

COPY

RECEIVED

FEB 11 2010

DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
ATTORNEY GENERAL

STEVEN L. OLSEN, ISB # 3586
Deputy Attorney General
Chief, Civil Litigation Division

MICHAEL S. GILMORE, ISB #1625
MICHAEL C. ORR, ISB #6720
Deputy Attorneys General
P.O. Box 83720
Boise, Idaho 83720-0010
Telephone: (208) 334-2400
mike.gilmore@ag.idaho.gov
michael.orr@ag.idaho.gov
Attorneys for the Idaho Water Resources Board

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF LICENSING)	SECOND AFFIDAVIT OF
WATER RIGHT PERMIT NO. 01-7011)	MICHAEL C. ORR IN SUPPORT
IN THE NAME OF TWIN FALLS CANAL)	OF IDAHO WATER RESOURCE
COMPANY AND NORTH SIDE CANAL)	BOARD'S MOTION FOR
<u>COMPANY</u>)	SUMMARY JUDGMENT

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

MICHAEL C. ORR, being first duly sworn upon his oath, deposes and states that:

1. I am a Deputy Attorney General in the Idaho Office of the Attorney General and one of the attorneys of record for the Idaho Water Resource Board in the above-entitled proceedings.

2. The following is based upon my own personal knowledge.

3. Attached hereto as **Exhibit 1** is a true and correct copy of the *Order Issuing Major License (Constructed), Project No. 2258*, issued by the Federal Power

Commission on March 31, 1975.

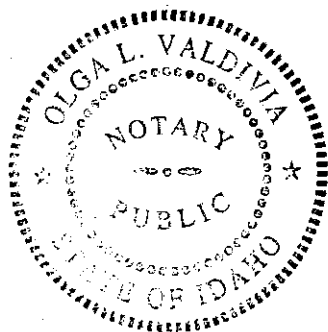
4. Attached hereto as **Exhibit 2** is a true and correct copy of the *Order Issuing Major License (Inconstructed), Project No. 2736*, issued by the Federal Power Commission on March 31, 1975.

Further your affiant sayeth naught.

DATED this 11th day of February 2010.

Michael C. Orr
MICHAEL C. ORR

SUBSCRIBED AND SWORN to before me this 11th day of February 2010.



[Signature]
Notary Public for Idaho
Residing at: Boise
My commission expires: 2/8/2012

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of February 2010, I caused a true and correct copy of the foregoing **SECOND AFFIDAVIT OF MICHAEL C. ORR IN SUPPORT OF IDAHO WATER RESOURCE BOARD'S MOTION FOR SUMMARY JUDGMENT** to be filed with the Court and served on the following parties by the indicated methods:

John Rosholt Travis Thompson Barker Rosholt 113 Main Ave., W. Ste 303 Twin Falls, ID 83301-6167	☒ U.S. Mail ☐ Hand Delivery ☐ Certified Mail ☐ Overnight Mail ☐ Facsimile: _____ ☒ E-mail (Affidavit only – no exhibits): jar@idahowaters.com tlr@idahowaters.com
John Simpson Barker Rosholt PO Box 2139 Boise, ID 83701-2139	☒ U.S. Mail ☐ Hand Delivery ☐ Certified Mail ☐ Overnight Mail ☐ Facsimile: _____ ☒ E-mail (Affidavit only – no exhibits): jks@idahowaters.com
Randall C. Budge Candice M. McHugh Racine Olson Nye Budge & Bailey, Chartered PO Box 1391 Pocatello, Idaho 83204-1391	☒ U.S. Mail ☐ Hand Delivery ☐ Certified Mail ☐ Overnight Mail ☐ Facsimile: _____ ☒ E-mail (Affidavit only – no exhibits): rcb@racinelaw.net cmm@racinelaw.net
Robert L. Harris PO Box 50130 Idaho Falls, ID 83405	☒ U.S. Mail ☐ Hand Delivery ☐ Certified Mail ☐ Overnight Mail ☐ Facsimile: _____ ☒ E-mail (Affidavit only – no exhibits): rharris@holdenlegal.com

Craig B. Evans, Chairman Bingham Group Water District PO Box 1268 Blackfoot, ID 83221	☒ U.S. Mail ☐ Hand Delivery ☐ Certified Mail ☐ Overnight Mail ☐ Facsimile: _____ ☒ E-mail (Affidavit only – no exhibits): <u>binghamgroundwtr@cableone.net</u>
Lyle Swank IDWR 900 N. Skyline Dr. Idaho Falls, ID 83402-6105	☒ U.S. Mail ☐ Hand Delivery ☐ Certified Mail ☐ Overnight Mail ☐ Facsimile: _____ ☒ E-mail (Affidavit only – no exhibits): <u>lyle.swank@idwr.idaho.gov</u>
Allen Merritt Cindy Yenter IDWR 1341 Fillmore St. Ste 200 Twin Falls, ID 83301-3033	☒ U.S. Mail ☐ Hand Delivery ☐ Certified Mail ☐ Overnight Mail ☐ Facsimile: _____ ☒ E-mail (Affidavit only – no exhibits): <u>allen.merritt@idwr.idaho.gov</u> <u>Cindy.yenter@idwr.idaho.gov</u>


 MICHAEL C. ORR
 Deputy Attorney General

5.

Second Affidavit of Michael C. Orr in Support of
Idaho Water Resource Board's Motion for Summary Judgment

Exhibit 1

Order Issuing Major License (Constructed), Project No. 2258,
(Federal Power Commission) (Mar. 31, 1975)

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: John N. Nassikas, Chairman;
William L. Springer, and Don S. Smith.

Idaho Power Company)

Project No. 2258

ORDER ISSUING MAJOR LICENSE
(CONSTRUCTED)

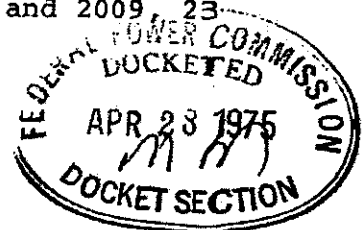
(Issued March 31, 1975)

The Idaho Power Company (Applicant) of Boise, Idaho, filed with the Commission on February 13, 1959, an application for major license under §4(e) of the Federal Power Act (Act) 16 U.S.C. §797(e), for operation and maintenance of the constructed Project No. 2258. Supplements and revisions to the basic application were filed on February 24, March 24, April 2, 6 and 29, and November 12, 1959; November 21, 1972; and April 10, 1973. Project No. 2258, as applied for, consists of three developments on the Snake River, Idaho, which was found to be a navigable water of the United States by Commission order dated August 4, 1955, in Idaho Power Company, Project Nos. 1971, 2132 and 2133, 14 F.P.C. 72 (1955). Upper Salmon A and B developments are located in the region of Buhl, Counties of Gooding and Twin Falls, Idaho. Shoshone Falls development is located in the region of Twin Falls, Counties of Jerome and Twin Falls, Idaho. American Falls development is located in the region of the City of American Falls, County of Power, Idaho.

We are by this order licensing only the American Falls development under the docket designated as Project No. 2258. While the Commission has included under one license developments owned and operated by the same company when they are closely coordinated hydraulically or electrically, 1/ no close relationship appears to exist here between American Falls and the two other developments involved. American Falls is 99 miles upstream of Shoshone Falls development and over 130 miles upstream of the

1/ See, e.g., Wisconsin Michigan Power Company, Project No. 1759, Order issued November 5, 1974, F.P.C.; Virginia Electric & Power Company, Project Nos. 2093 and 2099, 23 F.P.C. 537 (1960).

DC-23



two plants at Upper Salmon development. The Bureau of Reclamation (Reclamation) Minidoka Dam, which impounds Lake Walcott reservoir as part of the Minidoka Reclamation Project, is some 39 miles downstream of American Falls, and separates American Falls from the other developments and interrupts flows from the American Falls reservoir. Accordingly, we will not presently treat Project No. 2258, as applied for, as one project, but will defer consideration of the Upper Salmon and Shoshone Falls portions. Hereinafter, any discussion or comments on Project No. 2258 will refer only to American Falls development, designated hereinafter as American Falls Project. Matters and issues raised in any portion of record in Project No. 2258 relating to Shoshone Falls or Upper Salmon developments will not be treated or resolved by this order.

American Falls Project was constructed in several stages between 1913 and 1927, with the first unit placed in operation in 1913; the second in December, 1923; the third in January, 1924; and the fourth and fifth in June, 1927. The project works consist of: a concrete gravity diversion dam, located immediately below the American Falls dam of Reclamation, with gated spillway; a powerhouse adjacent to the dam with one 3,500-kW generating unit and four 6,000-kW generating units installed therein; step-up transformers and switching equipment associated with the 2.3/6.9/46/138-kV substation; and appurtenant facilities. The diversion dam provides a forebay which receives water from the American Falls reservoir. The forebay supplies the plant and creates an effective head of 48 feet.

Public notice of the filing of the basic application was issued June 1, 1959, with July 20, 1959, as the last day for filing protests or petitions to intervene. Notice was published in the Federal Register on June 6, 1959, 24 Fed. Reg. 4643 (1959).

A petition for leave to intervene was tendered out-of-time by the Idaho Fish and Game Commission (IFG). The petition stated that as it appeared that the construction and operation of the hyroelectric dams at Project No. 2258 have had and will have detrimental effect upon certain fish resources of the State of Idaho, the petitioner requested leave to intervene in order to fulfill its statutory responsibilities. By order dated August 14, 1959, we permitted intervention. Our records reflect no further action taken by IFG respecting the instant proceeding.

Interior has requested the inclusion of special license articles in any license issued for Project No. 2258; Applicant has opposed several of these conditions. By letter dated December 16, 1969, Interior recommended that the Commission hold in abeyance the issuance of a license to Applicant for the American Falls power plant, until the problems arising out of the contemplated replacement of Reclamation's American Falls dam had been resolved.

We note that with the enactment of the Act of December 28, 1973, 87 Stat. 904, a method was adopted by which a Replacement Dam may be constructed by non-Federal entities. We note too, that on September 25, 1973, Applicant filed for major license for its unconstructed American Falls power plant, Project No. 2736, in anticipation of enactment of the Act of December 28, 1973. Therefore, we herein issue a license for Project No. 2258 and provide for Applicant's filing for surrender of its license for Project No. 2258 at such time as it is rendered inoperative by any new project approved by the Commission.

Pursuant to Staff request dated January 26, 1971, Applicant filed on November 21, 1972, and supplemented on April 10, 1973, its Exhibit W or environmental report. Pursuant to Section 2.81 of the Commission's General Rules, 18 C.F.R. §2.81 (1974), Staff has made its initial review of the Applicant's report and determined that the proposed action is not a major Federal action significantly affecting the quality of the human environment requiring the preparation of a detailed environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. §4321 et seq.

We agree. Issuance of this license for continuing operation in the present manner will not produce significant environmental impacts. All three applied-for developments involve plants with limited pondage and are semipermanent features in the environment, having operated from 28 to 68 years. Enough time has elapsed since construction so that local human and wildlife populations have adapted to their appearance, spatial requirements and operational modes.

The United States Department of the Interior (Interior) made comments dated August 30, September 28, and November 2, 1962; March 25, 1964; March 24, 1965; and December 16, 1969. We herein provide for the disposition of all issues remaining between Interior and Applicant.

Interior asserts that the hydroelectric installation sought to be licensed under Project No. 2258 is located in part on Federal lands. Applicant has opposed Interior's allegations, saying that none of the developments proposed to be licensed involve public lands. We do not believe that the importance of designating public lands within the project at this time outweighs the public interest in placing this constructed project under license. By Article 29 herein, we have reserved settling this difference pending notice and opportunity for hearing.

Interior recommended license conditions to effect the maximum benefit from use of waters from the Reservoir for generation of power from any Federal plant at the site and from Applicant's plant. We believe that the maximum utilization of the power resource at American Falls can be achieved under the terms of Article 10 regarding the development of additional capacity or other changes and Article 11, which requires electrical and hydraulic coordination with respect to any Federal powerplant at American Falls. In addition, we are requiring by Article 36 that Applicant enter into an agreement with the Bureau of Reclamation within two years to effect the maximum justifiable power development of the American Falls site.

We note that no Federal power plant has been constructed, although one was authorized by the Congress, 64 Stat. 1083. Under Section 10(f) of the Act and Article 12 of this license, the United States will be reimbursed for headwater benefits, if any, provided to Applicant.

Issues have also been raised concerning protection for present and future irrigation development. The interested parties have agreed to Article 32 as recognition that the project should not be operated in a manner that would contribute to the depletion in flow of the Snake River.

As the forebay above Applicant's plant at American Falls backs up against the existing Reclamation Dam, Interior noted that evacuation of all the stored water from the reservoir requires lowering the elevation of the forebay. To insure the integrity of the Reclamation project, Interior requested a license condition which would insure that drawdown would be effected as necessary. Applicant would accede to such a condition only when such drawdown was required for irrigation purposes. We concur with Interior's position on this matter; the United States should be able to control flows at American Falls for all beneficial downstream uses. We have so provided in Article 31 of the license.

Interior also wishes to have included the condition found in Utah Power & Light Company, Project No. 2420, 40 F.P.C. 1495 (1968), wherein the order issuing license said that the Applicant would not make any claims under the authority of the license for depletion of future flows for irrigation of lands or other beneficial purposes. In the Order Modifying License Order on Rehearing in the above-captioned project, 41 F.P.C. 175 (1969), that article was clarified to indicate that the license was not to be construed as affording greater rights to Licensee than it might otherwise have. Here, we adopt the clarified article as Article 33.

At the time the original application for Project No. 2258 was filed on February 13, 1959, Exhibits R (recreational use) and S (fish and wildlife resources) were not required of the Applicant. These plans became required elements of certain applications in 1963 in the case of Exhibit R, 29 F.P.C. 777; and in 1966 for Exhibit S, 35 F.P.C. 1038.

We are requiring by Article 35 that within two years Applicant shall file for Commission approval Exhibits R and S pursuant to our Regulations, 18 C.F.R. §4.41. Such a condition will more fully develop and protect the resources available at the project. Consultation with appropriate agencies is a part of this requirement.

By letter dated January 26, 1971, the Commission's Secretary requested from Applicant a filing of an Exhibit W (environmental report) pursuant to our then applicable Order No. 415, 44 F.P.C. 1529 (1970). On November 21, 1972 and April 10, 1973, Applicant filed the requested data. These filings have given us certain insight on environmental factors involved in this application, and some limited data as to recreational and fish and wildlife matters. In addition, other data exist in the Commission's records relating to the instant application and that in Project No. 2736 which give us a satisfactory basis for evaluating the environmental resources of the area.

The major characteristics of this project are an outstanding forebay fishery for resident species, particularly rainbow and brown trout; boat ramp and public parking area adjacent to the power plant; extensively landscaped 1/4 acre park, 1/2 acre open, grassy park, and 1-1/2 acre plot of grassy

terrain, all used for picnicking; foot bridge for fishing accessibility; and certain common flora and fauna, none of which are endangered species under the Endangered Species Act of 1973, 16 U.S.C. §1531 et seq. No major archeological resources are located in the area.

We have consulted the National Register of Historical Places through February 4, 1975, and find no listed historical sites would be affected. The Old Island Powerhouse has been identified as an historical landmark eligible for inclusion in the National Register. By Article 30 herein we are assuring that project operation will not have a detrimental effect upon it.

Interior recommended that the transmission lines and facilities included under license be made available for wheeling of government power on such terms and conditions as may be mutually satisfactory to the Applicant and Interior. Applicant submits that there is no justification for subjecting the lines to such a requirement, contending that such arrangements should be left to mutual agreements of the parties.

Applicant included for license its Shoshone Falls-American Falls 138-kV transmission line; American Falls-Brady Substation 138-kV transmission line; and the step-up transformer banks and switching equipment which make up the 2.3/6.9/46/138-kV substation adjacent to the American Falls plant. Our analysis of the transmission system leads us to conclude that the interconnected primary transmission system ties in at the American Falls substation. The banks and facilities at the substation connect with the American Falls plant and serve as the primary outlet for plant output, while other sources feed into the substation, commingling the power generated by the project. We do not believe that the two 138-kV lines included in the application are "primary lines" and a part of the project within the meaning of the Section 3(11) of the Act, 16 U.S.C. §796(11).

We, therefore, perceive no need to include those facilities herein under license in an article requiring wheeling of government power. While Applicant has wheeling responsibilities at other projects, see, e.g., Idaho Power Company, Project No. 1971, 32 F.P.C. 342 (1964), we believe that the facts here are sufficiently at variance with those in Project No. 1971 so as to preclude the necessity for the same arrangements. In Project No. 1971 wheeling is accomplished over the applicant's lines from the powerhouse to the junction with the interconnected system, which were deemed jurisdictional. In the instant case there are no such transmission facilities subject to our jurisdiction.

By letter dated August 28, 1959, the U.S. Department of the Army, Corps of Engineers (Corps) commented on the basic application. Corps said that at the present time, the need for navigation facilities in this reach of the river and operational control of these projects in the interests of navigation, appears remote. However, to adequately safeguard the right of any possible future navigation, the Corps recommended that the Commission's standard navigation articles be inserted in any license issued. The Corps has approved the plans of the structures in accordance with the Act and we have included the requested provisions.

By letter dated April 19, 1967, the Snake River Power Association, Inc., stated that the Association is in full support of the position that the Secretary of the Interior has taken with regards to the conditions for granting of the license for the American Falls Plant.

By our previously noted order issued August 4, 1955, 14 F.P.C. 72, we determined that the Snake River from its junction with the Columbia River up to the mouth of Henry's Fork is a navigable water of the United States. In accordance with the criteria set forth in Public Service Company of New Hampshire, Project No. 2288, 27 F.P.C. 830, the termination date for this license will be December 31, 1993. Interior has recommended this termination date. We make the effective date of this license August 1, 1955, which was the first day of the month in which the Snake River was determined to be navigable.

By letter dated March 6, 1975, Idaho Department of Health and Welfare (IDHW) issued a state water quality certificate pursuant to Section 401 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. §1341. In so doing, IDHW stated that it found no adverse impacts on water quality by the operation and maintenance of the American Falls Power Plant facility.

Pertinent parts of Exhibits J, K, L and M filed with the application for major license have been examined and found to conform with the Commission's Rules and Regulations and are hereinafter approved and made part of the license for Project No. 2258. We believe that the structures to be placed under license are safe and adequate. In addition, Applicant has shown the necessary financial ability to continue operation.

The Applicant for Project No. 2258 is also the Applicant for American Falls Project No. 2736, which would be constructed pursuant to the Act of December 28, 1973, to utilize for power generation, falling water releases from the American Falls Replacement Dam. Article 37 of the license approved herein would require surrender of the license for Project No. 2258 when the project is rendered inoperable by the construction or operation of a more comprehensive development at American Falls. Accordingly, we do not consider the application for Project No. 2736 to be a conflicting application within the meaning of the Act. 16 U.S.C. §800(a).

We believe that licensing Project No. 2258 under terms and conditions hereinafter proposed meets the standard of Section 10(a) of the Act, 16 U.S.C. Section 803(a). That Section requires that the project approved 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 water power development, and for other beneficial public uses, including recreational purposes..."

Our evaluation of the question of comprehensive development has included questions of conservation of resources, optimum utilization of water power, maintenance of water quality, fish and wildlife protection, navigation, the inclusion of the project in the interconnected transmission system, and recreational use. The license conditions also insure the development of the project for public use and access.

We believe that the subject matter of the instant application has been fully developed and considered by this Commission. Therefore, we do not believe that a trial-type hearing would contribute any new and relevant information, except as hereinafter provided, and conclude that it is not in the public interest to hold such a hearing at this time.

We conclude on the basis of the facts before us that a major license should be issued to the applicant effective on August 1, 1955 and terminating December 31, 1993. We believe that such a term is appropriate under our prior determinations as to constructed projects in similar circumstances.

The Commission finds:

(1) The American Falls development of Project No. 2258 may affect lands of the United States and would be located on a navigable waterway of the United States.

(2) The Shoshone Falls and Upper Salmon developments of proposed Project No. 2258 should be severed from the application and reserved for treatment in later proceedings.

(3) Applicant is a corporation organized under the laws of the State of Maine and is authorized to do business in the State of Idaho.

(4) Public notice of the filing of the application for major license was given on June 1, 1959. A timely petition to intervention was filed by the Idaho Fish and Game Commission and was granted.

(5) No conflicting application is before the Commission.

(6) Subject to the terms and conditions hereinafter imposed, the project does not adversely affect a Government Dam, nor will the issuance of a license upon the conditions hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(7) Subject to the terms and conditions hereinafter imposed, the project will 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, and for other beneficial public uses, including recreational purposes.

(8) Subject to the terms and conditions hereinafter imposed, the cost of continuing operation of this constructed project is reasonable compared to the cost of developing suitable alternative sources of power.

(9) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 36,700 horsepower, and the amount of annual charges based on such capacity to be paid under the license for the project for the cost of administration of Part 1 of the Act is reasonable.

(10) The Commission should reserve the right to determine at a later date, after notice and opportunity for hearing, whether any lands of the United States are occupied by the American Falls Project, and to fix reasonable annual charges for the use, occupancy and enjoyment of such lands.

(11) The plans of the structures affecting navigation have been approved by the Corps of Engineers.

(12) The term of the license hereinafter authorized is reasonable.

(13) The Exhibits designated and described in paragraph (B) below conform to the Commission's Rules and Regulations and should be approved as part of the License for the project.

(14) Applicant has submitted satisfactory evidence of compliance with the requirements of all applicable state laws insofar as necessary to effectuate the purposes of a license for the project.

(15) For the reasons discussed above, we do not believe that our actions taken herein constitute a major Federal action significantly affecting the quality of the human environment requiring the preparation of a detailed environment impact statement.

The Commission orders:

(A) This license is hereby issued to Idaho Power Company of Boise, Idaho, under Section 4(e) of the Federal Power Act, for a period effective August 1, 1955, and terminating December 31, 1993, for the continued operation and maintenance of the American Falls Project No. 2258, located on the Snake River and affecting navigable waters of the United States, subject to the terms and conditions of the Act which is incorporated herein by reference as a part of this license and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) The American Falls Project No. 2258 consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the licensee's interests in such lands, the limits of which are otherwise defined, the use and occupancy of which are necessary for the purpose of the project; such project area and project boundary being shown and described by certain exhibits which form part of the application for license which are designated and described as follows:

Exhibit J: (FPC No. 2258-3) General Map,
American Falls Development

Exhibit K: (FPC No. 2258-6) Detail Map,
American Falls Development

(ii) project works consisting of: a concrete gravity diversion dam, located immediately below the American Falls Dam of the United States Bureau of Reclamation, with gated spillway; a forebay impounded by such diversion dam; a powerhouse adjacent to the dam with one 3,500-kilowatt generating unit and four 6,000-kilowatt generating units installed therein; step-up transformers and switching equipment associated with the 2.3/6.9/46/138-kV substation; and appurtenant facilities: the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also form part of the application for license and which are designated and described as follows:

<u>Exhibit L</u>	<u>FPC No.</u>	<u>Showing for American Falls</u>
Sheet 1 of 4	2258-7	General Plan
Sheet 2 of 4	2258-8	Weir & Gate Sections
Sheet 3 of 4	2258-9	Powerhouse Plans
Sheet 4 of 4	2258-10	Powerhouse Sections

Exhibit M: Pages 1 and 2 of five typewritten pages, entitled "General Description and Specifications of Equipment," filed February 13, 1959, except for the two 46-kV transmission lines, the 138-kV tie to Brady Substation, and the four 138-kV transmission lines included on page 2.

(iii) all of the structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the following terms and conditions set forth herein as articles:

Article 1. The entire project, as described in this order of the Commission, shall be subject to all 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 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 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 uses of project lands and waters or the project works or divergence from such approved exhibits may be made if such changes will not result in decrease in efficiency, in 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 incident 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 Power 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 of any such alteration thereof, and shall notify him of the date upon which work with respect to any alteration will begin, and 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 more than one week, and of its resumption and completion. 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 from time to time prescribe for the protection of life, health, or property.

Article 5. The Licensee within five years from 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, 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 of 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 deed or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning to 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 Act, or is transferred to a new licensee or to a non-power licensee under the provisions of Section 15 of the Act, the Licensee, its successors and assigns will be responsible for and will make good any defect of title to or of right of occupancy and use in any of such project property which is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and will pay and discharge, or will assume responsibility for payment and discharge, of all liens or incumbrances 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 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 Act and the Commission's Rules and Regulations thereunder.

Article 8. After the first 20 years of operation of the project under the license, six percent per annum shall be the specified rate of return on the net investment in the project for determining surplus earnings of the project for the establishment and maintenance of amortization reserves, pursuant to Section 10(d) of the Act; one-half of the project surplus earnings, if any, accumulated after the first 20 years of operation under the license, in excess of six percent per annum on the net investment, shall be set aside in a project amortization reserve account as of the end of each fiscal year: Provided, That, if and to the extent that there is a deficiency of project earnings below six percent per annum for any fiscal year

or years after the first 20 years of operation under the license, the amount of such deficiency shall be deducted from the amount of any surplus earnings accumulated thereafter until absorbed, and one-half of the remaining surplus earnings, if any, thus cumulatively computed, shall be set aside in the project amortization reserve account; and the amounts thus established in the project amortization reserve account shall be maintained therein until further order of the Commission.

Article 9. 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, the Licensee shall install and thereafter maintain such gages and stream-gaging stations as the Commission may deem necessary and best adapted to the requirements; and shall provide for the required readings of such gages and for the adequate rating of such stations. The Licensee shall also install and maintain standard meters adequate for the determination of the amount of electric energy generated by said 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 and may be altered from time to time if necessary to secure adequate determinations, but such alteration shall not be made except with the approval of the Commission or upon the specific direction of the Commission. The installation of gages, the ratings 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 said 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 be mutually agreed upon. The Licensee shall keep accurate and sufficient record 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 10. The Licensee shall 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, after notice and opportunity for hearing.

Article 11. 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 may 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 12. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or of the United States of 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 improvements of the United States the Licensee shall pay to the Commission the amounts for which it billed from time to time for such headwater benefits and for the costs of making the determinations pursuant to the then current Commission Regulations under the Federal Power Act.

Article 13. 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 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.

Article 14. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall, after notice and opportunity for hearing, permit such reasonable use of its project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission in the interest of comprehensive development of the waterway or waterways involved and the conservation and utilization of water resources of the region, for water supply, or for the purpose of steam-electric, irrigation, industrial, municipal, or similar uses.

The Licensee shall receive reasonable compensation, at least full reimbursement for any damages or expenses which the joint use causes him to incur, for use of its reservoir or other project properties or parts thereof for such purposes, any such compensation to 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 be concurrently 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 15. 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 other lawful authority for avoiding or eliminating inductive interference.

Article 16. 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 17. 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 Licensee's lands and interest 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 reasonable 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 18. 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 structures and operations 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 and State agencies, after notice and opportunity for hearing.

Article 19. 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 water 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. Licensee, in the interests of promoting optimum recreational use and protecting the scenic values of project lands and waters, may to a reasonable extent grant permits to individuals or groups of individuals for landscape plantings on project lands, or for the construction of access roads, wharves, landings, and other similar facilities, the occupancy of which may, under appropriate circumstance, be subject to the payment of rent in a reasonable amount; Provided, That Licensee, in granting such permits, shall require that permittees provide for multiple occupancy and use of such facilities, where

feasible, and shall ensure that such facilities are constructed and maintained in such a manner so as to be consistent with shoreline aesthetic values; Provided further, That the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities. These facilities are in addition to the facilities that the Licensee may construct and maintain as required by the License.

Article 20. The Licensee shall be responsible for and shall take reasonable measures to prevent soil erosion on lands adjacent to the stream(s) and to prevent stream siltation or other forms of water or air pollution resulting from construction, operation or maintenance of the project. The Commission upon request, or upon its own motion, may order the Licensee to take such measures as the Commission may find to be necessary for these purposes, after notice and opportunity for hearing.

Article 21. Licensee shall dispose of all temporary structures, unused timber, brush, refuse, or other unneeded material resulting from the clearing of lands or from the maintenance or alteration of the project works. Disposal of the 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 22. Insofar as any material is dredged or excavated in the prosecution of any work authorized under the license, or in the maintenance of the project, such material shall be removed and deposited in such a manner that it will reasonably preserve the project environmental values and so it will not interfere with traffic, both land and water. Dredging and filling in a navigable water of the United States will also be done to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 23. 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 its rights-of-way and such right of passage through its dams or other structures, and permit such control of pools as may be required to complete and maintain such navigation facilities.

Article 24. 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 the 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 25. The Licensee shall furnish free of cost to the United States power 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 26. The Licensee shall for the protection of navigation, construct, maintain and operate at its own expense such lights and other signals on fixed structures in or over navigable waters of the United States as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 27. 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 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 take any such other action necessary to restore the project stream(s), 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 provide for the continued operation and maintenance of non-power facilities and fulfill such other obligations under the license as the Commission may prescribe. The Commission, in its discretion, may also terminate the license.

Article 28. The right of the Licensee and of its transferees and successors 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 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 29. The Commission reserves the right to determine at a later date what, if any, lands of the United States are occupied or affected by the project works and to fix the annual charge for the use thereof.

Article 30. The Licensee shall cooperate with the U.S. Department of the Interior's Bureau of Reclamation, the Office of the Idaho State Historic Preservation Officer, and other appropriate agencies (1) in the identification of historical resources within the project boundary, (2) in developing a plan for protection of such structures including the Old Island Powerhouse, and (3) in developing and executing plans for the improvement of such resources in the interest of recreation, education, and historic preservation, including the provision of public access to such structures.

Article 31. The Licensee shall operate its facilities at American Falls in such a manner as not to interfere with the release of water by the Government at American Falls Dam and, when required by the United States, acting through the Department of the Interior, the Licensee shall draw down the elevation of water in its forebay pool sufficiently to permit the waters to flow from the Government's American Falls Dam into the forebay of the Licensee's installation at rates of flow as determined by the Department of the Interior.

Article 32. The project shall be operated in such a manner as will not conflict with the future depletion in flow of the waters of Snake River and its tributaries, or prevent or interfere with the future upstream diversion and use of such water above the backwater created by the project for the irrigation of lands and other beneficial consumptive uses in the Snake River watershed.

Article 33. This license shall not be construed as affecting in any way any claim the licensee may have concerning its water rights acquired pursuant to State law. Those rights, not this license, shall govern any claim the licensee may advance against the United States or other

parties claiming through the United States for any damages resulting from any future depletion in the flow of the waters of the Snake River and its tributaries for the irrigation of lands or other beneficial consumptive uses.

Article 34. The Licensee shall, to the satisfaction of the Commission's authorized representative, install and operate such signs, lights, sirens or other devices below the powerhouse to warn the public of fluctuations in flow from the project as may be reasonably needed to protect the public in its recreational use of project lands and waters.

Article 35. The Licensee shall, within two years from the issuance of the license, file for Commission approval an Exhibit R and an Exhibit S for the project conforming to the requirements of Section 4.41 of the Commission's Rules and Regulations under the Federal Power Act. These exhibits shall be prepared in cooperation with the appropriate State and Federal agencies with Exhibit R specifically incorporating a solid waste management plan to include (a) the location of solid waste receptacles to be provided at public areas, picnic areas, and boat access areas, (b) schedules for collection from the receptacles, (c) provisions for including in the subject plan any public use areas as they may be developed, and (d) disposal sites and methods of disposal.

Article 36. Within two years from the issuance of this order, the Licensee shall enter into an agreement with the Bureau of Reclamation, United States Department of the Interior, to effect the maximum justifiable development of the power resources of the American Falls site consistent with comprehensive development for other beneficial public purposes.

Article 37. The Licensee shall file for surrender of license for this project when its generating capacity is rendered inoperable by reason of the construction and/or operation of a more comprehensive hydroelectric development at American Falls.

Article 38. The Licensee shall continue to consult and cooperate with the Idaho Department of Parks and Recreation, Idaho Fish and Game Department, Fish and Wildlife Service and the Bureau of Reclamation of the U.S. Department

of the Interior, the City of American Falls, and other appropriate agencies for the protection and development of the natural resources and environmental values of the project area.

Article 39. The Licensee shall pay the United States the following annual charges, effective August 1, 1955:

(i) For purpose of reimbursing the United States for the cost of administration of Part 1 of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purposes is 36,700 horsepower;

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, an amount to be hereafter determined by the Commission.

Article 40. 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.

(D) The Exhibits designated and described in paragraph (B) above are hereby approved and made a part of the license.

(E) The Licensee shall within 90 days from the date of acceptance of this license, file in accordance with the provisions of Section 11.20(a)(4) of the Regulations a statement under oath showing the gross amount of power generation for the project in kilowatt-hours for each calendar year commencing August 1, 1955.

(F) The Upper Salmon and Shoshone Falls developments included as part of the application for license for American Falls Project No. 2258 filed February 13, 1959, are hereby severed from that application and will be considered separately at a later date.

(G) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

By the Commission.

(S E A L)



Kenneth F. Plumb,
Secretary.

IN TESTIMONY of its acknowledgement of acceptance of all of the provisions, terms and conditions of this license the Idaho Power Company, this 25th day of April, 1975, has caused its corporate name to be signed hereto by

JAMES E BRUCE its _____
President, and its corporate seal to be affixed hereto and
attested by PAUL L JAUREGUI, its _____
Secretary, pursuant to a resolution by its Board of Directors
duly adopted on the 10th day of April, 1975, a
certified copy of the record of which is attached hereto.

Idaho Power Company

By

James E. Bone
President

Attest:

Paul Lawrence
Secretary

(Executed in Quadruplicate)

RESOLUTIONS

RESOLVED, That the officers of the Company be, and they hereby are, authorized in their discretion to file for rehearing on Federal Power Commission Order Issuing Major License (Constructed) for the American Falls development under Project No 2258, or to acknowledge, accept and execute acceptance of all of the terms and conditions of the Federal Power Act, and all of the provisions, terms and conditions prescribed in conformity therewith by the Federal Power Commission in its Order Issuing Major License (Constructed) for American Falls development of Project No 2258, issued March 31, 1975, as contained and expressed therein, for and on behalf of, and as the act and acceptance of said license, and all of the provisions, terms and conditions thereof by this Company; and be it

FURTHER RESOLVED, That the officers of the Company be, and they hereby are, authorized in their discretion to file for rehearing on Federal Power Commission Order Issuing Major License (Unconstructed) and Permitting Withdrawal of Intervention for the American Falls Development under Project No 2736, or to acknowledge, accept and execute acceptance of all of the terms and conditions of the Federal Power Act, and all of the provisions, terms and conditions prescribed in conformity therewith by the Federal Power Commission in its Order Issuing Major License (Unconstructed) and Permitting Withdrawal of Intervention for American Falls development of Project No 2736, issued March 31, 1975, as contained and expressed therein, for and on behalf of, and as the act and acceptance of said license, and all of the provisions, terms and conditions thereof by this Company.

STATE OF IDAHO)
) ss
County of Ada)

I, PAUL L JAUREGUI, Secretary of Idaho Power Company, do hereby certify that the above and foregoing is a true, full and correct copy of the resolutions unanimously passed and adopted by the Board of Directors of said Company at a regular meeting of said Board held at Boise, Idaho, on Thursday, the 10th day of April, 1975, of which meeting due notice was given, and that a quorum was present and voting throughout the meeting and at the time of the passage and adoption of said resolutions; that the said resolutions have not been in any way altered, amended or rescinded, and the same is in full force and effect as of the date of this certificate.

IN WITNESS WHEREOF, I have hereunto subscribed my name
and affixed the corporate seal of said Company this 25th day of
April, 1975.

(CORPORATE SEAL)

Paul A. Juregen

Second Affidavit of Michael C. Orr in Support of
Idaho Water Resource Board's Motion for Summary Judgment

Exhibit 2

Order Issuing Major License (Unconstructed), Project No. 2736,
(Federal Power Commission) (Mar. 31, 1975)

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

APR 3 1975

POWER PLANT CONSTRUCTION
RECEIVED

APR 11 1975

POSTED 3
COPIES LAT

Before Commissioners: John N. Nassikas, Chairman;
William L. Springer, and Don S. Smith.

Idaho Power Company

Project No. 2736

ORDER ISSUING MAJOR LICENSE (UNCONSTRUCTED) AND
PERMITTING WITHDRAWAL OF INTERVENTION

(Issued March 31, 1975)

On September 25, 1973, Idaho Power Company (Applicant) of Boise, Idaho, filed application for major license under Section 4(e) of the Federal Power Act (Act), 16 U.S.C. §797(e), to authorize the construction, operation and maintenance of the proposed American Falls Project No. 2736, which will be located at the U.S. Department of the Interior, Bureau of Reclamation (Reclamation), American Falls Replacement Dam on the Snake River. The application was revised or supplemented on February 1 and 6, March 18, April 16, June 3, July 15 and 31, August 9 and 26, September 30, October 31, and November 15, 1974.

Notice of the application was issued December 5, 1973, with a return date for protests or petitions to intervene of January 28, 1974. As hereinafter discussed, four petitions to intervene were received and granted by the Commission, and the Idaho Public Utilities Commission filed Notice of Intervention under the Commission's Rules of Practice and Procedure, 18 C.F.R. §1.8(a)(1). Notice was published in the Federal Register on December 14, 1973, 38 Fed. Reg. 34496.

The American Falls Powerplant will have a total installed (nameplate) capacity of 92.4 mW. The power plant and appurtenant facilities will be located near the City of American Falls, Power County, Idaho, about 25 miles southwest of Pocatello, Idaho. The project will affect lands and navigable waters of the United States and a Government dam.

The project will consist of (1) three 18-foot steel-lined penstocks extending approximately 240 feet downstream to the centerline of project turbines from a connection with similar penstocks and intake works to be constructed as part of the Government dam; (2) reinforced concrete powerhouse containing

DC-23

NO.	ACTION	DATE	BY	INFO
1	REC			
2	CEB			
3	WIC			
4	VCM			
5	DCB			
6	PJB			
7	J			
8	DP			
9	DR			
10	FILE			

Return to Act By _____

Action Taken _____ By _____

Copy to: J. E. Kornher
July 7, 1976

AFF007838

three adjustable-blade turbines each rated 42,000 hp at 88-foot net head connected to three vertical-shaft, semi-outdoor type generators each rated 34.2 mVA (30.8 mW at 0.9 p.f.), a 175-ton gantry crane, and other related electrical and mechanical equipment; (3) switchyard upstream from the powerhouse containing one three-phase transformer rated approximately 125 mVA, 13.8/138 kV, with circuit breakers and disconnect switches; (4) 138-kV steel-pole transmission line extending approximately 2,100 feet along the right bank and across the Snake River to the 138-kV switchyard of the existing American Falls development of the Applicant; (5) tailrace; (6) recreational facilities consisting of a public parking area, three small landscaped parks with picnic tables, a potable water supply and sanitary facilities, a public access area on the west bank of the Snake River to accommodate bank fishing, and boat launching facilities; and (7) appurtenant facilities. The power will be used for public utility purposes.

The Honorable Cecil D. Andrus, Governor of the State of Idaho, petitioned to intervene in support of the application on January 28, 1974, stating that the water and power needs of all of Idaho's citizens would be best satisfied by the early issuance of a license. We granted intervention by order dated February 8, 1974.

The American Fall Reservoir District's (District) petition in support of application was filed January 25, 1974. Its stated interest was in the expeditious granting of a license.

The Idaho Fish and Game Commission (IFG) filed its petition on January 28, 1974, in order to be heard and report recommendations regarding the effect Project No. 2736 may have upon fish and wildlife resources. On September 3, 1974, IFG made motion to withdraw its intervention, as it was of the opinion that the July 2, 1974, agreement between itself and District, herein noted, provides satisfactory mitigation of potential adverse fisheries impact from the project. We herein grant IFG's motion.

The Idaho Public Utilities Commission (IPUC) filed its Notice of Intervention on January 10, 1974. By letter dated August 16, 1974, IPUC stated its unqualified support for the project, urging us to expeditiously issue the license herein. By our order dated February 20, 1974, we granted the petitions to intervene filed by the District and IFG.

On June 12, 1974, we allowed an intervention on the timely filed petition of the Shoshone-Bannock Tribes (Tribes) of the Fort Hall Indian Reservation, Idaho. The Tribes

alleged that there are tribal lands within the boundary of Project No. 2736, and that they are entitled to receive a reasonable annual charge for the use thereof under §10(e) of the Act. Applicant filed an answer on March 1, 1974, and stated that no tribal lands are encompassed within project boundaries.

We invited Interior to comment on the petition by the Tribes by letter dated February 21, 1974. By letter dated May 21, 1974, the Associate Solicitor for the Division of Indian Affairs stated his opinion that the operation of the American Falls Replacement Dam and Reservoir "affects the Fort Hall Indian Reservation."

We granted intervention to Tribes solely because of its status as a spaceholder in the Reservoir above American Falls Dam and as a landowner in the general area of Project No. 2736. In so doing, we specifically said that annual charges should be exacted only if Indian tribal lands are within the boundaries of the hydroelectric project subject to our jurisdiction. See 16 U.S.C. §§796(2); 797(e); 803(e). The proposed hydroelectric project includes only clearly defined areas downstream of the Replacement Dam, and does not include the dam or the reservoir. Our records further indicate that no tribal lands are included within the boundaries of the proposed hydroelectric project and, thus, no basis exists for assessing annual charges for such use.

Additionally, we note that Applicant has no control over the water releases at the Replacement Dam, nor can it affect Tribes' storage rights in the reservoir. In short, it is our opinion that Project No. 2736 will not affect tribal lands by its operation under the terms of the license issued herein.

By letter dated November 15, 1974, Applicant transmitted a copy of the Water Quality Certification issued by the State of Idaho pursuant to Section 401 of the Federal Water Pollution Control Act Amendments of 1972 (Amendments of 1972), 33 U.S.C. §1341. The Certification dated November 13, 1974, was issued upon certain conditions provided for herein to insure maintenance of water quality in the Snake River. By letter dated November 26, 1974, the Commission's Secretary transmitted the certification to the U.S. Environmental Protection Agency (EPA) pursuant to EPA's Regulations, 40 C.F.R. §123.11(b) (1974).

On the matter of water quality, two further permits are involved in the licensing of this project. By letter dated October 31, 1974, Applicant transmitted a National Pollutant Discharge Elimination System (NPDES) discharge permit under Section 402 of the Amendments of 1972, 33 U.S.C. §1342, by EPA

Region X, for the City of American Falls' municipal treatment plant's discharge into the Snake River. Under Article 4 of the license Applicant will submit "as-built" drawings of the project, which will show any major structures in the project area, including the above-mentioned treatment plant and the location of the discharge into the Snake River.

By letter dated February 11, 1975, Applicant transmitted a NPDES discharge permit issued by EPA Region X for a wastewater discharge from the project works. The permit became effective on March 6, 1975. Pursuant to Article 4 of the license, Applicant will also submit "as-built" information on this wastewater discharge into the Snake River.

This is not the only application for license for an American Falls project to have been before this Commission. There currently exists at American Falls a 27.5mW power facility owned by Idaho Power Company which was a part of application for major license in Project No. 2258, filed February 13, 1959. By letter dated December 16, 1969, the United States Department of the Interior (Interior) requested that we hold in abeyance the issuance of the license in Project No. 2258 until the problems arising out of the contemplated replacement of the American Falls Dam had been resolved. As such problems have been disposed of pursuant to the Act of December 28, 1973, we issued a license for the American Falls Project No. 2258 on March 31, 1975.

The existing American Falls Dam was constructed by Reclamation in 1927 as part of the Minidoka Reclamation Project. Within a short time an alkali/aggregate reaction took place in the dam, leading to abnormalities, cracking, and general deterioration over the years. At present, Reclamation has reduced the storage in the reservoir behind the dam to approximately 2/3 capacity for safety purposes.

The Act of December 28, 1973, 87 Stat. 704, in pertinent part authorizes the Secretary of the Interior (Secretary) to enter into agreements with the American Falls Reservoir District (District) authorizing the District to finance and construct a Replacement Dam at American Falls, title to which will pass to Reclamation upon its substantial completion. The Act of December 28, 1973, deems the Replacement Dam to be a Government dam, as defined in Section 3(10) of the Federal Power Act. 16 U.S.C. §796(10).

Pursuant to the 1973 Act the District, as constructing agency, may execute contracts with an appropriate non-Federal entity for use of the falling water leaving the dam for power

generation, which contract shall provide for a monetary return to the District to defray the cost of construction of the Replacement Dam. District may also contract with a non-Federal entity to coordinate construction of the hydroelectric facilities and the Replacement Dam, such facilities being the subject of this order.

Reclamation developed a Draft Environmental Impact Statement (DEIS) on the American Falls Dam Replacement Program to accompany the legislative process which led to the enactment of the Act of December 28, 1973. The DEIS was made available to the Council on Environmental Quality (CEQ) and a wide range of agencies, organizations, and individuals on May 17, 1973. Pursuant to §2.81 and §4.41 of the Commissions Rules, 18 C.F.R. §2.81 and §4.41, Applicant submitted its Exhibit W (environmental report). Reclamation and Commission Staff coordinated their independent analyses of the environmental impacts of the Replacement Dam Program, considered and reviewed comments received on the DEIS, and developed a Final Environmental Impact Statement (FEIS), designated as INT FES 74-60, which was made available to CEQ and the public on November 13, 1974. As Reclamation and Staff agreed that the major impacts of the Program would be attributable to the Replacement Dam itself, Reclamation served as lead agency for the FEIS, as suggested in CEQ's guidelines, 40 C.F.R. §1500.7(b) (1974). Staff contributed assistance with respect to this Commission's area of jurisdiction and expertise.

On the basis of the information in the FEIS and other data on file with the Commission, we believe that the beneficial effects to be derived from Project No. 2736 outweigh the adverse effects upon the environment. We discuss hereinafter the relevant environmental impacts which we have considered pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. §4432 (2)(c).

Construction of the Replacement Dam and power plant will result in the loss of a 14-acre forebay located between the existing powerhouse and dam. This area provides an important and substantial fishery for rainbow trout entering the forebay from the upstream reservoir. In 1971 alone the fishery provided fishermen with about 37,500 recreation hours and a take of 13,700 fish. The forebay fishery is a prime element in the lives of many local citizens, serving as a source of food, a recreation opportunity, and a social gathering place.

The area of the tailwater at the existing powerhouse provides a good sport fishery also. Without adequate oxygenation of water passing through the proposed penstocks, these fish would continue downstream in search of sufficient DO levels.

Through an agreement dated July 2, 1974, the District will provide the Idaho Fish and Game Commission (IFG) with \$875,000 as mitigation for the loss of the forebay and the associated fishery. Of that sum, \$575,000 will be for construction and \$300,000 for operation and maintenance of facilities provided. Through the above agreement, IFG will provide for some or all of the following facilities:

- a. Three 400' x 12' x 3' concrete raceways at the American Falls Hatchery owned and operated by IFG.
- b. Acquisition, construction, and impoundment of an off-stream fishing area.
- c. A fishing access bridge across the Snake River below American Falls Dam.
- d. Improved access to the river below the project area and upstream of Lake Walcott.

While we recognize that the loss of the forebay will have a deleterious effect upon fishery resources, we believe that the agreement and the conditions required herein will substantially mitigate this loss.

During the summer months, diversion through the powerhouse of all or nearly all of the water passing the dam would result in a decrease in the quality of water in the Snake River downstream. During these warmer months, dissolved oxygen concentration in the storage reservoir would often fall below acceptable levels for fish. Under current operations, releases through the dam into the forebay result in extensive agitation and reoxygenation of the water prior to passage downstream. Elimination of the forebay and forebay releases of water would result in the direct passage of water from the reservoir through the proposed penstocks and turbines to the river downstream with little or no opportunity for improving oxygen conditions. When oxygen levels are low (3 to 4 mg/liter or lower) in the reservoir, water released into the river downstream via the powerhouse would not meet Idaho water quality standards for dissolved oxygen content (6 mg/liter or 90% saturation, whichever is greater). By letter dated July 1, 1974, the Idaho Department of Environmental and Community Services requested approval by

EPA of a variance to State water quality standards in the stretch of the Snake River between American Falls and downstream Lake Walcott whereby the 90% saturation requirement would be waived.

In order to meet Idaho's water quality standards for oxygen, the District will construct, maintain, and operate an oxygen injection system directly into the dam penstocks. As a part of this system the District will also construct, maintain, and operate a water quality monitoring system downstream of the dam and powerhouse. In addition, the District will test two other oxygen injection systems: (1) an injection by coarse bubble diffusers upstream of the penstocks, and (2) upstream injection by fine bubble diffusers. Based on the test results, either of the above alternate systems may replace the direct penstock injection systems or serve as a backup or supplementary system if needed. Whatever the system or systems employed, the oxygen injection rate will be controlled through the oxygen monitoring system to satisfy State water quality requirements and to ensure efficient system operation. We believe that any potential water quality problem attributable to the Replacement Dam Program would be adequately provided for by this system. By Article 46 we are requiring Applicant to cooperate in the installation, maintenance and operation of the system, and to assure that procedures exist so that Reclamation and the Idaho Department of Health and Welfare (IDHW) will be immediately notified if water quality drops below the approved State standard so that appropriate action may be taken to restore water quality.

Nearly all of the fish moving downstream from the reservoir after construction of the new dam and powerhouse will pass through the turbines. The mortality rate of these fish will be higher than it is for fish under the present situation. Estimates provided by the Applicant predict that smaller fish (12 inches or less) will experience approximately 5 to 10 percent mortality. Larger fish will encounter, however, a somewhat higher mortality rate on passage through the turbines. More than likely turbine mortality rates will be directly related to fish size, although absolute values cannot be determined without testing under actual conditions.

As the Applicant does not propose mitigation for fish losses resulting from turbine mortality, and since the impact could be substantial, we are requiring the Applicant to file for Commission approval plans for a 3-year turbine mortality study to commence after the new dam and powerhouse have been constructed and are fully operational. The Applicant will prepare the research plan in cooperation with appropriate State and Federal fishery agencies. We believe that by this approach we can best address the potential concerns which are not at this time adequately quantifiable.

During construction of the project works, turbidity from suspended solids will increase in the Snake River downstream. In addition to rendering the river less appealing from an aesthetic point of view, the suspended solids will tend to settle out and interfere with and reduce the production of food-chain aquatic organisms. Both impacts should be short-term and minor in nature.

Construction activities will require a maximum force of approximately 500 workers during the peak construction period lasting about two years. Some of these workers will come from the local area; the rest will move to this area and remain only temporarily. It would be expected that a portion of the workers' payrolls would be spent in surrounding towns and cities. The population increase will also be accompanied by needs for temporary housing, temporary increase on the existing educational facilities, additional water supplies, and increased load on the City of American Falls' (City) sewage treatment facilities and other services. Completion of construction activities will also result in a period of social and economic readjustment for the community.

The City has a 400,000-gallon-per-day secondary sewage treatment plant which discharges into the Snake River downstream from the existing power plant. This facility has an adequate capacity to handle the temporary increased load due to the influx of construction workers. Flows in the river downstream from the sewage outfall may be of poorer quality during construction due to possible reduced releases from the reservoir. However, reduced flows in the river are not expected at times critical to the fishery resources downstream. As herein noted, this plant has received a \$402 permit under the Amendments of 1972, 33 U.S.C. §1342.

Several alternatives to the Replacement Dam Program were considered: leave the existing dam without change; replace the existing dam without a powerhouse; repair the existing dam; enlarge the dam and the reservoir; and develop storage at other sites. These were considered as alternatives to the program which Congress approved by its Act of December 28, 1973. We have also considered power source alternatives to the proposed project: exotic, other hydroelectric, nuclear, gas turbines, combined cycle, coal-fired steam, and geothermal.

Our review of the alternative sources of power production convinces us that they are less attractive than the proposed project. The adverse environmental impacts of such alternatives would include noise, visual impacts, emissions, and increased

heat rejection. In addition, the operation of alternative thermal power sources would deplete even further the Nation's critically short fossil-fuel supplies.

At the same time that we attempt to make the most efficient use of our non-depleting hydroelectric resources consistent with environmental protection, it is our opinion that electrical energy conservation practices are desirable and should be promoted vigorously. Though conservation cannot eliminate growth in energy demand and the need to expand electric generating capacity, such a program could effect a significant reduction in the need for new generating capacity over the next decade.

By letters dated May 17, 1974, the Secretary of the Commission requested comments pursuant to Section 4(e) of the Act and other relevant statutes from appropriate Federal, State and local agencies on the application for license. The comments received are discussed below.

The U.S. Department of the Interior (Interior) in letters dated September 5 and October 17, 1974, commented on the application and other supplemental information. Interior said that the license application provided that all falling water from the Replacement Dam would be used for hydroelectric generation purposes. Applicant's response dated September 25, 1974, acknowledged that under certain conditions it would not receive all falling water. We note that if the water quality monitoring program provided for in Article 46 herein shows substandard dissolved oxygen levels, Reclamation will be informed of the condition so that the powerplant may be bypassed. If Applicant defaults in any of its falling water payments, the powerplant will be bypassed. Further, Applicant will not receive releases when interruptions occur for inspections, maintenance, repair and emergency conditions at the Replacement Dam. In short, the United States is not obligated to operate the Replacement Dam in a manner to have water in the Replacement Dam at elevations for power generation or to operate to increase head for power generation. The Applicant noted still further that load and machinery capacities as well as the amount and timing of water releases for irrigation, flood control and other purposes would be limiting factors to the amount of water Applicant receives for hydroelectric generation.

Interior expressed concern that the application did not adequately recognize the major adverse environmental impacts of the proposed project: (1) the destruction of the existing forebay and its associated fishery without adequate mitigation;

(2) the degradation of water quality in the reach from American Falls Dam to Lake Walcott and its effect on the tailrace fishery, and (3) the fish mortality resulting from passage through the new turbines. These were also the chief concerns of the Idaho Wildlife Federation in its letter dated January 22, 1974.

Interior recommended that Applicant revise its exhibits to indicate (1) means to measure fish losses, (2) assignment of mitigation responsibility, and (3) the plan for mitigation. Additionally, inclusion of the standard stream gaging articles in any issued license was requested.

We concur with the specific recommendations above. By Article 40 we are requiring Applicant to continue consultation and cooperation with appropriate environmental agencies for the protection and development of the natural resources of the project area. By Article 45 Applicant shall submit for our approval a plan for a 3-year research study of fish mortality through the turbines, and at termination of the study recommend changes to alleviate the mortality problem. By Article 46 we require of Applicant consultation and cooperation with Reclamation and District in the installation, maintenance and operation of a dissolved oxygen and temperature monitoring system in the Snake River downstream from the project tailrace. Article 10 is the requested stream gaging article.

In addition, these requests have been partially satisfied through an agreement between District and Applicant dated August 21, 1973, setting forth that environmental costs related to the Replacement Dam and power plant are District's and a July 2, 1974, agreement between District and Idaho Fish and Game Commission, which establishes a mitigation plan and funding therefor. We are thus satisfied that sufficient measures have been taken to protect the resources involved.

Interior further recommended that recreation site No. 5, consisting of an existing gravel boat ramp, parking area, and access road, be included within the project boundary. Applicant's revised Exhibit R, filed July 15, 1974, which is approved in part by the terms of this license, includes this site within the project boundary. By Article 42 we are requiring Applicant to comply with Interior's recommendation that public access be provided from the new powerhouse access road, under the railroad bridge, to the west river bank.

Interior also recommended that a scenic overlook should be constructed above the Replacement Dam near the right abutment, to be operated and maintained by Reclamation. While we agree

that the recommendation may have merit, we do not believe that such a development outside the project should be the Applicant's responsibility and are not, therefore, requiring its development.

Interior noted that the area of the project may be of some historical significance. By Article 44 we require Applicant to coordinate with appropriate agencies to develop plans and procedures to protect and enhance historical values within the project boundary, including the Old Island Powerhouse.

Under Section 7 of the Act of December 28, 1973, \$400,000 is authorized for construction of specific facilities for public recreation and fish and wildlife enhancement. Interior noted that Applicant's Exhibit R said that some of these funds would be available for enhancement in the tailrace area, whereas Interior's position is that the public funds will not be available for Applicant's use. We agree with the latter interpretation of the Act of December 28, 1973, and have specifically deleted all references to such funds in the Exhibit R we approve hereinafter.

Interior also recommended that the following articles requested for the existing Project No. 2258 be included in the license for Project No. 2736:

- (a) The Project shall be operated in such manner as will not conflict with the future depletion in flow of the waters of Snake River and its tributaries, or prevent or interfere with the future upstream diversion and use of such water above the backwater created by the project for the irrigation of lands and other beneficial consumptive uses in the Snake River watershed.
- (b) The Licensee shall not make any claims under the authority of this license against the United States or other parties claiming through the United States for any damages resulting from any future reduction in the flow of the waters of the Snake River and its tributaries for the irrigation of lands or other beneficial purposes.

Even though the Applicant would agree to insertion of the provision contemplated by Interior in (a) above, we consider it unnecessary from a practical standpoint and do not require its inclusion. The use of falling water releases for power generation is so thoroughly under the control of Reclamation

in its releases for irrigation and other purposes of the Minidoka Project that the Applicant would have no opportunity to operate the project in a manner to conflict with future depletion or diversion of the water of the Snake River. The use of the resource is a non-depleting one and under the Act of December 28, 1973, and related contracts, the operation of the hydroelectric facility shall not impair the efficiency of the Replacement Dam Program to serve the other purposes of the Minidoka Project.

While the Applicant did not address (b) above in its comments, we note that the recommendation is similar to Section 4.7 of the unexecuted Falling Water contract. Section 4.7 provides that:

No liability shall accrue against the United States or any of its officers, agents, or employees, or against the Constructing Agency, for damage, direct or indirect, arising by reason of shortages in the quantity of water available through the Existing Dam or Replacement Dam or interruptions in water releases resulting from drought, inaccuracy in distribution, hostile diversion, prior or superior claims, accident to or failure of the Existing Dam or the Replacement Dam, whether or not attributable to negligence of the officers, agents or employees of the United States or the Constructing Agency, or other causes of whatsoever kind.

However, to adequately protect the Government from liability for water shortage or interruption, and in the absence of an executed agreement among the parties to that effect, Article 35 includes Interior's recommendations subject to the clarification that the license, as such, shall not be interpreted as affording greater rights to Licensee than it might otherwise have. See, Utah Power & Light Company, Project No. 2420, 41 F.P.C. 175 (1969).

Interior commented that the 138-kV transmission line from the powerplant to the switchyard traverses directly over a congested recreational area, and suggested that the line be relocated or modified to insure that it does not present a hazard. By Article 38 we require Applicant to complete, within one year, a study addressing the need for alternative alignment or clearance for the transmission line. By Article 39 we require Applicant in the design, construction and maintenance of the project works, including transmission lines, to follow the Commission's Guidelines relating to protection of certain values in the design and location of rights-of-way and transmission facilities, 18 C.F.R. §2.13 (1974).

Applicant in Exhibits C, D, and E of its application stated that a June 15, 1923, contract (Contract) between Applicant and Reclamation, entitled a "Contract...Relative to Power Rights at American Falls, Idaho.", will continue in effect without change. Interior commented that it is anticipated that some changes would be made to said contract.

We note that Article 36 of the Contract provides that its execution shall not be construed as waiving any authority, jurisdiction or control which this Commission may have over Applicant at American Falls, nor could it, of course. Likewise, we would expect that any changes negotiated to the Contract will not be inconsistent with terms of this order or any applicable administrative or statutory requirements.

The U.S. Army, Corps of Engineers (Corps) by letter dated July 18, 1974, reported that the project is not in conflict with any existing or proposed Corps projects, and that the plans of project structures are satisfactory from the standpoint of navigation interest. According to the Corps, the project will have no adverse effect on flood control on the Snake River.

The Corps recommended that any license issued should require the Applicant to consult prior to construction with the Corps' District Engineer Walla Walla District, concerning Department of Army permit requirements. We have adopted that recommendation in Article 37.]

By letter dated July 26, 1974, the U.S. Environmental Protection Agency (EPA), requested that certain conditions relating to water quality be incorporated into the license. EPA recommended that the Applicant provide and operate facilities approved by the Idaho Department of Health and Welfare (IDHW) and EPA for reoxygenation of waters released from the project to meet established water quality standards, to monitor the quality of project releases, and to notify Reclamation when water quality falls below standard so that the project will be bypassed until such time as water quality standards are met.)

Applicant responded by letter dated September 25, 1974, that EPA's recommendations are provided for in the overall contractual scheme discussed heretofore. In addition, the \$401 certification requested by EPA and Article 46 responds to EPA's concerns. While we recognize that the chief responsibility for reoxygenation of the water passed downstream is that of the District's under the proposed contracts, we are requiring of Applicant that it consult and coordinate with interested parties and agencies to insure adequate water quality in the Snake River.)

We have provided in Article 46 a framework for consultation and cooperation to insure maintenance of water quality at the project. Particulars such as those required under the \$401 permit can be addressed within this format. Good faith consultation with interested agencies may reveal that more stringent requirements are desirable. In such a case, Article 46 provides a mechanism by which the natural resources involved will be protected.

The U.S. Department of Agriculture-Forest Service reported by letters dated July 25 and August 29, 1974, that this project would not affect National Forest land or resources, nor would it conflict with any project of which the Service is aware which should be or has been constructed by the United States.

The Department of Transportation-United States Coast Guard reported by letters dated July 23 and September 9, 1974, that it has no comments to offer nor any objection to the application.

Department of Commerce-National Marine Fisheries Service commented by letter dated June 28, 1974, that the project would have no direct effects on marine, estuarine, anadromous or inland commercial fisheries.

By letters dated May 31 and August 13, 1974, the U.S. Department of Health, Education and Welfare (HEW) said that it would be glad to comment on any draft environmental impact statement that the Commission might develop for this project. As we previously noted, Staff contributed to Reclamation's Final Environmental Statement on the American Falls Dam Replacement and Powerplant, which was made available to CEQ and the public on November 13, 1974, designated as INT-FES 74-60. */ Entities from whom comments were requested on that draft included HEW, but it did not choose to comment thereon.

The Chairman of the Pacific Northwest River Basins Commission reported by letter dated July 23, 1974, that the licensing of the project would be consistent with that Commission's approved comprehensive Columbia-North Pacific Framework Plan and that no significant historical or cultural assets are known to be involved in any environmental impacts.

*/ Reclamation had previously developed and circulated a draft statement on the proposed legislation which became the Act of December 28, 1973.

The Idaho Department of Water Resources stated in letters dated July 18 and August 23, 1974, that inclusion of the project plant as part of the American Falls Dam Replacement Program is consistent with the objectives of the State Water Plan, and that it is in the public interest to support construction of the proposed power plant.

In a letter dated May 31, 1974, the Idaho Parks and Recreation Department (IPRD) stated that it supported any proposal which would result in early replacement of the dam. This support was qualified pending Idaho Fish and Game Commission (IFG) accepting a plan to mitigate the loss of the forebay fishery and approval of the project's impact on water quality by IDHW. As developed herein, we believe that their concerns have been satisfied. By further letter dated September 5, 1974, IPRD expressed its satisfaction that the public interest for recreation at the project is being fulfilled.

The Advisory Council on Historic Preservation suggested in a letter dated June 21, 1974, that the Environmental Impact Statement give evidence of contact with the Idaho Historic Preservation Officer and contain a copy of his comments on the effects of the project on historical, cultural, archaeological and architectural resources. Reclamation's Final Environmental Statement adopts both of these recommendations.

We have also received comments dated June 27, 1974, from the Idaho State Preservation Officer. He suggested that the 1902 power plant building would be an excellent interpretive center for Reclamation and noted that American Falls itself has long been of historic interest as a fur trade and Oregon Trail landmark.

We have consulted the National Register of Historical Places through February 4, 1975, and find no listed sites that would be affected by the project. By Article 44, however, we require Applicant to coordinate with Reclamation and the State Historic Preservation Officer for the future protection and enhancement of any historic resources within the project boundary.]

The Idaho Department of Agriculture recommended by letter dated August 13, 1974, that the Exhibit R be approved and expressed the desire to see the entire rebuilding project implemented as soon as possible. With certain deletions noted herein we are approving the Exhibit R.

In a letter dated July 23, 1974, the State of Idaho, Division of Budget, Policy Planning and Coordination offered no comment on the application.

We believe that the licensing of American Falls Project No. 2736 best meets the standard of §10(a) of the Act, 16 U.S.C. §803(a). That section requires that a project approved 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, and for other beneficial public uses, including recreational purposes...."

Utilization of added head from the Replacement Dam through additional units will increase power capacity of the existing site from 27.5 mW to 92.4 mW. This increase reflects a fuller development of the waterpower potential of the project than previously attained. Releases from storage for irrigation purposes will also occur at times of Applicant's greatest need to serve the area's electric loads, principal of which are pumping loads of irrigators. Better use will be made of recreational attributes of the area. Adequate mitigation measures have been provided for any adverse effects of the overall project, particularly in terms of the loss of the forebay fishery, potential turbine fish mortality, and water quality concerns.

The value of increased generation and its contribution to system reliability is great. Applicant is a member of the Western Systems Coordinating Council (WSCC), in addition to having its own interconnected system. In these times of increasing need for reliable power, the addition of this potential is necessary. Of course, the energy source is of a non-depleting nature, which contributes to its efficacy in terms of conservation of natural resources.

Further, we have evaluated the cost and benefits of this project in comparison with those of alternative thermal generating sources, which would require the utilization of supplies from diminishing sources of fossil fuels. We are persuaded, as indicated previously, that no better alternative exists to the licensing of this project, and that the action we take today best serves the public interest.

Our records show that Applicant is financially qualified to undertake the development of this project. We conclude that the project structures as proposed in the application would be safe and adequate if constructed in accordance with sound engineering practice.

Among the several contracts contemplated under the Act of December 28, 1973, is the unexecuted Falling Water Contract between the District and the Applicant, subject to the approval of the Secretary of the Interior to insure that the contract will not impair the efficiency of the dam to serve the other purposes of the Federal Minidoka project. In essence, the proposed Falling Water Contract provides for the Applicant to retire District bonds in the amount of \$19,550,000 plus interest as payment for the use of "falling water" to help defray the cost of the Replacement Dam. Additional construction costs of over \$19 million are proposed to be borne by spaceholders in the reservoir and, in certain instances, by the Government.

Apart from this obligation, it is also proposed that Applicant will also make supplemental falling water payments in the event that any of the spaceholders are in default of payment of their obligations. Applicant would assume under the contract the obligation to pay 33% of the operation and maintenance costs of the Replacement Dam. The proposed contract would provide for the use of standard Commission accounting procedures, and would terminate upon expiration of this license.

The proposed Falling Water contract also contemplates the possibility that the District may be required to issue Interim Notes in order to meet the construction schedule for the Replacement Dam and Reservoir. In such an event, the Applicant under the proposed contract would execute a guaranty agreement to the purchasers of such Interim Notes, upon approval by the appropriate regulatory agencies, among others. This licensing order shall not be construed as giving any approval required of the Commission under the Act, including Section 204 (16 U.S.C. §824c(a)), for such an issuance.

Pursuant to Section 10(e) of the Federal Power Act, 16 U.S.C. §803(e), we are required to fix a reasonable annual charge for the use of a Government dam, subject to readjustment by the Commission at the end of twenty years after the project is available for service and at periods of not less than ten years thereafter upon notice and opportunity for hearing. The Applicant's obligation to pay for falling water in accordance with the terms of the proposed Falling Water Contract is in essence payment for benefits received from the Government's American Falls Replacement Dam. At 1974 costs, the forty annual payments of principal and interest spread over fifty years of the license would require an estimated annual payment of \$1,506,765 for falling water. In addition, the Applicant's payment of one-third of the annual operation and maintenance expenses of the Replacement Dam is estimated to average \$10,000 annually and is in the nature of further annual charges. In light of the substantial nature of the proposed payments to be made by the Applicant toward the construction, maintenance and operation of the Replacement Dam we believe Applicant would in essence be paying an annual charge for the use of a Government dam within the meaning of Section 10(e) of the Act. However, we will defer our determination of reasonable annual charges until we can review, in light of any revised costs, the financial obligations assumed by the Applicant. Copies

of executed contracts and other documents relating to such financial obligations are to be promptly filed with the Commission under Article 36 of this license.

We believe that the record relative to the instant application had been fully developed and considered by this Commission. The facts have been fully developed in Reclamation's DEIS and comments thereon, as set out in the Final Environmental Impact Statement, public staff meetings, pleadings and other data on file with the Commission. Therefore, we do not believe that a trial-type hearing will contribute any new and relevant information and conclude that it is not in the public interest to hold such a hearing in this proceeding.

We conclude on the basis of the record before us that a power license should be issued to the Applicant for a term of fifty years effective on the first day of the month in which this order is issued.

Applicant filed several exhibits as part of its application. Exhibit J, General Map of the Project Area, and Exhibit K, Detail Maps of the Project Area, substantially conform to the Regulations and are approved as part of this license for Project No. 2736, subject to the provisions of Article 4, whereby Applicant will submit "as-built" Exhibits upon completion of construction or at such time as the Commission may require.

Of the 11 sheets filed as part of Exhibit L, General Design Drawings, we have included FPC No's 2736-18 through 22 as herein-after described in this license. The remaining sheets were of an informational nature only and are not relevant to the design of the project.

Exhibit M, General Description and Specifications of Equipment is approved only as to those parts which describe part of the licensed project itself. Paragraph "1. Intake" was submitted for informational purposes only and equipment described therein is not a part of Project No. 2736 but rather of the Replacement Dam.

The revised Exhibit R filed July 15, 1974, is approved and made part of this license with the exception of portions of the text relating to expenditures of public funds authorized under the Act of December 28, 1973. Exhibit S is also approved. While we recognized previously that the primary responsibility for mitigation of any adverse environmental impacts from the Replacement Dam Program rests with District, we are requiring Applicant to consult and cooperate with appropriate agencies to help insure that the natural resources involved are protected. In this regard we note but do not include in the license the July 2, 1974, agreement between District and IFG, which Applicant filed as part of Exhibit R.

No conflicting applications are before the Commission at this time. We note that the license issued March 20, 1975, in Project No. 2258 is for the existing American Falls project.

One of the provisions of that order requires Applicant to make application to surrender Project No. 2258 when its generation is rendered inoperable by a more comprehensive hydroelectric development at American Falls.

Finally, Applicant noted in its Exhibits C, D, and E that application would be made to the Idaho State Department of Water Administration for a change in the point of diversion of the water at American Falls, to obtain permits for any additional water used, to construct project works in the river channel, and to remove certain of the existing facilities.

The Commission finds:

(1) The American Falls Powerplant Project No. 2736 would affect lands of the United States and the United States Department of the Interior Bureau of Reclamation American Falls Replacement Dam and would be located on a navigable waterway of the United States.

(2) Applicant is a corporation organized under the laws of the State of Maine and is authorized to do business in the State of Idaho.

(3) Public notice of the filing of the application for major license was given on December 5, 1973. Notice of intervention was filed by the Idaho Public Utilities Commission pursuant to section 1.8(d)(1) of this Commission's Rules of Practice and Procedure. Interventions were granted based on petitions filed by the Governor of Idaho, Honorable Cecil D. Andrus; Idaho Fish and Game Commission; American Falls Reservoir District; and the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation, Idaho.

(4) Intervenor Idaho Fish and Game Commission should be permitted to withdraw its petition to intervene.

(5) A trial-type hearing is neither warranted nor in the public interest, as the record before this Commission is sufficient for decision.

(6) No conflicting application is before the Commission.

(7) Subject to the terms and conditions hereinafter imposed, the project does not adversely affect a Government dam, nor will the issuance of a license therefor, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States.

(8) Subject to the terms and conditions hereinafter imposed, the project will 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, and for other beneficial public uses, including recreational purposes.

(9) The estimated cost of developing the project compared to the estimated cost of developing suitable alternative sources of power is reasonable.

(10) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charge is 123,000 horsepower, and the amount of annual charges based on such capacity to be paid under the license for the project for the cost of administration of Part I of the Act is reasonable.

(11) The amount of annual charges to be paid under the license for recompensing the United States for the use, occupancy, and enjoyment of its lands is reasonable, as hereinafter fixed and specified.

(12) It is appropriate in the administration of the Federal Power Act to defer the question of reasonable annual charges to be assessed for the use of a Government dam.

(13) The plans of the structures affecting navigation have been approved by the Corps of Engineers.

(14) The term of the license hereinafter authorized is reasonable.

(15) The Exhibits designated and described in paragraph (B) below conform to the Commission's Rules and Regulations and should be approved as part of the license for the project.

(16) The Applicant has demonstrated satisfactory evidence that it has the necessary financial capabilities to undertake the development and operation of the project.

(17) Federal development of this project has been precluded by the Act of December 28, 1973.

The Commission orders:

(A) This license is hereby issued to Idaho Power Company (hereinafter Licensee) under the Federal Power Act for a fifty year period commencing the first day of the month in which this order is issued, for the construction, operation and maintenance of the American Falls Project No. 2736, located on the Snake River, in Power County, Idaho, and which occupies lands of the United States, will utilize water from and affect the American Falls Replacement Dam of the United States Department of the Interior Bureau of Reclamation, and further would affect navigable waters of the United States, subject to the terms and conditions of the Federal Power Act, which is incorporated herein by reference as part of this license, and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) The American Falls Project No. 2736, consists of:

(i) all lands constituting the project area and enclosed by the project boundary, the limits of which are otherwise defined, and/or interests in such lands necessary or appropriate for the purposes of the project, whether such lands or interests therein are owned or held by the Licensee or the United States; such project area and project boundary being shown and described by certain exhibits which form part of the application for license which are designated and described as follows:

<u>Exhibit</u>	<u>FPC No.</u>	<u>Showing</u>
Exhibit J, Sheet 1 of 1	2736-32	General Map
Exhibit K, Sheet 1 of 2	2736-27	Detail Map
Exhibit K, Sheet 2 of 2	2736-28	Detail Map

(ii) project works consisting of: (1) three 18-ft. steel-lined penstocks extending approximately 240 ft. downstream from a connection with similar penstocks and intake works to be constructed as part of the Government's American Falls Replacement Dam to the centerline of project turbines;

(2) a reinforced concrete powerhouse containing three adjustable-blade turbines each rated 42,000 hp at 88-ft. net head connected to three vertical-shaft, semi-outdoor type generators each rated 34.2 mVA (30.8 MW at 0.9 p.f.), a 175-ton gantry crane, and other related electrical and mechanical equipment;

(3) a switchyard upstream from the powerhouse containing one three-phase transformer rated approximately 125 mVA, 13.8/138

kV, with circuit breakers and disconnect switches; (4) a 138-kV steel-pole transmission line extending approximately 2,100 ft. along the right bank and across the Snake River to the 138-kV switchyard of the existing American Falls Project No. 2258 of the Idaho Power Company; (5) a tailrace; (6) recreation facilities consisting of a public parking area, three small landscaped parks with picnic tables, a potable water supply and sanitary facilities, a public access area on the West bank of the Snake River to accommodate bank fishing, and boat launching facilities; and (7) appurtenant facilities: -- the location, nature and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also form part of the application for license and which are designated and described as follows:

<u>Exhibit L</u>	<u>FPC No</u>	<u>Showing</u>	
Sheet 1 of 10	2736-18	Project Layout-Plan & Section	<i>Exhibit D-10.5 PH-002</i>
Sheet 2 of 10	2736-19	Powerhouse General Arrangement-Top Deck & Generator Floor	<i>PH-017</i>
Sheet 3 of 10	2736-20	Powerhouse General Arrangement-Turbine Floor & Inspection Gallery	<i>P-018</i>
Sheet 4 of 10	2736-21	Powerhouse General Arrangement-Transverse Sections	<i>PH-015</i>
Sheet 5 of 10	2736-22	Powerhouse General Arrangement-Longitudinal Section	<i>PH-016</i>

Exhibit M: Consisting of three typewritten pages, filed February 6, 1974, entitled "General Description and Specification of Equipment", except for paragraph "1" on page 1.

Exhibit R (revised): Filed July 15, 1974 and consisting of:

- (1) seven typewritten pages of text, except for the second paragraph on page 1 and the third full paragraph on page 5 thereof, and
- (2) one map Exhibit R, page 1 of 1 (revised) (FPC No. 2736-29) entitled "Location Map - Recreational Facilities," insofar as it describes existing and proposed recreation sites.

Exhibit S (revised): Filed March 18, 1974, and consisting of five typewritten pages of text.

(iii) all of the structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, and such other property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; together with all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

(C) This license is also subject to the following terms and conditions set forth herein as articles:

Article 1. The entire project, as described in this order of the Commission, shall be subject to all 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 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 part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. The project works shall be constructed 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 uses of project land and waters or in the project works or

divergence from such approved exhibits may be made if such changes will not result in decrease in efficiency, in 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. Upon the completion of the project, or at such other time as the Commission may direct, the Licensee shall submit to the Commission for approval revised exhibits insofar as necessary to show any divergence from or variations in the project area and project boundary as finally located or in the project works as actually constructed when compared with the area and boundary shown and the works described in the license or in the exhibits approved by the Commission, together with a statement in writing setting forth the reasons which in the opinion of the Licensee necessitated or justified variations in or divergence from the approved exhibits. Such revised exhibits shall, if and when approved by the Commission, be made a part of the license under the provisions of Article 2 hereof.

Article 5. The construction, operation, and maintenance of the project and any work incidental to additions or alterations shall be subject to the inspection and supervision of the Regional Engineer, Federal Power 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 a detailed program of inspection by the Licensee that will provide for an adequate and qualified inspection force for construction of the project and for any subsequent alterations to the project. Construction of the project works or any feature or alteration thereof shall not be initiated until the program of inspection for the project works or any such feature thereof has been approved by said representative. The Licensee shall also furnish to said representative such further information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work 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

Letter sent by [illegible] January 2-21-76

a period of more than one week, and of its resumption and completion. The Licensee shall allow him 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 from time to time prescribe for the protection of life, health, or property.

Article 6. The Licensee within five years from 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, 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 of 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 deed or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article.

Article 7. 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 Act, or is transferred to a new license or to a non-power licensee under the provisions of Section 15 of the Act, the Licensee, its successors and assigns will be responsible for and will make good any defect of title to or of right of occupancy and use in any of such project property which is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and will pay and discharge, or will

assume responsibility for payment and discharge, of all liens or incumbrances 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 Licensee.

Article 8. 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 Act and the Commission's Rules and Regulations thereunder.

Article 9. After the first 20 years of operation of the project under the license, six percent per annum shall be the specified rate of return on the net investment in the project for determining surplus earnings of the project for the establishment and maintenance of amortization reserves, pursuant to Section 10(d) of the Act; one-half of the project surplus earnings, if any, accumulated after the first 20 years of operation under the license, in excess of six percent per annum on the net investment, shall be set aside in a project amortization reserve account as of the end of each fiscal year: Provided, that, if and to the extent that there is a deficiency of project earnings below six percent per annum for any fiscal year or years after the first 20 years of operation under the license, the amount of such deficiency shall be deducted from the amount of any surplus earnings accumulated thereafter until absorbed, and one-half of the remaining surplus earnings, if any, thus cumulatively computed, shall be set aside in the project amortization reserve account; and the amounts thus established in the project amortization reserve account shall be maintained therein until further order of the Commission.

Article 10. 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, the Licensee shall install and thereafter maintain such gages and stream-gaging stations as the Commission may deem necessary and best adapted to the requirements; and shall provide for the required readings of such gages and for

the adequate rating of such stations. The Licensee shall also install and maintain standard meters adequate for the determination of the amount of electric energy generated by said 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 and may be altered from time to time if necessary to secure adequate determinations, but such alteration shall not be made except with the approval of the Commission or upon the specific direction of the Commission. The installation of gages, the ratings 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 said 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 be mutually agreed upon. The Licensee shall keep accurate and sufficient record 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 11. The Licensee shall 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, after notice and opportunity for hearing.

Article 12 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 may 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 13. Whenever the Licensee is directly benefited by the construction work of another licensee, a permittee, or of the United States of a storage reservoir or other headwater improvements, 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 improvements 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 costs of making the determinations pursuant to the then current Commission Regulations under the Federal Power Act.

Article 14. 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 may 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 15. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall, after notice and opportunity for hearing, permit such reasonable use of its project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission in the interest of comprehensive development of the waterway or waterways involved and the conservation and utilization of water resources of the region, for water supply, or for the purpose of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation, at least full reimbursement for any damages or expenses which the joint use causes him to incur, for use of its reservoir or other project properties or parts thereof for such purposes, any such compensation to 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 be concurrently 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 16. 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 other lawful authority for avoiding or eliminating inductive interference.

Article 17. 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 18. 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 Licensee's lands and interest 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 19. 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 and State agencies, after notice and opportunity for hearing.

Article 20. 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 21. The Licensee shall be responsible for and shall take reasonable measures to prevent soil erosion on lands adjacent to the stream(s) and to prevent stream siltation or other forms of water or air pollution resulting from construction, operation or maintenance of the project. The Commission upon request, or upon its own motion, may order the Licensee to take such measures as the Commission may find to be necessary for these purposes, after notice and opportunity for hearing.

Article 22. Licensee shall dispose of all temporary structures, unused timber, brush, refuse, or other unneeded material resulting from the clearing of lands or from the maintenance or alteration of the project works. Disposal of the 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 laws and regulations.

Article 23. Insofar as any material is dredged or excavated in the prosecution of any work authorized under the license, or in the maintenance of the project, such material shall be removed and deposited in such a manner as to reasonably preserve the project environmental values and so as not to interfere with traffic, both land and water. Dredging and filling in a navigable water of the United States will also be done to the satisfaction of the District Engineer, Department of the Army, in charge of the locality.

Article 24. 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 its rights-of-way and such right of passage through its dams or other structures, and permit such control of pools as may be required to complete and maintain such navigation facilities.

Article 25. 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 the 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 26. The Licensee shall furnish free of cost to the United States power 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 27. The Licensee shall for the protection of navigation, construct, maintain and operate at its own expense such lights and other signals on fixed structures in or over navigable waters of the United States as may be directed by the Secretary of the Department in which the Coast Guard is operating.

Article 28. 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 29. 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 means of transportation and communication 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 30. 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 31. 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 32. The Licensee shall cooperate with the United States in the disposal by the United States of mineral and vegetative materials, under the Act of July 31, 1947, 61 Stat. 681, as amended (30 U.S.C. §601, et seq.) 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 33. 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 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 take any such other action necessary to restore the project stream(s), 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 provide for the continued operation and maintenance of non-power facilities and fulfill such other obligations under the license as the Commission may prescribe. The Commission, in its discretion, may also terminate the license.

Article 34. The right of the Licensee and of its transferees and successors 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 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 35. This license shall not be construed as affecting in any way any claim the licensee may have concerning its water rights acquired pursuant to State law. Those rights, not this license, shall govern any claim the licensee may advance against the United States or other parties claiming through the United States for any damages resulting from any future depletion in the flow of the waters of the Snake River and its tributaries for the irrigation of lands or other beneficial consumptive uses.

Article 36. Licensee shall promptly file for Commission information copies of all executed contracts

and other documents relating to any financial obligations assumed by it with respect to the American Falls Replacement Dam and Reservoir.

Article 37. During the planning and design period prior to construction of the project, the Licensee shall consult with the District Engineer, Corps of Engineers, Walla Walla District, concerning the Department of the Army permit requirements..

Article 38. Licensee shall within 1 year from the effective date of this license: (1) complete a study, in consultation with appropriate Federal, State and local agencies, to determine the need, if any, of an alternative alignment and/or clearance for the 138-kV transmission line extending from the powerhouse to the American Falls switchyard necessary for the safety and protection of persons using the reservoir for navigational and recreational purposes, and (2) file a revised Exhibit F and submit for Commission approval revised Exhibits J, K, M, and L, reflecting any change in alignment or clearance of the 138-kV transmission line, in conformance with the Commission's rules and regulations.

Article 39. Licensee shall in the design, construction and maintenance of the project works, including transmission lines, follow the Commission's "Guidelines for the Protection of Natural, Historic, Scenic and Recreational values in the Design and Location of Rights-of-Way and Transmission Facilities" of Commission Order No. 414 and other recognized engineering and landscaping practices as may be needed to protect and preserve the environmental values of the project.

Article 40. The Licensee shall, during the development and operation of the project, continue to consult and cooperate with the U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, Idaho Department of Fish and Game, Idaho Department of Water Resources, and other appropriate environmental agencies for the protection and development of the natural resources of the project area.

Article 41. The Licensee shall, to the satisfaction of the Commission's authorized representative, install and operate such signs, lights, sirens or other devices

below the powerhouse to warn the public of fluctuations in flow from the project, as may be reasonably needed to protect the public in its recreational use of project lands and waters.

Article 42. The Licensee shall, in cooperation with the U.S. Department of the Interior, State and local agencies, construct, maintain and operate, or arrange for the construction, maintenance and operation thereof, a parking area along the access road to the powerhouse; a foot trail to provide public access, extending from this road, under the railroad bridge, to the west riverbank tailrace area; and a boat dock (Development 6) adjacent to the existing park (Development 1, as shown on the Exhibit R drawing FPC No. 2763-29).

Article 43. Licensee shall consult and cooperate with the Idaho Department of Health and Welfare and comply with State and local regulations in planning and providing for the collection, storage, and disposal of solid wastes generated through public access and use of project lands and waters, and, within one year after issuance of this license, shall file with the Commission a solid waste management plan which has been approved by the Idaho Department of Health and Welfare. This plan shall provide:

- (a) the location of solid waste receptacles to be provided at public areas, picnicking areas, and boat access areas;
- (b) schedules of collection for the above receptacles;
- (c) provisions for including in the subject plan any public use areas as they may be developed; and (d) disposal sites and methods of disposal.

Article 44. The Licensee shall cooperate with the U.S. Department of the Interior's Bureau of Reclamation and the Office of the Idaho State Historic Preservation Officer: (1) in developing plans or procedures for the protection, during and after project construction, of any historic resources identified as being within the project boundaries including the Old Island Powerhouse, and (2) in developing and executing plans for the improvement of such structures in the interest of recreation, education, and historic preservation, including the provision of public access to such resources.

Article 45. The Licensee, within 1 year of the date of issuance of the license and following consultation and cooperation with the U.S. Department of the Interior's Bureau of Reclamation and Fish and Wildlife Service, and

the Idaho Department of Fish and Game, shall prepare and submit for Commission approval plans for a comprehensive, 3-year research study devised to determine the mortality rate of fish passed downstream via the turbines. The Licensee shall file annual progress reports with the Commission and at the termination of the study, shall file with the Commission a final report to include recommendations for any changes in project structures or operations as indicated desirable from the study, or the need for any continuation of the study.

Article 46. The Licensee, following consultation with appropriate Federal and State water quality agencies, shall cooperate with the Bureau of Reclamation and the American Falls Reservoir District in the installation, maintenance, and the continuous operation of a dissolved oxygen and temperature monitoring system in the Snake River immediately downstream from the project tailrace. Licensee will insure that procedures exist whereby water releases from the Replacement Dam will bypass the project when the D.O. levels as measured by the system fail to meet the approved State standards. The Licensee shall maintain records of the data gathered and shall file with the State Health and Welfare and Fish and Game Departments and the Commission annual summaries, or summaries for other intervals when requested, reporting observed daily minimum, maximum, and average dissolved oxygen concentrations and temperatures, and any actions taken when the D.O. levels were below the approved State Standard.

Article 47. The Licensee shall commence construction of the project within two years from the effective date of the license and shall thereafter in good faith and with due diligence prosecute such construction, and shall complete construction of such project works within four years from the effective date of the license.

Article 48. The Licensee shall pay the following annual charges, effective as of the first day of the month in which this license is issued:

- (i) For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for such purposes is 123,000 horsepower; and

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of 10.31 acres of its lands, \$24.74, or such amount as may be determined from time to time pursuant to the Commission's Regulations; and

(iii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of the American Falls Replacement Dam, an amount to be hereafter determined by the Commission. Upon receipt from the Licensee of the executed contracts, as provided for in Article 36 herein, the Commission will determine the amount of reasonable annual charges to be paid by Licensee for the purpose of recompensing the United States for the use, occupancy, and enjoyment of the American Falls Replacement Dam.

Article 49. 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.

(D) The Exhibits designated and described in Paragraph (B) above are hereby approved and made a part of the license to the extent heretofore noted.

(E) Intervenor Idaho Fish and Game Commission is hereby permitted to withdraw its petition to intervene.

(F) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

By the Commission.

(S E A L)

Kenneth F. Plumb,
Secretary.

IN TESTIMONY of its acknowledgment of acceptance of all of the provisions, terms and conditions of this license, Idaho Power Company, this ____ day of _____, 1975, has caused its corporate name to be signed hereto by

_____, its _____ President,

and its Corporate Seal to be affixed hereto and attested

by _____, its _____ Secretary,

pursuant to a resolution of its Board of Directors duly adopted

on the ____ day of _____, 1975, a certified copy of

the record which is attached hereto.

Idaho Power Company

By _____
President

Attest:

Secretary

(Executed in Quadruplicate)