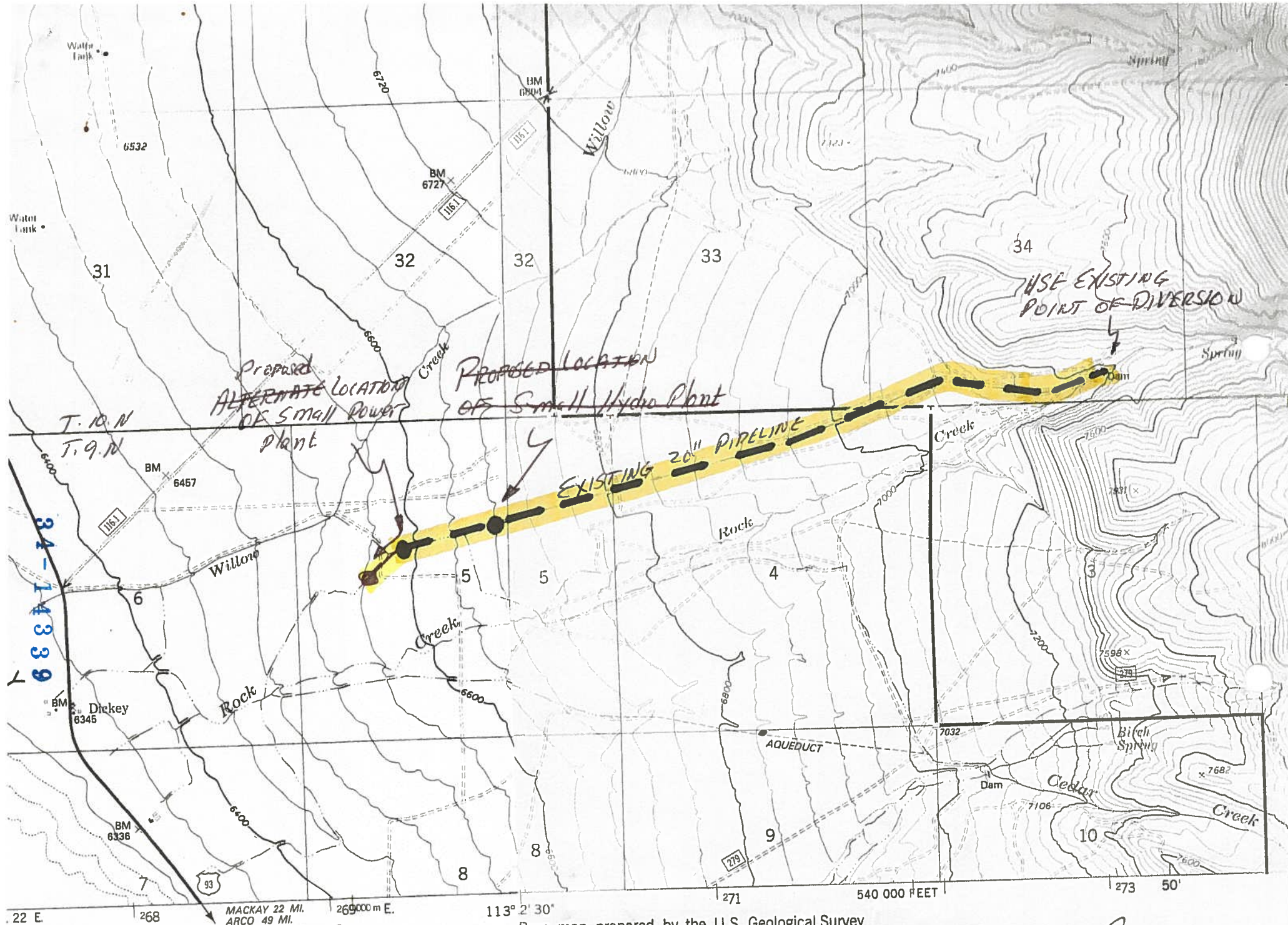
Signature of Applicant

Print Name (and title, if applicable)

For Department Use:

Received by _____ Date _____ Time _____ Preliminary check by _____
Fee \$ 490.00 Received by Km Receipt No. ED36815 Date 7/14/2011

34-14339



22 E. 268

MACKAY 22 MI.
ARCO 49 MI.

113° 2' 30"

Base map prepared by the U.S. Geological Survey

Control by USGS and USC&GS

Method from aerial photographs

540 000 FEET

273 50'

DIKEY PEAK

BURAH PEAK

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

AFFIDAVIT FOR WATER RIGHTS TO BE USED FOR POWER PURPOSES

A. Establishment of Residency: (Complete either 1, or 2).

1. Individual Applicant or Individual Members of a Partnership:

I, _____ of _____
(city)
County of _____, State of Idaho, being duly sworn, do hereby
certify that I am a bona fide resident of the State of Idaho.

2. Corporation:

I, Gordon Fulton of Mackay
(name) (city)
County of Custer, State of Idaho, being duly sworn, depose and
say: That I am the designated registered agent of the DICKEY LIVESTOCK INC.
(name of corporation); that as such I am in charge of the registered office of the said
corporation as required by Section 30-1-12, Idaho Code, at Mackay
(city)
Idaho, wherein are kept the corporate records required by Section 30-1-52, Idaho Code; and that DICKEY
LIVESTOCK INC. is a corporation qualified to do business in the State of Idaho under the laws
(name of corporation)
of the State of Idaho.

B. Ownership of Facilities: (To be completed for hydropower projects only)

The hydropower facility to be developed pursuant to the attached Application for Permit:

- (check one)
- ☐ Will not utilize existing man-made irrigation facilities such as a dam or a canal.
- ☒ Will utilize existing man-made irrigation facilities such as a dam or a canal, and permission of the owner is documented in an affidavit attached hereto.
- ☐ Will utilize existing man-made irrigation facilities such as a dam or a canal, and the owner is the signee of this affidavit.

STATE OF IDAHO)

County of Custer) ss

On this 16th day of June, 2010, personally appeared before me the signer(s) of
the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

JANE HILL
Notary Public
State of Idaho

SEAL

My commission expires: 8-1-2012

Gordon Fulton
Applicant

Jane Hill
Notary Public residing at _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

34-00836
Water Right No.
34-04039
34-10585

AFFIDAVIT FOR WATER RIGHTS TO BE USED FOR POWER PURPOSES

A. Establishment of Residency: (Complete either 1, or 2).

1. Individual Applicant or Individual Members of a Partnership:

I, Wiley Francis Smith (name) of Mackay (city),

County of Custer, State of Idaho, being duly sworn, do hereby
certify that I am a bona fide resident of the State of Idaho.

2. Corporation:

I, _____ (name) of _____ (city),

County of _____, State of Idaho, being duly sworn, depose and
say: That I am the designated registered agent of the _____

_____ (name of corporation): that as such I am in charge of the registered office of the said

corporation as required by Section 30-1-12, Idaho Code, at _____ (city)

Idaho, wherein are kept the corporate records required by Section 30-1-52, Idaho Code: and that _____

_____ (name of corporation) is a corporation qualified to do business in the State of Idaho under the laws
of the State of Idaho.

B. Ownership of Facilities: (To be completed for hydropower projects only)

The hydropower facility to be developed pursuant to the attached Application for Permit:

(check one)

- ☐ Will not utilize existing man-made irrigation facilities such as a dam or a canal.
- ☐ Will utilize existing man-made irrigation facilities such as a dam or a canal, and permission of the owner is documented in an affidavit attached hereto.
- ☒ Will utilize existing man-made irrigation facilities such as a dam or a canal, and the owner is the signee of this affidavit.

Wiley F. Smith
Applicant

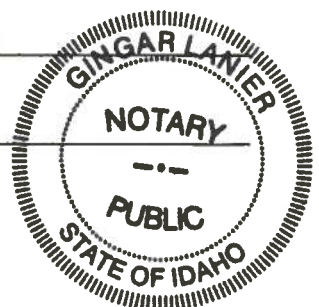
STATE OF IDAHO)
County of Custer) ss

On this 11th day of June, 20 10, personally appeared before me the signer(s) of
the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

SEAL

My commission expires: 4/4/14

Ginger Lamer
Notary Public residing at
Leslie, ID



34-14339

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT
To appropriate the public waters of the State of Idaho

Ident. No.

RECEIVED

JUN 23 2010

Department of Water Resources
Eastern Region1. Name of applicant(s) Gordon FultonPhone (208) 588 3118Name connector (check one): ☐ and ☐ or ☐ and/orMailing address: 5907 Hwy 93City MackayState Id Zip 83251 Email: tailingart@yahoo.com2. Source of water supply Rock Creek which is a tributary of Sinks

3. Location of point(s) of diversion:

Twp	Rge	Sec	Govt Lot	¼	¼	¼	County	Source	Local name or tag #
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10N	22E	34		SE	SW	SE	Custer	Rock Creek	34-04039

4. Water will be used for the following purposes:

Amount 9 cfs for Power Generation purposes from Jan 1 to Dec 31 (both dates inclusive)
(cfs or acre-feet per year)Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per year)Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per year)Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per year)5. Total quantity to be appropriated is (a) up to 9 cubic feet per second (cfs) and/or (b) _____ acre-feet per year (af).

6. Proposed diverting works:

a. Describe type and size of devices used to divert water from the source. Existing concrete headgate with spillwayb. Height of storage dam n/a feet; active reservoir capacity n/a acre-feet; total reservoir capacity _____ acre-feet. If the reservoir will be filled more than once each year, describe the refill plan in item 11.For dams 10 feet or more in height OR reservoirs with a total storage capacity of 50 acre-feet or more, submit a separate Application for Construction or Enlargement of a New or Existing Dam. Application required? ☐ Yes ☒ Noc. Proposed well diameter is n/a inches; proposed depth of well is _____ feet.d. Is ground water with a temperature of greater than 85°F being sought? ☐ Yes ☒ Noe. If well is already drilled, when? n/a; drilling firm _____

Well was drilled for (well owner) _____; Drilling Permit No. _____

7. Description of proposed uses (if irrigation only, go to item 8):

a. Hydropower; show total feet of head and proposed capacity in kW. 600 ft head 125 kwb. Stockwatering; list number and kind of livestock. nac. Municipal; show name of municipality or the applicant's qualifications as a municipal provider. n/ad. Domestic; show number of households n/ae. Other; describe fully. n/a

8. Description of place of use:

- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
9N	22E	5								9									9 cfs
		5								P									

Total number of acres to be irrigated: n/a

9. Describe any other water rights used for the same purposes as described above. Include water delivered by a municipality, canal company, or irrigation district. If this application is for domestic purposes, do you intend to use this water, water from another source, or both, to irrigate your lawn, garden, and/or landscaping? n/a

10. a. Who owns the property at the point of diversion? US Department of Agriculture Forest Service
b. Who owns the land to be irrigated or place of use? Bureau of Land Management or Wiley F Smith
c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: Special use Permit applied for

11. Describe your proposal in narrative form, and provide additional explanation for any of the items above. Attach additional pages if necessary. My proposal is to install a small Hydro Plant on our existing 20 " diameter x 2 1/4 mile long steel irrigation pipeline. The creek is already diverted through it virtually year-around for stock or irrigation water. Flows vary considerably due to seasonal runoff, so most of the year the flows are in the 1 cfs to 3 cfs range, but I intend to install a plant capable of utilizing up to 9 cfs when the water is available during spring runoff. The actual location of the plant may be subject to slight changes as I complete the planning , permitting and design process.

12. Time required for completion of works and application of water to proposed beneficial use is 5 years (minimum 1 year).
13. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½" x 11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.

The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.

Signature of Applicant

Print Name (and title, if applicable)

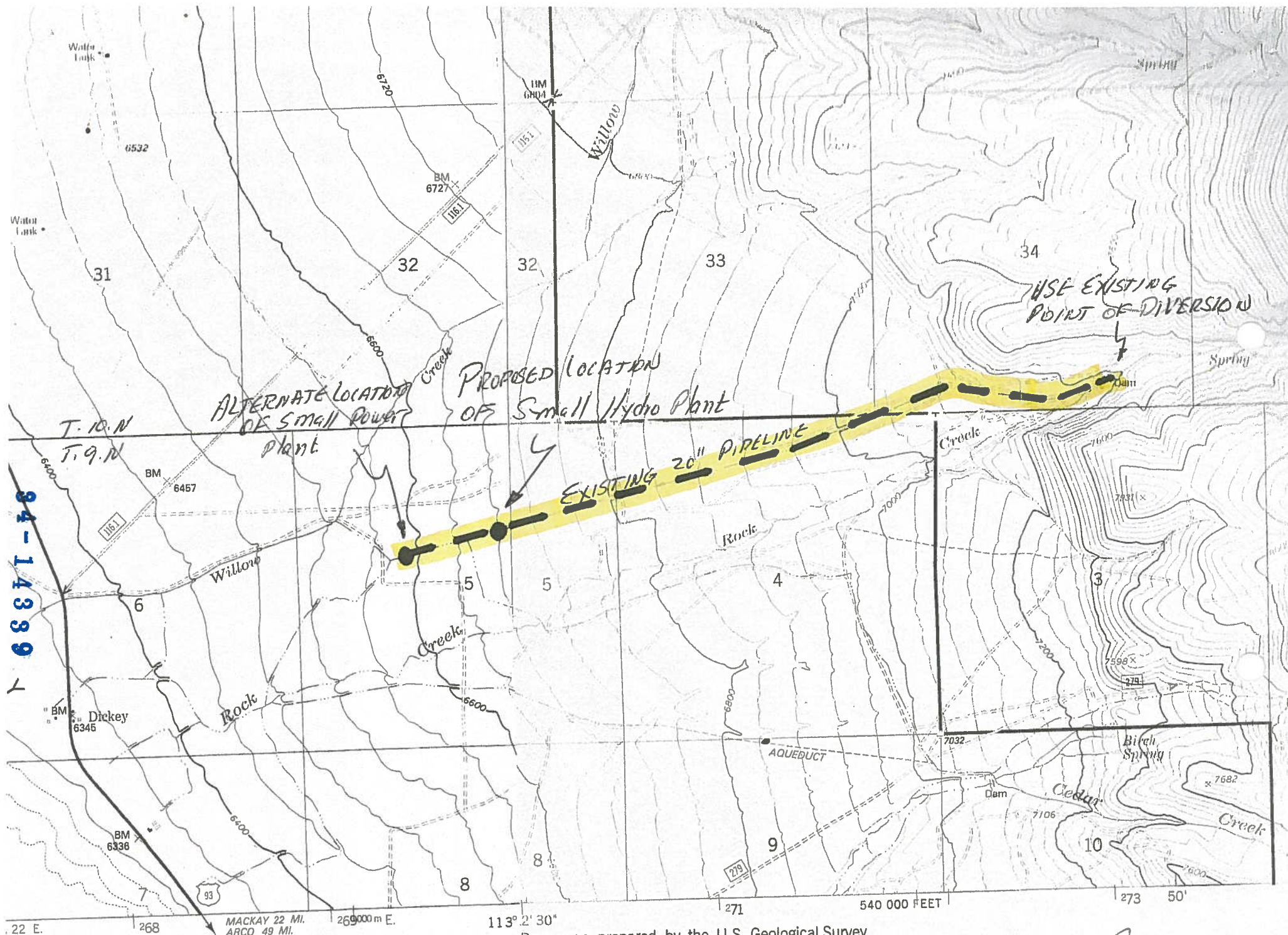
Signature of Applicant

Print Name (and title, if applicable)

For Department Use:

Received by _____ Date _____ Time _____ Preliminary check by _____
Fee \$ _____ Received by _____ Receipt No. _____ Date _____

34-14839



Base map prepared by the U.S. Geological Survey
Control by USGS and USC&GS

RUBEN PLAK

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

AFFIDAVIT FOR WATER RIGHTS TO BE USED FOR POWER PURPOSES

A. Establishment of Residency: (Complete either 1, or 2).

1. Individual Applicant or Individual Members of a Partnership:

I, _____ of _____
(city)
County of _____, State of Idaho, being duly sworn, do hereby
certify that I am a bona fide resident of the State of Idaho.

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I, Gordon Fulton of Mackay
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County of Custer, State of Idaho, being duly sworn, depose and
say: That I am the designated registered agent of the DICKEY LIVESTOCK INC.
(name of corporation): that as such I am in charge of the registered office of the said
corporation as required by Section 30-1-12, Idaho Code, at Mackay
(city)
Idaho, wherein are kept the corporate records required by Section 30-1-52, Idaho Code: and that DICKEY
LIVESTOCK INC. is a corporation qualified to do business in the State of Idaho under the laws
(name of corporation)
of the State of Idaho.

B. Ownership of Facilities: (To be completed for hydropower projects only)

The hydropower facility to be developed pursuant to the attached Application for Permit:

(check one)

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- ☒ Will utilize existing man-made irrigation facilities such as a dam or a canal, and permission of the owner is documented in an affidavit attached hereto.
- ☐ Will utilize existing man-made irrigation facilities such as a dam or a canal, and the owner is the signee of this affidavit.

STATE OF IDAHO)

County of Custer) ss

On this 16th day of June, 20 10

personally appeared before me the signer(s) of
the above instrument, who duly acknowledged to me that he (she) (they) executed the same.



SEAL

Gordon Fulton
Applicant

Jane Hill
Notary Public residing at _____

My commission expires: 8-1-2012

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

34-00836
Water Right No.
34-04039
34-10585

AFFIDAVIT FOR WATER RIGHTS TO BE USED FOR POWER PURPOSES

A. Establishment of Residency: *(Complete either 1, or 2).*

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I, Wiley Francis Smith of Mackay,
(name) (city)
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(name) (city)
County of _____, State of Idaho, being duly sworn, depose and
say: That I am the designated registered agent of the _____
_____: that as such I am in charge of the registered office of the said
(name of corporation)
corporation as required by Section 30-1-12, Idaho Code, at _____
(city)
Idaho, wherein are kept the corporate records required by Section 30-1-52, Idaho Code: and that _____
(name of corporation) is a corporation qualified to do business in the State of Idaho under the laws
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B. Ownership of Facilities: *(To be completed for hydropower projects only)*

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Wiley F. Smith
Applicant

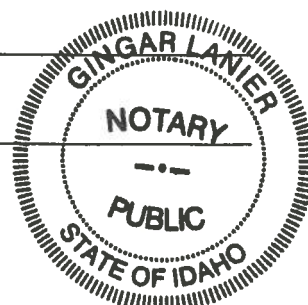
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County of Custer) ss

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the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

SEAL

My commission expires: 4/4/14

Ginger Lanier
Notary Public residing at
Leslie, ID



34-14339



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region, 900 North Skyline Drive, Suite A • Idaho Falls, Idaho 83402-1718

Phone: (208) 525-7161 • Fax: (208) 525-7177 • Web Site: www.idwr.idaho.gov

March 1, 2012

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

GORDON FULTON
5907 HWY 93
MACKAY, ID 83251

Application For Permit No. 34-14339

Dear Applicant(s):

The Department of Water Resources has received your water right application. Please refer to the number referenced above in all future correspondence regarding this application.

A legal notice of the application has been prepared and is scheduled for publication in the CHALLIS MESSENGER on March 15 and 22, 2012. Protests to this application may be submitted for a period ending ten (10) days after the second publication.

If the application is protested, you will be sent a copy of each protest. All protests must be resolved before the application can be considered for approval. If the protest(s) cannot be resolved voluntarily, the Department will conduct a conference and/or hearing on the matter.

If the application is not protested, the Department will process your application and notify you of any action taken on the application. If your application is approved, the Department will send you a copy of the permit.

Please contact this office if you have any questions regarding the application.

Sincerely,

Sharla Cox
Administrative Assistant



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region, 900 North Skyline Drive, Suite A • Idaho Falls, Idaho 83402-1718

Phone: (208) 525-7161 • Fax: (208) 525-7177 • Web Site: www.idwr.idaho.gov

March 01, 2012

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

ROGER TOTTEN
Water District 34
PO BOX 53
MACKAY, ID 83251

RE: Application for Permit No 34-14339

Dear Watermaster:

A copy of the above referenced application is enclosed. Please review the application, then complete the enclosed recommendation form and return it to this office within 21 days of the date of this letter.

IDWR's regional offices can finish reviewing an unprotested application as soon as the protest period has past. Your prompt response to this request will ensure that your recommendation can be considered during regional review. If IDWR has not received your written recommendation within 21 days from the date of this letter, IDWR will presume that you do not oppose approval of the application and that you have no comments for IDWR to consider.

Please contact this office if you have any questions regarding the application.

Sincerely,

Sharla Cox
Administrative Assistant

Enclosure(s)



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region, 900 North Skyline Drive, Suite A • Idaho Falls, Idaho 83402-1718

Phone: (208) 525-7161 • Fax: (208) 525-7177 • Web Site: www.idwr.idaho.gov

March 01, 2012

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

STATE OF IDAHO
DEPT OF ENVIRONMENTAL QUALITY
900 N SKYLINE DR STE B
IDAHO FALLS, ID 83402

Application to Permit No. 34-14339

STATE OF IDAHO:

The Department of Water Resources is seeking written comment and/or recommendations from your agency regarding the above referenced water right application. A copy of the application is enclosed for your reference.

This office can publish notice of the application as soon as the initial review is completed; therefore, your prompt response to this request is appreciated. If your agency desires to formally protest the approval of this application, you may do so after the notice is published by filing a written protest along with a \$25.00 filing fee within 10 days after final publication.

Please contact this office if you have any questions regarding the application.

Sincerely,

Sharla Cox
Administrative Assistant

Enclosure(s)



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region, 900 North Skyline Drive, Suite A • Idaho Falls, Idaho 83402-1718
Phone: (208) 525-7161 • Fax: (208) 525-7177 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

March 01, 2012

STATE OF IDAHO
FISH AND GAME
4279 COMMERCE CIRCLE
IDAHO FALLS, ID 83402

Application to Permit No. 34-14339

STATE OF IDAHO:

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Please contact this office if you have any questions regarding the application.

Sincerely,

Sharla Cox
Administrative Assistant

Enclosure(s)



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region, 900 North Skyline Drive, Suite A • Idaho Falls, Idaho 83402-1718

Phone: (208) 525-7161 • Fax: (208) 525-7177 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

March 01, 2012

US FOREST SERVICE
1405 HOLLIPARK DR
IDAHO FALLS, ID 83402

Application to Permit No. 34-14339

STATE OF IDAHO:

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Sharla Cox
Administrative Assistant

Enclosure(s)



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region, 900 North Skyline Drive, Suite A • Idaho Falls, Idaho 83402-1718

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

March 01, 2012

BUREAU OF LAND MANAGEMENT
1405 HOLLIPARK DR
IDAHO FALLS, ID 83402

Application to Permit No. 34-14339

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Please contact this office if you have any questions regarding the application.

Sincerely,

Sharla Cox
Administrative Assistant

Enclosure(s)

Cox, Sharla

From: Cox, Sharla
Sent: Thursday, March 01, 2012 9:42 AM
To: 'Challis Messenger (ameans@challismessenger. com) '
Subject: Legal Notice for your paper
Attachments: Challis Messenger E-Mail.doc

Contacts: Challis Messenger

Please Note: I have sent this legal notice a week early, due to, I am out of the office next week. Please note, advertise this on March 15 and 22, 2012.

Thank you.

Sharla

Sharla Cox
Administrative Assistant
Idaho Department of Water Resources
900 N. Skyline Dr. Ste. A
Idaho Falls ID 83402
208-525-7161 - telephone
208-525-7177 - fax
sharla.cox@idwr.idaho.gov

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

34-14339

GORDON FULTON

5907 HWY 93

MACKAY, ID 83251

Point of Diversion SESWSE

S34 T10N R22E

CUSTER County

Source ROCK CREEK Tributary

Use: POWER

01/01 to 12/31 6.5 CFS

Total Diversion: 6.5 CFS

Date Filed: 6/29/2011

Place Of Use: POWER

T09N R22E S5 NWSW

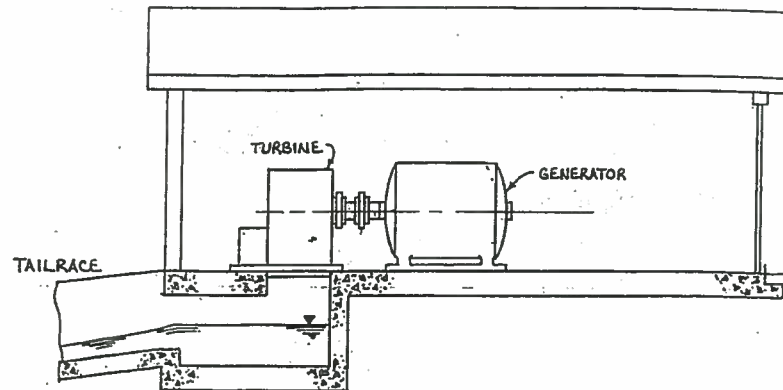
Permits will be subject to all prior water rights. For additional information concerning the property location, contact Eastern Region office at (208) 525-7161. Protests may be submitted based on the criteria of Idaho Code § 42-203A. Any protest against the approval of this application must be filed with the Director, Dept. of Water Resources, Eastern Region, 900 N Skyline Dr Ste A, Idaho Falls ID 83402 together with a protest fee of \$25.00 for each application on or before April 2, 2012. The protestant must also send a copy of the protest to the applicant.

GARY SPACKMAN, Interim Director

Published on March 15 and 22, 2012

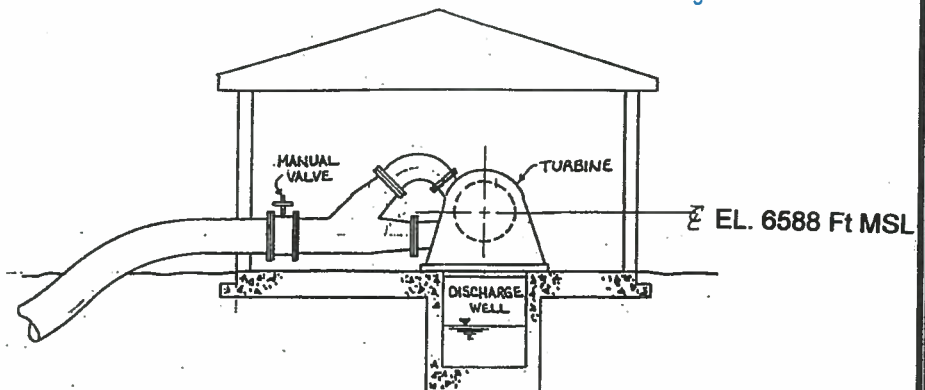
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Department of Water Resources
Eastern Region



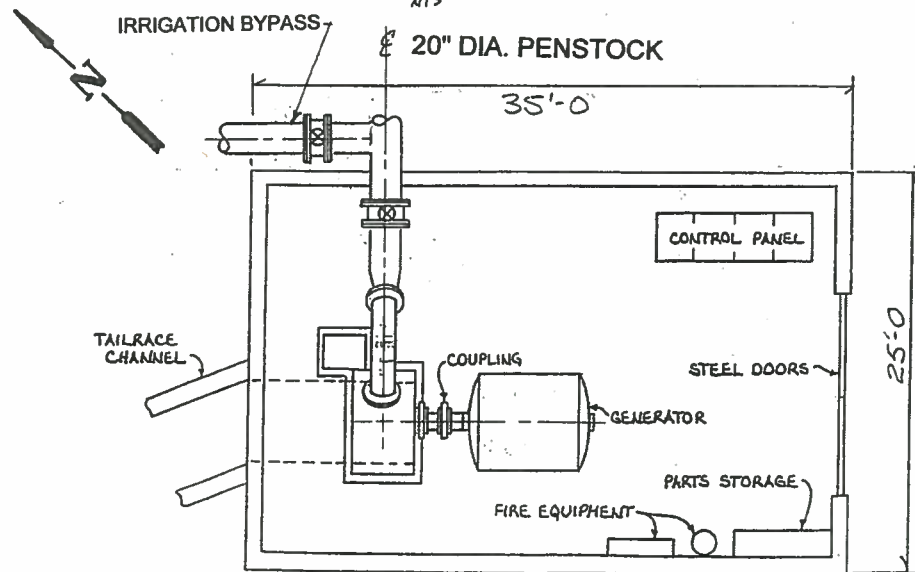
SIDE ELEVATION

NTS



END ELEVATION

NTS



PLAN

NTS

POWERHOUSE

ROCK CREEK
HYDROPOWER PROJECT



RECEIVED

FEB 17 2012

Department of Water Resources
Eastern Region

IDAHO DEPARTMENT OF FISH AND GAME

UPPER SNAKE REGION

4279 Commerce Circle
Idaho Falls, Idaho 83401

C.L. "Butch" Otter / Governor
Virgil Moore / Director

February 10, 2012

Mr. Gordon Fulton
5907 Hwy 93
Mackay, Idaho 83251

RE: Request for Comments-Proposed Hydropower Project and Diversion off Rock Creek

Dear Mr. Fulton:

Idaho Department of Fish and Game (Department) has received a request from you seeking comments on a proposal to appropriate public surface waters for a small hydropower generation facility constructed on an existing irrigation pipeline (Project). In a letter to you sent by Idaho Department of Water Resources (IDWR), you were required to seek comments from the Department concerning Project effects on aquatic habitat for fish and wildlife resources prior to IDWR verifying you have a complete Application for Permit (Application). In addition to utilizing your existing stock-water and irrigation water rights, you propose to divert an additional 6.5 cubic feet per second (c.f.s.) of surface water from an existing diversion from January 1 to December 31 (inclusive). The existing diversion structure is located on Rock Creek, a disconnected tributary to Chilly Slough in the Big Lost River basin. The diversion structure and perennial stream channel of Rock Creek is situated on lands administered by the Salmon-Challis National Forest. A portion of the intermittent Rock Creek channel downstream of the diversion structure is situated on lands administered by the Bureau of Land Management (BLM). Department staff has met with you on-site several times and is familiar with the proposed Project and Rock Creek watershed.

Fish and wildlife are property of all Idaho citizens. The Department and the Idaho Fish and Game Commission are expressly charged with statutory responsibility to preserve, protect, perpetuate, and manage fish and wildlife in Idaho (Idaho Code 36-103 (a)). In fulfillment of our statutory charge and direction as provided by the Idaho Legislature, we offer the following comments and recommendations. The purpose of these comments is to assist you by providing technical information addressing potential effects relative to conflicts with the local public interest (Idaho Code Section 42-203A(5)(e)) including effects on aquatic habitat for fish and wildlife resources. It is not the intention of the Department to support or oppose this proposal.

The Rock Creek watershed, which drains the northwest slopes of Mount Borah, is abundant in wildlife resources. The area downstream of the diversion is key habitat for greater sage-grouse and year-round habitat for pronghorn. The area of Rock Creek upstream and downstream of the diversion is considered wintering habitat for mule deer, elk, and bighorn sheep. In 2005, 34 bighorn sheep were released in this area of Rock Creek to help offset substantial declines of wild bighorn sheep populations (IDFG 2010). Though abundant in wildlife, the Department has no occurrence information of fish utilizing Rock Creek.

The Department is concerned about de-watering Rock Creek below the existing diversion structure and the negative effect it may have on aquatic habitats, particularly riparian vegetation that is used by wildlife. The Department concludes that there would be no net change on aquatic habitat for fish and wildlife resources if the Project were only to use your existing water rights. However, because you are requesting to use an additional 6.5 c.f.s of Rock Creek surface water year-round, the Department is concerned about de-watering effects on wildlife habitat. De-watering below the diversion would be most evident during base flows from November through March when

Keeping Idaho's Wildlife Heritage

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irrigation water rights are not authorized and surface flow is less than 6.5 c.f.s. You and other water right holders on Rock Creek are only authorized to divert stock-water from November through March. Any un-appropriated water passes the diversion and flows down the Rock Creek channel. Any water flowing past the diversion helps maintain riparian habitats important to all wildlife species. The Department recommends you amend your Application to show you are leaving a flow of surface water in Rock Creek downstream of the diversion.

The Department does not believe that Rock Creek has a sufficient supply of water to satisfy a 6.5 c.f.s. year-round appropriation. In your Application, you claim that base flows are typically between 1 and 3 c.f.s.; however, your application did not include any hydrologic or flow information. Predictions made utilizing the U.S. Geological Survey Web-based Stream Stats program show flows are less than 3.0 c.f.s. in Rock Creek for the months of November through March. Accordingly, IDWR is required under Idaho Code Section 42-203A(5) to determine if the water supply is sufficient for the purposes for which it is sought to be appropriated. If IDWR authorizes a 6.5 c.f.s. year round water appropriation, there is a high likelihood that flows would be eliminated or greatly diminished in Rock Creek below the diversion. This may have negative effects on wildlife and wildlife habitat. The Department recommends you provide realistic flow information in your Application for the months of November through March and seek to appropriate a commensurate amount of water based on actual flow information.

In summary, Idaho Department of Fish and Game is concerned about the potential your Project has to de-water Rock Creek below the diversion structure during the non-irrigation season and adverse effects it may have on riparian vegetation and wildlife habitat. To help avoid adverse impacts to the local public interest, namely wildlife habitat, the Department recommends that you prepare a modified Application that shows you are leaving some water in the Rock Creek channel year-round below your diversion.

Idaho Department of Fish and Game appreciates the opportunity to review and comment on your proposal. If you have questions or require further assistance, please contact our Environmental Staff Biologist, Tom Bassista, at 208.525.7290.

Sincerely,



Steve Schmidt
Regional Supervisor

SLS:tpb:jms

cc: Kerrie Mathews (IDWR-Idaho Falls)
Walt Poole (IDFG-HQ)
Troy Saffle (DEQ-Idaho Falls)
Carol Benkowsky (Salmon Challis National Forest-Mackay)
Gail Baer (Salmon Challis National Forest-Salmon)
Todd Kuck (BLM-Challis)

Literature Cited

Idaho Department of Fish and Game (IDFG). 2010. *Bighorn Sheep Management Plan 2010*.
Idaho Department of Fish and Game, Boise, USA.

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JAN 10 2012

Department of Water Resources
Eastern Region

State of Idaho
Department of Water Resources
900N. Skyline Dr., Suite A
Idaho Falls, id 83402-1718

January 8, 2012

Dear Kerrie;

Sorry for the slow response response to your letter of August 8 2011, but I am still gathering the requested information, as well as trying to educate myself about the relative cost-benefit design options available for this project. Hopefully, we can figure out how to optimize the resource potential for the greater benefit all parties concerned.

I will try to answer the seven billeted items identified in your "Second request for more information" as well as the remaining questions from an earlier request.

1. The Potential to reduce the quantity of water under existing water rights

Since power generation is a totally non-consumptive use of the available water, there is no potential to affect the quantity or the quality of water under prior existing rights, in any way.

2. The sufficiency of the water supply for the proposed application

The sufficiency question is part of the design dilemma that we are currently trying to figure out. Obviously due to vastly increased costs we don't want to design a plant for a huge amount of water that only occurs for a few days during spring runoff, nor do we want a plant that is too small to optimally utilize what water is available. I have been told that as a general rule of thumb, one should have enough water to fully utilize the plant design capacity for one-fourth, to one-third of the year, i.e., three to four months.

To my knowledge there are no historic systematic measurements of year around stream flows on this drainage, so I consulted an engineering firm in Boise, which has done extensive design work on similar small hydro projects. You will find enclosed a copy of their computer generated, hydrological assessment. I assume you are probably familiar with a program called "Streamstats", that they used to estimate flows based on the size of the drainage, as well as projected revenue.

Based on the information they supplied, I had one engineer tell me that I should probably design the plant to utilize a little more than the 6 cfs that I am currently applying for, so I may wish to amend the application for a slightly higher amount, if it appears that the overall benefits will outweigh the increased plant costs.

In lieu of my many years of direct observation, measurement, or the "Streamstats" data I am fairly confident that we can design a plant to utilize the sufficient water, thereby assuring the sufficiency of the water supply.

3. The good faith nature of the application

It's hard to imagine what I could provide as empirical evidence that my motives are in "good faith". I guess that you will just have to take my word that my desire is not scam, sham, spam, or flim-flam.

4. The adequacy of the applicants' financial resources

Enclosed is a financial statement from last year for both myself and Dickey Livestock, for which I am the principal shareholder. Within a month or two I can forward to you a more current financial statement if you feel it is necessary for your purposes. Also enclosed is a letter from Farm Credit Services stating that they would base a formal application for this project on its merits, but they have no reason to believe "reasonable and probable financing" would not be available.

5. The local public interest in the water resource

I can see little or no effect on the public interest or change in the public water resource. There are no fish, and the water not already diverted for irrigation or stock water purposes typically sinks within a few hundred feet of the diversion. There appear to be no concerns from the various agencies I have contacted either, so I believe this to be a non-issue.

6. The conservation of the water resources of Idaho

I would submit that this particular request is not relevant to this application, since power generation is a totally non-consumptive use, conservation of the water resources in Idaho will not be affected at all.

7. Impacts to the economy of the local area or watershed

If one assumes that moderate growth, jobs, reliable, renewable, clean energy, and basic infrastructure improvements are good, then I would submit that the impacts to the local economy or watershed will all be positive. I can't think of a single thing related to the construction, or operation of this proposed power plant that would be detrimental in any way.

There are still a couple of unresolved issues from an earlier request for information that I will address also.

I sent a letter to the US Forest Service stating that you would require an "easement agreement" for any new water appropriation which proposes to use an existing point of diversion located on USFS property.

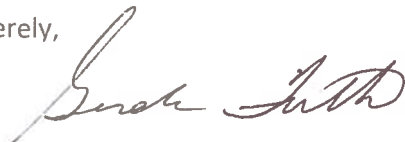
The local District Ranger ultimately forwarded to me a copy of a letter (copy enclosed) from 1996 to Wiley Smith stating that this right of way number, Idaho 011980, was granted December 21, 1960 to his father, Francis Smith and my father David Fulton. As you can see from the letter these rights-of-way were granted without an expiration date and apparently constitute a permanent conditional easement. She indicated that the existing "grandfathered in" right of way should suffice, since there is no substantial change.

Also you will find enclosed a copy of a letter from Department of Environmental Quality. I wasn't sure if they had already sent a copy to you or not. If not here it is.

Last spring I met with a representative from the Idaho Department of Fish and Game. He indicated that he couldn't see any problems, but he did want to look at the site during the wintertime to assess possible impacts to game. We have an appointment for him to come back up on Wednesday, January, 11 to assess potential conflict. Hopefully he will forward his observation and insight to you shortly thereafter, so you can make your determination.

If you have any further questions I will certainly try to answer them to the best of my ability, and hopefully in a more timely fashion. Thanks!

Sincerely,

A handwritten signature in dark ink, appearing to read "Gordon Fulton", written in a cursive style.

Gordon Fulton

Mathews, Kerrie

From: Bassista, Tom [thomas.bassista@idfg.idaho.gov]
Sent: Friday, November 18, 2011 2:23 PM
To: Mathews, Kerrie
Subject: RE: Gordon Fulton Application

Kerrie:

FYI-I'm working on a comment letter for this proposed hydro. I am addressing it to IDWR so you will see it sometime soon after Thanksgiving.

Gordon called last week and I told him I would be working on the letter soon.

Thanks for your patience on this one.

Tom

From: Mathews, Kerrie [mailto:Kerrie.Mathews@idwr.idaho.gov]
Sent: Thursday, September 22, 2011 9:54 AM
To: Bassista, Tom
Subject: RE: Gordon Fulton Application

Good Morning;

Here is the amended application for Gordon Fulton.

Thanks,

Kerrie Mathews

Idaho Department of Water Resources
208.525.7161

"Life is a succession of lessons which must be lived to be understood."
-Helen Keller

From: Bassista, Tom [mailto:tom.bassista@idfg.idaho.gov]
Sent: Wednesday, September 21, 2011 4:03 PM
To: Mathews, Kerrie
Subject: RE: Gordon Fulton Application

Yes we would like to provide some comments concerning this application. Can you please send me a copy of the latest amended application. In my file I have an application dated June 23, 2010 requesting 9 cfs annually.

Thanks

Tom

From: Mathews, Kerrie [mailto:Kerrie.Mathews@idwr.idaho.gov]
Sent: Thursday, September 08, 2011 10:22 AM

05. Additional Information Requirements. (7-1-93)

c. The following information shall be submitted for applications to appropriate unappropriated water or trust water and for permits being reprocessed for trust water. The additional information submittal requirements of this rule are waived for filings which seek to appropriate five (5) cfs or less or storage of five hundred acre-feet (500 AF) or less and for filings seeking reallocation of trust water which the Director determines will reduce the flow of the Snake River measured at Murphy Gauge by not more than two (2) acre-feet per day. For filings proposing irrigation as a purpose of use, the additional information is required if more than two hundred (200) acres will be irrigated. However, the Director may specifically request submittal of any of the following information for any filing, as he determines necessary. Information relative to the effect on existing water rights, Section 42-203A(5)(a), Idaho Code, shall be submitted as follows: (7-1-93)

N/A (7) i. For applications appropriating springs or surface streams with five (5) or fewer existing users, either the identification number, or the name and address of the user, and the location of the point of diversion and nature of use for each existing water right shall be submitted. (7-1-93)

N/A ii. For applications appropriating groundwater, a plat shall be submitted locating the proposed well relative to all existing wells and springs and permitted wells within a one-half mile radius of the proposed well.

★ iii. Information shall be submitted concerning any design, construction, or operation techniques which will be employed to eliminate or reduce the impact on other water rights. (7-1-93)

d. Information relative to sufficiency of water supply, Section 42-203A(5)(b), Idaho Code, shall be submitted as follows: (7-1-93)

★ i. Information shall be submitted on the water requirements of the proposed project, including, but not limited to, the required diversion rate during the peak use period and the average use period, the volume to be diverted per year, the period of year that water is required, and the volume of water that will be consumptively used per year. (7-1-93)

★ ii. Information shall be submitted on the quantity of water available from the source applied for, including, but not limited to, information concerning flow rates for surface water sources available during periods of peak and average project water demand, information concerning the properties of the aquifers that water is to be taken from for groundwater sources, and information on other sources of supply that may be used to supplement the applied for water source. (7-1-93)

e. Information relative to good faith, delay, or speculative purposes of the applicant, Section 42-203A(5)(c), Idaho Code, shall be submitted as follows: (7-1-93)

★ i. The applicant shall submit copies of deeds, leases, easements or applications for rights-of-way from federal or state agencies documenting a possessory interest in the lands necessary for all project facilities and the place of use or if such interest can be obtained by eminent domain proceedings the applicant must show that appropriate actions are being taken to obtain the interest. Applicants for hydropower uses shall also submit information required to demonstrate compliance with Sections 42-205 and 42-206, Idaho Code. (7-1-93)

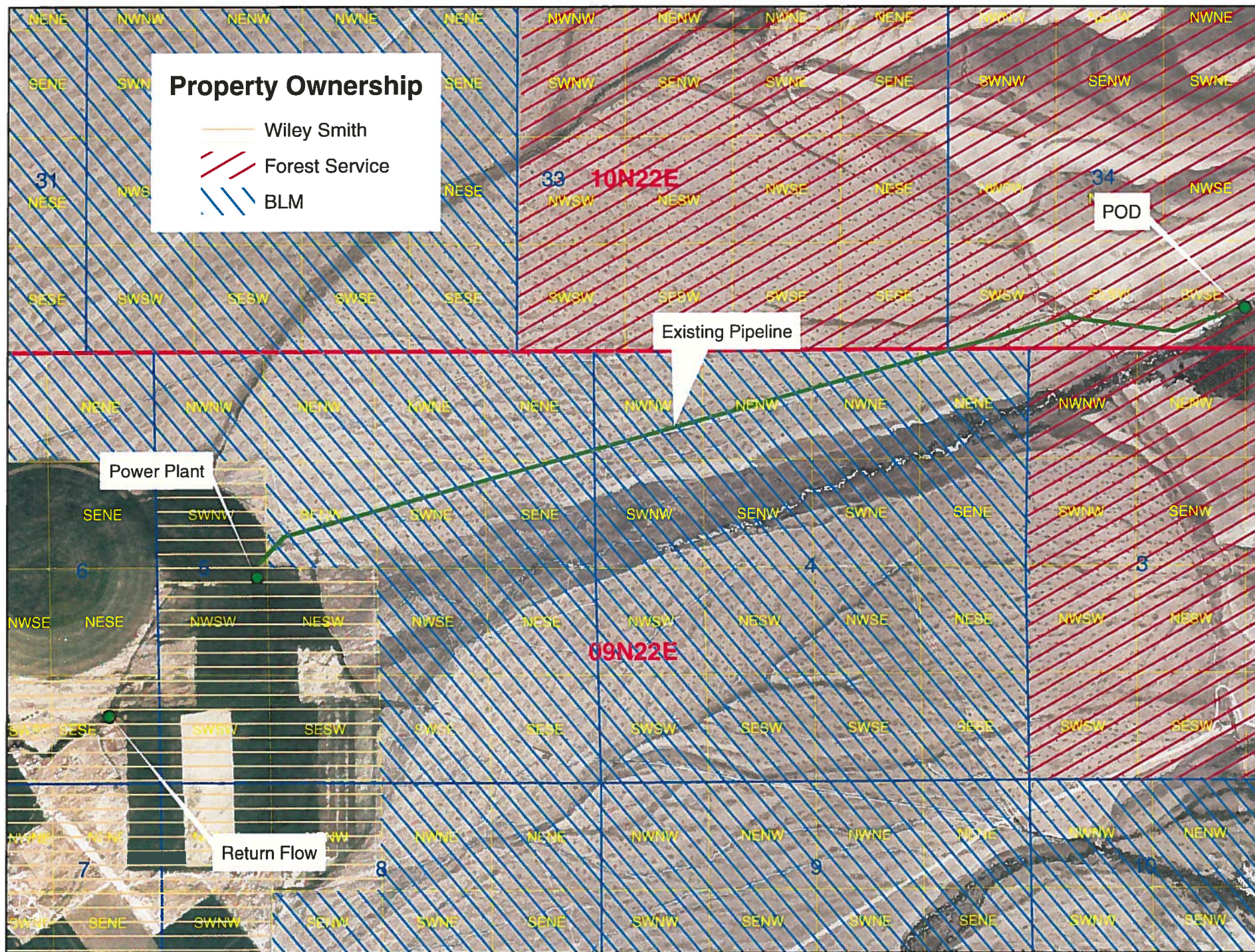
ii. The applicant shall submit copies of applications for other needed permits, licenses and approvals, and must keep the department apprised of the status of the applications and any subsequent approvals or denials. (7-1-93)

f. Information Relative to Financial Resources, Section 42-203A(5)(d), Idaho Code, shall be submitted as follows: (7-1-93)

* i. The applicant shall submit a current financial statement certified to show the accuracy of the information contained therein, or a financial commitment letter along with the financial statement of the lender or other evidence to show that it is reasonably probable that financing will be available to appropriate the water and apply it to the beneficial use proposed. (7-1-93)

* ii. The applicant shall submit plans and specifications along with estimated construction costs for the project works. The plans shall be definite enough to allow for determination of project impacts and implications. (7-1-93)

Fig g. Information Relative to Conflict with the Local Public Interest, Section 42-203A(5)(e), Idaho Code, shall be submitted as follows: The applicant shall seek comment and shall submit all letters of comment on the effects of the construction and operation of the proposed project from the governing body of the city and/or county and tribal reservation within which the point of diversion and place of use are located, the Idaho Department of Fish and Game, the Idaho Department of Environmental Quality, and any irrigation district or canal company within which the proposed project is located and from other entities as determined by the Director. (7-1-93)



Property Ownership

- Wiley Smith
- Forest Service
- BLM

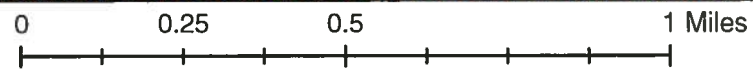
Existing Pipeline

Power Plant

POD

Return Flow

Gordon Fulton



Mathews, Kerrie

From: Jordan, Blake
Sent: Tuesday, August 02, 2011 7:38 AM
To: Mathews, Kerrie
Subject: FW: Gordon Fulton Application

From: Bassista, Tom [<mailto:tom.bassista@idfg.idaho.gov>]
Sent: Monday, August 01, 2011 4:11 PM
To: Jordan, Blake
Subject: RE: Gordon Fulton Application

Blake:

Our water right specialist from Boise, Walt Poole, and I will be touring this site on August 8th.

What is the current status of this application?

I met with Mr. Fulton on June 24th and we toured the site. We discussed low flows on Rock Creek and it appears as though there is barely 2 cfs flowing in the channel during low flow periods. The channel runs on Forest Service land then onto BLM lands.

I can get with you after our August 8th visit to determine how IDFG will comment.

Thanks,

Tom

From: Jordan, Blake [<mailto:Blake.Jordan@idwr.idaho.gov>]
Sent: Wednesday, June 29, 2011 12:19 PM
To: Bassista, Tom
Subject: RE: Gordon Fulton Application

Tom,
Sorry for the delayed response.

Gordon Fulton just resubmitted his permit application for hydropower. He is now requesting 6.5 cfs from Rock Creek. He has not provided us with all the requested information under Water Appropriation Rule 40.05, but says it should be coming. We probably won't process this application until we receive all the information requested under the 40.05 letter that we sent to him. If we do not receive all the information requested under the 40.05 letter within a week or two, then we will send him another request letter with a 30 day deadline. I'm thinking at the latest we should have all comments within 1-2 months from now. For now, I think the best thing to do is provide a comment so the department can determine whether this application can be processed.

Blake

From: Bassista, Tom [<mailto:tom.bassista@idfg.idaho.gov>]
Sent: Thursday, June 16, 2011 2:40 PM
To: Jordan, Blake
Subject: RE: Gordon Fulton Application

Blake:

Thanks for the information.

I've spent a little time examining this Application for Permit and Fish and Game has some possible wildlife concerns. It looks like there are 5 water rights from Rock Creek and all take out of the same POD (34-57, 34-58, 34-836, 34-4039, and 34-10585).

Water Right #	year round stockwater	stockwater 5/1-10/15	Irrigation 5/1-10/15	Irrigation 4/1- 11/15
34-57	0.02		2.4	
34-58			3.2	
34-836	0.02	0.19	3.2	
34-4039				3.2
34-10585				3.2

The applicant, Mr. Gordon Fulton is requesting 9 cfs Jan 1 to Dec 31 (inclusive). His request greatly expands the current use of Rock Creek water during the non-irrigation season. From November 16 through March 31 only .04 cfs is legally allowed to be diverted for stockwater purposes. Water is diverted into a metal pipe so none of that water is available to wildlife. I do not know what the winter flows are like in Rock Creek but Mr. Fulton indicates low flows are around 1 to 3 cfs. I also don't know if there is any water flowing in the natural channel downstream of the POD during winter months. Water flowing in the natural channel may be critical for wintering mule deer and Greater Sage-grouse.

I'm working with my local Habitat Biologist in the area to fully evaluate our concerns. I will most likely need to set up a field visit with Mr. Fulton to have a better understanding of the project location.

Given our concerns I'm wondering what you think is the best way of handling this. We are not prepared to provide a comments letter until we learn more about the area. Do you have a time frame for when you are wanting comments?

Thanks for any insight to help us along this process.

Tom P. Bassista
Environmental Staff Biologist

Idaho Department of Fish and Game
Upper Snake Region
4279 Commerce Circle
Idaho Falls, ID 83401
208.525.7290

From: Jordan, Blake [<mailto:Blake.Jordan@idwr.idaho.gov>]

Sent: Friday, June 10, 2011 12:50 PM

To: Bassista, Tom

Subject: Gordon Fulton Application

Here you go



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 North Skyline Drive, Suite A Idaho Falls Idaho 83402-1718

Phone: (208) 525-7161 FAX: (208) 525-7177 www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

August 8, 2011

Gary Spackman
Interim Director

Gordon Fulton
5907 HWY 93
MACKAY, ID 83251

Re: Application for Permit – Second request for more information

Dear Mr. Fulton;

When applying for a permit to appropriate water greater than 5 cfs and/or more than 500 acre-feet, IDWR requires additional information to help evaluate the criteria found under Idaho Code 42-203A(5).

Idaho Code 42-203A(5) requires IDWR to evaluate the following criteria for application to appropriate water:

- The potential to reduce the quantity of water under existing water rights
- The sufficiency of the water supply for the proposed application
- The good faith nature of the application
- The adequacy of the application's financial resources
- The local public interest in the public water resource
- The conservation of the water resources in Idaho
- Impacts to the economy of the local area or watershed

To ensure that IDWR has sufficient information to evaluate the criteria, Rule 40.05 of the Water Appropriation Rules (IDAPA 37.03.08.040.05) requires water right applicants to submit additional information to IDWR in connection with their application. A copy of Water Appropriation Rules 40.05.c-g is attached to this letter.

Please submit the information required by Water Appropriation Rules 40.05.c-g to IDWR within 30 days. IDWR will hold your application until you have submitted the additional information. If you believe that a particular piece of information is not relevant to your application, please explain why. A complete response to Rule 40.05.f, information relative to Financial Resources, is not required if construction of your project will cost less than \$5000.00. Instead, simply state the project cost of your project. If you do not respond within 30 days, IDWR may void your application. If you need additional time to submit the required information, please submit a written request. IDWR can grant additional time "upon a showing of good cause."

Please feel free to contact this office if you have any questions.

Sincerely,

Kerrie Mathews
Water Resource Agent

8-18-2011 - Talked to Gordon. He will get the rest of the information together when he gets back from AK in about a month.



Northwest
FARM CREDIT SERVICES

1036 Erikson Drive
PO Box 157, Rexburg, ID 83440
Voice: 208.656.2100 Toll Free: 800.464.6812 Fax: 208.656.2102

June 15, 2011

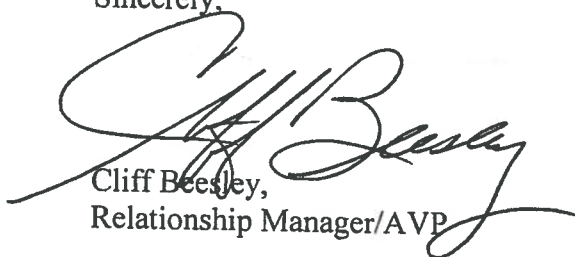
To Whom It May Concern:

Northwest Farm Credit Services has had a lending relationship with Dickey Livestock, Inc., and Gordon Fulton for over 15 years. We have provided various types of financing to this operation over this time. Each application for financing has been and will continue to be evaluated based on the merits of the proposal. Mr. Fulton has provided some preliminary information on a proposed hydro power plant that he is considering. The proposed plant appears on the surface to have some merit but until further analysis is completed NWFCFS has no opinion as to the merits of financing such a project. Nor will NWFCFS render an opinion until such time as a formal application is submitted to us.

This being said, NWFCFS does have interest in providing financing to rural operations for projects which make financial sense for the owner of such projects, and which meet all local, state, and federal regulations for the given project. Thus, if after full investigation Mr. Fulton submits a complete application for financing it will be considered based on its merits. Given our current understanding of the financial position and capacity of Mr. Fulton and Dickey Livestock, Inc. we have no reason to believe "reasonable and probable financing" would not be available.

This letter of opinion is not a Commitment to Lend and should under no circumstances be construed to be such.

Sincerely,



Cliff Beesley,
Relationship Manager/AVP

June 28, 2010

GORDON FULTON
5907 HWY 93
MACKAY, ID 83251

RE: Application for Permit

Dear Applicant(s):

The Department of Water Resources has received your water right application. Preliminary review of the application indicates that it is incomplete and cannot be accepted for processing. We are returning your application and filing fee to allow you to complete the necessary items. The required information is described below.

- The Landowner Agreement was not provided correctly. On item 10C it was indicated that you applied for a Special Use Permit. There was no document submitted showing evidence that an application has been filed with the BLM for a special use permit. Also, the US Forest Service requires an easement agreement for any new water appropriations which proposes to use an existing point(s) of diversion located on their property.

- Under Item 11 you indicated that the actual plant may be subject to slight changes as the planning, permitting and design processes are completed. If changes to the point of diversion or place of use occur after an Application for Permit is signed and approved, then the Department would require an Application for Amendment of a Permit to be filled out and submitted with a \$50 filing fee.

- To determine if 9 cfs is a reasonable amount of flow to produce 125 kw of power with 600 feet of head; the following formula was used:

$$P = QHe / 11.8$$

Where: P = power (kw), Q= flow rate (cfs), H= gross head (ft), e= efficiency

According to this equation, a flow rate of 9 cfs with 600ft of head would produce 343.2 kw of power (assuming the system is 75% efficient). The flow rate you are seeking seems to be high for a 125 kw power plant. Please justify why 9 cfs is needed for your proposed hydro power generation plant.

-The processing of Power applications requires information that shows whether or not the project will be regulated by FERC &/or PUC. If project is regulated by FERC &/or PUC, then approvals or alternatives must be provided.

- Applying for a permit to appropriated water greater than 5cfs and/or more than 500 Af, IDWR requires additional information to help evaluate the criteria found under Idaho Code § 42-203A(5).

Idaho Code § 42-203A(5) requires IDWR to evaluate the following criteria for applications to appropriate water:

- The potential to reduce the quantity of water under existing water rights
- The sufficiency of the water supply for the proposed appropriation
- The good faith nature of the application
- The adequacy of the applicant's financial resources
- The local public interest in the public water resource
- The conservation of water resources in Idaho
- Impacts to the economy of the local area or watershed

To ensure that IDWR has sufficient information to evaluate the criteria, Rule 40.05 of the Water Appropriation Rules (IDAPA 37.03.08.040.05) requires water right applicants to submit additional information to IDWR in connection with their applications. . A copy of Water Appropriation Rules 40.05.c-g is printed on the back of this page.

Please submit the required information to the Department as soon as possible. If you believe that a particular piece of information is not relevant to your application, please explain why. A complete response to Rule 40.05.f, Information Relative to Financial Resources, is not required if construction of your project will cost less than \$5,000. Instead, simply state the projected cost of your project.

Water Appropriation Rules 40.05.c through 40.05.g

c. The following information shall be submitted for applications to appropriate unappropriated water. . . .

Information relative to the effect on existing water rights, Section 42-203A(5)(a), Idaho Code, shall be submitted as follows:

- i. For applications appropriating springs or surface streams with five (5) or fewer existing users, either the identification number, or the name and address of the user, and the location of the point of diversion and nature of use for each existing water right shall be submitted.
- ii. For applications appropriating groundwater, a plat shall be submitted locating the proposed well relative to all existing wells and springs and permitted wells within a one-half mile radius of the proposed well.

iii. Information shall be submitted concerning any design, construction, or operation techniques which will be employed to eliminate or reduce the impact on other water rights.

d. Information relative to sufficiency of water supply, Section 42-203A(5)(b), Idaho Code, shall be submitted as follows:

i. Information shall be submitted on the water requirements of the proposed project, including, but not limited to, the required diversion rate during the peak use period and the average use period, the volume to be diverted per year, the period of year that water is required, and the volume of water that will be consumptively used per year.

ii. Information shall be submitted on the quantity of water available from the source applied for, including, but not limited to, information concerning flow rates for surface water sources available during periods of peak and average project water demand, information concerning the properties of the aquifers that water is to be taken from for groundwater sources, and information on other sources of supply that may be used to supplement the applied for water source.

e. Information relative to good faith, delay, or speculative purposes of the applicant, Section 42-203A(5)(c), Idaho Code, shall be submitted as follows:

i. The applicant shall submit copies of deeds, leases, easements or applications for rights-of-way from federal or state agencies documenting a possessory interest in the lands necessary for all project facilities and the place of use or if such interest can be obtained by eminent domain proceedings the applicant must show that appropriate actions are being taken to obtain the interest. Applicants for hydropower uses shall also submit information required to demonstrate compliance with Sections 42-205 and 42-206, Idaho Code.

ii. The applicant shall submit copies of applications for other needed permits, licenses and approvals, and must keep the department apprised of the status of the applications and any subsequent approvals or denials.

f. Information Relative to Financial Resources, Section 42-203A(5)(d), Idaho Code, shall be submitted as follows:

i. The applicant shall submit a current financial statement certified to show the accuracy of the information contained therein, or a financial commitment letter along with the financial statement of the lender or other evidence to show that it is reasonably probable that financing will be available to appropriate the water and apply it to the beneficial use proposed.

ii. The applicant shall submit plans and specifications along with estimated construction costs for the project works. The plans shall be definite enough to allow for determination of project impacts and implications.

g. Information Relative to Conflict with the Local Public Interest, Section 42-203A(5)(e), Idaho Code, shall be submitted as follows:

The applicant shall seek comment and shall submit all letters of comment on the effects of the construction and operation of the proposed project from the governing body of the city and/or county and tribal reservation within which the point of diversion and place of use are located, the Idaho Department of Fish and Game, the Idaho Department of Environmental Quality, and any irrigation district or canal company within which the proposed project is located and from other entities as determined by the director.

Note: For applications that do not exceed a total diversion rate of 5.0 cfs or the irrigation of 200 acres within the Salmon and Clearwater River drainages, seeking comment from the city or county is optional unless otherwise directed by IDWR.

Please feel free to contact this office if you have any questions.

Sincerely,

Blake Jordan
Sr. Water Resource Agent

Enclosures

Application for Permit

Filing Fee

Copy of Water Appropriation Rule 40.05



AURORA

POWER & DESIGN INC.
ENERGY SOLUTIONS FOR THE WAY YOU LIVE

June 8, 2011

Gordon Fulton
5907 US HWY 93
Mackay, Idaho 83251

Dear Mr. Fulton,

I have completed the hydrology and power study of your proposed hydropower plant on Rock Creek as we discussed on the telephone. A copy the Streamstats Ungaged Site Report is attached. From that report I used the monthly 50-percent exceedance values to develop a median hydrograph. Using Google Earth I determined the following information:

Diversion Elevation - 7,190-ft MSL
Powerhouse Elev. 6,580-ft MSL
Static Head 610-ft

Pipeline length to new powerhouse site – 12,940-feet

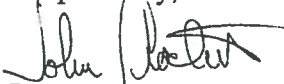
A photo of the site layout I used is attached.

Attached are two power studies and corresponding revenues based an estimate of 6.5-cents per kWh for Lost River electric rate. One of the power studies uses water-to-wire efficiencies for custom equipment runs about \$320,000. I believe these are pretty good numbers except they do not account for downtime and severe winter conditions. This would also be for interconnecting to a 3-phase line. The other power study uses efficiencies for the standard equipment similar to what Canyon quoted you previously for about \$130,000. This would be for interconnecting to a single-phase line and using a turbine that does not perform as well with the variations of flow. My purpose was to show you a range of production you might expect depending on the choice of equipment.

The next step would be firm-up the power sales arrangement, equipment and project cost. I have not been successful at getting hold of Ted Sorensen for you to look over the Dry Creek project but he will get back to me eventually.

Please let me know if you have any questions or comments. I will be in touch.

Respectfully,


John Crockett

Enclosures

Rock Creek near Mackey

Flows at Fulton Diversion

Streamstats Ungaged Site Report

Site Location: Idaho

NAD27 Latitude: 44.1481 (44 08 53)

NAD27 Longitude: -113.8370 (-113 50 13)

NAD83 Latitude: 44.1480 (44 08 53)

NAD83 Longitude: -113.8379 (-113 50 16)

Drainage Area: 6.08 mi²

Peak-Flow Basin Characteristics

100% Peak FLOW Region 6 (6.08 mi²)

Parameter	Value	Regression Equation Valid Range	
		Min	Max
Drainage Area (square miles)	6.08	4	6236.7
Mean Annual Precipitation (inches)	29.2	15.26	31.98

Low-Flow Basin Characteristics

100% Low Flow Region 6 (6.08 mi²)

Parameter	Value	Regression Equation Valid Range	
		Min	Max
Drainage Area (square miles)	6.08 (below min value 6.4)	6.4	6236.7
Mean Basin Slope from 30m DEM (percent)	60	8.6	66.2
Percent Forest (percent)	34	14.5	80.2
Mean Basin Elevation (feet)	9520 (above max value 9461)	6258.1	9461
Relief (feet)	5470	3015.2	9419.7
Mean Annual Precipitation (inches)	29.2	15.3	42.3

Warning: Some parameters are outside the suggested range. Estimates will be extrapolations with unknown errors.

Zero-Flow Probability Basin Characteristics**100% Low Flow Region 6 Prob Zero Flow (6.08 mi2)**

Parameter	Value	Regression Equation Valid Range	
		Min	Max
Drainage Area (square miles)	6.08 (below min value 6.4)	6.4	6236.7
Mean Annual Precipitation (inches)	29.2	15.3	42.3
Ag Land Percentage (percent)	0	0	9.27

Monthly and Annual Basin Characteristics**100% Low Flow Region 6 (6.08 mi2)**

Parameter	Value	Regression Equation Valid Range	
		Min	Max
Drainage Area (square miles)	6.08 (below min value 6.4)	6.4	6236.7
Mean Basin Slope from 30m DEM (percent)	60	8.6	66.2
Percent Forest (percent)	34	14.5	80.2
Mean Basin Elevation (feet)	9520 (above max value 9461)	6258.1	9461
Relief (feet)	5470	3015.2	9419.7
Mean Annual Precipitation (inches)	29.2	15.3	42.3

Peak-Flow Streamflow Statistics

Statistic	Flow (ft ³ /s)	Prediction Error (percent)	Equivalent years of record	90-Percent Prediction Interval	
				Minimum	Maximum
PK1_5	41.7	63		13.2	132
PK2	53.8	62		19.6	148
PK2_33	58.2	60		21.7	156
PK5	86.8	56		34.1	221
PK10	109	56		42.9	274
PK25	138	56		53.7	353
PK50	160	57		61.4	417
PK100	183	58		68.9	487
PK200	204	60		75	554
PK500	239	62		85.3	670

Low-Flow Streamflow Statistics

Statistic	Flow (ft ³ /s)	Estimation Error (percent)	Equivalent years of record	90-Percent Prediction Interval	
				Minimum	Maximum
M1D10Y	0.67				
M7D10Y	0.75				
M7D2Y	1.06				
M30D5Y	0.99				

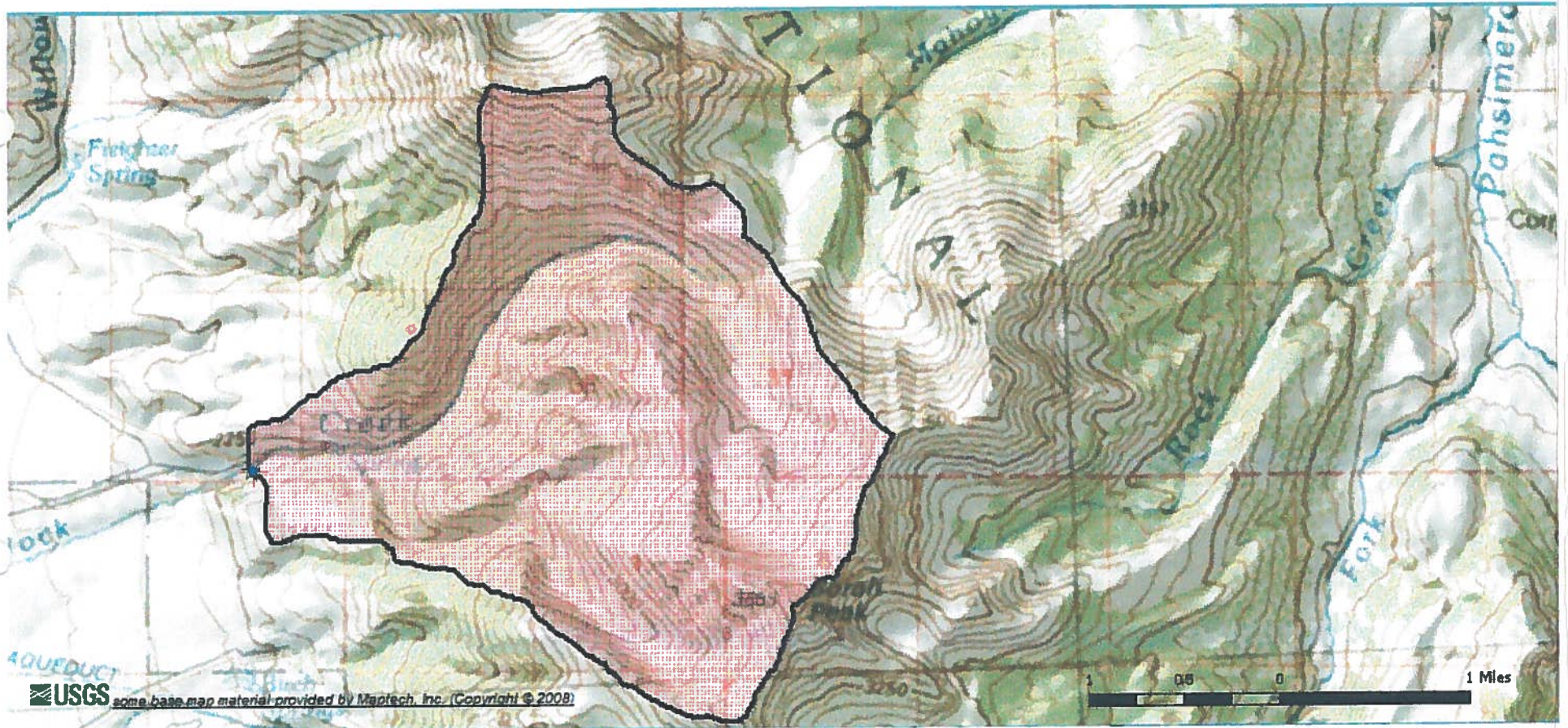
If the Zero-Flow Probability Basin Characteristics given above are within the valid range and one of the probabilities below is greater than $1/n$ where n is the recurrence interval in years (i.e. 0.1 for M1D10Y or M7D10Y, 0.2 for M30D5Y, or 0.5 for M7D2Y), then the flow estimate for the corresponding flow statistic is zero (0), and 0 should be used instead of the above low-flow estimate derived using regression equations. Also note that Wood and others (2009) presented alternative regression equations for 7-day 2-year low flow (M7D2Y) better suited to extrapolation to small streams, and used those equations to model perennial streams. The perennial streams model results may be viewed in the interactive map by turning on the Perennial Streams Model layer in the Map Contents listing.

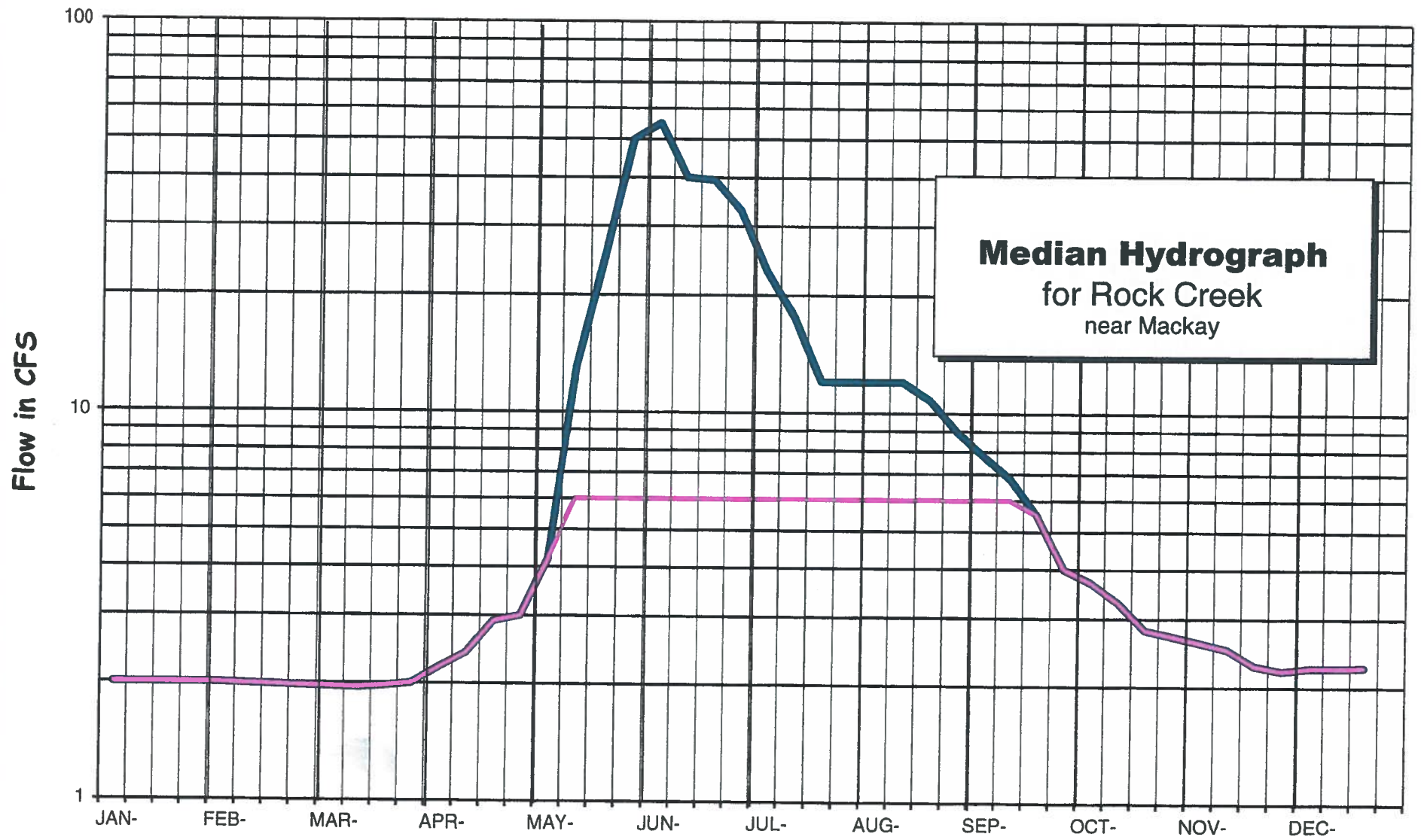
Zero-Flow Probability Statistics

Statistic	Flow (ft ³ /s)			
			JUND80	32.8
			JULD20	30.5
QA	6.42		JULD50	21.9
JAND20	2.26		JULD80	16.2
JAND50	2.02		AUGD20	12.5
JAND80	1.8		AUGD50	11.7
FEBD20	2.22		AUGD80	8.06
FEBD50	1.99		SEPD20	7.16
FEBD80	1.69		SEPD50	7.28
MARD20	2.42		SEPD80	5.23
MARD50	1.96		OCTD20	3.45
MARD80	1.7		OCTD50	3.45
APRD20	3.95		OCTD80	1.93
APRD50	2.38		NOVD20	2.77
APRD80	1.91		NOVD50	2.52
MAYD20	23.9		NOVD80	2.2
MAYD50	11.3		DECD20	2.37
MAYD80	4.82		DECD50	2.23
JUND20	65		DECD80	1.93
JUND50	43.1			

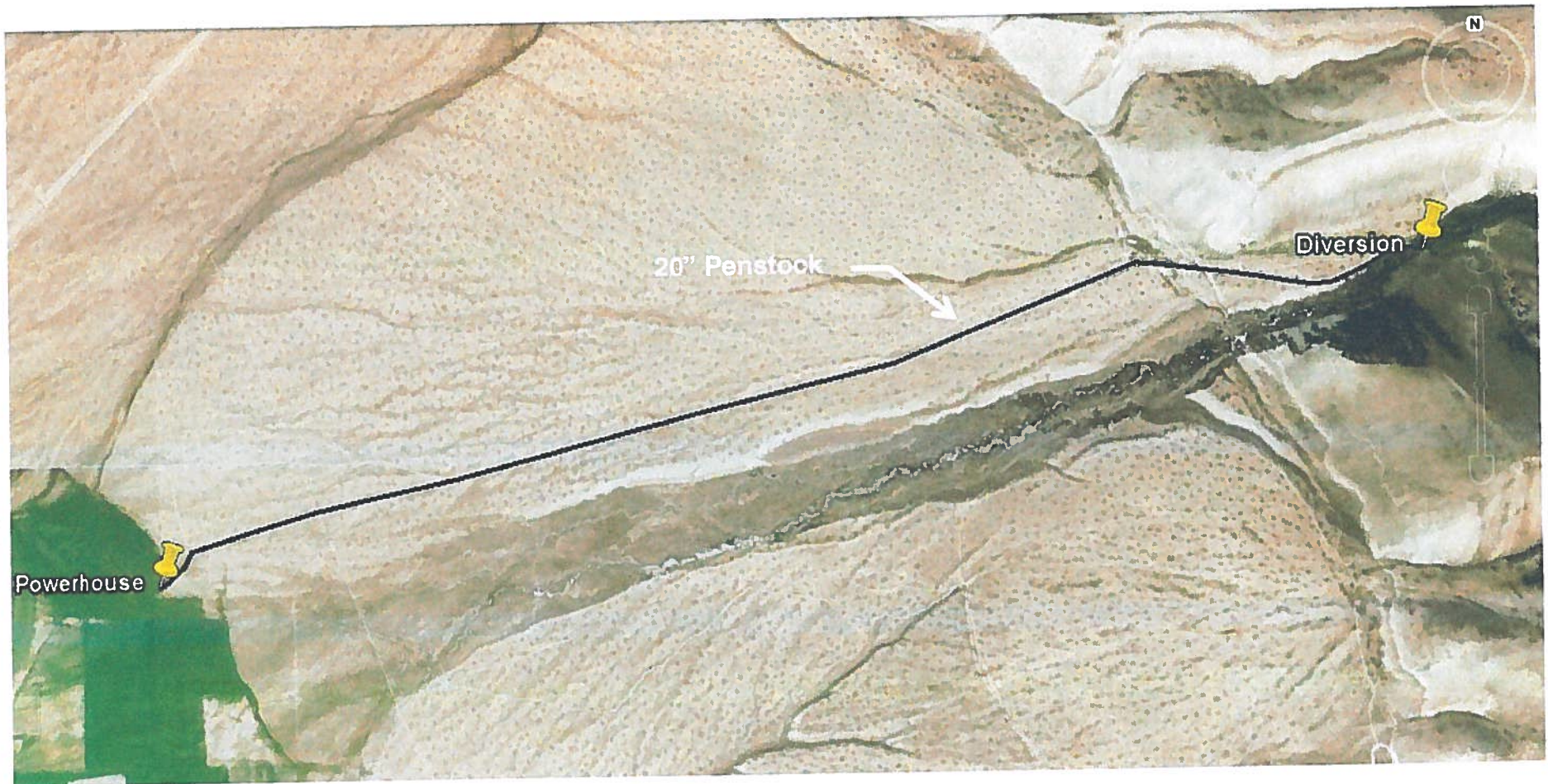
Rock Creek near Mackey

Drainage Area above Fulton Diversion





Fulton Hydropower Project Project Layout



06/07/2011

HYDROPOWER ANALYSIS SHEET

Rock Creek near Mackay

Static Head ----- 610 Feet

Nominal Pipe Size- 20.00 Inches I.D.

Penstock Length - 12,940 Feet

Turbine Type ----- Canyon Standard

MONTH	FLOW CFS	FLOW GPM	BYPASS CFS	POWER CFS	SPILL CFS	VELOCITY Feet/Sec	TOTAL EFFICY	NET HEAD	POWER KILOWATTS	WEEKLY KWH
JAN-	2.09	938	0.0	2.09	0.0	0.96	40	607	43	8,085
JAN-	2.00	898	0.0	2.00	0.0	0.92	40	607	41	7,653
JAN-	2.00	898	0.0	2.00	0.0	0.92	40	607	41	7,653
JAN-	2.00	898	0.0	2.00	0.0	0.92	40	607	41	7,653
FEB-	2.00	898	0.0	2.00	0.0	0.92	40	607	41	6,912
FEB-	2.00	898	0.0	2.00	0.0	0.92	40	607	41	6,912
FEB-	1.99	893	0.0	1.99	0.0	0.91	40	607	41	6,870
FEB-	1.98	889	0.0	1.98	0.0	0.91	40	607	41	6,827
MAR-	1.97	884	0.0	1.97	0.0	0.90	40	607	40	7,511
MAR-	1.96	880	0.0	1.96	0.0	0.90	40	608	40	7,464
MAR-	1.95	875	0.0	1.95	0.0	0.89	40	608	40	7,417
MAR-	1.97	884	0.0	1.97	0.0	0.90	40	607	40	7,511
APR-	2.00	898	0.0	2.00	0.0	0.92	40	607	41	7,406
APR-	2.20	987	0.0	2.20	0.0	1.01	41	607	46	8,344
APR-	2.40	1,077	0.0	2.40	0.0	1.10	42	606	52	9,316
APR-	2.90	1,302	0.0	2.90	0.0	1.33	45	605	66	11,897
MAY-	3.00	1,346	0.0	3.00	0.0	1.38	45	605	69	12,853
MAY-	4.20	1,885	0.0	4.20	0.0	1.93	51	600	109	20,234
MAY-	13.00	5,835	0.0	6.00	7.0	2.75	60	590	180	33,464
MAY-	25.00	11,221	0.0	6.00	19.0	2.75	60	590	180	33,464
JUN-	50.00	22,442	0.0	6.00	44.0	2.75	60	590	180	32,384
JUN-	55.00	24,686	0.0	6.00	49.0	2.75	60	590	180	33,464
JUN-	40.00	17,953	0.0	6.00	34.0	2.75	60	590	180	33,464
JUN-	39.40	17,684	0.0	6.00	33.4	2.75	60	590	180	33,464
JUL-	33.00	14,811	0.0	6.00	27.0	2.75	60	590	180	33,464
JUL-	23.00	10,323	0.0	6.00	17.0	2.75	60	590	180	33,464
JUL-	17.60	7,899	0.0	6.00	11.6	2.75	60	590	180	33,464
JUL-	12.00	5,386	0.0	6.00	6.0	2.75	60	590	180	33,464
AUG-	12.00	5,386	0.0	6.00	6.0	2.75	60	590	180	33,464
AUG-	12.00	5,386	0.0	6.00	6.0	2.75	60	590	180	33,464
AUG-	12.00	5,386	0.0	6.00	6.0	2.75	60	590	180	33,464
AUG-	10.80	4,847	0.0	6.00	4.8	2.75	60	590	180	33,464
SEP-	9.00	4,039	0.0	6.00	3.0	2.75	60	590	180	32,384
SEP-	7.80	3,501	0.0	6.00	1.8	2.75	60	590	180	32,384
SEP-	6.80	3,052	0.0	6.00	0.8	2.75	60	590	180	32,384
SEP-	5.50	2,469	0.0	5.50	0.0	2.52	58	593	159	28,591
OCT-	4.00	1,795	0.0	4.00	0.0	1.83	50	601	102	18,920
OCT-	3.70	1,661	0.0	3.70	0.0	1.70	49	602	91	17,012
OCT-	3.30	1,481	0.0	3.30	0.0	1.51	47	603	78	14,584
OCT-	2.80	1,257	0.0	2.80	0.0	1.28	44	605	63	11,742
NOV-	2.70	1,212	0.0	2.70	0.0	1.24	44	605	60	10,839
NOV-	2.60	1,167	0.0	2.60	0.0	1.19	43	606	57	10,323
NOV-	2.50	1,122	0.0	2.50	0.0	1.15	43	606	55	9,815
NOV-	2.27	1,019	0.0	2.27	0.0	1.04	41	607	48	8,680
DEC-	2.20	987	0.0	2.20	0.0	1.01	41	607	46	8,622
DEC-	2.24	1,005	0.0	2.24	0.0	1.03	41	607	47	8,820
DEC-	2.24	1,005	0.0	2.24	0.0	1.03	41	607	47	8,820
DEC-	2.25	1,010	0.0	2.25	0.0	1.03	41	607	48	8,870
PEAK KW -	180					PLANT FACTOR -	56.00%			TOTAL KWH- 888,720

06/07/2011

FINANCIAL REPORT

Rock Creek near Mackay

Static Head -----	610 Feet	Peak Power -----	180 kW
Penstock Length ----	12,940 Feet	Total Power -----	888,720 kWh
Nominal Pipe Size --	20 Inches I.D.	Project Cost -----	Unknown
Turbine Type ---Canyon Standard			

Annual Revenue

Based on Estimate of Lost River Electric Rates (for net metering)

PERIOD	KWH	2011 LEVELIZED RATE MILLS	Start-up SEASONAL FACTOR RATE	MILLS/ KWH	REVENUE
January	31,044	65.00	1.00	65.00	2,018
February	27,521	65.00	1.00	65.00	1,789
March	29,902	65.00	1.00	65.00	1,944
April	36,963	65.00	1.00	65.00	2,403
May	100,014	65.00	1.00	65.00	6,501
June	132,776	65.00	1.00	65.00	8,630
July	133,855	65.00	1.00	65.00	8,701
August	133,855	65.00	1.00	65.00	8,701
September	125,744	65.00	1.00	65.00	8,173
October	62,258	65.00	1.00	65.00	4,047
November	39,656	65.00	1.00	65.00	2,578
December	35,131	65.00	1.00	65.00	2,284
	888,720		Total Revenue -		\$57,767



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

900 North Skyline Drive, Suite B • Idaho Falls, Idaho 83402 • (208) 528-2650

C.L. "Butch" Otter, Governor
Toni Hardesty, Director

June 7, 2011

Mr. Gordon Fulton
5907 Hwy 93
Mackay, Idaho 83251

RE: DEQ comments on water right application

Dear Mr. Fulton:

The Idaho Department of Environmental Quality (Department) reviewed your water rights application, as well as the Department's associated existing water quality information near your proposed project site identified in your application dated June 23, 2010.

This application is for 9 cubic feet per second (cfs) year round for power generation as well as current stock water and irrigation. As explained to the Department, this would be non-consumptive in nature, returning to Rock Creek after going through the proposed turbines. Based on this information, the Department has no opposition to the granting of this right if it is developed according to the information provided. However, should this project proceed, you may need to acquire a license from the Federal Regulatory Energy Commission (FERC). This FERC license will require additional information and the Department's participation in the process. The Department will also issue a § 401 water quality certification which may impose additional conditions on the FERC licensed activity.

We have no other comments at this time. Additionally, the Department believes this letter is sufficient to allow the Department of Water Resources to complete their review of your water rights application. Thank you for the opportunity to review your application.

Please do not hesitate to contact me at 208.528.2650 for any additional information we may be able to provide.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Saffle".

Troy Saffle
Regional Manager
Idaho Falls Regional Office

c: Sharla Cox, IDWR Eastern Region
Doug Conde, Deputy Attorney General

RECEIVED

JUN 06 2011

Department of Water Resources
Eastern Region

CUSTER COUNTY COMMISSIONERS

PO BOX 385
CHALLIS, ID 83226
(208) 879-2360
(208) 879-5246 (fax)

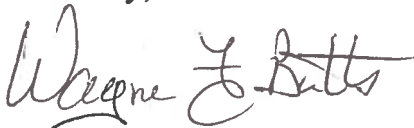
May 31, 2011

Department of Water Resources
900 N. Skyline Dr. #A
Idaho Falls, Idaho 83402-1700

To Whom It May Concern:

The Board of Custer County Commissioners met on May 25, 2011 for a regularly scheduled meeting. Before the board was a request presented by Gordon Fulton in regards to his application for a water right for power generation. Since he already has a water right for irrigation and stock water at the same diversion we can see no reason to oppose this issuance of a new permit for power generation. Please show that our letter is for support for this permit.

Sincerely,

A handwritten signature in dark ink, appearing to read "Wayne F. Butts", written in a cursive style.

Wayne F. Butts,

Mathews, Kerrie

From: John Crockett [johncrockett@cableone.net]
Sent: Wednesday, March 21, 2012 12:09 PM
To: Mathews, Kerrie
Cc: Gordon Fulton
Subject: RE: Fulton (Rock Creek) Powerhouse Drawing

Dear Ms. Mathews,

Yes, getting the power water right the same the existing water right. The existing pipe provides irrigation and stockwater for Mr. Fulton and his neighbor. It appears that combined right is 8.8 cfs. The application for the power water right is, I believe, 6 cfs. This means we run 8.8 cfs down the pipe but can only use 6 cfs for power. The design currently includes a bypass pipe above the turbine but there seems to be no logical reason not to run the entire 8.8 cfs through the turbine some of the time. Hope this helps clear-up my question. Please let me know. Also, how is that coming. I know Mr. Fulton would greatly appreciate getting the water right so he can proceed.

Respectfully,
John

From: Mathews, Kerrie [mailto:Kerrie.Mathews@idwr.idaho.gov]
Sent: Wednesday, March 21, 2012 10:05 AM
To: johncrockett@cableone.net
Subject: RE: Fulton (Rock Creek) Powerhouse Drawing

Good Morning;

Sorry it has taken me so long to get back to you..

Could you explain a little further? Do you mean use the existing diversion rate and run through the power plant then off to their established uses? In essence not diverting any additional water just using the existing rate?

Thanks,

Kerrie Mathews

Idaho Department of Water Resources
208.525.7161

"Life is a sum of all your choices."
-Albert Camus

From: johncrockett@cableone.net [mailto:johncrockett@cableone.net]
Sent: Wednesday, February 29, 2012 10:56 AM
To: Mathews, Kerrie
Subject: RE: Fulton (Rock Creek) Powerhouse Drawing

Thanks for letting me know Kerrie. I did talk to Mr. Fulton the other day and part of our discussion was I thought it would make more sense if the power right matched his and his

neighbors [Willey Smith?] irrigation right which appears to be something like 8.8 cfs. Please let me know if you have any thoughts.

I miss the IDWR family. I only say this because I had a dream last night about meeting with Director Spackman. I've been working on another project where I needed some GIS help. I have been wishing I had access to my old GIS friends at IDWR as I did when I worked there - you might/should know they are the best! In my dream he said they could help me. Anyway.... the IDWR family has been rattled under this Governor, and since you have been there, but there's still a great many good people there and it remains a family. I hope it is as good for you there as it was for me.

Thank you for your help and service.

Respectfully,
John

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

From: Mathews, Kerrie [<mailto:Kerrie.Mathews@idwr.idaho.gov>]

Sent: Wednesday, February 29, 2012 8:48 AM

To: John Crockett

Subject: RE: Fulton (Rock Creek) Powerhouse Drawing

Mr. Crockett;

I received your drawing today, it will work for our needs at this point.

If you have any questions please let me know.

Thank you,

Kerrie Mathews

Idaho Department of Water Resources
208.525.7161

"Life is a sum of all your choices."

-Albert Camus

From: John Crockett [<mailto:johncrockett@cableone.net>]

Sent: Monday, February 27, 2012 1:47 PM

To: Mathews, Kerrie

Cc: Gordon Fulton

Subject: Fulton (Rock Creek) Powerhouse Drawing

Dear Ms. Mathews,

Attached is the powerhouse drawing as you requested for Gordon Fulton's power water right. Please confirm you got this and let me know if it will work for your needs. Thank you.

Respectfully,



United States Forest Service
Department of Agriculture
Salmon & Challis National Forests
Lost River Ranger District
P.O. Box 507
Mackay, Idaho 83251

Reply to: 5510

Date: December 16, 1996

Wiley Smith
Star Route
Mackay, ID 83251

Dear Wiley:

In researching our records and those of the BLM, I have found a right-of-way grant issued to Francis Smith and David Fulton for the Rock Creek Ditch. This was granted December 21, 1960. It is right-of-way number Idaho 011980 and is shown on BLM Master Title Plats and in our Land Status Atlas.

The right-of-way was granted under the Act of March 3, 1891 which means the ditch was in place prior to the establishment of the Lemhi National Forest (predecessor to the Challis National Forest). Although this authority has been rescinded, the Forest Service recognizes these types of rights-of-way and does not require any further permits or easements. These rights-of-way were granted without an expiration date.

I have a copy of the warranty deed transferring the private land to the Wiley F. Smith Family Trust. This includes all appurtenances which would include the right-of-way on the ditch.

As we discussed during our phone conversation today, we will close the files for your special use permit and the permanent conditional easement. We will maintain a file of the paperwork on the existing right-of-way.

Sincerely,


DAVID S. FALLIS
District Ranger

cc: SO



Caring for the Land and Serving People