

W. MARCUS W. NYE
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL
JOHN B. INGELSTROM
DANIEL C. GREEN
BRENT O. ROCHE
KIRK B. HADLEY
FRED J. LEWIS
MITCHELL W. BROWN
ERIC L. OLSEN
CONRAD J. AIKEN
RICHARD A. HEARN, M.D.
DAVID E. ALEXANDER
LANE V. ERICKSON
PATRICK N. GEORGE
SCOTT J. SMITH
STEPHEN J. MUHONEN
BRENT L. WHITING
JUSTIN R. ELLIS
JOSHUA D. JOHNSON
JONATHAN S. BYINGTON
DAVE BAGLEY
CAROL TIPPY VOLYN
THOMAS J. BUDGE
CANDICE M. MCHUGH

LAW OFFICES OF
RACINE OLSON NYE BUDGE & BAILEY
CHARTERED

201 EAST CENTER STREET
POST OFFICE BOX 1391
POCATELLO, IDAHO 83204-1391

TELEPHONE (208) 232-6101
FACSIMILE (208) 232-6109

www.racinelaw.net

SENDER'S E-MAIL ADDRESS: rcb@racinelaw.net

RECEIVED

NOV 21 2007

DEPARTMENT OF
WATER RESOURCES
BOISE OFFICE
100 SOUTH CAPITOL
BOULEVARD, SUITE 208
BOISE, IDAHO 83702
TELEPHONE: (208) 395-0011
FACSIMILE: (208) 433-0167

IDAHO FALLS OFFICE
477 SHoup AVENUE
SUITE 203A
IDAHO FALLS, ID 83402
TELEPHONE: (208) 528-6101
FACSIMILE: (208) 528-6109

COEUR D'ALENE OFFICE
250 NORTHWEST
BOULEVARD, SUITE 106A
COEUR D'ALENE, ID 83814
TELEPHONE: (208) 765-6888

ALL OFFICES TOLL FREE
(877) 232-6101

LOUIS F. RACINE (1917-2005)
WILLIAM D. OLSON, OF COUNSEL

November 19, 2007

Gary Spackman, Bureau Chief
Water Allocation Bureau
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

Ernest Carlson, Manager
Eastern Region/IDWR
900 N. Skyline Drive, Suite A
Idaho Falls, Idaho 83402

Re: Georgetown Irrigation Company - Water Right No. 11-07219

Dear Gary and Dave:

Georgetown Irrigation Company's Permit No. 11-07219 is now ready for the issuance of a license by reason of the enclosed Agreement between the State of Idaho Department of Fish and Game and Georgetown Irrigation Company resolving a protest by the State. In this regard for your information and file, I am enclosing copies of the following:

1. My letter of this date transmitting the original Agreement to Deputy Attorney General Harriet A. Hensley.
2. Copy of the signed original Agreement between Georgetown Irrigation Company and the State of Idaho.
3. Draft license approved by both parties as being consistent with the Agreement.

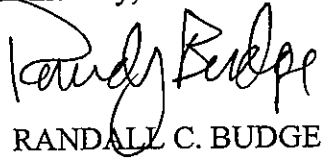
November 19, 2007

Page 2

At your earliest convenience, please issue the original license in accordance with the enclosed draft license, sending the original to Georgetown Irrigation Company with a copy to me and to Harriet A. Hensley.

Thank you for your cooperation and assistance. If you have any questions, don't hesitate to give me a call.

Sincerely,



RANDALL C. BUDGE

RCB:rr

Enclosures

cc: Harriet A. Hensley, Deputy AG
Georgetown Irrigation Company
Ted Sorenson

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LOUIS F. RACINE (1917-2005)
WILLIAM D. OLSON, OF COUNSEL

November 19, 2007

Harriet A. Hensley
Deputy Attorney General
Natural Resources Division
P.O. Box 83720
Boise, Idaho 83720-0010

Re: *Georgetown Irrigation Company - Water Right No. 11-07219*

Dear Harriet:

Enclosed please find an original fully-executed Agreement by and between Georgetown Irrigation Company, Inc., and the State of Idaho, Department of Fish Game, governing terms and conditions for Georgetown Irrigation Company's Application for Water Right License on Georgetown Creek to be submitted to the Idaho Department of Water Resources. The draft License for Water Right No. 11-07219 which you provided has also been reviewed and approved by Georgetown Irrigation Company as being consistent with the Agreement.

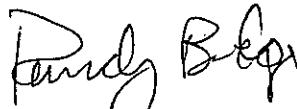
By copy of this letter and the enclosed Agreement and draft License, I am advising IDWR Water Allocation Bureau Chief Gary Spackman and Eastern Region Manager Dave Carlson of the foregoing and request that the license be issued accordingly. Should they or you have any questions on this matter, please contact me.

November 19, 2007

Page 2

Thank you for your cooperation, efforts and professional courtesies in the negotiating, drafting and finalizing of this important agreement.

Sincerely,



RANDALL C. BUDGE

RCB:rr

Enclosure

cc: IDWR

Gary Spackman, Chief, Water Allocation Bureau (w/encls.)

Dave Carlson, Eastern Region Manager (w/encls.)

Georgetown Irrigation Company (w/encls.)

Ted Sorenson (w/encls.)

ORIGINAL

**AGREEMENT BY AND BETWEEN
GEORGETOWN IRRIGATION COMPANY, INC., AND
THE STATE OF IDAHO, DEPARTMENT OF FISH AND GAME, GOVERNING
TERMS AND CONDITIONS FOR GEORGETOWN IRRIGATION COMPANY'S
APPLICATION FOR WATER RIGHT LICENSE ON GEORGETOWN CREEK TO
BE SUBMITTED TO THE IDAHO DEPARTMENT OF WATER RESOURCES**

THIS AGREEMENT ("Agreement") is made and entered into effective the 30th day of September 2007, between Georgetown Irrigation Company ("GIC") and the Idaho Department of Fish and Game ("IDFG"), referred to hereinafter as the "Party" or "Parties," as the case may be. This Agreement provides the basis for the Idaho Department of Water Resources ("IDWR") to issue a water right license to GIC for operation of the Georgetown Creek Hydroelectric Facility ("Facility") based on water right permit no. 11-07219.

I. RECITALS

A. The Facility became operational in 1986. The Facility relies on diverted flow from Georgetown Creek for its operation and is currently operating under water right permit no. 11-07219. Water is also diverted at the same location from Georgetown Creek for irrigation use under decreed right no. 11-290, decreed in the District Court of the United States for the District of Idaho, Eastern Division, in the case of Utah Power and Light Company, Plaintiff v. The Last Chance Canal Company, Limited, et al., Defendants, In Equity No. 203, filed July 14, 1920.

B. The diversion structure for delivery of water for irrigation and production of hydropower is located on lands owned by the United States. On June 4, 1973, the United States issued a right-of-way grant (IDI-6483) for the GIC diversion authorizing GIC's use and occupancy of lands under the management and control of the U.S. Bureau of Land Management ("BLM"). The original point of diversion was located approximately 7000 feet downstream of the current diversion structure ("original point of diversion"). GIC relocated the point of diversion for beneficial use of water right no. 11-290 to install a diversion dam and pressurized irrigation system. Right-of-way grant (IDI-6483) requires that a minimum of five (5) cfs be allowed to bypass the diversion structure and remain in the natural stream channel below the diversion structure for the purpose of sustaining fish and other aquatic and riparian life in Georgetown Creek. The grant also requires installation and operation of a continuous measurement device to determine the amount of water that bypasses the diversion. (Appendix A.)

C. On October 18, 1982, the Federal Energy Regulatory Commission ("FERC") issued an Order Approving Request For Waiver and Granting Exemption From Licensing For the Georgetown Irrigation Conduit Hydroelectric Project (FERC Order). Article 2 of the FERC Order requires compliance with the terms and conditions that federal or state fish and wildlife agencies determined were appropriate to prevent loss of, or damage to, fish and

wildlife resources. (Appendix B.) Article 2 terms and conditions for the project were submitted by IDFG in a letter dated September 16, 1982. The IDFG required flow-monitoring equipment capable of recording instantaneous flow data at the diversion and a bypass flow of 5 cfs in Georgetown Creek for the benefit of aquatic resources. (Appendix C.)

D. On October 3, 1985, IDWR issued water right permit no. 11-07219 to GIC for the diversion and use of water from Georgetown Creek at the GIC Facility. GIC has submitted proof of beneficial use and a field examination has been conducted. GIC has requested that a water right license be issued based on water right permit no. 11-07219.

E. The IDFG has documented the presence of Bonneville cutthroat trout in Georgetown Creek both upstream and downstream of the GIC diversion structure. Preservation and enhancement of native populations of Bonneville cutthroat trout is a priority of the State of Idaho. The IDFG is working with other state and federal agencies, PacifiCorp, and private Parties to preserve, restore, and enhance Bonneville cutthroat trout and other aquatic resources in the Bear River Basin.

F. The Parties believe it to be in their mutual interest to cooperate and facilitate the issuance of a water right license to GIC that includes the following conditions for the restoration and protection of Bonneville cutthroat trout and other aquatic resources in Georgetown Creek:

II. AGREEMENT

In consideration of the recitals above, which are an integral part of this Agreement and are expressly incorporated herein, and the mutual covenants and agreements hereinafter set forth, the Parties covenant and agree as follows:

A. ACCEPTANCE OF THIS AGREEMENT.

The GIC will request acceptance of this agreement by IDWR and issuance of a water right license for hydropower production at the GIC Facility that includes the conditions outlined in this Agreement. No Party shall file or pursue any objection, petition, or suit challenging the issuance of a water right license based on permit no. 11-07219 for hydropower production at the GIC Facility if the draft and final license issued by IDWR contain the following conditions and are not inconsistent with the following conditions:

1. Bypass flow. Use of water under license 11-07219 shall require a year-round flow of 5 cfs bypassing GIC's intake pipe for the benefit of aquatic species in Georgetown Creek in accordance with the BLM right-of-way grant. For purposes of this Agreement, the Parties contemplate, intend, and agree that the terms and conditions of this Section II.A.1. shall also apply to water right no. 11-290 as long as the diversion structure for water right no. 11-290 is located on lands owned by BLM and the right-of-way grant (IDI-6483) issued by the United States is

in effect and requires the 5 cfs bypass flow.

Until such time as a fish passage facility is installed at the point of diversion, the bypass flow shall be released at the drainage head gate of GIC's diversion. Until such time as a fish passage facility is installed at the point of diversion, the 5 cfs bypass flow shall be measured at the crested weir located approximately 150 to 200 feet downstream from the drainage head gate, or at a point as close as possible to the location of the crested weir if the weir is removed or damaged, or at the location of the replacement measuring device if the crested weir is replaced.

The Parties acknowledge that there is disagreement as to the historic use of Right Hand Fork Creek flow to meet the 5 cfs bypass flow requirement. However, for purposes of this Agreement, during the time period in which the bypass flow is released at the drainage head gate of GIC's diversion, IDFG will not oppose the use of flow from Right Hand Fork Creek to fulfill the 5 cfs bypass flow requirement, providing that use of flow from Right Hand Fork Creek to meet the 5 cfs bypass requirement is accomplished pursuant to the laws of the State of Idaho and the United States of America and is consistent with the right-of-way grant (IDI-6483) for the GIC diversion authorizing GIC's use and occupancy of lands under the management and control of BLM.

In the event the point of diversion is relocated to any point upstream of the original point of diversion described in Section I.B. of this agreement, it is understood that IDFG will participate in any transfer proceedings for water right nos. 11-290 and 11-07219 conducted pursuant to Idaho Code § 42-222 and request that IDWR include any and all measures, including a bypass flow, IDFG concludes are necessary to protect aquatic resources affected by the relocation of the point of diversion as conditions of any amendment to water right nos. 11-290 and 11-07219. It is also understood that IDFG will participate in any proceedings before FERC required by the relocation of the point of diversion and request any and all mitigation measures, including a bypass flow, IDFG concludes are necessary to protect fish and wildlife resources from any project-related impacts.

The Parties acknowledge and agree that IDWR may not enforce the terms and conditions of this Section II.A.1. relative to water right no. 11-290 when GIC is not diverting water under water right no. 11-07219 for hydropower production. However, the Parties contemplate, intend, and agree that the terms and conditions of this Section II.A.1. shall apply to water right no. 11-290 as well as water right no. 11-07219 and that the Parties are entitled to enforce the terms and conditions of this Section II.A.1. as it applies to water right no. 11-290 in any state or federal court with jurisdiction.

2. Monitoring, Monitoring Device Operation, Maintenance, and Replacement. The GIC, in consultation with IDWR, IDFG, and BLM, will install and maintain a continuous flow monitoring device, approved by IDWR, and approved and calibrated by a professional engineer, at the crested weir located downstream from the drainage head gate, or at the replacement measuring device if the crested weir is replaced. The device and configuration of the weir must be capable of measuring flows up to 5 cfs. For purposes of this Agreement, the irrigation season is defined as May 1 through September 30. Each year, prior to May 1, GIC will inspect the monitoring device to ensure that the device is operational and if not, will ensure that the device is operational by May 1. On or before May 1, GIC will provide confirmation that the monitoring device is operational in a report to the watermaster of Water District 11, BLM, and IDFG. During the irrigation season, GIC will visit the measuring site at least once per day to confirm that the monitoring device is operational and that a flow of 5 cfs is provided in the bypass channel. If the water stage recorder is not operating properly, daily staff gage readings will be obtained to ensure that the 5 cfs bypass flow is provided and readings submitted as part of a monthly report. Failure of the water stage recorder will be reported to the watermaster of Water District 11, BLM, and IDFG within 24 hours. During the irrigation season, GIC will collect monthly readings, and submit monthly reports to the watermaster of Water District 11, BLM, and IDFG.

During the non-irrigation season, which for purposes of this Agreement is defined as October 1 through April 30, the forebay of the facility will be operated at maximum pool for the entire season. The bypass opening will be set to provide a discharge of 5 cfs or more at the measuring weir and locked. Staff gage readings on the weir will be obtained at least weekly by GIC personnel. Reports, including the weekly staff gage readings, will be provided monthly to the watermaster of Water District 11, BLM, and IDFG. In the event the staff gage readings indicate a decrease in discharge below 5 cfs, GIC will promptly examine the outlet gate for obstructions, clean as necessary, and adjust the gate opening to ensure that a 5 cfs bypass flow is restored. GIC agrees to provide IDFG and BLM reasonable access to lands and facilities to take readings off the monitoring device and evaluate the effectiveness of the monitoring device and the aquatic resources affected by the bypass flow. The GIC agrees to maintain, repair and replace any portion of the monitoring device promptly and as necessary to ensure the monitoring device's continued operation. In the event that replacement is required, GIC will promptly install a device approved by IDWR, IDFG, and BLM.

The Parties acknowledge and agree that IDWR may not enforce the terms and conditions of this Section II.A.2. relative to water right

no. 11-290 when GIC is not diverting water under water right no. 11-07219 for hydropower production. However, the Parties contemplate, intend, and agree that the terms and conditions of this Section II.A.2. shall apply to water right no. 11-290 as well as water right no. 11-07219 and that the Parties are entitled to enforce the terms and conditions of this Section II.A.2. as they apply to water right no. 11-290 in any state or federal court with jurisdiction.

3. Mitigation for Reduced Flows Resulting From Circumstances Beyond GIC's Control. Irrigation Season: If, based on the recorder chart and due to circumstances beyond GIC's control, the discharge has been less than 5 cfs for any period prior to the daily visit by GIC personnel, the bypass discharge will be increased to an amount equal to 5 cfs plus the previous deficiency for a period at least equal to the prior deficiency period. Non-Irrigation Season: If, based on the staff gauge recorder chart and due to circumstances beyond GIC's control, the discharge has been less than 5 cfs for any period prior to the weekly visit by GIC personnel, the bypass discharge will be increased to an amount equal to 5 cfs plus the previous deficiency for a period at least equal to the prior deficiency period. Intention of the Parties: The Parties intend and agree that this Section II.A.3. shall in no way be construed so as to permit GIC to intentionally reduce flows below the 5 cfs bypass flow requirement, nor is it intended to affect in any way the requirements for daily and weekly measurements and adjustments. The Parties intend and agree that this Section II.A.3. shall in no way be construed to affect or limit in any way the obligations of GIC specified in Sections II.A.1., II.A.2., II.A.4., and II.A.5. of this Agreement.

The Parties acknowledge and agree that IDWR may not enforce the terms and conditions of this Section II.A.3. relative to water right no. 11-290 when GIC is not diverting water under water right no. 11-07219 for hydropower production. However, the Parties contemplate, intend, and agree that the terms and conditions of this Section II.A.3. shall apply to water right no. 11-290 as well as water right no. 11-07219 and that the Parties are entitled to enforce the terms and conditions of this Section II.A.3. as it applies to water right no. 11-290 in any state or federal court with jurisdiction.

4. Fish Passage: In the event funds become available to install fish passage facilities for Bonneville cutthroat trout at the point of diversion and IDFG determines that fish passage facilities at the point of diversion are necessary for the restoration and protection of Bonneville cutthroat trout in the Bear River basin, GIC will permit such installation and will permit the relocation of the continuous monitoring device so that the bypass flow is measured at GIC's point of diversion. Unless otherwise agreed, GIC will not be responsible for the relocation of the continuous

monitoring device if such relocation is a result of the installation of fish passage facilities.

The Parties acknowledge and agree that IDWR may not enforce the terms and conditions of this Section II.A.4. relative to water right no. 11-290 when GIC is not diverting water under water right no. 11-07219 for hydropower production. The Parties contemplate, intend, and agree that the terms and conditions of this Section II.A.4. shall apply to water right no. 11-290 as well as water right no. 11-07219 and that the Parties are entitled to enforce the terms and conditions of this Section II.A.4. as they apply to water right no. 11-290 in any state or federal court with jurisdiction.

5. Permits and Approvals. GIC shall obtain a stream channel alteration permit from IDWR in connection with any work in the channel of Georgetown Creek to install, operate, or maintain a monitoring device or any other equipment not a part of the diversions works for water right no. 11-07219.

B. GENERAL.

1. Binding Effect. This agreement shall bind and inure to the benefit of the respective successors and assigns of the Parties.

2. Other Existing Agreements. This Agreement does not alter or supersede any rights or obligations in any other existing agreement between two or more Parties, as between those Parties.

3. No Obligation to Expend Public Funds. This Agreement shall not be construed to obligate the expenditure of funds by any public agency.

4. Modification of the Agreement. This Agreement may be terminated or modified, but only by means of a written agreement signed by each of the Parties hereto.

5. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Idaho. This Agreement may be executed in duplicate counterparts, each of which so executed shall be deemed an original, and all said counterparts together shall constitute one and the same agreement.

6. Further Assurances. The Parties shall execute and deliver, as reasonably requested, any further documents or instruments, and shall perform any further acts that may be reasonably required to fully affect the transactions intended under this Agreement.

7. Entire Agreement. This Agreement together with all appendices referred to herein, which are incorporated herein and made a part hereof by this reference, constitute the entire agreement between the Parties pertaining to the subject matter of this Agreement.

8. Attorneys Fees. If any action is brought by either Party in respect to such Party's rights under this Agreement, the prevailing Party shall be entitled to reasonable attorney fees and court costs as permitted by law and determined by the court.

9. Non-Waiver. The failure of any Party to enforce any right or remedy hereunder, or to promptly enforce any such right or remedy, shall not constitute a waiver thereof nor give rise to any estoppel against such Party, nor excuse any of the Parties from their obligations hereunder. Any waiver of such right or remedy must be in writing and signed by the Party to be bound. This Agreement is subject to enforcement at law and/or equity, including actions for damages and/or specific performance.

10. Remedies. Except as otherwise provided, should any Party fail or neglect to perform in accordance with the terms of this Agreement or any other agreements between them, each Party shall be entitled to all rights as are available at law or in equity. No waiver of a condition or warranty requirement shall limit any Party's remedies for breach of any covenant related to such condition or warranty.

11. Mutual Cooperation. The Parties will cooperate with each other at the time of installation of the measuring devices and during inspections and other operational tests that may be necessary to coordinate and install the measuring devices.

12. No Personal Liability. GIC specifically understands and agrees that in no event shall any official, officer or agent of the state of Idaho be personally liable or responsible for any representation, statement, covenant, warranty or obligation contained in, or made in connection with, this Agreement, express or implied.

13. Severability. If any part of this Agreement is declared invalid or becomes inoperative for any reason, such invalidity or failure shall not affect the validity and enforceability of any other provision, unless the invalidity or unenforceability of any such provisions hereof does substantial violence to, or where the invalid or unenforceable provisions comprise an integral part of, or are otherwise inseparable from, the remainder of this Agreement.

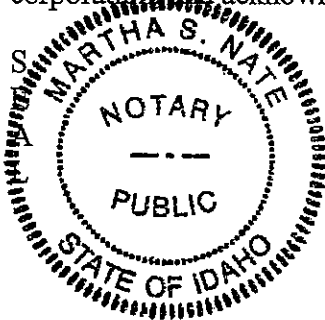
IN WITNESS WHEREOF, the Parties hereto have executed this instrument.

GEORGETOWN IRRIGATION COMPANY, INC.

Drue Smith
DRUE SMITH, President
Georgetown Irrigation Company, Inc.

State of Idaho)
County of Boscawen) S.S.

I, Martha S. Nate, a notary public, do hereby certify that on this 13th day of September 2007, personally appeared before me DRUE SMITH, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and who, being by me first duly sworn, declared that he is the President of Georgetown Irrigation Company, Inc., that he signed the foregoing document as president of the corporation, and acknowledged to me that he executed the same.



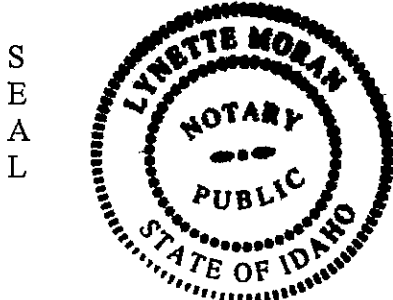
Martha S. Nate
Notary Public
My Commission Expires on 7/22/09

STATE OF IDAHO
IDAHO DEPARTMENT OF FISH & GAME

Virgil Moore
VIRGIL MOORE, Deputy Director
Idaho Department of Fish & Game

State of Idaho)
County of Ada) S.S.

I, Lynette Moran, a notary public, do hereby certify that on this 16 day of September 2007, personally appeared before me Virgil Moore, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and who, being by me first duly sworn, declared that he is the Deputy Director of the Idaho Department of Fish & Game, that he signed the foregoing document as Deputy Director of the Idaho Department of Fish & Game, and acknowledged to me that he executed the same.



Lynette Moran
Notary Public
My Commission Expires on 2010, May

APPENDIX A

To

**AGREEMENT BY AND BETWEEN
GEORGETOWN IRRIGATION COMPANY, INC., AND
THE STATE OF IDAHO, DEPARTMENT OF FISH AND GAME, GOVERNING TERMS
AND CONDITIONS FOR GEORGETOWN IRRIGATION COMPANY'S APPLICATION
FOR WATER RIGHT LICENSE ON GEORGETOWN CREEK TO BE SUBMITTED TO
THE IDAHO DEPARTMENT OF WATER RESOURCES**

APPENDIX A

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
Idaho State Office
Room 398, Federal Building
550 W. Fort Street
Boise, Idaho 83702

DECISION

RIGHT-OF-WAY GRANTED

Details of Grant

Serial number of grant: I-6483

Name of grantee: Georgetown Irrigation Company

Map showing the location and dimensions of grant:

Map designations: Irrigation Headworks Site

Date filed: January 3, 1973

Permitted use by grantee: Irrigation intake structure and pipeline

Authority for grant: Act of March 3, 1891 (26 Stat. 1101), as amended.

Regulations applicable to grant:

Code reference: 43 CFR Parts 2800 and

Date of grant: June 4, 1973

Expiration date of grant: 50 years

Rental: None

Amount:

When payable by grantee:

Terms and Conditions of Grant

Pursuant to the authority vested in the undersigned by Order No. 701 of the Associate Director, Bureau of Land Management, dated July 23, 1964, (29 F.R. 10526), as amended, a right-of-way, the details of which are shown above, is hereby granted subject to the following terms and conditions:

1. All valid rights existing on the date of the grant.
2. All regulations specified above.
3. Filing of proof of construction within five years of the date of the grant.
4. Further terms and conditions as follows:
 - (a) Pursuant to 43 CFR 2801.1-5, the District Manager, Burley, District Office, P. O. Box 489, Idaho, has the authority to conduct all business with the grantee with respect to use of lands and disposition of resources, and the grantee is requested to contact him prior to the beginning of construction.
 - (b) Stipulations of Exhibit A and those executed June 2, 1973 attached hereto and made a part hereof.

Vincent S. Strobel, Chief
Branch of L&M Operations

cc: EM, I-2
STROBEL: in 6/4/73

ISO-2800-9

4-72

RECEIVED
DEPT. OF THE INT.
BUREAU OF LAND MGMT.

JUN 4 11 08 AM 1973

RM 334, FED. BLDG.
BOISE, IDAHO 83702
IDAHO LAND OFFICE

R/W I-6483 (Revised)
5/29/73

STIPULATIONS

1. All disturbed gravel and dirt around the diversion box shall be rounded off and smoothed down in such a way as to conceal the box and blend it into the natural setting of the area. The disturbed area shall be planted by the applicant with a seed mixture provided by the Bureau of Land Management.
2. The pipe trench shall be filled in and leveled off at ground level and planted with the same mixture as Item 1.
3. An accurate water measuring system or device shall be installed to determine the quantity of water being diverted out of the creek.

A reading or measurement in cfs shall be made at the beginning of the irrigation season. Further measurements shall be made at two week intervals during the entire irrigation season. At the end of the season the compiled measurements shall be submitted to the District Manager, Bureau of Land Management, Box 489, Burley, Idaho.
4. As a condition to the granting and use of this R/W, the Georgetown Irrigation Company, or its successor(s) in interest, agrees that a minimum flow of five (5) cubic feet of water per second shall be allowed to bypass the subject diversion structure and remain in the Georgetown Creek stream channel below the diversion structure. This minimum water flow is for the purpose of sustaining fish and other aquatic and riparian life forms in this reach of Georgetown Creek.
5. The end of the diversion pipe shall be plugged to prevent the loss of unused water.

Accepted by:

Donald L. Rex

Name

Title

Date:

6-2-73

For Georgetown Irrigation Company

COMPANY SEAL

EXHIBIT A

STIPULATION
BUREAU OF LAND MANAGEMENT
RIGHT-OF-WAY I-6483

The permittee agrees in all operations under this permit to comply with the applicable State and Federal laws and regulations concerning the use of poisonous substances, including insecticides, herbicides, fungicides, ~~pesticides~~ and other similar substances. Prior to the use of such substances on or near the right-of-way, the permittee shall obtain from the District Manager, approval of a written plan for such use. The plan shall state the type and quantity of material to be used, the pest to be controlled, the method of application and such other information as he may require. All use of such substances on or near the right-of-way shall be in accordance with the approved plan. If the use of a poison is prohibited by the Secretary of the Interior, it shall not be used. If use of a poison is limited by the Secretary of the Interior, it shall be used only in accordance with that limitation.

APPENDIX B

To

**AGREEMENT BY AND BETWEEN
GEORGETOWN IRRIGATION COMPANY, INC., AND
THE STATE OF IDAHO, DEPARTMENT OF FISH AND GAME, GOVERNING TERMS
AND CONDITIONS FOR GEORGETOWN IRRIGATION COMPANY'S APPLICATION
FOR WATER RIGHT LICENSE ON GEORGETOWN CREEK TO BE SUBMITTED TO
THE IDAHO DEPARTMENT OF WATER RESOURCES**

APPENDIX B

RECEIVED

OCT 22 1982

Department of Water Resources

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21 FERC 162,052

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Georgetown Irrigation Company) Project No. 6445-000

ORDER APPROVING REQUEST FOR WAIVER AND
GRANTING EXEMPTION FROM LICENSING FOR A
CONDUIT HYDROELECTRIC PROJECT

(Issued October 18, 1982)

On June 18, 1982, Georgetown Irrigation Company (Applicant) filed an application for exemption from all or part of Part I of the Federal Power Act pursuant to 18 C.F.R. Part 4 Subpart J (1980) implementing Section 30 of the Federal Power Act (Act) for a project as described in the attached public notice. 1/ Applicant concurrently filed a request, under Section 1.7(b) of the Commission's Rules of Practice and Procedure [18 C.F.R. §1.7(b)(1982)] for waiver of the discharge requirement of Section 4.91(f)(5).

Notice of the application for exemption and the request for waiver was published and comments were requested from interested Federal and State agencies including the U.S. Fish and Wildlife Service and the State Fish and Wildlife Agency. All comments that were filed have been considered. No agency has any objection relevant to approval of the waiver request or to issuance of an exemption.

Standard Article 2, included in this exemption, requires compliance with any terms and conditions that Federal or State fish and wildlife agencies have determined appropriate to prevent loss of, or damage to, fish and wildlife resources. The terms and conditions referred to in Article 2 are contained in any letters of comment by these agencies which have been forwarded to the Applicant in conjunction with this exemption.

- 1/ Authority to act on this matter is delegated to the Director, Office of Electric Power Regulation, under §375.308 of the Commission's regulations, 18 C.F.R. §375.308 (1981), 18 C.F.R. §375.308 (1981), FERC Statutes, and Regulations §30, 238. This order may be appealed to the Commission by any party within 30 days of its issuance pursuant to Rule 1902, 18 C.F.R. §385.1902, FERC Statutes and Regulations §29,052, 47 Fed. Reg. 19014 (1982). Filing an appeal and final Commission action on that appeal are prerequisites for filing an application for rehearing as provided in Section 313(a) of the Act. Filing an appeal does not operate as a stay of the effective date of this order or of any other date specified in this order, except as specifically directed by the Commission.

Should the Applicant contest any terms or conditions that were proposed by Federal or State agencies in their letters of comment as being outside the scope of Article 2, the Commission shall determine whether the disputed terms or conditions are outside the scope of Article 2.

No protests have been received. It appears in the public interest to approve the request for waiver and the exemption, conditioned by the standard exemption articles.

It is ordered that:

(A) Georgetown Irrigation Company's request for waiver of the discharge requirement of Section 4.91(f)(5) of the Commission's Regulations, as filed under Section 1.7(b) of the Commission's Rules of Practice and Procedure [18 C.F.R. §1.7(b)(1982)], is approved.

(B) The Irrigation Hydroelectric Plant Project No. 6445 as described and designated in the Georgetown Irrigation Company application filed on June 18, 1982, is exempted from all of the requirements of Part I of the Federal Power Act, including licensing subject to the standard articles in §4.94 of the Commission's regulations attached hereto as Form E-1, 18 C.F.R. §4.94 (1981).

(C) The Commission may accept a license application by any qualified license applicant and revoke this exemption if actual construction or development of the proposed generating facilities has not begun within 18 months, or been completed within four years, from the date on which this exemption was granted. If an exemption is revoked, the Commission will not accept a subsequent application for exemption within two years of the revocation.

Robert E. Anderson
for Lawrence R. Anderson
Director, Office of Electric
Power Regulation

DC-A-13

MICROFILMED

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Project No. 6445-000

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Georgetown Irrigation Company) Project No. 6445-000

NOTICE OF APPLICATION FOR EXEMPTION OF SMALL
CONDUIT HYDROELECTRIC FACILITY
(August 3, 1982)

Take notice that on June 18, 1982, Georgetown Irrigation Company (Applicant) filed an application, under Section 30 of the Federal Power Act (Act) (16 U.S.C. 823(a)), for exemption of a proposed hydroelectric project from requirements of Part I of the Act. Applicant concurrently filed a request, under Section 1.7(b) of the Commission's Rules of Practice and Procedure (18 C.F.R. §1.7(b)(1982)) for waiver of the discharge requirement of Section 4.91(f)(5). The proposed Irrigation Hydroelectric Plant Project (FERC Project No. 6445) would be located on lands owned by 2 L Farms near the Town of Georgetown in Bear Lake County, Idaho. Correspondence with the Applicant should be directed to: Ted S. Sorenson, 550 Linden Drive, Idaho Falls, Idaho 83401.

Purpose of Project - The existing complex system of water conveyance conduits is used primarily to supply irrigation water to 1,500 acres of farmland. The energy generated by the proposed facility would be incidental to the irrigation water supply function of the system. The water surplus to irrigation needs would be discharged back into Georgetown Creek after being used for power generation.

Project Description - The proposed project would be located at Station 150+00 along Georgetown Irrigation Company's main pipeline and would consist of: (1) a 1,600-foot-long 36-inch diameter welded steel penstock; (2) a powerhouse containing two generating units having a total installed capacity of 450-kW operated under a 206-foot head and at a flow of 30 cfs; (3) a 100-foot-long 36-inch diameter steel pipe tailrace; and (4) appurtenant facilities. Applicant estimates that the average annual energy output would be 1,870,000 kWh.

Agency Comments - The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the Idaho Department of Fish and Game are requested, for the purposes set forth in Section 30 of the Act, to submit within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific

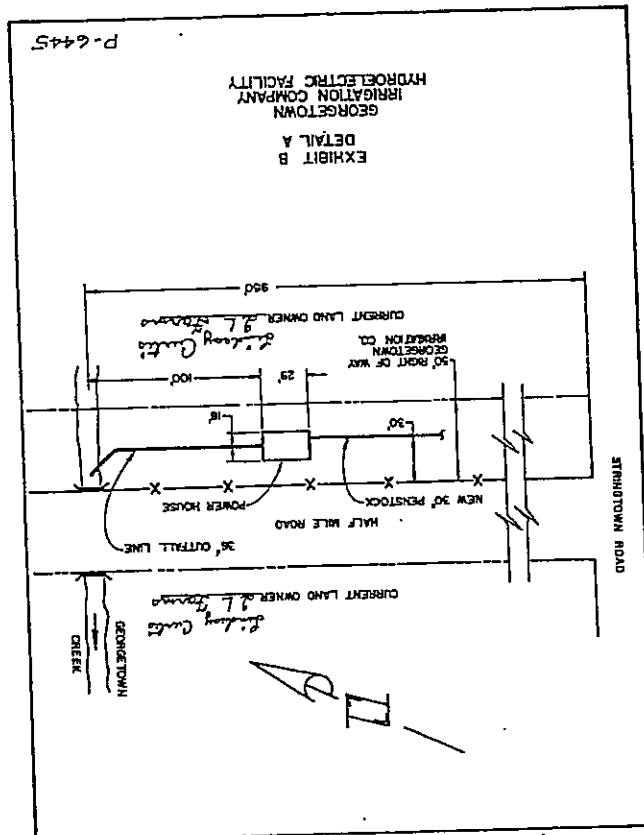
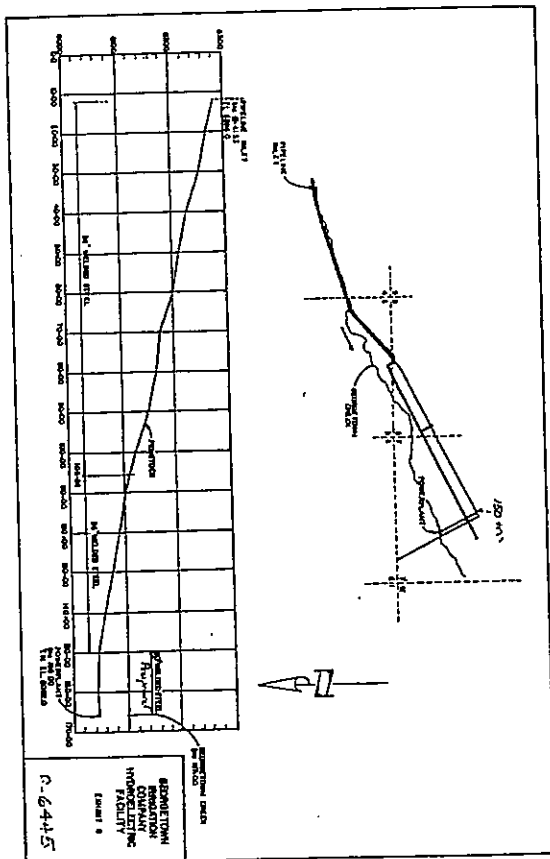
terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

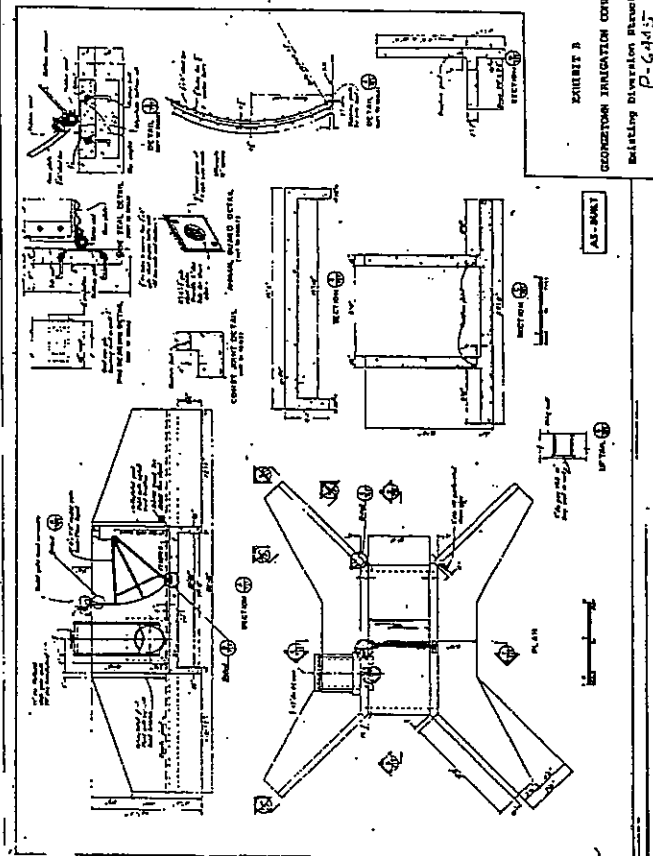
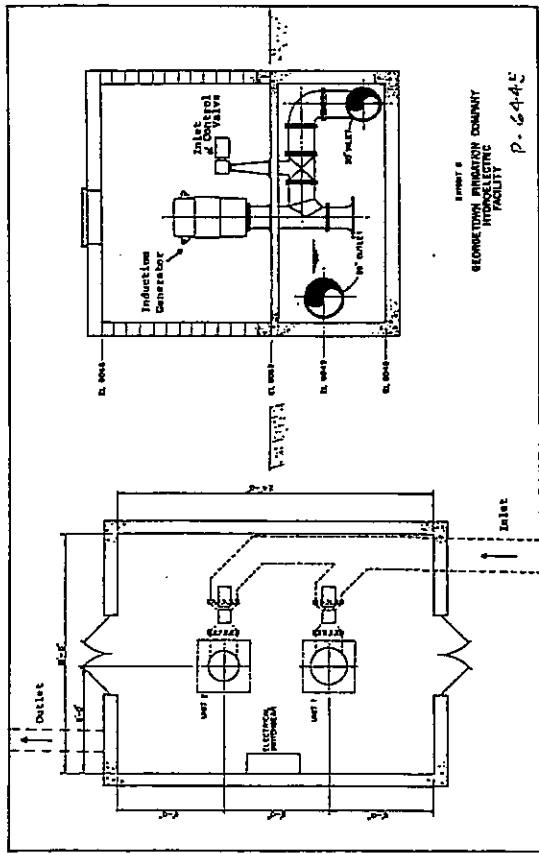
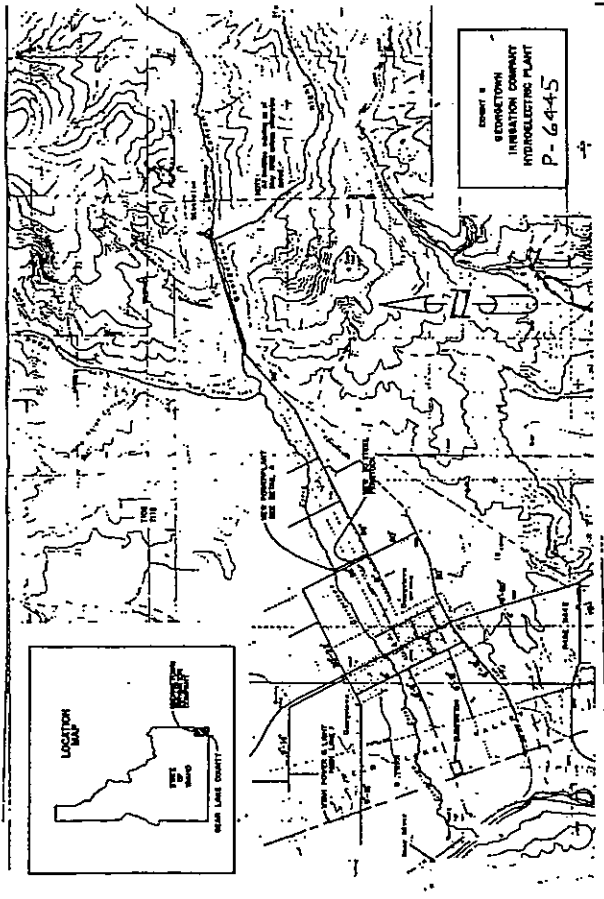
Comments, Protests, or Petitions to Intervene - Anyone may submit comments, a protest, or a petition to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 C.F.R. §1.8 or §1.10 (1980). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a petition to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or petitions to intervene must be received on or before SEP 14 1982.

Filing and Service of Responsive Documents - Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "PETITION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb
Secretary

DC-A-1





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§ 4.94 Standard terms and conditions of exemption.

Any exemption granted under § 4.93 for a small conduit hydroelectric facility is subject to the following standard terms and conditions:

(a) Article 1. The Commission reserves the right to conduct investigations under sections 4(g), 306, 307, and 311 of the Federal Power Act with respect to any acts, complaints, facts, conditions, practices, or other matters related to the construction, operation, or maintenance of the exempt facility. If any term or condition of the exemption is violated, the Commission may revoke the exemption, issue a suitable order under section 4(g) of the Federal Power Act, or take appropriate action for enforcement, forfeiture, or penalties under Part III of the Federal Power Act.

(b) Article 2. The construction, operation, and maintenance of the exempt facility must comply with any terms and conditions that any Federal or State fish and wildlife agencies have determined are appropriate to prevent loss of, or damage to, fish or wildlife resources or otherwise to carry out the purposes of the Fish and Wildlife Coordination Act.

APPENDIX C

To

**AGREEMENT BY AND BETWEEN
GEORGETOWN IRRIGATION COMPANY, INC., AND
THE STATE OF IDAHO, DEPARTMENT OF FISH AND GAME, GOVERNING TERMS
AND CONDITIONS FOR GEORGETOWN IRRIGATION COMPANY'S APPLICATION
FOR WATER RIGHT LICENSE ON GEORGETOWN CREEK TO BE SUBMITTED TO
THE IDAHO DEPARTMENT OF WATER RESOURCES**

APPENDIX C

September 16, 1982

Mr. Kenneth F. Plumb, Secretary
Federal Energy Regulatory Commission
325 North Capitol Street, N.E.
Washington, DC 20426

Re: Georgetown Irrigation Hydroelectric Plant
Project. FERC No. 6443. Georgetown Creek, Bear
Lake County, Idaho. Application for Exemption
for Small Hydroelectric Power Project Under SmW
Capacity. Georgetown Irrigation Co.

Dear Mr. Plumb:

We have reviewed the referenced application and submit the following
terms and conditions for the purposes set forth in Section 408 of the
Energy Security Act of 1980.

1. Every reasonable care to be taken to minimize water quality degradation during construction and to prevent long-term erosion.
2. Inlet structure to be designed so as to prevent entrainment of air into the penstock. In this respect, intake structure to be constructed according to design approved by the Idaho Department of Fish and Game (IDFG).
3. Velocity dissipation structures as approved by IDFG shall be installed to reduce water velocities from the powerhouse to a level comparable to that of the natural stream.
4. Erosion control structures shall be installed below any powerhouse to prevent erosion as determined necessary and approved by IDFG.
5. An instantaneous minimum stream flow of 5 cfs to be maintained between diversion inlet structure and return discharge point during the period when the power plant is in operation.
6. Flow monitoring equipment capable of recording instantaneous flow data to be installed and operated at the diversion. Data will be made available to IDFG upon request.

Mr. Kenneth F. Plumb
September 16, 1982
Page 2

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7. Transmission lines, if above ground, to be designed and constructed to prevent mortalities to raptors. Design for preventing raptor mortalities to be subject to approval by the IDFG.
 8. Project construction shall not start until items requiring IDFG approval under these terms and conditions have been submitted by applicant and approved by IDFG.
 9. Access to be granted to IDFG for inspection of fish facilities, stream flow or any other project aspect covered under the terms and conditions.
 10. If, after construction, the applicant should at any time in the future abandon the site, all manmade facilities capable of restrictive fish passage to be removed from the stream.

Transmission line design criteria are available to applicant from the IDFG.

Sincerely,

COPY

Original Signed By
Kenneth D. Norrie

Jerry M. Conley
Director

cc: USFWS (Buechler)
Ted Sorenson
Region 5

JMC:MRR:jt

State of Idaho
Department of Water Resources

Draft**Water Right License****Draft**

WATER RIGHT NO. 11-07219

Priority: January 12, 1981

Maximum Diversion Rate: 30.00 CFS
Maximum Diversion Volume: 19,800.0 AF

It is hereby certified that GEORGETOWN IRRIGATION CO
C/O DRUE SMITH
PO BOX 8
GEORGETOWN ID 83239

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated January 12, 1981; and has submitted Proof of Beneficial Use on May 21, 1986. An examination indicates that the works have a diversion capacity of 48.6 cfs of water from:

SOURCE

LEFT HAND FORK GEORGETOWN CREEK Tributary: GEORGETOWN CREEK
GEORGETOWN CREEK BEAR RIVER

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
POWER	01/01 to 12/31	30.00 CFS	19,800.0 AF

LOCATION OF POINT(S) OF DIVERSION:

LEFT HAND FORK GEORGETOWN CREEK L3 (SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$) Sec. 32, Twp 10S, Rge 44E, B.M.
BEAR LAKE County

GEORGETOWN CREEK
BEAR LAKE County

SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 4, Twp 11S, Rge 44E, B.M.**PLACE OF USE:** POWER

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
11S 44E 7								X									

CONDITIONS OF APPROVAL

1. Use of water under this right shall be non-consumptive.
2. Rights 11-290 and 11-7219 when combined shall not exceed a total diversion rate of 70 cfs.
3. Right 11-290 is also diverted through the point(s) of diversion described above.
4. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 11.

Draft

Water Right License

Draft

WATER RIGHT NO. 11-07219

CONDITIONS OF APPROVAL CONTINUED

5. At each authorized point of diversion the right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.
6. When diverting and using water in connection with this right, the right holder shall maintain an instantaneous minimum bypass flow in the amount of 5.0 cfs past the point of diversion on Georgetown Creek. The 5.0 cfs bypass flow shall be measured within the SWNE, Section 4, T11S, R44E, B.M.
7. At the measurement location for the bypass flow, the right holder shall maintain a flow measuring device capable of measuring a flow of 5.0 cfs. The right holder shall also maintain a data recorder capable of continuously recording the measured bypass flow. The measuring device and recording devices shall be of types approved by the Department.
8. By January 5 of each year, the right holder shall submit an annual report to Water District 11 documenting the instantaneous minimum bypass flow for the preceding calendar year (January 1 through December 31).
9. The rights for the use of water confirmed in this license shall be junior and subordinate to all rights for the use of water other than hydropower, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any right or claim against any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this right.
10. The diversion and use of water for hydropower purposes under this license is subject to review by the Director on or after March 1, 2021. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.
11. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
12. The diversion and use of water described in this right may be subject to additional limitations agreed to by the right holder and other parties under separate agreement to which the Department is not a party and which may be enforceable by a court of law.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.