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DEPARTMENT OF
WATER RESOURCES

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Attorneys for State of Idaho

UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

In the Matter of Application for Original) Project No. 12063-001
Minor License by William Arkoosh for)
the Little Wood River Ranch II) STATE OF IDAHO'S MOTION TO
Hydroelectric Project.) INTERVENE
_____)

TO: MAGALIE R. SALAS, SECRETARY, FEDERAL ENERGY REGULATORY
COMMISSION.

On October 17, 2003, William Arkoosh ("Applicant") filed an application for an Original Minor License for the Little Wood River Ranch II Hydroelectric Project located on the Little Wood River, in Lincoln County, Idaho. On December 9, 2003, the Federal Energy Regulatory Commission ("Commission") issued a Notice of Application Accepted For Filing With The Commission And Soliciting Motions To Intervene And Protests. The State of Idaho, *ex rel.*, the Idaho Department of Fish and Game ("IDFG"),

Idaho Department of Parks and Recreation ("IDPR"), Idaho Department of Environmental Quality ("IDEQ"), Idaho Water Resource Board ("Water Board"), and the Idaho State Board of Land Commissioners ("Land Board"), by and through the State's undersigned counsel, Harriet A. Hensley, Deputy Attorney General, hereby respectfully moves the Commission for an order permitting the State of Idaho to intervene as a party for all purposes in the above-referenced project proceeding pursuant to Rule 214, 18 C.F.R. § 385.214. Pursuant to 18 C.F.R. 385.2001(a)(1)(iii), this document has been filed electronically with the Commission this date and thus all requirements for file copies have been met.

I. STATEMENT OF INTEREST AND GROUNDS FOR INTERVENTION

A. The Attorney General is a duly-established executive officer of the State of Idaho and is authorized to represent the State in all legal proceedings. Idaho Code § 67-1401. The names and addresses of the persons designated for service of documents in connection with this motion and all further proceedings are as follows:

Harriet A. Hensley, (ISB #5235)
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Phillip J. Rassier (ISB # 1750)
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Steven Schuster (ISB #3453)
Deputy Attorney General
Idaho Department of Lands
P.O. Box 83720
Boise, ID 83720-0050

B. The IDFG is a duly established executive department of the State of Idaho. Idaho Code §§ 36-101 and 67-2402(1). The statutory policy of the State of Idaho is to preserve, protect, perpetuate, and manage all fish and wildlife. Idaho Code § 36-103(a). The IDFG, acting under the supervision of the Idaho Fish and Game Commission, has the responsibility to carry out that policy. Idaho Code §§ 36-102(a) and -103(b).

C. The IDPR is a duly established executive department of the State of Idaho. Idaho Code §§ 67-2402(1) and -4222(a). The IDPR, acting under the supervision of the Park and Recreation Board, carries out recreational policies and programs of the State of Idaho. Idaho Code §§ 67-4221 and -4222. The IDPR is authorized by state statute to prepare and keep current a "Statewide Comprehensive Outdoor Recreation and Tourism Plan" referred to as "SCORTP," for the protection and maintenance of areas of scenic beauty, recreational utility, historical, archeological, or scientific interest for the enjoyment of the people. Idaho Code §§ 67-4219 and -4223(h). Consistent with these authorities, the IDPR participates in hydropower licensing proceedings to further the public interest in recreational, scenic, and historical/archeological values.

D. The Water Board is a constitutionally established water agency within the Idaho Department of Water Resources and consists of eight members appointed by the Governor. Idaho Const. art. XV, § 7; Idaho Code § 42-1732. Among the Board's duties is "to formulate, adopt and implement a comprehensive state water plan for conservation, development, management and optimum use of all unappropriated water resources and waterways of this state in the public interest." Idaho Code § 42-1734A. The Water Board has adopted the Comprehensive State Water Plan Part A, which is the statewide water policy document. This plan contains policies in the areas of water quality, species

of concern, instream flow, energy development and conservation, and other areas of water management.

E. The IDEQ is a duly established executive department of the State of Idaho. Idaho Code § 39-104. The statutory policy of the State of Idaho is to provide for the protection of human health and the environment. Idaho Code § 39-102 and -102A. The IDEQ implements these policies of the State of Idaho. Idaho Code § 39-104. The IDEQ is the state agency responsible for developing and implementing water quality standards and providing certification regarding federal licenses and permits pursuant to Sections 303 and 401 of the Clean Water Act and Idaho Code §§ 39-101 to -130 and 39-3601 to -3639.

F. The Land Board, a constitutionally created body, has the direction, control and disposition of the public lands of the state. Idaho Const. art. IX, §§ 7 and 8. Pursuant to Idaho Code § 58-104(9), the powers and duties of the Land Board include:

To regulate and control the use or disposition of lands in the beds of navigable lakes, rivers and streams, to the natural or ordinary high water mark thereof, so as to provide for their commercial, navigational, recreational or other public use;

Consistent with this authority, the Land Board participates in licensing proceedings that involve the use of public and submerged lands owned by the State.

G. The participation of the State of Idaho is in the public interest because Sections 4 and 10 of the Federal Power Act require the Commission to consider factors within the special expertise and authority of the Idaho agencies described above. The IDFG represents the public interest in fish and wildlife resources. The IDPR represents the public interest in recreation, scenic values, and historical/archeological resources. The IDEQ represents the public interest in protection of water quality. The Water Board

represents the public interest in the implementation of state water policy regarding water use and planning. The Land Board represents the public interest in ensuring that submerged lands owned by the State are used in accordance with the public trust doctrines. The Applicant and Commission need to know the policies of the State of Idaho, by and through these agencies, regarding the proposed construction and operation of the Little Wood River Ranch II Hydroelectric Project.

II. POSITION OF THE STATE OF IDAHO

A. Proposed Project Site Description

The proposed Littlewood River Ranch II Project would be located on the Little Wood River in the Big Wood River Basin, in Lincoln County, Idaho.

B. Fish and Wildlife

The IDFG Fisheries Management Plan (IDFG 2001) sets forth general policies as well as specific directives for fish management in the Big Wood River system. Additional policies that should be considered in reviewing the application for license include the Nongame and Endangered Wildlife Plan (IDFG 1991), Furbearers Plan (IDFG 1990), and Waterfowl Plan (IDFG 1990).

Protection and restoration of fish habitat and water quality in the Big Wood River system is a high priority in the fisheries management programs. The IDFG's goal is to restore, protect and enhance healthy, self-sustaining aquatic communities in these basins. With this in mind, the IDFG works with the hydroelectric industry and the Commission to ensure that hydroelectric development on Idaho waters will have benign effects on aquatic resources. Additionally, the IDFG recognizes that valuable nongame wildlife, furbearer, and waterfowl habitats may be adversely affected or lost due to hydroelectric

development in Idaho. The IDFG works to protect riparian and wetland communities, important to wildlife.

C. Recreation and Scenic Values

The IDPR works to protect and enhance recreational and scenic values throughout the State of Idaho. With this in mind, the IDPR works with the hydroelectric industry and the Commission to ensure that any hydroelectric development on Idaho waters enhances the scenic beauty and recreational utility of areas impacted by such development to the end that the health, happiness, recreational opportunities and wholesome enjoyment of life of the people may be further encouraged. Idaho Code § 67-4219.

D. Water Use and Planning

The Constitution of the State of Idaho provides that waters of the State are subject to regulation and control of the State. Idaho Const. art. XV, §§ 1 and 3. The Constitution provides that the Water Board shall have the power to formulate and implement a state water plan for optimum use and conservation in the public interest, subject to legislative review. The Water Board adopted a resolution on December 13, 1996, which approved the Comprehensive State Water Plan Part A ("State Water Plan"). The State Water Plan contains policies in the areas of water quality, species of concern, instream flow, energy development and conservation, and other areas of water management. It is the policy of the State of Idaho that new hydropower developments be in conformance with the State Water Plan. In addition, new hydropower developments should be consistent with any managed recharge projects, proposed or developed, in the Big Wood Canal Company's conveyance systems in the project area, including the Little Wood River.

E. Water Quality

Hydroelectric projects typically alter riverine characteristics such as water velocity, discharge, water depth, and water retention times. Significant potential water quality changes associated with the construction and operation of such projects include dissolved oxygen and temperature modifications, gas supersaturation (i.e., nitrogen), sedimentation, riparian/streambank erosion, and local nutrient processing. The Little Wood River in the project area has been designated by the State as a Water Quality Limited Segment under 303(d) of the Clean Water Act, 16 U.S.C. § 1313(d). This designation indicates that water quality has been degraded to the point that it is no longer able to fully support designated uses including cold water biota, salmonid spawning, primary and secondary contact recreation, and agricultural water supply. It is in this context that the IDEQ will review applications for the construction and operation of new hydroelectric power projects in the Big Wood River Basin.

F. Land Use

Under the equal footing doctrine, the State of Idaho holds title to the beds and banks of navigable bodies of water below the natural high water mark for the use and benefit of the public. The proposed project may require the approval of the Land Board to occupy state-owned lands. *See* Idaho Code § 58-104(9); IDAPA 20.03.09.

PRAYER FOR RELIEF

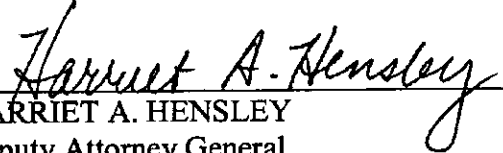
For the reasons given above, the State of Idaho respectfully requests as follows:

1. That the State of Idaho's Motion to Intervene be granted for all purposes.
2. That a copy of all pleadings filed with the Commission in this matter be sent to the State of Idaho at the addresses stated on page 2.

3. For such other and further relief as the Commission may deem just and proper.

DATED this 6th day of February 2004.

LAWRENCE G. WASDEN
Attorney General
State of Idaho


HARRIET A. HENSLEY
Deputy Attorney General
Natural Resources Division

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this 6th day of February 2004, served the foregoing document, STATE OF IDAHO'S MOTION TO INTERVENE, upon each person designated on the official service list compiled by the Secretary in this proceeding by U.S. Mail, postage prepaid.

LYNN HARMON, MANAGER
AMERICAN FALLS RESERVOIR DIST. #2
P.O. BOX C
SHOSHONE ID 83352-1503

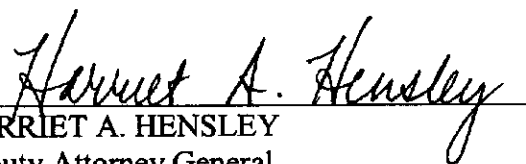
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GOODING ID 83330-0176

WILLIAM ARKOOSH
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DALE L. HIGBEE
OPERATIONS SUPERVISOR
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HARRIET A. HENSLEY
Deputy Attorney General
Natural Resources Division

Service List for P-12063

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Principal/Party Name/Address

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American Falls Reservoir District No. 2
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Shoshone, ID 83352-1503

WILLIAM ARKOOSH
Arkoosh, Bill
2005 Highway 26
Gooding, ID 83330-5337

NOTCH BUTTE HYDRO CO INC

State of Idaho

State of Idaho

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State of Idaho

State of Idaho

State of Idaho

Representative Name/Address

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TED S. SORENSON
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Steven Schuster
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STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

February 6, 2004

Magalie R. Salas, Secretary
Federal Energy Regulatory Commission
888 First Street NE Rm 1A
Washington, D.C. 20426

Re: STATE OF IDAHO'S MOTION TO INTERVENE
In the Matter of Application for Original Minor License by William
Arkoosh for the Little Wood River Ranch II Hydroelectric Project
No. 12063-001

Dear Secretary Salas:

Attached for filing in the above-named matter is the original STATE OF IDAHO'S MOTION TO INTERVENE. In addition, please change your Service List for this matter to reflect that the mailing address for Scott Grunder of Idaho Fish and Game is P.O. Box 25 not 600 S. Walnut. The correct address is listed on page 2 of the attached motion.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Harriet A. Hensley".

HARRIET A. HENSLEY
Deputy Attorney General
Natural Resources Division

HH/pb

Attachment 1 **Original**

cc: The official Service List compiled by the Secretary in Project No. 12063.

Boehm, Pat
From: Hensley, Harriet
Sent: Friday, February 06, 2004 12:31 PM
To: Boehm, Pat
Subject: FW: FERC Acceptance in P-12063-001

Harriet A. Hensley
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e-mail: hhensley@ag.state.id.us

-----Original Message-----

From: efiling@ferc.gov [mailto:efiling@ferc.gov]
Sent: Friday, February 06, 2004 12:20 PM
To: hhensley@ag.state.id.us
Cc: efiling@ferc.gov
Subject: FERC Acceptance in P-12063-001

Notice of Acceptance

This is in reference to:

Accession #: 200402065014

Filed Date: 02/06/2004

File Desc: Motion/Notice of Intervention of State of Idaho under P-12063.

Docket #: P-12063-001

Filing Type: Motion/Notice of Intervention

Signed by: Harriet Hensley

Filed by: STATE OF IDAHO

The FERC's Office of the Secretary has accepted your submission and converted your filing to a PDF File for official use. You can review information about your submission, native and PDF files in eLibrary at: <http://FERCONLINE.FERC.GOV/efile/efAccessionRpt.aspx?Accession=200402065014>

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