

11/07

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF PROTEST

RECEIVED

APR 14 2008

**WATER RESOURCES
WESTERN REGION**

1. Matter being protested:

Application for Permit No. 77-14283 in the name of Carl Smid.

2. Name of protestant:

**United States Department of the Interior (USDOI)
Bureau of Land Management (BLM)
Idaho State Office (ISO)**

3. Protestant's Representative for service (If different than protestant):

Fredric W. Price, Water Rights Specialist, ID933B

4. Service mailing address:

**United States Department of the Interior (USDOI)
Bureau of Land Management (BLM)
Idaho State Office (ISO)
1387 South Vinnell Way
Boise, Idaho 83709**

5. Service telephone number:

(208) 373-3831

Email Address:

Fredric_Price@blm.gov

6. Basis of protest (including statement of facts and law upon which the protest is based):

**The application for water permit describes a place of use for power purposes that is federal public land. The applicant is not authorized to construct facilities on federal public land as described in Application for Permit No. 77-14283 for the Place of Use (POU) within:
Township 24N Range 03E Section 13 SWSE.**

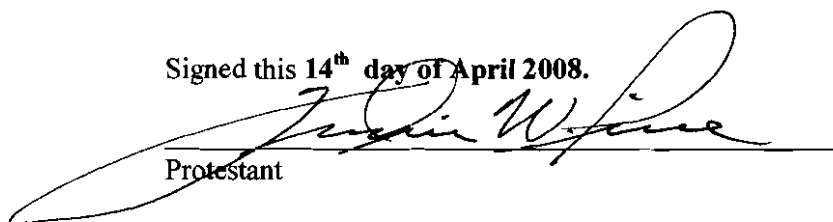
7. What would resolve your protest?

Amend the application for water permit to exclude federal public land as a place of use.

**NOTICE OF PROTEST
77-14283, Carl Smid
April 14, 2008**

I hereby acknowledge that if I, or my designated representative, fail to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 14th day of April 2008.


Protestant

Fredric W. Price
Protestant's Representative

Enclosures:

Copy of Application for Permit No. 77-14283 for Carl Smid.

Two (2) Maps for Place of Use (POU) within:

Township 24N Range 03E Section 13 SWSE

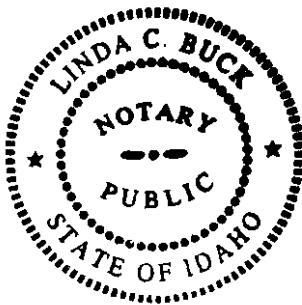
Master Title Plat for Place of Use (POU) within:

Township 24N Range 03E Section 13 SWSE

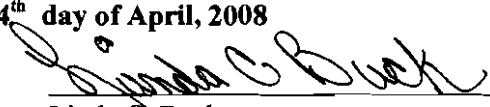
FERC Order, Docket No. DI06-2-000

NOTARY:

Subscribed and sworn to before me on this 14th day of April, 2008



Seal


Linda C. Buck

Notary Public in and for: State of Idaho

Residing at: Mountain Home, Idaho

My Commission expires: December 21, 2011

FOR DEPARTMENT USE ONLY

Received by Jnh Date: April 14, 2008 Time 3 : 49 AM (PM)

\$25.00 fee Received by Jnh # W036368 Date: April 14, 2008

NOTICE OF PROTEST
77-14283, Carl Smid
April 14, 2008

CERTIFICATE OF SERVICE

I certify that on **April 14, 2008**, I served a true and correct copy of the **"Protest for Application for Permit No. 77-14283 for Carl Smid"** with enclosures upon the following individuals by placing the documents in the United States mail in Boise, Idaho, postage paid, and addressed as follows:

Original to: **John Westra, Regional Manager**
 Idaho Department of Water Resources (IDWR)
 Western Regional Office
 2735 Airport Way
 Boise, ID 83705-5082

Copies to: **Carl Smid**
 HC 69 Box 950
 Riggins, Idaho 83545

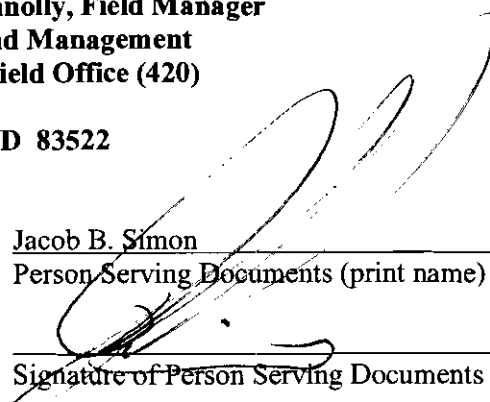
Norman M. Semanko
 1010 West Jefferson Street, Suite 101
 Boise, Idaho 83702

Cuddy and Associates
 125 Johnson Avenue, Suite #2
 PO Box 64
 Orofino, Idaho 83544

Craig Johnson, Fisheries/Wildlife Biologist
 Bureau of Land Management
 Cottonwood Field Office (420)
 1 Butte Drive
 Cottonwood, ID 83522

Chuck Dillon, Realty Specialist
 Bureau of Land Management
 Cottonwood Field Office (420)
 1 Butte Drive
 Cottonwood, ID 83522

Stephanie Connolly, Field Manager
 Bureau of Land Management
 Cottonwood Field Office (420)
 1 Butte Drive
 Cottonwood, ID 83522



Jacob B. Simon
Person Serving Documents (print name)

Signature of Person Serving Documents

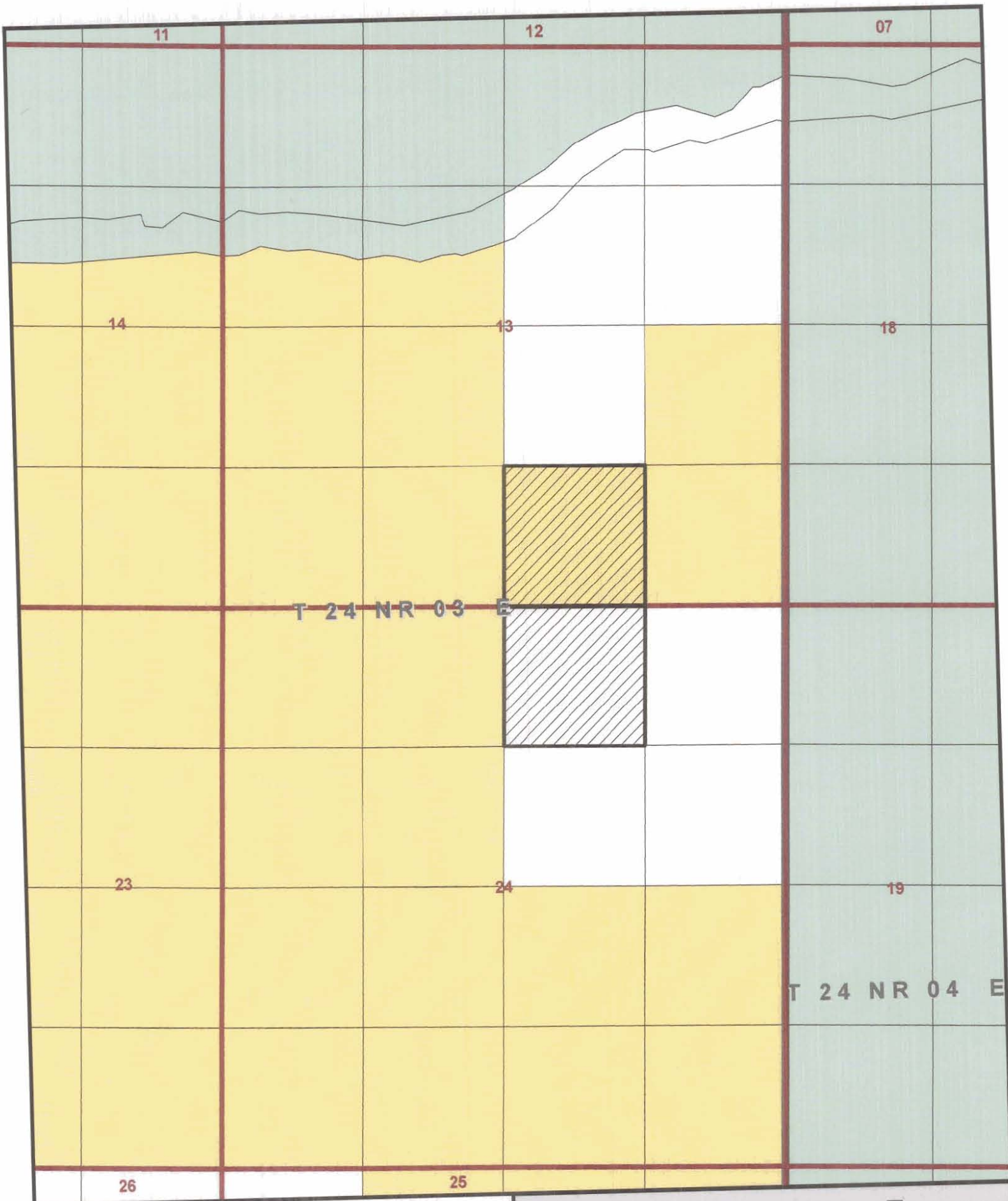
April 14, 2008

Date

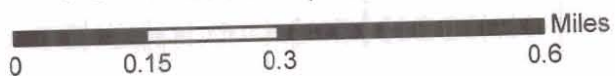
NOTICE OF PROTEST

77-14283, Carl Smid

April 14, 2008



77-14283, Carl Smid



77-14283_POU Land Status



BLM



PRIVATE



USFS



77-14283, Carl Smid

0 0.15 0.3 0.6 Miles



77-14283_POU **Land Status**



BLM



PRIVATE



USFS

UNITED STATES OF AMERICA 117 FERC ¶62,185
FEDERAL ENERGY REGULATORY COMMISSION

Carl Smid

Docket No. DI06-2-000

ORDER RULING ON DECLARATION OF INTENTION
AND FINDING LICENSING NOT REQUIRED

(Issued November 28, 2006)

1. On June 7, 2006, Carl Smid filed a Declaration of Intention (DI) concerning his proposal to develop the French Creek Micro Hydro Project, to be located on French Creek, tributary to the Salmon River, near the town of Riggins, Idaho (T. 4 N., R. 3 E., secs. 13 and 24, Boise Meridian).

PROJECT DESCRIPTION

2. The proposed French Creek Micro Hydroelectric Project, a run-of-river facility, would include: (1) a 2,900-foot-long, 10-inch-diameter PCV penstock, diverting 2 cfs from French Creek; (2) a powerhouse containing a 15 kW Pelton-type turbine; and (3) appurtenant facilities. The powerhouse would be approximately one mile from the confluence of French Creek with the Salmon River. The power would be used on-site at the owner's residence and ranch. The project would not be connected to an interstate grid, and will not occupy any tribal or federal lands.

PUBLIC NOTICE

3. Notice of the DI was published on June 14, 2006. Protests, comments, and/or motions to intervene were to be filed by July 14, 2006. The U.S. Department of the Interior, Fish and Wildlife Service (FWS), filed comments on July 12, 2006. FWS stated that Bull Trout, a species listed as threatened under the Endangered Species Act, was known to occur in French Creek, and expressed concerns about the potential effect of the proposed facility on that population. However, FWS also stated that the status of Bull Trout as a local population or their location relative to the proposed project is not known. The State of Idaho Department of Fish and Game (Idaho DFG) filed a Notice of Intervention and Comments on July 12, 2006, stating that the tributary streams of the Salmon River in general and French Creek in particular have been documented as containing Bull Trout and Snake River Steelhead. Idaho DFG did not provide any further information about the location and/or numbers of fish or how the proposed project might affect them. These comments raise issues related to licensing procedures

and not whether the Commission has jurisdiction to require that the project be licensed under Section 23(b)(1) of the Federal Power Act (FPA).

JURISDICTION

* 4. Pursuant to Section 23(b)(1) of the FPA, §817(1), a non-federal hydroelectric project must (unless it has a still-valid pre-1920 federal permit) be licensed if it:

- is located on a navigable water of the United States;
- occupies lands of the United States;
- utilizes surplus water or waterpower from a government dam; or
- is located on a body of water over which Congress has Commerce Clause jurisdiction, undergoes construction or major modification on or after August 26, 1935, and the project affects the interests of interstate or foreign commerce.

DISCUSSION

* 5. The proposed project will not occupy any public lands or reservations of the United States and will not use surplus water or water power from a Federal government dam. There is insufficient evidence to suggest that French Creek is a navigable waterway at the site or in the vicinity of the proposed project. The proposed project will be constructed after August 26, 1935, and is located on a Commerce Clause waterway. It will not be connected to an interstate transmission grid, and the power generated would be used solely by the applicant. Therefore, the project would not affect the interests of interstate or foreign commerce as a result of connection to the interstate electrical grid.

6. In some cases, a project's effects on anadromous fish can constitute an effect on the interests of interstate or foreign commerce. However, the effect must be real and substantial. The proposed French Creek Project does not include a dam, and will not block spawning habitat in the creek. In addition, the project will not significantly affect flows in the creek. We, therefore, find that the project would not have a significant effect on anadromous fish in the creek, and would not affect the interests of interstate or foreign commerce.

CONCLUSION

6. Section 23(b)(1) of the FPA does not require licensing of the proposed project. Although the project will be constructed after August 26, 1935, and is located on a Commerce Clause water, it would not affect the interests of interstate or foreign commerce. There is no evidence to suggest that the project

is located on a navigable waterway. If evidence to support the Commission's licensing jurisdiction is found in the future, Section 23(b)(1) would require licensing. Under Section 4(g) of the FPA, the project owner could then be required to apply for a license.

The Director orders:

(A) Section 23(b)(1) of the Federal Power Act does not require licensing of the proposed French Creek Micro Hydroelectric Project. This order is issued without prejudice to any future determination, upon new or additional evidence, that licensing is required.

(B) This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Joseph D. Morgan
Director
Division of Hydropower
Administration and Compliance

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

RECEIVED
MAY 20 2007
WATER RESOURCES
WESTERN REGION

1. Name of Applicant Carl Smid Phone 254-381-7005
Mailing address HC 69 Box 950, Riggins, ID 83549
2. Source of water supply French Creek which is a tributary of Salmon River
3. Location of point of diversion is Township 24N Range 3E Sec. 24 in the SW 1/4,
SW 1/4, NE 1/4, Govt. Lot _____, B.M., _____ Idaho _____ County;
additional points of diversion if any: _____
4. Water will be used for the following purposes:
Amount 2.0 for hydro power purposes from Jan 1 to Dec 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated is (a) 2.0 and/or (b) _____
cubic feet per second acre feet per annum
6. Proposed diverting works:
a. Describe type and size of devices used to divert water from the source A permanent 6-inch diameter end-of-pipe tee configuration submerged inlet will be placed approximately 1 foot below the normal low water level approximately 5 feet from shore. The inlet will be equipped with a passive fish protection screen complying with NMFS criteria. The Tee inlet will divert water by gravity flow to a penstock headwork basin located approximately 5 feet landward from the normal high water line.
b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet
c. Proposed well diameter is inches _____; proposed depth of well is _____ feet
d. Is ground water with a temperature of greater than 85°F being sought? No
e. If well is already drilled, when? _____; Drilling firm _____
Well was drilled for (well owner) _____; Drilling Permit No. _____
7. Time required for completion of works and application of water to proposed beneficial use is 3 years (minimum 1 year)
8. Description of proposed uses (if irrigation only, go to item 9):
a. Hydropower; show total feet of head and proposed capacity in kW. 160 feet, 15 kW (see attached)
b. Stockwatering; list number and kind of livestock _____
c. Municipal; show name of municipality. _____
d. Domestic; show number of households. _____
e. Other; describe fully. _____

AMENDED

RECEIVED

APR 30 2007

WATER RESOURCES
WESTERN REGION

9. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of the use (example: *D* for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
24N	3E	24		P															
				CS															
		13																P	

BLM

Total number of acres to be irrigated 0

10. Describe any other water rights used for the same purposes as described above. _____

11. a. Who owns the property at the point of diversion? Carl Smidb. Who owns the land to be irrigated or place of use? Carl Smid

c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: _____

12. Remarks: The project is a run-of-the-river 15 kW micro-hydro system that proposes to divert 2 cfs from French Creek to provide electrical power to a single ranch and residence owned by the applicant. Electrical power will be produced with a Pelton type turbine and electrical generation equipment manufactured by Canyon Hydro of Deming, WA. Approximately 2800 feet of 10 inch diameter PVC penstock will be installed in the existing roadway adjacent to French Creek.

All equipment including the diversion inlet, penstock, powerhouse, and transmission line will be installed on property owned by the applicant. Electrical power will not be distributed off-site. A "Declaration of Intention" for the project has been filed with the Federal Energy Regulatory Commission. The project description and flow-duration analysis prepared for the "Declaration of Intention" are attached.

13. MAP OF PROPOSED PROJECT REQUIRED -Attach an 8 1/2"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

BE IT KNOWN that the undersigned hereby makes this application for permit to appropriate the public waters of the State of Idaho as herein set forth.

Carl E. Smid

Signature of Applicant (and title, if applicable)

Received by AK Date 5-30-06 Time _____ Preliminary check by DN & JR
 Fee \$ 280 Received by WD 34238 Date 5-30-06
 Publication prepared by DB Date 3/26/2008 Published in IDAHO COUNTY FREE PRESS
 Publication approved _____ Date APRIL 2 & 9, 2008

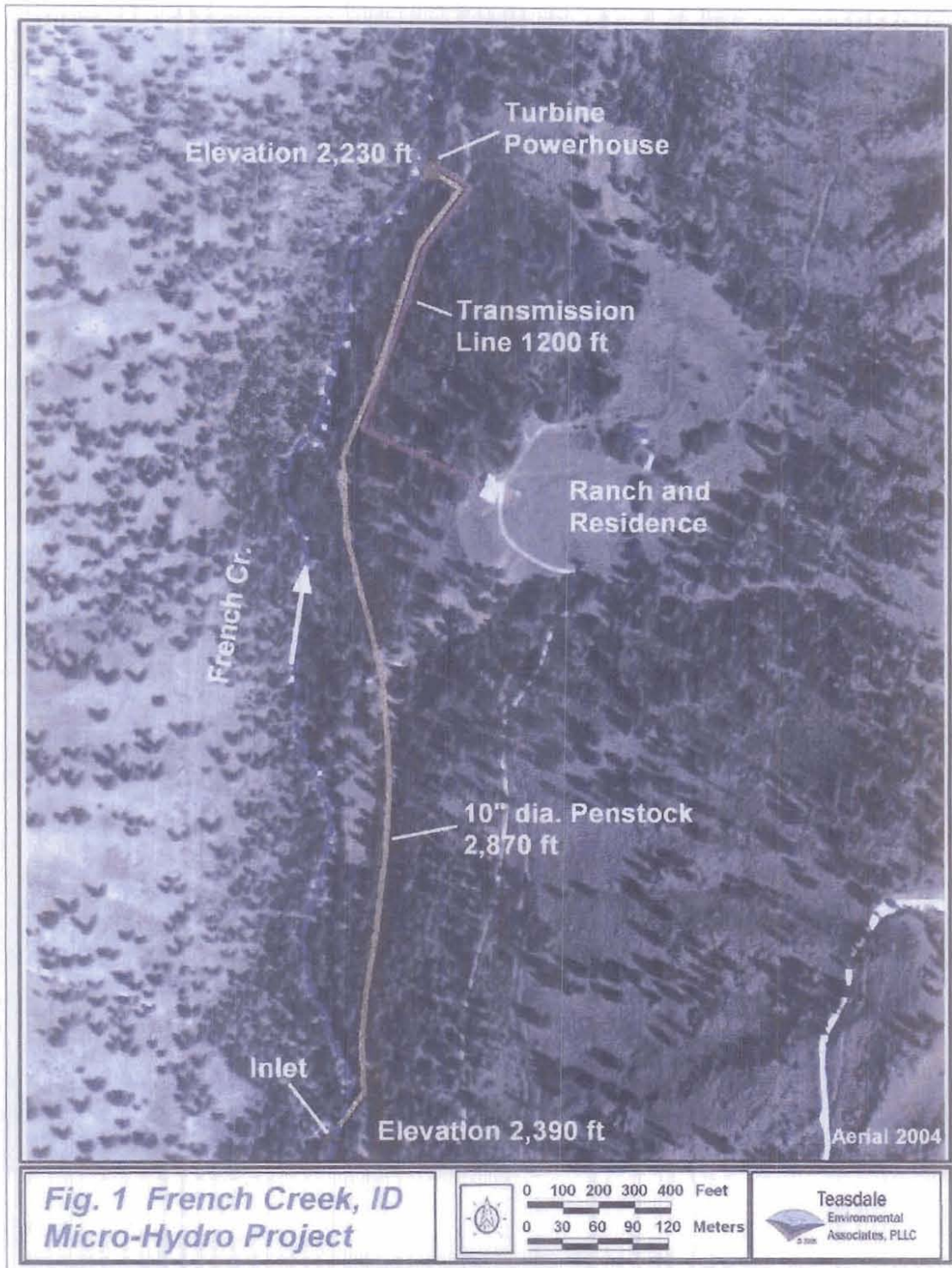


Figure 1. Conceptual plan of the French Creek, ID Micro-Hydro Project.



Figure 2. Project location map.

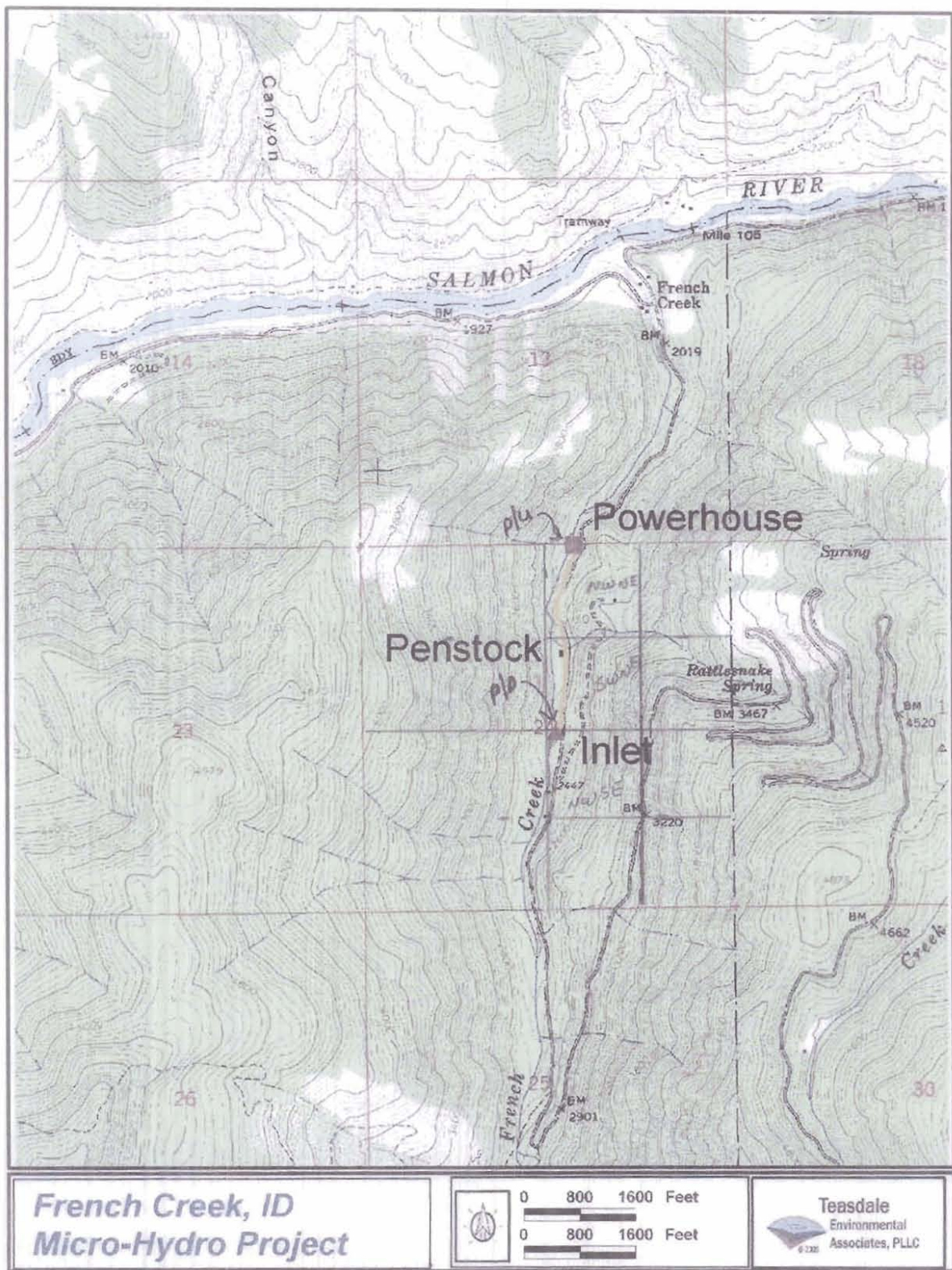


Figure 3. USGS topographic map of the project location.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

AFFIDAVIT FOR WATER RIGHTS TO BE USED FOR POWER PURPOSES

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

1. Individual Applicant or Individual Members of a Partnership:

I, Carl E. Smid of Riggins,
(name) (city)
County of Idaho, State of Idaho, being duly sworn, do hereby
certify that I am a bona fide resident of the State of Idaho.

2. Corporation:

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

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

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

(check one)

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

Carl E. Smid
Applicant

STATE OF IDAHO)
County of Idaho)ss

On this 21 day of MAY, 20 06, personally appeared before me the signer(s) of
the above instrument, who duly acknowledged to me that he (she) (they) executed the same.

REXANN ZIMMERMAN
Notary Public
State of Idaho

Rexann Zimmerman
Notary Public residing at

SEAL

My commission expires: July 22, 2011

RIGGINS