

UNITED STATES OF AMERICA 114 FERC ¶ 62,270
FEDERAL ENERGY REGULATORY COMMISSION

William Arkoosh

Project No. 12063-001

ORDER ISSUING ORIGINAL LICENSE
(Minor Project)

(March 17, 2006)

INTRODUCTION

1. On October 17, 2003, William Arkoosh (Mr. Arkoosh) filed, pursuant to Part I of the Federal Power Act (FPA),¹ an application for a minor original license to construct, operate, and maintain the 1.5-megawatt (MW) Little Wood River Ranch II Hydroelectric Project (project). The proposed run-of-river project will be located on the Little Wood River, six miles west of the town of Shoshone, Lincoln County, Idaho.² The proposed project does not occupy any federal lands. As discussed below, I am issuing a license for the project.

BACKGROUND

2. On December 9, 2003, the Commission issued a public notice accepting the application for filing and soliciting interventions and protests. Timely motions to intervene were filed by Notch Butte Hydro Company, Inc., and the State of Idaho. Neither intervenor opposes the project.

3. On February 10, 2004, the Commission issued a public notice that the project was ready for environmental analysis and solicited comments, recommendations, terms and conditions, and prescriptions. In response, comments and recommendations were filed by the U.S. Department of the Interior's Fish and Wildlife Service (FWS), the State of Idaho Department of Fish and Game (Idaho DFG), Idaho Department of Parks and Recreation (Idaho Parks), Idaho State Board of Land Commissioners (Idaho Land

¹ 16 U.S.C. §§ 791a - 825r. (2000).

² The Little Wood River is a tributary of Big Wood River, a navigable waterway which empties into the Snake River. The applicant will sell power to a utility in the area that is connected to an interstate grid. Since the project is located on a stream over which Congress has jurisdiction under the Commerce Clause, affects interstate commerce through its connection to an interstate power grid, and will be constructed after 1935, it is required to be licensed pursuant to section 23(b)(1) of the FPA.

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Commissioners), Idaho Water Resources Board (Idaho Water Board), and Idaho Department of Environmental Quality (Idaho DEQ).

4. An Environmental Assessment (EA) was prepared by Commission staff and issued on August 12, 2005. The EA contains background information, analysis of impacts, support for related license articles, and the basis for a finding that issuance of the license is not a major federal action significantly affecting the quality of the human environment.

5. The FWS, Idaho DEQ, and the Idaho DFG filed comments on the EA, noting certain minor corrections. Also, Idaho DFG stated its objections to, and a need for clarification of, several staff recommendations. Its comments are discussed below. Motions to intervene, comments, and recommendations have been fully considered in determining whether, and under what conditions, to issue this license.

PROJECT DESCRIPTION

6. The proposed run-of-river project will require all new construction entirely on lands owned by the applicant. The proposed project will consist of: a 10-foot-high, 220-foot-long rock rubble diversion dam creating an 8-acre (40-acre-foot) reservoir; a 2,800-foot-long open feeder canal; a concrete intake structure having two parallel 5-foot-diameter, 250-foot-long steel penstocks; a 60-foot-long, 20-foot-wide, 25-foot-high concrete and steel power house containing two hydraulic Francis turbines with a total installed capacity of 1,500 kilowatts; a 3,500-foot-long tailrace canal; a 10,500-foot-long, 12.5-kilovolt transmission line; an access road; and appurtenant facilities. The applicant estimates that the approximate total average annual generation would be 6.8 gigawatt-hours (GWh).

7. The project will operate with water diverted from the Little Wood River into a 2,800-foot-long feeder canal leading to the intake structure and powerhouse containing two Francis turbines. After exiting the turbines, flows will empty into a 3,500-foot-long tailrace canal and return to the Little Wood River. Mr. Arkoosh proposes to maintain specified minimum flows that vary depending on the time of year in the 2.6-mile-long bypassed reach. The proposed project will provide electrical energy to the local utility, Idaho Power Company.

8. As explained below, previously filed project boundary maps do not meet the Commission's current regulations. Therefore, new project boundary maps will need to be developed. The new project boundary maps will need to be filed with the Commission and approved by the Commission prior to the start of construction (see Article 203), and shall include all lands necessary to construct and operate the project as proposed with staff's additional measures. This would include project facilities, the project reservoir

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(including all lands inundated by the project), and any facilities necessary for operation and maintenance of the project and the transmission line.

WATER QUALITY CERTIFICATION

9. Under section 401(a) of the Clean Water Act (CWA),³ the Commission may not issue a license authorizing the construction or operation of a hydroelectric project unless the state water quality certifying agency has either issued a water quality certification for the project or has waived certification by failing to act on a request for certification within a reasonable period of time, not to exceed 1 year. Section 401(d) of the CWA provides that the certification shall become a condition of any federal license that authorizes construction and operation of the project.⁴

10. On July 29, 2003, Mr. Arkoosh, applied to the Idaho DEQ for certification of the project, as required by section 401 of the Clean Water Act. Idaho DEQ issued a certification on June 1, 2004, for the project. In response to the applicant's request, and with Commission staff concurrence, Idaho DEQ clarified several of the conditions by letter dated August 29, 2005, and filed September 8, 2005. The certification as modified contains 16 conditions, which are set forth in Appendix A of this order and incorporated into the license (see ordering paragraph E). The certification includes requirements for construction and operation to be within Idaho's water quality standards, to use prudent erosion control measures, to meet instream standards set by the Little Wood River Watershed Management Plan, and to protect streambank vegetation during construction.

11. Condition 9 requires the licensee to file an erosion control plan with the Commission after it has been approved by Idaho DEQ. This condition does not provide for consultation with Idaho DFG and FWS and it does not provide for Commission review or approval. Therefore, Article 401 requires the licensee to consult with other agencies during plan development and file the plan with the Commission for approval.

SECTION 18 FISHWAY PRESCRIPTIONS

12. Section 18 of the FPA, 16 U.S.C. § 811, provides that the Commission shall require the construction, maintenance, and operation by a licensee of such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce, as appropriate. No fishway prescriptions or reservations of authority were filed under

³ 33 U.S.C. § 1341(a)(1).

⁴ 33 U.S.C. § 1341 (d).

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section 18 of the FPA.

THREATENED AND ENDANGERED SPECIES

13 Section 7(a)(2) of the Endangered Species Act of 1973 (ESA),⁵ requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species, or result in the destruction or adverse modifications of designated critical habitat.

14 The FWS provided a list of federally threatened and endangered species that may occur within the proposed project area, which included the Utah valvata snail (threatened), bald eagle (threatened), and gray wolf (experimental/non-essential population).⁶

15 Results of a sensitive snail survey conducted by the applicant indicated that the Utah valvata snail is not present within the proposed project area; therefore, staff concluded that the proposed project would have no effect on the federally-listed Utah valvata snail.

16 The proposed project area lacks a good food source, perch trees and nesting areas for the bald eagle and will have raptor-proof transmission lines, therefore the proposed project construction and operation would have no effect on the bald eagle.

17 The project area does not occupy areas used for dening or hunting by gray wolves, and there is a lack of food and cover in the project area for the wolf to exist. A log-boom across the power canal and exit ramps on the canal banks would provide egress for any transient wolf that might try to cross the power canal. Therefore, construction and operation of the project would not jeopardize the continued existence of the experimental, nonessential population of the gray wolf.

NATIONAL HISTORIC PRESERVATION ACT

⁵ 16 U.S.C. § 1536(a)(2).

⁶ An experimental population is a geographically described group of reintroduced animals that is isolated from other existing populations of the species; if the experimental population is also designated as nonessential to the survival of the species, for purpose of consultation under the Endangered Species Act, the population is treated as a species that is proposed for listing as threatened or endangered.

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18. Section 106 of the National Historic Preservation Act and its implementing regulations,⁷ require federal agencies to take into account the effect of any proposed action on properties listed or eligible for listing in the National Register (defined as historic properties) and to afford the Advisory Council on Historic Preservation a reasonable opportunity to comment. The section 106 process requires identification of historic properties, in consultation with the State Historic Preservation Officer (SHPO), as a first step.

19. The applicant requested the SHPO's review of the proposed project. In a letter dated April 30, 2002, (included in the license application) the SHPO responded that the proposed project could be located in an area sensitive for archeological resources and recommended that a professional archeologist survey the project area, including any access roads and power lines involving the project, prior to any ground-disturbing activities related to the project.

20. Because the exact locations of the project facilities have not been determined, the applicant, upon issuance of an original license, will need to identify whether there are any historic properties that could be potentially adversely affected by the proposed project. In the case of this particular project, the greatest chance for the presence of historic properties would involve the discovery of significant prehistoric archeological deposits within the project area. All steps in identifying and assessing potential adverse effects to historic properties must take place prior to any project construction activity.

21. Article 408 provides for the licensee to conduct a cultural resources survey of the project area and file a report containing the survey results. If no historic properties have been identified as a result of the cultural resources survey, the licensee may proceed with project construction. If any historic properties will be affected by project construction or operation, the licensee will file for Commission approval a historic properties management plan (HPMP). Prior to any land-clearing or ground-disturbing activities involved with this project, the licensee will fully implement any approved HPMP.

RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES

A. Recommendations Pursuant to Section 10(j) of the FPA

22. Section 10(j) of the FPA⁸ requires the Commission, when issuing a license, to

⁷ 36 C.F.R. § Part 800 (2004).

⁸ 16 U.S.C. § 803(j)(1).

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include conditions based on recommendations of federal and state fish and wildlife agencies submitted pursuant to the Fish and Wildlife Coordination Act⁹ to "adequately and equitably protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat)" affected by a project.

23. Idaho DFG and Interior filed recommendations pursuant to section 10(j) of the FPA.¹⁰ This license includes conditions consistent with all the agencies' recommendations filed under section 10(j). They include measures to: provide specified minimum flows into the bypassed reach (Article 402); monitor flows in the bypassed reach (Article 404); file a plan showing the proposed design of the project's environmental features (Article 405); file a riparian habitat improvement plan with specifications for planting native riparian vegetation (Article 406); and file a plan to monitor the effectiveness of the project's environmental mitigation measures (Article 407).

B. Recommendations Pursuant to Section 10(a)(1) of the FPA

24. Interior made four recommendations that are not specific measures to protect, mitigate damages to, or enhance fish and wildlife because they are studies that could have been conducted prior to filing the license application. Consequently, we do not consider these recommendations under section 10(j) of the FPA. Instead, we consider these recommendations under the broad public-interest standard of FPA section 10(a)(1).^{11,12}

25. Measures recommended by Interior that were considered under section 10(a) include: (1) perform a detailed evaluation of all potential project-related impacts to native nongame, game, aquatic, and terrestrial resources; (2) complete an assessment of

⁹ 16 U.S.C. § 661 *et seq*

¹⁰ Letters from Idaho DFG and Interior were filed on April 7, 2004, and April 9, 2004, respectively.

¹¹ 16 U.S.C. §803(a)(1).

¹² Section 10(a)(1) requires that any project for which the Commission issues a license 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; for the adequate protection, mitigation, and enhancement of fish and wildlife; and for other beneficial public uses, including irrigation, flood control, water supply, recreation, and other purposes.

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the cumulative impacts of existing hydropower facilities in the Wood River system; (3) prepare and evaluate the potential need, feasibility, and benefits of providing fish passage and screening; and (4) perform a flow study and hydraulic analysis to determine a minimum flow to protect fish and wildlife. For the reasons described below, none of these measures were required as part of this license order.

26. The analysis in the EA describes project effects on native nongame, game, aquatic, and terrestrial resources. Therefore, no additional analysis is needed.

27. Interior provided no rationale for its request for a complete assessment of the cumulative impacts, and it is unclear how such an assessment would result in identification of any project effects not discussed in the EA or derivation of any mitigation measures not already considered in the EA. Therefore, the assessment recommended by Interior is not needed.

28. The Idaho DFG and Idaho DEQ indicated that fish screening and fish passage measures are not warranted at this time. No unique or necessary habitat for the species present in the project area has been identified upstream of the proposed project and none of these species are known to make long distance spawning migrations within the Little Wood River. In the final EA, staff determined that blocking upstream passage should not result in any significant change in the relative abundance of these species. Therefore, no requirement for fish passage and screening evaluations are needed.

29. In the EA, staff described the hydrological and biological effects of the proposed minimum flows using existing information. This analysis demonstrates that adequate information already exists to evaluate the applicant's proposed minimum flows. On this basis, staff was able to recommend minimum flows. Staff further notes that Idaho DFG recommended a minimum flow for the project based on the available information. Therefore, staff determined that Interior's recommended flow study or hydraulic analysis is not needed to evaluate or recommend minimum flows.

PACIFIC NORTHWEST ELECTRIC POWER PLANNING AND CONSERVATION ACT

30. In 1980, Congress enacted the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act).¹³ This act created the Northwest Power Planning Council (now known as the Northwest Power and Conservation Council) and directed it to develop a Columbia River Basin Fish and Wildlife Program (Program). The

¹³ 16 U.S.C. §§ 839 (b) et seq.

Program is to protect, mitigate, and enhance fish and wildlife resources affected by the development and operation of hydroelectric projects on the Columbia River and its tributaries, while assuring the Pacific Northwest an adequate, efficient, economical, and reliable power supply.¹⁴ Section 4(h)(11)(A) of the Northwest Power Act¹⁵ provides that federal agencies operating or regulating hydroelectric projects within the Columbia River Basin shall exercise their responsibilities to provide equitable treatment for fish and wildlife resources with other purposes for which the river system is utilized and shall take the Council's Program into account "at each relevant stage of decision making processes to the fullest extent practicable."

31. As part of the Program, the Council designated over 40,000 miles of river in the Pacific Northwest region as "protected areas" which are not suitable for hydroelectric development. The Little Wood River Ranch II Project will not be located within a designated protected area

32. To mitigate harm to fish and wildlife resources, the Council has adopted specific provisions to be considered in the licensing or relicensing of non-federal hydropower projects (Appendix B of the Program). The license, which among other things includes requirements to protect state water quality standards during project construction and operation, including the filing of an erosion control plan (Appendix A); providing minimum flows (Article 402); monitoring flows in the bypassed reach (Article 404); filing a plan showing the proposed design of the project's environmental features (Article 405); filing a riparian habitat improvement plan (Article 406); and filing a plan to monitor the effectiveness of the project's environmental mitigation measures (Article 407), is consistent with the applicable provisions of the Program. Article 409 reserves to the Commission the authority to require future alterations in project structures and operations to take into account, to the fullest extent practicable, the applicable provisions of the Program.

OTHER ISSUES

A. Comments on the Environmental Assessment

33. In a letter filed on September 8, 2005, the FWS indicated that it had no comments on the EA.

34. In a letter filed on September 12, 2005, Idaho DFG provided several substantive

¹⁴ 16 U.S.C. § 839 b(h)(5)

¹⁵ 16 U.S.C. § 839 (h)(11)(A).

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comments on the EA. Idaho DFG stated that it disagreed with the conclusion in the EA that there would be no cumulative impacts from the construction and operation of the Little Wood River Ranch II Project. Idaho DFG asserted that the construction and operation of the project in conjunction with past and ongoing adverse impacts in the basin would, without mitigation, adversely impact aquatic resources.

35. During scoping Commission staff solicited information that would assist them in conducting an accurate and thorough analysis of the site-specific and cumulative effects of licensing the project.¹⁶ In response to this request, no information or comments were filed that identified any potential cumulative effects to any specific resources.

36. Idaho DFG suggests that, without mitigation, construction and operation of the project would cumulatively impact aquatic resources. However, Idaho DFG fails to describe any specific cumulative effects on aquatic resources that would occur due to construction and operation of the project, nor does it identify any cumulative effects that would not be mitigated by the measures recommended by Commission staff in the EA.¹⁷ These staff-recommended measures include all the measures recommended by Idaho DFG under section 10(j) and have been adopted in this license. I conclude that they would adequately mitigate for potential adverse effects, cumulative or otherwise, to aquatic resources of the Little Wood River.

37. Idaho DFG states that it does not support the development of an 8-acre impoundment upstream of the diversion dam where smallmouth bass would be stocked. Idaho DFG states that it is not clear what this proposed measure is intended to mitigate.

38. To clarify, construction of the project diversion dam will impound water in the Little Wood River stream channel and result in the formation of an 8-acre impoundment. The formation of this impoundment is not intended as a mitigation measure, but rather it is an artifact of raising the water surface elevation of the stream for diversion into the feeder canal. While the formation of the impoundment is not intended as mitigation, Commission staff indicated in the EA that creation of roughly 8 acres of new wetted habitat in the impoundment would partially mitigate for habitat reductions in the bypassed reach.¹⁸ Additionally, the licensee did not propose, nor did Commission staff recommend, stocking the impoundment with smallmouth bass, and I am not requiring this measure as part of the license.

¹⁶ EA at 5.

¹⁷ EA at 36 - 37.

¹⁸ EA at 25.

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39. Idaho DFG states that the EA does not define "drought conditions" in the context of considering deviations from the minimum flow regime for the period of April through September. Idaho DFG states there should be a clear, unambiguous definition of drought condition. Minimum flows and adjustments during drought conditions are addressed in Article 402, Minimum Flow. A requirement for the licensee to define drought conditions, in consultation with Idaho DFG and other agencies and for Commission approval, is included as part of Article 404, Operational Compliance Monitoring Plan.

B. Administrative Conditions

40. The Commission collects annual charges from licensees for the administration of the FPA. Article 201 provides for the collection of such funds. Under regulations currently in effect, projects with authorized installed capacity of less than or equal to 1,500 kilowatts, such as this project, will not be assessed annual charges.

41. Article 301 requires the licensee to start project construction within two years of the date of this license issuance and complete construction within four years of issuance of this license.

42. Article 302 requires the licensee, before commencing project construction, to file for Commission approval a project financing plan to show that the necessary funds have been committed to construct the project.

C. Exhibit F and G Drawings

43. The Exhibit F drawings filed on November 20, 2003, are approved and made part of the license (see ordering paragraph C). The licensee's Exhibit G drawings do not conform to the Commission's current regulation for Exhibit G drawings because they do not include the entire length of the transmission line and do not include three known reference points, (i.e., latitude and longitude coordinates, or state plane coordinates). Therefore, Article 203 requires the licensee to file Exhibit G drawings for Commission approval.

D. Review of Final Plans and Specifications

44. Article 303 requires the licensee to provide the Commission's Division of Dam Safety and Inspection Portland Regional Office (D2SI-PRO) with final contract drawings and specifications together with a supporting design report consistent with the Commission's engineering guidelines.

45. Article 304 requires the licensee to provide the Commission's Division of Dam

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Safety and Inspection Portland Regional Office (D2SI-PRO) with a plan for a quality control and inspection program.

46. Article 305 requires the licensee to review and approve the design drawings and specifications for any contractor-designed cofferdams.

47. Article 306 requires the licensee to provide the Commission's Division of Dam Safety and Inspection Portland Regional Office (D2SI-PRO) with a temporary emergency action plan.

48. Article 307 requires the licensee to file revised as-built drawings upon the completion of the project.

E. Use and Occupancy of Project Lands and Waters

49. Requiring a licensee to obtain prior Commission approval for every use or occupancy of project land would be unduly burdensome. Therefore, Article 410 allows the licensee to grant permission, without prior Commission approval, for the use and occupancy of project lands for such minor activities as landscape plantings. Such uses must be consistent with the purpose of protecting and enhancing the scenic, recreational, and environmental values of the project.

STATE AND FEDERAL COMPREHENSIVE PLANS

50. Section 10(a)(2)(A) of the FPA, 16 U.S.C. § 803(a)(2)(A), requires the Commission to consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project.¹⁹ Under section 10(a)(2)(A), federal and state agencies filed 75 comprehensive plans that address various resources in Idaho. Of these, the staff identified and reviewed seven comprehensive plans that are relevant to this project.²⁰ No conflicts were found.

SAFE MANAGEMENT, OPERATION, AND MAINTENANCE OF THE PROJECT

¹⁹ Comprehensive plans for this purpose are defined at 18 C.F.R. § 2.19.

²⁰ The list of applicable plans can be found in section IX of the EA for the project issued August 12, 2005.

51. The project dam is classified as having a low hazard potential, based on the Commission's dam safety criteria and the following project-specific features: (1) the diversion dam would have a height of 10 feet and impoundment of 40 acre-feet; (2) the project would occupy undeveloped land; (3) there are no developed recreational facilities near the project; (4) failure of the dam or penstock would not appear to pose a risk to life or property. Staff concludes that the dam and other project works will be safe when constructed, operated, and maintained in accordance with the Commission's standards and oversight.

NEED FOR POWER

52. The project is located in the Northwest Power Pool Area (NWPP) of the Western Electric Coordinating Council's (WECC) region of the North America Electric Reliability Council (NERC). The NWPP comprises all or major portions of Idaho, Montana, Nevada, Oregon, Utah, Washington and Wyoming; a small part of California; and the Canadian Provinces of British Columbia and Alberta. For the period 2003 through 2012, WECC anticipates peak demand and annual energy requirements in the NWPP to grow at annual compound rates of 2.5 and 2.3 percent, respectively. Resource capacity margins for this winter-peaking area range between 30.5 and 42.1 percent of firm peak demand over this 10-year period, assuming planned capacity additions totaling 11,863 MW are constructed on schedule. For the WECC region as a whole, the summer reliability margin is projected to fall below the recommended minimum of 14 to 15 percent by about 2010 without the new capacity additions that were uncommitted as of the December 2003 date of the WECC's Ten-Year Coordinated Plan Summary.

53. I conclude that the region has a need for power over the near term and that power from the proposed project would be useful in contributing to a diversified generation mix and meeting a small part of the regional need for power.

PROJECT ECONOMICS

54. In determining whether to issue a license for a proposed hydroelectric project, the Commission considers a number of public interest factors, including the economic benefits of project power. Under the Commission's approach to evaluating the economics of hydropower projects, as articulated in *Mead Corp.*,²¹ the Commission uses current costs to compare the costs of the project and likely alternative power with no forecasts concerning potential future inflation, escalation, or deflation beyond the license issuance date. The basic purpose of the Commission's economic analysis is to provide a

²¹ 72 FERC ¶ 61,027 (1995)

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general estimate of the potential power benefits and the costs of a project, and of reasonable alternatives to project power. The estimate helps to support an informed decision concerning what is in the public interest with respect to a proposed license.

55. In applying this analysis to the project, staff has considered two options: the project as proposed and the project as licensed herein. As proposed, the project would produce about 6.8 GWh of energy annually at a cost of about 43.4 mills/kWh, or about \$295,000 per year. Using the Idaho Public Utility Commission's (IPUC) levelized avoided cost rate, staff estimates the annual value of project power would be 52.36 mills/kWh,²² or \$356,000 per year. To determine whether the proposed project is currently economically beneficial, staff subtracts the project's cost from the value of the project's power.²³ Thus, power from the project would cost about 9.0 mills/kWh or \$61,000 less than the likely alternative cost of power.

56. With the additional measures required by this license, the project would also produce about 6.8 GWh of energy annually at a cost of about 44.3 mills/kWh, or about \$301,000 per year. Using IPUC's levelized avoided cost rate, we estimate the annual value of project power would be 52.36 mills/kWh or \$356,000 per year. Thus, power from the project would cost about 8.1 mills/kWh or \$55,000 less than the likely alternative cost of power.

57. In considering public interest factors, the Commission takes into account that hydroelectric projects offer unique operational benefits to the electric utility system (ancillary service benefits). These benefits include their capability to provide an almost instantaneous load-following response to dampen voltage and frequency instability on the transmission system, system-power-factor-correction through condensing operations, and a source of power available to help in quickly putting fossil-fuel based generating stations back on line following a major utility system or regional blackout.

COMPREHENSIVE DEVELOPMENT

²² In a September 26, 2002, order (Case No. GNR-E-02-1; Order No. 29124) the IPUC established a levelized avoided cost rate for the Idaho Power Company (IPC). The levelized avoided cost rate for the IPC is 52.36 mills/kWh for a project smaller than 10 megawatts coming on-line in 2005 with a 20 year contract.

²³ Details of staff's economic analysis for the project as licensed herein and for various alternatives are included in the EA issued August 12, 2005.

58. Sections 4(e) and 10(a)(1) of the FPA,²⁴ respectively, require the Commission to give equal consideration to the power development purposes and to the purposes of energy conservation; the protection, mitigation of damage to, and enhancement of fish and wildlife; the protection of recreational opportunities; and the preservation of other aspects of environmental quality. Any license issued shall be such as in the Commission's judgment will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for all beneficial public uses. The decision to license this project, and the terms and conditions included herein, reflect such consideration.

59. The EA for the project contains background information, analysis of effects, support for related license articles, and the basis for a finding that the project will not result in any major, long-term adverse environmental effects. The project would be safe if operated and maintained in accordance with the requirements of this license.

60. Based on our independent review and evaluation of the project, recommendations from the resource agencies, and the no-action alternative, as documented in the EA, I have selected the proposed project, with the staff-recommended measures, as the preferred alternative, and find that it is best adapted to a comprehensive plan for improving Little Wood River.

61. I selected this alternative because: (1) issuance of this original license would provide a beneficial, dependable, and inexpensive source of electric energy; (2) the required environmental measures would protect fish and wildlife, terrestrial, and cultural resources, and (3) the 1.5 MW of electric energy generated from this renewable resource would continue to offset the use of fossil-fueled, steam-electric generating plants, thereby conserving nonrenewable resources and reducing atmospheric pollution.

LICENSE TERM

62. The Commission's general policy is to establish 30-year terms for projects with little or no redevelopment, new construction, new capacity, or environmental mitigation and enhancement measures; 40-year terms for projects with moderate amount of such activities; and 50-year terms for projects with extensive measures. Projects like this one that entail construction of a new dam generally receive a 50-year license.²⁵ Because this license authorizes construction of a new dam, a new powerhouse, and a new transmission line, a 50-year license term is appropriate.

²⁴ 16 U.S.C. §§ 797(e) and 803(a)(1), respectively.

²⁵ See *City of Danville, Virginia*, 58 FERC ¶ 61,318 at 62,020 (1992).

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The Director orders:

(A) This license is issued to Mr. Arkoosh (licensee), for a period of 50 years, effective the first day of the month in which this order is issued, to construct, operate and maintain the Little Wood River Ranch II Project. This license is subject to the terms and conditions of the Federal Power Act (FPA), which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the FPA.

(B) The project consists of:

- (1) All lands, to the extent of the licensee's interest in these lands, described in the project description and the projects boundary discussion of this order.
- (2) The project works consisting of: (1) a 10-foot-high, 220-foot-long rock rubble diversion dam creating an 8-acre (40-acre-foot) reservoir; (2) a 2,800-foot-long open feeder canal; (3) a concrete intake structure having two parallel 5-foot-diameter, 250-foot-long steel penstocks; (4) a 60-foot-long, 20-foot-wide, 25-foot-high concrete and steel power house containing two hydraulic Francis turbines with a total installed capacity of 1,500 kilowatts; (5) a 3,500-foot-long tailrace canal; (6) a 10,500-foot-long, 12.5-kilovolt transmission line; (7) an access road; and (8) appurtenant facilities.
- (3) The project works generally described above are more specifically shown and described by those portions of exhibits A and F shown below:

Exhibit A: The following sections of Exhibit A of the license application filed on October 17, 2003, page 1 & 2, entitled "Project Description of exhibit A."

Exhibit F: The following revised Exhibit F filed November 17, 2003:

<u>Exhibit F Drawings</u>	<u>FERC No. 12063-</u>	<u>Description</u>
F-1	1001	Diversion Site Plan
F-2	1002	Diversion Sections
F-3	1003	Penstock & Penstock Intake Plan and Elevation

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F-4	1004	Powerhouse Plan
F-5	1005	Powerhouse Elevation
F-6	1006	Feeder Canal & Tailrace Cross Sections

(4) All of the structures, fixtures, equipment or facilities used to operate or maintain the project and located within the project boundary, all portable property that may be employed in connection with the project, and all riparian or other rights that are necessary or appropriate in the operation or maintenance of the project.

(C) The Exhibits A and F described above are approved and made part of the license. Copies of the approved Exhibit F drawings shall be filed with the Commission as directed by Article 202.

(D) The following sections of the FPA are waived and excluded from the license for this minor project:

Sections 4(b), except the second sentence; section 4(e), insofar as it relates to approval of plans by the Chief of Engineers and the Secretary of the Army; section 6, insofar as it relates to public notice and to the acceptance and expression in the license of terms and conditions of the FPA that are waived here; section 10(c), insofar as it relates to depreciation reserves; sections 10(d), 10(f), and 14, except insofar as the power of condemnation is reserved; and sections 15; 16; 19; 20; and 22.

(E) This license is subject to terms and conditions submitted by the State of Idaho, Department of Environmental Quality under section 401(a)(1) of the Clean Water Act, 33 U.S.C. § 1431(a)(1), as those conditions are set forth in Appendix A to this order.

(F) This licensee is also subject to the articles set forth in Form L-15 (Oct. 1975), entitled "Terms and Conditions of License for Unconstructed Minor Project Affecting the Interests of Interstate or Foreign Commerce" (see 54 FPC 1799 et seq.), and the following additional articles:

Article 201. Administrative Annual Charges. The licensee shall pay the United States the following annual charges, effective as of the first date of commencement of project construction, and as determined in accordance with provisions of the

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Commission's regulations in effect from time to time, for the purpose of reimbursing the United States for the cost of administration of Part 1 of the Federal Power Act. The authorized installed capacity for that purpose is 1,500-kilowatts. Under the regulations currently in effect, projects with authorized installed capacity of less than or equal to 1,500 kilowatts will not be assessed annual charges.

Article 202. Exhibit Drawings. Within 45 days of license issuance, the licensee shall file the approved exhibit drawings in aperture card and electronic formats.

(a) Three sets of the approved exhibit drawings shall be reproduced on silver or gelatin 35mm microfilm. All microfilm shall be mounted on type D (3-1/4" X 7-3/8") aperture cards. Prior to microfilming, the FERC Project Drawing Number (e.g., P-12063-1001 through P-12063-###) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number shall be typed on the upper right corner of each aperture card. Additionally, the Project Number, FERC Exhibit (i.e., F-1, etc.), Drawing Title, and date of this license shall be typed on the upper left corner of each aperture card.

Two of the sets of aperture cards shall be filed with the Secretary of the Commission, ATTN: OEP/DHAC. The third set shall be filed with the Commission's Division of Dam Safety and Inspections Portland Regional Office (D2SI-PRO).

(b) The licensee shall file two separate sets of exhibit drawings in electronic raster format with the Secretary of the Commission, ATTN: OEP/DHAC. A third set shall be filed with the Commission's Division of Dam Safety and Inspections Portland Regional Office (D2SI-PRO). Exhibit F drawings must be identified as (CEII) material under 18 CFR § 388.113(c). Each drawing must be a separate electronic file, and the file name shall include: FERC Project-Drawing Number, FERC Exhibit, Drawing Title, date of this license, and file extension in the following format [i.e. P-12063-####, F-1, Diversion Dam, MM-DD-YYYY.TIF]. Electronic drawings shall meet the following format specification:

IMAGERY - black & white raster file
FILE TYPE - Tagged Image File Format, (TIFF) CCITT Group 4
RESOLUTION - 300 dpi desired, (200 dpi min)
DRAWING SIZE FORMAT - 24" X 36" (min), 28" X 40" (max)
FILE SIZE - less than 1 MB desired.

Article 203. Exhibit G Drawings. Within six months of the license issuance, the licensee shall file, for Commission approval, Exhibit G drawings enclosing within the project boundary all project facilities necessary for operation and maintenance of the

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project, including the entire length of transmission line. The Exhibit G drawings must comply with sections 4.39 and 4.41 of the Commission's regulations

Article 301. *Start of Construction.* The licensee shall commence construction of the project works within two years from the issuance date of the license and shall complete construction of the project within four years from the issuance date of the license.

Article 302. *Project Financing Plan.* At least 90 days before starting construction, the licensee shall file a project financing plan for Commission approval. The plan must show that the licensee has acquired the funds, or commitment for funds, necessary to construct the project in accordance with this license. The licensee shall not start any project construction or ground-disturbing activities that are inseparably associated with the project, before the project financing plan is approved.

Article 303. *Contract Plans and Specifications.* At least 60 days before starting any license-related construction activities, the licensee shall submit one copy of its plans and specifications and a supporting design document to the Commission's Division of Dam Safety and Inspections (D2SI) – Portland Regional Engineer and two copies to the Commission (one of these shall be a courtesy copy to the Director, D2SI). The licensee may not begin construction until the D2SI-Portland Regional Engineer has reviewed and commented on plans and specifications, determined that all preconstruction requirements have been satisfied, and authorized start of construction. The Commission may require changes to the plans and specifications to ensure the work is completed in a safe and environmentally sound manner. Construction may not commence until authorized by the Portland Regional Engineer.

Article 304. *Quality Control and Inspection Program.* At least 60 days before starting any license-related construction or ground disturbance activities, the licensee shall submit one copy to the Division of Dam Safety and Inspections – Portland Regional Engineer and two copies to the Commission (one of these shall be a courtesy copy to the Director, Division of Dam Safety and Inspections), of the Quality Control and Inspection Program (QCIP) for the Commission's review and approval. The QCIP shall include a sediment and erosion control plan.

Article 305. *Cofferdam Construction Drawings.* Before starting any license-related construction activities, the licensee shall review and approve the design of contractor-designed cofferdams. At least 30 days before starting construction of the cofferdams, the licensee shall submit one copy to the Division of Dam Safety and Inspections - Portland Regional Engineer and two copies to the Commission (one of these copies shall be a courtesy copy to the Director, Division of Dam Safety and Inspections),

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of the approved cofferdam construction drawings and specifications and the letters of approval.

Article 306. Temporary Emergency Action Plan. At least 60 days before starting any license-related construction activities, the licensee shall submit one copy to the Division of Dam Safety and Inspections – Portland Regional Engineer and two copies to the Commission (one of these shall be a courtesy copy to the Director, Division of Dam Safety and Inspections), of the Temporary Emergency Action Plan (TEAP) for the Commission's review and approval. The TEAP shall describe emergency procedures in case of failure of a cofferdam, large sediment control structure, or any other water retaining structure that could endanger construction workers or the public. The TEAP shall include a notification list of emergency response agencies, a plan drawing of the proposed cofferdam arrangement, the location of safety devices and escape routes, and a brief description of testing procedures.

Article 307. As-Built Drawings. Within 90 days of completion of any new construction of facilities authorized by this license or modifications, the licensee shall file for Commission approval, revised Exhibits A, F, and G, as applicable, to describe and show those project facilities as built. A courtesy copy shall be filed with the Commission's Division of Dam Safety and Inspection – Portland Regional Office (D2SI-PRO); the Director, D2SI; and the Director, Division of Hydropower Administration and Compliance.

Article 401. Requirement to file Erosion Control Plan for Commission Approval. Condition 9 found in the State of Idaho, Department of Environmental Quality (Idaho DEQ) section 401 water quality certification (Appendix A) requires the licensee to prepare and implement an erosion control plan after it is submitted to and approved by Idaho DEQ. This condition does not provide for consultation with other entities or provide for submittal for Commission approval.

The licensee shall develop the Erosion Control Plan in consultation with Idaho DEQ, Idaho Department of Fish and Game, and the U.S. Fish and Wildlife Service. The licensee shall submit to the Commission documentation of its consultation, copies of comments and recommendations made in connection with the plan, and a description of how the plan accommodates the comments and recommendations. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information. The Commission reserves the right to make changes to the Erosion Control Plan. Upon Commission approval, the plan becomes a requirement of the license, and the licensee shall implement the plan, including any changes required by the Commission.

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Article 402. Minimum Flow. The licensee shall release from the project dam into the Little Wood River the instantaneous minimum flows listed below, in cubic feet per second (cfs), or inflow to the project forebay, whichever is less, for the protection and enhancement of aquatic resources, riparian vegetation, and water quality in the bypassed reach of the Little Wood River.

<u>Month</u>	<u>Minimum Flow, cfs</u>
January	13
February	13
March	13
April	13*/42
May	13*/55
June	13*/48
July	13*/35
August	13*/36
September	13*/36
October	13
November	13
December	13

*The lower flow of 13 cfs applies only during drought conditions

When the flows in the Little Wood River system are low due to drought conditions as defined in the plan required by Article 404, the required instantaneous minimum flow during the months of April through September is 13 cfs. During state-declared drought emergency conditions the licensee can request from Idaho Department of Fish and Game (Idaho DFG) that the required instantaneous minimum flow be reduced to no less than 10 cfs. The licensee must obtain written permission from Idaho DFG before an instantaneous minimum flow of no less than 10 cfs is permitted. Within 10 days of receiving the written correspondence from Idaho DFG, the licensee shall file it with the Commission.

The flow may be temporarily modified if required by operating emergencies beyond the control of the licensee, and for short periods upon agreement between the licensee, Idaho DFG, U.S. Fish and Wildlife Service, and Idaho Department of Environmental Quality. If the flow is so modified, the licensee shall notify the Commission as soon as possible, but no later than 10 days after each such incident.

Article 403. Run-of-River Operation The licensee shall operate the project in a

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run-of-river mode. The licensee shall at all times act to minimize the fluctuation of the impoundment surface elevation by maintaining a discharge from the project so that, at any point in time, flows, as measured immediately downstream of the project dam approximate the sum of inflows to the project impoundment.

Run-of-river operation may be temporarily modified if required by operating emergencies beyond the control of the licensee, or for short periods upon mutual agreement between the licensee and the U.S. Fish and Wildlife Service and Idaho Department of Fish and Game. If the flow is so modified, the licensee shall notify the Commission as soon as possible, but no later than 10 days after each such incident.

Article 404. Operational Compliance Monitoring Plan. Within six months of license issuance, the licensee shall file with the Commission, for approval, an operational compliance monitoring plan.

The plan shall include at a minimum:

- (1) a design for the minimum flow release structure;
- (2) a provision for installing an automated, continuous flow-monitoring device in the project bypassed reach;
- (3) a description of the exact location, method of calibration, and frequency of recording for the flow-monitoring device;
- (4) a description of how the project shall maintain compliance with the minimum flows required by Article 402, including what criteria to use for determining when drought and state-declared drought emergency conditions exist;
- (5) a method for determining compliance with run-of-river operation required by Article 403; and
- (6) an implementation schedule for the measures proposed by the plan.

The licensee shall prepare the plan after consultation with the U.S. Geological Survey, U.S. Fish and Wildlife Service, Idaho Department of Fish and Game, and Idaho Department of Environmental Quality. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies and tribes, and specific descriptions of how the agencies' and the tribes' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies and tribes to

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comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 405. Environmental Features Design Plan Within six months of license issuance, the licensee shall file with the Commission, for approval, a plan showing the proposed design of the project's environmental features.

The plan shall include at a minimum:

- (1) a design for the feeder and tailrace canals for trapping sediments;
- (2) a design for a plunge pool below the minimum flow and spill release structure;
- (3) a design for a log-boom to prevent big game entrainment;
- (4) a design for exit ramps near the log-boom for animal egress; and
- (5) a design for raptor-proofing the transmission lines.

The licensee shall prepare the plan after consultation with the U S Fish and Wildlife Service, Idaho Department of Fish and Game, and Idaho Department of Environmental Quality. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies and tribes, and specific descriptions of how the agencies' and the tribes' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies and tribes to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

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Article 406. *Riparian Habitat Improvement Plan.* Within six months of license issuance, the licensee shall file with the Commission, for approval, a riparian habitat improvement plan.

The plan shall include at a minimum provisions for:

- (1) removing the Russian olive trees and other non-native plant species, shrubs and grasses from project lands along the Little Wood River;
- (2) planting native trees, shrubs, and grasses on project lands along the Little Wood River; and
- (3) fencing the project lands along the affected reach of the Little Wood River on the licensee's land, designed to ensure wildlife movement through the project reach with inclusion of livestock crossing gaps.

The licensee shall prepare the plan after consultation with the U.S Fish and Wildlife Service, Idaho Department of Fish and Game, and Idaho Department of Environmental Quality. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies and tribes, and specific descriptions of how the agencies' and the tribes' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies and tribes to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 407. *Environmental Monitoring Plan.* Within six months of license issuance, the licensee shall file with the Commission, for approval, a monitoring plan.

The plan shall include at a minimum:

- (1) long-term monitoring to control noxious and invasive plant species; and
- (2) monitoring for five years the results of using the measures required by Article 406 to improve the riparian habitat zone.

The licensee shall prepare the plan after consultation with the U.S. Fish and Wildlife Service (FWS), Idaho Department of Fish and Game (Idaho DFG), and Idaho Department of Environmental Quality (Idaho DEQ). The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Project operation shall not begin until the licensee is notified by the Commission that the plan, including any changes required by the Commission, is approved. Upon Commission approval, the licensee shall implement the plan.

Article 408. Cultural Resources Survey, Report, and HPMP. The licensee, before starting any future land-clearing or land-disturbing activities associated with the project, shall consult with the Idaho SHPO and shall conduct a cultural resources survey of the affected areas. Further, the licensee shall file the following: (1) a report containing the survey results; (2) a historic properties management plan (HPMP), approved by the Commission, to avoid or mitigate impacts to any historic property identified during the survey; and, (3) the written comments of the SHPO and any interested Indian tribe that might attach religious or cultural importance to any identified historic property on the report and HPMP. If no historic properties have been identified as a result of the cultural resources survey, the licensee shall not need to file a HPMP.

If the licensee discovers any previous unidentified archeological or historic sites during the course of constructing or developing project works or other facilities at the project, the licensee shall stop all land-clearing or land-disturbing activities in the vicinity of the sites, shall consult with the SHPO, and shall file for Commission approval a HPMP to avoid or mitigate impacts to any historic property, together with the written comments of the SHPO and any interested Indian tribe that might attach religious or cultural importance to the discovered site on the HPMP.

Upon Commission approval the licensee shall implement the HPMP. The cultural resources survey and HPMP shall be based on the recommendations of the SHPO, shall be conducted and prepared by a qualified cultural resources specialist, and shall adhere to the Secretary of the Interior's Guidelines for Archeology and Historic Preservation, and the Advisory Council on Historic Preservation and Commission's "Guidelines for the

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Development of Historic Properties Management Plans for FERC Hydroelectric Projects”
(issued May 20, 2002).

The cultural resources survey report and HPMP shall contain the following: (1) a description of each discovered site, indicating whether it is listed or eligible to be listed on the National Register of Historic Places; (2) a description of the potential effect of each discovered site; (3) proposed measures for avoiding or mitigating the effects; (4) documentation of the nature and extent of consultation with the SHPO and any interested Indian tribe; and (5) a schedule for mitigating effects and conducting additional studies. The Commission may require changes to the HPMP.

The licensee shall not implement a HPMP or begin any land-clearing or land-disturbing activities until informed by the Commission that the requirements of this article have been fulfilled.

Article 409. Columbia River Basin Fish and Wildlife Program The Commission reserves the authority to order, upon its own motion or upon the recommendation of federal and state fish and wildlife agencies, affected Indian Tribes, and the Pacific Northwest Electric Power and Conservation Planning Council, alterations of project structures and operations to take into account to the fullest extent practicable the regional fish and wildlife program developed and amended pursuant to the Pacific Northwest Electric Power Planning and Conservation Act.

Article 410 Use and Occupancy (a) In accordance with the provisions of this article, the licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensee shall also have continuing responsibility to supervise and control the use and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for any interests that it has conveyed under this article.

If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, such action includes, as necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The type of use and occupancy of project lands and water for which the licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 watercraft at a time and where said facility is intended to serve single-family type dwellings; (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline; and (4) food plots and other wildlife enhancement.

To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The licensee shall also ensure, to the satisfaction of the Commission's authorized representative, the use and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements.

Before granting permission for construction of bulkheads or retaining walls, the licensee shall: (1) inspect the site of the proposed construction; (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site; and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline.

To implement this paragraph (b), the licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensee's costs of administering the permit program. The Commission reserves the right to require the licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

(c) The licensee may convey easements or rights-of-way across, or leases of, project lands for: (1) replacement, expansion, realignment, or maintenance of bridges or roads where all necessary state and federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project reservoir.

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No later than January 31 of each year, the licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed. If no conveyance was made during the prior calendar year, the licensee shall inform the Commission and the Regional Director in writing no later than January 31 of that year.

(d) The licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary state and federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary federal and state water quality certification or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary federal and state approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile (measured over project waters) from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from project waters at normal surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year.

At least 60 days before conveying any interest in project lands under this paragraph (d), the licensee must submit a letter to the Director, Office of Energy Projects, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G or K map may be used), the nature of the proposed use, the identity of any federal or state agency official consulted, and any federal or state approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the licensee to file an application for prior approval, the licensee may convey the intended interest at the end of that period.

(e) The following additional conditions apply to any intended conveyance under paragraph (c) or (d) of this article: (1) before conveying the interest, the licensee shall consult with federal and state fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer; (2) before conveying the interest, the licensee shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved Exhibit R or approved report on recreational resources of an Exhibit E; or, if the project does not have an approved Exhibit R or approved report on recreational resources, that the lands to be conveyed do not have recreational value; (3) the instrument

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of conveyance must include the following covenants running with the land: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (ii) the grantee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project; and (iii) the grantee shall not unduly restrict public access to project waters; and (4) the Commission reserves the right to require the licensee to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational, and other environmental values.

(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised Exhibit G or K drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised Exhibit G or K drawings would be filed for approval for other purposes.

(g) The authority granted to the licensee under this article shall not apply to any part of the public lands and reservations of the United States included in the project boundary.

(G) The licensee shall serve copies of any Commission filing required by this order on any entity specified in this order to be consulted on matters related to the filing. Proof of service on these entities must accompany the filing with the Commission.

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(H) This order is final unless a request for rehearing is filed within 30 days from the date of its issuance, as provided in section 313(a) of the FPA. The filing of a request for rehearing does not operate as a stay of the effective date of this license or of any other date specified in this order, except as specifically ordered by the Commission. The licensee's failure to file a request for rehearing shall constitute acceptance of this license order.

J Mark Robinson
Director
Office of Energy Projects

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Form L-15
(October, 1975)

**FEDERAL ENERGY REGULATORY COMMISSION
TERMS AND CONDITIONS OF LICENSE FOR UNCONSTRUCTED
MINOR PROJECT AFFECTING THE INTERESTS
OF INTERSTATE OR FOREIGN COMMERCE**

Article 1. The entire project, as described in this order of the Commission, shall be subject to all of 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 a 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 in 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 project works, or in uses of project lands and waters, or divergence from such approved exhibits may be made if such changes will not result in a decrease in efficiency, in a 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.

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

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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 variation 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 4. 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 Energy Regulatory 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 features 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 a period of more than one week, and of its resumption and completion. 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 prescribe from time to time for the protection of life, health, or property.

Article 5. The Licensee, within five years from the 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 or 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

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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 deeds or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article.

Article 6 The Licensee shall install and thereafter maintain gages and stream-gaging stations 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; shall provide for the required reading of such gages and for the adequate rating of such stations; and shall install and maintain standard meters adequate for the determination of the amount of electric energy generated by the 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 or its authorized representative. The Commission reserves the right, after notice and opportunity for hearing, to require such alterations in the number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, as are necessary to secure adequate determinations. The installation of gages, the rating 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 the 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 records 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 7 The Licensee shall, after notice and opportunity for hearing, 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.

Article 8 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

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the equitable sharing of benefits by the Licensee as the Commission may order.

Article 9. 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 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 Commission may prescribe for the purposes hereinbefore mentioned.

Article 10. On the application of any person, association, corporation, Federal agency, State or municipality, the Licensee shall permit such reasonable use of its reservoir or other project properties, including works, lands and water rights, or parts thereof, as may be ordered by the Commission, after notice and opportunity for hearing, in the interests of comprehensive development of the waterway or waterways involved and the conservation and utilization of the water resources of the region for water supply or for the purposes of steam-electric, irrigation, industrial, municipal or similar uses. The Licensee shall receive reasonable compensation for use of its reservoir or other project properties or parts thereof for such purposes, to include at least full reimbursement for any damages or expenses which the joint use causes the Licensee to incur. Any such compensation shall 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 concurrently be 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 11. 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.

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Article 12. 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 the Licensee's lands and interests 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 13. 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 14. In the construction, maintenance, or operation of the project, the Licensee shall be responsible for, and shall take reasonable measures to prevent, soil erosion on lands adjacent to streams or other waters, stream sedimentation, and any form of water or air pollution. The Commission, upon the request or upon its own motion, may order the Licensee to take such measures as the Commission finds to be necessary for these purposes, after notice and opportunity for hearing.

Article 15. The Licensee shall consult with the appropriate State and Federal agencies and, within one year of the date of issuance of this license, shall submit for Commission approval a plan for clearing the reservoir area. Further, the Licensee shall clear and keep clear to an adequate width lands along open conduits and shall dispose of all temporary structures, unused timber, brush, refuse, or other material unnecessary for the purposes of the project which results from the clearing of lands or from the maintenance or alteration of the project works. In addition, all trees along the periphery of project reservoirs which may die during operations of the project shall be removed. Upon approval of the clearing plan all clearing of the lands and disposal of the unnecessary 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.

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Article 16. 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 the 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 to take any such other action necessary to restore the project waters, 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 to provide for the continued operation and maintenance of nonpower facilities and fulfill such other obligations under the license as the Commission may prescribe. In addition, the Commission in its discretion, after notice and opportunity for hearing, may also agree to the surrender of the license when the Commission, for the reasons recited herein, deems it to be the intent of the Licensee to surrender the license.

Article 17. The right of the Licensee and of its successors and assigns 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 the 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 18. 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.

APPENDIX A

Water Quality Certificate Conditions for the Little Wood River Ranch II Hydroelectric Project Issued By the Idaho Department of Environmental Quality (Idaho DEQ) on June 1, 2004 and modified by an Addendum filed with the Commission by Idaho DEQ on September 8, 2005.

1. Water Quality Standards: The proposed project shall be constructed and operated in a manner which will not violate Idaho's Water Quality Standards as set forth in IDAPA 58.01.02, including without limitation, the standards for excess sediment (IDAPA 58.01.02.200.08) and turbidity (IDAPA 58.01.02.250.02 e).

2. Plans and Specifications: The proposed project shall be constructed in accordance with the approved plans and specifications and any approved revisions submitted to FERC. This includes Exhibit G, the project site map, Exhibit F-1A, which were approved by FERC and Idaho DEQ, respectively; the proposed structure will require building a rock rubble dam on the streambed of the Little Wood River along with its associated appurtenances.

3. Construction Materials: All fill, construction materials not used in the project shall be removed, and disposed of in a manner, which will prevent their entry into waters of the State of Idaho. All temporary structures, excavated material, vegetation or construction debris resulting from the construction will be disposed of out of the stream channel so it cannot re-enter the stream channel. All debris will be removed from the site and disposed of in a prudent reasonable manner.

4. Machinery and Equipment: No machinery is allowed to enter the stream. Any fueling of equipment must be done away from the streambank in an upland area using reasonable and prudent measures to protect groundwater or any other surface stream.

5. Transferring Ownership: The certification holder shall notify the Idaho DEQ, in writing, upon transferring the ownership or responsibility for compliance with these conditions to another person. The new owner/operator shall request in writing, transfer of this water quality certification to his/her name.

6. Inspection of Project Area: The certification holder shall allow Idaho DEQ or its representative to inspect the project area at reasonable times and to inspect records regarding this project.

7. License Modification: If for any reason the license needs to be modified, the Idaho DEQ will be contacted to request modification. Modifications to the existing

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license as defined in this water quality certification will require a re-issuance of the water quality certification by Idaho DEQ. As defined above this addendum constitutes a license modification of the original 401 water quality certification and was requested by the applicant. To the extent practical, all construction activity will occur from the streambank of the Little Wood River to minimize any impacts to the Little Wood River. Excavation and fill material will occur but these are confined only to the rock rubble dam area and its associated appurtenances.

8. Work in the Stream: The project will require working in the streambed of the Little Wood River as described in Exhibit F-1A, which was approved and accepted by FERC and Idaho DEQ, respectively. Only that fill material that will be used to create the rock rubble dam and the rock rubble structure associated with the dam is allowed. The fill material shall conform to Idaho Department of Water Resources standards on size and quality. The construction activity will conform to the best management practices defined in the Erosion Control Plan (item 9).

9. Erosion Control Plan: Suitable, reasonable, and prudent erosion control measures shall be used to prevent the entry or transport of sediment into the Little Wood River. An approved Erosion Control Plan shall be developed and implemented on the project activity. This plan shall be submitted to and must be approved by Idaho DEQ prior to commencement of the project. If the project activity should inadvertently disturb the stream's sediment and create a turbid condition, monitoring for turbidity and sediment will be required above, at, and below the disturbance. Idaho DEQ will be notified immediately upon such an incident, and the applicant shall submit in writing within 10 days of the incident a full description of the disturbance along with the monitoring data, and what measures were taken to prevent another such occurrence.

10. Total Maximum Daily Load (TMDL): The project shall be conducted in such a manner that it meets the instream standards and any allocations set by *The Little Wood River Watershed Management Plan*. This plan protects the stream from excess nutrients, temperature, and bacteria.

11. Stormwater Discharge: Stormwater discharges from ponds, stormwater management outfalls, and stormwater facilities shall have a velocity no greater than four feet per second for the two year storm in order to prevent erosion in the receiving waterway or wetland.

12. Streambank Protection: Streambank vegetation shall be protected to the extent practical during construction. Disturbed areas because of the project's activity shall be revegetated and/or seeded with perennial vegetation as described in the approved Idaho Department of Fish and Game (Idaho DFG) riparian enhancement/habitat

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improvement mitigation.

13. Wetlands and Riparian Lands: Impacts on jurisdictional wetlands and riparian vegetation will be mitigated as described in the approved Idaho DFG riparian enhancement/habitat improvement mitigation.

14. Reasonable Assurances: This project has been reviewed to meet state water quality standards by Idaho DEQ as well as any TMDL provisions. In effect, a reasonable assurance has been established that the project will abide and meet state water quality standards and/or beneficial uses. Should the engineering aspects of the design fail, the DEQ will not be held liable for project future.

15. Education of Contractor and Sub Contractors: The Applicant and/or his Authorized Agent will instruct and educate the contractor and all sub contractors on the terms and conditions of the 401 water quality certification. Any activity that does not comply with the terms and conditions of the 401 water quality certification essentially violates the water quality standards and impairs the beneficial uses of the Little Wood River. Such activities are not allowed in the Little Wood River with the exception of working in the stream as described in Item 8 above.

16. Final Statement of Compliance: Within 30 days of completion of construction, the Applicant must provide Idaho DEQ with a written statement that the completed project meet the terms and conditions of the 401 water quality certification.