



LEGAL DEPARTMENT
911 North 7th Avenue
P.O. Box 4169
Pocatello, Idaho 83205

(208) 234-6148
Fax: (208) 239-6986

A. DEAN TRANMER • *City Attorney*
NANCY A. FERRIS • *Chief Deputy Attorney*
KIRK BYBEE • *Chief Civil Deputy*
RICHARD A. DIEHL, JR. • *Deputy City Attorney*
STEPHEN F. HERZOG • *Deputy City Attorney*
DARCY L. TAYLOR • *Assistant to City Attorney*
CARA LEWIS • *Prosecution Coordinator*
SHEILA GUSTAVESON • *Prosecution Assistant*

June 16, 2008

Mr. David R. Tuthill
IDWR Director
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098

RECEIVED

JUN 19 2008

DEPARTMENT OF
WATER RESOURCES

Re: Application For Leasing of Water For Hydroelectric Generation
Pursuant to Idaho Code Sections 42-108A and 42-108B

Dear Mr. Tuthill:

Enclosed please find an Application For Leasing of Water For Hydroelectric Generation from the City of Pocatello. Pursuant to the City of Pocatello's Spaceholder Contract with the United States of America for water in Palisades Reservoir and Idaho Code Sections 42-108A and 42-108B, the City of Pocatello believes it has the right to lease a portion of its stored water to the Idaho Power Company to be beneficially used for hydroelectric purposes within the State of Idaho for the 2008 water year.

Also enclosed please find a copy of an executed Lease Agreement between the City of Pocatello and the Idaho Power Company to lease 20,000 acre-feet of the City's storage water and a check from the City in the amount of \$80.00 for the fees required to process this request as per Idaho Code Section 42-108B.

Please send me a copy of the Notice of Hearing your prepare to be published in the newspaper. If you have any questions, please contact me at the above address or telephone number.

Sincerely,


A. Dean Tranmer
City Attorney

ADT/dt
Enc.

cc: Roger W. Chase, Mayor
Jonathon C. Bowling, Idaho Power

RECEIVED

JUN 19 2008

DEPARTMENT OF
WATER RESOURCES

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR LEASING OF WATER
FOR HYDROELECTRIC GENERATION

United States of America
Bureau of Reclamation Contra
with the City of Pocatello,
Contract No. 14-06-100-1825
and Water Right No. 01-2068
Lease Ident No. _____

1. Name of applicant City of Pocatello Phone (208) 234-6149
Post Office Address P.O. Box 4169, Pocatello, ID 83205
2. Identify the No. of the Right to be Leased BOR Contract # 14-06-100-1825 and Water Right # 01-2068
Basis of Right XX License _____ Claim XX Decree (Aberdeen Springfield Canal
Co., et al v. Henry Eagle, 7th
Jud. District, 3/12/69)
3. Right as Recorded
a. Amount 50,000 AF Use Municipal from Year Round to _____
(cfs or ac-ft per annum) (both dates inclusive)
Current Point of Diversion is _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$, Govt. Lot _____
Sec. _____ Township _____ Range _____ B.M. _____ County, additional.
points of diversion, if any: _____
- b. Current Place of Use: Palisades Reservoir (Stored Water)

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	

4. Change Resulting from Lease
a. Amount Leased Up to 20,000 AF from 2008 Water Year to _____
(cfs or ac-ft per annum) (both dates inclusive)
Point of Diversion under Lease is _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$ of _____ $\frac{1}{4}$, Govt. Lot _____
Sec. _____ Township _____ Range _____ B.M. _____ County, additional.
points of diversion, if any: Palisades Reservoir
- b. Place of Use Under Lease: The leased water will be placed to beneficial use for power purpose at all of Lessee's facilities on the Snake River downstream from Palisades Reservoir and*

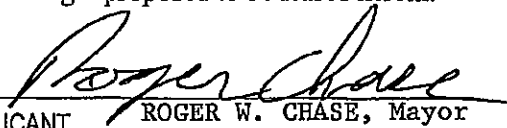
TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	

* (4.b. con't.) Milner Dam, including the American Falls, Twin Falls, Shoshone, Upper and Lower Salmon, Bliss, C.J. Strike, Swan Falls and Hells Canyon hydroelectric projects.

5. Who owns land to which right is appurtenant? City of Pocatello, See Attachment A
6. If applicant is not owner, please provide lease agreement signed by Owner. If applicant is owner, please provide copy of lease.
7. Name of Lessor City of Pocatello Phone (208) 234-6149
Post Office Address P.O. Box 4169, Pocatello, ID 83205
8. Name of Lessee Idaho Power Company Phone (208) 388-2200
Post Office Address P.O. Box 70, Boise, ID 83207
9. Is Lessee a private or public utility? Lessee is an investor-owned utility, incorporated under the laws of the State of Idaho and regulated by the Idaho Public Utilities Commission.
10. Describe any other water rights used for hydroelectric generation at the same site that the leased water will be used:
A list of the water rights is attached as Attachment B
11. Period of Lease Water Year 2008 (not to exceed one year).
12. Describe the frequency of water use under the right, or portion thereof, during the past 5 years. Attach watermaster records, pumping power bills, or other evidence to demonstrate that the right has not been lost through abandonment or forfeiture: The water right is for storage water and the owner is a municipal corporation. Over the last five years owners has placed the majority of this water right in the State Water Rental Pool except a small portion reserved for mitigation purposes and leased to
13. Describe the relative availability of water to fill the right, or portion thereof. IGWA in 2007. See State Rental Pool Bank records. Attach evidence to support this description. Owner has been informed by IDWR and the Bureau of Reclamation that approximately 100% of its 50,000 AF water right probably will be deemed allocated for owner's use in 2008. See IDWR/BOR Records.
14. Describe any other water rights with the same purpose and place of use as the right, or portion thereof being leased. Will the present place of use receive water from any source?
Owner is also leasing 20,000 AF to the Idaho Groundwater Appropriators, Inc. There is no designated place of use for owner's storage water rights.
15. Describe the anticipated effect of this sale or lease upon other water users.
No effect upon other water users is anticipated as a result of this lease.
16. Remarks:

I certify that the information contained herein is true and correct and that the lease proposed will not injure any other water rights senior or junior to the water right proposed to be leased herein.

APPLICANT


ROGER W. CHASE, Mayor
City of Pocatello

FOR DEPARTMENT USE ONLY

Received by UN Date 10/19/09 Time 2:33 PM Fee \$ 80.00 Receipted by UN
Receipt No. 1007151 Receipt Date 10/19/09 Publication Prepared by _____
Date _____ Published in _____
Publication approved _____ Date _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application to Lease Water for Hydropower Generation
No. _____ and said application is hereby _____.

1. Approval of said application is subject to the following limitations and conditions:

- a. Approval is limited to the lesser of the term of the lease or one year.
- b. The use of leased water by the lessee in no way creates a water right for hydropower generation.
- c. The quantity of right _____ used for _____ purposed shall be limited to _____.
- d. Other: _____

DIRECTOR

Attachment "A"

The City of Pocatello has equitable title and contractual rights under the contract it entered into with the U.S. Bureau of Reclamation under Contract No. 14-06-100-1825 dated January 8, 1960 (hereinafter "Contract") and later confirmed by decree in *Aberdeen-Springfield Canal Co., et al v. Henry Eagle* (7th Jud. Dist. 03-12-1969). Under the Contract, the City of Pocatello is entitled to 4.1667% of the reservoir capacity of Palisades Reservoir, which is 50,000 acre feet at the estimated active capacity of 1,200,000 acre feet.

The U.S. Bureau of Reclamation holds IDWR water right license 01-2068 for Palisades Reservoir and IDWR has recommended 01-2068 for decree in the SRBA, which has a priority date of July 28, 1939.

The City of Pocatello filed and is pursuing SRBA Claim 01-2068Y based on its contractual and equitable rights to 4.1667% of the reservoir capacity of Palisades Reservoir.

On March 9, 2007, the Idaho Supreme Court in the *United States of America v. Pioneer Irrigation District, et al.*, 144 ID 106, 157 P.3d 600, affirmed that equitable or beneficial title to the right is held in trust by the contract holder organization in the quantities or percentages specified in the contract between the Bureau of Reclamation and the holder organization (Pocatello).

Therefore, the City of Pocatello is the true and lawful owner of the equitable title and contractual rights represented by SRBA Claim 01-2068Y. It is the true and lawful owner of the equitable title and contractual rights of the portion of water right 01-2068 represented by Contract No. 14-06-100-1825 dated January 8, 1960. Neither of these water rights have lapsed, been abandoned, or forfeited, either in whole or in part.

The City of Pocatello acquired this storage water in part to mitigate and replace to the Snake River, in accordance with applicable law, depletions attributable to the city's diversion of ground water and surface water for municipal uses within the City's service area, and which are proven to cause injury to senior water right holders.

Subject to this primary mitigation and replacement purpose, and to the extent Lessor's fill for its Palisades Reservoir storage water right is in excess of the amount necessary to meet this primary mitigation and replacement purpose, the Lessor rents its Palisades Reservoir water to other users for irrigation, power, domestic, municipal, industrial, commercial, mitigation, and recharge purposes.

Lessee desires to lease storage water from Lessor for the sole purpose of hydroelectric generation pursuant to Idaho Code §42-108A.

ATTACHMENT "B"

American Falls Power Rights: 01-02017
01-02032
01-02046
01-07128
01-10382
01-10383
01-10384

Twin Falls Power Rights: 02-02056
02-07375

Shoshone Falls Power Rights: 02-02036

Upper Salmon Falls Power Rights: 02-02057

Lower Salmon Falls Power Rights: 02-02001A
02-02001B
02-02059
02-02060

Bliss Power Rights: 02-02064
02-02065
02-10135

C.J. Strike Power Rights: 02-02080

Swan Falls Power Rights: 02-00100
02-02032
02-04000
02-04001
02-07379

Hells Canyon Power Rights: 03-02017
03-02020

WATER LEASE

This WATER LEASE ("Lease Agreement") is made and entered into by and between the CITY OF POCATELLO, a Municipal Corporation of Idaho, (the "Lessor") and IDAHO POWER COMPANY ("Idaho Power"), an Idaho Corporation, and is effective on the date executed by both parties hereto.

RECITALS

A. Lessor, under a valid Spaceholder Contract with the United States of America, currently holds storage rights entitling storage water above Milner Dam in U.S. Bureau of Reclamation storage projects and desires to lease twenty thousand (20,000) acre-feet of stored water to Idaho Power on a one time basis, pursuant to I.C. §42-108A, to be used for hydroelectric generation purposes.

B. Idaho Power owns and operates hydroelectric generation facilities on the Snake River above and below Milner Dam, holds storage rights in American Falls Reservoir, holds valid water rights for hydropower purposes at each of those facilities, and can beneficially use water at such facilities for the benefit of its customers over and above the supply currently available to it from the Snake River. As a result, Idaho Power desires to lease storage water from the Lessor on the terms hereof for use for hydroelectric generation purposes at each of its facilities on the Snake River.

C. Pursuant to the Agreement by and between Idaho Power and the State of Idaho dated October 25, 1984 ("Swan Falls Agreement"), and the Consent Judgments entered in Case Nos. 62237 and 81375 in the District Court in and for the County of Ada, Idaho Power retains the right to purchase, lease, own, or otherwise acquire water from sources upstream of its power plants and convey it to and past its power plants below Milner Dam. The water thus acquired by Idaho Power is considered as "fluctuations from the operation of Company facilities" and is thus available to Idaho Power over and above the unsubordinated minimum average daily flows referenced in the Swan Falls Agreement. This issue is currently being litigated.

D. Pursuant to the Lessor's Spaceholder Contract with the United States of America and I.C. §42-108A, the Lessor has the right to lease its stored water to Idaho Power to be beneficially used for hydroelectric purposes within the State of Idaho for a period not to exceed one year.

Now, therefore, and in consideration of covenants, obligations and other valuable consideration referred to herein, the Lessor and Idaho Power agree as follows:

1. Quantity of Leased Water. The water that is the subject of this Lease Agreement is referred to herein as the "Leased Water". The quantity of Leased Water shall be twenty thousand (20,000) acre-feet.

COPY

2. Legal/Administrative Approvals and Water Delivery and Administration. The Lessor and Idaho Power shall cooperate in obtaining all necessary approvals from the Idaho Department of Water Resources, or other appropriate authorities which may be required for the rental, release, delivery of the Leased Water to Idaho Power and/or crediting of the Leased Water to the Company's storage account in American Falls Reservoir, and the appropriate administration of such water through the Snake River system.

3. Delivery Contingencies. Lessor's obligation to deliver the Leased Water shall be subject to payment by Idaho Power pursuant to Paragraph 6 below, and the "water shortage" provisions of Paragraph 8 below.

4. Lease Contingencies. This Lease Agreement, and Idaho Power's obligations hereunder, are expressly contingent upon:

a. Acquiring all approvals by the Idaho Department of Water Resources and/or other authorities that may be required by state or federal law, rule or regulation for the rental, release, delivery and use of the Leased Water for hydroelectric purposes by Idaho Power; and

b. Administration of the Leased Water within the Snake River that ensures delivery of the Leased Water to Idaho Power at its designated places of use on terms and conditions satisfactory to Idaho Power. Such terms and conditions shall include, but shall not be limited to, the ability of Idaho Power to place the Leased Water to beneficial use for power purposes at all of its facilities on the Snake River downstream from Palisades Reservoir and Milner Dam, to and including Hells Canyon Dam, subject only to reasonable carriage loss between the point of delivery and the places of use. Additionally, the Leased Water shall be expressly accounted for as "fluctuations from the operation of Company facilities" and, as such, shall be available to Idaho Power over and above the unsubordinated minimum average daily flows referenced in the Swan Falls Agreement and the Consent Judgments in Case Nos. 62237 and 81375 in the district Court in and for the County of Ada. This issue is currently being litigated.

5. Scheduling of Releases and Use. The scheduling of releases of the Leased Water shall be at the sole discretion of Idaho Power, subject to such reasonable notice that the Lessor and the U.S. Bureau of Reclamation may require to implement any necessary storage release requests.

6. Lease Payments. Upon delivery of the Leased Water, Idaho Power shall pay to the Lessor Thirty-Five Dollars (\$35.00) for each acre-foot of Leased Water, up to twenty thousand (20,000) acre-feet, credited to the Company's American Falls Reservoir storage account or used at any of the Company's hydroelectric facilities. Lessor shall be responsible for all administrative costs or expenses

imposed by federal or state law, rule or regulation associated with the lease of Leased Water.

7. Term. Subject to the provisions of Paragraph 8 below, and consistent with Lessor's Spaceholder Contract with the United States of America and with I.C. §42-108A, this Lease Agreement shall be a one time transfer in the year 2008 of the Leased Water. Neither this Lease Agreement nor any provision herein shall operate as a precedent for further lease arrangements.

8. Water Shortage. In the event that the Lessor is unable, because of legal or physical reasons or because of the unavailability of water under its Spaceholder Contract, to deliver any or all of the full quantity of Leased Water, the Lessor's obligation to deliver Leased Water, and Idaho Power's obligation to pay for Leased Water, shall be reduced accordingly.

9. Termination. Either Lessor or Idaho Power may terminate this Lease Agreement:

- a. For any reason by providing notice of such termination in writing, provided such notice is received by the other party at least 10 days in advance of the delivery of the Leased Water;
- b. For any violation or breach of the terms of this Lease Agreement; or
- c. If any of the terms and conditions of any approval of the lease arrangement, under I.C. §42-108A or other applicable state or federal law, rule or regulation, or the administration of the Leased Water, are inconsistent with the terms of this Lease Agreement.

10. Miscellaneous/Standard provisions.

- a. Amendments. No amendment or modification of this Lease Agreement or its provisions shall be effective unless documented in writing and approved and executed by both parties with the same formality as this Lease Agreement.
- b. Notices. All notices and other communications under this Lease Agreement shall be in writing. Notices shall be deemed as duly received on the date of service, if served personally on the party to whom notice is to be given. Notices shall also be deemed as duly received three (3) days from the date said notice is mailed to the party to whom notice is to be given, either by first class mail, registered or certified, postage prepaid or by express delivery with handling prepaid, and properly addressed as follows:

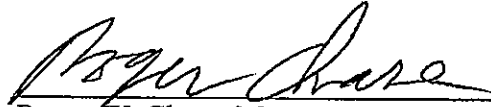
If to the Lessor: Roger W. Chase, Mayor
City of Pocatello
P.O. Box 4169
Pocatello, ID 83205

If to Idaho Power: James C. Miller
Senior Vice President – Power Supply
Idaho Power Company
P.O. Box 70
Boise, ID 83707

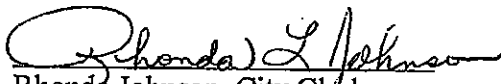
This Lease Agreement shall be signed in duplicate and shall be effective when signed by both the Lessor and Idaho Power.

CITY OF POCATELLO

Date: 6-5-2008

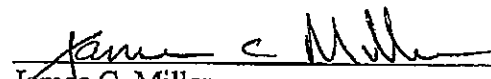

Roger W. Chase, Mayor

ATTEST:


Rhonda Johnson, City Clerk

IDAHO POWER COMPANY

Date: 6/12/2008


James C. Miller
Sr. Vice-President – Power Supply